STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: December 16, 2020
AT (OFFICE): NHPUC

FROM: Stephen Frink
Director – Gas & Water Division

SUBJECT: IR 20-089
COVID-19 Investigation
Responses to Utility & OCA Comments on Staff Recommendation

TO: Commissioners
Docket File
Service List

SUMMARY RESPONSE AND STAFF RECOMMENDATION

Three utilities filed comments opposing Staff's revised recommendation that the Commission not authorize the utilities to create a regulatory asset for waived fees, arguing that waived fees are extraordinary and, in two instances, material. The New Hampshire Electric Cooperative, Inc. (NHEC) does not believe it is subject to Commission to regulation on this matter. The Office of the Consumer Affairs (OCA) objected to the Commission authorizing creation of regulatory asset for any COVID-19 related financial impacts. Having reviewed and considered the comments, Staff agrees with NHEC that it is not subject to the Commission's accounting order. With that exception, Staff's revised recommendation remains unchanged. The Commission should authorize the Utilities to create a regulatory asset for the increase in bad debt due to COVID-19 but not for any other revenue or expense items impacted by COVID-19.

BACKGROUND

On August 18, 2020, Staff issued a memorandum recommending that the Commission authorize the Utilities to create a regulatory asset for incremental bad debt and waived fees related to the COVID-19 pandemic.

On October 13, 2020, Staff filed a letter that analyzed and summarized the information provided by the Utilities in response to Staff data requests issued September 8, 2020 seeking additional information about the Utilities' recent actual bad debt expense and late payment charges, the level of bad debt expense currently being recovered through base rates, and how those items compare to company annual revenue. The information was provided for the Commission's use while considering Staff's recommendations.

On November 13, 2020, Staff issued a revised memorandum recommending that the Commission authorize the Utilities to create a regulatory asset for incremental bad debt and but not for waived fees related to the COVID-19 pandemic.

On November 24, 2020, the Commission issued a secretarial letter setting a deadline of December 4, 2020 for filing responses to Staff's recommendations.

On December 4, 2020 responses to Staff's recommendations were filed by the OCA, NHEC, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), Liberty Utilities (EnergyNorth Natural Gas) Corp. and Liberty Utilities (Granite State Electric) Corp. both d/b/a Liberty (Liberty), and Unitil Energy Systems, Inc. (UES) and Northern Utilities, Inc. (NUI).

MATERIALITY REQUIREMENT FOR EXTAORDINARY EVENT

It is Liberty's position that the Staff recommendation improperly imposed a materiality requirement before allowing special accounting treatment arising from an extraordinary event. The Company suggests that the analysis should focus on whether a particular item of gain or loss results from the pandemic and, if so, allow special accounting treatment without regard to the relative size of those particular gains or losses.

Staff disagrees. New Hampshire gas and electric utilities are required to maintain accounts in conformity with the Federal Energy Regulatory Commission Uniform System of Accounts (FERC USOA) and the FERC USOA general instructions impose a materiality requirement[1]:

7. *Extraordinary Items.*

It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below. Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the forseeable future. (In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate. ***To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary***. [Emphasis Added]

[1] PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT (Title 18, Chapter I, Subpart C, Part 101).

MATERIALITY OF WAIVED FEES

The Unitil response provides a detailed analysis of the expected loss of revenue from waived fees and the impact on earnings for UES and NUI.

UES current rates were set in 2016 based on an annual revenue requirement determined using an adjusted 2015 test year, which included late payment charges revenue (LPCR) of $481,633 and reflected in the calculation of the approved annual revenue requirement.

UES annual revenue and LPCR for 2016 through 2020, and a comparison of the annual late payment revenue to the amount reflected in rates, are provided below Table 1:

TABLE 1					
UES Late Payment Charge Revenue & Total Revenue					
	Total Base		Percent of	LPCR	over/(under)
Year	Revenue	LPCR	Base Revenue	in Rates	Collected
2015	53,060,514	481,633	**0.91%**		
2016	53,501,664	397,636	**0.74%**	$ 481,633	$ (83,996.73)
2017	57,499,226	264,291	**0.46%**	$ 481,633	$(217,341.74)
2018	60,442,266	343,959	**0.57%**	$ 481,633	$(137,673.73)
2019	58,955,650	275,537	**0.47%**	$ 481,633	$(206,095.74)
2020	Unavailable	94,676		$ 481,633	$(386,956.62)

Although current rates are based on an annual revenue requirement that anticipated LPCR of $481,633 (0.91 percent of total revenue), the average annual LPCR for 2016 through 2019 has been $320,356 (0.56 percent of average total revenue). UES 2020 LPCR revenue is $94,676, which is $225,680 less than the average LPCR over the past four years and $386,957 less than what is reflected in rates. Based on UES projections, if UES had not waived late payment charges in 2020, LPCR would be $573,697 and $253,341 more than the average LPCR over the past four years and $92,064 more than what is reflected in rates.

NUI current rates were set in 2017 based on an annual revenue requirement determined using an adjusted 2016 test year, which included LPCR of $104,863 and reflected in the calculation of the approved annual revenue requirement.

NUI annual revenue and LPCR for 2016 through 2020, and a comparison of the annual late payment revenue to the amount reflected in rates, are provided in Table 2:

TABLE 2					
NUI Late Payment Charge Revenue & Total Revenue					
	Total Base		Percent of	LPCR	over/(under)
Year	Revenue	LPCR	Base Revenue	in Rates	Collected
2016	32,814,080	104,863	**0.32%**	$ 104,863	$ -
2017	34,251,433	97,464	**0.28%**	$ 104,863	$ (7,399.00)
2018	38,449,788	94,695	**0.25%**	$ 104,863	$ (10,168.00)
2019	40,408,217	76,773	**0.19%**	$ 104,863	$ (28,090.00)
2020	Unavailable	36,803		$ 104,863	$ (68,060.28)

Although current rates are based on an annual revenue requirement that anticipated LPCR of $104,863 (0.32 percent of total revenue) based on a 2016 adjusted test year, the average annual LPCR for 2016 through 2019 has been $93,449 (0.26 percent of average total revenue). NUI 2020 LPCR revenue is $36,803, which is $56,646 less than the average LPCR over the past four years and $68,060 less the what is reflected in rates. Based on NUI projections, if NUI had not waived late payment charges in 2020, LPCR would be $174,660, and $81,211 more than the average LPCR over the past four years and $69,797 more than what is reflected in rates.

Both UES and NU LPCR for 2020 is well below the threshold prescribed by the FERC to be considered extraordinary. Although both UES and NUI LPCR for 2020 is well below normal, absent the waiver, LPCR would be well above average (most recent four years) and what is reflected in rates.

Eversource estimated waived fees to $2.6 million and argues that a shortfall of approximately $2.6 million, and growing by hundreds of thousands of dollars per month, is not “relatively small” and that waived fees should not be excluded from regulatory asset treatment. Staff agrees that $2.6 million is a large number but as a percentage of Eversource’s annual revenue is well below the FERC threshold to be considered extraordinary. That amount only represents 0.73% of the $355.9 million revenue Eversource earned in 2019.

OCA REQUEST FOR CLARIFICATION

The OCA opposes Staff recommendation that the Commission authorize the Utilities to create a regulatory asset for incremental bad debt related to COVID-19, arguing that is not appropriate for the Commission to authorize the creation of regulatory assets for incremental bad debt at this time. Staff memorandums speak for itself on that issue.

The OCA also requested that the Commission clarify the statement made by Staff in its November 13 Memorandum, that its updated review “takes into account the Agreement between the Utilities and the Consumer Services and External Affairs Division, governing utility late payment charges.” The OCA notes that the Agreement was entered into among 16 utilities, the Staff of the Commission, as well as the OCA, New Hampshire Legal Assistance and LISTEN Community Services (a nonprofit provider of community services based in Lebanon). The OCA states a distinction is important because New Hampshire law does not allow utilities to obtain binding regulatory determinations by negotiating agreements with individual divisions of the Public Utilities Commission and, while it is not necessary for the Commission to reexamine the question of what legal authority underlies the agency's approval of the referenced agreement; the OCA's request is simply for clarity – to avoid setting unhelpful precedents – about the parties to the agreement.

The OCA is correct regarding the signatories to the Agreement. Staff does not believe it is necessary for the Commission to clarify that point but has no objection to the Commission doing so.

NHEC NOT SUBJECT TO REGULATORY ASSET RECOMMENDATIONS

NHEC states that none of the subject matter covered in Staff's regulatory asset recommendations is within the Commission's statutorily limited jurisdiction regarding the NHEC and that none of the subject matter had been raised in in any previous Commission orders or docket involving NHEC since its filing of a Certificate of Deregulation more than 20 years ago.

Staff agrees with NHEC. Staff's regulatory asset recommendations should not apply to NHEC.

COST RECOVERY

It is not possible at this time to determine the full extent of the impact of COVID-19 on the Utilities and ratepayers. The Commission authorizing the Utilities to create a regulatory asset for a quantifiable incremental increase in bad debt under the conditions recommended by Staff would be an indication by the Commission that cost recovery is probable. While "probable" does not mean the regulatory asset *must* be included in rates at a later date, it does suggest inclusion in rates is more likely than not.

Not authorizing the Utilities to create a regulatory asset for lost revenues or incremental expenses related to COVID-19 at this time does not prohibit future recovery. It would simply mean the Commission is not expressing an opinion or judgment on the likelihood that lost revenues or other expenses will be approved for recovery through rates at this time. The burden of proof regarding inclusion of the COVID-19 related lost revenue or incremental costs in future rates will lie squarely with the Utilities.

In both instances recovery will be determined based on the facts as presented when the Utilities seek recovery.

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