

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

CONCORD STEAM CORPORATION

-and-

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.

d/b/a LIBERTY UTILITIES

Docket No. DG 16-___

Joint Petition for Approval of an Asset Purchase Agreement

I. Introduction

Concord Steam Corporation (“Concord Steam”) and Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (“EnergyNorth”) respectfully petition the New Hampshire Public Utilities Commission, pursuant to RSA 374:30, to approve the attached Asset Purchase Agreement (“APA”) between the parties.

Concord Steam plans to cease utility service as of May 31, 2017. The APA, which provides for Concord Steam’s sale of certain intangible and real property assets to EnergyNorth, is one component of Concord Steam’s wind down plan as it provides information that allows EnergyNorth to plan for and design the orderly and cost-effective conversion of those Concord Steam customers who choose natural gas service. The APA is in the public interest because it will facilitate the orderly transition of Concord Steam’s customers over a single construction season without burdening other EnergyNorth customers.

II. The Joint Petitioners

1. Concord Steam is a New Hampshire Corporation and a public utility that provides steam service to commercial and institutional customers and to one residential customer in the City of Concord.
2. EnergyNorth is a New Hampshire corporation and a public utility that provides retail gas service to customers in 30 communities throughout southern and central New Hampshire and in the City of Berlin.

III. The APA

3. On July 1, 2016, Concord Steam and EnergyNorth signed the APA for the sale and purchase of specified intangible and real property assets of Concord Steam. The APA is provided as an attachment to this petition. Concord Steam agreed to sell certain customer information, billing and usage information, system maps, and specific easements. Concord Steam also agreed, among other things, to burn a minimum amount of natural gas during the winter of 2016-2017, and to burn only natural gas if it is operating after June 1, 2017.
4. EnergyNorth agreed to pay Concord Steam \$1.9 million at the May 31, 2017, closing.
5. The APA is subject to several conditions, including that the Commission approve the APA without change and approve EnergyNorth's ability to recover the purchase price, as follows: EnergyNorth will create a regulatory asset when it makes a payment to Concord Steam under the terms of the APA. Carrying costs will accrue on the regulatory asset at the cost of capital applicable to Cast Iron/Bare Steel investments. As of the effective date of permanent rates following the conclusion of EnergyNorth's next distribution rate case, the balance of the regulatory asset (the

payment made to Concord Steam plus accrued carrying charges) will be amortized and recovered through EnergyNorth's distribution rates over the next five years. Once amortization of the regulatory asset plus accrued carrying charges begins, carrying charges on the unamortized balance will accrue at EnergyNorth's authorized cost of capital as determined in that distribution rate case. If permanent distribution rates change as a result of a subsequent rate case, carrying charges on the unamortized balance will also change to the extent that there is a change to the cost of capital authorized in that subsequent rate case.

IV. Standard of Review and Basis for Approval of Transactions

6. RSA 374:30 provides in relevant part:

Any public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise....

7. Pursuant to RSA 374:30, the Commission may authorize Concord Steam to sell some of its assets to EnergyNorth if the Commission finds that the proposed transfer is in the "public good". *See Grafton County Electric Light & Power Co. v. State*, 77 N.H. 539 (1915). The public good standard "is analogous to the 'public interest' standard... applied and interpreted by the Commission and by the New Hampshire Supreme Court." *Consumers New Hampshire Water Company*, 82 NH PUC 814, 817 (1997) (citing *Waste Control Systems, Inc. v. State*, 114 N.H. 21, 22-23 (1974)). "The [relevant] test requires a finding that a transaction is one not forbidden by law and is reasonably permitted under all the circumstances of the case" and "'a finding that, based upon the totality of the circumstances there is no

net harm to the public as the result of the transaction.” *Id.* at 818 (*quoting Pennichuck Water Works, Inc.*, 77 N.H.P.U.C 708, 713 (1992)).

8. When evaluating requests to transfer utility assets, the Commission has historically applied a “no harm” standard. *See, e.g., Re New England Power Company*, 83 N.H.P.U.C. 392, 397 (1998) (approving electric utility’s transfer of generating facilities). In applying this standard, the Commission’s “obligation is to ensure that the interests of ratepayers are balanced against the right of shareholders to be free of regulation which unreasonably restrains legitimate corporate activities.” *Id.* (citations omitted). Under the no harm test, the transaction should be approved unless the Commission finds that it will have an adverse impact on the public. *Id.*; *Eastern Utilities Associates*, 76 N.H.P.U.C. 236, 252 (1991).

V. The APA Is Consistent with the Public Good

9. The APA is consistent with the public good because it will result in no net harm to the public and, in fact, will benefit customers of both Concord Steam and EnergyNorth. As is set forth in detail in the written testimony accompanying this Joint Petition, the transactions will result in all Concord Steam customers having the opportunity to convert to natural gas in a single construction season and avoid the inconvenience of conducting the conversion over several years and exposure to higher rates if Concord Steam chose not to conduct this orderly wind down. The transactions provide a net benefit to all EnergyNorth customers because the projected increased sales to Concord Steam’s former customers will offset the costs of the APA and the costs of conversion. In addition, the transactions further the

legitimate corporate concerns of Concord Steam's shareholders which must also be taken into account under the above-stated no harm standard.

10. After Commission approval of the APA, EnergyNorth will immediately complete its engineering design and construction preparation for the 2017 season.
11. EnergyNorth has already determined that it has sufficient capacity to serve all Concord Steam customers, should they all choose to convert.

VI. Request for Relief

For all the reasons stated above and in the written direct testimony submitted with this petition, the Joint Petitioners respectfully request that the Commission:

- (a) Find that the APA is in the public interest;
- (b) Authorize Concord Steam to transfer the assets described in the APA to the Company in accordance with the APA;
- (c) Approve EnergyNorth's proposal for recovery of the Purchase Price; and
- (d) Grant such other and further relief as may be consistent with the public interest.

Respectfully Submitted,

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



Dated: July 21, 2016

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Dated: July 21, 2016

Liberty Utilities (EnergyNorth Natural
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By: _____

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Certificate of Service

I hereby certify that on this 21st day of July 2016, a copy of this Joint Petition for Approval of an Asset Purchase Agreement has been sent electronically to the Office of the Consumer Advocate.



By: _____

Michael J. Sheehan