



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 17-GSEP-04

April 30, 2018

Petition of Liberty Utilities (New England Natural Gas Company) Corp. for Approval of its 2018 Gas System Enhancement Plan, pursuant to G.L. c. 164, § 145, for rates effective May 1, 2018.

APPEARANCES: Ronald J. Ritchie, Esq.
Liberty Utilities
36 Fifth Street, P.O. Box 911
Fall River, Massachusetts 02721

-and-

John K. Habib, Esq.
Matthew S. Stern, Esq.
Keegan Werlin LLP
99 High Street, 29th Floor
Boston, Massachusetts 02110

FOR: LIBERTY UTILITIES (NEW ENGLAND
NATURAL GAS COMPANY) CORP.
Petitioner

Maura Healey, Attorney General
Commonwealth of Massachusetts

By: William H. Stevens Jr.
Joseph Dorfler
Ashley Gagnon
Assistant Attorneys General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, Massachusetts 02108

Intervenor

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I. INTRODUCTION

On October 31, 2017, Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities (“Liberty” or “Company”), pursuant to G.L. c. 164, § 145 (“Section 145”), submitted to the Department of Public Utilities (“Department”) its 2018 gas system enhancement plan (“GSEP”) to replace aging or leaking natural gas pipeline infrastructure. In its initial filing, Liberty requested approval to collect \$5,346,380 through the gas system enhancement adjustment factors (“GSEAF”), for effect on May 1, 2018, to recover the cost to replace eligible leak-prone infrastructure through the end of calendar year 2018 (Exhs. LU-VPD-1, at 3; LU-VPD-2, at 1). The Company stated that its 2018 revenue requirement exceeded the 1.5 percent revenue cap by \$1,670,344, and thus, Liberty asked the Department to waive the cap to permit recovery of the full amount of estimated costs (Exhs. LU-VPD-1, at 4; LU-VPD-4, at 1). Additionally, the Company sought to collect \$832,569 through the GSEAF, representing the amount of revenue requirement deferred from the prior year’s GSEP as it exceeded the 1.5 percent revenue cap set forth in Section 145 (Exhs. LU-VPD-1, at 3; LU-VPD-2, at 1).

During the proceeding, Liberty recalculated its revenue requirement to reflect the reduction of the corporate income tax rate from 35 percent to 21 percent on certain aspects of its filing, as provided in the Tax Cuts and Jobs Act of 2017 (“Tax Act”), and arrived at a revenue requirement of \$4,963,513, reflecting a decrease of \$382,867 related to the Tax Act

(Exh. AG 2-1, Att., Sch. 1.1).¹ The revised revenue requirement would exceed the 1.5 percent revenue cap by \$1,287,477, and thus, the Company still asks the Department to waive the cap (see Exh. AG 2-1, Att., Sch. 1.1). Based on the Company's revised proposed revenue requirement of \$4,963,513, plus the deferred amount of \$832,569, Liberty proposes to implement the following GSEAF rates for each customer class (in dollars per therm): residential, \$0.1019; commercial and industrial ("C&I") – low load factor, \$0.0717; C&I – high load factor, \$0.0570.

The general terms of the Company's GSEP and the formula for calculation of its GSEAF are set forth in its Local Distribution Adjustment Clause ("LDAC") tariff, currently M.D.P.U. No. 1002L. As discussed in Section III.E, below, the Company proposes certain modifications to its LDAC tariff. The Department has docketed this matter as D.P.U. 17-GSEP-04.

On December 1, 2017, the Attorney General of the Commonwealth of Massachusetts ("Attorney General") submitted a notice of intervention pursuant to G.L. c. 12, § 11E(a). On December 6, 2017, pursuant to notice duly issued, the Department held a public hearing and procedural conference. In support of its GSEP filing, the Company sponsored the testimony of John L. Amorim, engineering supervisor for Liberty; Janet M. Simpson, partner at Dively and Associates, PLLC; and Vincent P. Duffy, director of regulatory affairs for Liberty. The Department held an evidentiary hearing on March 6, 2018. On March 23,

¹ On December 22, 2017, the Tax Act was signed into law. Pub. L. No. 115-97, 131 Stat. 2054: An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

2018, the Attorney General and the Company submitted initial briefs. On March 30, 2018, the Company submitted a reply brief.² The record consists of 73 exhibits and five responses to record requests.

II. STATUTORY REQUIREMENTS

Section 145 permits gas distribution companies to, in the interest of public safety and to reduce lost and unaccounted for natural gas, submit to the Department annual plans to repair or replace aging or leaking natural gas infrastructure.³ Any plan filed with the Department shall include, but not be limited to: (i) eligible infrastructure replacement of mains, services, meter sets, and other ancillary facilities composed of non-cathodically protected steel,⁴ cast iron,⁵ and wrought iron,⁶ prioritized to implement the federal gas

² The Attorney General did not submit a reply brief.

³ Section 145(a) defines eligible infrastructure replacement to be: “a replacement or an improvement of existing infrastructure of a gas company that: (i) is made on or after January 1, 2015; (ii) is designed to improve public safety or infrastructure reliability; (iii) does not increase the revenue of a gas company by connecting an improvement for a principal purpose of serving new customers; (iv) reduces, or has the potential to reduce, lost and unaccounted for natural gas through a reduction in natural gas system leaks; and (v) is not included in the current rate base of the gas company as determined in the gas company’s most recent rate proceeding.”

⁴ Cathodic protection is a technique to control the corrosion of metal surface by making the structure work as a cathode of an electrochemical cell. NACE International Standard Practice, SP0169-2007.

⁵ Applies to gray cast iron that is a cast ferrous material in which a major part of the carbon content occurs as free carbon in the form of flakes interspersed through the metal. Because the carbon flakes do not bond with the ferrous material on the molecular level, the metal is brittle and susceptible to stress cracking under pressure situations. American Gas Association, Gas Piping Technology Committee.

distribution pipeline integrity management plan (“DIMP”) annually submitted to the Department, and consistent with 49 C.F.R. §§ 149.1001 through 149.1015; (ii) an anticipated timeline for the completion of each project; (iii) the estimated cost of each project; (iv) rate change requests; (v) a description of customer costs and benefits under the plan; and (vi) any other information the Department considers necessary to evaluate the plan. Section 145(c). Annual changes in the revenue requirement eligible for recovery pursuant to the plan shall not exceed (i) 1.5 percent of the gas company’s most recent calendar year total firm revenues, including gas revenues attributable to sales and transportation customers, or (ii) an amount determined by the Department that is greater than 1.5 percent of the gas company’s most recent calendar year total firm revenues, including gas revenues attributable to sales and transportation customers. Section 145(f).⁷

The Department may modify a plan prior to approval at the request of a gas company, or make other modifications to a plan as a condition of approval. Section 145(d).⁸ The Department is required to consider the costs and benefits of the plan including, but not

⁶ Together with cast iron, wrought iron pipelines are among the oldest energy pipelines constructed in the United States. The degrading nature of iron alloys, the age of the pipelines, and pipe joints design have greatly increased the risk involved with continued use of such pipelines. https://opsweb.phmsa.dot.gov/pipeline_replacement/

⁷ The revenue requirement includes depreciation expense, property taxes, and a return on investment associated with the plan. Section 145(e). Any revenue requirement approved by the Department in excess of such cap may be deferred for recovery in the following year. Section 145(f).

⁸ If a gas company files a plan on or before October 31 for the subsequent construction year, the Department must review the plan within six months. Section 145(d). The plan is effective as of the date of filing, pending Department review. Section 145(d).

limited to, impacts on ratepayers, reductions of lost and unaccounted for natural gas through a reduction in natural gas system leaks, and improvements to public safety. Section 145(d). The Department is also required to give priority to plans narrowly tailored to addressing leak-prone infrastructure most immediately in need of replacement. Section 145(d).

If a plan complies with Section 145, and the Department determines that it reasonably accelerates eligible infrastructure replacement and provides benefits to customers, the Department must preliminarily accept the plan either in whole or in part. Section 145(e). The gas distribution company may begin recovering the plan revenue requirement beginning on May 1 of the year following submission of the plan. Section 145(e). Subsequently, on or before May 1 of each year, the gas distribution company must file final project documentation for construction completed the previous calendar year in order to demonstrate substantial compliance with the plan, and to demonstrate that the costs were reasonably and prudently incurred. Section 145(f).

III. GAS SYSTEM ENHANCEMENT PLAN

A. Introduction

Liberty distributes natural gas to approximately 55,440 customers in the Fall River, North Attleboro, Plainville, Swansea, Somerset, and Westport communities of Massachusetts (Exh. LU-JLA-2, at 3). As of December 31, 2016, approximately 14.41 percent of the mains on Liberty's distribution system is composed of non-cathodically protected steel and approximately 18.24 percent is composed of smaller diameter cast iron and wrought iron, which means that slightly less than one-third (32.65 percent) of the system is composed of

relatively higher risk materials (Exh. LU-JLA-2, at 4). With large diameter cast iron mains included, approximately 33.4 percent of the distribution system qualifies as “leak prone” by industry standards (Exh. LU-JLA-2, at 4). Approximately 32 percent of the services existing on the Company’s distribution system are composed of non-cathodically protected steel (Exh. LU-JLA-2, at 4).

Under the GSEP, Liberty anticipates replacing over 210 miles of leak-prone or “Priority Main” on the Company’s system over a 20-year period (Exh. LU-JLA-2, at 6). Work to replace that amount of Priority Main will also encompass the replacement of approximately 11,706 leak-prone services, connected meter sets, and the completion of all necessary tie-overs (i.e., connection of services that are already built to current-day standards to new replacement main) (Exh. LU-JLA-2, at 6). Based on 2012-2016 results, the Company’s data indicates that if unprotected steel and cast iron mains were replaced or retired, an average of approximately 88 percent of the Company’s leaks discovered during that five-year window would have been avoided (Exh. LU-JLA-2, at 6). Liberty proposed to retire 14.54 miles of leak prone mains and 799 associated services in 2017 (Exhs. AG 1-6; AG 1-7). At the time of its GSEP filing, while the 2017 construction season was not yet complete, the Company stated that it had retired 4.99 miles of leak-prone mains and 231 associated services through the end of August 2017 (Exh. LU-JLA-2, at 2). In 2018, the Company anticipates replacing approximately 14.5 miles of leak-prone mains and 700 leak-prone services (Exh. LU-JLA-2, at 8).

The Attorney General raised issues regarding flow back of excess deferred income taxes, waiver of the 1.5 percent cap, and certain of the Company's proposed tariff revisions. We turn now to address the Attorney General's issues.

B. Revenue Requirement Calculation

1. Introduction

In its initial filing, Liberty presented its 2018 estimated GSEP revenue requirement and its proposed GSEAFs. The Company proposed a 2018 estimated GSEP revenue requirement of \$5,346,380 (Exh. LU-JMS-2, Sch. 1.1). During the proceeding, Liberty reduced its proposal based on the reduction in the federal corporate income tax rate relating to the Tax Act. Under its revised proposal, the Company proposes a 2018 estimated GSEP revenue requirement of \$4,963,513 (Exh. AG 2-1). The Attorney General raises concerns regarding the Company's revenue requirement calculation as it relates to the newly enacted Tax Act.

2. Positions of the Parties

a. Attorney General

The Attorney General maintains that Liberty's 2018 estimated GSEP revenue requirement fails to consider all of the reductions associated with the Tax Act (Attorney General Brief at 2). The Attorney General recognizes that the Company proposes to decrease its revenue requirement to reflect the effects of the lower federal corporate income tax rate on the level of current normalized income taxes (Attorney General Brief at 2, citing Exh. AG 2-1). Nonetheless, the Attorney General asserts that the Company's proposal fails

to reflect the required flow back of the balances of excess deferred federal income taxes that were created by the Tax Act (Attorney General Brief at 2-3, citing Exhs. AG 2-1; AG 2-4). The Attorney General calculates that the Company's revenue requirement should be reduced by \$516,170 (Attorney General Brief at 2-3, citing Exhs. AG 2-1; AG 2-4). The Attorney General maintains that there is no harm in requiring the Company to reduce its revenue requirement based on the estimated amount because the GSEP revenue requirement and its various components are themselves estimates (Attorney General Brief at 3).

b. Company

The Company states that it does not object to recalculating its revenue requirement to reflect the reduced corporate income tax rate of 21 percent, pursuant to the Tax Act (Company Reply Brief at 3). Liberty maintains that the Department should not require any further adjustment to the Company's proposed revenue requirement based on the Tax Act (Company Reply Brief at 3). The Company contends that the Attorney General's recommendation to flow back excess deferred income taxes is inconsistent with the LDAC tariff as the tariff does not support a separate calculation of income expense (Company Reply Brief at 3, citing Exh. AG 2-4; Tr. at 35-36). In addition, Liberty maintains that a determination regarding the appropriate flow back of excess deferred federal income taxes is more appropriately reserved for the Company's next base distribution rate case or the ongoing investigation opened by the Department into the impact of the Tax Act, i.e., Investigation into Effect of Reduction in Federal Income Tax Rates, D.P.U. 18-15 (Company Reply Brief at 3-4). Finally, Liberty maintains that the Attorney General's proposal to use

the Company's high-level, rough estimate of the excess deferred taxes would ultimately lead to an inaccurate result (Company Reply Brief at 4-5, citing Exh. AG 2-4; Tr. at 36).

3. Analysis and Findings

Effective January 1, 2018, the Tax Act reduced the federal corporate income tax rate from 35 percent to 21 percent. D.P.U. 18-15, at 1. Because the federal corporate income tax rate is implicated in numerous factors that comprise regulated companies' costs of service and revenues, the Department determined that the reduction in the federal corporate income tax rate has implications for the investor-owned electric distribution, natural gas distribution, and water companies under the Department's jurisdiction. D.P.U. 18-15, at 1, 4-6. To ensure that ratepayers receive the benefits from the decrease in the federal corporate income tax rate, the Department opened an investigation into the effect of the decrease in the federal corporate income tax rate on the rates charged by the Department's regulated utilities. D.P.U. 18-15, Order Opening Investigation (February 2, 2018).

In this proceeding, Liberty has proposed to reduce its revenue requirement based on a straight calculation of the change to the corporate income tax rate from 35 percent to 21 percent (Exh. AG 2-1, Att.). The Department has reviewed the Company's calculations and supporting documentation with respect to the revised normalized level of federal corporate income taxes, and we find that Liberty's proposed adjustment is appropriate (Exh. AG 2-1, Att.). With respect to the Attorney General's request to require the Company to implement further adjustments related to excess deferred income tax, we find that it is premature for the Company to make such changes in the GSEP at this time. To the extent

feasible, the Department intends to resolve all remaining issues related to the Tax Act in D.P.U. 18-15. See D.P.U. 18-15, at 4-7. While the reduction of the federal corporate income tax rate from 35 percent to 21 percent is a straightforward calculation, the excess deferred income tax requires more complex calculations. Additionally, the Tax Act itself is lengthy and complex.⁹ The Department must strike an appropriate balance between allowing a reasonable amount of time to review the Tax Act and implementing any changes imposed by the Tax Act. Thus, for any remaining issues relating to the Tax Act, we will rely on the ongoing proceeding in D.P.U. 18-15 where the Department will determine the impact of the Tax Act on various aspects of a company's revenue requirement. On conclusion of D.P.U. 18-15, the Department will reconcile any impact of the Tax Act in the following GSEP or GSEP reconciliation ("GREC") proceeding. To ensure that there is no harm to ratepayers, the Department expects that any impact of the Tax Act will be retroactive to January 1, 2018, i.e., the effective date of the Tax Act.

C. GSEP Revenue Cap

1. Introduction

Section 145(f) provides, in part, that "[a]nnual changes in the revenue requirement eligible for recovery shall not exceed (i) 1.5 percent of the gas company's most recent calendar year total firm revenues, including gas revenues attributable to sales and

⁹ The Tax Act makes significant revisions to the Internal Revenue Code affecting individual, estate, and corporate taxes. Together with the Joint Explanatory Statement of the Committee of Conference, the Tax Act is 1,097 pages.

transportation customers.”¹⁰ Liberty’s total firm revenues for calendar year 2016 were \$49,848,469, yielding a cap of \$747,727 on the incremental GSEP revenue requirement eligible for recovery (Exh. LU-VPD-2, at 1). Liberty’s revised 2018 estimated GSEP revenue requirement of \$4,963,513, less the 2017 GSEP revenue requirement of \$2,928,309, represents an incremental revenue requirement increase of \$2,035,204 (Exhs. LU-VPD-2, at 1; AG 2-1, Att., Sch. 1.1). Consequently, Liberty’s proposed 2018 GSEP revenue requirement exceeds its calculated revenue cap by \$1,287,477.¹¹ Liberty requests that the Department grant a waiver of the revenue cap to allow Liberty to include the full proposed 2018 estimated GSEP revenue requirement of \$4,963,513, plus the deferred amount of \$832,569, in its GSEAFs effective May 1, 2018 (Company Reply Brief at 3).

2. Positions of the Parties

a. Attorney General

The Attorney General argues that the Department should deny Liberty’s request to waive the 1.5 percent cap (Attorney General Brief at 7). The Attorney General first asserts that the Company could keep its annual increase in the GSEP charge to a level under the cap by replacing GSEP-eligible infrastructure at a rate of about 11.4 miles of main and 650 services per annum, while still meeting the 20-year timeline (Attorney General Brief at 4 & n.1). In the alternative, the Attorney General requests that the Department look to the

¹⁰ Sales customers receive gas supply and delivery services from an LDC.
Transportation customers receive only delivery services from an LDC.

¹¹ $\$2,035,204 - \$747,727 = \$1,287,477$

intent of the Legislature when considering a waiver of the cap (Attorney General Brief at 5).

The Attorney General argues that the Department has determined that Section 145 is clear and unambiguous, demonstrating the Legislature's intent for the revenue requirement to remain below 1.5 percent of calendar year total firm revenues (Attorney General Brief at 5, citing Boston Gas Company/Colonial Gas Company, D.P.U. 14-134, at 102-104 (2015)).

Further, the Attorney General requests that the Department balance the impact on ratepayers and the sufficiency of the Company's justification for exceeding the cap (Attorney General Brief at 5-6). The Attorney General argues that a cap is necessary to reach a balance between capital funding and ratepayer protection (Attorney General Brief at 6). She adds that the cap does not impose any limit on the level of capital investment that the Company can undertake in any given year (Attorney General Brief at 6). Accordingly, the Attorney General requests that the Department deny Liberty's request for a waiver of the 1.5 percent cap and instead defer the excess, or direct the Company to file a new timeline (Attorney General Brief at 7).

b. Company

Liberty argues that the Department should reject the Attorney General's recommendations and allow the Company's request for a waiver of the cap (Company Reply Brief at 6). The Company also claims that the Attorney General's recommendations should be denied as they are inconsistent with Section 145, punitive towards the Company's efforts to address emissions, and harmful to customers (Company Reply Brief at 6).

Liberty also claims that there are multiple flaws in the Attorney General's assertion that the Company should manage its rate of replacement to avoid going over the cap (Company Reply Brief at 7-8). Specifically, Liberty contends that the Attorney General's recommendation to slow the pace of replacement despite the approved timeline is based purely on the calculation of an average replacement rate over the remaining term of the GSEP from 2016, without any supporting testimony or further analysis of the overall GSEP (Company Reply Brief at 7, citing AGO Brief at 4, n.1). The Company further notes that, at a minimum, such calculations do not include variables such as weather, permitting delays, or unforeseen circumstances (Company Reply Brief at 7, citing Exhs. LU-JLA-2, Section III.B at 10; DPU 2-1).

Liberty further argues that decelerating GSEP replacement rates will prevent the Company from complying with Massachusetts Department of Environmental Protection ("MADEP") regulations designed to reduce methane emissions (Company Reply Brief at 7). Liberty claims that the emissions limits developed in conjunction with MADEP are based on figures presented in Liberty Utilities (New England Natural Gas Company) Corp., D.P.U. 16-GSEP-04 (2017), and decelerating replacement activities could result in administrative penalties (Company Reply Brief at 7-8, citing 310 CMR 7.73(8)(b)).

Finally, Liberty contends that the Attorney General's proposal would be detrimental to customers (Company Reply Brief at 8). The Company explains that if the cap is imposed, the Company would be required to defer a total of \$2,120,046 (representing the 2018 deferral of \$1,287,477 plus the prior year's deferral of \$832,569), which is a significant shortfall

considering that the total allowable recovery during the 2018-2019 period is \$3,676,036 (Company Reply Brief at 8, citing Exh. LU-VPD-1, at 4). The Company argues that this would also represent a significant balance that would be deferred to customers' rates in future years, despite the Department's acknowledgement that avoiding deferrals is a positive outcome to granting a waiver from the cap (Company Reply Brief at 8, citing Boston Gas Company/Colonial Gas Company, D.P.U. 17-GREC-03, at 30 (2017)).

3. Analysis and Findings

Section 145(f) sets a 1.5 percent cap on the annual change in the revenue requirement eligible for recovery. Section 145(f) also provides that the Department may determine an annual change in the revenue requirement eligible for recovery greater than the 1.5 percent cap. In the instant proceeding, Liberty requests that the Department waive the 1.5 percent cap and approve recovery of \$1,287,477 above its allowed incremental revenue requirement increase of \$747,727, plus the deferred amount of \$832,569 (Exhs. LU-VPD-1, at 4; AG 2-1, Att.).

Although the purpose of Section 145 is to accelerate the replacement of leak-prone infrastructure as well as accelerate the recovery of associated costs for LDCs, the 1.5 percent cap acts as a balance on potential bill impacts upon ratepayers. Therefore, to the extent exogenous constraints allow, the Department expects the Company to manage its accelerated replacement in a manner that results in a revenue requirement under the 1.5 percent cap and completes replacement within established timelines. The Department acknowledges that Liberty Utilities has now submitted four years of GSEP cost estimates. The Department

notes, however, that the GSEP process is still relatively new and revenue requirement estimates have not fully established a reliable history. The Department affirms the finding made in D.P.U. 16-GSEP-04, at 23, that the Company's 2018 GSEP revenue requirements represent estimated costs that will not be finalized until the Company's GREC proceeding beginning May 1, 2019. Accordingly, the Department remains concerned about the limited data available to support the correlation between a particular year's estimated GSEP revenue requirement and the corresponding actual GSEP revenue requirement. The Department will continue to monitor this relationship as more data continues to accumulate, and may revisit this issue in future filings if facts and circumstances so warrant.

Further, the Department has opened a general proceeding into the potential effect of the Tax Act on the Company's rates. D.P.U. 18-15. As determined in Section III.B.3, above, the Department allows the Company's proposed adjustment based on certain changes in the Tax Act. Nonetheless, the Tax Act could have an additional impact on Liberty's CY 2018 revenue requirement. The Department concludes that additional Tax Act adjustments, such as those related to excess deferred income taxes, may bring the Company below its estimates by the time of reconciliation. Therefore, the Department is not convinced that current projections accurately represent a need for a cap waiver.

Finally, the Department notes that next year marks the first five-year review of the Company's GSEP program, at which time the Company will file a summary of its completed work and an updated summary of work to be completed in the next five years. At the time of that filing, the Company will have had four years of experience in refining estimated

costs. Additionally, we anticipate that any further adjustments that stem from the Tax Act will likely be resolved. The Department recognizes that this juncture may be an appropriate time to evaluate the performance of the GSEP so far, identify any persistent exogenous constraints the Company expects to face going forward, and address how best to manage issues regarding the revenue requirement cap and overall replacement timeline.

For the reasons stated above, the Department denies the Company's request for a waiver from the 1.5 percent revenue cap. Therefore, the Department directs Liberty to limit incremental GSEP revenue requirement increases to 1.5 percent of its most recent calendar year total firm revenues, including gas revenues attributable to sales and transportation customers.

D. Conclusion on 2018 GSEP

Based on the Department's review of the record in this proceeding, and to the extent not otherwise addressed above, we find that the Company's 2018 GSEP complies with the requirements set forth in Section 145. Accordingly, the Department approves, except as noted above, Liberty's 2018 GSEP, for effect May 1, 2018. Based on the foregoing, the Department allows Liberty a 2018 revenue requirement of \$3,676,036, which comprises the Company's proposed revenue requirement of \$4,963,513 less the cap overage of \$1,287,477. Based on the allowed revenue requirement of \$3,676,036, the allowed GSEAFs are \$0.0646 per therm, \$0.0455 per therm, and \$0.0362 per therm for residential customers, C&I – low load factor customers, and C&I – high load factor customers, respectively (Exh. LU-VPD-2, at 1).

E. Proposed Tariff Changes

1. Introduction

The Company proposes several edits to the GSEP provisions of its LDAC tariff (Exh. LU-VPD-1, at 8). First, the Company proposes to revise the definition of GSEP-eligible existing infrastructure to include the replacement of sections of plastic and cathodically protected steel main, known as incidental pipe (Exhs. LU-VPD-1, at 9; LU-VPD-6, § 1.11(D)(6)). Liberty Utilities (New England Natural Gas Company) Corp., D.P.U. 17-GREC-04, at 11-12 (2017). Second, the Company proposes to change its tariff to include the recovery of costs associated with the repair of Grade 3 gas leaks with significant environmental impact (“G3SEI leaks”) (Exhs. LU-VPD-1, at 9; LU-VPD-6, § 1.11(A)). Third, the Company proposes a revision to allow for the replacement of copper services as a part of its GSEP (Exh. LU-VPD-6, §§ 1.11(D)(6); 1.11(K)(1)(a)). Fourth, Liberty proposes alterations to its calculations of the GSEP revenue requirement, rate base, depreciation, gross plant, and accumulated deferred income taxes so that these amounts are estimated by month rather than by year (Exh. LU-VPD-6, § 1.11(D)(15), 1.11(E)). Fifth, Liberty proposes edits to separate the GREC filing from the Company’s local distribution adjustment factor (“LDAF”) filing to recognize that the GREC filing is due annually on or before May 1st, while the LDAF filing is due annually 90 days prior to November 1st (Exh. LU-VPD-6, §§ 1.11(K)(3), 1.17). Finally, Liberty proposes a revision to clarify how the GSEP cap is calculated (Exh. LU-VPD-6, § 1.11(H)(1)).

2. Positions of the Parties

a. Attorney General

First, the Attorney General argues that the Department should stay approval of the Company's proposed incidental pipe revision of the tariff, stating that this is not the appropriate forum in which to establish tariff language with respect to the classification and cost recovery of incidental pipe (Attorney General Brief at 11). The Attorney General further recommends that, should the Department consider the proposed tariff change, the Department should reject the proposed revision to the definition of "Existing Infrastructure" because it would circumvent the Department's direction to the Company to propose a strategy related to incidental pipe in its May 1, 2018 GREC filing (Attorney General Brief at 11-12). The Attorney General asserts that although the Department has recognized that the replacement of "incidental pipe" may be necessary for cost-effectiveness reasons, the Department has found that incidental pipe is not GSEP-eligible infrastructure (Attorney General Brief at 11, citing D.P.U. 17-GREC-04, at 10-14).

Additionally, if the Department considers the proposed change to the definition of "Existing Infrastructure" in the instant proceeding, the Attorney General contends that the Department should reject it because it is incorrect and contrary to Section 145 (Attorney General Brief at 11-12). According to the Attorney General, the Company's proposed definition of "Existing Infrastructure" would constitute an improper expansion of Section 145 (Attorney General Brief at 12, citing ENGIE Gas & LNG LLC v. Department of Public Utilities, 475 Mass. 191, 205 (2016)).

Next, the Attorney General argues that Liberty's proposed changes to the tariff to allow for the recovery of G3SEI leaks are premature because the Department has not yet issued an order in its current rulemaking, Gas Leak Regulations, D.P.U. 16-31-B,¹² which includes regulations regarding the identification and repair of G3SEI leaks (Attorney General Brief at 8). The Attorney General asserts that if the Department approves the changes to the tariff, the Department should modify the language regarding G3SEI leak remediation to ensure that the Company recovers only its incremental G3SEI remediation costs pursuant to appropriate ratemaking treatment (Attorney General Brief at 8-9). In addition, the Attorney General proposes that the tariff be modified to require the Company to: (1) incorporate specific G3SEI leak identification procedures into the Company's operation and maintenance ("O&M") procedural manuals; and (2) incorporate the data derived from the G3SEI identification procedures into the Company's Distribution Integrity Management Plan ("DIMP") (Attorney General Brief at 9-10). The Attorney General did not address the remaining proposed tariff revisions on brief.

b. Company

The Company first argues that the Department views the GSEP as the proper forum in which to address proposed changes to the LDAC tariff (Company Reply Brief at 13, citing

¹² Pursuant to St. 2014, c. 149, § 2, An Act Relative to Natural Gas Leaks, the Department commenced the D.P.U. 16-31 rulemaking to promulgate regulations necessary to implement uniform natural gas leak classifications and to oversee and monitor gas companies' response and reporting. Subsequently, the Department added proposed regulations to address the identification and repair of G3SEI leaks, pursuant to St. 2016, c. 188, § 13, An Act to Promote Energy Diversity.

D.P.U. 17-GREC-04, at 30 n.11). The Company further claims that the Department has recognized that “incidental pipe” replacement or retirement may be a necessary component of a GSEP project, to render it operational or more cost-effective, and thus the Department sought more information on how the Company determines whether to replace or retire incidental pipe (Company Reply Brief at 14, citing D.P.U. 17-GREC-04, at 10-11). Further, the Company argues that the proposed revisions are not contrary to the Department’s findings in D.P.U. 17-GREC-04 or to Section 145, nor do they enable the Company to include the replacement or retirement of plastic or cathodically protected steel under the GSEP as leak-prone infrastructure or excuse the Company from providing the necessary documentation to justify its decisions (Company Reply Brief at 14-15). Liberty also notes that the proposed revision is entirely consistent with engineering practices that the Department has previously approved in the Company’s GSEP and targeted infrastructure replacement factor programs (Company Reply Brief at 15, citing D.P.U. 17-GREC-04, at 11). Thus, the Company contends that the Department should approve the proposed tariff change as consistent with the Department’s directives and Section 145 (Company Reply Brief at 15).

Next, regarding recovery for the G3SEI leak repair costs, the Company affirms that it will submit final project documentation for G3SEI leak repairs in its May 2019 GREC to demonstrate the reasonableness and prudence of the associated costs (Company Reply Brief at 9, citing Exh. LU-VPD-1, at 11). Further, Liberty asserts that the proposed tariff change is entirely consistent with the Attorney General’s requests regarding the application of appropriate ratemaking treatment and incremental cost recovery for G3SEI leak repairs

(Company Reply Brief at 10-11, citing Exhs. LU-VPD-1, at 10; LU-VPD-6, Rev. at 41-42; Tr. at 31-32). The Company points out that the proposed tariff language will require the Company to file documentation: (1) to demonstrate that G3SEI leak repair costs are reasonably and prudently incurred; (b) to identify whether the costs associated with each reported G3SEI leak are related to repair or replacement of Existing Infrastructure; and (c) to identify whether the capital cost is included in the GSEP revenue requirement subject to the revenue cap or included in eligible G3SEI O&M costs recoverable outside of the revenue cap (Company Reply Brief at 11, citing Exh. LU-VPD-6, Rev. at 42).

Regarding the Attorney General's recommendation to include the methods and procedures for identifying and remediating G3SEI leaks in the Company's O&M procedures, the Company maintains that it will finalize and implement its procedures once the final regulations in D.P.U. 16-31 are promulgated (Company Reply Brief at 12). As for the Attorney General's recommendation to incorporate G3SEI leak information in the DIMP, the Company challenges the propriety of including such information in the DIMP because the prioritization of G3SEI leaks, which are not hazardous to persons or property, may not fit within the risk-based assessment categories under the DIMP (Company Reply Brief at 12-13, citing Exh. LU-VPD-2, at 17). Finally, the Company states that its tariff changes regarding the calculation of the GSEP revenue requirement on a monthly basis rather than by year were made primarily to comply with the Department's directives in D.P.U. 16-GSEP-04 (Company Brief at 17).

3. Analysis and Findings

In D.P.U. 17-GREC-04, at 12, the Department directed the Company to propose a strategy for the treatment of incidental pipe in its May 1, 2018 GREC filing. Rather than proposing a specific procedure for including and, where applicable, excluding costs associated with incidental pipe in its May 1, 2018 GREC filing, the Company has proposed in this proceeding to simply change the definition of “existing infrastructure” to allow recovery of costs associated with the replacement of incidental pipe (Exh. LU-VPD-6, at 23). At this time, in the absence of a specific proposal for the treatment of incidental pipe in the context of the GSEP, the Department finds that approval of the Company’s proposed tariff change is premature. Therefore, the Department denies the Company’s proposed revision to the definition of “Existing Infrastructure” in its LDAC tariff. Moreover, where the Company’s proposed definition would depart from the statutory definition of eligible infrastructure contained in Section 145, the Department would not be inclined to accept the proposed definition change. Rather, following consideration of a specific procedure for the treatment of incidental pipe, the Department would expect a more targeted proposal to incorporate approved procedures and cost recovery associated with incidental pipe in the Company’s tariff.

As previously indicated, the Department expects the Company to propose a specific procedure for including and, when applicable, excluding costs associated with retiring and replacing existing infrastructure in the GSEP mechanism, including policies established to ensure that substantial plastic and cathodically protected steel main replacements are not

included for recovery in the GSEP mechanism. D.P.U. 17-GREC-04, at 12. Nevertheless, the Department has previously stated that any tariff change is best handled in the GSEP proceedings. D.P.U. 17-GREC-04, at 30 n.11; NSTAR Gas Company, D.P.U. 16-GREC-06, at 28 n.16 (2016). Therefore, only after the Company proposes the specific procedures previously directed by the Department as part of its May 1, 2018 GREC filing should the Company include proposed tariff changes related to the inclusion and, where applicable, exclusion of “incidental pipe” in its LDAC tariff.

As noted above, Liberty has not yet developed a reasonable estimate of the number of G3SEI leaks to be repaired in 2018 or their associated repair costs (Exh. LU-VPD-1, at 11). Nevertheless, where the Department has not yet issued final regulations in the D.P.U. 16-31 rulemaking regarding the methods for identifying and remediating G3SEI leaks, it is premature for the Department to approve any changes to the Company’s tariff regarding the G3SEI leaks or to require the Company to amend its O&M manual or its DIMP pending the approval of final regulations in D.P.U. 16-31. After the regulations are finalized in D.P.U. 16-31, the Department will then address the proper ratemaking treatment and other tariff modifications related to G3SEI leaks.

Liberty also proposed tariff revisions to include the replacement of copper services as part of its GSEP plan (Exh. LU-VPD-6, § 1.11(H)(1)). The Department has previously disallowed costs related to the replacement of copper services where a company’s tariff did not include copper as an eligible infrastructure. D.P.U. 16-GREC-06, at 11-12; see also NSTAR Gas Company, D.P.U. 17-GREC-06, at 16 & n.15 (2017). The Department

directed NSTAR Gas Company to propose a revision to its LDAC tariff if it sought to include costs related to the replacement of copper services in the GSEP, which it has done. NSTAR Gas Company, D.P.U. 17-GSEP-06, at 21 (April 30, 2018); D.P.U. 17-GREC-06, at 16 n.15; D.P.U. 16-GREC-06, at 11-12. In addition, we note that other LDCs have provided testimony that while copper itself is not as susceptible to corrosion as steel, it contains steel components that are, and therefore copper services should be considered leak-prone pipe and appropriate for inclusion in the tariff. Bay State Gas Company, D.P.U. 17-GSEP-05, at 26-27, 29 (April 30, 2018). After review of Liberty's proposal, and an examination of other LDC's GSEP practices, we find that the tariff revisions regarding the inclusion of copper services as GSEP-eligible infrastructure are reasonable.

Regarding the changes to its revenue requirement calculation, the Department had previously accepted the Company's proposal to work with other GSEP-eligible LDCs to propose amended tariffs to estimate the GSEP revenue requirement using monthly averages, rather than using beginning- and end-of-year plant balances. D.P.U. 16-GSEP-04, at 13-15. Accordingly, the Department finds that the proposed revisions to the Company's tariff regarding the calculation method of the GSEP revenue requirement are reasonable.

The Company also proposed tariff changes to recognize that the difference in timing of the GREC filing and the LDAF filing does not allow both filings to be submitted simultaneously (Exh. LU-VPD-6, §§ 1.11(K)(3), 1.17). After the Department's review, we find these revisions to the LDAC tariff to be reasonable.

Finally, the Company proposed revisions to the calculation of the GSEP revenue cap (Exh. LU-VPD-6, § 1.11(E)). The Department previously determined that it may be appropriate to revise the Company's tariff language to clarify that the recovery of the annual gas system enhancement reconciliation adjustment factor that may be billed in any year beginning in November 1 will be limited by the difference between the GSEP cap and the annual change in the GSEP recovery. D.P.U. 17-GREC-04, at 30 n.11. We find that, here, Liberty has appropriately revised its tariff language to be consistent with Department precedent.

Based on the foregoing, the Department rejects the Company's proposal to revise its tariff relating to incidental pipe and the recovery of costs for G3SEI leaks, and finds that Liberty's proposed tariff revisions relating to copper services, the calculation of its revenue requirement using monthly averages for plant balances, the timing and treatment of the GREC filing in coordination with the LDAF filing, and the calculation of the GSEP revenue cap are allowed. The Department directs the Company to submit a compliance tariff that incorporates the approved revisions to its LDAC tariff within five business days of the issuance of this Order.

IV. ORDER

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

ORDERED: That the petition of Liberty Utilities (New England Natural Gas Company) Corp. for approval of a 2018 gas system enhancement plan, as modified, is APPROVED; and it is

FURTHER ORDERED: That the gas system enhancement adjustment factors of Liberty Utilities (New England Natural Gas Company) Corp. in the amounts of \$0.1019 per therm, \$0.0717 per therm, and \$0.0570 per therm for the residential, commercial and industrial low load factor, and commercial and industrial high load factor customers, respectively, to take effect May 1, 2018, are DENIED; and it is

FURTHER ORDERED: That the gas system enhancement adjustment factors of Liberty Utilities (New England Natural Gas Company) Corp. in the amounts of \$0.0646 per therm, \$0.0455 per therm, and \$0.0362 per therm for the residential, commercial and industrial low load factor, and commercial and industrial high load factor customers, respectively, to take effect May 1, 2018, are APPROVED, subject to further review and investigation; and it is

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

By Order of the Department,

/s/

Angela M. O'Connor, Chairman

/s/

Robert E. Hayden, Commissioner

/s/

Cecile M. Fraser, 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.