

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-770

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES**

CONCORD STEAM CORPORATION

Joint Petition for Approval of an Asset Purchase Agreement

Order Approving Settlement Agreement and Transfer of Assets

ORDER NO. 25,965

November 10, 2016

APPEARANCES: Michael J. Sheehan, Esq., for Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; Orr & Reno, by Susan S. Geiger, Esq., for Concord Steam Corporation; The New Hampshire Department of Justice, Office of the Attorney General, by Christopher G. Aslin, Esq., for the Department of Administrative Services; Upton & Hatfield, LLP, by John F. Teague, Esq., for the Concord School District; James W. Kennedy, Esq., City Solicitor, for the City of Concord; Donald M. Kreis, Esq., the Office of the Consumer Advocate, on behalf of residential ratepayers; and Alexander F. Speidel, Esq., for the Staff of the New Hampshire Public Utilities Commission.

In this order, the Commission approves an asset purchase agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities and Concord Steam Corporation, filed pursuant to RSA 374:30, and a settlement agreement regarding the acquisition. The asset purchase agreement is related to the filing made by Concord Steam Corporation, considered and approved in Docket No. DG 16-769, by Order No. 25,966, which sets emergency rates and authorizes the termination of service on or about May 31, 2017. The assets in question include Concord Steam's customer information, provided that customers provide their consent, to be used by Liberty in facilitating conversions of Concord Steam customers to gas service in an orderly fashion. The assets also include certain real estate easements held by Concord Steam, to be acquired by Liberty for the conversions. The assets are to be acquired by Liberty pursuant to

the asset purchase agreement, and the companion settlement agreement, for \$1.9 million.

Liberty will recover its cost of acquisition in its distribution rates over five years as a regulatory asset.

I. PROCEDURAL HISTORY

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) provides natural gas service to customers in Concord and various other New Hampshire communities. Concord Steam Corporation (Concord Steam), provides steam service to customers in Concord. On July 21, 2016, the companies filed a joint petition for approval of an asset purchase agreement between them (Asset Purchase Agreement) pursuant to RSA 374:30. The petitioners included the written testimony of Peter Bloomfield, P.E., Concord Steam's president, and Liberty personnel William Clark and Stephen Hall in support of their petition. *See* Hearing Exhibit 1. On July 26 the Commission issued an Order of Notice scheduling a hearing regarding the petition on September 9, and a technical session, held on August 19, 2016.

The Office of the Consumer Advocate (OCA) filed a letter notifying the Commission that it would participate on behalf of residential customers consistent with RSA 363:28 on July 25, 2016.

On August 15, 2016, Liberty filed a Settlement Agreement, also executed by Concord Steam and Commission Staff (Staff), outlining further conditions for the implementation of the Asset Purchase Agreement. *See* Hearing Exhibit 2.

Petitions to intervene were filed by the New Hampshire Department of Administrative Services (Department of Administrative Services), The Jordan Institute, the City of Concord, Mr. Richard M. Husband of Litchfield, and the Concord School District. The petitioners filed a joint objection to The Jordan Institute's intervention request, to which the OCA responded. Deputy Commissioner of the Department of Administrative Services Michael P. Connor filed

written testimony with the Commission regarding the asset purchase agreement and ancillary matters on September 9, 2016. *See* Hearing Exhibit 3.

The hearing was held as scheduled on September 9, 2016, at which the Commission denied the intervention requests of The Jordan Institute and Mr. Husband on the basis that they lack standing. *See* Transcript of September 9, 2016 Public Hearing (Tr.) at 11-12, 19-20. The Department of Administrative Services, the Concord School District, and City of Concord, all customers of Concord Steam, were granted intervention by the Commission at the hearing. Tr. at 9.

On October 27, 2016, Concord Steam filed a request for an expedited Commission Order approving this petition and Settlement Agreement, due to Concord Steam's perilous financial condition. In addition, Concord Steam asserted that it needs final orders from the Commission to secure working-capital financing from Merrimack County Savings Bank.

From August through October, 2016, Mr. Husband, The Jordan Institute, and various other interested persons filed comments regarding the proposals under consideration. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2016/16-770.html>.

II. THE ASSET PURCHASE AGREEMENT AND SETTLEMENT AGREEMENT

The Asset Purchase Agreement was jointly presented by Liberty and Concord Steam. Hearing Exhibit 1 at (Bates Pages) 21-44. Under the terms of the Asset Purchase Agreement, Liberty would acquire certain tangible and intangible assets from Concord Steam. The tangible assets are comprised of certain real property easements held by Concord Steam around the premises of its current customers. The easements would enable Liberty to manage the technical aspects of the conversion of those customers to Liberty's natural gas service in advance of

Concord Steam's approved termination of service date of May 31, 2017. Hearing Exhibit 1 at 5; 24-25; 41. Liberty would acquire Concord Steam customer information, including billing information, for customers that give written consent for such transfer pursuant to the terms of a written consent form. Hearing Exhibit 1 at 5; 24; 44. Customer information would also facilitate Liberty's conversion of Concord Steam customers to Liberty gas service. Hearing Exhibit 1 at 24.

If approved by the Commission, the transfer of assets contemplated by the Asset Purchase Agreement would be accomplished at a closing on May 31, 2017, the approved termination of service date for Concord Steam. Hearing Exhibit 1 at 25. In return for its tangible and intangible assets, Concord Steam would receive a payment of \$1.9 million, which would be applied by Concord Steam to the emergency rate structure approved in Docket No. DG 16-769 as an offset to the revenue requirement to be recovered in emergency rates from Concord Steam customers. As conditions of receiving this payment, Concord Steam is required by the Asset Purchase Agreement to utilize no less than 170,000 thousand cubic feet (Mcf) of natural gas prior to termination of service or incur a reduced payment. The Asset Purchase Agreement also requires Concord Steam to abandon its physical plant, including underground steam piping and boiler equipment, by May 31, 2017. Hearing Exhibit 1 at 5-6.

The Settlement Agreement, as entered into by Liberty, Concord Steam, and Staff (Settling Parties), included two additional provisions. First, the Settling Parties agreed that the proposed transfer of assets from Concord Steam to Liberty, under the terms of the Asset Purchase Agreement, is in the public interest. Second, the Settlement Agreement stipulated support for Liberty's recovery of the \$1.9 million purchase price in the following manner. Liberty will create a regulatory asset when it makes a payment to Concord Steam under the terms of the Asset Purchase Agreement. Carrying costs will accrue on the regulatory asset at the cost

of capital applicable to Cast Iron/Bare Steel investments made by Liberty. As of the effective date of permanent rates following the conclusion of Liberty'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 Liberty'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 Liberty's authorized cost of capital. 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 in that subsequent rate case. Hearing Exhibit 2 at 2-3.

III. POSITIONS OF THE PARTIES AND STAFF REGARDING ASSET PURCHASE AND SETTLEMENT AGREEMENTS

A. Liberty

Messrs. Clark and Hall of Liberty described how the proposed transaction would benefit Liberty's existing customers. Hearing Exhibit 1 at 5-10. In general terms, Messrs. Clark and Hall stated that the Asset Purchase Agreement offers an "orderly, managed transition of Concord Steam's customers from steam to natural gas as their fuel source, if they so choose," with Liberty performing the necessary installation of gas services to all new customers during the 2017 construction season. According to Liberty, the managed transition will enable customers to utilize gas as their fuel source by the 2017-2018 heating season, which is urgent in light of the expected May 31, 2017, shutdown date for Concord Steam. Hearing Exhibit 1 at 5.

According to Liberty, this orderly transition of customers, as compared with a more disorderly pattern of customer migration away from Concord Steam, offers significant customer savings for Liberty ratepayers. Using a discounted cash flow (DCF) analysis, Liberty found that a net present value of \$1,467,613 over 10 years was generated from the terms of the Asset

Purchase Agreement. Hearing Exhibit 1 at 6. In particular, in addition to the benefits to Liberty of having Concord Steam using a greater amount of natural gas as a fuel source during the 2016-2017 heating season, significant cost savings for Liberty were found to accrue from aggregating construction work into a single portfolio during one construction season, with an estimated savings of 30% compared to converting customers incrementally over multiple years. *Id.* Liberty represented that, in theory, a “no deal” migration scenario in which Concord Steam customers would migrate to Liberty gas service on an ad hoc basis would theoretically offer slightly more expected financial benefit to Liberty using the DCF methodology. Hearing Exhibit 1 at 7. However, Liberty represented that there was significantly more risk associated with the assumptions in the “no deal” ad hoc migration scenario, thereby making the more certain DCF outcome of the Asset Purchase Agreement scenario the prudent business decision for Liberty. *Id.*

With regard to rate impacts on Liberty customers, Liberty represented that recovery of the proposed \$1.9 million regulatory asset would result in a little over \$500,000 per year recovered through Liberty distribution rates, but that anticipated revenue would more than offset this figure, resulting in a net expected decrease to Liberty distribution rates. Hearing Exhibit 1 at 10.

B. Concord Steam

Mr. Bloomfield described how the proposed transaction would benefit Concord Steam’s existing customers. Mr. Bloomfield reinforced Liberty’s position that an orderly conversion of Concord Steam customers would offer benefits. Hearing Exhibit 1 at 15; 17. Mr. Bloomfield also stated that the purchase price (of \$1.9 million) paid to Concord Steam by Liberty under the terms of the Asset Purchase Agreement would enable Concord Steam to pay expenses that would otherwise be passed onto steam customers in the form of higher (emergency) rates. Hearing

Exhibit 1 at 18. Mr. Bloomfield stated further that customers would benefit from the expectation that the Asset Purchase Agreement would enable Liberty and Concord Steam to work in a coordinated fashion to provide Concord Steam customers with a smooth transition to natural gas service, if they chose it, in a relatively short period of time. *Id.* at 18.

C. OCA

The Commission takes administrative notice that, at the October 5, 2016, hearing in Docket No. DG 16-769 the OCA represented that it did not see any financial harm to Liberty's existing customers if the Asset Purchase Agreement were approved. The OCA requested that the Commission rule that all conversions of Concord Steam customers be made in a manner that is consistent with the standard of all cost-effective energy efficiency reflected in the EERS decision made by the Commission in Docket No. DG 15-137. Tr. at 167-168; 170.

D. Staff

Mr. Frink offered oral testimony in support of the Asset Purchase Agreement and Settlement Agreement at the September 9, 2016 public hearing. Specifically, Mr. Frink noted that the Asset Purchase Agreement eliminated the risk to Liberty of a long, drawn-out, or disorderly conversion of Concord Steam customers to Liberty gas service. According to Mr. Frink, an orderly conversion would offer savings benefits to Liberty in terms of construction costs, and enhanced revenue from gas sales for Liberty as well. Tr. at 102-103. Mr. Frink confirmed Liberty's 30% estimate of savings for construction costs, and stated that the rate of return contemplated for Liberty's investment in Concord Steam assets by the Settlement Agreement was fair, in light of other investment opportunities for Liberty. Tr. at 103-104. Mr. Frink also pointed to the importance of the \$1.9 million payment reducing expenses to Concord Steam customers, and the reasonable management of the increasingly untenable business conditions of Concord Steam offered by the terms of the Asset Purchase Agreement and

Liberty's involvement, as important benefits to be considered from a Concord Steam customer perspective. Tr. at 104-107.

Staff, in closing, stated its support for the Commission approving the Asset Purchase Agreement and Settlement Agreement under the relevant statutory standards, and noted the importance of the proposal in offering a way to ameliorate rate shock for Concord Steam customers and risk for Liberty and its customers. Tr. at 171-172.

E. Others

The City of Concord expressed concerns, addressed in the companion proceeding Docket No. DG 16-769, related to the costs of infrastructure repair for which Concord Steam could be liable. Tr. at 163-165.

The Concord School District deferred stating its position until the October 5, 2016, public hearing in the companion proceeding Docket No. DG 16-769. The Commission takes administrative notice that, at the October 5 hearing, the Concord School District presented general support for the wind-down proposals for Concord Steam. *See* Transcript of October 5, 2016 Public Hearing, Docket No. DG 16-769, at 124-126.

Deputy Commissioner Michael Connor of the Department of Administrative Services presented written and oral testimony regarding the challenges faced by his agency in managing the conversion process from steam service to natural gas-based heating for State buildings. *See, e.g.,* Hearing Exhibit 3. However, the Commission takes administrative notice that at the October 5, 2016, public hearing in the companion proceeding Docket No. DG 16-769, Mr. Conner indicated that the concerns of the Department of Administrative Services regarding conversion issues had been largely ameliorated. *See* Transcript of October 5, 2016 Public Hearing in Docket No. DG 16-769 at 109.

IV. PUBLIC COMMENTS REGARDING PROPOSAL

A series of public comments regarding the Liberty Utilities-Concord Steam Asset Purchase Agreement proposal, and the companion Settlement Agreement, were received by the Commission from August through October of 2016. The comments were in two general categories. The first group of comments opposed the proposed transaction on the basis of expected increased use of fossil fuel, specifically “fracked” natural gas, in the City of Concord as a consequence of expected conversions from Concord Steam to Liberty gas service. This category of comment relied on health concerns surrounding the use of “fracked” gas, concerns with climate change, and concerns with energy efficiency to urge denial of the instant petition and Settlement Agreement. The second group of comments, from the Concord South Congregational Church and the Concord Community Music School, made reference to the financial hardship of expected conversion costs for Concord community institutions and non-profits, and to a petition by State Senator Dan Feltes and others (filed on October 14, 2016) to establish a fund to defray or cover the costs of conversion away from Concord Steam service. The petition contemplates including a charge in Liberty’s distribution rates to provide money to the fund.

The Jordan Institute, on September 15, 2016, presented public comments stressing the need to integrate energy-efficiency efforts into any conversion effort for Concord Steam customers.

V. COMMISSION ANALYSIS

Pursuant to RSA 374:30, “[a]ny 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” *See, e.g., New England Electric Transmission Corporation and New England Power Company*, Order No. 25,474 (March 19,

2013). We have reviewed the petition and the subject Asset Purchase Agreement, the Settlement Agreement, and the other evidence presented in this proceeding, and we find the proposed transaction between Concord Steam and Liberty to be in the public interest.

Liberty's DCF analysis indicates that an orderly transition of Concord Steam customers to Liberty gas service during the 2017 construction season offers significant financial benefits to Liberty, and by extension, Liberty customers. This outcome also mitigates the significant risks posed by a disorderly conversion of Concord Steam customers to Liberty gas service, which could result from a sudden catastrophic financial failure of Concord Steam in the absence of this transaction. The \$1.9 million payment, with the treatment as a regulatory asset, will have, at most, minimal impact on Liberty rates, and will substantially benefit existing Concord Steam customers as described by Concord Steam and Staff. We further find the proposed treatment of the \$1.9 million payment as a regulatory asset and the rates of return specified by the Settlement Agreement to be just and reasonable. Having approved the emergency rate relief for Concord Steam, and its termination of service planned for the spring of 2017 in Docket No. DG 16-769, we find that this transaction will do no harm to Liberty or Concord Steam ratepayers, and in fact will offer significant potential benefits to both.

With regard to the public comments by the South Congregational Church, the Concord Community Music School, and the petition filed by Senator Feltes and others for a Liberty fund to help defray the costs of conversion from Concord Steam service by Concord institutions and businesses, we urge these institutions in the first instance to seek assistance from their benefactors, members, and the Concord community at large. In the meantime, we will soon take up Senator Feltes' and the joint petitioners' petition in a separate proceeding.

With regards to the various public comments urging denial, or delay, of our approval of the Asset Purchase Agreement due to concerns related to energy efficiency, the use of natural gas

(“fracked,” or otherwise), the desire to have the Department of Administrative Services use non-fossil fuel forms of energy for heating, and other related concerns, we note that this Commission does not direct the energy usage decisions of the Department of Administrative Services, or any other Concord Steam customer. Even though the Asset Purchase Agreement contemplates the possibility of Concord Steam customers selecting Liberty natural gas as their replacement heating fuel, based on its attributes of economy, efficiency, convenience, cleanliness, etc., such conversions, and the provision of customer information from Concord Steam to Liberty, will be based solely on the consent of the customers in question.

This transaction does not represent an expansion of Liberty’s gas franchise, which already exists in the City of Concord. Concord Steam customers are also free to choose competitive natural gas suppliers to serve their premises with Liberty delivery service; they may use different conventional fuels, provided by non-utility providers (oil, propane, kerosene); they may seek to use electricity to run heat pumps or other electrical heating equipment; they may use passive and/or active solar heating technologies; or, they may use wood fuel or other biomass technologies. The customers may also use any combination of the above. Likewise, any energy efficiency measures to be undertaken by Concord Steam customers will be at their own election, using the technologies and approaches of their choice. Concord Steam customers, and Liberty customers, would be ill-served by our denial of the instant petition and Settlement Agreement on the basis of a concern that certain energy choices are being made by Concord Steam customers instead of others, especially in light of the ongoing business emergency at Concord Steam, and the potential benefits to Liberty and Concord Steam ratepayers accruing from this transaction.

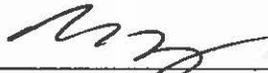
Based upon the foregoing, it is hereby

ORDERED, that the proposed transfer of assets, pursuant to the Asset Purchase Agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities and

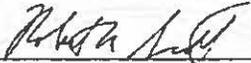
Concord Steam Corporation and the Settlement Agreement, are APPROVED subject to the terms and conditions delineated therein and the terms of this Order; and it is

FURTHER ORDERED, that the \$1.9 million payment to be made by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities to Concord Steam Corporation be made subject to the terms of the Settlement Agreement approved herein.

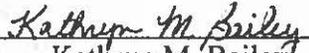
By order of the Public Utilities Commission of New Hampshire this tenth day of November, 2016.



Martin P. Honigberg
Chairman

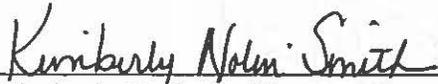


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary

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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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