

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 19-054**

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

**2019 Cast Iron/Bare Steel Replacement Program Results**

**Order Approving Revised Delivery Rates**

**ORDER NO. 26,266**

**June 28, 2019**

**APPEARANCES:** Michael J. Sheehan, Esq., on behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; the Office of the Consumer Advocate by Brian Buckley, Esq., on behalf of residential ratepayers; and Lynn Fabrizio, Esq., on behalf of Commission Staff.

In this order, the Commission approves an increase in Liberty's base delivery rates effective July 1, 2019, to collect an additional \$1,020,832 in revenue annually. The increase will allow Liberty to recover \$9,479,323 that it invested in the Cast Iron/Bare Steel Replacement Program during fiscal year 2019. This rate change will result in a \$4.33, or 0.37 percent, annual increase for the typical residential heating customer.

**I. PROCEDURAL HISTORY**

On February 14, 2019, Commission Staff (Staff) filed a memorandum in Docket No. DG 11-040 recommending termination of the Cast Iron/Bare Steel (CIBS) replacement and accelerated recovery program established in that docket for Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company). On March 15, 2019, Liberty filed a response to Staff's recommendation.

On April 15, 2019, Liberty submitted its Fiscal Year 2019 CIBS Replacement Program Results Filing. The CIBS program was established in Order No. 24,777 (July 12, 2007), which approved a settlement agreement as part of the merger of National Grid and EnergyNorth.

Liberty became subject to an updated settlement agreement, which included the CIBS program, upon Liberty's acquisition of the EnergyNorth system. *See National Grid USA*, Order No. 25,370 at 25 (May 30, 2012).

In its 2019 filing, Liberty sought a \$1,321,114 increase in its base delivery rates to recover \$12,293,905 in qualifying capital costs spent in fiscal year (FY) 2019 (April 1, 2018, to March 31, 2019) to replace cast iron and bare steel pipes. Liberty requested authority to implement the rate increase as of July 1, 2019.

In support of its request, Liberty filed the joint testimony of David B. Simek, Manager of Rates and Regulatory Affairs, and Catherine A. McNamara, Rates and Regulatory Affairs Analyst; and the joint testimony of Shawn D. Furey, Manager of Gas Operations and Brian R. Frost, Senior Engineer for Liberty Utilities Service Corp.

The Commission issued an order of notice scheduling a Prehearing Conference for April 16, 2019, to be followed by a technical session with Liberty, Staff, and any intervenors. The order of notice required Staff and any intervenors to file testimony on or before May 24, and scheduled a final hearing on the merits for June 6. On April 16, 2019, the Office of the Consumer Advocate (OCA) filed a letter notifying the Commission of its participation in this proceeding on behalf of residential customers pursuant to RSA 363:28. No other parties intervened.

At the Prehearing Conference, Liberty and Staff presented preliminary statements on issues raised by Staff's recommendation to terminate Liberty's CIBS program. On April 17, Staff filed a report on the technical session with a proposed procedural schedule. Staff filed the testimony of Stephen P. Frink and the testimony of Randall S. Knepper on May 28.

At the hearing held on June 6, Liberty offered the pre-filed and live testimony of Mr. Simek, Ms. McNamara, Mr. Furey, and Mr. Frost in support of its request. Staff offered the pre-

filed and live testimony of Stephen P. Frink and Randall S. Knepper, Directors of the Commission's Gas and Water Division, and Safety Division, respectively.

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/2019/19-054.html>.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Liberty**

Liberty stated that it removed 9.9 miles of cast iron and bare steel pipe during CIBS fiscal year 2019 at a total cost of \$16,852,577 million (including estimated carry-over costs). Direct Testimony of Shawn D. Furey and Brian R. Frost, Exhibit (Exh.) 3 at 6.<sup>1</sup> In its filing, the Company sought to add \$12,293,905 to its rate base. Direct Testimony of David B. Simek and Catherine A. McNamara, Exh. 3 at 51. Liberty expects the total implementation costs for the FY 2019 CIBS program to be \$20,296,315. That number would include \$11,613,249 spent on FY 2019 projects during the program year, \$3,593,321 incurred as carry-over costs from the FY 2018 program, and estimated future carry-over costs into FY 2020 of \$5,089,745. According to Liberty, of the costs incurred during the FY 2019 program year, \$12,293,905 are eligible for recovery under CIBS rates, including costs in excess of the 5 percent carry-over cap under the CIBS settlement agreement. That would leave \$2,379,546 incurred for unrecoverable costs such as tie-over of plastic services and replacement of short lengths of plastic pipe, for example. Exh. 3 at 9.

According to Liberty, all of the carry-over costs are related to final trench restoration work that could not be completed in the planned FY 2019 due to city rules regarding minimum

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<sup>1</sup> Unless otherwise noted, all page references to Exhibits are to Bates page numbers.

temperature requirements, or a requirement that trenches be allowed to settle for one full freeze-thaw cycle before final restoration. *Id.* at 8-10.

Liberty maintained that the total incremental expenditure of \$12,293,905 it proposed to include in rate base would result in a revenue deficiency requirement of \$1,321,114. Exh. 3 at 52. Liberty requested authority to implement a permanent increase in delivery rates as of July 1, 2019, on an equal percentage basis among all customer classes. Liberty estimated that the bill impact on a typical residential heating customer would be an increase of \$5.61 per year. *Id.* at 54.

At hearing, Liberty said that it would accept removal of the carry-over costs in excess of five percent, as recommended by Staff. Ms. McNamara testified that would result in an annual increase of \$4.33 or 0.37 percent for residential customers. Hearing Transcript of June 6, 2019, (Tr.) at 17.

#### **B. OCA**

The OCA concurred with Staff's recommendation that the CIBS accelerated cost recovery mechanism be discontinued. The OCA believes that an accelerated cost recovery methodology is unnecessary because a focus on safety and reliability in the replacement of leak-prone pipe is a foundational component of the regulatory compact and an obligation of any regulated gas utility doing business in New Hampshire. Tr. at 148-149. In light of the Company's historical rate case frequency, the OCA is not convinced that the benefits of such a mechanism outweigh its costs. Tr. at 149. The OCA further noted that the threat of earnings attrition between rate cases is an inherent component in cost-of-service ratemaking. *Id.* Efficiencies and project prioritization encourage a regulated utility to bring direct benefits to ratepayers; however, those benefits are diminished when one-half of a utility's annual capital budget is eligible for accelerated cost recovery, as is the case for Liberty. *Id.* The OCA agreed

with Mr. Knepper's testimony that only \$778,739 of carry-over costs should be eligible for recovery in this proceeding. The OCA was also of the opinion that the rates proposed are just and reasonable. *Id.*

### C. Staff

Staff argued for termination or suspension of Liberty's accelerated recovery program for CIBS, noting that Liberty has achieved significant progress in its replacement of CIBS pipes in recent years. At the conclusion of the 2019 season, Liberty will have approximately 55 miles of CIBS mains remaining in the ground. Direct Testimony of Stephen P. Frink (Exh. 4) at 9. Staff maintained that Liberty has developed a relatively efficient process for the annual replacement of CIBS pipe and, as a result, that accelerated recovery is no longer warranted. *Id.* at 10, and Direct Testimony of Randall S. Knepper (Exh. 5) at 11. In its recommendation for termination, Staff determined that public safety risks due to leaks and pipe failures have been substantially reduced, as evidenced by the significant decline in system leaks; and that regulatory burden and expense will be reduced by eliminating the annual CIBS step adjustments. Staff Recommendation (Exh. 1) at 4.

Staff also concluded that recovery of CIBS qualifying costs for 2019 and 2020 can be achieved through Liberty's anticipated 2020 general rate proceeding, thereby causing minimal delay in cost recovery for the Company and achieving administrative efficiency. *Id.* at 4. Staff concluded that termination of Liberty's CIBS program is consistent with the Commission's decision to discontinue step adjustments through Northern Utilities' bare steel replacement program due to reduced leaks and a similarly anticipated general rate filing. *Id.*

Staff testified to its concerns regarding the decline in the Company's completion of planned projects and the high rate of carry-over costs in FY 2019. Exh. 5 at 13. Staff found that Liberty had replaced, inserted, or abandoned its third highest number of bare steel services (274)

in FY 2019 since the inception of the program, but that the total represents a nearly 25 percent decrease from FY 2018 levels and 27 percent less than the Company had projected. *Id.* at 13-14. According to Staff, the decrease in actual bare steel replacements was largely a result of delays in the 3 associated main projects and scope reductions in 2 of those projects. In addition, of the 24 projects in which mains and services were installed, only 3 included final restoration costs, leaving 21 projects with completion and restoration costs carrying over to CIBS FY 2020. *Id.*

Staff noted that Liberty requested approval from the Commission's Safety Division for recovery of \$3,593,321 in total CIBS FY 2019 carry-over costs, but that the CIBS settlement agreement limits recovery of carry-over costs to 5 percent of total program spending, or \$778,739, unless the Safety Division approves a higher amount. *Id.* at 16-17. The Safety Division recommended that the Commission limit recovery of carry-over costs to \$778,739, for reasons similar to those discussed in oral and written testimony from Staff in prior CIBS dockets DG 16-449, DG 17-063, DG 18-064. *Id.* at 17. Staff maintained that the remaining balance of \$2,814,582 (\$3,593,321 less \$778,739) would be eligible for recovery in the Company's next rate case and should not be recovered in this docket. *Id.*

Staff acknowledged that in FY 2019, the Company replaced the third largest amount of leak-prone cast iron mains and services ever in a single year of its CIBS program. Exh. 5 at 19. Staff expressed cautious optimism that Liberty could meet its stated 2024 total CIBS replacement goal. *Id.* at 19-20, 22.

### III. COMMISSION ANALYSIS

We find that Liberty's proposed adjustments, as modified by the disallowance of \$2,814,582 in carry-over costs, will result in rates that are just and reasonable, as required by RSA 374:2 and RSA 378:7. Specifically, we approve the addition of \$9,479,323 to Liberty's rate base and the related increase in its revenue requirement of \$1,020,832. At this time, we

have no reason to expect that Liberty will be denied a just and reasonable return on eligible CIBS carry-over costs in its next full distribution rate case.

We also find that the results to date of Liberty's CIBS replacements throughout its service territory and the general distribution rate case the Company expects to file in 2020 warrant the termination of the CIBS accelerated recovery program. To address Liberty's concern that its general rate filing could occur later than anticipated in 2020, we will terminate the CIBS settlement agreement at the end of the 2019 construction year and allow Liberty to recover CIBS FY 2020 spending under the terms of the CIBS settlement agreement. The FY 2020 filing shall include project costs expended as of March 31, 2020, but shall not include paving costs in excess of 5 percent of the approved estimated expenditures for CIBS FY 2021 carried over from the CIBS FY 2020 period without the Safety Division's approval in advance of the filing. Liberty shall file its FY 2020 CIBS program results by April 15, 2020.

At any time prior to July 1, 2020 (the effective date of any CIBS FY 2020 step adjustment), Liberty shall have the option to voluntarily terminate the CIBS settlement agreement and forego or withdraw its CIBS FY 2020 rate filing.

We encourage Liberty to seek recovery of 2019 CIBS spending through its anticipated general rate filing rather than a CIBS FY 2020 filing. Recovery of 2019 CIBS spending through a general rate filing would be administratively efficient and recovery would commence at approximately the same time as provided for under the CIBS settlement agreement if a general rate case is filed by mid-year 2020.

By terminating the existing CIBS program, we are not precluding an alternative proposal in Liberty's next rate case. We continue to believe it is important to replace the cast iron bare steel infrastructure and would consider an alternative proposal from the parties during the anticipated rate case.



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

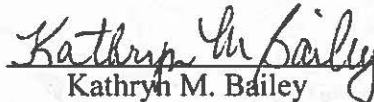
**ORDERED**, that Liberty be permitted to increase its base delivery rates to add \$1,020,832 to its annual revenues, effective July 1, 2019, on a service rendered basis; and it is

**FURTHER ORDERED**, that Liberty file its fiscal year 2020 CIBS program results by April 15, 2020; and it is

**FURTHER ORDERED**, that Liberty file properly annotated tariff pages with the Commission by July 29, 2019, as required by N.H. Code Admin. Rules Puc 1603 and consistent with this order.

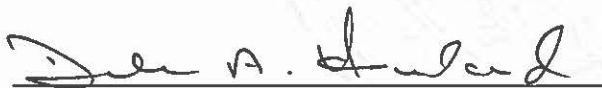
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 2019.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
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