

**STATE OF NEW HAMPSHIRE**

## Inter-Department Communication

**DATE:** April 1, 2016  
**AT (OFFICE):** NHPUC**FROM:** Stephen Frink<sup>SF</sup>  
Assistant Director – Gas & Water Division  
Alexander Speidel  
Staff Attorney

NHPUC 1APR16PM2:15

**SUBJECT:** DG 16-016 - Concord Steam Contract with Concord School District**TO:** Commissioners  
Docket File  
Service List**SUMMARY OF STAFF RECOMMENDATION**

The petition should be denied. Approving the special contract would have a material and negative impact on Concord Steam's earnings and does not ensure that the Concord School District will continue service beyond 2017. An Order of Notice should be issued allowing for a written response by Concord Steam to Staff's Recommendation and setting a hearing date.

**BACKGROUND**

On January 7, 2016, Concord Steam Corporation (Concord Steam or Company) filed a petition for approval of a special contract with the Concord School District (CSD). The contract provides for deeply discounted rates on Concord High School usage for three years commencing October 1, 2014 and for the CSD schools currently being served by Concord Steam to continue service through September 30, 2027. The contract also includes a provision that allows CSD to terminate service if any one of several conditions is met.

The contract consists of two parts. The first part provides for discounted rates for Concord High School usage over three years; October 1, 2014 through September 30, 2017. The second part covers ten years commencing October 1, 2017; the applicable rate would be a "Capacity Charge" based on the tariff usage rate in effect at that time, with the Capacity Charge adjusted annually by the change in the Consumer Price Index (CPI). The October 1, 2017 through September 30, 2027 rates would apply to Concord High School, Rundlett Middle School, Abbot-Downing and Christa McAuliffe Elementary Schools usage, although CSD has the option to continue taking service under an existing

special contract between Concord Steam and the CSD for usage at Rundlett until that contract expires on September 30, 2019. <sup>1</sup> See DR Staff 1-13.

### **CONTRACT TERMS**

#### **Special Rate October 1, 2014 – September 30, 2017 (Concord High School)**

CSD will pay a monthly Capacity Charge and Cost of Energy (COE) Charge.

**Capacity Charge:** Set annually by multiplying the average annual usage by the “Capacity Factor” and dividing by 12.

Capacity Factor:

October 1, 2014 – September 30, 2015:	\$8.73 per Mlb.
October 1, 2015 – September 30, 2016:	\$8.05 per Mlb.
October 1, 2016 – September 30, 2017	\$9.66 per Mlb.

Annual Usage:

October 1, 2014 – September 30, 2015:	Annual average usage 9/1/12 thru 8/31/13
October 1, 2015 – September 30, 2016:	Annual average usage 9/1/13 thru 8/31/14
October 1, 2016 – September 30, 2017	Annual average usage 9/1/14 thru 8/31/15

Annual Capacity Charges (Staff DR 1-6):

October 1, 2014 – September 30, 2015:	\$106,665 (\$8,888.74 per month)
October 1, 2015 – September 30, 2016:	\$132,714 (\$11,060 per month)
October 1, 2016 – September 30, 2017:	\$156,766 (\$13,064 per month) – Estimate

**Cost of Energy Charge:** The COE rate multiplied by monthly usage.

#### **Special Rate October 1, 2017 – September 30, 2027 (All CSD Schools)**

CSD will pay a monthly Capacity Charge (twelve equal payments) and the Cost of Energy Charge.

**Capacity Charge:** Set annually by multiplying the Agreement Volume (forecast of annual volume for the upcoming October 1 to September 30 to be submitted by CSD to Concord Steam on an annual basis) by the tariff Usage Rate in effect on October 1, 2017 and adjusted annually on October 1 of each following year, the rate will be adjusted by the change in the CPI for the Boston-Brockton-Nashua area for the 12 months ending in

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<sup>1</sup> Order No. 25,030 issued October 27, 2009 in Docket No. DG 09-154 ‘Petition for Approval of Special Contract with Concord School District’.

September of that year) and dividing by 12. See Contract Article I 'Capacity Charge' definition, Article 5.021, Exhibits B & C.

**Cost of Energy:** The tariff COE rate billed monthly on actual usage. See Contract Article I 'COE Charge' and 'Energy Charge' definitions, Article 5.022 & 5.023, Exhibits B & C and Company response to Staff DR 2-2 & 2-3.

The contract contains no provision for the reconciliation of each year's Capacity Charges based on the Agreement Volume with actual usage for the year. The annual Cost of Energy will be billed on monthly metered usage at tariffed rates. See Company response to Staff DR 2-3.

### **Key Non-Rate Terms**

The three year contract specific to Concord High School commences on October 1, 2014 (that is, on a date prior to the Commission's approval of the special contract) and CSD will receive a credit for payments made in excess of the contract rate since that date. See Item 5.

CSD will not reduce its steam requirements by converting any of its buildings to another fuel source, unless conversion is part of a complete building replacement or renovation that includes upgrading the mechanical systems of the building. See Contract Article 4.02.

CSD can terminate the contract without penalty if CSD's steam usage exceeds 30% of Concord Steam's overall steam sales or if the combined capacity charge and COE charge exceeds \$32 per Mlb. on October 1, 2017. See Contract Article 2.02.

CSD may elect to keep existing contracts between CSC and CSD in force until the term of the existing contract expires. See Contract Article 7.01.

### **STAFF REVIEW AND FINDINGS**

Staff reviewed the petition and testimony of Mark Saltsman, Vice President of CSC, and attached contracts and exhibits. Staff conducted discovery, issuing two sets of data requests, and reviewed the record in DG 16-202, the Commission's Investigation into Concord Steam's Plant Safety and General Operational Status, and DG 16-294, Concord Steam's Request for a Rate Increase, as well as the Concord Steam reports and records on file with the Commission.

### **Meter Charges and Agreement Volume**

Concord Steam intends to charge the CSD monthly meter charges at tariffed rates. See Staff DR 1-18. The special contract has no provision to that effect and in fact Article V 'Billing and Payments' only provides for the payment of a monthly Capacity Charge and

COE Charge and the sample invoice does not include a meter charge (Contract Exhibit C).

The monthly Capacity Charge will be determined by multiplying the Capacity Factor by the Agreement Volumes (estimated annual CSD steam load for the upcoming year) and dividing by 12, with the Agreement Volumes to be determined by CSD. See Staff DR 1-18. The contract does not specify how CSD will determine the Agreement Volume for the upcoming year and because there is no reconciliation mechanism to address the difference between Agreement Volume and metered usage for the year actual Capacity Charges in any given year, that provision could result in Capacity Charges very different from what Concord Steam would otherwise be entitled to.

**Under Billings and Partial Payments**

Due to the unapproved special contract terms being applied by Concord Steam as a matter of private contract law with CSD, Concord Steam under-billed CSD for usage at Abbot-Downing and Christa McAuliffe Elementary Schools in 2014, 2015 and 2016. Concord Steam has been accepting partial payment for Concord High School usage since November 1, 2014, reflecting the discount in special contract for which the Company is seeking approval. Lost revenue related to the under-billing and partial payments from January 2014 through February 2016 total \$490,411, see Table 1 below:

Concord School District  
Balance Due as of February 29, 2016

School	Due Per Tariff	Paid	Balance Due
Chisti McAuliffe	157,867	100,561	57,306
Abott Downing	181,498	107,847	73,651
Concord High School	1,653,123	1,293,670	359,454
Total	1,992,488	1,502,077	490,411

Table 1

Abbot-Downing and Christa McAuliffe Elementary Schools are being charged at rates other than the normal Concord Steam Tariff, under a special contract that was not filed with the Commission pursuant to RSA 378:18. See Staff DR 1-19. Concord Steam has billed CSD at the tariff rate for Concord High School usage but CSD has only been paying the proposed discount rate on Concord High School usage from November 1, 2014 to present. See Staff DR 1-4.

According to Concord Steam’s rate filing, in 2015, the Company had total revenue, net of fuel charges, of \$2,428,648 and experienced a Net Operating Loss of \$307,059. CSD under billing and partial payments for 2015 totaled \$261,878.

## Termination Provisions

The contract contains five conditions; if any one of the five conditions were to occur during the effective period of the contract, CSD would be allowed to terminate service with Concord Steam. In light of recent developments, there is a high probability that two of the conditions will occur, specifically, Conditions 1 and 5, as explained below.

Condition 1 – CSD steam usage becomes representative of more than thirty percent (30%) of Concord Steam overall steam sales as a result of the loss of sales or reduction in use of steam by other Concord Steam customers.

Condition 5 – The total cost of steam (which is the usage rate charge plus the cost of energy) is greater than \$32 per 1,000 pounds (Mlb.) on October 1, 2017.

In 2015, CSD usage constituted approximately twenty percent of Concord Steam sales. At the Status Conference held on February 10, 2016, Michael Connor, the Deputy Commissioner of the New Hampshire Department of Administrative Services, stated that the State of New Hampshire has no intention of entering into a long-term contract with Concord Steam (Tr. p. 23). Mr. Connor also noted that the City of Concord, Merrimack County and the YMCA all intended to terminate service with Concord Steam. Mr. Connor explained that Administrative Services was prepared to move forward with a guaranteed energy saving contract (i.e., conversion equipment contract and/or energy efficiency contract) that includes all of the State's facilities being served by Concord Steam (Tr. p. 21), and that even if Administrative Services did not enter into an energy performance contract, it could still implement the energy saving measures on its own (Tr. p. 22).

Mr. Connor also stated that the State was paying Concord Steam \$47 per Mlb., or about three and three quarter times what the State pays for facilities using natural gas (Tr. p. 23). That rate is equivalent to a natural gas rate of \$3.93 per therm.<sup>2</sup> Absent a rebuilt plant being placed into service by October 1, 2017, Concord Steam's total cost of steam will be well in excess of \$32 per Mlb. A \$32 per Mlb. rate is equivalent to a natural gas rate of \$2.68 per therm. Liberty Utilities, the natural gas utility serving Concord, has filed its proposed Summer Cost of Gas rates (Docket DG 16-315) and for a residential heating customer the average annual rate (based on 2015-16 actual rates and 2016 proposed summer rate) is \$1.25 per therm.

In 2015, the State of New Hampshire usage constituted approximately 40% of Concord Steam sales. If the State terminates service, or implements energy savings measures that significantly reduce its steam usage and other customers also terminate service, CSD usage can be expected to exceed 30% of Concord Steam annual sales, and CSD will thereby have the unilateral authority to terminate the contract under its own terms.

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<sup>2</sup> Equivalent rate calculated using the 'Comparable Fuel Quantity Conversion and Fuel Cost Conversion Calculators' located on the Commission website (<http://www.puc.nh.gov/Gas-Steam/naturalgasvsalternativefuels.htm>).

That situation would also likely result in a November 1, 2017 rate in excess of the \$32 per Mlb. specified as a triggering event enabling CSD to unilaterally terminate. Concord Steam is seeking financing for its rebuilding project, which would be critical for avoiding the \$32 per Mlb. ceiling price, but given the prospect of declining sales and lack of a long term contract with the State, it is difficult to envision investors committing \$17 to \$20 million to finance the project. Staff has the understanding that Concord Steam intends for its special contract with CSD to act as a guarantee of long-term revenue stream to help cover bond payments and/or equity dividends to potential investors, thereby making an investment in the Concord Steam rebuilding project more attractive to such investors. Staff is of the opinion that the CSD special contract completely fails to offer such advantages to Concord Steam, insofar as there is a great potential for sudden unilateral termination of the contract, and service, by CSD, under these terms and market realities. Investors engaging in proper due diligence are sure to come to the same conclusions. Furthermore, even if Concord Steam were able to acquire financing, there is no guarantee that steam rate would drop to \$32 per Mlb. on completion of the rebuilding. The actual cost of the rebuild and expected sales will be key determinants in setting the rate. There is also the concern that even if Concord Steam is able to achieve a substantial rate reduction, the new rate may still not be competitive with natural gas rates, leading to the potential triggering of Condition 1 for termination.

#### **STAFF RECOMMENDATION**

The petition should be denied for the following reasons:

1. The discounted rate under the special contract has had, and will have, a material and negative impact on the Company's earning at a time when CSC is under earning and experiencing declining sales. Approving a deeply discounted **retroactive** rate for usage at Concord High School since November 1, 2014 will have an immediate, material and negative impact on Concord Steam's annual revenue and income. Approving the special contract would cost Concord Steam approximately \$570,000 in revenues (difference between \$950,000 estimated revenue at Tariff rates and \$380,000 estimated revenue at special contract rates).
2. The discounted rates for years 4 through 13 of the contract can only be increased by the annual inflation rate tied to the CPI, which may not be sufficient to cover increases in Concord Steam's operating costs over that period. If that were the case, Concord Steam's future earnings would be negatively impacted and result in a revenue deficiency that would need to be recovered from other customers.
3. The contract does not provide a reasonable assurance Concord Steam will be able to retain CSD as a customer beyond October 1, 2017, as the unilateral termination provisions are very favorable to CSD. Based on information presented at the Status Conference in DG 16-202, it appears the State of New Hampshire will be going forward with plans to reduce its energy consumption and terminate steam service, in which case CSD will be able to terminate service under two of the

provisions (CSD sales would exceed 30% of Concord Steam annual sales and rates would exceed \$32 per Mlb. as of October 1, 2017).

4. If any of the conditions of the termination provisions are met, the proposed special contract would allow the CSD to terminate steam for all of its facilities, including Rundlett Middle School, which is currently required to take steam service until September 30, 2019 under an existing special contract.
5. The contract does not include a meter charge, thereby failing to recover metering costs related to serving CSD facilities.
6. The contract allows CSD to set the Agreement Volume without specifying how the Agreement Volume is to be determined.
7. The contract terms have been implemented (i.e., through retroactive application of discounts) by Concord Steam far in advance of any approval by the Commission, in clear violation of RSA 378:18.

Staff recommendation regarding procedure:

The Commission should issue an Order of Notice that allows for Concord Steam to issue discovery on Staff's findings and recommendations and file a written response, and set a date for a hearing on the merits. Intervention requests should be addressed at the hearing on the merits but parties requesting intervention should be allowed to issue discovery on both the Company and Staff and file comments pending a Commission decision on the intervention requests.

Concord Steam entering into a special contact with CSD for usage at the Abbot Downing and Crista McAuliffe schools and providing utility service under the terms of the contract without Commission approval should be addressed in DG 16-202, the Commission's investigation into Concord Steam's operations.

**SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED**

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**Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.**

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**FILING INSTRUCTIONS:**

**a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

DEBRA A HOWLAND  
EXECUTIVE DIRECTOR  
NHPUC  
21 S. FRUIT ST, SUITE 10  
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**b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**

**c) Serve a written copy on each person on the service list not able to receive electronic mail.**