

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 14-091

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
D/B/A LIBERTY UTILITIES**

Petition to Approve Special Contract and Lease Agreement

Order Approving Special Contract and Lease Agreement

ORDER NO. 25,694

July 15, 2014

APPEARANCES: Sarah B. Knowlton, Esq., on behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; Babak Alizadeh, *pro se*, on behalf of Innovative Natural Gas, LLC d/b/a iNATGAS; Drew Drummond, *pro se*, on behalf of Clean Energy Fuels; David Lavoie, *pro se*, on behalf of NG Advantage, LLC; Preti, Flaherty, Beliveau & Pachios, Chartered, LLP, by Mark H. Puffer, Esq., representing Xpress Natural Gas, LLC; the Office of the Consumer Advocate by Rorie E.G. Hollenberg, Esq., on behalf of residential ratepayers; and Alexander F. Speidel, Esq. with Michael J. Sheehan, Esq., on behalf of Commission Staff.

In this order, we approve a special contract and lease between Liberty and iNATGAS that will govern the construction of a compressed natural gas (CNG) station on the Liberty natural gas system and the sale of gas to that station.

I. BACKGROUND

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) filed a petition to approve several agreements constituting a “special contract,” RSA 378:18, and lease with Innovative Natural Gas, LLC d/b/a iNATGAS (iNATGAS). The agreements include a Master Project Agreement, Attachment to Testimony of William J. Clark, Hearing Exhibit 2 (Clark Attachment), at 21¹; a Lease Agreement, *id.* at 28; a Special Contract – Natural Gas –

¹ Some of the hearing exhibits contain more than one page number. All references in this order are to the numbers at the bottom right corner of each page.

Firm Transportation, *id.* at 55; an Escrow Agreement, formally labelled Addendum to Master Project Agreement, Hearing Exhibit 8; and a Maintenance Agreement, Hearing Exhibit 9. In support of its petition Liberty filed the testimony of Stephen R. Hall, Director, Regulatory and Government at Liberty, and the confidential testimony of William J. Clark, Business Development Professional at Liberty. *See* Liberty's petition, Hearing Exhibit 1; redacted testimony of William J. Clark, Hearing Exhibit 2 (Clark Testimony); and testimony and schedules of Stephen R. Hall, Hearing Exhibit 3.

The Office of the Consumer Advocate (OCA) filed a letter of participation on behalf of residential ratepayers consistent with RSA 363:28. The Commission approved four petitions to intervene in Order No. 25,666 (May 14, 2014). The four entities granted limited intervention pursuant to RSA 541-A:32, II, were Clean Energy Fuels (Clean Energy), Global CNG, LLC (Global), NG Advantage, LLC (NG Advantage), and Xpress Natural Gas, LLC (XNG).

After several rounds of discovery and two technical sessions, Commission Staff (Staff) filed a report and the OCA filed testimony regarding Liberty's proposal. As described further below, Staff recommended approval only if iNATGAS or its affiliates provided additional financial security and if the parties modified the agreements so that Liberty had final say over compressor operations and maintenance. The OCA objected to the proposal based on its assessment that the risks outweigh the potential benefits.

The Commission held a public hearing on June 10, 2014, at which witnesses testified on behalf of Liberty, Staff, and the OCA. No intervenors offered testimony.

II. POSITIONS OF THE PARTIES AND STAFF

A. Liberty and iNATGAS

Liberty stated that the proposed agreements and lease with iNATGAS are in the public interest. The Lease agreement, Special Contract, Master Project Agreement, and related agreements between Liberty and iNATGAS divide the responsibilities for the CNG station's construction costs and facility maintenance between iNATGAS and Liberty.

Under the proposed Special Contract, Liberty will provide firm transportation of CNG to iNATGAS's CNG fueling station for a term of 15 years, and iNATGAS will be a sales customer of Liberty for one year. Clark Attachment at 59. iNATGAS will pay a fixed delivery charge in excess of the amount charged under Liberty's tariff for all gas metered at the delivery point. *Id;* see Hearing Exhibit 10. This fixed charge will remain in effect for the term of the contract and is not subject to any adjustments. Hearing Exhibit 1, Petition, at 4. Under "take or pay" provisions of the Special Contract, iNATGAS will be required to take (that is, buy and make use of) or pay for (that is, pay a monetary penalty to Liberty equivalent to the cost of) at least 300,000 dekatherms (Dth) of gas for each of the first two years of the Special Contract. For the following two years, iNATGAS will be required to take or pay for at least 500,000 Dth per year. In year five of the Special Contract, iNATGAS will be required to take or pay for at least 1,300,000 Dth per year. Clark Attachment at 58. The Special Contract rate, which is higher than Liberty's tariff rate, is intended to compensate Liberty for its investment. Liberty's responsibilities under the agreement include buying the CNG compressors and building related electrical and gas facilities necessary to serve iNATGAS. Hearing Exhibit 1 at 4-5.

Under the Lease Agreement iNATGAS will lease from Liberty land off Broken Bridge Road in Concord where the CNG fueling station will be located. Clark Attachment at 28.

Liberty will invest approximately \$2.2 million. Clark Testimony at 6-7; Attachment to Testimony of Stephen R. Hall, Hearing Exhibit 3, at 7. With the higher Special Contract rate to be charged to iNATGAS and the expected volume of sales, Liberty stated that its investment in the iNATGAS venture will be recovered in a time range of 3.3 to 5.5 years. Hearing Exhibit 1 at 5-6. Liberty asserted that the project will be financially beneficial to Liberty and its customers. *Id.* at 6; Clark Attachment at 17.

Liberty argued that the new technologies related to truck-based shipment of CNG to end users represent a major opportunity for sales growth for iNATGAS's CNG station concept. Clark Testimony at 8-9. Since CNG is cheaper than heating oil and other traditional fuels used by those not connected to the natural gas pipeline networks, Liberty believes its venture with iNATGAS will bring lower energy costs to customers in New Hampshire and other New England states, contributing to the public interest. *Id.* at 8-9, 18-19.

Liberty listed a number of safeguards taken to protect Liberty and its customers from financial harms should iNATGAS fail to meet its financial obligations to Liberty. Liberty required an iNATGAS affiliate, Alternative Vehicle Service Group, LP (AVSG), and its principal, Babak Alizadeh, to provide guarantees to cover iNATGAS's obligations under the Lease Agreement and Special Contract. *Id.* at 18-19. Liberty may purchase the CNG fueling station from iNATGAS for its net book value in the event that iNATGAS defaults. Liberty stated that this would enable Liberty to either operate the CNG fueling station and supply CNG to end users or lease the facility to another operator, providing continued revenue to Liberty. *Id.*

In its rebuttal testimony, Liberty stated that iNATGAS agreed to deposit \$1.22 million into an escrow account as security for guaranteed payments, and to file an escrow agreement as an amendment to the Master Project Agreement. Hearing Exhibit 6 at 4-6. Regarding CNG compressor maintenance, Liberty stated that iNATGAS agreed in principle to sign a maintenance contract stating that Liberty had the final say in CNG compressor operations and maintenance. Hearing Exhibit 6 at 4. Liberty also presented an assessment of the risk of CNG sales that contradicted that of the OCA. Liberty stated that the market risk for bulk CNG delivery is “minimal,” and that the agreements adequately protect Liberty from operational risk posed by an iNATGAS default. Hearing Exhibit 6 at 5-6.

Liberty stated in its closing that the proposed agreements with iNATGAS are in the public interest, and that Liberty and its customers will be adequately protected from the proposal’s risks, especially in light of Liberty’s and iNATGAS’s agreement to integrate Staff’s recommendations. Tr. at 133-138. Liberty also stated that the proposal was consistent with Liberty’s Least Cost Integrated Resource Plan. Tr. at 138.

B. Staff

Staff examined the financial and legal aspects of the proposal. Staff expressed its concerns about the potential risks to Liberty and its customers of an iNATGAS default given Liberty’s \$2.2 million investment and the expectation that iNATGAS will pay for large quantities of gas pursuant to the take-or-pay provisions. Staff pointed to the novelty and competitive nature of the CNG sales market and recommended that Liberty take additional safeguards to ameliorate ratepayer risks, because those proposed in the original petition were inadequate. Hearing Exhibit 4 at 2-7.

Staff recommended that iNATGAS or its guarantors place \$1.22 million in escrow, payable to Liberty to adequately balance the risks to Liberty and its ratepayers. That figure is the net present value (NPV) of the Special Contract's take-or-pay provisions (the NPV of the minimum that iNATGAS must pay over the first five years). Staff recommended that the escrow be reduced in future years to account for actual and assured revenues based on iNATGAS sales. Hearing Exhibit 4 at 7-8; Tr. at 132-133.

Staff summarized the safety and engineering aspects of the proposal and recommended that Liberty and iNATGAS enter into a maintenance agreement, with assistance from Liberty's engineering consultant that provides Liberty with the final say on CNG compressor operations and maintenance. Hearing Exhibit 4 at 9-10.

Staff stated in its Report, and at hearing, that if Liberty and iNATGAS provided adequate evidence of the escrow and filed an acceptable maintenance agreement, Staff would consider the proposal to be in the public interest under RSA 378:18 (the statute governing special contracts) and RSA 374:30 (the statute governing utility leases). Hearing Exhibit 4 at 8. Staff also opined that Liberty's calculation of rent payments under the proposed lease was prudent and appropriate. Hearing Exhibit 4 at 7.

On June 20, 2014, Liberty filed the Escrow Agreement as an amendment to the Master Project Agreement (Hearing Exhibit 8) and the Maintenance Agreement (Hearing Exhibit 9). Staff filed a memorandum stating that Liberty's filings comported with Staff's recommendations and that the conditions precedent for Staff's support of the proposal were satisfied. *See* June 25, 2014, Memorandum of Stephen P. Frink.

C. Office of the Consumer Advocate

The OCA expressed its opposition to the Liberty-iNATGAS Special Contract and Lease Agreements and recommended that the Commission reject the proposal. Hearing Exhibit 5; Tr. at 3. In general terms, the OCA stated that (1) Liberty's proposal presents undue risks to Liberty and its ratepayers in the event of an iNATGAS default; (2) the potential for cost escalation over the long term of the Special Contract threatens to overshoot the higher-than-tariff fixed rate iNATGAS will pay; (3) the agreements pose uncertainties and risks in the ownership structure of fixtures and gas commodity; and (4) the proposal may result in an unfair "ratepayer subsidy" of iNATGAS's operations. Hearing Exhibit 5, *passim*. The OCA made a specific request that if the Commission should approve the proposal and permit inclusion of this investment in rate base, then a "half-year" convention should be applied to Liberty's investment, and that the first year revenue requirement should be reduced by \$34,084. Hearing Exhibit 5 at 6. The half-year convention accounts for the variability of in-service dates of assets by assuming an average of one-half year for all of new assets. Hearing Exhibit 5 at 6.

In its closing statement at the hearing, the OCA indicated that Staff's recommendations for escrow and a maintenance agreement did not alter its opposition to the proposal.

Tr. at 129-131. The OCA recommended that the Commission refer to its *Generic Discounted Rates Docket*, Orders No. 20,633 (Oct. 19, 1992) and 20,882 (June 23, 1993), for guidance on the assessment of special contracts, including the need for a special contract to comply with a utility's least cost integrated resource plan and other matters referred to in a "checklist."

Tr. at 130.

D. Intervenor

The intervenors did not file any written statements of their positions and did not make any oral statements at the final hearing. Tr. at 133.

III. COMMISSION ANALYSIS

We have reviewed the proposed Special Contract, Lease Agreement, and Master Project Agreement; and the materials submitted by Liberty and iNATGAS in support of the petition, including the additional features submitted as part of Hearing Exhibits 8 through 10, and Staff's June 25, 2014, response thereto. We have also taken into consideration the OCA and Staff reports, testimony, and supporting materials. We have conducted our review pursuant to the language of RSA 378:18, which gives the Commission the authority to approve special contracts when "special circumstances exist which render such departure from the general schedules just and consistent with the public interest." RSA 378:18; *Northern Utilities Inc.*, 85 NH PUC 6, 8, Order No. 23,381 (Jan. 6, 2000). RSA 374:30 requires the Commission to find that leases of utilities be for the public good as a condition of approval. For the reasons described below, we find that special circumstances exist that justify the departure from standard tariff rates and that render the Special Contract and related agreements to be just, reasonable, and consistent with the public interest. *Northern Utilities Inc.*, Order No. 25,306 at 4 (Dec. 22, 2011). We also find that approval of the proposed lease of Liberty's property to iNATGAS is for the public good.

Liberty's investment of \$2.2 million will be more than offset by the anticipated revenues if iNATGAS realizes its projected sales, producing a positive return that will help to hold down rates for all Liberty customers. It is an investment similar to upfront investments in physical plant Liberty has made to serve other large customers. Although the level of risk to Liberty

associated with this project may be higher than normal because the thermal CNG market is in its infancy and there are a finite number of potential customers, those risks are mitigated through the “must-take” provision of the special contract, the payment guarantees from iNATGAS’s president and AVSG, and the \$1.22 million escrow account. Liberty and its ratepayers are protected by contract provisions that require iNATGAS to purchase insurance to protect against adverse events that could occur at the facility. The Maintenance Agreement ensures the CNG equipment owned by Liberty will be operated and maintained at or above the manufacturer’s requirements. These safeguards adequately balance the risks to Liberty and its ratepayers.

In addition to the benefits noted above, Liberty’s firm sales customers will benefit from sales to iNATGAS through lower cost of gas rates because pipeline demand charges recovered through the cost of gas will be spread over the increased volumes generated by the iNATGAS venture.

We are not required at this time to decide whether or how Liberty’s investment in the CNG facilities should be recovered from ratepayers. We note that in approving the Special Contract and Lease Agreement, full cost recovery is not guaranteed and ultimately the investment must be found prudent for such recovery to occur. Liberty is permitted to request recovery of the investment and nothing in this decision precludes any party from taking an opposing position with regard to such a request. We need not address the OCA’s suggestion that we use the half-year convention, discussed above, because we do not address the ratemaking issues here.

In reference to the OCA's request that we examine the *Generic Discounted Rates Docket*, Orders Nos. 20,633 and 20,882, and the “checklist” in Order No. 20,882 in reference to the

Liberty-iNATGAS proposal before us, we note that Order No. 20,882 states: “All special contract filings for a discounted rate should document with a written explanation in the form of testimony and supporting exhibits that” *Generic Discounted Rates Docket*, 78 NH PUC 316, Order No. 20,882 (June 23, 1993) (emphasis added). The Liberty rate proposed for iNATGAS is a surcharged rate, not a discounted rate. Therefore, the “checklist” of Order No. 20,882 does not apply here.

Even if the checklist did apply, those few items applicable to the surcharge present in this docket would militate in favor of granting the petition. One checklist item that the OCA specifically raised was whether the iNATGAS proposal complies with Liberty’s most recent integrated resource plan (IRP). Tr. at 130. Liberty stated that this proposal conforms to its most recent IRP, approved in *National Grid NH*, Order No. 25,317 (Jan. 11, 2012). Tr. at 138. No party offered evidence suggesting otherwise. The issues related to Liberty’s IRP that this docket implicates are supply issues which were discussed during the hearing testimony of Francisco DaFonte, Liberty’s Senior Director of Energy Procurement. Tr. at 16, 25-32, 38-44, 77-80. Based on our review of the file and Mr. DaFonte’s testimony, we are satisfied that the iNATGAS proposal conforms to Liberty’s IRP.

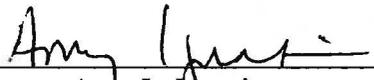
We view the proposal’s Special Contract and related agreements to be in the public interest, and the lease of Liberty property to iNATGAS to be in the public good. We recognize that CNG is a new technology and that the New England CNG market has strong competitors. We also view the entry of iNATGAS to offer potential benefits to New Hampshire energy consumers, especially those located away from gas pipeline distribution networks, with enhanced, more cost-competitive access to clean, inexpensive CNG fuel to meet their energy

needs. This project is expected to have many economic benefits for New Hampshire energy consumers, especially industrial and institutional consumers. Considering the Escrow Agreement recommended by Staff in place as part of the Master Project Agreement, together with additional clarifications regarding gas delivery points and CNG compressor maintenance, we view the potential risks and benefits to Liberty and its ratepayers to be adequately balanced. Therefore, having found the Special Contract to be just and consistent with the public interest, and the Lease Agreement to be in the public good, we approve the proposal.

Based upon the foregoing, it is hereby

ORDERED, that the Special Contract and Lease Agreement proposed by Liberty, as modified during the course of this proceeding, are APPROVED.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 2014.

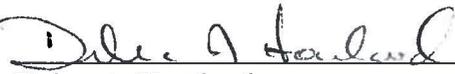


 Amy L. Ignatius
 Chairman



 Martin P. Honigberg
 Commissioner

Attested by:



 Debra A. Howland
 Executive Director