

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

CONCORD STEAM CORPORATION

Petition for Emergency Rates and to Discontinue Service

DG 16-769

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is entered into as of the 4th day of October, 2016, by and among Concord Steam Corporation (“Concord Steam” or “the Company”), the State of New Hampshire, Department of Administrative Services (“the State”) and the Staff (“Staff”) of the New Hampshire Public Utilities Commission (“Commission”) (collectively, “the Settling Parties”). This Settlement Agreement resolves all issues regarding Concord Steam’s requests for emergency rates and permission to discontinue utility service that are the subject of this docket.

I. INTRODUCTION AND PROCEDURAL HISTORY

Concord Steam is a New Hampshire corporation and a regulated utility that provides steam service in Concord. The State is a customer of Concord Steam.

On July 21, 2016, Concord Steam filed a *Petition for Emergency Rates and to Discontinue Service* (the “Petition”) pursuant to RSA 378:9 and RSA 374:28. In support of the Petition, Concord Steam submitted the pre-filed direct testimony of its President, Peter Bloomfield, and schedules supporting a general emergency rate increase of approximately 23% effective for service rendered October 1, 2016 through May 31, 2017, the date on which Concord Steam proposes to discontinue service. (This emergency rate request was approved by the

Commission on an interim basis by Order No. 25,947 (Sept. 28, 2016), with rates effective October 1, 2016). Mr. Bloomfield's prefiled testimony explains the circumstances underlying the Company's decision to discontinue service to its customers and its closure plan which includes working with customers to transfer to an alternate heating source, and returning the steam plant and piping located on the Hugh Gallen State Office Park South Campus to the State of New Hampshire. The proposed closure plan also includes abandoning the remaining steam piping system and filling the manholes along the system with flowable fill (light concrete) to eliminate the possibility of collapse in the future.

In addition to the requests for emergency rates and permission to discontinue service, Mr. Bloomfield's testimony seeks approval of discounted rates for the Abbot-Downing and Christa McAuliffe Schools and approval of an equipment lease between Concord Steam and CATCH that was part of a special contract approved by the Commission in Order No. 25,558 issued on August 2, 2013 in Docket DG 13-152.

On July 26, 2016, the Commission issued an Order of Notice scheduling, *inter alia*, a technical session on August 12, 2016 and an adjudicative hearing on September 6, 2016. At the adjudicative hearing which was held as scheduled, Commission Staff recommended that emergency rates be put into effect on October 1, 2016 on a temporary basis, that additional discovery be conducted, and that a hearing on permanent emergency rates be scheduled such that permanent emergency rates could be implemented on November 1, 2016.

After the September 6th hearing, parties and Commission Staff met in a technical session and agreed upon a procedural schedule for the duration of the docket. Via Secretarial letter dated September 14, 2106, the Commission approved the procedural schedule which included a merits

hearing on October 5, 2016 and indicated that the intervention requests of the New Hampshire Department of Administrative Services and the City of Concord were granted.

The Settling Parties and Staff conducted additional discovery and met in a technical session on September 22, 2016. They also engaged in settlement discussions which led to this Settlement Agreement. On September 28, 2016, the Commission issued Order No. 25,947 approving an increase in Concord Steam's distribution rates on an interim basis as of October 1, 2016 as follows: \$37.53 per one thousand pounds (Mlb) of steam for the first 500 Mlbs of steam sales; \$36.37 per Mlb for sales of 501-2000 Mlbs; and \$32.88 per Mlb for steam sales over 2000 Mlbs. These rates were approved without reference to a specific revenue requirement or other detailed rate elements. The Order indicated that the final determination regarding permanent rates and other matters under consideration in this docket will be made after further recommendations by Staff and other parties, and the October 5th hearing.

The Settling Parties recommend that the Commission resolve all outstanding issues in this docket by approving this Settlement Agreement without condition or modification.

II. SETTLEMENT TERMS

The terms set forth below are intended to constitute a comprehensive settlement of the issues in this docket, and as such, all terms are interdependent, and each Settling Party's agreement to each individual term is dependent upon agreement with all of the terms. The Settling Parties agree as follows:

A. RATES AND RATE ADJUSTMENTS

1. Effective November 1, 2016 Concord Steam's 2015 adjusted annual usage rate revenue of \$2,004,501 will be increased by \$1,400,000 resulting in Target Usage Revenue of \$3,404,501 for the months of October 1, 2016 through May 31, 2017. This increase results in the

following usage rates: \$35.37 per one thousand pounds (Mlb) of steam for the first 500 Mlbs of steam sales; \$34.21 per Mlb for sales of 501-2000 Mlbs; and \$30.72 per Mlb for steam sales over 2000 Mlbs. Report of Proposed Rate Changes is attached as Exhibit 1.

2. The usage rate for the Abbot-Downing and Christa McAuliffe Schools will be \$3.08 per Mlb, effective through May 31, 2017. All other Concord Steam tariff charges and rates will apply to these schools.

3. Monthly Usage Rate Adjustment Mechanism:

Concord Steam may increase approved usage rates to eliminate a projected under recovery that exceeds 5% of the Target Usage Revenue. Concord Steam shall provide the Commission with a monthly calculation of the projected over/under recovery of the Target Usage Revenue of \$3,404,501. The monthly calculation will be filed, along with any resulting revised usage rates for the subsequent month, not less than five (5) business days prior to the first day of the subsequent month, and shall include a revised tariff if adjusting the usage rates.

Projected Target Usage Revenue shall be calculated as follows: Actual monthly usage revenues to date plus projected monthly usage revenue (projected sales may be adjusted for customer losses), less actual and projected monthly usage revenue from fixed usage rate sales (i.e., sales to Rundlett, Abbot-Downing and Christa McAuliffe Schools).

4. If there is a projected over recovery of Target Usage Revenue in excess of 5% in the final over/under calculation (May 2017 Report), Concord Steam will refund the projected over recovery through a credit on customer bills and/or issuing a refund check.
5. Concord Steam may request an increase in emergency rates in the event of an extraordinary expense but only as part of a full rate review.
6. Concord Steam shall recover rate case expenses through a surcharge on customers' bills. The rate case expense surcharge of \$0.61 per Mlb will be effective as of November 1, 2016. Concord Steam will file a reconciliation of rate case expenses and actual and projected rate case expense surcharge revenue on or before February 15, 2017 and a revised rate case expense surcharge for effect on March 1, 2017, if necessary, to eliminate a projected over or under recovery. Rate case expenses and the revised surcharge will be subject to Commission review and approval by secretarial letter.

B. DISCONTINUATION OF SERVICE

7. Concord Steam will discontinue service to its steam customers on or about May 31, 2017. At that time, Concord Steam will return the steam plant and piping located on the Hugh Gallen State Office Park South Campus to its owner, the State of New Hampshire. With the

exception of the steam piping loop for six (6) Downtown State Buildings¹ discussed below, Concord Steam will abandon the remaining steam piping system and fill the manholes along the system with flowable fill (light concrete) to eliminate the possibility of collapse in the future.

8. To ensure that the State shall have access to steam for heating purposes beyond the termination of service by Concord Steam until such time as the State is able to complete a conversion of the Downtown State Buildings to alternative heating sources, Concord Steam agrees to conduct all necessary work to isolate a section of Concord Steam's steam pipes necessary to enable the State to distribute self-generated steam to the Downtown State Buildings (the "Downtown Loop"). Such isolation work shall be completed at Concord Steam's expense no later than five (5) business days after termination of steam service by Concord Steam.
9. At the time of discontinuance of Concord Steam's utility service, Concord Steam shall convey the Downtown Loop and all necessary easements, licenses, or other property interests necessary to maintain and operate the Downtown Loop to a special purpose entity to be created as a holding company for the Downtown Loop (the "Holding Company").
10. The Holding Company shall promptly enter into a triple-net lease with the State (the "Lease") for access to and use of the Downtown Loop by the State. The terms of the Lease shall be negotiated by the parties and submitted to the Commission prior to Concord Steam's discontinuance of service and the Parties agree that the Commission shall resolve all disputes that may arise over negotiation of the terms of the Lease. The rent for the Downtown Loop shall consist of the State's agreement to pay all expenses related to the Downtown Loop during the term of the Lease, including liability insurance naming the Holding Company as an additional insured. As additional rent for the Downtown Loop the State also agrees to pay Concord Steam for incidental Holding Company expenses such as Secretary of State Registration fees, tax return filing expenses and similar administrative expenses. Annual lease payments by the State to the Holding Company for the incidental Holding Company expenses shall be \$2,000.
11. Upon termination of the Lease, the State agrees to arrange for the filling and stabilization of any manholes associated with the Downtown Loop in accordance with Concord Steam's decommissioning plan approved by the Commission in Docket No. DG 16-769. At the State's request, Concord Steam shall provide the State with specifications for the material used by Concord Steam to fill non-Downtown Loop manholes. In consideration of the State assuming responsibility for filling the manholes associated with the Downtown Loop, Concord Steam shall include a credit to the State on the State's final utility bill equal to the estimated cost of filling the manholes associated with the Downtown Loop. The estimated cost is approximately \$8,000 and will be itemized at the time of the credit.

¹ The Downtown State Buildings are otherwise known as the State House, State House Annex, Department of Justice Building, Legislative Office Building, State Library and Upham Walker House.

12. Concord Steam's customers converting to service provided by Liberty Utilities may do so only if they have paid all outstanding charges owed to Concord Steam and are in good standing with Concord Steam.
13. The State agrees to perform, at its expense, a Phase I and Phase II environmental assessment of the premises currently operated by Concord Steam pursuant to a License for Use of Premises with the State ("the Premises"). Such environmental assessment shall be initiated as soon as possible after the date of this Settlement Agreement, and the State will make a good faith effort to obtain a final report within 60 days after the assessment is initiated but in no event later than December 23, 2016. All reports and other results of the assessment shall be provided to Staff and Concord Steam within five (5) business days of their receipt by the State.
14. On or before February 15, 2017, Concord Steam and the State ("the parties") shall file with the Commission a joint report identifying the environmental liability to be the responsibility of Concord Steam, the remediation measures for which Concord Steam may be liable and the estimated cost of remediation. The parties agree that the cost of any environmental remediation to be the responsibility of Concord Steam shall be included in the decommissioning costs of Concord Steam and recovered from customers through Concord Steam's rates prior to discontinuance of service on May 31, 2017. Concord Steam may request Commission approval to adjust emergency rates for potential remediation costs for which Concord Steam may be liable. To the extent that Concord Steam's responsibility for environmental remediation, or the cost of such environmental remediation, are in dispute or otherwise unknown at the time of the February 15, 2017 joint report, the parties agree to submit the issue to the Commission for the fashioning of an appropriate remedy, which may include the creation of a reserve fund to cover estimated environmental remediation costs.
15. Upon discontinuance of Concord Steam's utility service, the License for Use of Premises Agreement between the State and Concord Steam (the "Agreement") shall terminate and the premises thereunder shall be returned to the State free of all debris, refuse, garbage, dribble or other waste products associated with the operation of the plant.
16. Following such termination of the Agreement, and upon payment of all rent and other rent payments due under Sections IV, V.A and V.B of the Agreement through the termination date, and contingent on the resolution of environmental liability pursuant to Paragraph 14 above, the State shall provide to Concord Steam a release of liability from any and all claims that the State may have, or could bring in the future, against Concord Steam arising under Section V.G of the Agreement.
17. Upon resolution of Concord Steam's responsibility, if any, for environmental liability at the Premises, and the payment to the State by Concord Steam of sufficient funds to cover the estimated cost of any environmental remediation found to be the responsibility of Concord Steam, the State shall provide to Concord Steam a release of liability from any claims by the State for such environmental liability on the Premises.

C. OTHER

18. The CATCH equipment lease should be approved.
19. Upon discontinuance of Concord Steam's utility service, the contract providing for steam services for Rundlett Middle School, entitled Special Contract N. NHPUC3 Concord Steam Corporation with Concord School District, SAU8, shall terminate, and by this Settlement Agreement Concord Steam Corporation and Concord School District release one another from any remaining duties or commitments pursuant to said contract.

III. CONDITIONS

This Agreement is expressly conditioned on the Commission's acceptance of all its terms, without change or condition. If the Commission does not accept this Agreement in its entirety, without change or condition, or if the Commission makes any findings that go beyond the scope of this Agreement, and any of the Settling Parties notify the Commission within five business days of their disagreement with any such changes, conditions, or findings, the Agreement shall be deemed to be withdrawn, in which event it shall be deemed to be null and void and without effect, shall not constitute any part of the record in this proceeding, shall not be relied upon by Staff or any party to this proceeding or by the Commission for any other purpose.

The Settling Parties agree that the Commission's approval of this Agreement will not constitute continuing approval of or precedent for, any particular principle or issue, but such acceptance does constitute a determination that the Agreement's provisions in their totality are just and reasonable and consistent with the public interest.

The discussions that produced this Agreement have been conducted with the understanding that all offers of settlement and settlement discussions relating to this docket shall be confidential, shall not be admissible as evidence in this proceeding, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

The information and testimony previously provided in this proceeding are not expected to be subject to cross-examination by the Settling Parties, which would normally occur in a fully litigated case. The Settling Parties agree that all direct testimony and supporting documentation should be admitted as full exhibits for purposes of consideration of this Agreement. This Agreement to admit all direct testimony without challenge does not constitute agreement by the Settling Parties that the content of the written testimony filed on behalf of Staff or the other parties is accurate or what weight, if any, should be given to the views of any witness. The identification of the resolution of any specific issue in this Agreement does not indicate any of the Settling Parties' agreement to such resolution for purposes of any future proceeding, nor does the reference to any other document bind the Settling Parties to the contents of, or recommendations in, such document for purposes of any future proceeding. Because they have entered into this Agreement, the Settling Parties agree to forego cross-examining witnesses regarding their pre-filed testimony and, therefore, the admission into evidence of any witness's testimony or supporting documentation shall not be deemed in any respect to constitute an admission by any party to this Agreement that any allegation or contention in this proceeding is true or false, except that the sworn testimony of any witness shall constitute an admission by such witness.

This Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one agreement binding on all parties hereto.

(Signature Page Follows)

Dated: October 4, 2016

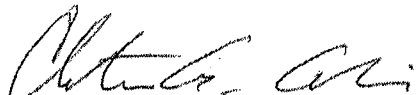
Concord Steam Corporation
By its Attorneys
Orr & Reno, P.A.



Susan S. Geiger

Dated: October 4, 2016

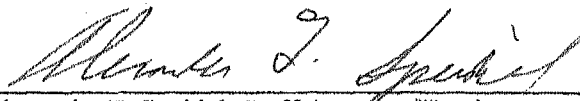
State of New Hampshire
Department of Administrative Services
By its Attorney



Christopher G. Aslin, Assistant Attorney General

Dated: October 4, 2016

Staff of the New Hampshire Public Utilities
Commission
By its Attorney



Alexander F. Speidel, Staff Attorney/Hearings
Examiner

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