

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 20-105

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A LIBERTY

Petition for Permanent Rates

Order Following Hearing on First Step Adjustment

O R D E R N O. 26,603

April 5, 2022

In this order, the Commission approves Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty's (Liberty) request to implement a step adjustment in the amount of \$4 million based on the terms of the Settlement Agreement on Permanent Rates, as conditionally approved in this docket by Order No. 26,505 (July 30, 2021). This order further directs Liberty to propose a recoupment mechanism for step adjustment revenues to be collected over the course of one year, beginning August 1, 2022.

I. BACKGROUND AND PROCEDURAL HISTORY

On July 30, 2021, the Commission issued Order No. 26,505, in which it conditionally approved a settlement agreement on permanent rates (Settlement Agreement) between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty), then Staff of the Commission (now the Department of Energy), and the Office of the Consumer Advocate (OCA) (together, the "Settling Parties"). The conditions placed on approval of the Settlement Agreement included that a provision allowing for and capping an initial step adjustment at \$4.0 million for plant placed in service in 2020, was accepted, however the first step adjustment: 1) would not be implemented contemporaneously with permanent rates; 2) would be subject to additional reporting requirements, including identifying which projects shall be considered for

prudence determinations up to but not in excess of a \$4 million cap; and 3) would be the subject of a separate hearing. Order 26,505 at 9–10, 12–13.

On August 24, 2021, Liberty filed a Motion for Rehearing on Implementation of Step Adjustment.

On August 31, 2021, Liberty pre-filed the supplemental direct testimony of Heather M. Tebbetts, including documentation relating to the first step adjustment responsive to the Commission's reporting requirements.

On September 22, 2021, the Commission issued Order No. 26,521 denying Liberty's Motion for Rehearing on Implementation of Step Adjustment.

On October 19, 2021, Liberty filed a letter requesting the Commission schedule a hearing on the implementation of the first step adjustment. On October 26 the Commission issued a procedural order scheduling a hearing on the first step adjustment to occur on December 1, 2021. On November 23, the Commission issued a procedural order rescheduling this hearing to January 18, 2022.

On January 13, 2022, Liberty pre-filed the second supplemental direct testimony of Heather M. Tebbetts.

The Commission held a hearing on the first step adjustment on January 18, 2022. At the hearing, the Commission made several requests for records, including documentation relating to directives to install forward-looking infrared cameras, the company's motor vehicle retirement policies, and the calculation of the step adjustment as a component of Liberty's allowed revenue from distribution rates. The request for records relating to the calculation of the step adjustment was re-issued by the Commission on February 2, 2022, upon a finding that the company's initial reply was non-responsive.

The supplemental pre-filed testimony, record request responses, filings and orders relating to the underlying rate case, and subsequent docket filings are posted on the Commission's website at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-105.html>.

II. PARTY POSITIONS

a. Liberty

Liberty requested authorization to implement a step adjustment that would increase its allowed revenue from distribution rates by \$4 million, associated with approximately \$36 million of non-growth plant investment placed in service during calendar year 2020. Liberty proposed implementing a \$0.05121 per therm revenue factor beginning February 1, 2022 in order to collect \$4 million over six months. Liberty noted that this rate would be in effect until August 1, 2022. At that point, it would have requested authorization to implement a second step adjustment, provided for in the Settlement Agreement.

Liberty requested a determination that the plant identified in its filings as non-growth and placed in service in 2020 is prudent, used and useful. Liberty provided internal business cases, change orders, and closeout forms in its August 31, 2021, filing, and noted that these capital investments were both subject to discovery by the settling parties and were reviewed by the Commission's former audit division (now a function of the Department of Energy). Liberty responded to a number of questions from the Commission relating to the categorization and qualification of capital projects, property tax collections (confirming that it was not seeking any return on property tax expenses), security projects undertaken at the direction of the Department of Homeland Security, its transportation fleet policies, and its step adjustment calculation.

Concerning its step adjustment calculation, Liberty took the position that the settling parties agreed on a method of calculating the step adjustment resulting in a maximum amount of a step adjustment in the amount of \$4 million, and that any other method of calculation would be inconsistent with the Settlement Agreement, such as what is termed as a “one-year rate-base update.” Exh. 60 at 1-3. In compliance with a Commission-issued record request, Liberty filed an alternate calculation of its step adjustment as an update to rate-base. *Id* at Attachment 1.

b. Office of the Consumer Advocate

Although the OCA did not appear at the January 18, 2022 hearing, and it did not make any filings on the step adjustment, it was one of the settling parties to the Settlement Agreement of Permanent Rates.

c. New Hampshire Department of Energy

Energy supported Liberty’s rate increase request. Energy confirmed that it reviewed the capital expenditures identified by Liberty and is comfortable that all were placed in service in 2020, were prudently incurred, and are used and useful. The Department of Energy stated that the step increases provided for in the Settlement Agreement are consistent with established parameters of other rate cases, noted that step increases reduce administrative expenses and the frequency of rate cases, and opined that Liberty’s rate calculation was appropriate.

III. 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. Puc 203.20(b) requires the Commission to determine, prior to approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest. Even where

all parties join a settlement agreement, however, the Commission cannot approve it without independently determining that the result comports with applicable standards. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 18 (March 10, 2011).

The Commission is authorized to fix rates after a hearing, upon determining that rates, fares, and charges are just and reasonable. RSA 378:7. In circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8. In determining whether rates are just and reasonable, the Commission must balance the customers' interest in paying no higher rates than are required against the investors' interest in obtaining a reasonable return on their investment. *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). In this way, the Commission serves as arbiter between the interests of customers and those of regulated utilities. *See* RSA 363:17-a; *see also* *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 17 (March 10, 2011). RSA 374:2, RSA 378:7, and RSA 378:27-28 are underlying ratemaking standards that require, among other things, that a public utilities' rate base be set based on its prudently incurred, used, and useful property, and which shall yield not less than a reasonable return on the cost of the property less accrued depreciation.¹

Based on Liberty's filings of August 31, 2021, and testimony heard at the January 18, 2022 hearing, we agree that the capital projects underlying Liberty's request for the first step increase are used and useful, and that their costs were prudently incurred. Liberty's treatment of accrued depreciation in calculating the amount of its step adjustment, therefore, is the final issue in our analysis.

¹ RSA 378:28 directs the Commission to apply the provisions of RSA 378:27 in fixing permanent rates, so far as possible.

As noted above, the Commission is directed to allow the company an opportunity to earn not less than a reasonable return on the cost of property, less accrued depreciation. In setting distribution rates based on a test year rate base in a general rate case, the Commission implements this directive with the aim of establishing stable and more predictable rates that balance the interests of the utility against the interests of its customers. However, where a utility's annual additions to plant in service exceed the depreciation allowance, interim adjustments to allowed revenues between rate cases, such as step adjustments, may be appropriate to enable the utility to earn a fair return on its investment and meet its obligations to provide safe and reliable service.

For Liberty, such interim adjustments have historically been implemented through its Cast Iron Bare Steel (CIBS) program. The recent trend (between 2018 and 2020) in CIBS program interim rate adjustments resulted in increases to annual revenues from distribution rates ranging between \$752 thousand and \$1.6 million per year. Exh. 54 at 3. In this docket, concurrently with the termination of Liberty's CIBS program, the interim adjustment to distribution revenues has been recharacterized as a step adjustment, which Energy characterized as "... continuing the purpose of the CIBS, but rolling it into more traditional ratemaking mechanisms." Hearing Transcript of July 13, 2021, at 139.

In evaluating the Settling Parties' \$4 million dollar step adjustment, we note that Liberty's original petition provided an illustrative calculation of a step increase based on \$40 million in plant additions, which resulted in a revenue increase of approximately \$2.7 million per year. Exh. 33 at 26. Liberty's petition went on to cite dockets DE 09-035, DE 10-055, and DE 16-384 for the Commission's usual step increase methodology. *Id.* at 27. Each of these dockets employed a methodology to

calculate a step adjustment based on net plant in service, which included calculating net utility plant in service by adding new plant additions while accounting for accumulated depreciation. (See *Public Service Company of New Hampshire*, Order No. 25,123 at 6 (June 28, 2010) (“These step increases are intended to account for a return on additions to the Company’s net plant...”); *Unitil Energy Systems, Inc.*, Order No. 25,214 at 25 (April 26, 2011) (“...intended to provide for additional cost recovery for net plant in service additions...”); *Unitil Energy Systems, Inc.*, Order No. 26,007 at 10 (April 20, 2017) (“The Step Adjustment revenue will be the sum of (1) the Pre-Tax Rate of Return applied to the annual change in Net Plant in Service, multiplied by the factor of 80 percent; (2) Depreciation expense on annual Plant Additions multiplied by the factor of 80 percent; and (3) property taxes on the Change in Net Plant in Service multiplied by the factor of 80 percent.”)

However, due to confidential settlement negotiations between the Settling Parties, Liberty’s revised requested 2021 step adjustment’s calculation is not based on a change to net plant, and instead uses a different method of calculation that results in hitting the \$4 million revenue increase cap based on only \$36 million in 2020 plant additions. This revenue increase starkly contrasts with Liberty’s illustrative example and its existing revenue increase trends that flowed through the CIBS program.

As raised by the Commission at hearing, this different means of calculation results in a higher return than the Company’s net plant in service would seem to justify, raising concerns that ratepayers will be called on to pay more than is necessary. Hearing Transcript of January 18, 2022 at 54. In attempting to quantify this difference, the Commission requested that Liberty demonstrate what the step adjustment would be if calculated as an update to net plant in service. Liberty was unable to provide the Commission with an accurate calculation. See, e.g., Exh. 60,

Att. 1, Pg. 1, Line 5 (According to Liberty's calculations, \$410,552,322 less \$401,880,698 equals \$20,173,739). By our best estimation, Exhibit 60 demonstrates that a step adjustment based on Liberty's net plant at the end of 2020 would be in the ballpark of \$1.1 million, which we note is in line with Liberty's recent interim adjustments under the CIBS program.

That analysis performed, we are left with two options: overruling a singular term within a settlement agreement and potentially upsetting, at a late juncture, what all parties agreed was a just and reasonable outcome to this rate case or accepting this settlement figure without further ado. We note that Order No. 26,505 found the Settlement Agreement on permanent rates to be just and reasonable and in the public interest. As such, we accept the step adjustment as proposed with the caveat that treatment of depreciation with respect to the calculation of future step adjustments will be the topic of a future investigation, including assessing how New Hampshire's electric and gas utilities calculate step adjustments, whether step adjustments are successful at avoiding rate cases and minimizing litigation expenses, and whether any new rules or other policy should be implemented to ensure future step adjustments are calculated appropriately, consistently, and in the public interest.

In sum, we authorize Liberty to implement a step adjustment to increase its allowed revenue from distribution rates by \$4 million, associated with approximately \$36 million of non-growth plant investment placed in service during calendar year 2020. We further direct Liberty to file a recoupment proposal to collect the first year's revenue that would have been collected had the first step adjustment been implemented on August 1, 2021, over the course of 12 months beginning on August 1, 2022, contemporaneously with its second step adjustment.

Based upon the foregoing, it is hereby

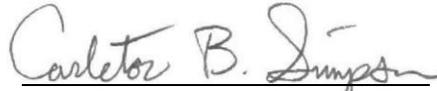
ORDERED, that Liberty's request for authorization to implement a step adjustment to increase its allowed revenue from distribution rates by \$4 million, for effect August 1, 2021, is **APPROVED**; and it is

FURTHER ORDERED, that Liberty shall make a filing no later than June 1, 2022, proposing a recoupment mechanism to collect \$4 million in distribution revenue over 12 months, representing the revenue that Liberty is entitled to collect based on the first step adjustment for the period of August 1, 2021 through August 1, 2022, for effect August 1, 2022.

By order of the Public Utilities Commission of New Hampshire this fifth day of April, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 20-105

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