

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-769

CONCORD STEAM CORPORATION

Petition for Emergency Rates and to Discontinue Service

Order Approving Settlement Agreement and Emergency Rates

ORDER NO. 25,966

November 10, 2016

APPEARANCES: Orr & Reno, by Susan S. Geiger, Esq., for Concord Steam Corporation; The New Hampshire Department of Justice, Office of the Attorney General, by Christopher G. Aslin, Esq., for the Department of Administrative Services; Upton & Hatfield, LLP, by John F. Teague, Esq., for the Concord School District; James W. Kennedy, Esq., City Solicitor, for the City of Concord; and Alexander F. Speidel, Esq. for the Staff of the Public Utilities Commission.

In this order, the Commission approves a settlement agreement and companion increase in distribution rates, on an emergency basis, for Concord Steam Corporation. The emergency distribution rates approved in this order are lower than the interim emergency rates approved by the Commission in Order No. 25,947 (September 28, 2016), but do represent an increase in the rates approved by the Commission in Concord Steam Corporation's last distribution rate case, Order No. 25,499 (April 25, 2013). The permanent emergency rates, which will be effective as of December 1, 2016, are as follows: \$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 to 2000 Mlbs; and \$30.72 per Mlb for steam sales over 2000 Mlbs. The rates are being approved pursuant to RSA 378:9.

Also in this order, the Commission approves Concord Steam's proposal, as delineated in the settlement agreement, for its discontinuation of service on or about May 31, 2017.

I. CONTINUED PROCEDURAL HISTORY

The procedural history of the earlier phases of this docket are described in Order No. 25,947 (September 28, 2016), approving interim emergency rates for Concord Steam Corporation (Concord Steam). That Order deferred the Commission's consideration of permanent emergency rates to a public hearing scheduled for October 5, 2016, and granted intervenor status to the Concord School District. *Id.* at 5-6.

On October 4, 2016, Concord Steam, the New Hampshire Department of Administrative Services (Department of Administrative Services), and Commission Staff, filed a Settlement Agreement presenting a resolution to the outstanding issues in this proceeding. Hearing Exhibit 6. Stephen Frink of the Commission's Gas & Water Division also filed direct testimony regarding the general terms of the Settlement Agreement, the proposed permanent emergency rates, and the terms of the discontinuation of service agreed to by Concord Steam. Hearing Exhibit 8.

At the hearing on October 5, Michael P. Connor, Deputy Commissioner of the Department of Administrative Services; Peter Bloomfield, President of Concord Steam Corporation; and Mr. Frink provided additional oral testimony regarding the Settlement Agreement.

II. THE SETTLEMENT AGREEMENT

The substantive terms of the Settlement Agreement (Hearing Exhibit 6) are reproduced 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 sale of 501-2000 Mlbs; and \$30.72 per Mlb for steam sales over 2000 Mlbs. [A report of proposed rate changes was attached to the Settlement Agreement].

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 to the steam plant and piping located on the Hugh Gallen State Office Park South Campus to its owner, the State of New Hampshire [Department of Administrative Services]. With the exception of the steam piping loop for six (6) Downtown State Buildings¹ discussed below, Concord Steam will abandon the remaining steam piping

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.

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 [Department of Administrative Services] (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 [Department of Administrative Services] 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.

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 [Department of Administrative Services] 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 of 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 [Department of Administrative Services] 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 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 [Department of Administrative Services] 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 [[Concord Area Trust for Community Housing](#)] 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. POSITIONS OF THE PARTIES AND STAFF REGARDING SETTLEMENT AGREEMENT AND EMERGENCY RATES

A. Concord Steam

Concord Steam is a signatory to the Settlement Agreement and is the petitioner for emergency rates and termination of service in this proceeding. Peter Bloomfield provided oral testimony on behalf of Concord Steam in support of the Settlement Agreement at the hearing. *See* Transcript of October 5, 2016, Public Hearing (Tr.) at 21-70. Mr. Bloomfield adopted, by reference, his prior oral and written testimony regarding the emergency business conditions prevailing at Concord Steam, and the specific decommissioning program proposed therein. Tr. at 21; Hearing Exhibit 1; *see also* Order No. 25,947 at 3-4. Mr. Bloomfield noted that the “permanent” emergency rates called for in the Settlement Agreement were a 19 percent increase over the distribution rates approved in Docket No. DG 12-242, compared with the “interim” emergency rates approved by Order No. 25,947, which represented a 23 percent rate increase over the DG 12-242 rates. Tr. at 27. Mr. Bloomfield clarified, on cross-examination, that Concord Steam would still continue to exist as a corporate entity (albeit without public utility status) after the proposed termination of service on May 31, 2017, enabling it to attend to ministerial matters through its expected termination of corporate existence in November or December of 2017. Tr. at 29-30. These ministerial matters would include the post-May 31, 2017, reporting requirements placed on Concord Steam by the terms of the Settlement Agreement. Tr. at 30-31. Mr. Bloomfield opined that ongoing reporting regarding physical plant issues would not be necessary, in light of the shutdown plans. Tr. at 35-36.

On cross-examination by the City of Concord's attorney, Mr. Bloomfield expressed Concord Steam's opinion that it would only be responsible for fiscal year 2017-2018 (beginning on April 1, 2017) property taxes for two months, April and May 2017, on a pro-rated basis, not for a full year's tax liability. Tr. at 37-38. Mr. Bloomfield confirmed that it had set aside adequate monies for its expected fiscal year 2016-2017 property tax liabilities as part of the emergency rate proposal presented in the Settlement Agreement. Tr. at 59-61.

Mr. Bloomfield provided an explanation of the context for Point 18 of the Settlement Agreement, relating to the "CATCH equipment lease." Mr. Bloomfield explained that \$35,000 of leased equipment had been installed by Concord Steam in CATCH's Endicott Hotel building without Commission approval of the financing arrangement; Mr. Bloomfield requested full recovery for the cost of the lease as part of the emergency rate package contemplated by the Settlement Agreement. Tr. at 52-54.

B. Department of Administrative Services

At an earlier phase in this proceeding, Deputy Commissioner Michael Connor of the Department of Administrative Services filed testimony delineating challenges faced by the Department of Administrative Services in converting various State buildings in Concord to alternative forms of heating, generally natural gas. *See* Hearing Exhibit 4. The Department of Administrative Services joined as a signatory to the October 4, 2016, Settlement Agreement, and Mr. Connor offered oral testimony at the October 5 hearing in support of the Settlement Agreement. Tr. at 108-113. Mr. Connor explained that most of the items of concern to the Department of Administrative Services had been resolved by the Settlement Agreement. Tr. at 109. Specifically, Mr. Connor stated that Concord Steam, subject to the terms of the Settlement Agreement, had agreed to provide access (through a holding company) to the State

for the use of the so-called “Downtown Loop” of steam piping, defined (by Mr. Connor at the September 9, 2016, hearing for Docket No. DG 16-770) as running along Green, Park, and School Streets, and roughly parallel to Main Street through the State House Plaza. *See* Transcript of September 9, 2016, Public Hearing in Docket No. DG 16-770 at 144. Mr. Connor also expressed confidence that proper arrangements could be made for a temporary natural-gas fired boiler to serve the buildings around the Downtown Loop, and that a proper environmental assessment of the Concord Steam steam plant owned by the Department of Administrative Services in the South Campus office area (near Pleasant Street) would be made. Tr. at 109-113. In summation, the Department of Administrative Services stated that the Settlement Agreement adequately protected the interests of the State of New Hampshire. Tr. at 123.

C. Concord School District

At hearing, the Concord School District expressed the view that the planned shutdown of Concord Steam represented an emergency for the District, due to its responsibility for providing heat to its school buildings in all circumstances, and that the Settlement Agreement represented a “real solution” to the emergency. Tr. at 124-125. The Concord School District also expressed its support for the Settlement Agreement’s terms, including those related to special rates for the Concord School District. Tr. at 126. The Concord School District endorsed the Settlement Agreement after a vote of the Concord School Board on November 7.

D. Staff

Staff was a signatory to the Settlement Agreement and filed written testimony in support thereof. Mr. Frink also provided oral testimony at hearing. *See* Hearing Exhibit 8; *note correction* at Tr. 72-73. Mr. Frink stated that, in light of the ongoing customer losses and revenue shortfalls at Concord Steam, allowing the company to terminate service would be in the

public interest, because if it tried to prolong operations, it would continue to operate at a loss, and escalating revenue shortfalls would need to be recovered from a shrinking customer base with ever-increasing rates. Hearing Exhibit 8 at (Bates pages) 3-4; Tr. at 84-88. Mr. Frink also described the technical aspects of Concord Steam's revenue requirement requested as part of emergency rates, and Staff's requested adjustments that were integrated into the rate schedules of the Settlement Agreement. Hearing Exhibit 8 at 4-5; Tr. at 80-81; 98-106. Mr. Frink also provided detailed explanations of the usage rate adjustment mechanism within the Settlement Agreement proposed rate structure, and the value of the monthly reporting requirement presented in the Settlement Agreement. Hearing Exhibit 8 at 6-7; Tr. at 80-82.

Mr. Frink testified that the Settlement Agreement's continuation of special rates for Concord School District schools was just and reasonable, and in the public interest, due to the District's past payment of contributions-in-aid-of construction to Concord Steam; and would avoid litigation risks for Concord Steam. Hearing Exhibit 8 at 7-8. Mr. Frink endorsed the approach of having the Department of Administrative Services operate the Downtown Loop after the termination of service by Concord Steam as a reasonable solution to the State's technical problems with conversion. He also endorsed the rate case expense surcharge proposed as part of the Settlement Agreement rate proposal. Hearing Exhibit 8 at 8-9. As an attachment to his pre-filed testimony, Mr. Frink provided detailed accounting schedules delineating Staff's examination of the Concord Steam emergency rate proposal embedded within the Settlement Agreement, for which Mr. Frink provided additional explanation at hearing. Hearing Exhibit 8 at 11-21; Tr. at 80-81; 98-106. Staff requested that the Commission approve the Settlement Agreement as being in the public interest under the operative statutory standards of RSA 378:9 and 374:28. Tr. at 127.

E. City of Concord

The City of Concord did not support the Settlement Agreement as currently structured. Tr. at 115-117. The City expressed a series of concerns regarding proper permitting for Concord Steam's plans to fill its to-be-abandoned manholes with concrete, and other decommissioning activities. Tr. 117-120. The City also expressed its position that Concord Steam should be required to place funds in escrow for full-year potential tax liabilities for fiscal year 2017, in addition to fiscal year 2016. On Commissioner questioning, the City stated that it had yet to quantify a specific dollar amount for fiscal year 2017 liability. Tr. at 117-118. The City also expressed its opinion that Concord Steam should be required to set aside monies within emergency rates as an escrow account or funds in reserve, to cover the potential costs of damage to Concord streets and infrastructure (including water and sewer systems) resulting from Concord Steam's decommissioning process. Tr. 118-120. As with the tax issue, the City was not able to specify a dollar amount that it would request for such repairs. Tr. at 120-121.

F. Others

Mr. Richard Husband, a Litchfield resident, filed comments in this proceeding, and in the companion Docket No. DG 16-770, opposing the planned shutdown of Concord Steam and the expected resulting increased use of natural gas. *See* Public Comment of Richard Husband, September 6, 2016. Ms. Becky Field, past President of Concord's South Congregational Church, offered oral comments at the hearing in support of the South Congregational Church's October 5, 2016 written comments, requesting that the Commission consider a fund for financial assistance, to be established by Liberty Utilities, for non-profit institutions facing financial hardships due to the conversion costs expected in connection with Concord Steam's requested termination of service. *See* Public Comment of South Congregational Church, October 5, 2016; Tr. at 11-14.

Ms. Field, on behalf of the South Congregational Church, requested that the Commission support the proposal of State Senator Dan Feltes for such a fund to be established by Liberty Utilities, and in the alternative, stay its decision on the Settlement Agreement until adequate provision for such non-profit institutions' conversion costs could be made. Tr. at 13-14; *see also* Public Comment of South Congregational Church, October 5, 2016 at 2. The Concord Community Music School filed similar supporting comments on October 14, 2016.

Senator Feltes himself offered oral comments to the Commission at the October 5, 2016, hearing in support of his concept of a Liberty Utilities-funded source of monies to enable Concord non-profit institutions and small businesses to convert away from Concord Steam service without undue financial hardship. Tr. at 15-19.

IV. EVIDENTIARY DISPUTE RE: PROPOSED HEARING EXHIBIT 7

At hearing, the City proffered a proposed Hearing Exhibit 7, an internal memorandum from the City's Associate Engineer Laura Aibel, P.E., to Concord City Engineer Ed Roberge, P.E., dated September 15, 2016, delineating \$7,200 in damage to Concord manholes allegedly caused by Concord Steam. This document was proffered by the City Solicitor on cross-examination of Mr. Bloomfield on the subject of damage to Concord infrastructure. Tr. at 41-42. Concord Steam objected to the inclusion of this document on the basis that it was received by Concord Steam in the context of settlement discussions with the City, which, in Concord Steam's opinion, meant that inclusion of the document into evidence would violate N.H. Code Admin. Rules Puc 203.20(a). Tr. at 114-115. The City responded by noting that it was not a signatory to the Settlement Agreement, and that the document was actually provided by the City to Concord Steam outside of the context of settlement negotiations. Tr. at 115-116. The Commission did

not rule on the matter at hearing, taking the issue under advisement and reserving the identification for proposed Hearing Exhibit 7. Tr. at 117.

V. COMMISSION ANALYSIS

Pursuant to RSA 378:9, “[w]henver the Commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto.” Regarding the scope of the Commission’s authority under RSA 378:9, the Supreme Court has said that, “The Legislature ... intended to vest in the commission as a fact finding body wide discretionary powers to decide whether a crisis is of sufficient severity to warrant relief and if so the extent of the relief.” *Petition of Public Service Company of New Hampshire*, 130 N.H. 265, 283 (1988). The test for whether an emergency exists is, “whether reasonable persons may find the affairs of this company are at such a crisis that immediate and substantial disaster threatens unless prompt relief is given.” *Petition of Public Service Co.*, 97 N.H. 549, 551 (1951). The crisis need not be unforeseen, sudden, or unexpected. *Id.* at 550-51. The urgency of the petitioner’s needs, rather than the time or manner of their arrival, determines whether emergency rates are warranted. *Id.* at 551; *see also Lakes Region Water Company, Inc.*, Order No. 25,516 (June 4, 2013) at 6-7; *Concord Steam Corporation*, Order No. 25,947 (September 28, 2016) at 5.

Pursuant to RSA 374:28, “[t]he commission may authorize any public utility to discontinue ... any part of its service ... permanently and remove the equipment essential to the same, whenever it shall appear that the public good does not require the further continuance of such service.” In making its determination of whether the public good does not require further continuation of a utility’s service obligation, the Commission is obliged to consider whether the utility would be providing service at a loss if required to continue, and whether customers can be

conveniently converted to an alternate fuel source, along with ensuring the safety of the abandonment of utility plant. *See Claremont Gas Corporation*, Order No. 21,309 (August 5, 1994), 79 NH PUC 426, 430-431 (1994).

We encourage parties to settle issues through negotiation and compromise because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,797 (June 26, 2015), *citing Granite State Electric Co.*, Order No. 23,966 at 10 (May 8, 2002); *see* RSA 541-A:31, V(a) (“informal disposition may be made of any contested case...by stipulation [or] agreed settlement.”) Nonetheless, we must independently determine that the result comports with “applicable standards.” Order No. 25,797 at 11, *citing EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972 at 48 (May 29, 2009) (“we must scrutinize settlement agreements thoroughly regardless of whether a party appears at hearing to raise objections”). We conduct this analysis through a transparent process to ensure that a just and reasonable result has been reached. *Id.*; *see* N.H. Code Admin. Rules Puc 203.20(b) (the Commission shall approve settlements that are “just and reasonable and serve the public interest”).

The “applicable standards” governing the proposed settlement in this rate case are those of RSA 378:9 governing emergency rates, and those of RSA 374:28 relating to termination of utility service. In the first instance, having reviewed the evidence presented, we reiterate our recent finding of Order No. 25,947 that an emergency exists with respect to Concord Steam necessitating immediate and ongoing emergency rate relief. Furthermore, the drastic operating losses and customer migration conditions prevailing for this utility establish that in all likelihood, service by Concord Steam beyond May 31, 2017, would continue to be at a loss, meeting the

first prong of the public good test of RSA 374:28, as applied by the Commission in the *Claremont Gas* case of 1994. Also, given the provisions within the Settlement Agreement made for the Department of Administrative Services to use the Downtown Loop, together with the fact that incumbent gas and electric utilities, along with various non-utility merchants, offer acceptable substitutes for Concord Steam's heating service within the City of Concord, we are confident that conversion to alternative fuel sources before the 2017-2018 heating season is feasible for Concord Steam customers. This conversion effort will be facilitated by the involvement of Liberty Utilities, the incumbent gas utility, through the terms of the Settlement Agreement in Docket No. DG 16-770, (approved today by separate Order). We are also satisfied that, pursuant to the terms of the Settlement Agreement, Concord Steam will abandon its physical plant in a safe and responsible manner. Therefore, we find that granting Concord Steam's petition to terminate service pursuant to RSA 374:28 is for the public good.

The Settlement Agreement presented in this proceeding generally meets the requirements for establishing emergency rates, within our discretion, and the requirements for a termination of service by Concord Steam. The Settlement Agreement offers a valuable opportunity to arrange for an orderly shutdown for Concord Steam during its last heating season of operation, in connection with its various outstanding compliance matters pending before us.

The discretionary emergency rate-setting powers granted to the Commission under RSA 378:9, in the context of the present emergency, enable us to incorporate the "special contract" rates extended, without Commission approval, by Concord Steam to the Concord School District for the Abbot-Downing and Christa McAuliffe Schools as a pragmatic compensation for the Concord School District's payment of a contribution-in-aid-of-construction

to Concord Steam. We therefore approve these “special contract” rates, embedded in the Settlement Agreement and emergency rate schedules.

We believe that the “special contract” rates for Concord High School in Docket No. DG 16-016, should be denied because the rate relief provided through the Settlement Agreement reflects sales to Concord High School at tariff rates and is supported by the Concord School District. Accordingly, we will direct the Executive Director to issue a secretarial letter denying the relief requested in docket DG 16-016, and closing that docket in light of this emergency rate relief. We also endorse the continuation of the Concord School District special contract rates approved by Order No. 25,030 (Oct. 27, 2009), in Docket No. DG 09-154 for Rundlett Middle School, reflected in the Settlement Agreement and endorsed by the settling parties. In the context of our approval of the Settlement Agreement, we also approve the equipment lease with CATCH.

We approve of the monthly usage rate adjustment mechanism presented in the Settlement Agreement as just and reasonable, and we also approve the various reporting requirements presented in the Settlement Agreement. Nonetheless, in light of the present emergency, we identify the need for more information to be given to the Commission. Specifically, within the monthly revenue calculation reports specified by the Settlement Agreement, Concord Steam shall also include: (i) the number of accounts with a past due balance, the amount past due on each account, the number of days past due, and Company collection efforts on each account; (ii) the precise customer count and sales volume (in Mlb and dollars) for each month; (iii) the precise employee count at Concord Steam; (iv) monthly income statements; and (v) updated monthly cash flow statements for the months of October 2016 through October 2017.

Furthermore, Concord Steam shall provide a brief summary update of its physical plant status to the Commission on a monthly basis. This reporting requirement supersedes the quarterly status reports ordered by the Commission in Docket No. DG 14-233, by Order No. 25,728 (Oct. 28, 2014). Accordingly, we will direct the Executive Director to issue a secretarial letter in Docket No. DG 14-233, closing the docket in light of the reporting requirements and relief granted in this order. Likewise, we will direct the Executive Director to issue a secretarial letter in Docket No. IR 16-202 Investigation relating to Concord Steam's physical plant, closing that docket, in light of Concord Steam's impending termination of service.

With regard to the effective date of the emergency rates called for by the Settlement Agreement, we find, in the context of ongoing customer migration away from Concord Steam, that it would be advisable to continue the higher interim emergency rates established in Order No. 25,947 for one more accounting month, with the emergency rates specified in the Settlement Agreement to take effect on December 1, 2016. This will provide an additional cushion for Concord Steam in financing its operations. In the interest of fairness, we find that any rebates to customers of Concord Steam resulting from over-collections shall be made on a pro rata basis to any customer who is or was a Concord Steam customer between October 1, 2016, and May 31, 2017. In light of this order, we direct the Executive Director to issue a secretarial letter in Docket No. DG 16-294, regarding Concord Steam Corporation's request for a permanent rate increase, closing that docket as moot.

We identify one provision of the Settlement Agreement that is unenforceable in light of the procedural posture of this docket. Point 12 of the Settlement Agreement specifies, "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.” Hearing Exhibit 6 at 6. Although we are approving the companion Settlement Agreement involving Concord Steam, Liberty Utilities, and other parties in Docket No. DG 16-770, Liberty Utilities is not a party to this proceeding, nor is it a party to this Settlement Agreement. We believe it would not be appropriate for us to attempt to bind Liberty Utilities in this order.

We also do not see a basis for granting the City’s request to include fiscal year 2017-2018 city taxes into the emergency rate schedules contemplated here, at the present time. No specific figure has been provided by the City for Concord Steam’s expected tax liability at the end of the heating season, and its operations, as of May 31, 2017. In addition, Mr. Frink testified that some portion of the company’s property tax obligations is accounted for in the rate calculations and, if there are further obligations that cannot be covered by the emergency rates set in this order, the company can file an appropriate request to adjust those rates.

Regarding the evidentiary dispute over proposed Hearing Exhibit 7, we find that the simple cost estimates presented within the document do not shed any light on the Settlement Agreement terms, or negotiations leading to the Settlement Agreement. We will therefore strike the identification for Hearing Exhibit 7 and enter the document into evidence, giving it the weight it is due.

The public comments by Mr. Richard Husband, the South Congregational Church, and the Concord Community Music School are duplicates of those comments filed in Docket No. DG 16-770, and are addressed in the Order for that proceeding. Concerning Senator Feltes’ concept for a Liberty Utilities-funded means of supporting Concord institutions’ and businesses’ conversion costs, we will address the petition in the Docket No. DG 16-827.

With regard to the questions of final decommissioning costs, and the potential environmental costs incurred in connection with the Department of Administrative Services-owned steam plant, we are satisfied with the reporting requirements specified by the Settlement Agreement, and the requirement that the Commission adjudicate any disputes involving these matters.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement between Concord Steam, the Department of Administrative Services, Staff and the Concord School District is hereby **APPROVED**, subject to the modifications, reporting requirements, and reconciliation mechanisms described herein; and it is

FURTHER ORDERED, that the interim emergency rates approved by Order No. 25,947 shall continue in effect through November 30, 2016; and it is

FURTHER ORDERED, that pursuant to RSA 378:9, and the terms of the Settlement Agreement as modified herein, that Concord Steam's emergency distribution rates of \$35.37 per Mlb of steam for the first 500 Mlbs of steam sales, \$34.21 per Mlb for sales of 501 to 2000 Mlbs, and \$30.72 for steam sales over 2000 Mlbs, are hereby **APPROVED**, effective December 1, 2016, subject to the Monthly Usage Rate Adjustment Mechanism specified by the Settlement Agreement, and ancillary refunds and reconciliation mechanisms described in this Order and the Settlement Agreement, including the carve-outs for special rates for Concord School District schools; and it is

FURTHER ORDERED, that the rate case expense surcharge established by the Settlement Agreement of \$0.61 per Mlb of steam sales is **APPROVED**, subject to the reconciliation mechanism specified by the Settlement Agreement; and it is

FURTHER ORDERED, that the identification be stricken on Hearing Exhibit 7, and that the Exhibit be entered into evidence; and it is

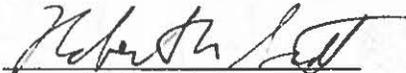
FURTHER ORDERED, that, subject to the terms of the Settlement Agreement and this Order, that Concord Steam may terminate service on or about May 31, 2017; and it is

FURTHER ORDERED, that, the Commission shall retain jurisdiction over Concord Steam until the terms of the Settlement Agreement are fully complied with and it has fulfilled its decommissioning obligations.

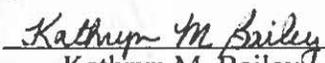
By order of the Public Utilities Commission of New Hampshire this tenth day of November, 2016.



Martin P. Honigberg
Chairman

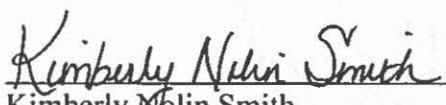


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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INTERESTED PARTIES

RECEIVE ORDERS, NOTICES OF HEARINGS ONLY

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