

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 13-198

ENERGYNORTH NATURAL GAS, INC. d/b/a LIBERTY UTILITIES

Investigation into Line Extension Policy Matters

Order Approving Settlement Agreement

ORDER NO. 25,624

January 24, 2014

APPEARANCES: Sarah B. Knowlton, Esq., for EnergyNorth Natural Gas, Inc. d/b/a Liberty Utilities; Rorie E.B. Hollenberg, Esq., of the Office of the Consumer Advocate, on behalf of residential ratepayers; and Alexander F. Speidel, Esq., for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On June 20, 2013, Staff filed a letter requesting that the Commission open an investigation, pursuant to RSA 365:5 and 374:4, regarding potential irregularities in tariff compliance by EnergyNorth Natural Gas, Inc. d/b/a Liberty Utilities (Liberty), a public utility distributing natural gas in 28 cities and towns in southern and central New Hampshire and the City of Berlin in northern New Hampshire. *See* Letter of Stephen P. Frink, Assistant Director Gas & Water Division, to Executive Director Debra A. Howland, dated June 20, 2013. Specifically, Staff alleged that Liberty was not in compliance with Section 7 of Liberty's tariff governing service extensions. In response to the Staff letter, on July 8, 2013, Liberty filed a letter with the Commission disputing Staff's conclusions. Having reviewed Staff's letter of June 20, 2013, and Liberty's response of July 8, 2013, the Commission issued, on July 24, 2013, an Order of Notice opening an investigation docketed as DG 13-198, and delineating the scope of

the investigation. On its own motion, the Commission included as a mandatory party to the investigation Liberty's predecessor parent company, National Grid USA, who continues to provide services to Liberty pursuant to a Transition Services Agreement. The Order of Notice also scheduled a prehearing conference for August 8, 2013.

On July 31, 2013, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket on behalf of residential ratepayers pursuant to RSA 363:28. There were no other intervenors.

On August 7, 2013, National Grid USA filed a letter objecting to its inclusion as a mandatory party in this investigation. Also on August 7, 2013, Staff filed a partial settlement agreement signed by Liberty, Staff, and the OCA. *See* Hearing Exhibit 1. Staff requested that the Commission accept, pursuant to its waiver authority under N.H. Code Admin. Rules Puc 201.05, the late-filed partial settlement. The Commission held the prehearing conference as scheduled on August 8, 2013, and accepted the partial settlement for its review. On September 20, 2013, the Commission approved the partial settlement agreement, and released National Grid USA from party status. *See* Order No. 25,574 (September 20, 2013).

Discovery was served on Liberty by Staff and the OCA from July through October, 2013 pursuant to a discovery schedule approved by the Commission on September 3, 2013. On November 13, 2013, Staff, with the concurrence of Liberty and the OCA, filed a letter requesting that the Commission suspend the November 15, 2013 report, and the November 27, 2013 Liberty response requirements, of the approved procedural schedule, because the parties had reached a settlement in principle. The Commission approved these modifications to the procedural schedule by a secretarial letter dated November 15, 2013.

On November 21, 2013, Liberty filed a settlement agreement signed by Liberty, OCA, and Staff. *See* Hearing Exhibit 2, Settlement Agreement filed November 21, 2013. On November 27, 2013, Liberty filed a letter providing a specific dollar figure for the Extra Footage Charge proposed in the settlement agreement (discussed below), and also filed a motion for confidential treatment pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc 203.08 regarding certain discovery responses propounded by Staff.

The Commission held a hearing on the merits on December 4, 2013, at which the Commission granted Liberty's motion for confidential treatment. *See* Transcript of December 4, 2013 Hearing (Tr.) at 5. On December 9, 2013, Liberty, in response to a Commission inquiry (discussed below), and with the concurrence of the OCA and Staff, filed revised proposed tariff language for Section 7 of its Tariff. *See* Hearing Exhibit 3.

II. TERMS OF THE SETTLEMENT AGREEMENT

The settling parties, Liberty, the OCA, and Staff, recommended that the Commission approve the settlement agreement as a just and reasonable resolution of the matters examined in this investigative docket. The settlement agreement outlined a methodology for the calculation of contribution in aid of construction (CIAC) as part of a revision of Liberty's Section 7 of its Tariff, governing service extensions.

The settlement agreement incorporated the following provisions:

- (1) Effective January 1, 2014, Liberty would replace the existing Section 7 of its tariff with the new Section 7 set forth in Attachment A to the settlement agreement;
- (2) Within ten days of issuance of a Commission order approving the settlement agreement, Liberty would refund to any residential customer that had a service extension of more

than 100 feet, installed between July 24, 2013 and the date of Commission approval of the final disposition of the investigation in Docket No. DG 13-198, the positive difference between the amount charged for such extension and the cost as determined by the new “Extra Footage” charge as defined in Section 7 in the proposed Liberty Tariff;

(3) The “Extra Footage” charge defined in the proposed Tariff would be revised annually. A revised tariff page specifying the updated charge would be filed with the Commission no later than April 1 of each year for effect on and after April 1. This filing would include the annual computation and supporting schedules;

(4) Other than the obligation to refund in Section II (b) of the settlement agreement (outlined in Point (2) above), there should not be any fines, penalties, reparations, or disallowances to Liberty and its current service affiliate relating to the application of Section 7 of Liberty’s tariff.

III. POSITIONS OF THE PARTIES AND STAFF REGARDING THE SETTLEMENT; COMMISSION INQUIRY (PROPOSED TARIFF LANGUAGE)

Staff, at the December 4, 2013, public hearing, indicated its support, with Liberty’s and the OCA’s concurrence, for the settlement agreement, and requested that the Commission approve the settlement. Tr. at 70. Staff also presented the direct testimony of Mr. Frink in support of the settlement, while Liberty presented the direct testimony of William T. Sherry, Vice President of Customer Care at Liberty, and Steven R. Hall, Director of Regulatory and Government Affairs at Liberty Energy Utilities New Hampshire Corp. Messrs. Sherry and Hall stated that, during the discovery process, Liberty was able to confirm that, for all new services installed in Liberty’s New Hampshire service territory in recent years, no customers were

overcharged for CIAC. Tr. at 11. Messrs. Sherry and Hall also provided a comprehensive description of the workings of the proposed language for Section 7 of the Liberty Tariff, and the terms of the settlement agreement. Tr. at 12-34; 39-41.

Mr. Frink expressed his support for the proposed settlement agreement, and the CIAC/line extension policies put forward in the proposed language for Section 7 of Liberty's Tariff. Mr. Frink noted that the proposed language for Section 7 was likely to stimulate growth in the customer base of Liberty, was consistent with accepted accounting and financial standards, and was beneficial for existing Liberty customers. Tr. at 34-39.

The Commissioners at hearing expressed confusion regarding a specific feature of the proposed Section 7 Liberty Tariff language, which drew a distinction between so-called "Service and Main Extensions," defined in Section 7(A)(1) of the proposed Tariff as "Extensions for which both an extension of a service and an extension of a main are required to be constructed to provide requested gas service for a customer," and "Service Extensions," defined in Section 7(A)(2) of the proposed Tariff as "Extensions from a main to the point of delivery on the customer's premises." *See* Hearing Exhibit 2, Attachment A; Tr. 43-49; 53-65. In order to clarify this ambiguity in the settlement agreement, the Commission ordered Liberty to file a new proposed Section 7 Tariff for the Commission's review. Liberty, with Staff's and the OCA's collaboration, filed a new proposed Section 7 on December 9, 2013. *See* Hearing Exhibit 3.

IV. 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. N.H. Code Admin. Rules Puc 203.20 (b) requires that, prior to

approving a settlement, the Commission determine that the settlement results are just and reasonable and in the public interest. In this instance, we are presented with a settlement agreement, and proposed tariff language, that will govern the line-extension construction activities of Liberty after our approval.

We have reviewed the settlement agreement, in light of testimony provided by the parties at the hearing. On the basis of this review, we are satisfied that this settlement agreement, and its companion revised proposed tariff language, offers a reasonable and balanced CIAC methodology for line extensions to new Liberty customers.

Having reviewed the record, including the settlement and the evidence presented at hearing, we find that the resolution of this matter through the terms of the settlement agreement is just and reasonable and in the public interest. We find that the terms of the settlement, and the proposed updated Section 7 tariff language, represent an appropriate balancing of ratepayer interests, the interests of new customers, and the interests of Liberty's investors, and are consistent with the public interest. We will adopt and approve the terms of the settlement agreement, and the revised tariff language presented in Hearing Exhibit 3 with an effective date of February 1, 2014. We also commend the settling parties for their efforts in reaching a just and reasonable resolution of this matter. Our approval of this settlement agreement does not limit our disposition of similar matters in the future.

To conclude, we approve the settlement agreement and incorporate its terms and conditions into this order. To facilitate the efficient administration of the settlement agreement, we authorize Liberty, the OCA, and Staff to modify the settlement agreement so long as any modification is mutually agreed upon and non-substantive, such as a clerical or ministerial

amendment that involves timing or scheduling. In this instance, we have modified, on our own motion, the effective date of the settlement agreement to February 1, 2014, for timing purposes. The parties shall file any such modification with the Commission and provide a copy to all parties on the service list. The Commission will approve the requested modification, if appropriate, via secretarial letter but will not require notice or hearing.

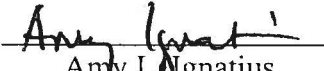
Based upon the foregoing, it is hereby

ORDERED, that the terms of the settlement agreement and revised tariff section 7 presented by the parties are hereby adopted and approved as discussed herein, with an effective date of February 1, 2014; and it is

FURTHER ORDERED, that Liberty shall file properly annotated tariff pages, for Section 7 of its Tariff, in compliance with this order no later than 15 days from the issuance date of this order, as required by N.H. Code Admin. Rules Puc 1603; and it is


FURTHER ORDERED, that the “Extra Footage” charge defined in Section 7(A)(6) of Liberty’s revised Tariff be revised annually, with a revised tariff page specifying the updated charge to be filed with the Commission no later than April 1 of each year beginning on April 1, 2015. This filing shall include the annual computation and supporting schedules.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of
January, 2014.


Amy L. Signatius
Chairman


Robert R. Scott
Commissioner

Attested by:


Lori A. Davis
Assistant Secretary