

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 22-045

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

Winter 2022-2023 and Summer 2023 Cost of Gas

**Order Approving Gas Holder Stabilization Agreement and Environmental
Surcharge Rate Factor**

ORDER NO. 26,934

January 11, 2024

In this order, the Commission approves Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty's (Liberty) proposed course of action to stabilize, preserve and utilize an 1888 Gas Holder structure in Concord as a part of its ongoing manufactured gas production remediation efforts up to a total maximum contribution amount of \$2,379,492. The Commission authorizes an increase to Liberty's Environmental Surcharge (ES) rate of \$0.0004 per therm, to begin recovery of \$486,596 in costs incurred though calendar year 2022 to stabilize the Gas Holder structure.

I. PROCEDURAL HISTORY

On September 1, 2022, Liberty pre-filed the Supplemental Testimony of Heather Tebbetts with attachments, in support of proposed updates to Local Distribution Adjustment Charge (LDAC) rate for the 12-month period beginning November 1, 2022. In the cover letter to that filing, Liberty stated that it identified rate change requests that should be adjudicated on a separate timeline due to the complexity of issues presented. As it pertains to this order, one such request relates to Liberty's request to recover costs incurred in 2021–2022 to stabilize an 1888 Gas Holder structure in Concord (Gas Holder), and Liberty's plan to maintain that building as a part of its

ongoing site remediation. Liberty proposed to recover Gas Holder costs through the Environmental Surcharge component of the LDAC.

On September 29, 2022, the Commission issued Order No. 26,692, severing the Gas Holder issues from the existing procedural schedule, and directing that those costs not be recovered unless authorized by Commission order.

On December 8, 2022, Liberty filed a supplemental petition (Supplemental Petition) related to the Gas Holder and associated costs, and a technical statement of Craig Holden. On December 30, Liberty made an additional supplemental filing related to the Gas Holder issue, including pre-filed direct written testimony of John Murphy and James Wieck and attachments.

On June 7, 2023, the New Hampshire Department of Energy (DOE) pre-filed direct written testimony of Faisal Deen Arif related to the Gas Holder issue.

On August 30, 2023, the Commission held a hearing on the severed rate change requests. The Commission heard testimony from Tyler Culbertson, John Murphy, James Wieck, Jennifer Goodman, William Haswell, and Faisal Deen Arif related to the Gas Holder issue. The hearing was continued due to unrelated issues. Although the hearing was not closed and closing statements were not taken, the parties substantively agreed to a resolution of the Gas Holder issue at hearing. Due to the passage of time the Commission deems it expeditious to admit the exhibits related to the Gas Holder issue into evidence and issue a ruling on the Gas Holder issue.

Liberty's petition and subsequent docket filings are posted to the Commission's website at: <https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-045.html>.

II. BACKGROUND AND FACTS

Recovery of costs associated with environmental remediation of historic byproduct contaminants at manufactured gas production facilities is a recognized part

of Liberty's rate structure, with costs being recovered through the ES. *See, e.g.*, Order No. 23,331 (October 29, 1999). The ES is a rate mechanism assessed as a part of the LDAC. *See, e.g.*, Order No. 24,270 (January 30, 2004). Approved environmental remediation costs are generally recovered through the ES over 7-year terms. Exh. 25 at Bates page 134.

The "Gas Holder" structure is a brick holder house and iron gas holder tank constructed in 1888 at a former manufactured gas production facility. Exhibit 20 at Bates pages 21–22. The Gas Holder structure is situated at a 2.4-acre site on Gas Street in Concord. *Id.* The 2.4-acre site is the subject of a New Hampshire Department of Environmental Services (NHDES) supervised Remedial Action Plan dated April 1, 2015. *Id.* The Gas Holder structure may be the only remaining intact structure of its kind and was placed on the National Register of Historic Places in 2018. *Id.*

Maintaining the Gas Holder structure preserves an existing physical barrier to prevent infiltration of precipitation into the foundation of the structure and deeper subsurface soils, limiting the amount of residual contaminants from the manufactured gas production process released into the environment. Exh. 25 at Bates page 224. If the Gas Holder structure was to be razed, Liberty would need to investigate the subsurface and would likely need to remove or otherwise remediate contaminated soils that may be present beneath the Gas Holder structure. *Id.*

On October 1, 2021, Liberty entered into an Emergency Stabilization License Agreement, *see generally* Exh. 19 at Bates pages 9–22, wherein Liberty stated that it desires to contribute to the total cost of stabilizing and preserving the Gas Holder structure in an amount no greater than the aggregate estimated cost of demolishing the structure, investigating the area beneath the structure, and removing or managing

contamination beneath the structure made accessible by the demolition of the structure. *Id.* at Bates page 10.

III. POSITIONS OF THE PARTIES

a. Liberty

Liberty seeks approval to recover \$486,596 of costs already contributed toward stabilizing the Gas Holder structure. Liberty requests to begin recovery of this amount over a period of 7 years through an ES rate factor of \$0.0004 per therm.

Liberty further requests approval of its decision to enter into an Emergency Stabilization Access Agreement, which provides that Liberty will continue to contribute to the Gas Holder structure stabilization up to the estimated cost to demolish the Gas Holder and investigate and remedy any contamination found beneath the Gas Holder. The total estimated cost to demolish the Gas Holder and investigate and remediate any contamination found beneath the Gas Holder structure, which Liberty requests authority to contribute and recover from ratepayers, is \$2,379,492. Supplemental Petition at 6. The total estimated cost represents the common portions of different cost estimates generated by GZA and Haley & Aldrich. Exh. 25 at Bates pages 98–99. The GZA report estimates costs of investigation and remediation to be between \$1.69 million and \$2.38 million. *See* Exh. 20 at Bates pages 19–30. The Haley & Aldrich report estimates the costs of investigation and remediation to be between \$2.38 million and \$3.05 million. Exh. 23.

With respect to the DOE's recommendations, Liberty acceded to the recommendation of a financial cap discussed below subject to the caveat that if conditions change, and 50 years later unforeseen circumstances arise, flexibility may be needed. Transcript of August 30, 2023 Hearing (Tr. Aug. 30) at 58.

b. DOE

The DOE recommends approval of Liberty's request to recover \$486,596 of costs already contributed toward stabilizing the Gas Holder structure. Exh. 25 at Bates page 10. The DOE further recommends that Liberty's request for authority to recover up to \$2,379,492 (inclusive of the \$486,596 above) in expenses as environmental remediation expenses pursuant to the Emergency Stabilization Access Agreement to stabilize the Gas Holder Structure, in accordance with the stabilization plan as presented by Liberty in this docket, be granted. *Id.* In addition, DOE recommends that \$2,379,492 be established as a financial cap for remediation of the Gas Holder structure and site, recognizing that the \$2,379,492 estimate includes the removal or remediation of 788 cubic yards of contaminated soil. *Id.* In essence the DOE recommends that, should conditions change and the Gas Holder structure need to be razed in the future, ratepayers be deemed to have already paid to remove or remediate 788 cubic yards of soil from under the facility or for contaminates that would have been remediated by razing the Gas Holder structure and removing or otherwise remediating the soil under the Gas Holder structure in 2021–22. Tr. Aug. 30 at 121–27. The DOE further recommends that Liberty and other involved parties use other sources of funds as the first source of funds for Gas Holder site maintenance purposes. Exh. 25 at Bates page 10.

c. OCA

The OCA characterized the Gas Holder structure requests as a stipulation and supported the requests subject to the recommendations of the DOE. Tr. Aug. 30 at 62. The OCA also pointed out that the Commission's statutory authority to modify its prior orders due to changed circumstance addresses Liberty's concerns related to the DOE's recommended financial cap.

IV. COMMISSION ANALYSIS

The Commission's review of Liberty's request to recover incurred costs through the ES is limited to whether the costs are of the nature of costs permitted in the ES mechanism and were reasonably and prudently incurred. The Commission's review of the Emergency Stabilization Access Agreement includes consideration of Liberty's prudence in entering into the Emergency Stabilization Access Agreement, and the reasonableness of the terms of the agreement. We must consider whether the Emergency Stabilization Access Agreement is prudent and reasonable. *See* RSA 374:1 and 374:2 (public utilities shall provide reasonably safe and adequate service at "just and reasonable" rates), and 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable). Liberty must meet all requirements under the prudence standard to manage its business and operations in a manner consistent with good utility practice, including the evaluation of alternatives in making business decisions.

The record supports that Liberty is liable for environmental remediation at the Gas Holder structure and surrounding site, that the NHDES considered maintaining the Gas Holder structure as a cap over the Gas Holder structure's footprint to be an acceptable course of action as early as 2015, and that if the Gas Holder structure were razed that investigation would be necessary and that removal or remediation of contaminants would be probable. Liberty's engagement with interested parties in this matter, as well as the GZA and Haley & Aldrich reports, demonstrate that Liberty assessed and evaluated alternatives, and that incurring expenses to stabilize the Gas Holder structure and entering into the Emergency Stabilization Access Agreement are reasonable decisions so long as they meet Liberty's stated intent that they do not result in costs being passed to Liberty's ratepayers in excess of the aggregate

estimated cost of demolishing the Gas Holder structure, investigating the area beneath the structure, and removing or managing contamination beneath the structure made accessible by the demolition of the structure.

We find that the initial \$486,596 of incurred costs, and the total \$2,379,492 cost estimate to be just and reasonable, based on the GZA and Haley & Aldrich reports filed and supporting testimony. Nonetheless, the estimated costs include estimated costs of investigating and removing or otherwise remediating 788 cubic yards of soil that are inaccessible and will not actually be investigated, removed or otherwise remediated. Despite the fact that soil will not actually be removed or remediated and the near-certainty that such an estimate would not be precisely correct, we can think of no better way to condition approval of the Emergency Stabilization Access Agreement than to impute the estimated cubic yardage of soil as an actual amount of soil ratepayers have actually paid to investigate and remove or remediate under the proposal. Assuming Liberty contributes and later collects a total of \$2,379,492 (inclusive of the \$486,596 already spent and authorized to be recovered) for the stabilization of the Gas Holder structure pursuant to the terms of the Emergency Stabilization Access Agreement, ratepayers shall be deemed to have already remediated or removed 788 cubic yards of contaminated soil under or directly attributable to the Gas Holder structure, and shall not be required to pay to remediate or remove that same volumetric amount of soil in the future. This condition is subject to the Commission's statutory authority to alter its prior orders due to changed circumstances pursuant to RSA 365:28.

Based upon the foregoing, it is hereby


ORDERED, that Exhibits 19 through 25 are admitted into evidence; and it is

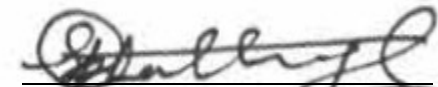
FURTHER ORDERED, that Liberty is authorized to recover \$486,596 through the Environmental Surcharge over 7 years, beginning with rates effective February 1, 2024; and it is

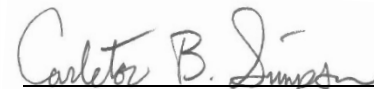
FURTHER ORDERED, that Liberty's decision to enter into the Emergency Stabilization Access Agreement is **APPROVED**; and Liberty may seek to recover up to a total maximum contribution amount of \$2,379,492, inclusive of the \$486,596 authorized to be recovered herein, as contributions to the costs of stabilization of the Gas Holder structure under the terms of the Emergency Stabilization Access Agreement; and it is

FURTHER ORDERED, that Liberty shall file a compliance tariff reflecting the Environmental Surcharge factor authorized herein as directed in Docket No. DG 23-076, once Liberty's LDAC rates for effect February 1, 2024, are addressed in that matter.

By order of the Public Utilities Commission of New Hampshire this eleventh day of January, 2024.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-045

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