

SPECIAL CONTRACT - NATURAL GAS

CONTRACT NO. NHPUC 2017-01

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

with

New Hampshire Department of Administrative Services

Date of Execution: March 1, 2017
Effective Date: March 1, 2017 (subject to Commission approval)
Date of Termination: September 30, 2018, unless terminated earlier or extended

Authorized by Order No. _____ (_____, 2017) in Docket No. DG 17-xxx

STATEMENT OF SPECIAL CIRCUMSTANCES
THAT JUSTIFY DEPARTURE FROM EXISTING TARIFF

1. The New Hampshire Department of Administrative Services (“NHDAS”) seeks to have portable natural gas-fired steam boilers (“Boilers”) installed at two or more locations in Concord, New Hampshire (the “Boiler Locations”) to provide temporary steam service to twenty-three state-owned buildings (the “State Buildings”). The Boilers need to be operating by May 31, 2017, the projected date that NHDAS’s current steam provider will cease doing business. NHDAS does not currently have the authority to borrow money to pay for the costs related to the Boilers. Absent the terms of this Special Contract, the State Buildings would either be without steam service or would be exposed to unreasonably high steam rates beginning June 2017.
2. At NHDAS’s request, Liberty Utilities (EnergyNorth Natural Gas) Corp. (“Liberty”) agreed to take the steps necessary to ensure NHDAS will have temporary steam service as of May 31, 2017, under the terms of this Special Contract. Specifically, Liberty will engage an engineer, arrange for the required utility connections, and contract for the rental, installation and operation of the Boilers. Liberty will include the costs related to the Boilers, without any markup, in a surcharge to NHDAS’s natural gas bills.
3. The services Liberty agrees to perform under this Special Contract are services not contemplated by Liberty’s Tariff. Accordingly, this Special Contract, subject to New Hampshire Public Utilities Commission approval, is necessary to provide NHDAS with the steam services it needs. For the reasons described above, the departures from Liberty’s Tariff that are embodied in this Special Agreement are just and consistent with the public interest under the particular circumstances of this case.

SPECIAL CONTRACT

between

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

and

New Hampshire Department of Administrative Services

This Special Contact is made as of March 1, 2017, by and between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, a New Hampshire corporation and public utility as defined by RSA 362:2 with a place of business at 15 Buttrick Road, Londonderry, New Hampshire (“Liberty”), and the New Hampshire Department of Administrative Services, a state agency authorized to manage state buildings pursuant to RSA 21-I with offices at 25 Capitol Street, Concord, New Hampshire (“NHDAS”). Liberty and NHDAS are also individually referred to as a “Party” or collectively as the “Parties.”

WHEREAS, NHDAS wishes Liberty to supply, install, and operate Boilers, through the use of approved third-party vendors, at the Boiler Locations in Concord, New Hampshire to provide steam service for the State Buildings; and

WHEREAS, NHDAS wishes Liberty to include the costs related to supplying, installing, and operating the Boilers in the regular monthly utility bills that Liberty will send to NHDAS for natural gas service; and

WHEREAS, Liberty’s Tariff does not provide for, nor is Liberty engaged in the business of, supplying, installing or operating Boilers to provide customers with steam service; and

WHEREAS, subject to the terms, conditions, limitations, and provisions of this Special Contract, and for the reasons stated above, Liberty is willing to arrange for the supply, installation, and operation of the Boilers as requested by NHDAS; and

WHEREAS, the Parties understand that this Special Contract must satisfy the provisions of RSA 378:18 and Puc 1606, and must be approved by the New Hampshire Public Utilities Commission (“Commission”); and

WHEREAS, in the absence of this Special Contract, Liberty’s Tariff precludes Liberty from arranging for the supply, installation, and operation of Boilers as requested by NHDAS, thus depriving NHDAS of the benefits associated with this Special Contract;

NOW, THEREFORE, the Parties agree as follows:

1.0 Definitions

The following words and terms shall be understood to have the following meanings when used in this Special Contract. In addition, except as otherwise expressly provided, where terms used in this Special Contract are defined in Liberty’s Tariff for Gas Service (“Tariff”), which includes General Terms and Conditions, Rate Schedules, and Delivery Terms and Conditions (collectively, “Terms and Conditions”) and not otherwise defined here, such terms shall have the respective meanings given in Liberty’s Tariff. The Terms and Conditions, as they may be in effect from time to time, are also

incorporated by reference and made a part of this Special Contract. In the event of any inconsistency between the terms of any incorporated document and this Special Contract, including but not limited to its commercial terms, the terms of this Special Contract will govern.

1.1 The “Boilers” are temporary, portable, natural gas-fired steam boilers to be installed at the Boiler Locations under the terms of this Special Contract.

1.2 “Engineer” is Nobis Engineering, Inc., a New Hampshire corporation with its principal office at 18 Chenell Drive, Concord, New Hampshire, and is the firm that is responsible for the necessary design and engineering services to have the Boilers installed.

1.3 “Boiler Company” is Powerhouse Equipment & Engineering Co. Inc., of 240 Creek Road, Delanco, New Jersey, the firm that will deliver and assist with the installation, connection, and operation of the Boilers.

1.4 “Contractor” is R.H. White Construction Co., Inc., a Massachusetts Corporation authorized to do business in New Hampshire, with a place of business at 615 River Road, Bow, New Hampshire, the firm that will assist with the installation and connection of the Boilers.

1.5 “Service Commencement Date” is the date that any Boiler begins to provide steam service for any State Building under the terms of this Special Contract.

1.6 “Boiler Locations” are the locations in Concord, New Hampshire where the Boilers will be installed as designated by NHDAS on the recommendation of the Engineer. Subject to final determination by NHDAS, the Boiler Locations are anticipated to be: (1) the Department of Justice parking lot located at 33 Capitol Street; and (2) adjacent to the Concord Steam plant facility located at 105 Pleasant Street, and/or such other location(s).

1.7 “State Buildings” are the twenty-three (23) State-owned buildings in Concord, New Hampshire that will receive heating service from the Boilers, and which are listed in Attachment A, hereto.

2.0 Obligations of Liberty

2.1 After receiving NHDAS’s consent, described in Section 3.1 below, Liberty shall retain the Engineer to perform the design and engineering services to have the Boilers installed to meet the heating requirements of the State Buildings. Liberty shall pay the costs related to the Engineer’s services.

2.2 After receiving NHDAS’s consent, Liberty shall arrange for Contractor to connect the water service and electricity service consistent with the Engineer’s designs at the Boiler Locations. Liberty shall pay the costs related to Contractor making the water and electricity services available for the Boilers. NHDAS shall open and be responsible for its own accounts with the water and electricity utilities related to the Boilers.

2.3 After receiving NHDAS’s consent, Liberty shall arrange for natural gas service to the Boiler Locations, at no charge to NHDAS. Liberty intends to install a separate meter and establish a separate account with NHDAS for natural gas service to each Boiler. Natural gas service will be billed to NHDAS at the tariff rate, plus the surcharges set forth in Section 2.8, below.

2.4 After receiving NHDAS’s consent, including a review and approval of the Engineer’s design, Liberty shall arrange for Boiler Company and/or Contractor to connect the Boilers to the existing steam

system and to modify the existing steam infrastructure, if necessary, in consultation with Concord Steam Corp., so that the Boilers efficiently serve the State Buildings. Liberty shall pay any costs related to connecting the Boilers and to modifying the existing steam infrastructure that are not paid by Concord Steam Corp. as part of its decommissioning.

2.5 After receiving NHDAS's consent, Liberty shall arrange for the Boiler Company and Contractor to have the Boilers ready for operation by May 31, 2017, to operate the Boilers as of the Service Commencement Date, and to decommission the Boilers when no longer needed by NHDAS. Liberty shall also arrange to have the steam infrastructure disconnected from the State Buildings and to fill the manholes associated with the steam infrastructure utilized by the State.

2.6 For any contract for services or equipment entered into by Liberty pursuant to Sections 2.1, 2.2, 2.4, and 2.5, above, Liberty shall require that the contractor carry general liability and casualty insurance in amounts sufficient to protect NHDAS and that name the State of New Hampshire as an additional insured. For all such contracts, Liberty shall require the contractor to indemnify the State by inclusion of the following language in the contract:

The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

2.7 To the extent Liberty performs any services related to those described in Sections 2.1, 2.2, 2.4, and 2.5, with NHDAS's express consent, Liberty shall charge its fully loaded costs for those services. Liberty shall provide to NHDAS the invoices for all costs incurred in association with work performed or services and equipment provided pursuant to Sections 2.1, 2.2, 2.4 and 2.5, which must be reasonable in nature and in accordance with industry standards. The application of these charges shall be as set forth in Section 2.8.

2.8 Liberty shall include a surcharge (a) on the first 15 monthly bills following the Service Commencement Date for the accounts serving the Boilers, which surcharge will recover the costs incurred under Sections 2.1, 2.2, 2.4, 2.5, and 2.7, and (b) on all monthly bills following the Service Commencement Date for so long as NHDAS uses the Boilers, which surcharge will recover the ongoing costs related to renting, operating and decommissioning the Boilers.

2.9 The total cost passed on to NHDAS pursuant to Section 2.8 shall not exceed \$2,725,000, allocated to no more than \$2,180,000 in State FY2018, and no more than \$545,000 in State FY 2019.

2.10 If the costs that Liberty reasonably incurs under Sections 2.1, 2.2, 2.4, 2.5, and 2.7 are greater than the not-to-exceed amounts in Section 2.9, then NHDAS agrees to take all reasonable steps to obtain the funds necessary to reimburse Liberty, including, but not limited to, seeking Governor and Executive Council approval of an amendment to the not-to-exceed amount in this agreement.

3.0 Obligations of NHDAS

3.1 NHDAS shall provide its consent to the selection of Boilers, the Engineer, the Contractor, and Boiler Company and to the scopes of work before Liberty is obligated to undertake work associated with

that consent as set forth in Sections 2.1, 2.2, 2.3, 2.4, and 2.5. Notwithstanding Section 9.1, NHDAS's consent may be conveyed to Liberty by electronic mail.

3.2 NHDAS shall timely provide to Liberty all information requested to have the Boilers operational by May 31, 2017.

3.3 NHDAS shall pay: (a) the surcharges described in Section 2.8; (b) Liberty's approved distribution rate and Liberty's approved Local Distribution Adjustment Charge for the natural gas consumed; and (c) Liberty's approved cost of gas if NHDAS chooses sales service or Liberty's approved transportation charges if NHDAS chooses transportation service.

3.4 NHDAS shall pay the utility bills described in Section 3.3 in the normal course as they become due after the Service Commencement Date.

3.5 NHDAS shall provide at least thirty (30) days' notice to Liberty of the date it will no longer need the Boilers.

4.0 Condition Precedent

4.1 The Parties agree that the provisions of this Special Contract are expressly subject to and conditioned on final Commission approval.

5.0 Effective Date and Term of Special Contract

5.1 This Special Contract shall become effective on the date that the Commission's order approving its terms becomes final, or the date on which the Special Contract is approved by the Governor & Executive Council of the State of New Hampshire, whichever comes later.

5.2 Notwithstanding Section 5.1, any costs Liberty reasonably incurs in furtherance of the Special Contract prior to its effective date shall be recovered as described in Section 2.

5.3 This Special Contract shall terminate on September 30, 2018, unless terminated earlier or extended, pursuant to Sections 5.4 or 5.5, respectively.

5.4 The Special Contract may be terminated prior to September 30, 2018, at NHDAS' sole discretion, provided that NHDAS has reimbursed Liberty for all costs incurred under Section 2.

5.5 NHDAS shall have the option, at its sole discretion, to extend the Special Contract, upon 30-days prior written notice to Liberty, up to September 30, 2018. Following any such extension, the termination provisions of Section 5.4 shall continue to apply.

6.0 Force Majeure

6.1 Neither Party shall be liable in damages or otherwise for any failure to perform its obligations under the Special Contract occasioned by or in consequence of any event of force majeure including acts of God, strikes, lockouts, labor disputes or other industrial disturbances, acts of the public enemy or terrorists, civil disturbances, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, or accident to machinery or lines of pipes, partial or total failure, or threat thereof, of Liberty's reserved firm transportation capacity, emergency repair to equipment or lines of pipe, or by a break, or fault, or threat thereof, in Liberty's distribution system, the action or inaction of any court or governmental or public authority which prevents or restricts performance or any other similar or

dissimilar cause, whether of the kind herein enumerated, or otherwise beyond the control of the Party claiming force majeure, which by the exercise of reasonable due diligence, the Party claiming force majeure is unable to prevent or avoid.

6.2 Upon an event of force majeure the affected Party shall exercise reasonable due diligence to avoid the adverse impacts of a force majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

6.3 As soon as practicable after a force majeure event shall have been remedied, the Party claiming force majeure shall give notice to the effect that the same has been remedied and that the Party has resumed, or is then in a position to resume, the performance of the covenants or obligations affected by force majeure. Nothing contained in this Section shall be construed to require Liberty to settle a controversy with a landowner or settle or prevent a strike or other controversy with employees or with anyone purporting or seeking to represent employees.

7.0 Disclaimer of Liability, Hold Harmless

7.1 In no event shall Liberty, its direct or indirect parents, and their directors, officers, or employees, be liable to NHDAS or to any third party for any special, consequential, incidental, or punitive damages, or damages for lost profits or lost opportunity, whether arising in tort, contract or otherwise that arise under this Special Contract or that arise from Liberty's conduct in carrying out its obligations under this Special Contract.

7.2 NHDAS agrees to hold Liberty, its affiliates, and their respective directors, officers, employees, agents, successors, and assigns, harmless from and against all liabilities, damages, claims, expenses, actions and causes of action, including without limitation reasonable attorney's fees, arising from this Special Contract and from the design, engineering, installation, or operation of the Boilers. This clause shall not apply to any vendors or contractors retained by Liberty in providing the services set forth in this Special Contract.

8.0 Public Regulation

8.1 Liberty is a public utility subject to regulation by the Commission. Liberty's compliance with any order or rule of the Commission, or of any other regulatory or legislative authority with jurisdiction, shall not constitute a breach of this Special Contract.

8.2 In the event the Commission, or any other regulatory or legislative authority with jurisdiction, issues any order or rule that materially and adversely affects the rights and obligations of either Party to this Special Contract, then the affected Party may give written notice to the other requiring renegotiation of the terms and conditions of the Special Contract, and the Parties shall negotiate in good faith to achieve the original objectives of this Special Contract through an amendment to this Special Contract that remedies such material and adverse effect and that is in compliance with the order or rule. Should the Parties fail to agree on such amendment to this Special Contract within sixty (60) days of the issuance of the order or rule, the affected Party may terminate this Special Contract upon providing written notice to the other.

9.0 Notices

9.1 Except as otherwise provided in Section 3.1, any notice required or desired to be served pursuant to this Special Contract shall be in writing. In the absence of written notice of a change of address to the other Party to this Special Contract, any such notice shall be hand delivered or mailed,

certified mail (return receipt requested, first class, postage prepaid), or sent by nationally recognized express courier (e.g., Federal Express, United Parcel Service, etc.), or faxed to Liberty or NHDAS at the following addresses:

Company: Liberty Utilities (EnergyNorth Natural Gas) Corp.
d/b/a Liberty Utilities
15 Buttrick Road
Londonderry, NH 03053
Attention: Legal Department
Tel: 603-216-3635
Fax: 603-421-1769

NHDAS N.H. Department of Administrative Services
25 Capitol Street
Concord, NH 03301
Attention: Vicki V. Quiram, Commissioner
Tel: 603-271-3201
Email: Vicki.Quiram@nh.gov

Notices shall be effective upon receipt or upon addressee's refusal to accept. Faxed notices shall be effective upon confirmation of their receipt.

10.0 Non-Appropriation

10.1 This Agreement is contingent on the availability and continued appropriation of funds, and in no event shall NHDAS be liable for any payments in excess of such appropriated funds.

11.0 Governing Law

11.1 This Special Contract is entered into and shall be construed in accordance with the laws of the State of New Hampshire, excluding its choice of law rules or rulings. The Parties agree that any actions, suits, or claims with respect to this Special Contract shall be brought before the Commission if the Commission has jurisdiction over the particular claim, otherwise in a state court located in the State of New Hampshire.

12.0 Privity

12.1 This Special Contract is entered into solely for the benefit of the Parties and not for the benefit of any other persons or entities. No other persons or entities may enforce it for their benefit nor shall they have any claim or remedy for its breach. The Parties do not intend to confer third-party beneficiary status on anyone.

13.0 Entire Agreement

13.1 This Special Contract supersedes, terminates, and merges all prior, collateral, and contemporaneous agreements, written or oral, between the Parties relating to its subject matter.

14.0 Waiver

14.1 Notwithstanding any other provision to the contrary, no waiver by either Party of any default of the obligations contained in this Special Contract to be performed by the other Party shall be construed as a waiver of any succeeding default or breach of such obligation, or the waiver of any other obligation or condition.

15.0 General

15.1 Section headings are for convenience and reference only, and may not be construed to explain, amplify, or modify the provisions of this Special Contract.

15.2 Provisions of this Special Contract may be changed or waived, but only by a written instrument, signed by authorized representatives of both Parties.

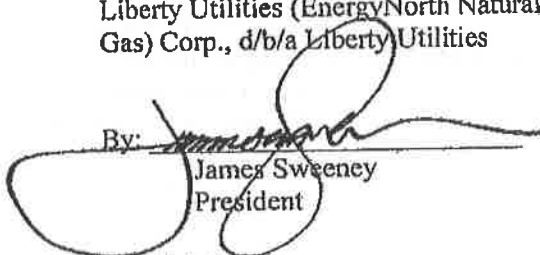
15.3 The Parties acknowledge that recitals set forth above are an integral part of this Special Contract and shall have the same contractual significance as any other language.

15.4 If any terms of this Special Contract are invalid or declared invalid by order of a court or other governmental body having jurisdiction (an "Invalidating Event"), the Parties agree to renegotiate, in good faith, the affected material terms of this Special Contract, thus remedying the material and adverse effect of any such Invalidating Event in a way that is in compliance with any order or rule.

15.5 This Special Contract may be executed in one or more counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, NHDAS and Liberty have caused this Special Contract to be executed by their respective representatives, duly authorized, as of the day and date first above written.

Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities

By: 
James Sweeney
President

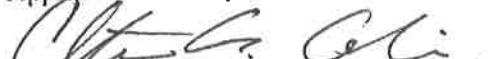
March 1, 2017

New Hampshire Department of Administrative Services

By: 
Vicki V. Quiram
Commissioner

March 1, 2017

Approved for form, substance and execution by the Attorney General


Assistant Attorney General

March 1, 2017

This AGREEMENT was approved by Governor and Council on

_____, 2017 as Item # _____.

Exhibit A

State Buildings

Building	Street Address
Department of Justice	33 Capitol Street
Upham Walker House	18 Park Street
Legislative Office Building	33 North State Street
State House	107 North Main Street
State House Annex	25 Capitol Street
State Library	20 Park Street
Londergan Hall	101 Pleasant Street
M&S Building	109 Pleasant Street
Spaulding Hall	95 Pleasant Street
Annex – SOPS	105½ Pleasant Street
Johnson Hall	107 Pleasant Street
Dolloff Building	117 Pleasant Street
Grounds Shop	79 South Fruit Street
NH Hospital Laundry	127 Pleasant Street
NH Hospital Warehouse	Pleasant Street
Main Building	105 Pleasant Street
Paint and Carpentry Shops	Pleasant Street
Philbrook Building	121 South Fruit Street
Thayer Building	97 Pleasant Street
Transportation Garage	127A Pleasant Street
Howard Recreation Building	99 Pleasant Street
Pond Place	125 Pleasant Street
Twitchell Hall	111 Pleasant Street