

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 13-198

ENERGYNORTH NATURAL GAS, INC. d/b/a LIBERTY UTILITIES

Investigation into Line Extension Policy Matters

**Order Approving Partial Settlement Agreement,
Addressing the Party Status of National Grid USA, and
Addressing the Scope of the Investigation**

ORDER NO. 25,574

September 20, 2013

APPEARANCES: Devine, Millimet & Branch, P.A., by Kevin M. Baum, Esq., on behalf of EnergyNorth National Gas, Inc. d/b/a Liberty Utilities; McLane, Graf, Raulerson, and Middleton, P.A., by Patrick H. Taylor, Esq., on behalf of National Grid USA; Rorie E.B. Hollenberg, Esq., of the Office of Consumer Advocate, on behalf of residential ratepayers; and Alexander F. Speidel, Esq., for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On June 20, 2013, Staff filed a letter requesting that the Commission open an investigation, pursuant to RSA 365:5 and 374:4, regarding potential irregularities in tariff compliance by EnergyNorth Natural Gas, Inc. d/b/a Liberty Utilities (Liberty), a public utility distributing natural gas in 28 cities and towns in southern and central New Hampshire and the City of Berlin in Northern New Hampshire. *See* Letter of Stephen P. Frink, Assistant Director Gas & Water Division, to Executive Director Debra A. Howland, dated June 20, 2013. Specifically, Staff alleged that Liberty was not in compliance with Section 7 of Liberty's tariff, governing service extensions. In response to the Staff letter, on July 8, 2013, Liberty filed a letter with the Commission disputing Staff's conclusions. On July 24, 2013, the Commission issued an Order of Notice opening an investigation docketed in Docket No. DG 13-198. On its

own motion, the Commission included Liberty's predecessor parent company, National Grid USA, who continues to provide services to Liberty pursuant to a Transition Services Agreement, as a mandatory party to the investigation. The Order of Notice also scheduled a prehearing conference for August 8, 2013.

On July 31, 2013, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket on behalf of residential ratepayers pursuant to RSA 363:28. There were no other intervenors.

On August 7, 2013, National Grid USA filed a letter objecting to its inclusion as a mandatory party in this investigation. Also on August 7, 2013, Staff filed a partial settlement agreement signed by Liberty, Staff, and the OCA. *See* Prehearing Conference Exhibit 1. Staff requested that the Commission accept the late-filed partial settlement, pursuant to its waiver authority under N.H. Code Admin. Rules Puc 201.05. The Commission held the prehearing conference as scheduled on August 8, 2013, and accepted the partial settlement for review.

On August 29, 2013, Staff, with the concurrence of Liberty and the OCA, filed a request for the Commission's approval of a procedural schedule that included the filing of an investigative report on or before November 15, 2013, by Staff, and by the OCA, if it chose to do so. The Commission approved this schedule, with the November 15, 2013 report date, by a secretarial letter dated September 3, 2013.

II. TERMS OF THE PARTIAL SETTLEMENT AGREEMENT

The settling parties, Liberty, Staff, and the OCA, recommended that the Commission approve the partial settlement agreement, which sought to avoid interrupting Liberty's service line extension projects undertaken during the 2013 construction season, and to enable Liberty to

proceed during this time with confidence that the OCA and Staff would not recommend that the Commission impose sanctions for such activity, in light of the investigation relating to Section 7 of Liberty's tariff. The terms of partial settlement would apply from the date of Commission approval of the partial settlement until the earlier date of (1) December 31, 2013, or (2) the date of Commission approval of the final disposition of the investigation docketed in DG 13-198 (Settlement Period). (The partial settlement was not intended by the settling parties as a final disposition of the investigation in Docket No. DG 13-198). *See* Prehearing Conference Exhibit 1, p. 3, Section 10.

The partial settlement agreement incorporated the following provisions:

(1) For residential service line extensions of 100 feet or less, Liberty, OCA, and Staff agreed that Liberty would continue to assess a \$900 flat fee to residential customers during the Settlement Period;

(2) Liberty, OCA, and Staff agreed that no fines and or penalties should be assessed against Liberty by the Commission for Liberty's use of the \$900 flat fee for residential customers during the Settlement Period;

(3) Liberty, OCA, and Staff agreed that, for residential customers seeking line extensions of more than 100 feet, and for all commercial and industrial customers' service line extension requests, Liberty would make new customer offers and agreements for service extensions pursuant to the current terms of Section 7 of Liberty's tariff, Service and Main Extensions, with Contributions In Aid Of Construction (CIAC) figures calculated and applied by Liberty in accordance with its tariff, during the Settlement Period;

(4) Liberty, OCA, and Staff agreed, for these CIAC calculations made for commercial and industrial customers, and those CIAC calculations made for service extensions for residential customers longer than 100 feet, that no fines and or penalties should be assessed against Liberty by the Commission for any CIAC calculation errors made by Liberty during the Settlement Period;

(5) Liberty, OCA, and Staff agreed that, if it is found that a Liberty residential customer has been over-assessed for CIAC during the Settlement Period, such a residential customer would be entitled to refunds from Liberty for such over-assessment. Liberty, OCA, and Staff also agreed that no repayment would be sought by Liberty from residential customers for any under-assessment of CIAC amounts. This Partial Settlement provision would not be applicable to Liberty's commercial and industrial customers; instead, the recoupment provisions of Section 7 of Liberty's tariff, Service and Main Extensions, shall govern for commercial and industrial CIAC calculations;

(6) Liberty, OCA, and Staff agreed that all outstanding contracts for service extensions, as of the date of the Settlement's execution by the settling parties, would be honored by Liberty pursuant to their original terms, including price (such as the \$900 flat fee). Liberty, OCA and Staff agreed that no fines or penalties should be assessed by the Commission for Liberty's performance of these contracts.

III. POSITIONS OF THE PARTIES AND STAFF REGARDING THE PARTIAL SETTLEMENT

Staff, at the prehearing conference, indicated its support, with Liberty's and the OCA's concurrence, for the partial settlement agreement, and conveyed the settling parties' joint request

that the Commission approve the partial settlement. *See* Transcript of August 8, 2013, Prehearing Conference (Tr.) at 12-13. Staff also presented the direct testimony of Stephen P. Frink, Assistant Director of the Gas and Water Division, in support of the partial settlement. Tr. 13-17. Mr. Frink confirmed that the partial settlement was designed to enable Liberty to meet the ongoing demand for natural gas conversions by customers during the Settlement Period, without concerns regarding potential Commission sanction as a result of this investigation. Tr. 17-18. Mr. Frink also confirmed that the Settlement Period was designed to roughly correspond with the length of the remaining 2013 construction season, in light of the fact that little work could be accomplished during the hard-ground freeze months of January and February. Tr. at 18-20. Finally, Mr. Frink confirmed that customers' existing contracts with Liberty for service extensions entered into prior to the effective date of the partial settlement would be upheld pursuant to their original terms, and that contracts entered into during the Settlement Period would be governed by the terms delineated by the partial settlement agreement. Tr. at 23-24.

IV. PARTY STATUS OF NATIONAL GRID USA

In its letter of August 7, 2013, National Grid USA, providing services to Liberty pursuant to the terms of a Transition Services Agreement, objected to its inclusion as a mandatory party to this investigation. *See* Letter of Patrick H. Taylor, Esq., to Executive Director Debra A. Howland, dated August 7, 2013. Specifically, National Grid asserted, both in its letter and at the prehearing conference, that as it was not a "public utility" under RSA 362:2, I, and did not own, operate, or manage Liberty or any other public utility in the State. As a result, National Grid claimed it was not subject to the Commission's jurisdiction, and could not be included as a mandatory party in this investigation. Tr. 7-9. In its letter and at the prehearing conference,

National Grid USA did commit to continuing its assistance to Liberty, pursuant to the terms of the Transition Services Agreement, in responding to inquiries arising in this investigation. Tr. at 8.

At the prehearing conference, Liberty took no position regarding National Grid USA's involvement. Tr. at 9. The OCA indicated its general concurrence with National Grid's position. Tr. at 9. Staff took no position regarding National Grid USA's pleading, noting that the inclusion of National Grid USA was done by the Commission at its own motion, but Staff did express its expectation that National Grid USA would continue its ongoing cooperation pursuant to the Transition Services Agreement with Liberty. Tr. at 10.

V. SCOPE OF THE INVESTIGATION

In its closing statement, Liberty requested that the Commission narrow the original scope of this investigation to instances where the \$900 flat fee in controversy were applied which, in Liberty's view, was only for residential customers with service extensions of 100 feet or less. Tr. at 27-28. Liberty further asserted that a more comprehensive review of CIAC costs for Section 7 line extensions would be more appropriate during a full rate case, rather than in this investigative proceeding. *Id.*

The OCA did not take a position regarding Liberty's scope-related request directly; however, it did indicate that, in the OCA's view, examination of other customer classes' CIAC treatment by Liberty under Section 7 of its tariff for line extensions was within the Commission's power, and would be appropriate within the context of this investigation. Tr. at 28-29.

Staff strongly opposed any narrowing of the scope of this investigation, and argued in favor of the application of the original scope of issues provided for in the Commission's July 27, 2013 Order of Notice. Staff argued that it was not certain that potential Section 7 tariff violations by Liberty were limited to any specific customer class and, in order to properly assess whether any violations had occurred, a broad inquiry regarding Liberty's CIAC cost structures for line extensions, for all customer classes, was required. Tr. at 29-31.

VI. COMMISSION ANALYSIS

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. N.H. Code Admin. Rules Puc 203.20(b) requires that, prior to approving a settlement, the Commission determine that the settlement results are just and reasonable and in the public interest. In this instance, we are presented with a partial settlement agreement that governs the line-extension construction activities of Liberty during the pendency of this investigation, or through December 31, 2013, whichever comes first.

We have reviewed the partial settlement agreement, and considered testimony and statements provided by the parties at the prehearing conference. On the basis of this review, we find that this partial settlement agreement offers a just and reasonable solution for Liberty's line-extension construction activities during the pendency of this investigation, by allowing Liberty to proceed with executed, and future, construction contracts with clarity and consistency. We note, however, that this partial settlement does not endorse the CIAC approaches outlined for implementation by Liberty within the partial settlement's terms for the purposes of general, ongoing compliance with Section 7 of its tariff, nor does this partial settlement represent a final

disposition of this investigation. We await the Staff and OCA reports on their investigation findings scheduled for November 15, 2013, and the evidence presented at the hearing scheduled for December 4, 2013 for further information regarding these matters.

Having reviewed the record, including the partial settlement and the evidence presented at the prehearing conference, we find that the terms of the partial settlement agreement are just and reasonable and in the public interest. We will adopt and approve the terms of the partial settlement agreement, with the understanding that the partial settlement will terminate on the earlier date of our approval of the final disposition of this investigation, or December 31, 2013. Our approval of this settlement agreement does not limit our disposition of similar matters in the future.

With regard to National Grid USA's request for release from the status of a mandatory party to this investigation, we take note of the commitments made by National Grid USA in its pleading of August 7, 2013 to "continue to provide such assistance [to Liberty in responding to Staff and OCA data requests in this investigation] pursuant to the terms of the [Transition Services Agreement]... National Grid is committed to providing such assistance." While not ruling on National Grid USA's assertions that it is no longer subject to the Commission's jurisdiction, we find that National Grid's mandatory party status is not required, on the basis of the commitments for cooperation within this investigation made by National Grid USA, and, therefore, release National Grid USA from party status.

Finally, regarding the scope of this investigation, we agree with Staff that limiting the scope of this investigation to any subset of line extension projects, or classes of Liberty customers, would not be appropriate given the need for comprehensive information regarding the

appropriateness of Liberty's actual application of Section 7 of its tariff for line extension projects. Therefore, we decline to narrow the scope of this investigation from that delineated in the Order of Notice issued on July 24, 2013.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the partial settlement agreement presented by the parties are hereby adopted and approved as discussed herein; and it is

FURTHER ORDERED, that National Grid USA is hereby released, on the Commission's discretion, from the status of a mandatory party in this investigation, with the expectation that it will cooperate fully with Liberty in responding to the investigative inquiries of Staff and the Office of the Consumer Advocate; and it is

FURTHER ORDERED, that the scope of this investigation shall remain as delineated in the Order of Notice issued on July 24, 2013.

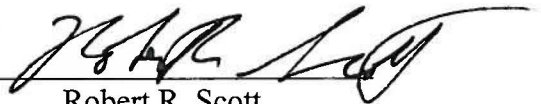
By order of the Public Utilities Commission of New Hampshire this twentieth day of September, 2013.



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.

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