

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  LIBERTY UTILITIES (MIDSTATES NATURAL GAS) CORP., d/b/a LIBERTY UTILITIES	DOCKET NOS. TF-2017-0205, RPU-2016-0003
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**ORDER REJECTING TARIFF REVISION AND  
APPROVING PROPOSED CUSTOMER NOTICE WITH MODIFICATION**

(Issued September 7, 2017)

**BACKGROUND**

On July 25, 2016, Liberty Utilities (Midstates Natural Gas) Corp., d/b/a Liberty Utilities (Liberty), filed with the Utilities Board (Board) an application to increase its annual Iowa gas revenues by approximately \$1 million and to change its rate design. The rate increase application was identified as Docket No. RPU-2016-0003. On February 17, 2017, Liberty, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and intervening parties the City of Keokuk (Keokuk) and Roquette America filed a joint unanimous settlement which resolved all issues among all parties except for the amount of rate case expense to be recovered by Liberty. On April 28, 2017, the Board issued an “Order Approving Settlement with Reporting Requirement, Denying Motion to Strike, and Addressing Rate Case Expense” (Final Order). In the Final Order, the Board disallowed \$25,000 of Liberty’s reported actual rate case expenses and approved Liberty’s recovery over a seven-year period of

\$814,643 of rate case expense through the use of a rider (the Regulatory Expense Surcharge). (Final Order, p. 35.)

In the rate case proceeding, Liberty explained it intended to contact all of its customers before October 2017 about the rate increase under the Settlement. The Board directed Liberty to prepare a written notice form to be delivered to its customers and to file with the Board a proposed form of notice not less than 30 days before sending the notice to customers. (Final Order, p. 22; Ordering Clause No. 8, pp. 37-38.)

On May 16, 2017, Keokuk filed a motion asking the Board to grant rehearing on the question of whether Liberty's rate case expenses approved by the Board were reasonable and just under Iowa Code § 476.6(5). On June 9, 2017, the Board issued an order denying the motion for rehearing.

On June 16, 2017, Keokuk filed a Petition for Judicial Review in the Iowa District Court for Polk County seeking review of the Board's Final Order and order denying rehearing. OCA has intervened in support of Keokuk's Petition for Judicial Review.

#### **LIBERTY'S TARIFF REVISION AND PROPOSED CUSTOMER NOTICE**

On August 11, 2017, Liberty filed a revised Regulatory Expense Surcharge Tariff identified as TF-2017-0205. Liberty explains it is revising Tariff Sheet No. 15A to notify customers that the Regulatory Expense Surcharge may increase pursuant to Iowa Code § 476.18 as a result of the appeal.

On August 24, 2017, Liberty filed a “Petition for Approval of Customer Notice” and a proposed form of the customer notice (Proposed Customer Notice). Liberty explains that the Proposed Customer Notice provides information about the rate case and the final rate increase that went into effect in June 2017. The Proposed Customer Notice includes a table with information about the monthly delivery and distribution commodity charges by customer type and statements about the Regulatory Expense Surcharge. The Proposed Customer Notice also provides information about how customers can save energy, reduce their energy bills, and obtain assistance paying their energy bills, among other types of information.

On August 30, 2017, OCA filed an “Objection to Proposed Tariff Revisions and Customer Notice” (Objection). OCA objects to the proposed tariff revisions and related portions of the Proposed Customer Notice. According to OCA, Liberty’s recovery of costs related to the appeal under Iowa Code § 476.18 is not automatic and a reasonable amount to be recovered cannot be determined until the appeal is concluded. At that time, the Board and OCA would have an opportunity to review the appellate expenses and determine what expenses are reasonable. OCA contends that if the Board determines it is reasonable for Liberty to recover costs associated with the appeal, such costs would be recovered under different statutory authority and should not be included in the same recovery mechanism as rate case expenses. OCA states that Liberty’s recovery of appellate costs should be through a separate

tariff provision considered by the Board in a proceeding that starts after the conclusion of the appeal.

OCA asserts that because the appellate costs Liberty might recover are not properly included in the rate case tracker, the following sentence in Liberty's Proposed Customer Notice should be eliminated: "The Regulatory Expense Surcharge may increase due to additional expenses incurred as a result of the appeal of the rate case." OCA asks the Board to reject the revised tariff, direct Liberty to strike the sentence in the Proposed Customer Notice about a possible increase in the Regulatory Expense Surcharge, and instruct Liberty it may refile an application for recovery of appellate fees at the conclusion of the appellate proceedings.

On August 30, 2017, Keokuk filed an objection to the proposed tariff revisions and customer notice agreeing with and joining in OCA's Objection. According to Keokuk, Liberty's proposed tariff revisions are not ripe.

## **DISCUSSION**

### **A. Liberty's revised tariff**

Iowa Code § 476.18(2) provides that the Board shall allow a public utility to recover reasonable legal costs and attorney fees incurred in an appeal. The Board may consider the degree of success of the utility's legal arguments in determining the reasonable legal costs and attorney fees to be allowed. In its revised tariff, Liberty states that the Regulatory Expense Surcharge (through which Liberty is recovering

the rate case expense approved by the Board under Iowa Code § 476.6(5)) may increase pursuant to Iowa Code § 476.18 due to additional expenses incurred by the company as a result of the appeal. Liberty explains that it believes its customers should have notice that the Regulatory Expense Surcharge may increase because of the appeal. However, because the statement in the revised tariff is premature, does not encompass all possible outcomes of the appeal, and may be incorrect, the proposed tariff language does not give accurate notice about possible effects of the appeal. The Board will reject the revised tariff.

**B. Liberty's Proposed Customer Notice**

The Board agrees with OCA that a utility's recovery of costs associated with an appeal is not automatic. In the event Liberty seeks to recover legal costs and attorney fees incurred as a result of participating in the appeal, the Board will have to make a separate determination of the reasonable legal costs and attorney fees Liberty may recover pursuant to Iowa Code § 476.18. Any changes to the tariff for the Regulatory Expense Surcharge at this time are premature because the appellate proceeding is just beginning and it may be some time before the outcome of the appeal is known and the reasonableness of costs can be evaluated. The Board will not at this time address the merits of OCA's argument that Liberty's recovery of appellate costs must be done through a separate tariff and not the Regulatory Expense Surcharge but notes that the mechanism by which Liberty could recover appellate costs found to be reasonable is not yet known.

The Board has reviewed Liberty's Proposed Customer Notice which provides customers with information about how their rates and charges have changed as a result of the rate case. The Proposed Customer Notice is consistent with Liberty's statement in the rate case proceeding that it would inform customers about the outcome of the rate case. The Board will approve the Proposed Customer Notice with one exception. The Board will require Liberty to modify the sentence relating to additional expenses for the appeal as follows:

“The Regulatory Expense Surcharge may change ~~increase~~  
~~due to additional expenses incurred as a result of the appeal~~  
of the rate case.”

As revised, that sentence notifies customers about the appeal and conveys general, but accurate, information that the outcome of the appeal could affect the surcharge.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The Utilities Board rejects the Revised Regulatory Expense Surcharge Tariff filed by Liberty Utilities (Midstates Natural Gas) Corp., d/b/a Liberty Utilities, on August 11, 2017.

2. The Utilities Board approves the Proposed Customer Notice filed by Liberty Utilities (Midstates Natural Gas) Corp., d/b/a Liberty Utilities, on August 24, 2017, subject to the modification identified on page 6 of this order.

**UTILITIES BOARD**

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Trisha M. Quijano  
Executive Secretary, Designee

Dated at Des Moines, Iowa, this 7<sup>th</sup> day of September 2017.