

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 14-155

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
and IBERDROLA USA ENTERPRISES, INC.**

Joint Petition to Approve Sale of New Hampshire Gas Corporation

ORDER APPROVING SETTLEMENT AGREEMENT

ORDER NO. 25,736

November 21, 2014

APPEARANCES: Sarah B. Knowlton, Esq., for Liberty Utilities (EnergyNorth Natural Gas) Corp.; McLane, Graf, Raulerson & Middleton, PA, by Patrick H. Taylor Esq., for Iberdrola USA Enterprises, Inc.; Rorie E.P. Hollenberg, Esq., for the Office of Consumer Advocate; Dickinson Henry, Jr., for HotZero, LLC; and Michael Sheehan, Esq., for the Staff of the Public Utilities Commission.

In this order we approve the settlement agreement that provides for Iberdrola's sale of NH Gas to EnergyNorth. We find that the proposed stock sale satisfies the no-net-harm and public good standards of RSA 369:8 and RSA 374.

I. PROCEDURAL HISTORY AND BACKGROUND

Liberty Utilities (EnergyNorth Natural Gas) Corp. (EnergyNorth) is a public utility that provides natural gas service to approximately 86,000 customers in southern and central New Hampshire and in Berlin. Iberdrola USA Enterprises, Inc. (Iberdrola), is a Maine holding company and an indirect subsidiary of Iberdrola, S.A., which is organized in Spain. Iberdrola owns New Hampshire Gas Corporation (NH Gas), a public utility that provides propane air service to approximately 1,200 customers in Keene. EnergyNorth and Iberdrola signed a Stock Purchase Agreement under which EnergyNorth agreed to buy all of NH Gas's outstanding stock for \$3million. Exhibit 1 at 14. After the sale the NH Gas system will be known as the Keene Division of EnergyNorth. Exhibit 5 at 3.

EnergyNorth and Iberdrola filed a joint petition seeking commission approval of the proposed stock sale on June 6, 2014. Exhibit 1 at 1. The petition included supporting testimony of EnergyNorth witnesses Richard Leehr, Stephen Hall, Francisco DaFonte, and the joint testimony of Daniel Saad, Mark Smith, and William Sherry, and of Iberdrola witness Thorn Dickinson. Exhibit 1 at 144, 162, 172, 184, and 198, respectively.

The Office of Consumer Advocate (OCA) notified the Commission that it would participate on behalf of residential ratepayers pursuant to RSA 363:28. HotZero, LLC, a company that develops hot water district energy systems, filed a petition to intervene. June 24, 2014, *Petition for Intervention* at 1. The Commission granted HotZero's petition on a limited basis in *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,690 at 5 (July 9, 2014).

After conducting discovery and after the OCA and Staff filed testimony, all parties reached a Settlement Agreement that they believe resolves the issues presented in this docket. Exhibit 5. The parties presented the Settlement Agreement to the Commission for approval at a public hearing on October 30, 2014.

II. THE SETTLEMENT AGREEMENT

The overriding theme of the Settlement Agreement is that EnergyNorth will separately account for the Keene Division and will operate the Keene Division largely without change. Transcript of October 30, 2014, public hearing (Tr.) at 14, 21 (EnergyNorth characterized its proposal to operate the Keene Division "as is"). Section II of the Settlement Agreement, titled "Terms of Agreement," contains 17 numbered paragraphs that comprise the substance of the parties' agreement. Exhibit 5 at 3-8. They are summarized below and are referenced by paragraph number within Section II.

Several paragraphs require EnergyNorth to account for the Keene Division as a separate entity. EnergyNorth must maintain separate accounting records and file separate annual reports for the Keene Division. *Id.* ¶ 2. EnergyNorth must maintain separate cost of gas rates and general distribution rates. *Id.* ¶ 6. EnergyNorth agreed to separately report proposed capital projects for the Keene Division. *Id.* ¶ 7. If the proposed capital project exceeds \$50,000, EnergyNorth will give Staff and the OCA 60 days advance notice, where feasible. *Id.*

The Settlement Agreement requires EnergyNorth to operate the Keene Division largely without change from existing operations. EnergyNorth agreed to keep the Keene work center open with its current staffing of eight full time employees. *Id.* ¶¶ 8, 9. EnergyNorth may change the staffing levels or job responsibilities with advance notice to the OCA and Staff. *Id.* ¶ 9. The Keene Division will comply with the emergency response requirements of Puc 504.07 as if it were a separate utility. *Id.* ¶ 10. EnergyNorth also agreed to “adopt and follow” existing NH Gas policies and procedures, including compliance with six documents listed by title and attached to the Settlement Agreement. *Id.* ¶ 16.

The Settlement Agreement clarified other responsibilities relating to the Keene Division. EnergyNorth cannot charge overhead to capital projects in the Keene Division associated with other EnergyNorth enterprises. Only overhead associated with the Keene Division may be charged to that division. *Id.* ¶ 3. EnergyNorth must file monthly reports with specific data related to odor calls if EnergyNorth uses its dispatch or control center IT systems for such calls coming from the Keene Division. *Id.* ¶ 11. EnergyNorth agreed to only use in-house personnel to locate and mark its underground facilities. *Id.* ¶ 12. EnergyNorth must adhere to Puc 508.04(m) regarding the schedules for completing leak repairs. *Id.* ¶ 13. EnergyNorth agreed that the Keene Division will continue to own and be responsible for its distribution

system upstream of the customer piping at the meter outlet. *Id.* ¶ 15. EnergyNorth also agreed to meet with the OCA and Staff within 90 days to develop a long-term plan for replacement of the Keene Division's remaining cast iron and wrought iron pipes. *Id.* ¶ 14.

Under the Settlement Agreement, EnergyNorth may bill the Keene Division \$200,000 per year for corporate expenses, adjusted for inflation. *Id.* ¶ 5. This amount is approximately the same that NH Gas has paid to Iberdrola for similar services. Tr. at 13. EnergyNorth will not seek recovery of transaction costs, transition costs, or the acquisition premium related to the Stock Purchase Agreement. Exhibit 5 ¶ 4. Finally, the parties agreed that the Settlement Agreement terms shall remain in effect "until the Commission approves otherwise." *Id.* ¶ 17. Mr. Hall testified that current NH Gas customers will "see very little change" as a result of the proposed sale. Tr. at 23.

III. POSITIONS OF THE PARTIES

All parties supported the Settlement Agreement. EnergyNorth argued that the sale meets the public good standard. Tr. at 29. Iberdrola also stated that the proposed sale is in the public interest and meets the no-net-harm standard. Tr. at 28.

Staff explained that the Settlement Agreement reasonably satisfies the concerns highlighted in its testimony. Staff's first issue was a potential shifting of costs from NH Gas to existing EnergyNorth customers, if NH Gas were rolled into the EnergyNorth systems. Exhibit 4, Direct Testimony of Stephen P. Frink, at 9-10. The OCA's witness raised similar concerns. Exhibit 3, Direct Testimony of Scott J. Rubin, at 16-17. The Settlement Agreement requires EnergyNorth to keep NH Gas financially separate, alleviating those issues. Tr. at 16-17.

Staff's second set of concerns involved changes to NH Gas's operations and safety procedures that could arise from the sale. Exhibit 4, Direct Testimony of Randall S. Knepper (as

corrected in Exhibit 6). As outlined above, EnergyNorth agreed to keep the Keene operations center and maintain existing emergency response standards and procedures. Tr. at 17. Staff thus supported the Settlement Agreement. Tr. at 28.

The OCA supported the Settlement Agreement and recommended Commission approval. Tr. at 27. HotZero also supported the Settlement Agreement. Tr. at 28.

IV. COMMISSION ANALYSIS

Our rules authorize disposal of any contested case by settlement if we “determine that the result is just and reasonable and serves the public interest.” N.H. Code of Admin. Rules Puc 203.20(b); *see* RSA 541-A:31, V(a) (“Unless precluded by law, informal disposition may be made of any contested case ... by stipulation [or] agreed settlement...”). Nonetheless, we cannot approve a settlement agreement “without independently determining that the result comports with applicable standards.” *Unitil Energy System, Inc.* Order No. 24,677 at 18 (Oct. 6, 2006) (citation omitted).

The standards applicable to the sale of a utility are found in RSA 369:8, RSA 374:30, and RSA 374:33. Under RSA 369:8 we review whether a transaction will “adversely affect rates, terms, service, or operation of the public utility within the state.” This statute allows for streamlined review of transactions that will clearly have no such adverse impacts. In those cases, RSA 369:8 states that our review ends upon a finding of no adverse impacts, the so-called “no net harm” standard. Few cases are so clear. As noted in *New England Electric System*, Order No. 23,308 at 13 (Oct. 4, 1999), we usually do not accept “at face value” a petitioner’s representations of no net harm and rarely approve a transaction under the summary process of RSA 369:8, because “the Commission must independently verify that no adverse effect on the rates, terms, service or operation of the utility to be acquired will occur.” *Id.* at 15. “In cases

that require further inquiry, the petitioners must satisfy not just the ‘no adverse impacts’ standard in RSA 369:8, but also the requirements of RSA 374.” *Aquarion Water Co. of N.H.*, Order No. 24,691 at 7 (Oct. 31, 2006). RSA 374:30 allows a public utility to “transfer ... its franchise, works, or system” upon our finding that “it will be for the public good.” RSA 374:33 similarly requires a showing that acquisition of a public utility’s stock is “in the public interest.”

As explained below, we find that the petitioners have satisfied the statutory requirements.

We first find that the petitioners have met the no net harm standard of RSA 369:8. The Settlement Agreement requires EnergyNorth to manage and operate what will become the Keene Division separately, without a change in distribution rates, and without substantial changes in the Keene Division’s operation. Thus, the financial concerns raised in Mr. Frink’s and Mr. Rubin’s pre-filed testimony are premature. They will be addressed, if necessary, in a future rate case as Mr. Rubin recommended in his pre-filed testimony and as Mr. Frink suggested at the hearing. Ex. 3 at 18; Tr. at 16-17. The Settlement Agreement also requires EnergyNorth to maintain the current operations of the Keene Division, satisfying Staff’s concerns in the areas of safety highlighted in Mr. Knepper’s testimony.

In deciding whether a particular transfer is for the public good or in the public interest, the Commission “has a longstanding practice of evaluating the managerial, financial, and technical ability of the proposed transferee to operate a public utility.” *Hampstead Area Water Company*, Order No. 24,803 (Nov. 2, 2007). EnergyNorth is an existing public utility in this state. No party to this docket challenged its “managerial, financial, and technical ability ... to operate a public utility.” See Exhibit 3, Direct Testimony of Scott J. Rubin, at 11 (“Liberty has been operating a natural gas utility in New Hampshire for the past two years and appears to have the necessary expertise and resources to add the roughly 1,000 customers of NH Gas to its

New Hampshire operations”). We similarly find no basis in the record to question EnergyNorth’s ability to operate NH Gas. We thus find the proposed sale of NH Gas’s stock from Iberdrola to EnergyNorth “will be for the public good” and is “in the public interest.” RSA 374:30 and :33.

“In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation.” *Granite State Electric Company*, Order No. 23,966 at 10 (May 8, 2002). It is apparent that the agreement before us is the result of such a process. We find that the Settlement Agreement “is just and reasonable and serves the public interest.” Puc 203.20(b).

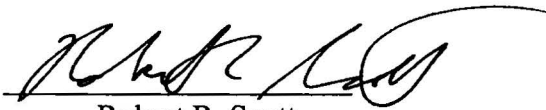
To conclude, we approve the Settlement Agreement and incorporate its terms and conditions into this order. To facilitate the efficient administration of the Settlement Agreement, we authorize the parties to modify the Settlement Agreement so long as any modification is agreed upon, is clerical or ministerial in nature, involves timing or scheduling, or pertains to other non-substantive terms. 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 request via secretarial letter, if appropriate, but will not require notice or hearing.

Based upon the foregoing, it is hereby

ORDERED, that the *Settlement Agreement*, Exhibit 5, is hereby APPROVED; and it is

FURTHER ORDERED, that the terms of the Settlement Agreement are incorporated into this order.

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

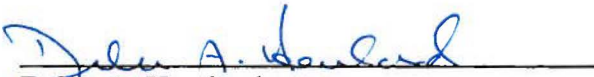


Robert R. Scott
Commissioner



Martin P. Honigberg
Commissioner

Attested by:



Debra A. Howland
Executive Director