DECISION

IN THE MATTER OF an application by Liberty Utilities (Gas New Brunswick) LP, as represented by its general partner Liberty Utilities (Gas New Brunswick) Corp., for approval to change its distribution rates effective May 1, 2022, for approval of its 2020 Regulatory Financial Statements, approval of costs related to its Customer First program, approval of costs and amortization period related to the variance account for COVID-19, approval of variance accounts for Payments from the Natural Gas Distribution Fund and Revenue Requirement True-Up, and approval of an excess earnings sharing mechanism.

(Matter No. 494)

July 26, 2022

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Chairperson:	François Beaulieu
Members:	Michael Costello
	John Patrick Herron
Board Counsel:	Katherine McBrearty
Counsel for Board Staff:	Gerald Lawson, Q.C.
Chief Clerk:	Kathleen Mitchell

APPLICANT:

Liberty Utilities (Gas New Brunswick) LP:	Len Hoyt, Q.C.

INTERVENER:

Park Fuels Ltd.	Matthew LeRoy

PUBLIC INTERVENER:	Heather Black

A. Introduction

[1] On November 22, 2021, Liberty Utilities (Gas New Brunswick) LP, as represented by its general partner Liberty Utilities (Gas New Brunswick) Corp. (Liberty), applied to the New Brunswick Energy and Utilities Board (Board) for approval of Liberty's proposed distribution rates, effective May 1, 2022 (Application).

[2] Liberty also sought approval of its 2020 Regulatory Financial Statements and the approval to continue to use the previously approved excess earnings sharing mechanism (ESM) for 2022 and subsequent years. In addition, Liberty sought approval of costs related to Liberty's Customer First program, approval of the costs and amortization period related to the variance account for COVID-19, and approval of the variance accounts for Payments from the Natural Gas Distribution Fund (SEUF Fees) and Revenue Requirement True-Up.

[3] The Board held a virtual pre-hearing conference on January 5, 2022. An intervener request was received from Park Fuels Ltd., which was granted. Park Fuels Ltd. did not file evidence in this matter.

[4] A hearing was held from March 28 to March 31. This was conducted by video conference pursuant to Rule 5.1.3. of the Board's Rules of Procedure (Rules of Procedure).

[5] Liberty presented two panels of witnesses. The first panel consisted of Mr. Gilles Volpé, Vice-President/General Manager, Mr. David Lavigne, Director, Finance and Regulatory, and Ms. Jill Schwartz, Director of Regulatory Shared Services, all of Liberty. The panel also included Mr. Alan Felsenthal, Managing Director, Power and Utilities, and a member of PricewaterhouseCoopers LLP's (PWC) Complex Accounting and Regulatory Solutions practice. Mr. Felsenthal was declared as an expert in the area of accounting, tax, and financial reporting issues at regulatory entities, which includes complex accounting and regulatory solutions.

[6] Liberty's second panel consisted of Mr. Volpé, Mr. Lavigne, Mr. Leo Guin, Accountant, and Ms. Karen Hall, Senior Manager, Customer First Rates and Regulatory, all of Liberty. The second panel also included Mr. Ralph Zarumba, Managing Director at Black & Veatch Management Consulting, LLC. Mr. Zarumba was declared an expert in utility costing, pricing, and related regulatory policy.

[7] Ms. Heather Black, the Public Intervener, filed written evidence prepared by Mr. Robert Knecht, an independent consultant specializing in the preparation of analyses and expert evidence in regulatory economics. He was declared an expert in the areas of regulatory economics and rate-making.

[8] Mr. Len Hoyt, counsel for Liberty, advised the Board on March 31 that he intended to make a motion pursuant to Rule 4.3.4. of the Rules of Procedure. The motion requested adding a corporate allocations variance account to the Application and subsequently filed a proposal for such account. In an oral ruling, the Board allowed Liberty's request.

[9] The Board issued a Partial Decision dated May 19 (Partial Decision). In its decision, the Board made several findings concerning the 2022 revenue requirement and ordered Liberty to refile its 2022 test year budget with adjustments as set out in paragraph 4 of the Partial Decision.

[10] Liberty filed its updated 2022 revenue requirement on May 30 (May 30 Letter). As a result of the adjustments to the revenue requirement, the adjusted budget for income taxes for 2022 would increase to $3.38 million. A set of comparative tables accompanied the May 30 Letter.

[11] On June 1, Liberty filed a Notice of Motion under section 8.1.1. of the Rules of Procedure, pursuant to sections 43 and 44 of the *Energy and Utilities Board Act,* S.N.B. 2006, c. E-9.18 (EUB Act). The utility sought a review or variance of the second sentence of paragraph 4(d)(i) of the Partial Decision, or a rehearing solely on the issue of the year in which to capitalize the Customer First program.

[12] On June 2, the Board provided the parties an opportunity to make written submissions on the merits of reviewing or varying paragraph 4(d)(i) of the Partial Decision or the rehearing. The Public Intervener was the only party who filed a submission. Board staff took no position with respect to Liberty’s Notice of Motion.

[13] To further assess Liberty's requested relief, the Board provided Liberty an opportunity to respond to the Public Intervener's submission. A reply was filed on June 9. The motion was heard on June 10 by videoconference.

[14] On June 10, Liberty informed the Board that it would withdraw its motion, including its supporting documents. Liberty, however, proposed that the May 30 Letter, including the four attachments to

the letter, be considered as compliance documents in response to the Partial Decision. The Board accepted the withdrawal of Liberty's motion.

[15] An Order was issued on June 23 (June 23 Order) approving the distribution rates for each customer class, effective on July 1. On the same date, the New Brunswick Court of Appeal allowed Liberty's application for judicial review of the Board's decision in Matter 491, which had reduced Liberty's return on equity (ROE) from 10.9 percent to 8.5 percent.

[16] On June 29, Liberty filed an application with the Board (Matter 530 Application) requesting an order varying the June 23 Order and staying the order pending the outcome of a review by the Board.

[17] In the Matter 530 Application, Liberty stated that the rates set out in the June 23 Order were calculated based on Liberty's ROE, as a component of its cost of capital, being 8.5 percent. Liberty further stated that, because of the New Brunswick Court of Appeal's decision, the Board-determined ROE of 8.5 percent was quashed, remitted to the Board for rehearing, and Liberty's ROE was 10.9 percent until ordered otherwise by the Board.

[18] On July 5, the Board stayed the June 23 Order pending the outcome of a review by the Board with respect to the Matter 530 Application. The Board also ordered that until further direction is provided, the rates would, therefore, remain fixed as set out in Appendix A as ordered by the Board in Matter 478 on December 23, 2020 (July 5 Order).

[19] Where there have been no further findings or orders in relation to Matter 530 beyond the July 5 Order that affect the decisions made in relation to Matter 494, the Board's reasons for its findings on Matter 494 are detailed below. Furthermore, references to the reduction of the allowed ROE resulting from Matter 491 remain within.

[20] Matter 530 will address anything further in relation to the requested variance as a result of the New Brunswick Court of Appeal's decision.

B. Legislative Framework

[21] The following provisions of the *Gas Distribution Act, 1999,* S.N.B. 1999, c. G-2.11 (GDA) are relevant to this proceeding:

52(2.1) The Board may, in accordance with generally accepted public utility practice, make an order permitting the general franchise holder to create or establish a regulatory variance account in respect of the occurrence of an event for the purpose of minimizing the rate impact of the costs arising from the event.

52.04(1) For the period commencing on January 1, 2020, and ending on the date the balance of the regulatory deferral account is recovered, the balance remaining in the regulatory deferral account after the amounts, if any, have been credited in accordance with section 52.03, shall be recovered by including in the revenue requirement of the general franchise holder those amounts authorized by the Board in accordance with this section.

52.04(2) On application by the general franchise holder for an order approving or fixing rates and tariffs in accordance with section 52, the Board shall authorize the recovery of the balance in the regulatory deferral account in any manner it considers appropriate, including determining the period during which the balance is to be recovered and the amounts to be included in the revenue requirement of the general franchise holder in any year.

52.04(3) Despite subsection (2), the Board shall authorize the recovery of $100 million of the balance in the regulatory deferral account on a fixed straight line amortization basis for the period commencing on January 1, 2020, and ending on December 31, 2045, unless the balance of the regulatory deferral account has been fully recovered before that date.

[22] The following provisions of the EUB Act apply to this application:

43 The Board may review, rescind or vary any order made by it.

44 The Board may require a rehearing of an application before making a decision on it.

C. Issues

[23] The Board must evaluate whether it will approve the changes to Liberty's distribution rates, its 2020 Regulatory Financial Statements, the costs related to Liberty's Customer First program, and the costs and amortization period related to Liberty's COVID-19 variance account and the continuation of the ESM. The Board must also evaluate if it will approve the creation of the requested variance accounts.

D. Analysis

1. 2020 Regulatory Financial Statements

a. Revenue and Expenses

[24] Liberty's 2020 Regulatory Financial Statements disclosed a total revenue of $43.684 million and total expenses of $36.042 million. This resulted in an income of $7.642 million before extraordinary items, regulatory deferral, and return on rate base.

[25] In closing argument, Mr. Hoyt submitted that the 2020 expenditures should be found to be prudent unless the presumption of prudence is rebutted on reasonable grounds. He also submitted there was no suggestion of imprudent spending in 2020.

[26] Mr. Knecht did not identify any evidence of imprudence concerning Liberty's 2020 revenue and expenses. He noted, however, that corporate allocations were an exception to this finding. He stated that corporate allocations for 2020 were based on the approved methodology and that the cost overrun was substantially due to budgeting difficulty for a transition year.

[27] Ms. Black had no issues concerning the prudence of the 2020 financial results.

[28] The Board has reviewed the 2020 Regulatory Financial Statements and finds no evidence of imprudence with respect to Liberty's 2020 revenue and expenses. The 2020 Regulatory Financial Statements are approved as filed.

b. System Expansion Portfolio Test

[29] In its assessment of financial results, the Board evaluates the prudency of Liberty's 2020 system expansion capital spending by using a system expansion portfolio test (SEP Test).

[30] The SEP Test is based on a three-year average of incremental capital costs and revenues associated with system expansion. The test evaluates whether growth-related capital spending is economically justified by incremental revenues.

[31] Liberty submitted that the SEP Test revenue to cost ratio for 2018 to 2020 was 146 percent on the current ratio of 104 percent.

[32] Mr. Knecht concluded that Liberty passed the 2020 SEP Test, and no disallowances to 2020 growth-based capital spending are necessary.

[33] The Board finds that Liberty's calculations for SEP Test parameters are consistent with the Board's direction and concludes that the 2020 system expansion was prudent. Accordingly, there will be no disallowances, and no adjustment to the 2020 rate base.

c. Board Conclusion – Regulatory Financial Statements

[34] Based on the foregoing, the Board approves the 2020 Regulatory Financial Statements as filed.

2. Excess Earnings Sharing Mechanism

[35] The GDA prescribes how the balance of the regulatory deferral account (RDA) is to be recovered for the period commencing on January 1, 2020 until the balance of this account is recovered. Under subsection 52.04(2) of the GDA, the Board has the discretion to authorize the recovery of the balance of the RDA above $100 million "in any manner it considers appropriate." This includes determination of the recovery period and the amounts to be included in the revenue requirement in any year.

[36] In Matter 478, Liberty had proposed to recover the balance of the RDA by continuing to use the ESM for 2022 and beyond. The Board accepted this proposal as it applied to earnings in 2021. Liberty was directed to file a detailed proposal with this general rate application to address the recovery of the balance above $100 million for earnings beyond 2021.

[37] Liberty is proposing to recover a portion of its RDA by using the previously approved ESM for 2022 and subsequent years.

[38] Mr. Knecht stated that Liberty's proposal represents a "generous offer to ratepayers" as he does not believe it has any obligation to share any of its return in excess of the allowed ROE.

[39] As it applies to earnings in 2022 and subsequent years, the Board accepts Liberty's proposal.

3. Revenue Requirement for 2022

[40] The 2022 revenue requirement is based on budgeted expenses, including income before extraordinary items, regulatory deferral, and return on rate base. This is summarized as follows:

	Component	Budgeted Revenue Requirement
1.	Operating and Maintenance Expenses	$12.388 million
2.	Other Expenses	$0.150 million
3.	Bad Debt Expense	$0.162 million
4.	Amortization of Property, Plant, and Equipment	$7.409 million
5.	Municipal and Other Taxes	$1.314 million
6.	Interest on Amounts Due to Associates and Affiliates and Other Interest	$5.049 million
7.	Amortization of Deferred Development Costs	$3.302 million
8.	Amortization of Regulatory Deferral Account	$3.846 million
9.	Income Tax Expense	Nil
10.	Income before Extraordinary Items, Regulatory Deferral, and Return on Rate Base	$10.593 million
11.	Excess Returned to Customers (through the ESM)	Nil
Total Budgeted Revenue Requirement		**$44.213 million**

[41] During the hearing, Liberty requested the following adjustments:

a. A reduction of $0.315 million in corporate allocations costs; and

b. An additional $2.47 million for capitalized O&M of services, meters, and stations.

[42] The Board's review below includes operating and maintenance expenses and income tax expenses.

a. Operating and Maintenance Expenses

[43] The total budgeted operating and maintenance (O&M) expenses are $17.853 million. O&M to be capitalized as property, plant, and equipment totals $5.465 million, reducing O&M expenses to $12.388 million, as shown in the table above.

[44] In his report, Mr. Knecht noted that the overall revenues required for 2022 were materially below those budgeted in 2021. He pointed out, however, that the reduction in budgeted costs in 2022 were not under management control but from the reduction of the allowed ROE resulting from Matter 491, Liberty's contract expiration with Maritime and Northeast Pipeline, and the increase in single end-use franchise revenues.

i. Capitalized O&M

[45] In final argument, Mr. Hoyt submitted that the Board should allow a $2.47 million variance to the 2022 budgeted rate base, which was related to the capitalized O&M of services, meters, and stations. He stated that the amount was not added to the rate base under their respective asset categories.

[46] Consequently, Mr. Hoyt argued that the budgeted rate base was understated by $2.47 million, plus the cost of debt, return on equity, and depreciation expense. He requested that the Board add such amount to the rate base.

[47] Apart from identifying in a response to an interrogatory that the 2022 budgeted rate base was understated by $2.47 million, Liberty did not quantify the impact of the above variance on the total revenue requirement at any time during the proceeding. The Board notes that Liberty did not amend its Application or file an updated budget with respect to the above variance when it submitted its compliance documents to the Board’s Partial Decision. Consequently, the Board will not allow the $2.47 million variance to the 2022 budgeted rate base.

ii. Corporate Allocations

[48] As a subsidiary of a larger holding company, Liberty shares the costs of corporate overhead and benefits from sharing expertise with affiliates. Liberty included these allocated corporate costs in its proposed revenue requirement for 2022.

[49] To allow the recovery of these costs from ratepayers, the Board must be confident that these costs bring value to the customers. This is done by reviewing the methods for allocating the costs between affiliates and ensuring that the services provided are both necessary and cost-effective. In the past, the Board has only allowed corporate allocations costs that were deemed appropriate.

[50] In Matter 478, the Board accepted the budgeted 2021 corporate allocations. Liberty was directed to obtain an independent review of corporate allocations and file a report as part of its 2022 general rate application.

[51] In its Application, Liberty proposed that $4.011 million in corporate costs be included in the test year. This represents a $1.556 million increase over the amount approved for corporate allocations in 2021.

[52] In his report, Mr. Knecht stated that the amounts claimed in corporate allocations were higher than the previously approved amounts and considerably higher than when the franchise was owned by Enbridge Gas New Brunswick (EGNB). He submitted that the substantial differences between Liberty's final 2021 budget for corporate allocations and the current forecast were "[…] unexplained, which reduces confidence in the corporation's ability to accurately budget these costs."

[53] Mr. Knecht recommended that the Board's approval be limited to the amount of the corporate allocations approved in the 2021 revenue requirement, plus an inflation adjustment of 4.2 percent, based on the Bank of Canada's 2022 forecast.

[54] Liberty disagreed with Mr. Knecht's recommendation. It noted that the organizational structure of Liberty and the current classification of costs differ significantly from those of EGNB.

[55] Liberty submitted that much of the increase resulted from transferring some costs from the O&M budget to corporate allocations. Mr. Lavigne testified that the $1.2 million increase was partly related to information technology (IT) costs that were transferred to shared services. These costs

included $0.5 million to $0.6 million in labour costs, plus another $0.205 million in non-labour costs.

[56] In rebuttal evidence, Liberty submitted that the corporate budgeting process was completed following its filing and that the amount of corporate allocations had been decreased to $3.696 million from the proposed amount of $4.011 million. Accordingly, Liberty requested an adjustment to the amount of the corporate allocations to reflect this reduction.

[57] During the hearing, Liberty filed revisions to the analysis of the corporate allocations. Mr. Lavigne testified that upon further review, the utility noticed that some of the IT costs in 2021 had been included twice in that year's budget.

[58] Under cross-examination, Mr. Lavigne testified that Liberty stood behind its original proposal of the adjusted amount of $3.696 million. He stated that if the Board determined that this amount was not appropriate, Liberty would ask that the revised amount of $2.772 million be approved, and the remaining $0.924 million be placed into a variance account.

[59] Liberty, therefore, revised its request for the Board to authorize immediate recovery of $2.455 million, plus $0.205 million in computer and telecom costs, with an adjustment of 4.2 percent to reflect inflation. Liberty also requested that the Board authorize a variance account for $0.924 million, equal to the difference between the expense recovery requested in its Application and the amount described above.

[60] Under cross-examination, Mr. Knecht testified that the proposed variance account was "unusual." He submitted that requesting such approval provides Liberty a second opportunity to explain why the corporate allocations costs have increased.

[61] In closing argument, Ms. Black argued that there was no basis for approving the variance account.

[62] In Matter 478, the Board applied the following guiding principles in relation to Liberty's request for variance accounts: (a) the costs in question are outside the control of the utility; (b) the costs are uncertain and cannot reasonably be foreseen or predicted; and (c) the cost variances have a material impact on the utility.

[63] In relation to Liberty's requests for variance accounts in this proceeding and in addition to what is set out in subsection 52(2.1) of the GDA, the Board will apply these principles to this matter.

[64] The Board is not satisfied that creating a corporate allocations variance account is appropriate in this matter. The approval of such an account provides Liberty a second opportunity to justify the increase in corporate allocations costs in this proceeding. Furthermore, these costs are not uncontrolled but regular costs and are within the control of both Liberty and Algonquin Power and Utilities Corporation (Algonquin). Accordingly, Liberty's request to create a corporate allocations variance account is denied.

[65] While Ms. Black did not agree with creating a corporate allocations variance account, she agreed with allowing the recovery of $2.772 million in corporate allocations costs.

[66] In Mr. Knecht's view, the differences between Liberty's final corporate 2021 budget for allocations and the current forecast are unexplained, which reduces confidence in Liberty's ability to accurately budget these costs.

[67] Although Liberty described some additional challenges regarding growth at the corporate level, its reorganization and other acquisitions are not unusual challenges for a corporation like Algonquin. The Board, therefore, finds insufficient evidence to justify the inclusion of $3.696 million in corporate allocations costs in the test year. Accordingly, the Board approves $2.772 million in corporate allocations costs to be included in the 2022 revenue requirement.

[68] Another issue related to corporate allocations results from the Board's decision dated January 13, 2021. At that time, the Board directed Liberty to obtain an independent review of corporate allocations and file a report with the Board.

[69] PWC carried out an independent review of corporate allocations. Mr. Felsenthal's review assessed the method used by Algonquin to allocate shared corporate costs between the affiliates. He concluded that the methods used by Algonquin were reasonable and consistent with the guidance from the Federal Energy Regulatory Commission and the National Association of Regulatory Utility Commissioners. Mr. Felsenthal also tested the actual transactions and found they performed as designed.

[70] In his report, Mr. Knecht concluded that while he did not disagree with the PWC's review, he expected Liberty to do further analysis. He recommended that the Board commission a study. The Board agrees.

[71] Board staff is directed to engage a consultant to review Liberty's corporate allocations costs and file the report with the Board once completed.

iii. COVID-19 Variance Account

[72] In Matter 478, the Board approved the creation of a variance account for COVID-19. It stipulated those only costs directly related to the COVID-19 pandemic would be eligible for recovery. The Board stated that these costs, and the amortization into the revenue requirement, would be subject to review during this proceeding.

[73] For the period between March 2020 and May 2021, Liberty stated that incremental expenses and lost revenues from uncharged Late Payment Fees due to COVID-19 were $378,418. It requested that this amount, with interest at the short-term borrowing rate, be recovered over a three-year amortization period. In its rebuttal evidence and in response to Mr. Knecht's report, Liberty indicated that it would support, including the total amount in the 2022 test year.

[74] Ms. Black had no objection to either proposal.

[75] The Board concludes that all accrued costs through May 2021 are approved. The recovery over a three-year amortization period is denied, and these costs will be expensed in 2022, resulting in an increase of the revenue requirement by $245,656.

iv. Retention and Incentives Programs

[76] Liberty proposes to include a $1.5 million expense for previously approved retention and incentives programs in its 2022 budget. The $1.5 million includes $150,000 for Residential Incentives, $900,000 for Commercial Incentives, $300,000 for the Propane Winback program and $150,000 for the Retention program.

[77] Mr. Knecht did not recommend any changes to Liberty's incentive and retention programs proposal. He stated that Liberty's budget for 2022 is similar in magnitude to actual spending averaged over the past five years, adjusted upward to recover the 2021 overspend balances. Notwithstanding this opinion, the Board must evaluate whether each proposed expenditure is reasonable and justifiable.

[78] Regarding the Residential Incentives program, Liberty stated that new residential natural gas customers qualify for an incentive of $2,000, which may be adjusted upwards or downwards

during the year, depending on the equipment selected for installation. In 2018 and 2019, Liberty spent $136,500 and $152,950, respectively, and $72,300 in 2020 and $41,072 in 2021. Accordingly, the Board finds that a budget of $150,000 for this program is reasonable and justifiable as it approximately reflects the amount spent in two of the past four years.

[79] The Commercial Incentives program is available to new and existing commercial natural gas customers that qualify. In 2018, 2019, and 2020, Liberty committed $31,000, $709,869 and $109,131, respectively. For 2021, Liberty spent $109,420 on the program. Liberty argued that the larger budgeted amounts are to attract new commercial customers. Given past trends, however, the Board cannot find any justification for a budget of $900,000 for the Commercial Incentives program. The Board previously approved a budget of $500,000 in 2019. Between 2018 and 2021, expenditures of over $500,000 only occurred once. Accordingly, the Board approves a budget of $500,000 for the Commercial Incentives program.

[80] Liberty submitted that the Propane Winback program is used to recapture customers who had left the gas distribution system for a propane alternative. It further submitted that each potential customer is evaluated individually based on the cost of previous annual consumption compared to prevailing market propane prices.

[81] Notwithstanding Liberty's desire to recapture customers, given the expenditures committed to the program since 2018, the Board cannot find any justification for a budget of $300,000. The highest yearly expenditure since 2018 was $128,352; in 2021, the program only spent $66,459. The budget for the Propane Winback program is therefore reduced from $300,000 to $100,000.

[82] Concerning the Retention program, Mr. Lavigne testified that the purpose of this program is to retain existing customers if there is a threat of them leaving the system. In 2021, no money was spent on customer retention. In 2019 and 2020, $91,981 and approximately $245,000 were spent on this program.

[83] Given past expenditures and noting that no money was spent on this program in 2021, the Board finds that a proposed expenditure of $150,000 is neither reasonable nor justifiable and sets the budget for this program at $100,000.

[84] As mentioned earlier, the above adjustments to the Retention and Incentives increase Liberty's 2022 income tax expense. This issue will be addressed below.

v. Customer First Program

[85] Liberty has requested the approval of costs related to its Customer First program. Specifically, Liberty has included the amortization of $9.928 million in capital spending over 20 years as part of the 2022 revenue requirement.

[86] Liberty described the Customer First program as a "[…] multi-year, transformational journey that will provide integrated processes, operations and systems across Liberty and its affiliated entities." It submitted that the implementation of "a set of multiple linked projects", like Customer First, would potentially cost more than $33.75 million to implement on a standalone basis.

[87] Mr. Knecht agreed that Liberty's information systems need to be regularly upgraded. While he made no specific recommendations for any adjustments to Liberty's proposed costs for the Customer First project, he submitted that ratepayer protections were reasonable. In his view, Liberty's analysis showed a significant negative impact on ratepayers and was concerned that costs of IT projects can often exceed budgeted amounts.

[88] Mr. Knecht recommended that the Board set a cap on the recoverable investment for this project at $10 million. He submitted that allowing recovery in rate base beyond $10 million should require a detailed explanation of why cost overruns occurred and how those cost overruns benefit ratepayers.

[89] During the proceeding, Ms. Hall testified that the project would not be completed until the Fall of 2022. Further, she testified that, given the need to test the system, it would not be in use until 2023. Mr. Lavigne also testified that, given this timing, it was reasonable that the project would not be capitalized until 2023. In an undertaking, Mr. Lavigne explained that the delay would reduce the revenue requirement by $0.488 million.

[90] In closing argument, Ms. Black did not object to Liberty's request for approval of the project subject to Mr. Knecht's recommendation regarding the cap on additional spending.

[91] The Board has considered the evidence in relation to the Customer First program, including Mr. Knecht's recommendation on capping additional spending. This program will provide Liberty with upgrades and systematic changes to core and essential IT infrastructure, operational technologies, and business processes. It will upgrade systems that are obsolete or that do not meet customer expectations. The Board accepts that a localized solution would not be cost-effective for Liberty.

[92] In Matter 452, the Board has acknowledged that benefits justifying a capital project, such as the Customer First program, can be both quantitative and non-quantitative. As described by Liberty, many benefits support essential business requirements and functions that are difficult to quantify, such as customer experience, safety, risk management, and reliability. The Board finds that these non-quantitative benefits and productivity improvements will allow Liberty to provide better customer service. As some of Liberty's systems are approximately 20 years old and some are being discontinued by its vendors, the Board concludes that there is merit in implementing a program similar to Customer First.

[93] Accordingly, all project components are approved, including the 20-year amortization period. Spending will be capped at $9.928 million, and any excess spending shall be contingent upon the Board's review of the overages.

[94] The Board also finds that the project should not be included in the 2022 revenue requirement because it will not be in use until 2023. Liberty is directed to remove $488,000 from the revenue requirement.

b. Income Tax Expenses

[95] In its May 30 Letter, Liberty filed information and a set of comparative tables in response to the Partial Decision. In accordance with the Board's directive, the adjustments to its revenue requirement resulted in an increase to the 2022 budget for income tax expenses to $3.38 million.

[96] Liberty submitted that this increase was primarily due to the reduction in incentive payments capitalized from $1.35 million to $0.750 million as a deduction to booked income and lower tax depreciation available as a credit. Liberty further submitted that the tax depreciation was reduced significantly due to the removal of $9.31 million for the Customer First program, which resulted in a reduction of the tax depreciation of $7.68 million. It stated that this class of asset has an accelerated depreciation rate for tax deduction purposes of 55 percent. Thus, when removed, a significant tax benefit is lost.

[97] It is common that when a utility is ordered to refile its test year budget for approval of distribution rates, certain adjustments will not be contemplated or calculable at the hearing. For this reason, compliance filing documents are required for Board staff to review and identify any mistakes before approving the distribution rates for each class of customers.

[98] Typically, compliance filings result in relatively small changes related to cascading effects on such items, for example, capitalized O&M, amortization, and interest.

[99] The impact of Liberty's compliance filing is more significant in this matter. During the hearing, Liberty was asked to provide what became Undertaking No. 6. This undertaking quantified the impact of the Customer First program's capitalization being delayed to 2023. While the undertaking response sets out the impact of amortization, cost of debt, and ROE, it inadvertently did not address the resulting changes in income taxes. Nothing was placed in evidence of how income taxes would be impacted by delaying the program's capitalization to 2023.

[100] The Board required a full understanding of the impact of delaying the capitalization of Customer First to 2023 as contemplated in the undertaking. The Board notes, however, that the oversight in the changes in income taxes may, in part, be related to 2022, representing the first year that Liberty would have been required to pay income taxes given the exhaustion of the utility's loss carry forward credits.

[101] The Board will strictly treat the May 30 Letter as a response to the directive in the Partial Decision. The Board accepts that the documents filed by Liberty were to provide additional explanatory material to understand a change in numbers previously unexplained by the evidence on the record.

[102] These documents have been reviewed by Board staff, and clarifying questions were asked to Liberty. Upon consideration of the evidence and the supporting documents of Liberty's compliance filing, the Board finds that the capitalization of the Customer First program in 2023 is appropriate and will allow the additional income tax expense.

c. Board Conclusion – Revenue Requirement

[103] For the above reasons, the proposed 2022 revenue requirement shall be adjusted as follows:

a. Retention and Incentives Programs:

i. The Commercial Incentives Program is reduced from $900,000 to $500,000;

ii. The Propane Winback Program is reduced from $300,000 to $100,000; and

iii. The Retention Program is reduced from $150,000 to $100,000.

b. Variance Account for COVID-19:

i. The recovery over a three-year amortization period is denied, and the costs will be expensed in 2022, resulting in an increase of the revenue requirement by $245,656.

c. Corporate Allocations:

i. The Board approves Corporate Allocations expenses of $2.772 million, which decreases the revenue requirement by $0.924 million.

d. Customer First Program:

i. Liberty is directed to remove $488,000 from the revenue requirement as a result of the removal of the expenses to the 2022 revenue requirement.

[104] The Board will allow the additional income tax expense in 2022 resulting from the reduction in incentive payments capitalized from $1.35 million to $0.750 million and the tax depreciation reduction due to the removal of $9.31 million for the Customer First program.

4. Cost Allocation, Load Forecast, and Rate Design

[105] Once the revenue requirement is established, rate setting requires three inputs: cost allocation, load forecast, and rate design.

a. Cost Allocation

[106] The Board approved a cost allocation methodology in a previous proceeding. In Matter 478, the Board determined Liberty would be required to file the approved cost allocation model in its general rate applications.

[107] In his report, Mr. Knecht reviewed the cost allocation methods and results for three key cost components: mains, meters, and service lines. He submitted that these accounts represent "[…] 92 percent of Liberty's distribution plant, and the allocation of these costs has a significant impact on the allocation of development O&M rate base, general plant, distribution O&M and company

A&G costs through the plant-related and labor-related allocation factors." Mr. Knecht made recommendations regarding treating all of these items in the cost allocation study.

[108] In response to Mr. Knecht's review, Liberty proposed to commit to reviewing its cost allocation recommendations as part of its 2023 general rate application.

[109] The Board finds a review of Liberty's cost allocation methodology appropriate. Mr. Knecht's proposed alternative cost allocation analysis does not change the overall picture. Revenues from the SGS class continue to lag behind allocated costs, revenues from the MGS class are still modestly below cost, and revenues from the LGS, CGS, and ICGS classes continue to substantially exceed allocated costs with the LGS class showing the highest revenue-to-cost ratio. Notwithstanding this, Mr. Knecht has explained his concerns, and Liberty has indicated its willingness to commit to reviewing his recommendations in response to his concerns.

[110] Accordingly, the Board directs Liberty to review the recommendations set out in Mr. Knecht's report and file a report on the inclusion of these recommended changes in the next general rate application.

b. Load Forecast

[111] As directed in Matter 478, Liberty provided an overview of its forecasting methodology by way of a technical session of stakeholders on January 6. The overview stated that there are two underlying foundations to Liberty's methodology. Firstly, a customer's forecasted load is based on the calculation of a base load plus a temperature-sensitive load. Secondly, a future period's consumption should align closely with a previous period's consumption unless a significant change to the customer has occurred.

[112] Liberty explained that the forecasting methodology is heavily weighted to a customer's existing historical consumption and occurs in two distinct steps: (a) compiling the forward volume projection (FVP) consumption data file and (b) the FVP data review process.

[113] In his report, Mr. Knecht submitted that he had concerns with Liberty's load forecasting methodology. Notwithstanding his concerns, he did not propose any adjustments and recommended that modifications be made to Liberty's forecasting process. Unless Liberty can demonstrate that its historical heating degree days (HDD) weighting scheme produces a more accurate "normal weather" value, Mr. Knecht recommended that it be replaced with a simple 20-

year average, and that the opaque FVP methodology that relies on a long-term history of customer consumption be replaced with the three-year average.

[114] In response to Mr. Knecht, Liberty confirmed that it already uses a simple 20-year average to calculate normal HDD and that its previous statement was inaccurate. Further, Liberty agreed to review the current load forecasting process and submitted it would consider replacing the FVP methodology with a historical average value. Liberty stated, however, that more analysis would be required to determine whether a history longer than three years would be more appropriate. Furthermore, Liberty stated that it wished to ensure a better understanding of the process that will be in place with the implementation of its Customer First program, where the FVP process would cease, and there would be a new approach developed and licensed by SAP, an enterprise resource planning platform.

[115] In final argument, Ms. Black submitted that Liberty's commitment to review the methodology seemed reasonable.

[116] Given that Customer First will be implemented in 2023, the Board concludes that it is reasonable to allow Liberty to review the new methodology generated by the SAP system.

c. Rate Design

[117] Liberty submitted that the rate design changes proposed will move rates closer to the cost of service based rates and address competition from alternative fuels.

[118] Concerning the SGS rate class, Liberty submitted that its rate design proposal is to make no structural changes to the current rates. It submitted, however, that the monthly fixed charge would increase by $2.40 per month, while the volumetric charge would decrease by $0.1451 per GJ, resulting in an overall increase of 1.96 percent to the proposed distribution charge.

[119] Regarding the MGS class, Liberty's proposal results in an overall decrease of 10.66 percent in the distribution charge. The monthly fixed charge for small MGS customers would increase by $2.40 per month, while the large MGS monthly fixed charge would remain unchanged at $50.00 per month. The volumetric charges in Blocks 1 and 2 would decrease by $1.2106 per GJ and $1.8188 per GJ, respectively.

[120] Liberty proposed an overall distribution charge decrease of 14.37 percent for the LGS rate class, with no changes to the monthly fixed charges or the volumetric charges in Blocks 1 and 2 (Summer). For the volumetric charge, Block 2 (Winter), Liberty proposed a decrease of $2.4864 per GJ.

[121] Regarding the CGS, ICGS, and OPS rate classes, Liberty's proposal provides for overall decreases of 8.2 percent, 12.43 percent, and 4.13 percent, respectively.

[122] Mr. Knecht outlined several concerns with Liberty's rate design proposals.

[123] For the SGS class, he submitted that, while Liberty's proposal for the customer charge level is not outside the practices of other utilities, he was concerned about the intra-class distributional impacts of the proposed rates. To mitigate the increases for smaller customers, he recommended an alternative rate design in which the energy charge remains approximately at current rate levels, and the customer charge is increased from $20.00 to $21.50.

[124] Concerning the MSG class of customers, Mr. Knecht submitted that the combination of Liberty's proposed increases for MGS and LGS rate classes create a material rate discontinuity between the classes. To address these concerns, Mr. Knecht recommended that the Board accept Liberty's proposal for the customer charge, that it be the same as for the SGS rate, but to further reduce the first block energy charge by 11.5 percent and lower the reduction in the tail energy block to 16.7 percent. He submitted that this proposal retains Liberty's competitive philosophy for rates.

[125] For the LGS class, Mr. Knecht submitted that no specific evidence was provided that indicated competition was higher for large customers within the class than for smaller customers. Furthermore, he submitted that the proposed changes for LGS are directionally inconsistent with those in the past two general rate applications, in which smaller customers were assigned smaller increases, or larger decreases than the larger customers within the class, for competitive reasons.

[126] To address the above concerns, Mr. Knecht proposed assigning the LGS class rate decrease to both the first energy block and the winter tail block. To recognize Liberty's conclusion about competition, he applied a larger rate decrease to the winter tail block charge (20.2 percent) than to the first energy block charge (14 percent).

[127] Mr. Knecht took no exception to Liberty's proposal for the CGS, ICGS, and OPS classes of customers.

[128] In rebuttal evidence, Liberty rejected Mr. Knecht's recommendation for an alternative rate design for the SGS rate class. Liberty submitted that the recovery of fixed costs through volumetric rates resulted in a decreased level of revenue stability, so to address this, it proposed to shift the recovery of fixed costs through its monthly customer charge. Liberty also submitted that, with respect to the COVID-19 pandemic, it "[…] did not seek a rate increase in the 2021 General Rate Application, despite cost indications that justified such an action."

[129] Concerning the MGS class concerns, Liberty submitted that Mr. Knecht's concerns about rate discontinuity do not apply to this situation and that Liberty's original proposal for the MSG and LGS rate design is reasonable.

[130] Liberty's proposed tariff designs for the SGS, MGS, and LGS classes of customers are denied; however, the Board agrees with Mr. Knecht's recommendations concerning alternative rate designs for the SGS, MGS, and LGS classes, as follows.

[131] For the SGS class of customers, the Board agrees with Mr. Knecht's approach to keeping the energy charge at approximately the same level and increasing the customer charge from $20.00 to $21.50.

[132] For the MGS class, the Board finds that Mr. Knecht's approach of increasing the customer charge for smaller customers from $20.00 to $21.50 is reasonable. Following Mr. Knecht's recommendation, the first and second energy block charges are to decrease.

[133] Regarding the LGS class, the Board finds that Mr. Knecht's proposal for LGS, combined with the MGS proposal, eliminates the rate discontinuity between the MGS and LGS classes. It also substantially reduces the intra-class cost shifting inherent in Liberty's proposal. Accordingly, the first and second energy block charges are to decrease.

[134] The Board accepts Liberty's proposal concerning rate design for the CGS, ICGS, and OPS rate classes.

[135] In Matter 478, the Board ordered Liberty to begin collecting more information about the nature of competitive fuels and the customers at risk of leaving the system. Such information was to be provided during this proceeding.

[136] Although Liberty did provide more systematic information in this proceeding, concerns were still raised about competitive information.

[137] In closing argument, Ms. Black raised the concern that there was not a lot of detail within each class to determine which customers are most affected. Although the Board understands Liberty's perspective that limited information is available, Liberty is directed to continue to provide more information about the nature of competitive fuels and the customers at risk of leaving the system. This will allow for greater clarity when evaluating Liberty's rationale in making rate design decisions based on competitive considerations.

5. Miscellaneous Issues

a. Proposed Variance Accounts

[138] Liberty seeks an order to establish three variance accounts according to subsection 52(2.1) of the GDA. The accounts relate to a variance account for Payments from SEUF Fees, a variance account for Revenue Requirement True-Up, and a Corporate Allocations Variance Account.

[139] As noted above and in addition to subsection 52(2.1) of the GDA, the Board is applying guiding principles as set out in Matter 478 in relation to Liberty’s requests for variance accounts.

i. Payments from Natural Gas Distribution Fund

[140] Liberty submitted that SEUF Fees are payable quarterly to Liberty by SEUF's being renewed. Liberty received a payment of $418,000 for the first quarter of 2021 and $470,000 in the second quarter of 2021. Using an estimate for the amounts remaining in 2021, Liberty forecasted a total of $1.88 million to be applied against the 2022 revenue requirement.

[141] Liberty proposed to include the $1.88 million to offset the revenue requirement for 2022 and then true it up in the 2023 general rate application once actual amounts are known for 2021. It submitted that this is due to Liberty's lack of visibility into the throughput of SEUFs and the variability in the throughput amounts due to potential volatility with the consumption of these entities for 2021.

[142] Mr. Knecht did not object to Liberty's request. While he agreed that the final SEUF revenue requirement credits are uncertain and beyond Liberty's control, he submitted that there is "little downside" to approving its proposal. Ms. Black had no objection to Liberty's request.

[143] Given the uncertainty surrounding the variability in throughput amounts, the fact that the SEUF fee amounts to be included in the revenue requirement cannot reasonably be foreseen and its consistency with the guiding principles set out in Matter 478, the Board approves the creation of a variance account for SEUF fees.

ii. Revenue Requirement True-Up Variance Account

[144] In Matter 491, the Board ordered that Liberty's ROE reflects the adjustments to its cost of capital effective January 1, 2022. In that proceeding, Liberty's ROE was reduced from 10.9 percent to 8.5 percent.

[145] Liberty submitted that it was not prudent to file its 2022 rate application with the knowledge that the ROE would change. Consequently, adjustments to rates were not applied on January 1.

[146] In its Application, Liberty requested an effective date of May 1 for its 2022 rates. It also requested that a variance account be created to true up the difference between the revenue received from its 2021 current rates during the first four months of 2022 and the revenue that would have been received under the new 2022 rates had they been approved on January 1. This would be applied to the revenue requirement.

[147] Liberty submitted that rates will be lowered, or raised in the case of the SGS class, in 2023 by the amount of the over or under earnings in the first four months of 2022. The amounts will then be applied to the 2023 revenue requirement of all rate classes based on a proration of revenue, by rate class, and the account would not include carrying charges.

[148] Mr. Knecht submitted that Liberty's proposed disposition of this variance account does not result in a perfect match between the customers affected by the filing delay and the customers who will eventually pay the cost or receive the benefit from the delay. Notwithstanding this, Mr. Knecht submitted that Liberty's proposal to accrue costs by rate class reduced cross-customer issues. He noted that Liberty's proposal was conceptually consistent with the Board-approved mechanism used to flow credits associated with the ESM. Mr. Knecht agreed with Liberty's proposal with this variance mechanism.

[149] In closing argument, Ms. Black recognized that Liberty's proposal was intended to be a practical way to capture the Board's order on the cost of capital. She argued, however, that she had trouble accepting it was fair to SGS customers. She also argued that if part of the proposal is to go back

to January 1 and recover the higher 2022 rates from SGS customers, this would violate the prohibition against retroactive and retrospective rate making.

[150] The Board finds that the overall proposed variance account is consistent with the guiding principles set out in Matter 478. In this proceeding, the proposed variance account would be established with respect to the occurrence of an event, namely the Board's cost of capital decision which reduced the ROE as of January 1.

[151] The Board, however, agrees with Ms. Black that the proposal, as it relates to SGS customers, violates the prohibition against retroactive ratemaking. The Board finds that Liberty did not raise any known exceptions to this principle that would attempt to resolve any unfairness or uncertainty related to it.

[152] Accordingly, the Board approves the creation of a revenue requirement true-up variance account, except for the SGS class of customers. Given the impending Matter 530 Application, the correction of the over collection, if any, shall occur once rates are put into effect.

iii. Large Industrial Rate Class Variance Account

[153] In Matter 515, the Board approved Liberty's request to establish a new rate schedule designated as its Large Industrial Contract Service (LICS) rate class. The new rate class allows the utility to negotiate rates for new large industrial customers in circumstances where the use of natural gas under any other rate schedule offered by Liberty would be uneconomic.

[154] In his report, Mr. Knecht noted that the new LICS customer would begin taking service in 2022 and that test year revenues from the customer could be material. He submitted that the Board should establish a variance account for LICS service in 2022 if approved in Matter 515.

[155] While Liberty had not included the request to create a variance account in its Application, in its rebuttal evidence and final argument, it agreed to the creation of such an account.

[156] In final argument, Ms. Black stated that she had no objection to creating a LICS variance account.

[157] The Board finds that the creation of a LICS variance account is appropriate and is consistent with the guiding principles set out in Matter 478. This account will ensure that the revenues from the new LICS rate class will be returned to ratepayers in 2023. In addition, had the LICS rate class been approved before the current matter, Liberty would have included the revenues that it

generated in the revenue requirement to reduce rates for other customers on the gas distribution system.

[158] Accordingly, the LICS variance account is approved.

6. Capital Budget

[159] In Matter 478, the Board directed Liberty to provide a more detailed capital budget, including the projects and assumptions that make up the budget. Liberty was also ordered to provide a variance analysis for budget-to-actual and budget-to-forecast spending. Liberty did comply with this direction in this proceeding.

[160] In his report, Mr. Knecht explained that Liberty's filing showed that actual capital spending and non-expansion capital came in modestly below budget. He noted, however, that net capital additions of $2.9 million were above budget, which is added to the rate base.

[161] While Mr. Knecht stated that he could not understand the factors that contributed to this variance, he also stated that there was no basis for concluding any actual capital spending or any of the various adjustments that affect the rate base involved any imprudence.

[162] Mr. Knecht recommended that the parties engage in a collaborative effort to develop a capital spending variance report. He further recommended that this process should be completed in time for Liberty to reflect the results in its 2023 general rate application filing and that it should (a) address the key impacts of capital spending on ratepayers; (b) be demonstrably consistent with the other capital spending reports in Liberty's filing; and (c) not be unduly burdensome to Liberty. Liberty agreed with Mr. Knecht's suggestions.

[163] The Board finds Mr. Knecht's suggestions helpful regarding a consultation process. This should not be burdensome for Liberty to create and will ultimately provide reporting in a meaningful and understandable manner for all parties.

[164] Accordingly, the Board directs that Liberty engage in a consultation process with all parties to develop a capital spending variance report. The result of this consultation process is to be filed with the Board when available.

E. Conclusion

[165] The Board concludes that:

a. Liberty's 2020 Regulatory Financial Statements are approved as filed;

b. The 2022 revenue requirement is approved, subject to the following adjustments:

   i. The Retention and Incentives programs are reduced in accordance with the above paragraphs and will allow the additional income tax expense relating to these adjustments;

   ii. The recovery over a three-year amortization period is denied for the variance account for COVID-19, and all costs will be expenses in 2022, resulting in an increase of the revenue requirement by $245,656;

   iii. Corporate allocations expenses of $2.772 million are approved, resulting in a decrease of the revenue requirement by $0.924 million;

   iv. As the Customer First program is scheduled to go into service in 2023, Liberty is directed to remove $0.488 million from the revenue requirement. The Board will allow the additional income tax expense relating to this adjustment;

c. The proposed SEUF Fees variance account and LICS variance account are approved;

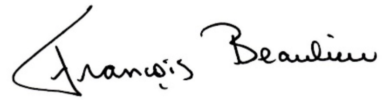
d. The Revenue Requirement True-Up variance account is approved for all classes of customers, with the exception of the SGS rate class;

e. The proposed corporate allocations variance account is denied;

f. All proposed tariff designs for the SGS, MGS, LGS classes of customers are denied; however, the Board agrees with Mr. Knecht’s alternative rate designs as mentioned in the above paragraphs; and

g. The Board accepts Liberty’s proposal for an ESM for 2022 and subsequent years.

Dated at Saint John, New Brunswick, this 26th day of July 2022.



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