

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 16-827**

**CONCORD STEAM CORPORATION NON-GOVERNMENTAL CUSTOMERS**

**Joint Petition to Establish Interconnection/Transition Fund for Non-Governmental  
Concord Steam Customers**

**Order Denying Petition and Approving Staff's Alternative Funding Proposal**

**ORDER NO. 26,017**

**May 11, 2017**

**APPEARANCES:** Senator Dan Feltes, *pro se*; Michael J. Sheehan, Esq., for Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; James W. Kennedy, Esq., City Solicitor, for the City of Concord; D. Maurice Kreis, Esq., Office of the Consumer Advocate, on behalf of residential ratepayers; Mr. Roy Schweiker, *pro se*; Ms. Nicolette Clarke of the Capitol Center for the Arts, *pro se*; Mr. Ron Snow of the Brain Injury Association of New Hampshire, *pro se*; Ms. Peggy Senter of the Concord Community Music School, *pro se*; Mss. Hansi Glahn, Carolyn Stiles, and Linda Graham of the Woman's Club of Concord, *pro se*; Mr. Peter Wright of the First Church of Christ, Scientist, *pro se*; Messrs. Kenneth Traum and James Doremus of the Concord Family YMCA, *pro se*; Mr. Arthur Aznive of the Snaphaunce Real Estate Trust, *pro se*; Mr. Remi Hinxhia of Associated Enterprises, *pro se*; Mr. Mark Ciborowski of Ciborowski Associates, *pro se*; Mr. Michael Gfroerer of the South Congregational Church, *pro se*; Mss. Rosemary Heard and Kate Foley of CATCH Neighborhood Housing, *pro se*; Ms. Angela Ford, *pro se*; Mr. Dana Nute of Resilient Buildings Group, *pro se*; and Alexander F. Speidel, Esq., for the Staff of the Public Utilities Commission.

In this Order, the Commission denies a petition by a group of Concord Steam customers for transitional assistance funds, and approves an alternative proposal, filed by Staff, for a targeted, means-tested assistance program.

**I. PROCEDURAL BACKGROUND**

On October 14, 2016, a group of mostly non-governmental customers ("Customers") of Concord Steam Corporation ("Concord Steam") filed a petition for Commission approval of a fund of \$1 million, to be established by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Liberty") as a regulatory asset, to help certain Concord Steam customers

convert from steam service to natural gas service. Concord Steam is a steam utility with mostly commercial and institutional customers in Concord, which, through proceedings in Docket Nos. DG 16-769 and DG 16-770, and by Commission Order Nos. 25,947 (September 28, 2016), 25,965 (November 10, 2016), and 25,966 (November 10, 2016), has received Commission approval for emergency rates, discontinuation of service at the end of the 2016-2017 heating seasons (on or about May 31, 2017), and for a sale of certain of its assets to Liberty. Liberty is the gas utility with a franchise to serve customers in the City of Concord. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-827.html>.

On October 17, 2016, the Office of the Consumer Advocate ("OCA") filed a letter indicating its participation in this proceeding on behalf of residential customers pursuant to RSA 363:28. On October 19, 2016, the Staff of the Commission ("Staff") filed a motion to dismiss the Customers' petition, citing certain alleged procedural defects with the filing (namely, a failure by Liberty to be included as a party/co-petitioner, and a problem of ripeness), with which the OCA concurred. The Customers objected to the Staff motion to dismiss, with which the City of Concord concurred (both on October 25, 2016). Liberty also filed a petition to intervene in this proceeding on October 25, 2016. On November 22, 2016, the Commission issued a secretarial letter alerting interested persons that the Commission had elected to make Liberty a mandatory party to this proceeding, and had issued final Orders for Docket Nos. DG 16-769 and DG 16-770, thereby correcting the alleged procedural defects pointed to by Staff. On that basis, the Commission denied the motion to dismiss, and issued an Order of Notice on November 23, 2016, scheduling a prehearing conference for December 21, 2016.

In advance of the prehearing conference, Ms. Angela J. Ford, a residential customer of Concord Steam, filed a motion to intervene on November 18, 2016; CATCH Neighborhood Housing filed a motion to intervene on December 15, 2016; and Mr. Roy Schweiker, a Liberty customer residing in the City of Concord, filed a motion to intervene on December 16, 2016. The prehearing conference was held as scheduled on December 21, 2016, at which the petitions to intervene of CATCH Neighborhood Housing, Mr. Schweiker, and Ms. Ford were granted. Maple Valley Manchester Partners, LLC, late-filed a motion to intervene on December 29, 2016.

On January 12, 2017, the Commission issued a secretarial letter advising the parties that the late-filed motion to intervene by Maple Valley Manchester Partners, LLC, was granted by the Commission, and also summarizing the appearances of the following Customers at the prehearing conference: Capital Center for the Arts; Brain Injury Association of New Hampshire; Concord Community Music School; Woman's Club of Concord; First Church of Christ, Scientist; Concord Family YMCA; Snaphaunce Real Estate Trust; Associated Enterprises, Inc.; Ciborowski Associates; South Congregational Church; CATCH Neighborhood Housing; and Ms. Ford. The Commission informed the parties of its approval of a procedural schedule, with a hearing date of February 10, 2017, in the January 12 secretarial letter.

On January 20, 2017, Stephen P. Frink, Assistant Director of the Gas and Water Division, filed testimony on behalf of Staff in opposition to the Customers' petition. Hearing Exhibit 16. On January 30, 2017, Senator Feltes and the City of Concord jointly filed a document styled "The City of Concord's and Senator Dan Feltes' Prehearing Memorandum of Law." On February 6, 2017, the OCA filed a Settlement Agreement entered into by the OCA with Senator Dan Feltes, the Jordan Institute, Resilient Buildings Group, the Woman's Club of Concord, the Brain Injury Association of New Hampshire, the South Congregational Church, the First Church

of Christ, Scientist, the City of Concord, the Concord Family YMCA, the Concord Community Music School, Ciborowski Associates, the Capitol Center for the Arts, CATCH Neighborhood Housing, the Capital Regional Development Council, Ms. Angela Ford and Mr. Josh Ford, and CenterPoint Church. Hearing Exhibit 2.

Subsequently, from February 8, 2017, through February 10, 2017, testimony was filed by the following Customers: First Church of Christ, Scientist; Woman's Club of Concord; Capitol Center for the Arts; South Congregational Church; Brain Injury Association of New Hampshire; Associated Enterprises, Inc.; Ms. Angela Ford and Mr. Josh Ford; Concord Family YMCA; and CATCH Neighborhood Housing. The following additional parties and interested persons/entities also filed testimony: Mr. Schweiker; Senator Dan Feltes; Resilient Buildings Group, Inc.; and Capital Regional Development Council. *See* Hearing Exhibits 4 through 15. The hearing was held as scheduled on February 10, 2017, at which the Commission considered the settlement agreement and the underlying petition.

Following the hearing, on February 23, 2017, the Commission issued a secretarial letter advising the parties to this proceeding that it could not approve the Settlement presented at the February 10 hearing. The Commission urged the parties to consider alternative arrangements that might assist steam customers in converting to natural gas, defined as energy conservation programs, on-bill financing, or equipment leases, and scheduled a technical session and status conference for March 2, 2017, to consider such alternative proposals.

The March 2 technical session and status conference were held as scheduled, where the parties advised the Commission that no agreement had been reached on the question of how to address the problem of steam-to-gas customer conversions. However, some information regarding potential solutions offered by competitive natural gas suppliers ("CNGS") in the

marketplace was presented by representatives of Direct Energy, a CNGS active in serving New Hampshire commercial and industrial customers. *See* Transcript of March 2, 2017, Status Conference.

Following the Status Conference, Staff filed a recommendation with the Commission, on March 22, 2017, requesting that a deadline for filing a settlement agreement regarding the outstanding issues in the instant proceeding be established for March 31, 2017. Staff filed a proposal with the concurrence of Liberty on April 3, 2017, for an alternative approach to giving Concord Steam customers transition assistance (Alternative Proposal), with funding to be provided by Liberty in an amount not to exceed \$200,000. The Commission subsequently issued a secretarial letter on April 4, 2017, giving interested parties and persons/entities until April 12, 2017, to file comments regarding the Alternative Proposal. Such responsive comments were filed by the various parties and interested persons/entities on April 12 and April 13, 2017: the South Congregational Church; the Woman's Club of Concord; CATCH Neighborhood Housing; Mr. Roy Schweiker; and a joint comment by the City of Concord and Senator Dan Feltes.

## **II. POSITIONS OF VARIOUS PARTIES, INTERESTED PERSONS, AND STAFF REGARDING THE PETITION AND STAFF ALTERNATIVE PROPOSAL**

### **A. Concord Steam Customers, and Allied Interested Persons**

As an initial matter, the role of Senator Dan Feltes and the City of Concord, respectively, may be most accurately described as “allied interested persons” in this proceeding, insofar as neither is a “non-governmental customer of Concord Steam,” nor did Senator Feltes qualify as a co-petitioner for this proceeding. *See* Secretarial Letter dated January 12, 2017; *see also* Transcript of December 21, 2016 Prehearing Conference, Docket No. DG 16-827, at 5-7. However, both Senator Feltes and the City of Concord were active in this proceeding in

presenting arguments broadly supportive of the Customers' petition and supporting arguments, and their role will be described as that of "allied interested persons" within this framework.

The basic collective proposal by the Customers and their allied interested persons was intended to ameliorate the Customers' sizable upfront costs associated with the conversion of their heating systems away from steam service, in preparation for Concord Steam's approved termination of service. To assist these Customers with their conversion efforts, the petitioners requested that the Commission establish a \$1 million interconnection/transition fund (Fund), with the specific purposes of: making grants or providing other financial assistance to non-governmental Concord Steam customers (including businesses and non-profit organizations) to pay for or be reimbursed for some or all of the direct costs related to the infrastructure and/or equipment necessary to interconnect and transition from Concord Steam service to natural gas service; or to assist with the financing or refinancing costs related to same. The Customers also initially proposed that the Commission Staff administer the Fund, and they delineated a number of proposed criteria for priority of receipt of Fund monies by customers. The Customers also indicated, in their initial petition, that Liberty would be willing to contribute \$1 million to the Fund through the creation of a regulatory asset that would accrue carrying costs on that regulatory asset at the cost of capital applicable to Cast Iron/Bare Steel replacement investments. As of the effective date of permanent rates following the conclusion of Liberty's next distribution rate case, the balance of the regulatory asset (the payment made to the Fund plus accrued carrying charges) would be amortized and recovered through Liberty's distribution rates assessed on all Liberty distribution customers other than R-4 (low-income) rate customers. *See* Hearing Exhibit 3.

The proposed Settlement Agreement, which was presented by the OCA, further expanded the rate-recovery exemption to include all Liberty residential customers, meaning that only Liberty commercial and industrial customers would be required to pay for the recovery of and rate of return on the proposed Liberty regulatory asset for the Fund. The proposed Settlement Agreement also made the Capital Regional Development Council the proposed Fund administrator, and provided some more detailed eligibility and allocation criteria for implementation of the Fund concept. Hearing Exhibit 2.

The Customer parties, both in their various oral statements at the prehearing conference, hearing, and status conference presentations, and in their written testimony, *see* Hearing Exhibits 5 through 13, Hearing Exhibit 15, provided narrative discussions of what they viewed to be the significant financial hardships associated with the unexpected termination of Concord Steam service. The descriptions of hardship vary in their specifics, but were consistent in one aspect: the Customers believe that the Commission's approval of the Fund concept, as modified by the Settlement Agreement, would be the appropriate vehicle for reducing their financial hardships, and would be in the public interest.

The City of Concord and Senator Feltes presented two legal arguments in support of the petition and associated Settlement Agreement, aside from the general argument that assisting local businesses and non-profits would be in the public interest. The City of Concord and Senator Feltes first cited to *Claremont Gas Corporation*, Order No. 21,309 (August 5, 1994). In *Claremont Gas*, a non-utility affiliate owner of a gas system terminating its franchise for service was required to pay for the conversion costs of customers moving to bottled propane. The City and Senator Feltes argued that *Claremont Gas* should provide guidance here, supporting the proposition that Liberty's funding of the \$1 million Fund would be appropriate and necessary.

The City of Concord and Senator Feltes also disputed Staff's position, described below, of the Fund proposal as being unreasonable and discriminatory, and thereby prohibited by RSA 378:10. They contended that no harm would be inflicted on existing Liberty customers from the Fund proposal. *See* Joint Memorandum of Law, January 30, 2017, and Hearing Exhibit 1.

The Customer parties that responded to the Staff's Alternative Proposal (South Congregational Church, Woman's Club of Concord, CATCH Neighborhood Housing) were in agreement that the Alternative Proposal was not adequate in its funding level, and overly stringent in its eligibility criteria.

**B. Mr. Schwieker**

In his written testimony, Hearing Exhibit 4, written comments, and oral testimony, Mr. Schwieker consistently opposed the concept of using a Liberty regulatory asset as the basis of the proposed Fund. He opposed the proposed Liberty rate of return as unjust and unreasonable; did not agree that it would be appropriate for the customers of Liberty to pay for conversion costs of Concord Steam customers, if, as indicated by Staff, those customers would realize economic savings over a relatively short payback period; and noted that the entity paying for conversion costs in the *Claremont Gas* case was an unregulated propane-company affiliate of the abandoning gas utility, not an unaffiliated, regulated utility such as Liberty seeking a rate of return through Commission-approved distribution rates.

Mr. Schwieker's comments regarding the Staff Alternative Proposal were largely non-supportive, criticizing the concept of subsidization of Concord Steam's conversion efforts on principle. Mr. Roy Schwieker Comment, April 13, 2017.



### **C. OCA**

The OCA fully supported the Fund, as modified by the proposed Settlement Agreement, as being in the public interest. The OCA's support was based on the following arguments:

(1) residential Liberty ratepayers would not be required to pay for the proposed Fund regulatory asset, as delineated by the Settlement Agreement; (2) the proposal would not violate RSA 378:10 (prohibition on unreasonable preference or advantage), as some level of cross-subsidization is expected in ordinary ratemaking; (3) the Fund proposal was not unreasonable within those boundaries; and (4) the purposes of the Fund were in the public interest. *See* Transcript of February 10, 2017, Public Hearing at 273-83.

### **D. Liberty**

Liberty indicated at the February 10, 2017, hearing that it supported the petition, as modified by the OCA-filed Settlement Agreement. *See* Transcript of February 10, 2017, Public Hearing at 288. Likewise, Liberty granted its concurrence to the Staff Alternative Proposal (subject to its ratemaking treatment and conditions).

### **E. Staff**

Mr. Frink, in his January 20, 2017, written testimony (Hearing Exhibit 16); oral testimony at the various prehearing conference, hearing, and status conference presentations; and various filings in this proceeding, consistently opposed the concept of the Fund to the extent it was to be paid for by Liberty customers. He opposed the terms of the petition as modified by the Settlement Agreement for that reason. Staff also opposed the petition due to: uncertainty regarding financial harm to Concord Steam customers; a lack of clarity in how the Fund monies would be disbursed; a lack of clarity regarding administration of the Fund; availability of other sources of funds for conversion; favoritism to natural gas conversions; unfair competitive

advantage being given to businesses receiving funds; discriminatory rates being set up in relation to Liberty's low-income customers, and under the terms of the proposed OCA Settlement Agreement, residential customers being exempt from recovery of the costs of the Fund; general lack of Commission authority to approve the Fund proposal, as Liberty ratepayers would see no benefit from the Fund; and the existence of the prohibitions of RSA 378:10 against unreasonable preferences.

Staff noted in its Alternative Proposal filing that approximately 14 non-governmental, non-profit, and residential customers had not converted away from steam heating service before July 1, 2016, the date on which Concord Steam announced its termination of service effective May 31, 2017. Staff (with Liberty's concurrence) recommended that due to special circumstances associated with certain customers, those customers (12 non-profits and 2 residential) be offered some assistance in conversion, if they could demonstrate that the cost of their conversion would not be recovered in five years or less from energy savings resulting from switching from steam to natural gas. Under Staff's Alternative Proposal, savings would be calculated excluding interest costs, with estimated savings based on the weighted average steam rate from October 2016 through May 2017, using customer historic annual load as compared with the weighted average natural gas rate for October 2016 through April 2017.

Subject to this eligibility screen, Liberty would offer a special contract to eligible non-profit and residential customers. The special contract would include an on-bill financing option for up to \$50,000 in conversion costs, with the total amount of funding to be provided by Liberty not to exceed \$200,000, with recovery through Local Distribution Adjustment Charge expense accounting. (The special contracts would be subject to approval under RSA 378:18.)

### III. COMMISSION ANALYSIS

Under RSA 378:10, “[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person or corporation, or to any locality, or to any particular description of service in any respect whatever or subject any particular person or corporation or locality, or any particular description of service, to any undue or unreasonable prejudice or disadvantage in any respect whatever.” Under RSA 378:11, “[t]he provisions of RSA 378:10 shall not require absolute uniformity in the charges made and demanded by public utilities when the circumstances render any lack of uniformity reasonable ....” Under RSA 378:18, the Commission may approve special contracts between public utilities and specific customers at rates other than tariffed rates, if such contracts are found to be in the public interest.

In this instance, we are presented with two alternatives. On the one hand, a Fund proposal dependent on the assessment of a general distribution rate charge, to be reviewed pursuant to RSA Chapter 378 ratemaking standards, on all Liberty commercial and industrial customer classes, for the benefit of a relatively small (though unknown) number of Concord Steam customers located within a single locality, the City of Concord. On the other, a more limited proposal to have Liberty enter into special contracts, on an individual customer-by-customer basis, to be approved pursuant to RSA 378:18.

As we indicated in our secretarial letter of February 27, 2017, we do not believe that we possess the authority under RSA 378:11 to grant an exemption from RSA 378:10 in order to approve the Fund petition proposal, as modified by the proposed OCA Settlement Agreement. We are sympathetic to the hardships that this may cause, but the problems caused by the termination of Concord Steam’s utility service cannot be resolved on the backs of Liberty commercial and industrial distribution ratepayers. Approving the Fund proposal would set a

dangerous precedent, as it could enable regulated utilities to circumvent the provisions of RSA 378:10 to benefit small groups of customers, granting them undue and unreasonable preference or advantage with relatively large “grant” sums, earning a regulated rate of return, from the general customer base of utilities such as Liberty.

Concord Steam’s dramatically increasing rates, as customers migrated from Concord Steam for lower cost alternatives, (termed a ‘death spiral’ by Concord Steam President Peter Bloomfield and Mr. Frink in the Concord Steam termination and emergency rate dockets) was addressed by our determinations in Docket Nos. DG 16-769 and DG 16-770. In those orders, we determined time was of the essence, approved an emergency rate increase which would have continued to increase if the Company continued to operate at a loss, and that customers would be better served by other means. Concord Steam was in no position to make monetary guarantees for its departing customers for conversion costs.

The *Claremont Gas* situation is not analogous. Unlike the non-utility propane company affiliate involved in the *Claremont Gas* case, Liberty is not an affiliate of Concord Steam. Moreover, Claremont Gas’ parent company did not rely on utility customers for recovery of the conversion costs.


Staff estimated energy savings by converting from the emergency steam rates authorized in DG 16-769 to gas service from Liberty to be more than 75 percent, as presented in Staff’s February 23, 2017, Energy Savings Calculation Worksheet. The Fund petition does not account for those savings. Customers seeking conversion assistance at this late date can work with Liberty and CNGS entities like Direct Energy, to resolve the situation, and the special-contract vehicle delineated within the Staff Alternative Proposal can be considered, within the customer-by-customer framework of RSA 378:18, after customers reach out to Liberty.

**Based upon the foregoing, it is hereby**

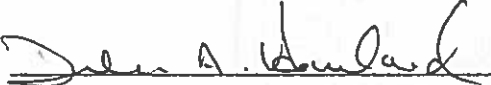
**ORDERED**, that the Customers' petition is DENIED; and it is

**FURTHER ORDERED**, that the Staff Alternative Proposal for transition assistance is hereby APPROVED, with individual special contracts entered into to be reviewed pursuant to RSA 378:18.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 2017.

 Martin P. Honigberg Chairman	 Robert R. Scott Commissioner	 Kathryn M. Bailey Commissioner
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Attested by:

  
Debra A. Howland  
Executive Director