

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 10-116

CONCORD STEAM CORPORATION

**Petition for Approval of Amendment to Special Contract
With Concord Family YMCA**

Order *Nisi* Approving Amendment to Special Contract

ORDER NO. 25,176

December 9, 2010

On April 28, 2010, Concord Steam Corporation (Concord Steam or Company), filed a petition to amend its special contract for steam delivery service with the Concord Family YMCA (YMCA). The Commission approved the original special contract, dated February 15, 2007, in Order No. 24,776 (July 12, 2007). On September 9, 2010, Staff filed a recommendation in the docket describing its concerns with the original contract and with the proposed amendments and recommending that certain changes be made to the proposed amendments. The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, is posted to the Commission's website at

<http://www.puc.nh.gov/Regulatory/Docketbk/2010/10-116.htm>.

The 2007 special contract was for a term of 10 years, subject to renegotiation if certain circumstances outlined in the contract were met. According to Staff's recommendation, Concord Steam and the YMCA encountered various problems with the contract that had not been anticipated at the time the contract was negotiated. These difficulties, and the existence of

conditions sufficient to warrant renegotiation, led to the submission of the proposed amendments.

Regarding the problems with the original contract, Staff's recommendation stated that Concord Steam and the YMCA differed over the meaning of terms governing changes to the monthly rate and the timing of such changes. Moreover, the YMCA routinely exceeded the original contract's set annual usage amount and fell behind on payments to Concord Steam, even at its discounted rate. To resolve their differences on the contract's interpretation, the parties negotiated the proposed amendments to the original contract.

Under the amendments as originally proposed, the material changes to the contract included: (1) setting the usage estimate annually by mutual agreement of the parties, rather than using the initial fixed usage estimate, which could only be changed following a year-end variance equal to or greater than 10 percent ; (2) a "true-up" mechanism to reconcile over- or under-payments; and (3) a "contribution" to the YMCA from Concord Steam in the form of a flat monthly discount to assist the YMCA in funding its ongoing steam energy conservation measures. According to the petition, the amendments to the contract are in the public interest because the YMCA represents a substantial portion of Concord Steam's year round load, including 15 percent of its summer load. Without the contract Concord Steam would lose the YMCA as a customer, which would result in higher rates for Concord Steam's other customers because it would be required to spread its fixed costs over a small customer base. Further, Concord Steam contended that because the rate charged to the YMCA was not less than its marginal cost to serve the YMCA, there would be no undue subsidy to the YMCA from the

Company's other customers. In addition, Concord Steam contended that permitting this discounted service would help the YMCA remain operational to the benefit of Concord residents.

Staff expressed general support for the amendments, particularly in light of the financial burden the original contract was placing on Concord Steam, but proposed various changes to the amendments intended to provide reasonable incentives for conservation and to ensure that Concord Steam received the appropriate payments. The changes are summarized below.

Staff's first proposed change was that the "contribution" proposed by Concord Steam be modified from a flat monthly discount to a discount based on actual usage to better reflect the energy conservation intended at the start of the original contract. Second, Staff recommended that an escrow account be established. Under this proposal, the YMCA would deposit money in an escrow account to be used as security against possible default. Should the YMCA remain current on its payments for a specified time, it would be entitled to withdraw a certain portion of the money in that account.

Staff's next recommendation was that the contract year be synchronized with Concord Steam's Cost of Energy year. This would allow for the adjustment of the contract rate at the same time that Concord Steam's rates would otherwise be adjusted to reflect its new Cost of Energy rate, reducing the need for intra-year rate adjustments. Finally, Staff recommended that the special contract's set annual usage estimate be updated each year based on an average of the YMCA's most recent three prior years' actual annual usage. It was Staff's contention that the set annual usage component of the special contract was critical to setting an accurate annual contract billing rate without the need for an amendment to, or a renegotiation of, the contract. This proposal was intended to ensure that the budget payments set by the contract would be

based on known usage and that usage estimates were not locked into an inappropriate mechanism for resetting.

On October 29, 2010, Staff filed a letter with the Commission stating that it had been working with Concord Steam to develop a final agreement. On November 19, 2010, Concord Steam filed a new amendment that incorporated most of the changes recommended by Staff. Specifically, the new amendment: (1) adopted Staff's proposal regarding the contribution with two modifications, specifically, not creating an escrow account for the contributions because the YMCA had remained current on its monthly steam account payments for the prior three years, and, using a formula accepted by Staff, modifying Staff's recommended annual contribution amount to one in which the maximum annual amount is capped at \$15,840; (2) adopted the proposal to synchronize the contract year to Concord Steam's November through October Cost of Energy year; and (3) adopted the proposal relating to the set annual usage estimates. This amendment agreement will allow Concord Steam to make adjustments to the set annual usage during each contract year, if necessary, to minimize estimated year-end over-/under- recoveries. Concord Steam will display a running total of the over-/under- recovery imbalance on each month's billing statement. Concord Steam noted that the Staff supported the changes to eliminate the escrow account and to modify the contribution in a manner that scales it on a declining percentage basis, tied to actual annual usage. The contribution is then incorporated into a discount to the lowest tier base rate. Also, Concord Steam stated that the YMCA supported and signed the revised amendment agreement to the special contract, a copy of which was filed with the Commission on November 22, 2010.

RSA 378:18 authorizes the Commission to approve a special contract when “special circumstances exist which render such departure from the general schedules just and consistent with the public interest.” We review the Company’s filing with this in mind, giving consideration to the policy precepts established in *Generic Discount Rates*, 77 NH PUC 650, 654-55 (1992) and *Generic Discounted Rates Docket*, 78 NH PUC 316, 316-17 (1993). *See also Concord Steam Corporation*, Order No. 24,776 (July 12, 2007) and *Concord Steam Corporation*, Order No. 25,009 (Sept. 4, 2009).

As noted recently in Concord Steam’s other petitions for special contracts, load retention is important to the Company. *See* Order No. 25,009 and *Concord Steam Corporation*, Order No. 25,030 (October 27, 2009). As such, there is a particular benefit to the Company in retaining the load of a customer as large as the YMCA. We note also, as did Staff in its recommendation, that there was some difficulty in understanding and interpreting the original agreement and that these difficulties led to the Company absorbing significant losses. Though this presented a difficult situation for Concord Steam, the willingness of both parties to work with Staff has created a contract beneficial to both parties.

In reviewing the proposed amendments to the contract we observe first that the newest version of the amendment includes a declining discount on volumes up to 5,000 Mlbs. per year and no discount on usage over that amount. This is in place of the originally proposed flat discount. The new amendment also includes a reconciling mechanism to ensure that any over- or under-payments within each contract year are charged or credited as the case may be. These changes ensure that the YMCA will receive the discount necessary for it to remain on Concord Steam’s system while at the same time encouraging the YMCA to undertake steam energy

conservation measures. Thus, the YMCA has an incentive to maintain its equipment and to conserve, and, to the extent it does not, Concord Steam and its other customers are not harmed. Further, there is a method in the contract for ensuring that to the extent payments may not match usage, adjustments may be made. We conclude that these changes to the contract are in the public interest and approve them.

Next, in the cover letter to the most recent special contract amendment agreement, the Company supports the conclusion that there is no need to include the escrow account as recommended by Staff because the YMCA has remained current on its bills for a substantial period. Further, Concord Steam contends that requiring the YMCA to place money in the escrow account would prevent it from using that money to fund its conservation measures. We find these claims credible and therefore agree that the escrow account is not necessary.

The Company also notes that it modified Staff's proposed contribution amount by incorporating a formula supported by Staff that uses a declining discount based on usage. Although the potential maximum contribution is greater than Staff's proposal, it is less than the amount in the original proposed amendment agreement and continues to incorporate Staff's recommended conservation incentive into the discount. We recognize the give and take necessary in any negotiation process, and note that the potential maximum amount of the contribution is an approximate 50-50 split between the original proposal and Staff's recommendation. We also agree with Staff's preference to incorporate some form of a conservation incentive into the agreement, albeit modest in this example.

The new amendment agreement also modifies the original contract so that the contract year and Concord Steam's Cost of Energy year are aligned. In this way the monthly budget

payment established for the contract year will reflect the Cost of Energy rate for that period. Absent alignment there is a much greater likelihood that the contract rate, and budget payment, would need to be adjusted when a new Cost of Energy rate becomes effective on November 1 of each year. We agree with this approach and approve it.

As to the last material change, the newly revised contract will require annually adjusted usage estimates based on the actual usage in the three most recent prior years rather than on a presumed or estimated usage set by negotiation and agreement of the parties. This change will ground the usage amounts for setting the monthly payments in the experience of the parties making it less likely that the estimates and payments will be inaccurate. Along with this, Concord Steam will keep a running tally of any differences between actual and estimated usage and the parties will be permitted to meet at least quarterly to adjust the YMCA's payments to minimize any over- or under-payments. We agree that these changes are beneficial in that they allow the rates to be based on relevant and useful information and allow for the payments to be adjusted as appropriate and without the need to amend the contract, thus diminishing the possibility that the payments will not reflect the actual usage by the YMCA.

In addition to the above specific issues, the contract meets the other requirements for approval. In particular, we note that the rates exceed the marginal cost to serve the YMCA and therefore there is no undue discount by the utility for the purpose of retaining this load. Finally, we note that the newly amended contract is to run for the remaining term of the initial contract. As we had already approved the length of the initial contract, and as this contract is an improvement over that contract, we conclude that the length of the contract is appropriate. For

the above reasons we approve the amendment agreement to this special contract as filed on November 22, 2010.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the amended special contract between Concord Steam and the Concord Family YMCA is approved; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than December 20, 2010 and to be documented by affidavit filed with this office on or before January 10, 2011; and it is

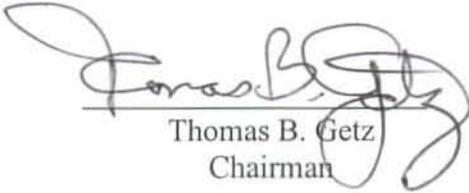
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than December 27, 2010 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 4, 2011; and it is

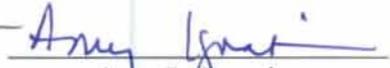
FURTHER ORDERED, that this Order *Nisi* shall be effective January 10, 2011, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before January 24, 2011, in accordance with N.H. Code Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this ninth day of
December, 2010.

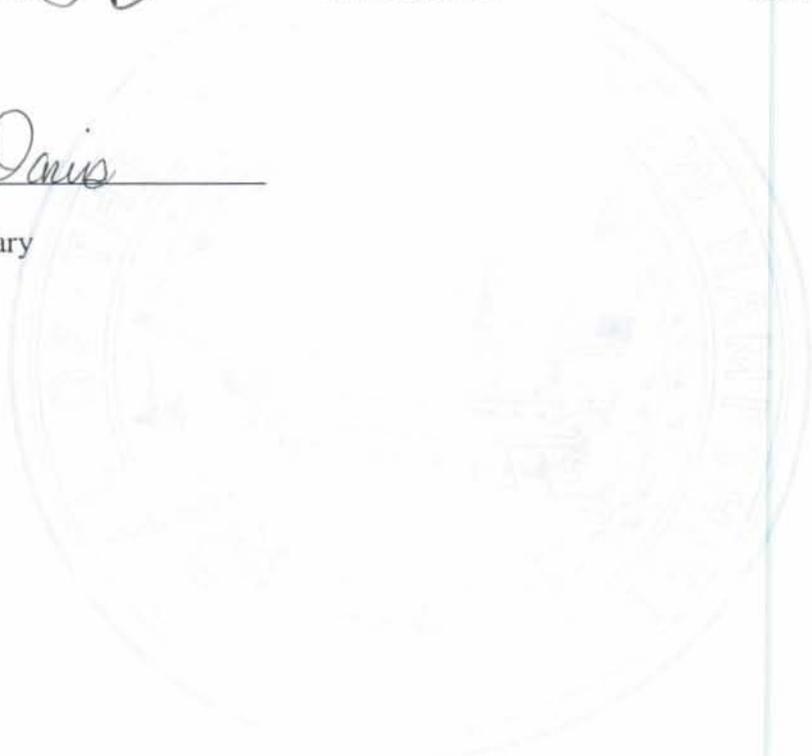

Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Lori A. Davis
Assistant Secretary



MEREDITH A HATFIELD
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

SARAH KNOWLTON
MCLANE GRAF RAULERSON & MIDD
PO BOX 459
PORTSMOUTH NH 03801

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FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429