

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 11-040

NATIONAL GRID USA ET AL.

**Transfer of Ownership of
Granite State Electric Company and EnergyNorth Natural Gas, Inc.
to Liberty Energy NH**

**Order Approving Settlement, Granting Motions for Confidential Treatment and
Waiver of Certain Filing Requirements**

ORDER NO. 25,370

May 30, 2012

APPEARANCES: Celia B. O'Brien, Esq. and McLane, Graf, Raulerson & Middleton, P.A. by Steven V. Camerino, Esq. and Patrick H. Taylor, Esq. for National Grid USA, National Grid NE Holdings 2 LLC, Granite State Electric Company and EnergyNorth Natural Gas, Inc.; Shannon P. Coleman, Esq. for Liberty Energy Utilities Co. and Liberty Energy Utilities (New Hampshire) Corp.; New Hampshire Legal Assistance by Alan M. Linder, Esq. for The Way Home and Pamela Locke; Law Offices of Shawn J. Sullivan, PLLC by Shawn J. Sullivan, Esq. for the United Steel Workers of America Local 12012-3; James Simpson for the International Brotherhood of Electrical Workers Local 326; the Office of the Consumer Advocate by Rorie E.P. Hollenberg, Esq. on behalf of residential ratepayers; and Lynn Fabrizio, Esq. for the Staff of the Public Utilities Commission.

I. TRANSACTION BACKGROUND

On March 4, 2011, National Grid USA, National Grid NE Holdings 2 LLC, Granite State Electric Company d/b/a National Grid (Granite State), EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (EnergyNorth), Liberty Energy Utilities Co. (Liberty Energy), and Liberty Energy Utilities (New Hampshire) Corp. (Liberty Energy NH) (collectively, the Joint Petitioners) filed with the Commission a joint petition with supporting testimony for authority to transfer ownership of Granite State and EnergyNorth to Liberty Energy NH and for related approvals (the Joint Petition).

Granite State is a New Hampshire corporation and public utility that provides retail electric service to approximately 43,000 customers in 21 communities in southern and western New Hampshire. It is directly and wholly owned by National Grid USA, acquired as a result of National Grid USA's merger with New England Electric System in 2000.

EnergyNorth is a New Hampshire corporation and public utility that provides retail gas service to approximately 86,000 customers in 30 communities throughout southern and central New Hampshire and in Berlin, New Hampshire. EnergyNorth is wholly owned by National Grid NE, which is indirectly owned by National Grid USA (collectively, National Grid). National Grid USA acquired EnergyNorth as a result of its merger with KeySpan Corporation in 2007.

National Grid USA is a public utility holding company that provides electric and natural gas service to customers in New England and New York through a number of indirectly owned subsidiaries, including Granite State and EnergyNorth.

Liberty Utilities Co. (Liberty Utilities) conducts the regulated utility business of Algonquin Power & Utilities Corp. (Algonquin). Algonquin is a publicly traded corporation based in Oakville, Ontario, with a power generation unit that includes 45 renewable power generating facilities and 12 high-efficiency thermal generating facilities located in six U.S. states and Canada, and a utility services unit that owns and operates one electric utility and 19 retail water and sewer utilities. Algonquin has been doing business in New Hampshire since 1998 when it acquired the first of its eight New Hampshire hydroelectric facilities.

Liberty Utilities owns and operates Liberty Energy, a wholly owned subsidiary based in Oakville, Ontario and publicly traded on the Toronto Stock Exchange, with securities registered with the U.S. Securities and Exchange Commission. Liberty Energy NH, in turn, is wholly and

directly owned by Liberty Energy and was formed for the purpose of acquiring ownership of the stock of Granite State and EnergyNorth.

II. PROCEDURAL HISTORY

On March 8, 2011, the Commission acknowledged receipt of the Joint Petition and opened this docket to assess its merits. On March 10, 2011, the OCA notified the Commission that it would participate in the docket on behalf of residential ratepayers pursuant to RSA 363:28.

On March 29, 2011, the Commission issued an Order of Notice setting a prehearing conference and technical session for April 20, 2011, and requiring intervenor petitions by April 15, 2011. The following additional parties sought and were granted status as full intervenors: United Steel Workers of America Local 12012-3 (USWA Local 12012-3), Pamela Locke, The Way Home, John Martino, Granite State Hydropower Association, International Brotherhood of Electrical Workers Local 326 (IBEW Local 326), the Business and Industry Association (BIA), and the New Hampshire Community Action Association (NHCAA). Intervenor John Martino withdrew from the proceedings on February 3, 2012.

Following the April 20, 2011 prehearing conference, Staff, the Joint Petitioners, OCA, and other parties appearing at the prehearing conference met in a technical session and agreed upon a proposed schedule to govern the remainder of the proceeding, which the Commission approved by secretarial letter dated April 25, 2011.

On June 13 and 14, 2011, and September 7 and 8, 2011, technical sessions were held to assist in the discovery process regarding the Joint Petitioners' filing. In addition, the Joint Petitioners responded to multiple rounds of data requests from Staff, OCA, and intervenors, with supplemental responses submitted as additional information became available during the course of the proceeding.

On October 7, 2011, Staff submitted written testimony of Steven E. Mullen, Assistant Director of the Commission's Electric Division; Stephen P. Frink, Assistant Director of the Gas & Water Division; Amanda O. Noonan, Director of the Consumer Affairs Division; Randall S. Knepper, Director of the Safety Division; and Gorham, Gold, Greenwich & Associates, LLC (G3 Associates), consultants to Staff in this proceeding. On the same date, the OCA filed written testimony of consultant Scott J. Rubin. On October 17, 2011, USWA Local 12012-3 submitted written testimony of Kevin Spottiswood. Settlement discussions were held at the Commission on October 13, November 9 and 10, and December 7 and 8, 2011.

On March 14, 2012, Liberty Energy NH, Granite State, and EnergyNorth jointly filed technical statements regarding financing for both Granite State and EnergyNorth, and a motion for waiver of certain filing requirements under N.H. Code Admin. Rules Puc 308.12 and Puc 509.03 pertaining to the technical statements. On April 2, 2012, Liberty Utilities filed supplemental information related to its proposed long-term debt issuances.

On April 19, 2012, the Joint Petitioners jointly filed a motion for protective order and confidential treatment pursuant to Puc 203.08 regarding certain information provided during the discovery phase of these proceedings, and a separate motion for a waiver of certain requirements under Puc 203.08(f). No objections were received.

A settlement agreement was executed among Staff and all parties, with the exception of BIA, and filed on April 9, 2012 (Settlement Agreement). BIA, though not a signatory, did not object to the Settlement Agreement. On April 10, 2012, Steven E. Mullen and G3 Associates filed supplemental testimony on behalf of Staff providing updates of issues addressed in their prior testimony.

III. INITIAL POSITIONS REGARDING THE PROPOSED TRANSACTION

A. Joint Petitioners

The Joint Petitioners request approval pursuant to RSA 374:30 and RSA 374:33 of the proposed transfer of ownership of Granite State and EnergyNorth from National Grid to Liberty Energy NH (Liberty Energy NH). The Joint Petitioners further seek authorization for Granite State and EnergyNorth each to issue additional long-term debt to establish a capital structure of 45 percent debt/55 percent equity, based on the level of rate base at the closing date, and authorization for Granite State and EnergyNorth each to record a regulatory asset or liability in an amount required to reflect the fair value of pension and other post-employment benefit obligations as of the transaction closing date.

Under the proposed transaction, Liberty Energy NH will purchase from National Grid all issued and outstanding shares of common stock of Granite State and Energy North through two separate stock purchase agreements. Under those agreements, National Grid USA proposes to sell its Granite State shares to Liberty Energy NH for an aggregate purchase price of \$83,000,000 in cash, less the amount of certain existing indebtedness of Granite State, and further adjusted based on Granite State's working capital, capital expenditures, and regulatory assets as of the date of closing; National Grid NE proposes to sell its EnergyNorth shares to Liberty Energy NH for the aggregate purchase price of \$202,000,000 in cash, adjusted based on EnergyNorth's working capital, environmental remediation costs, capital expenditures, and regulatory assets of the date of closing.

According to the Joint Petition, Algonquin will infuse Liberty Energy NH with approximately \$135 million of new capital to finance the purchase of stock. In turn, Algonquin will issue debt instruments to institutional lenders to obtain approximately \$135 million in

additional capital. Upon execution of each stock transfer, Granite State and EnergyNorth will become directly owned by Liberty Energy NH and indirectly by Algonquin.

In connection with the Purchase Agreements, National Grid USA will enter into Transition Service Agreements (TSAs) with Granite State and EnergyNorth to support utility operations following the stock transfer. Under the TSAs, National Grid USA, either directly or through its affiliates, will provide various specified services to Granite State and EnergyNorth under their respective TSAs until operations are fully transferred to Liberty Energy NH and assistance from National Grid USA is no longer needed. With expiration of the TSA agreements, Granite State and EnergyNorth will receive certain ongoing management, financial and administrative services from Algonquin, Liberty Utilities (Canada) Corp., Liberty Utilities and Liberty Energy NH pursuant to a set of Affiliate Services Agreements.

According to the Joint Petition, Granite State and EnergyNorth will issue promissory notes to Liberty Energy NH for up to \$20 million and \$85 million, respectively, to support debt financing. The Joint Petitioners seek Commission approval for the issuance of the promissory notes under RSA 369:1. In support of their request, Joint Petitioners state that the issuance will facilitate and support the stock transfers and will result in a capital structure of approximately 45 percent debt and 55 percent equity for each utility, allowing continued access to capital markets on favorable terms.

The Joint Petitioners also submit for Commission review and approval a Site Agreement related to the ongoing operation of six electric substations in New Hampshire, and a Management Services Agreement related to ongoing management services and working capital lending arrangements anticipated between Granite State and EnergyNorth and Algonquin and/or its affiliates. Granite State and EnergyNorth further propose to defer the recognition of

previously unrecognized assets and liabilities associated with their pension plans and post-retirement benefits other than pensions (OPEBs) and, instead, amortize their fair market values as regulatory assets or liabilities over the average remaining service period of active employees expected to receive benefits under the plans.

The Joint Petition outlines a number of anticipated advantages to be realized from the proposed transaction, including local management and operation of the two utilities under a New Hampshire-based President; the return of approximately 60 service company jobs such as management, engineering, accounting and customer service positions to New Hampshire through the employment of knowledgeable employees from National Grid, as well as the continued employment of Granite State and EnergyNorth field employees; a corporate owner committed to investing the capital necessary to provide safe and reliable utility service; and the maintenance of reasonable rates based on costs incurred primarily at the local level and readily identifiable with the services provided. The Joint Petition further states that Liberty Energy NH does not intend to seek rate recovery of any acquisition premium or transaction costs arising from the Stock Transfers, and does not plan to make substantive changes to either Granite State's or EnergyNorth's tariff as a result of the transfers.

B. United Steel Workers of America Local 12012-3

In support of its petition to intervene, USWA Local 12012-3 stated that it represents certain individuals employed by EnergyNorth who live and work in New Hampshire. Pre-filed testimony by Kevin Spottiswood, Unit Chairperson of Local 12012-3, stated that Liberty¹ has demonstrated a willingness to communicate with members of Local 12012 and, throughout the

¹ For ease of reading, "Liberty" hereinafter will refer to Liberty Energy and Liberty Energy NH jointly, with the understanding that ultimate direct ownership will be held by Liberty Energy NH. Where clarity requires, reference will be made to Liberty Utilities, Liberty Energy and/or Liberty Energy NH.

transaction process, has provided information on how it plans to conduct business operations, maintain labor/management relations and implement employee benefit programs. On behalf of USWA Local 12012, Mr. Spottiswood recognized Liberty's stated commitment to safety, public relations and job security, and argued that, to the extent those commitments could be solidified, the proposed sale should benefit all concerned.

C. OCA

In pre-filed testimony by Scott J. Rubin, the OCA argued that Liberty has not demonstrated the requisite financial, technical, and managerial fitness to own and operate EnergyNorth and Granite State. OCA further evaluated the effect of the proposed transaction on the utilities' cost of service and rates, on their quality of service, and on the State's economy, arguing that Liberty's operating costs, and therefore rates, would be higher than the costs EnergyNorth and Granite State would incur if they remained part of National Grid, and that Liberty was not proposing to make significant improvements in the quality of service received by customers. The OCA proposed a number of conditions designed to protect Granite State and EnergyNorth customers from potential negative consequences of the proposed transaction, including conditions to ensure that the level of rates and basic quality of service remain unchanged under new ownership.

D. Staff

Staff provided pre-filed testimony addressing customer service, emergency response, pipeline safety, information technology systems planning and implementation, transition costs and risks, and transaction financing. In terms of customer service, Staff noted Liberty's promises to uphold a customer-focused management philosophy through locally empowered management teams and the re-establishment of a local call center as well as walk-in centers.

Staff identified commitments to low-income customers currently undertaken by National Grid, noting that it was unclear whether Liberty would continue those commitments. Staff emphasized the need for customer service staffing plans that would support the transition and take into account possible cut-over failures.

With respect to emergency response and pipeline safety, Staff stated that Liberty would need to develop a more detailed, comprehensive Emergency Response Plan to eliminate the unnecessary sections applicable to larger regions and areas of response in National Grid's current plan. According to Staff, Liberty would also need to establish effective resource procurement mechanisms for wide-scale emergency events, including participation in regional mutual assistance networks with local management authority to make procurement decisions. Staff urged Liberty to implement and maintain remote readable computer access for designated Commission Staff and outage management system (OMS) capabilities that would provide estimated restoration times on a street-level basis. Finally, Staff urged Liberty's commitment to current pipeline safety conditions, including the sectionalizing of gas pipeline systems, valve maintenance, and adherence to industry best practices and construction standards. Staff also determined that Liberty should establish certain new pipeline safety conditions, including incorporating and integrating global positioning system information with geographic information systems to produce enhanced record keeping capabilities; more frequent odorization sampling; implementing a quality assurance plan for new construction activities; enhanced snow and ice protection for meter sets; and a commitment to reduce Grade 3 leaks, as defined in the Settlement Agreement, throughout the gas distribution system over a ten year period. Staff also urged Liberty to mark out private residential underground electrical facilities that extend beyond

Granite-State-owned facilities, as an added service for customers when using the underground damage prevention system.

Staff noted the various financing instruments the Joint Petitioners propose to support the transaction, including terms and conditions of long-term debt associated with financing the transaction, and short-term credit facilities to be made available to Granite State and EnergyNorth. Staff urged greater transparency in the transition process through quarterly status reports on transition timetables, estimated and actual costs incurred throughout the transition, services added, deleted or completed changes, in cost allocations, updated organizational charts and periodic financial forecasts. Staff further noted the need to reconcile Liberty's assertion that it could operate Granite State at the same cost level as currently operated under National Grid, given projected annual operational and maintenance costs that are higher than current levels.

Staff emphasized the need to clearly identify and distinguish transition costs, including those incurred to modify and acquire new information technology (IT) systems, from normal utility operating costs and capital investments, as well as the need to evaluate incremental transition costs associated with acquisition costs and potential rate impacts. Staff further urged commitment to a capital spending plan that is carefully considered and limited to what is essential to provide safe and reliable service and support economic growth, and not simply to increase rate base and revenues. Toward that end, Staff argued that no recovery of transition costs related to systems implementation should be permitted and that the acquisition premium (purchase price above the book value of regulatory assets) be held in escrow and used to offset significant transition cost overruns that Liberty might experience.

Finally, through its consultants, G3 Associates, Staff emphasized the importance of a transparent, efficient and effective transition of IT systems to Liberty. Toward that end, Staff

recommended a number of commitments that Liberty undertake to ensure the availability of and accessibility to historical data essential to Granite State and EnergyNorth, detailed transition planning to achieve full implementation of a committed IT plan, rigorous IT security measures and technologies to protect business data networks, maintenance of the highest level of access controls to systems and the information within them, a comprehensive systems testing program, and strengthened vendor management processes and protocols. Staff further recommended steps to ensure National Grid's full and continued commitment to a smooth transition, including the appointment of a fully-dedicated senior executive responsible for IT transition activities, the payment of a percentage of fees earned under the TSAs to a publicly-administered escrow account until the transaction is completed, and the posting of a performance bond payable to the State of New Hampshire in the event of non-performance. Staff also recommended monitoring and evaluation of systems implementation throughout the transition.

IV. SUMMARY OF SETTLEMENT AGREEMENT

The Settlement Agreement was signed and filed by the Joint Petitioners, Staff, the OCA and all parties to the proceeding with the exception of the BIA. The Settlement Agreement recommends that the Commission approve the proposed transfer of ownership, authorize the proposed issuance of new, long-term debt, and authorize both Granite State and EnergyNorth to record regulatory assets or liabilities reflecting the fair value of pension and other post-employment benefit obligations as of the transaction closing date. Granite State and EnergyNorth further agree that the Commission's approval of the Settlement be conditioned on their commitment to forego recovery through rates of any acquisition premium, transaction or transition costs that result from the acquisition. A copy of the Settlement Agreement, with the various attachments integral to the Agreement itself, is available at:

www.nh.puc.gov/docketbook/DG11-040. The Settlement includes a number of commitments made by Liberty and National Grid, as outlined below.

A. Commitments by Liberty

Liberty has agreed to certain reporting requirements intended to assist the Commission in monitoring the transition process, including monthly reports with updated organizational charts and transition timetables, costs incurred and estimates of costs to be incurred under the TSAs, the status of services provided under the TSAs, and updates on IT systems development and transfers from National Grid to Liberty.

1. Customer Rates

Liberty has made certain commitments designed to provide benefits to customers and ensure no detrimental rate impacts as a result of the proposed transaction. Those commitments include no recovery through rates of any acquisition premium or transaction costs, including financing, legal and regulatory costs incurred with closing the transition, or transition costs incurred to effect the transaction. Both Granite State and EnergyNorth commit to individual stay-out provisions under which Granite State agrees not to file for a rate increase effective prior to January 1, 2013,² and EnergyNorth agrees not to file for a rate increase until the earlier of three years from the date of closing or 270 days after the date on which 70 percent of the transition services are paid for. Granite State's stay-out commitment does not apply to safety or reliability related filings such as those made under its vegetation management plan (VMP), reliability enhancement plan (REP), or provision of default service. EnergyNorth further commits to forego recovery through gas rates for the cost of unaccounted for gas volumes that

² Granite State's commitment is consistent with its current multi-year rate agreement in DG 06-107, in which it agreed not to file for a rate increase before January 1, 2013.

exceed 1.28 percent as reported in its cost of gas filings for the period commencing July 1, 2012, and terminating the earlier of the completion of its first rate case or June 30, 2015.

Granite State and EnergyNorth also agree not to seek recovery for rate case expenses in excess of \$300,000 and \$600,000, respectively, in their respective first rate cases following the transaction close. Granite State's rate case expense commitment not does include the costs of a depreciation study.

2. Information Technology

As part of the Settlement, Liberty Energy developed an IT Plan and a preliminary IT Migration Plan designed to facilitate a seamless transition from National Grid to Liberty Energy's IT systems. The IT Plan sets out high level processes and procedures, while the IT Migration Plan provides specific IT system implementation plans to be followed during the transition process. Liberty will provide Staff an updated IT Migration Plan by August 1, 2012.

Liberty has agreed to an \$8.1 million cap on recovery of transition-related IT capital investments, not including capital expenditures required to meet changes in state or federal regulatory requirements. Liberty has also committed to undertake an IT security assessment compliant with International Organization for Standards (ISO) standard 2700-1³ prior to closing to establish a baseline security analysis, a re-assessment upon completion of the IT Migration Plan, and biennial assessments thereafter. Liberty will also undertake comprehensive IT systems testing in compliance with Institute of Electrical and Electronic Engineers (IEEE) standard 829.⁴ Finally, Liberty will strengthen its current practices regarding IT vendor management through testing of deliverables, where applicable, prior to contract payments and annual reviews of vendor performance and services.

³ ISO standard 2700-1 sets forth specific requirements intended to bring information security under explicit management control.

⁴ IEEE standard 829 specifies the format of documents that may be used in software testing.

3. Customer Service

In support of its commitment to maintain high levels of customer service, Liberty will maintain local management, a local customer service presence, and local walk-in centers for customers. Within six months of closing, Liberty will provide detailed plans explaining customer service operations and support functions for the post-transition period and a staffing contingency plan in case of cutover failure. Granite State commits to answering 80 percent of the calls received at its call center within 20 seconds; EnergyNorth commits to answering 80 percent of its call center calls within 30 seconds. Both performance metrics will be measured annually. A local president with decision-making authority and spending authority of at least \$250,000 will be headquartered in New Hampshire. Liberty will conduct a residential customer satisfaction survey for both Granite State and EnergyNorth within three months of close to establish a baseline for customer satisfaction. Should the survey results indicate a satisfaction level below 80 percent, Liberty will develop a plan to improve customer satisfaction for Staff review. Residential customer satisfaction surveys will be conducted annually thereafter. Liberty will also assist in determining the root cause of any failure to achieve the performance levels set forth in certain performance metric requirements outlined in Attachment N to the Settlement.

4. Safety

Liberty will appoint an Emergency Liaison who will provide Staff with updates four times daily during emergency events when the New Hampshire Emergency Operations Center is operating. Further commitments to safety are outlined in Attachment J to the Settlement, including marking underground electric facilities on customer property to the meter, bolstered resource procurement policies and practices during wide-scale emergency events, remote readable computer access for designated Commission Staff that enables access to outage

management system (OMS) display screens, OMS capability of displaying estimated restoration times of outages on a neighborhood level, improved valve maintenance, and enhanced reporting. These safety-related measures represent a comprehensive set of conditions that include and supersede existing safety-related standards and requirements set forth in various Commission orders, rules and commitments made in prior settlements.

5. Operations

Liberty commits to maintaining Granite State's existing REP and VMP conditions, as established in DG 06-107, and Granite State will file a new Integrated Resource Plan within six months of the issuance of this order. On acceptance of that commitment, the parties to the Settlement recommend that the current Granite State IRP docket, DE 10-142, be closed. Finally, Liberty commits to continue Granite State's practice of operating energy efficiency programs within budget and achieving kWh savings. Liberty 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. In its 2013-2014 Core filing, Liberty will submit a report summarizing its budget review.

6. Transition Process

To help ensure a smooth transition, Liberty commits to maintaining a fully dedicated senior executive responsible for transition activities associated with its various utility acquisitions. That executive, the head of Liberty Utilities (Canada) Corp.'s Project Management Office, will report directly to the President of Liberty Utilities (Canada) and will provide leadership, oversight, and control of any projects related to the integration of newly acquired companies.

B. Commitments by National Grid

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

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 from National Grid to Liberty Energy NH and/or its affiliates. The Pool A funds will be released on a pro-rata basis, using the cumulative number of transition services that have been fully transferred pursuant to the terms of the TSAs, as certified by the utilities and National Grid and confirmed by Staff.

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

Pool C will consist of \$10,000,000 to be held in escrow as a means for Staff to administer certain performance metrics set forth in Attachments N (Customer Service) and O (Gas and Electric Safety) to the Settlement. Those metrics are intended to ensure that specified performance levels are maintained by the utilities during the period when National Grid is providing transition services, and that the continued provision of those services at the same performance levels by Liberty Energy for a one-year period following 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.

If 180 days after the cut-over of all transition services (other than the limited number of services identified on Attachment L to the Settlement) there are no unresolved or uncorrected performance failures, 25 percent of Pool C funds 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 prior to closing. Funds equaling \$28,500,000 will be placed in the escrow account at close. The escrow agent will be required to hold, safeguard, administer, and only disburse funds from the account upon written certification of Staff in accordance with the terms of the Settlement. A copy of the escrow agreement will be filed with the Commission upon execution.

V. POSITIONS REGARDING THE SETTLEMENT

A. Joint Petitioners

In hearing testimony, Algonquin and Liberty Utilities provided an overview of their corporate structure and affiliate relationships, as depicted in Attachment A to the Settlement Agreement. That structure includes Emera, Inc. (Emera), Algonquin's largest shareholder at approximately 7 percent and a \$6 billion power utilities company with the contractual opportunity to invest and hold up to 25 percent of Algonquin. Algonquin further stated that

Emera has committed to providing Algonquin with \$60 million in additional equity earmarked for the acquisition of Granite State and EnergyNorth. With respect to additional acquisitions that could compete with the New Hampshire utilities for corporate resources, Algonquin stated that while it continues to develop power projects in Canada and the United States, it has no pending utility acquisitions other than the acquisition of some additional natural gas distribution assets in Missouri, Iowa, and Illinois, and that, in the event it were to acquire additional utility businesses, any new acquisition would not be likely to close before 2014. Algonquin agreed that to the extent it invests in an IT system with applicability outside the State of New Hampshire, the costs of that system should be reasonably shared amongst other regulated utilities, but emphasized that its utility and power businesses are legally separate from a debt perspective and would not be cross-collateralized. In New Hampshire, Algonquin stated that it sees an opportunity to increase penetration of its natural gas services, a potential to acquire additional utilities, and continued reinvestment in existing utility infrastructure.

Liberty Utilities described its business strategy as one that invests in moderate return and predictable risk businesses, such as rate-regulated utility companies, adding that its corporate culture focuses on customer service and local management and, in the instant transaction, a commitment to returning jobs to New Hampshire and increasing the penetration of natural gas service to customers in the state. Liberty Utilities stated that the acquisition of Granite State and EnergyNorth would constitute 30 percent of its corporate business, compared to 2 percent of National Grid's corporate portfolio. Liberty Utilities described the corporate structure of Liberty Energy NH, as depicted in Hearings Exhibit 6, noting that Liberty Energy NH continues to populate key management and leadership positions.

Liberty Utilities explained that -- with National Grid -- it has formed a multi-tiered, multi-disciplined transition management organization comprised of a Transition Steering Committee and a Transition Governance Group with representatives of both the Liberty family of companies and National Grid to manage the New Hampshire utility acquisitions and transition, as depicted in Hearings Exhibit 9. According to Liberty Utilities, the New Hampshire-based president of Liberty Energy NH has full accountability for profit-and-loss within the state and will be responsible for executing Liberty Utilities' corporate vision of customer-centricity, community involvement, employee engagement, and regulatory compliance.

Liberty Utilities testified that it created over 25 individual project plans for a series of functions it deems necessary to complete the transition. Those plans assessed people, process and policy issues, technology requirements, branding, and systems testing and readiness. According to Liberty Utilities, as of "Day 1" or the first day following the closing of the proposed transaction, Granite State and EnergyNorth customers will see no change to the phone numbers to call for service, only in the company name and logo. Personnel and employee benefits will transfer from National Grid to Liberty on Day 1. Liberty Utilities emphasized its diligence in getting its financial system up and running with a Microsoft Dynamics Great Plains application, and conducting system acceptance testing in readiness for Day 1.

With respect to the transfer and cut-over of corporate functions, Liberty Utilities stated that no service will be cut over prematurely. Towards that end, the IT Migration Plan (Attachment H to the Settlement) sets forth a significant testing approach and strategy, under which each individual service will be tested multiple times before it is turned over to the users, at which point Liberty will undertake detailed user acceptance testing. A readiness determination will be made on each service and Liberty will enter into a formal notification period with

National Grid prior to the cutover of each service. Liberty Utilities stated that to the extent its IT implementation costs exceed the cap set forth in the Settlement Agreement, all necessary investments would be made and non-recoverable costs would be borne by the shareholders.

National Grid testified that it is fully committed and has been working closely with Liberty Utilities and Liberty Energy NH to ensure that its responsibility to provide transition services under the TSAs is fully met. Roughly 48 personnel from National Grid are focused solely on this transaction and will transfer to Liberty Energy NH on Day 1, at a cost to National Grid of approximately \$650,000 a month during the transition period. National Grid further noted that it had committed a sum of \$28.5 million to this transition as part of the agreed upon escrow mechanism in the settlement, and is prepared to continue to provide services beyond the timeframes envisioned in the TSAs, if necessary. Toward that end, National Grid will maintain its core transition team in place until the transaction is fully completed.

B. The Way Home and Pamela Locke

On behalf of The Way Home and Pamela Locke, New Hampshire Legal Assistance (NHLA) expressed full support for the Settlement Agreement at hearing, and that Liberty's commitment to local management and a customer-oriented focus that provides the ability to contact personnel who will listen, address concerns, and make decisions was welcome. NHLA further noted that Liberty had immediately embraced the request that it assume full responsibility for the existing low-income programs that National Grid currently operates. Through questioning of petitioner witnesses, NHLA confirmed Liberty's commitment to low-income initiatives and to maintaining Granite State's existing energy efficiency programs within budget and meeting kilowatt-hour savings goals. NHLA concluded that the proposed transaction offers benefits to the customers, particularly to the low-income community.

NHLA also relayed at hearing support for the Settlement Agreement from the NHCAA, a signatory to the settlement.

C. United Steel Workers of America Local 12012-3

USWA Local 12012-3 stated its support for the transaction at hearing and its expectations of higher standards for better service and safer service under Liberty ownership to the benefit of employees, customers and the general public. USWA Local 12012-3 added its appreciation for the cooperation of Liberty management through the course of the transaction and negotiations.

D. International Brotherhood of Electrical Workers Local 326

On behalf of IBEW Local 326, James Simpson stated that in his 30 years in the electric industry he has never met a management group as open and willing to sit down and work with the unions as Liberty, noting that Liberty had taken the initiative to call the unions, hold employee meetings and host conference calls. IBEW Local 326 stated its strong support for the proposed transaction, noting that as a small company with fewer layers of bureaucracy, Liberty will be able to more nimbly respond to emergencies, increasing overall reliability.

E. OCA

The OCA stated its support for the Settlement Agreement, noting in particular the provisions in the settlement that require rate case stay-outs, limit rate case expense recovery, and establish a cap on recovery for the cost of unaccounted for gas. At hearing, OCA testified through its witness, Scott Rubin, that it had continuing concerns with Liberty's technical and managerial fitness, although the settlement provisions address most of his concerns about service quality and the transition process, including several ratemaking provisions, transition period caps on IT-related investment and unaccounted for gas, a bar on changes in accumulated deferred tax

balances as a result of the elected tax treatment of the transaction, and limits on rate case expenses in the utilities' first base rate cases under Liberty ownership.

Mr. Rubin noted that the high level of Staff involvement, called for in implementing the Settlement Agreement provides some limited protection for the public against the consequences of an inexperienced company taking over the Granite State and EnergyNorth utility operations. According to Mr. Rubin, Liberty will not capture some of the economies of scale that National Grid provides today, a concern in the early years of new utility ownership before new investments have depreciated. Stemming from that concern, the caps on expenses and ratemaking provisions in the Settlement Agreement are designed to mitigate and offset Liberty's higher operating costs in the first few years. Mr. Rubin testified that he had no objection to the financing terms proposed by Liberty during the proceedings, and concluded that if the settlement provisions are approved, implemented and vigorously enforced, the transaction is in the public interest and the public will not suffer a net harm.

F. Staff

Staff testified that the Settlement Agreement addresses concerns regarding Liberty's lack of experience in operating electric and gas distribution systems, the expense of the new IT systems and the impact that operating and transition costs might have on rates. According to Staff, Liberty has hired experienced employees with utility and New Hampshire regulatory experience, and the settlement ensures that there will be no recovery through rates of the acquisition premium, transaction or transition costs, and no present or future recovery of IT capital expenditures that exceed \$8.1 million. In addition, the settlement includes a rate case stay-out period for EnergyNorth and caps on rate case expenses recoverable through Granite State and EnergyNorth rates, and the unaccounted for gas provision is an added incentive for

EnergyNorth to maintain unaccounted for gas percentages at or below current levels during the transition period. Staff further noted that the escrow mechanism included in the settlement is designed as a financial incentive to ensure National Grid's commitment and involvement throughout the transition process, to ensure that Liberty receives the assistance they contracted for, and to protect the New Hampshire public. Escrow funds will be available to correct issues that may arise following the cut-over of services under the TSAs in the event it is determined that any identified problem is attributable to a failure of National Grid's data, systems, process or procedures. The funds will also be available for the Commission to use for possible penalty consideration in the event of a significant failure.

Staff stated that it had reviewed the proposed plan for financing the stock transfers, as well as the availability of short-term debt to provide for operational needs going forward. Staff found the long-term debt financing plan to be reasonable in its proposed interest rate and maturity terms, which will be reviewed again when final terms and conditions are provided after closing, and in the provision for a capital structure of 45 percent debt/55 percent equity. Staff added that the proposed use of the funds is appropriate and prudent, based on information available at the time of hearing and consistent with the Commission's standard application of the *Easton* test.⁵ The Settlement addresses Staff's concern regarding the availability of short-term credit funds for Granite State and EnergyNorth, given the fact that other Liberty Energy affiliates can draw upon the credit facility, as the total facility will be increased to \$80 million upon closing of this transaction and \$100 million upon the closing of its acquisition of additional gas distribution facilities in the Midwest. Cost allocation amongst the numerous Liberty affiliates will be reviewed by Staff and the OCA with Liberty prior to the filing of Granite State's first

⁵ The *Easton* analysis involves looking beyond actual terms of the proposed financing to the use of the proceeds and the effect on rates, in order to insure that the public good is protected. See *Appeal of Easton*, 125 N.H. 205, 211 (1984).

base rate case. Granite State's first rate case will also provide the opportunity to review the existing Major Storm Reserve, and Reliability Enhancement and Vegetation Management Programs, to assess whether those programs should be revised. The parties to the settlement have agreed to close the existing least cost integrated resource plan docket, DE 10-142, and to launch a new docket upon Liberty's filing of its own least cost planning document within six months of the Commission's order in this proceeding.

Staff testified that its concerns regarding Liberty's lack of experience in owning and operating gas and electric utilities, the need for seamless and transparent IT systems conversion, and the concern that low-income initiatives continue to be offered under Liberty ownership were addressed by the settlement. Staff stated that a number of customer service-related metrics are established through the terms of the settlement to help identify potential problems in the areas of billing accuracy, percentage of bills that are estimated, billing exceptions, call center responsiveness, and customer call handling during major storm events. The metrics are intended to ensure that customer service will not deteriorate during the transition period. In addition, Staff noted that Liberty committed to conducting a baseline customer satisfaction survey immediately following the transaction close, and will continue such surveys thereafter. Staff also noted that Liberty will dedicate one full-time equivalent to perform certain customer outreach functions, including specialized enrollment and education services, a calling campaign to customers regarding low-income home energy assistance programs, and continuation of existing low-income assistance programs, the Neighbor Helping Neighbor program, and Core energy efficiency programs.

Staff stated its concern that, as a much smaller corporation than National Grid, Liberty could face challenges in procuring resources and assistance during large, wide-scale outages. As

a result, an electric safety-related metric is included in the Settlement Agreement to ensure National Grid's continued assistance in emergency resource procurement during the transition period. A number of gas safety metrics were agreed to as well, to ensure no degradation in gas service during the transition to Liberty ownership. Attachment O to the Settlement Agreement lists both gas and electric safety performance metrics. In addition, Attachment J includes 20 gas safety performance conditions that will apply to EnergyNorth upon closing. Those conditions include the designation of critical pipeline valves, the incorporation of Global Positioning System (GPS) information into EnergyNorth's Geographic Information System (GIS), enhanced leak reporting, a targeted Grade 3 leak reduction program, and the continuation of certain existing safety-related programs and practices currently followed by National Grid, such as the Cast Iron Bare Steel (CIBS) Replacement Program and emergency response time standards. Attachment J also includes an electric safety condition that pertains to locating and marking out of certain customer owned electric facilities. According to Staff, the safety conditions set forth in Attachment J to the settlement are intended to consolidate and supersede existing safety requirements applicable to Granite State and EnergyNorth.

Through its consultants, G3 Associates, Staff testified that initially Liberty's lack of detailed planning for the back-end of the transition process was disappointing and that its IT implementation schedule was aggressive and would require additional extension before it could be completed. G3 Associates noted, however, that after extensive discovery and discussion, Liberty submitted an IT Plan and an IT Migration Plan that together address Staff's concerns regarding comprehensive systems testing and implementation. According to G3 Associates, the IT Plan outlines the requirements that Liberty's operating company will have for IT support and how Liberty intends to address those requirements, and the IT Migration Plan is a working

document that will guide IT systems implementation by the companies and provide Staff the ability to monitor implementation efforts and results. The IT Migration Plan, for example, includes a change-management process that will govern changes required as implementation proceeds while allowing Staff to monitor the efficiency of the implementation and changes that may affect cost or schedules associated with the systems transition. G3 Associates added that Liberty had gained a number of valuable insights from its experience in the acquisition of CalPeco, an electric distribution utility in California, including the need for more comprehensive IT testing plans and the need to provide sufficient time to train users of the IT systems to be implemented. G3 Associates stated that Liberty has added greater clarity to its IT plans, including longer-term planning requirements, integration testing, stress testing, user needs analysis, a data retention agreement, and a vendor management cost program to ensure that IT vendors deliver the products and services agreed upon. With respect to IT implementation, G3 Associates noted that Staff will need to be actively engaged in monitoring the IT implementation schedule and ensuring that commitments made are fulfilled and that operating expenses associated with IT implementation are judicious and prudent, based on the “reasonable man” theory of prudence (which would involve assessing the options available to and considered by Liberty, and the appropriateness of its decisions). G3 Associates recommended Staff obtain outside technical assistance to monitor and enforce the Settlement Agreement’s requirements. G3 Associates concluded that the Settlement Agreement addresses their concerns regarding the proposed transaction and, with active regulatory monitoring throughout the transition period by Staff, the Joint Petitioners can be expected to realize an orderly transition of responsibilities and a cost-effective solution to the IT needs of both Granite State and EnergyNorth.

Staff concluded that the commitments made in the Settlement Agreement ensure that the proposed transaction will be in the public interest.

VI. COMMISSION ANALYSIS

Pursuant to N.H. Code Admin. Rules Puc 203.20(b), the Commission shall approve disposition of a contested case by settlement “if it determines that the result is just and reasonable and serves the public interest.” *See also* RSA 541-A:31,V(a). In determining the public interest, the Commission serves as arbiter between the interests of customers and those of the regulated utilities. *See* RSA 363:17-a; *see also* *Public Service Co. of N.H.*, Order No. 24,919 (Dec. 5, 2008) at 7-8.

In general, the Commission recognizes that settlement of issues through negotiation and compromise provides “an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation.” *See* *Unitil Corporation and Northern Utilities, Inc.*, Order No. 24,906 (Oct. 10, 2008) at 32 (citations omitted); *see also* *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972 (May 29, 2009) at 48. Even where all parties join a settlement agreement, however, the Commission must independently determine that the result comports with applicable standards. *Unitil Corporation, supra* at 32. The issues must be reviewed, considered and ultimately judged according to standards that provide the public with assurance that a just and reasonable result has been reached. *Concord Electric Company*, 87 NHPUC 694, 708, Order No. 24,072 (2002), quoting from *Concord Electric Company*, 87 NHPUC 595, 605, Order No. 24,046 (2002), and orders cited therein.

In this case, we are guided by the standards for approval of a public utility acquisition set forth in RSA 369:8, II(b) (requiring no adverse effect on rates, terms, service or operation of the

utility), RSA 374:30 (requiring a commission finding that transfer of a utility system is for the public good), and RSA 374:33 (requiring the transaction to be lawful, proper and in the public interest). In applying these standards, we consider all interests involved and all relevant circumstances in determining what is reasonable. *See Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539, 540 (1915); *Parker-Young Co. v. State*, 83 N.H. 551, 561-562 (1929); *Appeal of Pinetree Power*, 152 N.H. 92, 97 (2005).

Consistent with the foregoing, we have reviewed the Settlement Agreement in light of the record as a whole. An important factor in our review is whether the concerns raised in testimony by non-utility parties regarding potential harm to customers of Granite State and EnergyNorth as a result of the proposed acquisition are adequately addressed by the settlement. We also look to whether the parties' review of the proposed transaction is sufficiently thorough and comprehensive to warrant confidence in the result reached in settlement.

Our assessment of the Joint Petition and Settlement Agreement in this proceeding includes a review of the request for authority to transfer stock ownership of Granite State and EnergyNorth from National Grid to Liberty Energy NH, as well as the reasonableness of the request to approve long-term debt issuances to finance the transaction. For the reasons discussed below, we conclude that the Settlement Agreement satisfies the applicable legal standards.

A. Request for Authority to Transfer Ownership

The first step in our review is to assess the proposal to transfer ownership of Granite State and EnergyNorth assets and operations from National Grid USA to Liberty Energy NH through the stock purchase agreements. As noted by Staff and the OCA, Liberty Energy has no experience to date operating a gas distribution system, and very limited experience operating an electric distribution system. An additional concern is the cost that Liberty Energy and Liberty

Energy NH must incur to develop and implement the IT systems required to support both the gas and the electric distribution systems. Liberty's ability to manage the gas and electric utility operations and implement the IT systems needed to do so is fundamental to a successful transfer. The implications for ratepayers in terms of reasonable rates, as well as safe and reliable service, are a critical element of our assessment of the transaction. That said, we recognize the importance of National Grid's role in collaborating with and assisting Liberty throughout the transition period and following cut-over. We have assessed the terms and conditions of the Settlement Agreement with a view toward potential rate impacts, operation and service implications.

1. Potential rate-related impacts.

Liberty has committed to a number of measures designed to protect ratepayers from adverse rate impacts that could result from the proposed transaction. Under the terms of the settlement, neither Granite State nor EnergyNorth will seek rate recovery for transaction or transition costs. These include the acquisition premium and other financing, legal and regulatory costs incurred to close the stock purchase transaction and implement the transfer at the operational level. We view Liberty's commitment to protect ratepayers as substantial, given the significance of the transaction in terms of dollars. The concerns expressed by both Staff and the OCA regarding the cost implications of Liberty's need to develop and implement entirely new IT systems, given its lack of experience or prior presence in the State, are addressed by several commitments Liberty has made to limit its potential recovery in future rate filings. Foremost is the agreement to limit recovery of prudently incurred transition related IT capital investments to \$8.1 million less depreciation. The cap on IT cost recovery helps to ensure that Liberty will carefully assess its IT needs and options, and will protect ratepayers from unlimited or imprudent

spending. We note, as well, Algonquin's significant commitment during the hearing to underwrite Liberty's IT costs through shareholders to the extent those costs exceed the cap. At the same time, a provision is made for Liberty's potential recovery of IT expenditures necessitated by future changes in state or federal requirements. Thus, Liberty will not be hobbled by the IT cap if non-transaction or non-transition related IT changes are required as a result of new regulatory requirements.

In the Joint Petition, Liberty asserts that customers will not experience an increase in rates as a result of the transaction. Granite State and EnergyNorth each have committed to refrain from raising customer rates for a certain period. Under the terms of the Settlement Agreement, the earliest Granite State customers would see a permanent rate increase would be January 1, 2013, and EnergyNorth will not file for a rate increase until the earlier of three years from the date of closing or 270 days after the date on which 70 percent of the transition services under the TSAs are paid. At the same time, both utilities will be permitted to seek rate increases, as warranted, for certain operational program needs. Granite State may seek rate increases, for example, for safety or reliability related filings pertaining to vegetation management, reliability enhancement, or default service. EnergyNorth may seek adjustments as needed for cost of gas impacts, CIBS program investments, local distribution adjustment charges, and exogenous events that result in annual revenue impacts greater than \$1,000,000. We note, as well, the agreements of both EnergyNorth and Granite State to limit rate case expense recovery to \$600,000 and \$300,000, respectively, excluding the cost of a depreciation study for Granite State.

These commitments provide certain rate impact protections for customers, while assuring the utilities the possibility of recovery for necessary operational expenses. As noted in Staff

testimony, Granite State is currently earning well below its authorized rate of return. We find, therefore, that a rate case filing within a year of the proposed transaction close is not unreasonable and, moreover, is consistent with the terms of the current multi-year rate arrangement approved in DG 06-107. We note as well that, according to Staff testimony, Granite State was expected to come in for a rate case under National Grid ownership. Regardless of who owns the Granite State system, therefore, a rate case would likely occur in the near future. We further find that a longer stay-out period is reasonable for EnergyNorth, which completed a rate case just a year ago.

Liberty also commits to holding customers harmless for the elimination of the historical accumulated deferred income tax (ADIT) liabilities resulting from its election under section 338(h)(10) of the Internal Revenue Service Code in accounting for its acquisition of Granite State common stock in this transaction. Further ratepayer protection is achieved by maintaining pro forma accounting for regulatory purposes to continue to provide ratepayers with the ratemaking benefit of Granite State's pre-acquisition ADIT balances until such time as actual ADIT balances related to the historical utility plant assets acquired equals or exceeds the levels that the pro forma ADIT would have been, absent the proposed transaction. The ADIT balances related to capital additions after the closing date are not affected by the section 338(h)(10) election and the treatment of these balances will not change for accounting and ratemaking purposes.

Finally, Liberty agrees not to seek recovery in its cost of gas rates for unaccounted for gas volumes that exceed 1.28 percent until the completion of EnergyNorth's first rate case or its September 2015 cost of gas filing. This provision serves as a safety measure, as well, because it provides an incentive to EnergyNorth to control unaccounted for gas volumes.

2. Operational and service commitments.

Of equal concern in our assessment of the proposed transaction is Liberty's technical and managerial ability to operate the Granite State and EnergyNorth utility systems. To address the concerns raised in testimony, Liberty has undertaken a number of commitments in the areas of information technology, customer service, low-income assistance, safety, reliability enhancement, vegetation management, and energy efficiency.

As part of the settlement, Liberty Energy developed an IT Plan and a preliminary IT Migration Plan to facilitate the transition from National Grid's to Liberty Energy's IT systems, with a commitment to provide an updated IT Migration Plan by August 1, 2012, in anticipation of completion of IT systems design. As part of its IT planning, Liberty will undertake comprehensive IT testing and conduct an IT security assessment prior to the transaction, with follow-up assessments upon the completion of the IT Migration Plan and biennially thereafter. In response to Staff concerns regarding the scope of Liberty's reliance on its IT vendors, Liberty Energy will implement tighter vendor management procedures, as well as annual reviews of vendor performance and services. Given the magnitude of the IT undertaking involved in this transaction, the commitment to extensive IT testing and security assessments, and the careful management of IT resources, will be critical to a successful transition and the establishment of a strong foundation for Liberty's operations in New Hampshire. We note as well National Grid's commitment to assisting the IT transition by appointing a senior IT management executive to oversee the transition.

The Joint Petition asserted a number of commitments by Liberty to provide high levels of customer service and regulatory responsiveness. Through the terms of the Settlement Agreement, Liberty Energy has reaffirmed those commitments by agreeing to establish and

maintain a strong local presence in New Hampshire, with a local president headquartered in New Hampshire and local call centers and walk-in centers for customer convenience. The commitment to provide the New Hampshire president with spending authority of at least \$250,000 to ensure the quickest possible response in emergency situations is of particular note, given the concerns regarding the shift of Granite State and EnergyNorth away from the corporate umbrella of National Grid.

Liberty will conduct annual residential customer service surveys, starting with an initial survey within three months of closing to establish a baseline measure of customer satisfaction. If the baseline satisfaction level is below 80 percent, Liberty Energy will develop a plan to improve customer satisfaction for Staff's review. Within six months of closing, Liberty will submit to Staff detailed plans explaining its customer service operations and support functions for the period following the TSAs and a staffing contingency plan in the event of a cutover failure, as defined in the Settlement Agreement.

Both Granite State and EnergyNorth commit to maintaining current metrics applicable to answering calls to its customer call center and maintaining the current complement of low-income activities and funding levels for low-income initiatives. Liberty further commits to a proactive customer outreach approach by agreeing to allocate the equivalent of a full-time employee to respond to customer requests through early intervention and to provide specialized enrollment and education services, crisis bill management, and outreach and education.

Granite State and EnergyNorth have committed to a comprehensive set of gas and electric safety conditions, that include new conditions as well as existing standards and requirements set forth in various Commission orders, rules and prior settlements. The consolidation of those conditions, including the marking of underground electric facilities on

customer property, improved gas valve maintenance, bolstered resource procurement during wide-scale emergency events, increased OMS capabilities, and in-house emergency response training and drills, is laudable, in terms of a comprehensive commitment to ensuring safe and reliable service, as well as administrative clarity.

In addition, Liberty will continue Granite State's current REP and VMP conditions, as established in DG 06-107. With regard to Granite State's integrated resource plan, the settlement parties have requested that the current planning docket, DE 10-142, be closed and that Granite State file a new integrated resource plan within six months of closing the docket. We find that request to be efficacious and hereby direct Staff to close DE 10-142 upon our issuance of this order.

Similarly, Liberty also commits to ensure a continuation of Granite State's practice of operating energy efficiency programs within budget and meeting kWh savings goals. Toward that end, it will review the current level of energy efficiency budgets in the Core Electric and Gas Energy Efficiency dockets and submit a report of its review of budget requirements in its 2013-2014 Core filing.

To address concerns raised by the Granite State Hydropower Association and consistent with the Commission's affiliate transactions rules, Granite State and EnergyNorth agree not to purchase energy, capacity or services from any of their competitive affiliates, including hydroelectric generating or gas facilities owned directly or indirectly by Algonquin Power Co., on terms more favorable than those offered to or available to any non-affiliated suppliers, including independently owned hydroelectric generating facilities in New Hampshire.

Staff and its consultants raised concerns about the number of utility acquisitions Liberty Utilities is undertaking in close succession and the potential financial as well as management

implications for Granite State and EnergyNorth operations. Pursuant to Staff's recommendation, Liberty Utilities will appoint a senior executive responsible for transition activities associated with the various acquisitions. That individual will head Liberty Utilities' Project Management Office, which will provide leadership, oversight and control of any projects related to the integration of new acquisitions. Throughout the EnergyNorth and Granite State transitions, the project management lead will hold periodic briefing sessions with transition team leads and provide updates in the quarterly reports provided to the Commission. This commitment brings increased transparency as well as a measure of assurance of coordinated management to the multiple acquisitions Liberty Utilities is pursuing. Integral to the success of the transition will be the experienced employees of EnergyNorth and Granite State who will continue to operate the systems. The continuity in senior operational and planning personnel provides considerable benefit to Liberty, which is admittedly less experienced in electric and natural gas utility operations, and is an important basis for our support of the Settlement Agreement.

Further transparency will result, as well, from Liberty's commitment to provide a number of monthly and quarterly reports to the Commission, including updated transition timetables, cost tallies, IT implementation, staffing, corporate cost allocation procedures, and financial forecasts. These reporting commitments are further enhanced by the commitment of the President of Liberty Energy NH and the Chief Executive Officer of Algonquin to hold quarterly sessions with Commission Staff and the OCA to keep them apprised of Granite State and EnergyNorth transition activities.

Finally, Liberty Utilities agrees to guarantee access to a minimum of \$18,867,000 to EnergyNorth and \$2,731,000 to Granite State under its January 18, 2012 Short-Term Revolving Credit Facility. Future renewals of that facility or any new short-term facilities will be at

favorable terms and conditions that are no more costly than comparable commercial credit facilities. We find this provision to be an important financial commitment underpinning the initial stages of the transition to Liberty operations and management.

3. National Grid Commitments

All parties recognize the magnitude of the transition to be undertaken by Liberty, as well as the crucial role National Grid will play in that transition. To underscore and ensure its support, National Grid has agreed to establish a financial escrow account administered by an independent escrow agent, with funds to be released upon Staff confirmation of readiness. The Settlement Agreement notes that the escrow agreement will be submitted to the Commission upon execution and that funds will be deposited within five business days following the Closing Date. We will direct National Grid to submit a copy of the escrow agreement for our review no later than one week prior to the anticipated Closing Date.

The Settlement Agreement establishes three pools of funds to be held in escrow, each underpinning a particular mode of support from National Grid, including the commitment to provide transaction services to facilitate a smooth and seamless transition, to ensure that service quality does not decline during the course of the transition, and to ensure cutover occurs only when Liberty's systems are fully ready. Release of the \$13.5 million in Pool A funds is tied to the completion of transition services under the TSAs and Staff's confirmation of readiness. The \$5 million in Pool B funds will be held until both Granite State and EnergyNorth certify to Staff that all services provided under the TSAs are completed satisfactorily. Certain consulting-type services that could be provided beyond the final cutover will be excluded from the Pool B escrow terms, as National Grid will continue to provide those services on an as-needed basis. Release of the \$10 million in Pool C funds is contingent on National Grid and, to an extent,

Liberty Energy maintaining certain levels of performance in customer service and gas and electric safety-related operations, subject to Staff monitoring and oversight.

We are persuaded that the commitments outlined above and described in detail in the Settlement Agreement adequately address the concerns raised in this proceeding. The commitments made by both Liberty and National Grid in the areas of ratepayer protections, operational enhancements, customer service levels, and financial restraints provide us with assurance that New Hampshire ratepayers are adequately shielded from potential harm as a result of the proposed stock transfers. We are further assured that Granite State and EnergyNorth will benefit from the affirmed collaboration of National Grid in the transition process and the focused management of Liberty Energy and its corporate affiliates with respect to transition implementation.

B. Approval of long-term debt issuances/overall transaction financing.

In reviewing the proposed financing for this transaction, we must determine whether the issuance is consistent with the public good, pursuant to RSA 369:1 and 4. To do so, we consider the amount of the issue authorized, the purpose for which the proceeds are to be used, and the reasonableness of the terms and conditions of the financing. We are further required to consider whether the object of the financing is reasonably required for use in discharging a utility company's obligation to provide safe and reliable service, whether the utility company's plans to accomplish that object are economically justified when measured against any adequate alternatives, and whether the capitalization resulting from the utility company's plans would be supportable. *Appeal of Easton*, 125 N.H. 205, 211-213 (1984).

Granite State and EnergyNorth have requested approval to issue long-term debt in an amount sufficient to establish a capital structure of 45 percent debt to 55 percent equity, based on

the rate base level at the closing date, to finance the stock purchases. To achieve that structure, Granite State proposes to issue up to \$20 million in new long-term debt in addition to retaining the \$15 million in long-term debt currently outstanding, and EnergyNorth proposes to issue up to \$90 million in long-term debt to refinance the existing long-term debt. According to the pre-filed testimony of Algonquin CFO David Bronicheski, the debt will be raised through a private placement of senior unsecured notes with U.S.-based institutional lenders. Granite State currently has \$15 million of unsecured long-term notes that include certain restrictive covenants that stipulate that note holders may declare the debt to be due and payable if total debt becomes greater than 70 percent of the total capitalization. Algonquin does not anticipate this to be an issue, however, given the proposed capital structure. If this were to occur, it would need to be addressed in a future proceeding before the Commission. The debt will be issued by Liberty Utilities Co. and assigned down to, and supported by promissory notes from, Granite State and EnergyNorth.

As part of its request for authority to issue long-term debt instruments connected with the proposed acquisition, Granite State, EnergyNorth and Liberty have filed a motion for waiver of certain filing requirements under Puc 308.12 and Puc 509.03. Puc 308.12 and Puc 509.03 pertained to information filing and format requirements for electric and gas utilities, respectively, seeking to issue securities. The companies request waivers of the requirements under Puc 308.12 to provide: (1) historical and forecasted capitalization information for Granite State; (2) resolutions of the board of directors for both Granite State and EnergyNorth; and (3) the use of a particular format to provide the required information.

According to the motion, the capitalization information provided for Granite State and EnergyNorth reflects information as of September 30, 2011, as well as pro forma adjustments

reflecting the proposed new debt issuance. The companies state that they have provided the more limited information (*i.e.*, without historical or forecasted data) because the sole purpose of the debt issuance is to modify the current debt/equity ratio, not to finance additions to rate base or for other purposes. They add that the required board of directors' resolutions authorizing the proposed long-term financing cannot be obtained until the change in ownership has occurred and a new board of directors has been installed by Liberty Energy NH. According to the motion, the resolutions will be provided promptly after consummation of the loan transactions. With respect to the format of the information provided, the motion states that the companies have complied with the substance of the rule by a reasonable alternative means, that is, by providing most of the required information in the form of technical statements relating to each utility.

Staff testified that it had reviewed the technical statements and found them reasonable and satisfactory. We therefore find that the alternative means of providing the information is sufficient to warrant a waiver of the format requirements of the cited rules. We further find that the provision of the capitalization information is sufficient for the purposes of the financing for which the companies seek approval, and that submission of the relevant resolutions of the board of directors upon their adoption will satisfy the applicable requirements under the cited rules. We therefore grant the requested waivers and direct Liberty, Granite State and EnergyNorth to submit within 10 days of their adoption the applicable resolutions.

Staff testified that it had reviewed the proposed financing terms, as well as the proposed use of the funds, and found the financing plan to be reasonable. Staff noted that the final interest rate and maturity terms will be subject to further review by Staff when finalized closer to the closing date to confirm that the terms do not substantially differ from those initially proposed. Staff testified at hearing that the proposed capital structure of 45/55 debt-to-equity ratio is within

the reasonable range of precedents and close to the standard hypothetical capital structure of 50/50 often used as a benchmark in rate cases. In addition, as noted by Staff, Granite State is currently earning well below its authorized rate of return and its first base rate case following the transfer will provide an opportunity to adjust the capital structure, as appropriate. Similarly, EnergyNorth's capital structure will be reviewed during its first post-close rate case.

Based on the utilities' testimony regarding the proposed use of the financing to support the acquisition and ongoing utility operations, and on Staff's review and testimony that the proposed debt-to-equity capital structure is reasonable and within the range of recent precedent, we find the proposed long-term debt issuance to be reasonable and consistent with the public good. With respect to the equity portion of the transaction financing, we note that \$60 million has been pledged as a commitment by Emera. As part of our approval of the overall transaction financing, we will require Liberty to provide proof of Emera's fulfilled commitment within 10 days from the completion of that transaction.

C. Motions for Confidential Treatment and Request for Waiver of Filing Requirements

The Joint Petitioners filed two motions for protective order and confidential treatment pursuant to Puc 203.08 regarding certain information provided with the Joint Petition (March 4, 2011 Motion), as well as during the discovery phase of these proceedings (April 19, 2012 Motion). In addition, Joint Petitioners filed a separate motion for a waiver of certain filing requirements under Puc 203.08(f).

New Hampshire's Right-to-Know Law, RSA 91-A, provides each citizen the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here by the Joint Petitioners, for "confidential, commercial, or financial information." RSA 91-A:5, IV. We have had numerous occasions to rule on motions

for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See e.g., EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,280 (October 25, 2011), *Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012); and *Public Service Co. of New Hampshire*, Order No. 25,332 (February 6, 2012).

Following the approach used in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by the movants should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* We will analyze each category of information for which protective treatment is requested in turn. Confidential treatment is sought for a number of responses made in the discovery process of this proceeding based on two exception categories: personal employee information, and proprietary and competitively sensitive information.

1. *Personal Employee Information*

The Joint Petitioners have requested confidential treatment on the basis of the personnel files exemption of RSA 91-A:5, IV for portions of the Seller Disclosure Schedules (Schedules)

attached to the Stock Purchase Agreements, as well as their responses to certain data requests made during the course of discovery.

In the March 4, 2011 Motion, the Joint Petitioners seek confidential treatment of information contained in the Schedules that is specific to certain corporate employees and employees represented by labor unions, including job titles, annual salaries, ID numbers, and other identifying data. In the April 19, 2012 Motion, the Joint Petitioners request confidential treatment of their response to Staff Data Requests 3-77 and 2-94, and attachments (a) and (b) to their response to Staff Data Request 3-39. Specifically, protection is requested of employee salary and benefit information provided in response to Staff Data Request 3-77; home addresses, base salary and potential bonus percentages included in certain offers of employment for non-officer positions provided in response to Staff Data Request 2-94; and social security numbers, social insurance numbers (the Canadian equivalent of U.S. social security numbers) and passport numbers of officers and board members included in correspondence with the Committee on Foreign Investment in the United States.

The movants argue that there is a clear privacy interest in the information for which they seek protection, the information is not otherwise disclosed to the public, disclosure will not provide any information to the public regarding conduct or activities of government and the privacy interests weigh in favor of confidentiality. With respect to the employment offers, the movants also argue that the information constitutes “confidential, commercial, or financial information” under RSA 91-A:5, IV and that disclosure could cause harm by making it easier for other companies to recruit their employees. *Citing EnergyNorth Natural Gas d/b/a National Grid NH*, Order 25,208 at 5 (March 23, 2011).

We are persuaded that the personnel information for which protection is sought trigger legitimate privacy interests. We also find that public disclosure of that information will not materially advance the public's understanding of the Commission's analysis of the transaction and settlement agreement that are the subject of this proceeding. Because the public interest in disclosure is minimal, we find the interest in protection outweighs the interest in disclosure and will grant the requested protective treatment.

2. Proprietary and Competitively Sensitive Information

The Joint Petitioners also request confidential treatment pursuant to RSA 91-A:5, IV of certain portions of the Schedules and certain data responses based on the proprietary and competitively sensitive nature of the information included therein. The March 4, 2011 Motion seeks protection of information pertaining to potential litigation liabilities, a pending IRS examination, and potential strategies for labor negotiations. The April 19, 2012 Motion seeks protection for discovery responses provided to Staff Data Requests 2-39, 3-30, 3-37, 3-39 (attachment (d)), 4-87, and TS 2-22.

In their March 4, 2011 Motion, the movants seek to protect disclosure of certain information included in Sections 5.8 of the Granite State and EnergyNorth Schedules and 5.12 of the Granite State Schedules pertaining to potential litigation liabilities involving environmental matters and pending legal proceedings. The movants argue that disclosure of that information could expose Granite State and EnergyNorth to costly litigation they may not otherwise have been subject to, and result in economic harm to the companies and their customers. Specifically, the movants seek protection to the extent that potential liabilities are not established, noting that full and candid disclosure of such liabilities is an essential component of a commercial transaction such as the one at issue here, and that public release of potential liability information

could dissuade future buyers from entering into transactions where disclosure would increase the probability of litigation.

The March 4, 2011 Motion also seeks protection of confidential settlement agreements between EnergyNorth and third parties to facilitate and/or receive contribution for remediation activities associated with the pending environmental matters. The movants argue that Section 5.8, paragraphs 3(a), (e), and (f) of the EnergyNorth Schedules describe the parties to or contents of the third party agreements and, therefore, merit protective treatment under RSA 91-A:5, IV, since they constitute confidential commercial or financial information. The movants add that public disclosure of this information would jeopardize the agreements and make it more difficult for EnergyNorth to enter into environmental litigation settlements in the future.

The March 4, 2011 Motion further requests protection of information contained in Section 5.15 of the Granite State Schedules regarding a pending IRS examination and its anticipated result, and Section 7.1, paragraph 4 of the Granite State Schedules and Section 7.1, paragraph 2 of the EnergyNorth Schedules regarding potential strategies for labor negotiations that have not yet occurred. With respect to the pending IRS examination, the movants argue that the information contains a non-public assessment of tax matters that are not yet settled and, therefore, constitute competitively sensitive information that is not otherwise publicly disclosed under RSA 91-A:5, IV. With respect to strategic labor negotiation information, the movants argue that public disclosure of that information would grant an unfair advantage to the unions and would disadvantage Granite State and EnergyNorth in future labor negotiations, and therefore should be protected under RSA 91-A:5, IV.

The April 19, 2012 Motion seeks protection of forward-looking financial assumptions related to a potential future rate increase for Granite State in the discovery response to Staff Data

Requests 2-39; copies of financing documents in response to Staff TS 2-22 Supplemental; expense budget information in response to Staff 3-30; user and technical manuals for National Grid's Energy Management Supervisory Control and Data Acquisition (SCADA) Systems in response to Staff 3-37; information regarding access to National Grid's internal web site in response at attachment (d) to Staff 3-39; and detailed information regarding IT systems architecture in response to Staff 4-87. The movants argue that the information provided in the discovery responses cited above are competitively sensitive information and, in the case of the SCADA user and technical manuals, proprietary, while the release of information regarding access to National Grid's internal website or regarding its IT systems architecture could pose a security risk to National Grid and its customers.

In sum, the movants argue that the information for which they seek protective treatment in the March 4, 2011 and April 19, 2012 Motions constitutes "confidential, commercial, or financial information" under RSA 91-A:5, IV, and that disclosure will not provide the public with information about the conduct or activities of the Commission or other parts of the New Hampshire State or local government.

We are persuaded that the information provided constitutes competitively sensitive information that should not be disclosed. Public disclosure of the information will not materially advance the public's understanding of the Commission's analysis in this proceeding, and that disclosure of the financial information could result in financial or competitive harm. We also agree that disclosure of the information regarding access to National Grid's internal website and regarding its IT systems architecture could pose legitimate security risks. To the extent that information for which protection is granted herein is released or made public by the movants at a

later time - for example, as a result of completion of pending matters, that information would no longer be subject to protective treatment. *See* Puc 203.08(l).

We note that no party or person has objected to confidential treatment requested or asserted that disclosure would inform the public about the activities of the government. Accordingly, in balancing the interests of the companies in protecting their information with the public's interest in disclosure, we conclude that the information should not be disclosed and we grant the Joint Petitioners' motion. Consistent with Puc 203.08(k), our grant of this motion is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

3. Waiver of Certain Filing Requirements under Puc 203.08(f)

Finally, the Joint Petitioners seek a waiver of Puc 203.08(f) to the extent that it requires seven copies of each of the confidential documents provided with its motion for confidential treatment. The movants request that the Commission accept one hard copy and one electronic copy of each document for purposes of the motion filing, as seven copies have already been provided to the Commission in the course of discovery and to provide seven copies at this time would necessitate a voluminous and unnecessary production of material.

We agree that a waiver with respect to the number of copies filed with the related motion for confidential treatment in this instance will not disrupt the orderly and efficient resolution of matters before us in this proceeding. We further find that the public interest is served to the extent that the movants are relieved of the burden of producing thousands of pages of documents where they have previously provided seven copies in the course of discovery and have provided an additional hard copy and electronic copy with their motion for confidential treatment. We therefore grant the requested waiver.

D. Conclusion

In this proceeding, we were asked to assess the proposed transfer of electric and gas distribution companies currently owned by National Grid, an established gas and electric utility operator in New England and New York, to Liberty Energy NH, a new entrant to the New England market with little experience in operating electric distribution companies and no experience in operating gas distribution companies. In order to assess compliance with the applicable legal standards set forth in RSA 369:8, II(b), RSA 374:30, and RSA 374:33, we look at the technical, managerial and financial capability of Liberty. We rely on testimony and evidence offered in hearing to conclude that the proposed transfer as conditioned by the Settlement Agreement is lawful, proper and in the public interest, and will have no adverse effect on rates, terms service or operation of the utilities.

As discussed above, we find that the numerous commitments and contingency provisions set forth in the Settlement Agreement provide significant protections for Granite State and EnergyNorth ratepayers – not only in the immediate period following the transfer, but throughout and even to an extent following the transition period covered by the Transition Services Agreements between National Grid and Liberty. In support of our findings above that Liberty has demonstrated that it has the requisite capability to operate the Granite State and EnergyNorth, we note the confidence Staff expressed at hearing in the reasonableness of Liberty's financing plans, as well as in the managerial and technological ability of the operational employees that are slated to manage utility operations under Liberty ownership. We further note the strong support provided in testimony and at hearing by both the USWA Local 12012-3 and the IBEW Local 329, and that Granite State and EnergyNorth under Liberty ownership will be locally managed and operated, bringing increased local employment and a

greater likelihood of responsiveness to the Commission's regulatory concerns. The testimony of Staff consultants on Liberty's information technology systems plans, including testing and security assessments, provides a further source of confidence in our conclusions. Based on the testimony filed on the record and presented at hearing, we are persuaded that the review of the proposed transaction by the parties and Staff was thorough and comprehensive and we thus have additional confidence that the result represented by the settlement agreement is just and reasonable and serves the public interest.

Based upon the foregoing, it is hereby

ORDERED, as set forth above, the settlement agreement is approved; and it is

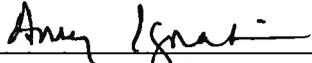
FURTHER ORDERED, that National Grid is directed to file a copy of the escrow agreement no later than one week prior to the transaction close; and it is

FURTHER ORDERED, that the long-term financing plan is approved, subject to Staff review of the final terms, which shall be submitted prior to the closing; and it is

FURTHER ORDERED, that Liberty Energy NH submit copies of the board of directors' resolutions authorizing the proposed long-term financing within 10 days of their adoption; and it is

FURTHER ORDERED, that the motions for confidential treatment and waivers of certain rule requirements are granted, as addressed herein.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of May,
2012.



Amy L. Ignatius
Chairman

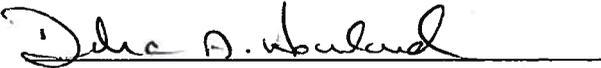


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director

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.

Executive.Director@puc.nh.gov	
alex@krakowsouris.com	Stephen.R.Eckberg@oca.nh.gov
alinder@nhla.org	steve.frink@puc.nh.gov
amanda.noonan@puc.nh.gov	steve.mullen@puc.nh.gov
celia.obrien@us.ngrid.com	steven.camerino@mclane.com
Christina.Martin@oca.nh.gov	suzanne.amidon@puc.nh.gov
dfeltes@nhla.org	tom.frantz@puc.nh.gov
diane.bateman@puc.nh.gov	
dnute@bm-cap.org	
edward.damon@puc.nh.gov	
grant.siwinski@puc.nh.gov	
gregm@ggga.net	
hmoffett@orr-reno.com	
jgred-simpson@ibewlocal326.org	
jim.brennan@puc.nh.gov	
lynn.fabrizio@puc.nh.gov	
mark.naylor@puc.nh.gov	
mary.coleman@us.ngrid.com	
mlicata@nhbia.org	
patrick.taylor@mclane.com	
robert.wyatt@puc.nh.gov	
Rorie.E.P.Hollenberg@oca.nh.gov	
scott.j.rubin@gmail.com	
shannon.coleman@libertyutilities.com	
sjs@sjsullivanlaw.com	

Docket #: 11-040-1 Printed: May 30, 2012

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
- DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.