

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: April 20, 2017
AT (OFFICE): NHPUC

FROM: Stephen Frink ^{SAF}
Assistant Director – Gas & Water Division
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Staff Attorney

SUBJECT: DG 17-035
Liberty Utilities
Special Contract with NHDAS

NHPUC 20APR'17AM11:21

TO: Commissioners
Docket File
Service List

SUMMARY OF STAFF RECOMMENDATION

The Commission should approve the special contract at its earliest convenience and require Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or Company) to file updated cost estimates when the Boilers become operational and to notify the Commission when regulatory requirements related to the special contract are sought and decision(s) rendered. If a request for regulatory approval is denied, a Liberty notification should include the expected impact on Boiler operations, costs and cost recovery and Company plans in light of the denial.

BACKGROUND

Docket DG 16-769 – Concord Steam Emergency Rates & Service Termination

On July 21, 2016, Concord Steam Corporation (Concord Steam) filed a petition for emergency rates and to discontinue service. Concord Steam currently serves 23 state-owned buildings in downtown Concord and at the Hugh J. Gallen State Office Park and the New Hampshire Department of Administrative Services (NHDAS or State) is the governmental agency responsible for managing those buildings. NHDAS Deputy Commissioner Michael Connor testified that the short lead-time to transition to alternative heating created a significant hardship for the State and that temporary boilers (Boilers) would be needed to provide steam to those buildings for the 2017-2018 heating season which could only be accomplished with Liberty's assistance and Legislative approval. (Connor Testimony 10/6/16 p. 2-3). NHDAS anticipated entering into a special

contract with Liberty in which Liberty would incur upfront costs and pass those costs through to the State on its utility bills.

On November 10, 2016, the Commission issued Order 25,966 approving a Settlement Agreement that set emergency rates for Concord Steam and allowed Concord Steam to terminate service on May 31, 2017. Mr. Connor testified that the State joined as a signatory to the Settlement Agreement in part because of his confidence that the State could make the proper arrangements for temporary natural-gas fired boilers to serve State buildings (10/5/16 Hearing Transcript, p. 110); “we're in the final negotiations for a temporary boiler with Liberty Utilities. So, with that, that basically addresses my initial concerns.”

Docket DG 17-035 – Liberty Special Contract with NHDAS

On March 1, 2017, Liberty filed a request for Commission approval of a special contract (Contract) with NHDAS for Liberty to install and operate temporary gas-fired steam boilers and recover the costs through a surcharge on NHDAS’s natural gas bills, pursuant to RSA 378:18. Liberty also asked for expedited processing as Concord Steam will cease providing service to the affected buildings on May 31, 2017. The filing included the petition and Contract, a Statement of Special Circumstances that Justify Departure from Existing Tariff and the testimony of William Clark, Director of Business Development for Liberty Utilities Service Corp.

Special Circumstances

Liberty contends that special circumstances exist to justify the departure from standard tariff rates, to wit: NHDAS has 23 state owned buildings connected to the Concord Steam distribution system that will require heat and hot water when Concord Steam ceases operation, and due to the size and scope of the conversion project, NHDAS will not be able to convert those buildings to an alternative fuel source prior to the 2017-2018 heating season; NHDAS cannot contract for the temporary solution by May 31, 2017; and, NHDAS needs additional time to determine and implement its long term heating solution.

To ensure that the State will have steam service to its buildings as of May 31, Liberty agreed to engage engineers, arrange for the required utility connections, and coordinate the rental, installation, and operation of the Boilers. The Contract allows Liberty to include these Boiler-related costs in a surcharge to NHDAS’s natural gas bills through September 30, 2018.

Liberty’s petition states that the Contract benefits the State because it solves the short term problems arising from Concord Steam’s May 31 closure and NHDAS will only pay the actual costs of Liberty’s non-tariff services without markup, NHDAS will have time to develop and install its permanent heating system, and Liberty and its customers will benefit from the Contract because NHDAS will reimburse Liberty for its costs related to the Boilers and will buy gas at tariffed rates.

Contract Terms

Liberty will contract for Boiler installations at two locations (Department of Justice Parking Lot and adjacent to the Concord Steam plant facility), connect to the steam system infrastructure to serve 23 State buildings, and contract for the operation and decommissioning of the Boilers. The costs to be paid by Liberty are to be a direct pass through (no markup of contractor or vendor invoices) and costs are not-to-exceed \$2,725,000.

The term of the Contract is from the date Boiler service commences through September 30, 2018 but the contract includes provisions for early termination or extension. The Contract will become effective on the date of Commission approval or Governor and Executive Council approval, whichever comes later. The Contract may be extended or terminated early at NHDAS' sole discretion, provided NHDAS has reimbursed Liberty for all costs incurred.

Liberty obligations:

- Retain and pay for engineering service to install Boilers
- Arrange and pay for Boiler water and electricity connections
- Arrange for natural gas service to Boilers at no charge to NHDAS
- Arrange and pay for Boiler connection to existing steam infrastructure and, if necessary, modify the steam infrastructure and pay for modifications not paid by Concord Steam as part of its decommissioning
- Arrange and pay to have Boilers ready for operations by May 31, 2017 and operation and decommissioning of the Boilers
- Upon decommissioning, arrange to have steam infrastructure disconnected from State Buildings and fill the manholes associated with that infrastructure
- Require Contractors to have sufficient insurance to protect the State and name the State as an additional insured

NHDAS obligations:

- Provide consent on selection of Boilers, Boiler Company, Engineer and Contractor
- Provide consent on Liberty's scopes of work
- Open and pay accounts with the water and electric utilities related to the Boilers
- Pay surcharge(s) for Liberty costs for Boilers
- Pay applicable Liberty tariff rates, including the Local Distribution Adjustment Charge
- Provide at least 30 days' notice to Liberty of the date Boilers will no longer be needed
- If Liberty costs are greater than the not-to-exceed amount, NHDAS to take all reasonable steps to obtain the funds necessary to reimburse Liberty, including seeking Governor and Executive Council approval to amend the amount.

Benefit to Liberty Customers

Liberty will be extending natural gas service to the Boiler at no cost to the State consistent with Liberty's line extension policy that six years of annual distribution revenues exceed direct construction costs. The direct cost of the gas lines, meters and regulators to serve the Boilers is estimated to be \$194,130 and the estimated distribution revenue for sixteen months (expected term of the Contract) is \$297,698. Furthermore, if State buildings are converted to natural gas the new gas lines could be used to serve those buildings.

NHDAS will be charged existing tariff rates for gas used to operate the Boilers and the estimated distribution revenue over the term of the contract exceeds the cost to provide that service. NHDAS will pay all non-gas, or abnormal costs, as a surcharge so those costs will not be borne by any other Liberty customer.

Docket DR 94-252 – Adjudicative Proceeding Not Required for Special Contract

Nisi Order 23,546 (September 5, 2000) approved an amendment to a special contract between Public Service Company of New Hampshire and Freudenberg-NOK Limited General Partnership - Seal Division. The Office of Consumer Advocate submitted a timely Motion for a Hearing (Motion), arguing that the Amendment was a new contract that did not meet the requirements of RSA 378:18-a.

Order 23,627 (January 29, 2001) denied the petition for rehearing, stating (pages 7-8) that neither a hearing nor order nisi is necessary to approve a special contract under RSA 378:18:

As with 378:18, this section [RSA 378:18-a] does not require a hearing in order to make the determination whether or not a currently effective tariffed rate is sufficient to attract the load. Thus, since there is no requirement by law for a hearing, the determination of special circumstances for special contracts is not a "contested case." Nor is there a requirement, in either RSA 378:18 or 378:18-a, III, for a hearing regarding special contracts upon the request of a party. Therefore, the Commission's determinations regarding whether special circumstances exist and whether a current tariffed rate is sufficient to attract the load, are questions of fact that may be made without resort to an adjudicative proceeding, and contrary to the assertions of the OCA, no hearing is necessary.

INVESTIGATION

Staff reviewed the filing and related dockets and obtained and reviewed additional material through discovery.

FINDINGS

Liberty's capital investment to serve the Boilers, which includes both direct and indirect costs, will be approximately \$223,250. The new gas mains downtown will also serve Concord City Hall and the surrounding City buildings. The new gas main to serve the Boiler located by the Concord Steam plant is expected to serve campus buildings that will be converted to direct fired natural gas equipment. Meters to measure Boiler usage will be tested and reused at a future location when the boilers are decommissioned. Liberty does not anticipate any retirement of assets that are initially constructed to serve the temporary Boilers. DR 1-10

The expected distribution revenues of \$297,698 for 16 months of Boiler usage is a conservative estimate and could be significantly greater if weather is normal or colder than normal during that period. Liberty's usage is based on actual 2015-2016 winter usage which was 16% warmer than the 10-year average. In addition, Liberty's revenue estimate does not include consumption for four months of the summer and NHDAS has indicated it will operate the Boilers during the summer to maintain heat/pressure in the steam piping. The estimated distribution revenues of \$297,698 to run the Boilers exceed the expected line extension cost of \$223,250. Actual revenues are likely to be higher and do not take into account associated long term revenue if State buildings are converted to natural gas or the revenue from the Concord City buildings that will also be served by the extension. DR 1-12.

Liberty intends to have two surcharges on the NHDAS bill, one for Boiler installation and one for Boiler rental. The Boiler installation costs are expected to be \$1,388,355 and will be recovered through 15 monthly surcharges of \$92,557. NHDAS requested the Boiler installation costs be billed over 15 months to facilitate budget processes. The rental costs include Boiler delivery, start-up and removal costs and are expected to be \$1,310,580 and will be recovered through a monthly surcharge over the term of the Contract. The surcharge will be lower for the months of March through October when three Boilers will be onsite and higher for the months of November through February when five Boilers will be on site. The monthly rental period is expected to be for 17 months, commencing in April 2017 and ending in August 2018, though rental terms may be extended if permanent alternative energy facilities are not fully operational in August 2018. The rental costs are set per the terms of a contract between Liberty and Powerhouse, the vendor providing the Boilers. The total projected cost related to the Boilers (installation, rental and decommissioning) and to be recovered through the two surcharges is \$2,698,935, which is \$26,065 or 0.96% below the not-to-exceed amount of \$2,725,000. The Boiler installation costs also include \$75,000 for alternate work that may not be required. DRs 1-4 & 2-3.

Decommissioning of the steam systems includes removal of boilers, gas meters and regulators, removal of vent stacks, disconnection of the steam piping, and filling the manholes associated with the NHDAS system. Liberty will remove the gas meters and regulators as part of its normal procedure for customer disconnection. The Boiler vendor will remove the Boilers as a requirement of its contract, which pricing is included in the

rental fees. RH White, the outside contractor responsible for the steam and gas connections, will disconnect the systems and fill the manholes. The estimated cost to disconnection is \$60,033 and is included in the Boiler installation cost projection.

Expectations are that both Boiler locations will be ready for steam connections on May 31st and operational within 5-7 days after Concord Steam terminates service.

Construction has begun at both sites and the contract with Powerhouse for temporary boilers has executed. The Boilers for the Concord Steam site were delivered April 11th and the Boiler for the Department of Justice Parking Lot will be delivered April 25th. Gas and electrical work is ongoing at both locations. Gas regulators have been ordered and will be on site in May. DR 1-13 & 2-2

During the first two weeks of Boiler operations, a licensed boiler operator will be on site to train NHDAS employees on operation of the boilers and will also be on site during normal business hours from December 1st through March 31st. The Boilers will be equipped with remote alarm systems that will notify NHDAS in the event of a boiler issue. DR 2-1.

NHDAS Boiler surcharges will be paid out of its Fiscal Year 2018-2019 proposed operating budget, to be approved by the Legislature through HB 1 sometime before July 1. According to NHDAS, the utility line item in the proposed budget is based on current Concord Steam cost and the proposed budget amount is sufficient to pay the natural gas charges. DR 2-6.

STAFF SUMMARY & RECOMMENDATIONS

The Commission should approve the Contract at its earliest convenience.

Circumstances exist to justify the departure from Liberty's standard tariff rates. Concord Steam is terminating service on May 31, 2017 and NHDAS does not have sufficient time to convert all of its buildings currently being served by Concord Steam to alternative energy sources or to adequately evaluate the best alternatives and acquire the necessary funding. The Contract allows for a temporary solution that was contemplated in DG 16-769. Liberty's customers will benefit as a result of the Contract, as the cost of the temporary boilers will be recovered from NHDAS and the expected revenues from the line extension to serve the temporary boilers exceed the expected cost of the extension.

Liberty will begin adding the surcharges to NHDAS natural gas bills upon approval of the Contract by the Governor and Executive Council and the surcharges will be back-dated to the beginning of the rental term. The majority of Boiler costs have either been incurred or set by contract so there is minimal risk that Liberty's costs related to the Contract will exceed the not-to-exceed limit for recovery from NHDAS. The cost to NHDAS under the terms for the special contract are reflected in NHDAS's proposed operating budget and Legislative approval is expected before July 1st.

Staff expects the regulatory approvals needed by NHDAS will be granted as there are no other feasible alternatives to providing heat and hot water to the impacted State building before the 2018-2019 heating season. Although the Contract's not-to-exceed amount poses a financial risk to Liberty, the majority of Boiler related costs are known and the risk to Liberty customers is mitigated through the benefits derived from increase natural gas sales related to the Contract to be billed at tariffed rates. Although the risk of financial harm is limited, Liberty should be required to notify the Commission if costs exceed the maximum allowed for recovery from NHDAS and, if related appropriation requests are denied, explain the expected impact on Boiler operations, costs and cost recovery and Company plans in light of the denial.

Staff recommends the Commission issue an order approving the Contract without a hearing. Concord Steam terminates service in approximately six weeks and Liberty has been incurring costs to ensure the Boilers will be operational at that time. Obtaining regulatory approvals as expeditiously as possible will allow Liberty to start billing and recovering those costs from NHDAS. RSA 378:18 does not require a hearing to determination if special circumstances exist for a special contract. The Contract was contemplated in approving Concord's Steam request to terminate service, special circumstances exist for a special contract, there are no intervenors and this is not a contested proceeding.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

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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FILING INSTRUCTIONS:

a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND
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21 S. FRUIT ST, SUITE 10
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b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.

c) Serve a written copy on each person on the service list not able to receive electronic mail.