

**National Grid USA, National Grid NE Holdings 2 LLC,
Granite State Electric Company d/b/a National Grid,
EnergyNorth Natural Gas, Inc. d/b/a National Grid NH,**

- and -

Liberty Energy Utilities Co. and Liberty Energy Utilities (New Hampshire) Corp.

Docket No. DG 11-040

SUMMARY OF SETTLEMENT AGREEMENT

The following summary was prepared as a guide to the Commission in reviewing the Settlement Agreement submitted by the parties in the above-captioned proceeding. It is not intended to modify, expand, or restrict the Settlement Agreement in any way, but rather to provide an overview of some of the key commitments and recommendations of the signatories to the settlement. To the extent that the summary varies from the Settlement Agreement, it is the parties' intention that the Settlement Agreement should govern. It is further their intent that, if a disagreement arises in the future concerning the meaning of the terms of the Settlement Agreement, this summary shall not be admissible into evidence and may not be relied on in any manner as a basis for resolving the disagreement.

I. Approvals

The Settlement Agreement recommends that the Commission:

- A. Approve the proposed transfer of ownership of Granite State and EnergyNorth from National Grid to Liberty Energy;
- B. Authorize Granite State and EnergyNorth to issue long term debt in an amount sufficient to establish a capital structure of 45% debt/55% equity, based on the level of rate base at the closing date. Specifically, Granite State proposes to issue up to \$20 million in new long term debt in addition to the \$15 million in long term debt currently outstanding, and EnergyNorth proposes to issue up to \$90 million in long term debt, which consists of refinancing \$80 million of existing long term debt plus an additional \$10 million; and
- C. Authorize Granite State and EnergyNorth each to record a regulatory asset or liability equal to the amount necessary to reflect the fair value of its pension and other post employment benefit obligations as of the closing date, as required by generally accepted accounting principles.

In addition, Granite State and EnergyNorth agree that the Commission's approval should be conditioned on their commitment not to seek to recover through rates any acquisition premium that results from the acquisition of their stock by Liberty Energy.

II. Conditions Agreed to by Liberty Energy

Liberty Energy's business model is predicated upon running utilities locally, with local customer service, local management, and local decision making. This business model is expected to result in enhanced local responsiveness to customer needs and regulatory inquiries and increased local employment (over 60 new jobs have been created to replace centralized positions that were previously housed elsewhere, including a local president). In order to implement its model, Liberty Energy needs to install Information Technology ("IT") systems and business processes and capabilities separate from the current systems being used by National Grid. In order to facilitate the ownership transition, Liberty Energy and National Grid have entered into Transition Services Agreements ("TSAs") for each utility for an initial period of two years. Under the TSAs, National Grid will continue to provide, at cost, certain services required by Liberty Energy until Liberty Energy's own systems are in place and have been fully tested and determined to be able to provide services to customers independent of the National Grid systems.

To ensure a seamless transition and ensure that the projected benefits of the transaction are realized, Liberty Energy has agreed to conditions in the areas of Cost Recovery, IT, Customer Service, Safety, Operations, Finance, Transition Process, and Affiliate Requirements. These commitments are supported by reporting requirements that will give the Commission significant visibility into the progress of the transition activities. A summary of the major conditions under each section follows:

A. Reporting

To assist the Commission in monitoring the transition process, Liberty Energy will provide a number of monthly and quarterly reports to the Commission. The monthly reports will include updated transition timetables, costs incurred and estimates of costs to be incurred under the TSAs, TSA completion percentages, and IT project status reports, and updated organizational charts.

The quarterly reports will include any changes to corporate cost allocation procedures, changes to the IT Plan and financial forecasts prepared in the normal course of business. Liberty Energy has further committed to provide updates to the Commission between quarterly reports if material changes to the IT Plan are made.

In addition to the reporting requirements, the President of Liberty Energy NH and the Chief Executive Officer of the ultimate parent company, Algonquin Power & Utilities Corp., shall attend quarterly sessions with the Commission Staff and the OCA to keep them apprised of transition activities.

B. Cost Recovery and Rate Cases

Liberty Energy has made several commitments designed to ensure that there are no detrimental rate impacts and to provide benefits to customers from the transaction. These commitments are:

- Liberty Energy will not seek rate recovery for transaction costs (i.e., the financing, legal, and regulatory costs incurred with closing the transaction) or transition costs (i.e., temporary costs incurred to effect the transaction at the operational level).
- Granite State commits to ensuring no rate impacts from an IRS Section 338(h)(10) election (related to the step up in basis of its assets for tax purposes).
- Granite State, which last filed a rate case in 1995, shall not file for a permanent rate increase with a proposed effective date prior to January 1, 2013. This stay-out commitment does not apply to safety or reliability related filings such as the vegetation management plan (“VMP”), reliability enhancement plan (“REP”), or default service rate filings.
- EnergyNorth will not file a rate case until the earlier of three years from the date of closing or 270 days after the date on which 70% of the transition services are paid, provided, however, that if any month during the 270-day period the percentage paid drops below 70%, then the 270 days will be reset and start running again once the percentage paid reaches 70%. During the stay-out period, EnergyNorth will be able to adjust its rates for impacts of cost of gas, the CIBS program, LDAC filings, and certain exogenous events resulting in annual revenue impacts greater than \$1,000,000.
- In their first rate cases following the closing, EnergyNorth will not seek recovery for rate case expenses in excess of \$600,000, and Granite State will not seek recovery for rate case expenses in excess of \$300,000, excluding the costs of a depreciation study. Both utilities will use RFPs to retain external consultants and outside legal counsel.
- To ensure its commitment to safety during the period of the rate case stay-out for EnergyNorth, Liberty Energy commits not to seek recovery in its cost of gas rates for unaccounted for gas volumes that exceed 1.28% until the completion of EnergyNorth’s first rate case or its September 2015 cost of gas filing.

C. Information Technology

To ensure a seamless transition to Liberty Energy’s IT systems, an IT Plan and a preliminary IT Migration Plan have been developed and included as part of the settlement. The IT Plan provides Liberty Energy’s high level processes and procedures, while the IT Migration Plan provides the specific IT system implementation plans to be used during the transition process. Liberty Energy has committed to providing the Commission staff with an updated IT Migration Plan by August 1, 2012, in anticipation of completion of the design phase of its systems.

In addition to the IT Plan and IT Migration Plan, Liberty Energy has agreed to the following IT-related conditions:

- Liberty Energy's prudently incurred transition related IT capital investments are limited to \$8.1 million less depreciation in future rate filings. This amount excludes requirements resulting from changes in state or federal requirements.
- Liberty Energy will undertake an IT security assessment prior to closing to establish a baseline security analysis. Liberty Energy will then undertake a security assessment upon the completion of the implementation of the IT Migration Plan, and biennially thereafter. The security assessments shall be compliant with ISO standard 2700-1.
- Vendor Management processes that strengthen current practices will be implemented, including testing of deliverables, where applicable, prior to contract payments, as well as annual reviews of vendor performances and services.
- Comprehensive testing plans in compliance with IEEE standard 830 will be undertaken as part of the IT Migration Plan.

D. Customer Service

Liberty Energy is committed to maintaining high levels of customer service. In furtherance of this commitment, Liberty Energy will maintain a local customer service presence, local management, and local walk-in centers where customers can communicate with the utilities. To ensure that the ownership transition is seamless from a customer service perspective, the following conditions have been agreed to:

- Detailed plans explaining the customer service operations and support functions for the period after the TSA and a staffing contingency plan in case of cutover failure shall be submitted within six months of closing.
- A local president with decision-making autonomy shall be headquartered in New Hampshire. The president shall oversee the local call centers and walk-in centers, which Liberty Energy commits to maintain. During emergencies, the president shall have spending authority of at least \$250,000 to ensure the quickest possible response.
- Granite State commits to answering 80% of its call center calls within 20 seconds. EnergyNorth commits to answering 80% of its call center calls within 30 seconds. These metrics will be measured on an annual basis.
- Liberty Energy will undertake an annual residential customer service survey. In order to establish a baseline measure of customer satisfaction, an initial survey will be conducted within three months of closing. If the survey results indicate satisfaction of less than 80%, Liberty Energy will develop a plan to improve customer satisfaction and provide it to Staff.

- Liberty Energy will assist in determining the root cause of any failure to achieve the performance levels set forth as an attachment to the Settlement.

In addition, Liberty Energy is committed to providing high levels of service to low income consumers. In furtherance of this commitment, Liberty Energy will allocate the equivalent of a full time employee to low income initiatives such as providing specialized enrollment and education services, responding to customer requests through early intervention, crisis bill management, and outreach and education. In addition, Liberty Energy will maintain the utilities' current complement of low income activities and funding levels for low income initiatives.

E. Safety

Under the Settlement, Liberty Energy has made a significant commitment to ensuring the safety of the utilities' operations. In particular, Liberty Energy has committed to the following:

- An Emergency Liaison will be appointed who will provide Staff with updates four times daily during periods when the New Hampshire Emergency Operations Center is operating.
- Additional Safety Conditions, including commitments to additional programs such as marking underground facilities on customer property, have been agreed to and outlined in Attachment J to the Settlement.

F. Operations

To ensure the continuity of current programs, Liberty Energy commits to the following operations and energy efficiency conditions:

- Liberty Energy will continue Granite State's current REP and VMP conditions established in DG 06-107.
- The parties request that Granite State's current IRP docket, DE 10-142, be closed and that the company be required to file a new IRP within six months of the closing of the docket.
- Liberty Energy commits to undertake all reasonable efforts to ensure a continuation of Granite State's practice of operating energy efficiency programs within budget and achieving kWh savings. Liberty Energy also agrees to review the current level of energy efficiency budgets in the Core Electric and Gas Energy Efficiency dockets to determine whether and to what extent the budgets need revision. As part of the next Core filing, a report summarizing this review shall be included.

G. Transition Process

The success of the transition process is paramount to Liberty Energy's success in operating the companies. To ensure the transition is completed effectively, Liberty Utilities (Canada) Corp.

shall maintain a fully dedicated senior executive to be responsible for the transition activities associated with all of its acquisitions. This individual, who is the head of Liberty Utilities (Canada) Corp.'s Project Management Office ("PMO"), shall provide leadership, oversight, and control of any projects related to the integration of newly acquired companies. This senior executive reports directly to the President of Liberty Utilities (Canada) Corp.

III. Conditions Agreed to by National Grid

To ensure the National Grid's ongoing commitment to support Liberty Energy in the transition process and provide a financial enforcement mechanism to secure the smooth transition of all utility functions, National Grid has agreed to establish a financial escrow arrangement to be administered by an independent escrow agent, with funds to be released upon receipt of notifications to be issued by Staff. Under that arrangement, National Grid will place \$28,500,000 of the purchase price into escrow at the closing. The escrow funds will be accounted for in three separate "pools" to be administered as follows.

A. Pool A will consist of \$13,500,000 and will be eligible for release to National Grid in increments at prescribed three-month intervals following the closing and continuing until Day N, which is defined as the date on which all transition services have been cut over to Liberty Energy NH and/its affiliates from National Grid. The Pool A funds will be released in phases as the utilities and National Grid certify to Staff, and Staff confirms, that the various Transition Services have been fully transferred pursuant to the terms of the TSAs. The Pool A funds will be released on a pro-rata basis, based on the cumulative number of transition services that have been fully transferred. If Staff disagrees with a certification by Liberty and National Grid regarding whether a transition service has been transferred in compliance with the TSAs, it will provide a written explanation of the basis for its determination, and the associated Pool A funds will continue to be held until a determination by Staff that the service has been so transferred. Notwithstanding the foregoing, \$1,500,000 of the Pool A funds will be held in escrow until Staff has confirmed that all transition services (other than a limited number of services identified on Attachment L to the Settlement) have been cut over.

B. Pool B will consist of \$5,000,000, which will be held in escrow until the two utilities and National Grid certify to Staff that all of the transition services other than the services identified on Attachment L to the Settlement have been transferred to Liberty Energy and/or its affiliates.

C. Pool C will consist of \$10,000,000, which will be held to administer the performance of certain metrics set forth in Attachments N (Customer Service) and O (Gas and Electric Safety) to the Settlement. The intent of the metrics is to ensure (i) that the specified performance levels are maintained by the utilities during the period when National Grid is providing transition services, and (ii) that the continued performance of those services by Liberty Energy for a one-year period following their cut over from National Grid is not rendered defective as a result of any system, database, data, process and/or procedure error that is directly attributable to National Grid. The performance metrics will be administered as follows:

- Customer Service Performance Metrics. If either utility fails to achieve a performance metric, a report will be filed with Staff within 21 days following the end of the month

in which the failure occurred. Within 10 days of the submission to Staff of the report identifying the performance failure, National Grid and the affected utility will jointly provide Staff a written explanation of the reason for the failure. If Staff determines that a review of the circumstances relating to the performance failure is warranted, it will conduct such a review to determine the reasons for the failure, the severity or significance of the impact of the failure, and whether the failure is directly attributable to National Grid. Upon initiation of such a review, \$250,000 of the Pool C funds will be set aside for National Grid's potential liability. If the failure to achieve the metric triggers a Staff review and/or a set-aside of funds, the written explanation provided by the companies must also include a proposed remedy and a good faith estimate of the cost of implementing the remedy. The initiation of a review by Staff does not limit National Grid, Liberty Energy, and the affected utility's ability to begin implementation of a remedy while Staff is conducting its review.

If Staff determines that the failure to achieve a particular metric is a result of (1) National Grid's failure to comply with its obligations under the TSAs or (2) a system, database, data, process and/or procedure error that is attributable to National Grid, it may either accept the companies' proposed remedy or propose such changes as it reasonably determines are necessary. The funds needed to remedy the identified deficiency will be drawn from the Pool C funds and must be used by National Grid to implement the remedy. The amount of remedial funds may exceed the initial \$250,000 set aside, although any additional funds will also come from the Pool C funds. In determining the amount of Pool C funds to be applied for remedial purposes, the Staff is required to consider (i) National Grid's relative culpability for the failure to achieve the relevant metric and (ii) the most cost-effective remedy to address the specific performance issue (with due consideration to the short-term nature of transition services). If National Grid disputes Staff's determination, it may seek a resolution of the dispute by the Commission.

If Staff determines that it is appropriate to assess a penalty against National Grid as a result of a material failure to achieve a particular metric, it will report its finding to the Commission for a determination of the appropriate amount of the penalty to be assessed. The Commission shall consider, among other relevant factors (i) National Grid's relative culpability for the failure to achieve the relevant metric; (ii) the harm, if any, to utilities' customers directly resulting from the failure to achieve the metric; (iii) the degree to which National Grid or the utilities failed to achieve the metric; and (iv) Commission precedent with regard to the magnitude of fines levied against New Hampshire utilities for similar performance issues. National Grid's failure to achieve a particular metric will be excused to the extent that the failure was caused by circumstances beyond its reasonable control.

- Gas and Electric Safety Performance Metrics. If either utility fails to achieve a performance metric, within 15 days of such failure or notification by Staff of such failure, National Grid and the affected utility will jointly provide Staff a written explanation of the reason for the failure. If the written explanation indicates that the failure to achieve a performance metric measurement is or may be directly attributable

to National Grid, Staff may initiate a review and initiate a process similar to that for a failure to achieve a customer service performance standard set forth above in order to ensure that the cause of the failure is appropriately remedied.

- If 180 days after the cut over of all transition services (other than a limited number of services identified on Attachment L to the Settlement), there are no unresolved or uncorrected performance failures, 25% of the Pool C funds that are not otherwise subject to a set-aside will be released to National Grid. The balance of Pool C funds will be held until a year after all of such services have been cut over. If a failure to achieve any metric has occurred prior to the conclusion of the 365 days and the matter has not yet been finally resolved, a portion of the Pool C funds in an amount equal to \$250,000 for each such pending matter will continue to be held in escrow until the matter is resolved.
- National Grid will establish an escrow account and engage an independent escrow agent for purposes of administering the escrow funds as contemplated by the Settlement Agreement. The escrow agent will be required to hold, safeguard, administer, and disburse the escrow funds upon written certification of Staff in accordance with the terms of this Settlement. A copy of the Escrow Agreement will be filed with the Commission upon execution.