



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 15-75

February 10, 2016

Petition of Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities for approval of the rates and charges set forth in Tariffs M.D.P.U. Nos. 1000C, 1001B, 1002I, 1003C through 1024C, and 1025A, and approval of an increase in base distribution rates for gas service pursuant to G.L. c. 164, § 94 and 220 C.M.R. § 5.00 et seq.

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## I. INTRODUCTION

On July 15, 2015, Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities (“Liberty Utilities” or “Company”) filed a petition with the Department of Public Utilities (“Department”) for an increase in gas distribution rates. The Department approved the Company’s last general increase in distribution rates on March 31, 2011. New England Gas Company, D.P.U. 10-114 (2011).

In its initial filing, the Company sought to increase its annual revenues by \$11,778,729, which represents a 33.3 percent increase in base distribution revenues, or an increase of 15.2 percent in current annual operating revenues.<sup>1</sup> The Company’s filing is based on a test year of January 1, 2014 through December 31, 2014.<sup>2</sup> The Department docketed this matter as D.P.U. 15-75, and suspended the effective date of the proposed rate increase until June 1, 2016, to investigate the propriety of the Company’s petition.

Liberty Utilities currently provides retail natural gas distribution service to approximately 54,000 residential, commercial, and industrial customers in the six Massachusetts communities of Fall River, North Attleboro, Plainville, Swansea, Somerset, and Westport (Exh. LU-/JMSw-1, at 3). The Company currently operates as a wholly owned

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<sup>1</sup> During the course of the proceeding, the Company made adjustments in response to information requests from the Department and the Attorney General which resulted in a decrease to its requested revenues to \$11,523,799 (Explanatory Statement at 1, n.1).

<sup>2</sup> For purposes of this Order, Liberty Utilities’ rate year will be March 1, 2016 through February 28, 2017.

subsidiary of Liberty Utilities Co., which is in turn a wholly owned subsidiary of Algonquin Power and Utilities Corp. (Exhs. LU-/JMSw-1, at 3; AG-1-3, Att. C-3, at 5-6).<sup>3</sup>

## II. PROCEDURAL HISTORY

On July 16, 2015, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E(a). On August 24, 2015, pursuant to G.L. c. 12, § 11E(b), the Department approved the Attorney General’s retention of experts and consultants. Liberty Utilities (New England Natural Gas Company) Corp., D.P.U. 15-75, Stamp Approval. The Department granted intervenor status to the Department of Energy Resources (“DOER”) and the Low-Income Weatherization and Fuel Assistance Program Network (“Low-Income Network”) and granted limited participant status to The Berkshire Gas Company and NSTAR Gas Company d/b/a Eversource Energy on August 27, 2015. Pursuant to notice duly issued, the Department held public hearings in Fall River on September 3, 2015 and North Attleboro on September 10, 2015, and solicited written comments.

In support of the Company’s filing, the following witnesses provided testimony:

(1) James M. Sweeney, president, Liberty Utilities - Massachusetts; (2) Janet M. Simpson, partner, Dively and Associates, PLLC; (3) Dylan W. D’Ascendis, managing consultant, Sussex Energy Advisors; (4) Paul M. Normand, principal, Management Applications

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<sup>3</sup> The Company formerly operated as a division of Southern Union Company. New England Gas Company, D.P.U. 10-114, at 1 (2011). The Department approved the acquisition of the Company’s assets by Liberty Utilities Co. in New England Gas Company, D.P.U. 13-07 (2013).

Consulting, Inc.; (5) Mark E. Smith, vice president of human resources, Liberty Utilities Service Corp.; (6) David A. Heintz, vice president, Concentric Energy Advisors; and (7) Melissa F. Bartos, assistant vice president, Concentric Energy Advisors. The Company also responded to multiple rounds of information requests from the Attorney General, the Department, and the Low-Income Network.

On December 15, 2015, the Attorney General, the Company, DOER, and the Low-Income Network (“settling parties”) filed for Department approval of a rate settlement agreement resolving a number of issues raised during the course of this proceeding as an alternative to a fully litigated rate case. Specifically, the settling parties submitted: (1) a Joint Motion for Approval of Settlement Agreement (“Joint Motion”); (2) the Settlement Agreement (“Settlement”); and (3) an Explanatory Statement including a summary of the adjustments to the Company’s revenue requirement calculated under the terms of the Settlement (Attachment A).<sup>4</sup> In the Joint Motion, the settling parties request that the Department find that: (1) the terms of the Settlement are reasonable; and (2) implementation of the terms of the Settlement will result in just and reasonable rates for the Company (Joint Motion at 2).

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<sup>4</sup> In a hearing officer memorandum issued November 24, 2015, the Department required that any settlement include an explanatory statement to facilitate review of the settlement proposal. The Department required that the explanatory statement include a procedural history, a section-by-section summary of the settlement, and responses to the following questions: (1) what are the issues underlying the settlement and what are the major implications; (2) whether any of the issues raise policy implications; (3) whether other pending proceedings may be affected; (4) whether the settlement involves issues of first impression, or if there is any change in treatment from a previously decided issue; and (5) what is the standard of review applicable to this proceeding.

On December 15, 2015, the Department established a procedural schedule for review of the Settlement providing for the opportunity to file comments. No comments were filed. The settling parties responded to information requests issued by the Department on January 15, 2016. On January 26, 2016, the settling parties filed an amendment to the Settlement (“Amendment”) as well as supplemental responses to information requests issued by the Department. The evidentiary record consists of 533 exhibits.<sup>5</sup>

### III. DESCRIPTION OF PROPOSED SETTLEMENT

#### A. Introduction

The Settlement provides for a distribution rate increase in two phases: (1) an increase of \$7.8 million over current rates, effective March 1, 2016; and (2) an increase of up to \$500,000, effective March 1, 2017 (Settlement at §§ 1.1.2-1.1.3). Other than the March 1, 2016 and March 1, 2017 distribution rate increases, the Company may not increase or redesign base distribution rates to become effective prior to March 1, 2019 (Settlement at § 1.5.1).<sup>6</sup>

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<sup>5</sup> The Joint Motion requests that the Department enter into evidence the Company’s initial filing, including all testimony, exhibits, and schedules, as well as all responses to discovery (Joint Motion at 1-2). The Company’s initial filing included affidavits from all witnesses adopting their direct testimony. On January 15, 2016, the Company provided affidavits in which the affiants authenticated the exhibits that they sponsored during the course of the proceeding. Accordingly, the Department grants the settling parties’ request to admit these exhibits into the record. 220 C.M.R. § 1.10(1).

<sup>6</sup> Under the terms of the Settlement, the creation of a new reconciling mechanism is considered a distribution rate increase, and thus may not become effective prior to March 1, 2019, unless required by statute (Settlement at § 1.5.2). This provision does not apply to any reconciling factor already in existence as of the effective date of the Settlement (Settlement at § 1.5.2).



B. March 1, 2016 Distribution Rate Increase

Under the Settlement, the rate base used to calculate the March 1, 2016 distribution rate increase includes: (1) the capital additions requested for recovery in the Company's pending TIRF filing, D.P.U. 15-54, representing cumulative TIRF investment through December 31, 2014; and (2) capital additions, incurred by the Company during 2015 associated with completed 2014 TIRF projects<sup>7</sup> (Settlement at §§ 1.8.1-1.8.2).<sup>8</sup>

In arriving at the agreed-upon rate increase of \$7.8 million, the settling parties made an adjustment to the Company's March 1, 2016 revenue requirement of negative \$117,731 associated with the three-year amortization of the gain on the disposition of certain assets and excess contributions in aid of construction, totaling \$353,192.81, collected by the Company (Settlement at § 1.4.2). The Company will continue to use the plant account depreciation accrual rates approved in D.P.U. 10-114 to determine its depreciation expense until base distribution rates are approved within the Company's next base rate proceeding (Settlement at § 1.4.1).

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<sup>7</sup> Under the Settlement, the Company must demonstrate in its Gas System Enhancement Plan cost recovery filing that it has not included any 2015 additions associated with completed 2014 TIRF projects (Settlement at § 1.8.5).

<sup>8</sup> The Settlement provides that the inclusion of these TIRF-eligible capital additions in rate base eliminates the need for a prudency review of these capital additions (Settlement at § 1.8.3). Additionally, because all TIRF-eligible capital additions are included in the March 1, 2016 distribution rates, the Company will cease billing its TIRF effective March 1, 2016 (Settlement at § 1.8.4). Any prior period reconciliation as of March 1, 2016 will be reviewed, and if warranted, recovered through the Company's local distribution adjustment clause, to be filed for effect May 1, 2016 (Settlement at § 1.8.4).

Pursuant to the Settlement, until base distribution rates are approved within the Company's next base rate proceeding, the Company will use for ratemaking purposes: (1) a 9.6 percent return on equity; (2) a capital structure consisting of 50 percent common equity and 50 percent long-term debt; and (3) a long-term debt rate of 6.38 percent (Settlement at §§ 1.3.1-1.3.3).

C. March 1, 2017 Distribution Rate Increase

The Settlement provides for an additional increase of up to \$500,000, effective March 1, 2017, associated with a significant incremental increase over test year levels of employee hires, contingent upon the Company demonstrating it has hired additional full-time employees to bring its total headcount to 152 employees (Settlement at § 1.2.1). In order to receive the additional distribution rate increase of \$500,000, the Company must demonstrate a headcount of 152 employees for any two bi-weekly pay periods during the fourth quarter of calendar year 2016 (Settlement at § 1.2.2). If the Company does not achieve a headcount of 152 employees for two bi-weekly pay periods during the fourth quarter of 2016, the \$500,000 distribution rate increase will be reduced according to a formula set forth in the Settlement (Settlement at §§ 1.2.2-1.2.3).<sup>9</sup> Pursuant to the Settlement, by January 31, 2017, the

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<sup>9</sup> Under the formula set forth in the Settlement, the Company will average the headcounts of the two bi-weekly pay periods with highest headcounts during the fourth quarter of 2016 (Settlement at § 1.2.3). The Company will then calculate the difference between this average and 152, and multiply that figure by \$87,000 (Settlement at § 1.2.3). That amount will then be subtracted from \$500,000 to determine the increase the Company is eligible to collect effective March 1, 2017 (Settlement at § 1.2.3).

Company must submit to the Department and the settling parties an affidavit providing evidence of the headcount numbers for the fourth quarter of 2016 (Settlement at § 1.2.3).

D. Rate Design

Under the Settlement, the Company will eliminate its multi-block distribution usage rate design and implement a single block rate structure (Settlement at § 1.7.1). Subject to certain allocations necessary to comply with the ten percent rate cap established by G.L. c. 164, § 94I, the distribution rate increases resulting from the Settlement will be implemented by increasing each base distribution element by an equal percentage across all rate elements (Amendment at § 1.7.2).<sup>10</sup>

E. Other Settlement Terms<sup>11</sup>

Under the Settlement, the Company will file a petition with the Department seeking approval of the issuance of three outstanding notes issued by Liberty Utilities in 2013 (Settlement at § 1.6).

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<sup>10</sup> The illustrative bill impacts provided in Attachment A to Exhibit DPU-SP-1-2 (supp.) include percentage increases to the customer charge that are not uniform across all rate classes. The Company is directed to ensure that the tariffs filed in compliance with this Order are consistent with the terms of the Settlement, as approved.

<sup>11</sup> The Settlement requires that after January 1, 2016, and prior to a Department Order on the Settlement, the Company file with the Department a letter from corporate management confirming the three percent non-union salary and wage increase, effective January 1, 2016 (Settlement at § 1.9.1). The settling parties satisfied this provision by filing on January 27, 2016, a letter from the Company's corporate management confirming the three percent increase effective January 1, 2016.

The Settlement provides that the Company shall maintain its existing arrearage management program and will continue to recover net incremental costs associated with administration of the program through its reconciling mechanism (Settlement at § 1.10).

Under the Settlement, the Company will use a composite property tax rate of 2.4386 percent to determine the property tax included within its Gas System Enhancement Plan filings (Settlement at § 1.11).

Pursuant to the Settlement, prior to the next winter heating season (November 2016-March 2017), the Company will provide public interest benefits of \$100,000 for incremental wireless heating controls and associated demand reduction programs<sup>12</sup> for low- and moderate-income residential gas heating consumers in its service territories in consultation with DOER and the Low-Income Network (Settlement at § 1.12).<sup>13</sup> No portion of this amount is recoverable from the Company's ratepayers (Settlement at § 1.12).

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<sup>12</sup> While the Settlement does not define "incremental" for purposes of this provision, the Department interprets this to mean that the \$100,000 in wireless heating controls and associated demand reduction programs will be in addition to any installations or programs proposed within the Company's 2016-2018 Three Year Energy Efficiency Plan, as approved in Liberty Utilities (New England Natural Gas Company) Corp., D.P.U. 15-163 (January 28, 2016). Additionally, the Settlement does not address the treatment of any energy efficiency savings or benefits related to these installations and programs. The Company should maintain a separate accounting for any costs, benefits, or savings associated with this \$100,000 in installations and programs.

<sup>13</sup> The Company shall submit, as part of its next base rate filing, a summary of the \$100,000 expenditures, including a breakdown of spending on the wireless heating controls and demand reduction programs instituted under the provision.

F. Settlement Conditions

The Settlement states that it: (1) shall not constitute an admission by any party that any allegation or contention in this proceeding is true or false; and (2) establishes no principles and, except as to those issues resolved by approval of this Settlement, shall not foreclose any party from making any contention in any future proceedings (Settlement at §§ 2.1-2.2). The Settlement provides that the settling parties agree that the content of Settlement negotiations, including work papers and documents produced in connection with the Settlement, is confidential (Settlement at § 2.3). The Settlement also states that all offers of settlement are without prejudice to the position of any party or participant presenting such offer or participating in such discussion and that the content of settlement negotiations are not to be used in any manner with these or other proceedings involving the parties to this Settlement (Settlement at § 2.3).

The settling parties state that the intent is for the Company's customers to receive the full benefit of the matters addressed in the Settlement, not any substitute regulatory treatment of lesser value, and that the terms of the Settlement shall not be interpreted to diminish the intended customer benefit (Settlement at § 2.4). The Settlement prohibits the Company from recovering more than once any charges collected under this Settlement or in any other rate, charge, or tariff the Company collects, and requires a full refund with interest as soon as reasonably possible in the event that such over-recovery is discovered (Settlement at § 2.8).

The terms of the Settlement provide that the Department shall have its usual jurisdiction to implement the terms of the Settlement (Settlement at § 2.7). The Settlement provides that

nothing in the Settlement shall be construed to limit the Attorney General's right to petition the Department for a review of the Company under G.L. c. 164, § 93, or other laws or regulations, or to pursue any cause of action related to the Settlement in court under G.L. c. 164, § 93A (Settlement at §§ 2.7, 2.9).

The Settlement provides that its provisions are not severable and that the Settlement is conditioned on approval in full by the Department (Settlement at § 2.5). The Settlement provides that it shall be effective upon its approval by the Department, and should the Department not approve the Settlement in its entirety by February 16, 2016, the Settlement states that it shall be deemed withdrawn and not constitute any part of the record in this proceeding or be used for any other purpose (Settlement at §§ 2.6, 2.10).

#### IV. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews all available information to ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Boston Edison Company, D.P.U. 92-130-D, at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. D.P.U. 95-104, at 15; D.P.U. 88-28/88-48/89-100, at 9.

It is well established that the Department's goals for utility rate structure are efficiency, simplicity, continuity, fairness, and earnings stability. D.P.U. 95-104, at 15; Bay State Gas

Company, D.P.U. 92-111, at 283 (1992); see also Massachusetts Electric Company, D.P.U. 95-40, at 144-45 (1995). The Department has previously accepted settlements which include cost allocation and/or rate design when such settlements were consistent with the Department's goals. D.P.U. 96-60; D.P.U. 96-70; D.P.U. 95-104, at 15; Massachusetts Electric Company, D.P.U. 91-52 (1991).

#### V. ANALYSIS AND FINDINGS

The Department has reviewed the Settlement and Amendment in light of the evidence regarding the appropriate revenue requirement for the Company, including the Company's initial filing and responses to information requests as well as the comments submitted in this proceeding. The Settlement and Amendment, taken as a whole, provides for a level of additional revenues and an allocation of costs that are consistent with findings that might reasonably have been made by the Department. Based on this review, the Department finds that the Settlement and its associated Amendment produces a level of revenues consistent with the establishment of just and reasonable rates and an allocation of costs consistent with the requirements of G.L. c. 164, § 94I. The Department therefore concludes that the Settlement and its associated Amendment is consistent with both applicable law and the public interest and results in just and reasonable rates because it represents a reasonable resolution of the many issues in this proceeding. NSTAR Electric Company, D.T.E. 03-121, at 49 (2004).<sup>14</sup>

Accordingly, the Settlement along with its associated Amendment is approved.

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<sup>14</sup> As the Department has noted in the past, the Settlement's confidentiality provision set out in the Settlement at § 2.3 does not bind the Department or preclude its inquiry as events may warrant. Cambridge Electric Light Company/Commonwealth Electric

In accordance with the terms of the Settlement, the Department's acceptance does not constitute a determination as to the merits of any allegations or contentions made in this proceeding not expressly covered by the Settlement. In addition, the Department's acceptance does not establish a precedent for future filings, whether ultimately settled or adjudicated.

This Order is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, and expressly does not form, and may not be considered to form, a contract binding on the Department or the Commonwealth of Massachusetts. In ruling on the Settlement, the Department has exercised its regulatory authority under G.L. c. 164, §§ 76, 94, and 94I; the Department's approval of the Settlement does not operate to make the Department a party to the Settlement.

Notwithstanding any agreements reached by the settling parties, the Department may enforce any of the commitments or obligations provided in the Settlement Agreement and the terms of this Order under its regulatory authority, including G.L. c. 165, § 4 and G.L. c. 164, §§ 76, 94, and 94I, and not as a matter of contract law.

With the approval of the Settlement, the Company is directed to file new tariffs to be effective March 1, 2016. The Department directs that the Company make such a compliance filing consistent with the terms of the Settlement.

## VI. ORDER

Accordingly, after due notice, public hearing, and consideration, it is

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Company, D.T.E. 04-114/03-118, at 6 n.4 (2005); Boston Edison Company, D.T.E. 03-117-A (Phase II) at 5. n.6 (2004). To the extent that the parties intend the assertion of confidentiality to be a motion for protective treatment, it is premature.



ORDERED: That the Joint Motion for Approval of Settlement Agreement, submitted by Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities, the Attorney General of the Commonwealth of Massachusetts, the Department of Energy Resources, and the Low-Income Weatherization and Fuel Assistance Program Network on December 15, 2015, is GRANTED and the Settlement Agreement, as amended on January 25, 2016, is therefore APPROVED; and it is

FURTHER ORDERED: That tariffs M.D.P.U. Nos. 1000C, 1001B, 1002I, 1003C through 1024C, and 1025A, filed by Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities on July 15, 2015, to become effective August 1, 2015, are DISALLOWED; and it is

FURTHER ORDERED: That Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities shall file new schedules of rates and charges as required by this Order and shall design all rates in compliance with this Order; and it is

FURTHER ORDERED: That Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities shall comply with all other orders and directives contained in this Order.

By Order of the Department,

/s/  
Angela M. O'Connor, Chairman

/s/  
Jolette A. Westbrook, Commissioner

/s/  
Robert E. Hayden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.