

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-449

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES**

2016 Cast Iron/Bare Steel Replacement Program

Order Approving Revised Delivery Rates

ORDER NO. 25,918

July 1, 2016

APPEARANCES: Michael J. Sheehan, Esq., for Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; and Alexander F. Speidel, Esq., for the Staff of the New Hampshire Public Utilities Commission.

In this order, we approve an increase in Liberty's base delivery rates to collect an additional \$161,010 annually, which will allow Liberty to recover approximately \$2.98 million that Liberty invested in the Cast Iron/Bare Steel Replacement Program during fiscal year 2016. This figure includes a disallowance of certain carryover costs totaling \$514,440. The rate change will increase a typical residential heating customer's annual bill by about \$0.75.

I. PROCEDURAL HISTORY

On April 15, 2016, Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (Liberty), filed its Fiscal Year 2016 Cast Iron/Bare Steel Replacement Program Results. Exhibit 1. The Cast Iron/Bare Steel (CIBS) program was established in the settlement agreement approved by the Commission as part of the merger of National Grid and EnergyNorth. *National Grid*, Order No. 24,777 at 27 (July 12, 2007). Liberty became subject to the settlement agreement upon Liberty's acquisition of the EnergyNorth system. *National Grid USA*, Order No. 25,370 at 25 (May 30, 2012). Liberty filed the supporting testimony of Gwyn M. Cassetty

(adopted by Richard G. MacDonald), Ian T. Crabtree, and David B. Simek. Exhibit 1 at 1, 47. In its filing, Liberty sought a \$214,434 increase in base delivery rates to recover \$3,496,272 in qualifying capital costs spent in fiscal year 2016 (April 1, 2015, to March 31, 2016) to remove cast iron and bare steel pipes. Exhibit 1 at 51. Liberty requested authority to implement the rate increase as of July 1, 2016. *Id.* at 23.

The Commission issued an order of notice scheduling a hearing for June 9, 2016. No parties intervened. The hearing was held as scheduled. Mr. Crabtree, Mr. Simek, and Mr. MacDonald of Liberty testified in support of Liberty's request. Transcript of June 9, 2016, hearing (Tr.) at 6-7. Staff offered the prefiled and live testimony of Randall S. Knepper, Director of the Commission's Safety Division. Exhibit 2; Tr. at 75.

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/2016/16-449.html>.

II. POSITIONS OF THE COMPANY AND STAFF

A. Liberty

Liberty testified that it eliminated 5.05 miles of cast iron and bare steel pipe during fiscal year 2016, at a total cost of \$4.6 million. Exhibit 1 at 27. Liberty seeks to add \$3,496,272 to its rate base. Liberty excluded: (1) the base spending level of \$514,244 under the terms of the settlement agreement that created the CIBS program; and (2) other costs not recoverable through the CIBS program, including \$48,350 in municipal pavement degradation fees that were erroneously double counted in the fiscal year 2014 CIBS filing. Exhibit 1 at 25-27. According to Liberty's calculations, the total incremental expenditure of \$3,496,272 for inclusion in rate base would result in a revenue requirement of \$214,434. Exhibit 1 at 51. Liberty requested

authority to implement the increase as of July 1, 2016, on a pro rata basis among all customer classes. Liberty estimated the impact on a typical residential heating customer would be \$1 per year. Exhibit 1 at 26; Tr. at 11-12.

Liberty sought recovery of \$816,314 in paving costs associated with fiscal year 2015 CIBS projects “carried over” into FY 2016. Pursuant to the terms of the settlement agreement, 5 percent, or \$301,874, of the carryover costs are allowed under a cap specified by the settlement agreement. The remaining \$514,440 must be approved by the Safety Division for rate recovery under the CIBS program. Exhibit 1 at 25. At hearing, Liberty responded to Staff’s pre-filed testimony that the Safety Division would not approve the remaining carryover costs. Liberty confirmed that, if the \$514,440 in disallowed carryover costs were not included, the resulting revenue requirement would be \$161,010, with an expected annual bill impact on typical residential customers of \$0.75. Tr. 11-12. Liberty confirmed that it intended to file a full distribution rate case in 2017 that would allow for recovery of any carryover costs disallowed in this proceeding, with a regulatory lag of approximately one year. Tr. 41-42. Liberty testified at length regarding what it viewed to be the challenges it faced in attempting to control carryover costs, which include the realities of the short New Hampshire construction season, its need to retain local paving contractors with contracts that meet their requirements, and other ongoing issues, including municipal regulations. Tr. at 16-32; 35-41; *see also* Exhibit 4 (excerpts of relevant municipal regulations).

Liberty updated the status of its pending litigation against the cities of Manchester and Concord regarding their road degradation fees and how Liberty accounted for those fees in this filing. Exhibit 1 at 27-29. The City of Concord, against whom litigation has proceeded to the New Hampshire Supreme Court level, has received payment of degradation fees under protest

from Liberty, which Liberty would refund to customers if its litigation is successful. *Id.* at 28-29. Liberty has not paid Manchester its degradation fees, pending the outcome of the litigation against that municipality, but Liberty has been accruing the fee demands within its books and records. *Id.*

Liberty mentioned minor CIBS expenditures associated with bacteriological soil testing around degraded cast iron/bare steel pipe, and physical sampling of degraded pipe, as required by the settlement agreement. Exhibit 1 at 9-10. On questioning at hearing, however, Mr. MacDonald confirmed that Liberty was not seeking any revision of the soil sampling program. Tr. at 12-13.

Liberty expressed confidence that it remained on pace to reach its goal of replacing all “leak prone pipe” by 2024. Exhibit 1 at 17-19; *see* Tr. at 48-49.

B. Staff

Staff filed the testimony of Randall S. Knepper, Director of the Safety Division. Exhibit 2; Tr. at 75. Mr. Knepper, in his prefiled testimony and at hearing, discussed, (1) the ongoing necessity for Liberty to engage in soil sampling and physical pipe sample gathering; (2) concerns regarding Liberty’s ability to meet its 2024 goal for completing the CIBS program replacements of impaired/problematic pipe; and (3) why the Safety Division did not approve \$514,440 in carryover costs.

Mr. Knepper testified that, in his professional opinion, ongoing bacteriological soil testing and degraded-pipe sampling is of critical importance in ongoing safety oversight of Liberty’s system by Staff, justifying the modest costs of those programs. Exhibit 2 at 6-7; Tr. at 88-89. Mr. Knepper expressed cautious optimism that the 2024 total replacement goal could be met by Liberty, but expressed concerns regarding the current replacement pace of

roughly 5 miles per year as potentially inadequate to the task, if it is not accelerated in the near future. Exhibit 2 at 9-18; Tr. at 99-105. According to Mr. Knepper, as of FY 2016, there are approximately 106.46 miles of CIBS pipes left in the system. *See* Exhibit 2, at 17. With 8 years left in the CIBS program, at the rate of replacement Liberty has accomplished to date, only 40 additional miles of CIBS would be replaced by 2024.

Mr. Knepper testified that \$514,440 in carryover costs above the 5 percent cap permitted by the settlement agreement should be disallowed under the CIBS program, but could be recovered under the next general rate case. Mr. Knepper indicated that Liberty's reasons for high carryover costs, including weather restrictions, municipal regulations, contracting issues, and personnel limitations, are not unusual and were known to Liberty when it agreed to the terms of the settlement agreement. Mr. Knepper explained that the disallowance provision in the settlement agreement was designed as an incentive to moderate Liberty's carryover costs. Exhibit 2 at 18-21; Tr. 90-98. In Mr. Knepper's opinion, Liberty should take necessary steps to ameliorate such issues to avoid potential disallowances. Mr. Knepper also noted that Liberty, with its upcoming 2017 rate case, would not suffer a long regulatory lag prior to recovering those costs. Exhibit 2 at 21; Tr. at 86.

In general terms, Mr. Knepper confirmed that, with the exception of the \$514,440 in carryover costs, Staff supported recovery of an additional \$161,010 in revenue for the fiscal year 2016 CIBS program. Tr. 81-82; *see also* Tr. at 123. According to Staff, Liberty will be filing a general rate case in 2017 and the CIBS program costs incurred in 2016 will be reflected in the general rate filing. Liberty will make a 2017 CIBS filing, but the associated costs and rate change should be addressed in the general rate case. Finally, Mr. Knepper recommended an

audit of the CIBS filings in the general audit of the expected 2017 Liberty rate case. Exhibit 2 at 27-28; Tr. at 83-84.

III. COMMISSION ANALYSIS

Based on our review of the record in this docket, we find that Liberty's proposed adjustments, as modified by the disallowance of \$514,440 of carryover costs not approved by the Safety Division, will result in rates that are just and reasonable as required by RSA 378:7 and RSA 374:2. Specifically, we approve the addition of \$2,981,832 to Liberty's rate base and the related increase in its revenue requirement of \$161,010. We concur with the Safety Division that Liberty needs to more effectively control carryover costs, and that the disallowance of \$514,440 from immediate recovery through the CIBS mechanism provides an incentive to control those costs, after several years of Commission orders urging such carryover cost control. Given that a full distribution rate case filing by Liberty appears to be imminent, we are not unduly concerned that there will be an excessive regulatory lag in Liberty's recovery of disallowed carryover costs prior to the next rate case (presuming that those expenditures were prudent), nor do we expect that Liberty will be denied a just and reasonable return on its investments as a result of this disallowance.

We concur with the Safety Division that Liberty should maintain its soil testing program, because it provides useful scientific information regarding degradation conditions throughout the Liberty system. Furthermore, Liberty should continue to provide physical samples of degraded pipe to Safety Division personnel. Liberty also should continue its marketing efforts for new customers along CIBS routes. We thus continue our requirement from last year that Liberty provide Staff with a report by the end of 2017 documenting the results of its market research conducted during the 2017 CIBS year and its plans for marketing to new customers going

forward. Furthermore, we note Staff's concern with the pace of replacement of CIBS-qualified pipe not quite matching a replacement schedule for completion by 2024. We expect that the miles of CIBS pipe replaced next year will be increased and shed more light on whether the level of effort required to meet this 2024 goal remains feasible. We will continue to monitor these issues in future CIBS filings.

Based upon the foregoing, it is hereby

ORDERED, that Liberty be permitted to increase its annual revenues by \$161,010, effective July 1, 2016, on a service rendered basis; and it is

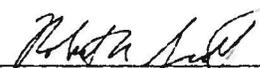
FURTHER ORDERED, that Liberty provide Staff with a report by the end of 2017 documenting the results of its market research conducted during the 2017 CIBS year and its plan for marketing to new customers going forward; and it is

FURTHER ORDERED, that Liberty file properly annotated tariff pages filed with the Commission by July 12, 2016, as required by N.H. Code Admin. Rules Puc 1603, and consistent with this Order.

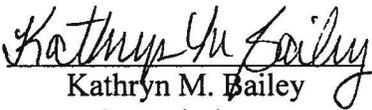
By order of the Public Utilities Commission of New Hampshire this first day of July, 2016.



Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director