



NEW BRUNSWICK
ENERGY & UTILITIES BOARD

COMMISSION DE L'ÉNERGIE ET DES SERVICES PUBLICS
NOUVEAU-BRUNSWICK

REASONS FOR DECISION

IN THE MATTER OF an application by Liberty Utilities (Gas New Brunswick) LP for approval of its 2022 regulatory financial statements, for approval to change its distribution rates effective September 1, 2024, approval of Weather Normalization Adjustment, approval of amounts related to SEUF Fees Variance account, approval of amounts related to Liberty's Revenue Requirement True-up Variance Account for 2023 as well as approval of the use of this account for the 2024 test year.

(Matter No. 551)

April 30, 2025

Matter 551 – Liberty Utilities Rate Application and for Approval of the 2022 and 2023 Regulatory Financial Statements

IN THE MATTER OF an application by Liberty Utilities (Gas New Brunswick) LP for approval of its 2022 regulatory financial statements, for approval to change its distribution rates effective September 1, 2024, approval of Weather Normalization Adjustment, approval of amounts related to SEUF Fees Variance account, approval of amounts related to Liberty’s Revenue Requirement True-up Variance Account for 2023 as well as approval of the use of this account for the 2024 test year. (Matter No 551)

APPLICATION: April 18, 2024
ORAL HEARING: October 4 to October 8, 2024
ORAL DECISION: December 20, 2025
ORDER: December 31, 2024

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Chairperson	Christopher Stewart
Member	John Logan
Member	Kenneth McCulloch, K.C.

PARTICIPANTS:

Liberty Utilities	Len Hoyt, K.C.
Park Fuels Ltd.	Matthew Leroy

PUBLIC INTERVENER: J.M. Alain Chiasson

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Regulatory Financial Statements**

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1 Introduction and summary conclusions

- [1] The following are the Board’s reasons for its oral decision delivered on December 20, 2024.
- [2] For the reasons below, the Board orders a reduction in Liberty’s proposed revenue requirement and modification to the estimated miscellaneous revenue. The Board also approves the implementation of a weather normalization adjustment mechanism for the Small General Service rate class only and the use of a revenue true-up variance account for 2024.

2 Overview

- [3] In April of 2024, Liberty applied to the Board for approval of increased distribution rates notionally effective January of 2024. The average increase in rates sought was 4.57 percent and reflected an increase in Liberty’s revenue requirement to \$52.353 million.
- [4] The rate increases proposed were not uniform across the rate classes. They ranged between 3.5 percent for residential customers and 6.5 percent for large industrial customers. Because Liberty requested that the rates be effective in January of 2024, the utility also sought approval of a revenue variance account to collect the money that would have been paid by customers had the rates been in effect at the start of the year. The money would be collected from customers in 2026.
- [5] In addition, Liberty sought approval for a weather normalization adjustment mechanism for all customers. The mechanism would use customers’ historical usage patterns to estimate use during a typical winter. In colder than normal months, bills would be adjusted downward and in warmer than normal months bills would be adjusted upward to reflect historical consumption experience.

3 2022 Regulatory Financial Statements

- [6] Liberty filed its 2022 regulatory financial statements as required by subsection 57(1) of the *Energy and Utilities Board Act*.
- [7] As part of its rate setting process for Liberty, the Board reviews past capital investments for prudence. Capital expansions to the Liberty system are reviewed using the Board-approved system expansion portfolio test (the “SEP Test”). The SEP Test uses a three-year rolling average to compare annualized capital project costs to the resulting annual

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revenue derived from the investments. If the resulting revenue exceeds the capital expenditure, the SEP Test is met.

- [8] Liberty submits that its capital expansion in 2022 was prudent and the SEP test was met because the estimated resulting revenue was 139 percent of costs. No party took issue with this assertion.
- [9] The Board finds that Liberty’s capital expansions in 2022 meet the SEP Test requirement and are, accordingly, prudent.
- [10] The Board must also evaluate whether the excess earnings sharing mechanism is triggered, resulting in a credit to customers. The Board finds that Liberty’s return on equity was insufficient to trigger the earnings sharing mechanism.

4 Revenue Requirement

- [11] Liberty’s application requested approval of a revenue requirement of \$52.353 million. The budget was completed prior to the beginning of 2024 and reflected Liberty’s estimated spending at that time. However, the application was not filed until mid-April and the hearing was held in October. By then, some information had been modified, refined or simply updated to reflect changed plans.

4.1 The Board will use updated information

- [12] Operating, maintenance and administration costs comprise a significant proportion of Liberty’s revenue requirement. During the interrogatory process for this matter, Liberty filed an updated OM&A expense forecast. Liberty took the position that such updated financial information should be considered only in very exceptional circumstances which were not present in this matter. On the other hand, Dustin Madsen, the expert witness called by the Public Intervenor, maintained that such information was pertinent and included the updated forecast in his recommendations.
- [13] Determining whether new financial information should be incorporated into the rate setting process involves striking a balance between the accuracy required to set just and reasonable rates and the disruption that continual changes to budget estimates could cause. This balance can be assessed by evaluating both the materiality of the change and the certainty of the updated information. In this case, the difference between the original budget OM&A forecast and the updated OM&A costs for 2024 is close to the rate increase sought by Liberty. Accordingly, the Board concludes that the change resulting from updating OM&A spending is material to both the utility and the customer. With respect to certainty, the lateness of the application proceeding to a hearing meant the updated

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information reflected actual spending for half the year which significantly increases the certainty of the updated budget data. The Board finds that the combination of these two factors constitute sufficient basis to use the updated budget forecast in Exhibit LULP 6.56. This information will serve as a starting point for the OM&A portion of the revenue requirement.

[14] Except for those expense items listed below, the Board accepts the remainder of the revenue requirement as requested in the application.

4.2 Labour Costs

[15] Liberty forecasted \$7.856 million in labour and benefits for 2024. This estimate was based on the actual spending for 81 employees as of the end of June and an assumption that Liberty would have 89 employees from July to the end of the year.

[16] During the hearing, Liberty's Director of Finance and Regulatory, David Lavigne, testified that Liberty did not increase staffing to 89 employees and that after July 2024 two more positions became vacant, leaving the total number of employees at 79. Furthermore, Mr. Lavigne confirmed Liberty did not anticipate filling any of vacancies prior to the end of the year.

[17] Curiously, Mr. Lavigne urged the Board to accept the full \$8.804 million labour and benefit estimate from the original budget on the premise that the difference between the original and revised amounts would provide Liberty with a cushion against other unplanned for expenses.

[18] The Public Intervener disagreed with Mr. Lavigne's thesis. He submitted that each item or class of expense must be demonstrably reasonable on its own.

[19] The Public Intervener's expert witness, Dustin Madsen, recommended that the labour and benefits budget be further reduced to account for the additional vacancies. He calculated the extra savings resulting from the extra vacancies in the second half of 2024 as \$462,000.

[20] The Board agrees that the budget must reflect the utility's spending as supported by the evidence. Given that Liberty will not fill vacancies in 2024, the salary and benefit expense relating to those unfilled positions should not be included in the revenue requirement. The Board reduces the labour and benefit budget stated in Exhibit LULP 6.56 by an additional \$462,000.

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[21] In light of the foregoing, the Board will not include a vacancy credit on the labour and benefit expense budget amount in its assessment of the 2024 revenue requirement. However, the Board is of the view that a vacancy credit to recognize that there may be positions that will be vacant for portions of the test year is appropriate and directs Liberty to develop and include a vacancy credit and include it in the preparation of the labour and benefit budget included in future rate applications.

4.3 Corporate Allocations

[22] Liberty is part of a larger corporate group that provides some services to its affiliates and allocates the associated costs to the affiliates. To the extent that the corporate group shared costs allocated to Liberty relate to expenditures that Liberty would otherwise have had to incur directly, they are properly part of the Liberty revenue requirement. Liberty's portion of the costs of those shared services is determined following a methodology previously reviewed and approved by the Board. While Mr. Madsen recommended changes to the methodology, the method has been reviewed and approved in the past. The Board does not see sufficient basis to review or order changes to the allocation methodology at this time.

[23] The Board is satisfied that the approved methodology has been followed.

[24] Liberty's proposed revenue requirement included \$4.854 million in allocated corporate shared costs. For the reasons described above, the Board will use the updated information included in Exhibit LULP 6.56 which has a forecasted expense of \$4.692 million.

[25] The process of determining the prudence of allocated costs involves both ensuring that the costs are related to regulated activity and that Liberty is allocated only a reasonable share of the cost of the shared services.

[26] In addition to confirming that the appropriate allocation methodology has been applied, the Board must be satisfied that the costs are reasonable in a New Brunswick context.

[27] To assist in assessing the reasonableness of the costs allocated to it, Liberty engaged MNP to evaluate the amounts in question. As part of this work, MNP estimated the cost of providing the allocated service locally to produce low-range, mid-range and high-range estimates of the labour for each of the services provided to Liberty by its parent or other affiliated corporations.

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- [28] MNP found that for some services, the allocated amount is higher than the “high” range of providing the service locally. MNP’s Gordon Chalk, acknowledged this point, but added that there may be circumstances where this was appropriate. Mr. Chalk allowed, for example, that in cases where employee retention was a concern or where a high level of skill or specialization was required, higher costs might be justified.
- [29] The authors of the MNP report, Exhibit LULP 2.60, conclude that the allocated corporate costs are reasonable because, in aggregate they are less than the cost of procuring all of the associated services locally.
- [30] The Board cannot accept MNP’s rationale. Paying a lower price for one service does not make paying a higher price for another acceptable or reasonable. The amount allocated for each service must be justifiable as reasonable in the New Brunswick context.
- [31] Mr. Madsen suggested that each individual allocation should be compared to the mid-range for providing the service locally. He concluded that the portion of an allocation that is above the mid-range is unreasonable. Liberty disputed this position and argued that there is no basis to determine that costs above the mid-range are unreasonable.
- [32] The Board finds that the ranges are a helpful reference point for determining prudence. Those costs that are above the high range of providing the cost locally are presumptively imprudent. In the absence of any evidence justifying higher than high-range allocated costs, the Board disallows the portion of allocated corporate service costs that are above MNP’s high-range estimate.
- [33] In future applications, Liberty should expect to provide a rationale for those corporate allocations which fall above the mid-range.
- [34] With respect to the allocated portion of energy procurement costs, Liberty witnesses confirmed that these costs are related to the purchase of natural gas and pipeline capacity. These costs are incurred to serve customers that purchase the natural gas commodity from Liberty and are not costs directly relating to Liberty’s utility distribution function. The *Gas Distributor Marketing Regulation* prohibits distribution customers from paying for gas sales operations as this would amount to cross-subsidization between the two business operations. The Board disallows allocated gas procurement costs of \$246,000 from the revenue requirement.

4.4 Other OM&A spending

- [35] Initially, Liberty budgeted \$2.124 million for consulting expenses in 2024. Updated estimates filed in this matter would reduce projected consulting expenses for 2024 to

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\$1.645 million. The revised number does not include \$147,000 in additional consulting expenses, \$100,000 pertaining to updating operation manuals and \$47,000 for the cost of a working capital study previously ordered by the Board. Together, the total projected consulting expenses are therefore \$1.792 million.

- [36] The Board finds that the \$100,000 cost of updating operation manuals is reasonable. Although the working capital study ordered by the Board was provided too late to permit its entry into evidence at the hearing of this matter, the Board is of the view that the information in the report will be of value in the next proceeding and the \$47,000 expense associated with the study is reasonable.
- [37] Liberty forecasts \$402,000 for advertising and promotions. This represents a 20% increase over the actual cost of advertising and promotions in 2023, \$344,000. Mr. Madsen's opinion was that there was no evidence to explain the year-over-year increase and recommended that the 2023 actual expenditure be adjusted upward by two percent for inflation as reasonable. The Board agrees.
- [38] In view of the foregoing, the professional consulting component of Liberty's 2024 revenue requirement is fixed at \$1.792 million. Liberty's advertising and promotions revenue requirement for 2024 is fixed at \$351,000.

4.5 Capitalization

- [39] As part of the forecast in Exhibit LULP 6.56, Liberty updated the portion of operating expenses it expects to capitalize in 2024. Mr. Madsen took issue with the revised amount, suggesting it did not reflect historical percentages for both the amount of labour generally capitalized or the percentage of the capital budget made up from operating expenses. He provided an estimate of what he believed was a reasonable estimate of capitalized operating expenses.
- [40] The capitalization amount should represent the results of a study by a third party in 2020, which was reviewed and approved by the Board. That study is reflected in the capitalization assumptions contained in Exhibit LULP 2.11. In the absence of persuasive evidence to suggest there was a departure from approved practice, the Board accepts the capitalization percentages as valid.
- [41] The Board directs Liberty to calculate the estimate of capitalized expenses based on the assumptions approved in Exhibit LULP 2.11.
- [42] The Board approves all other aspects of the revenue requirement.

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5 Revenue

- [43] Having arrived at a revenue requirement, the Board must set rates to provide the utility with a reasonable opportunity to recover its prudent expenses.
- [44] Liberty’s revenue is comprised of money from a variety of sources, including the distribution rates paid by customers

5.1 Miscellaneous Revenue

- [45] One offset to the revenue requirement is miscellaneous revenue which Liberty budgeted at \$3.858 million. Miscellaneous revenue comes from a number of sources, including fees from Single End Use Franchises and from the Large Industrial Contract Service Class. The Board adjusts the budgeted revenue from the LICS class for the reasons set out below but accepts the remaining budgeted amount for miscellaneous revenue.
- [46] The LICS revenue budget reflects the contract signed between Liberty and the customer in the class. During the course of the hearing, Liberty acknowledged that its budget did not account for the contracted minimum revenue in the contract and should be adjusted. Moreover, it was Liberty’s evidence that the revenue estimate did not reflect the throughput in 2023 because Liberty did not know if that throughput was representative. By the time of the hearing, Liberty had information on the actual throughput for a significant portion of the year and filed the information as Exhibit LULP 13.06C. The Board orders that LICS revenue be adjusted to reflect the actual throughput shown in LULP 13.06C and orders Liberty to adjust the revenue estimate to reflect the monthly average for 2024 for the remaining months.

5.2 Differential Rate Increases

- [47] In its application, Liberty proposed a 4.57 percent average increase to rates. However, it did not propose to allocate the increases evenly. The increase ranged from 3.5 percent for small general service customers to 6.54 percent for the industrial contract general service class.
- [48] Mr. Knecht, who gave expert evidence on behalf of the Public Intervener, expressed concern about the allocation of the rate increases. He noted that a pure cost of service system would result in a higher increase for those customer classes that are paying below the cost of service, and those classes paying more than the cost of service would get progressively less of an increase in rates.

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- [49] Mr. Therrien testified that Liberty considered the cost of service when determining a rate increase but also considered the value of service. In his view, adopting Mr. Knecht’s proposal would shift Liberty away from value for service and risk Liberty being less competitive.
- [50] On cross-examination, Mr. Knecht clarified that he was not recommending a pure cost of service approach to rate design for Liberty. However, he did say that departing from the cost of service should be accompanied by “clear and complete evidence of a competitive threat.”
- [51] The Board accepts Mr. Knecht’s thesis; value for service and competitive threats are clearly factors that ought to be considered and may justify limits to rate increases but should not be the primary factor. While rate increases for SGS customers may need to be tempered due to competitive threat, the extent of the differential allocation proposed by Liberty would have to be supported by more evidence than was provided. Further, rate increases for the remaining customers must reflect their cost of service. Customer classes with higher revenue-to-cost ratios should move towards parity proportional to the revenue to cost ratio.
- [52] The Board orders Liberty to allocate rate increases in a manner that reflects the principles outlined by Mr. Knecht and is not inconsistent with the Board’s direction in Matter 533.

6 Weather Normalization Adjustments

- [53] Liberty proposes a weather normalization adjustment. Liberty projects its revenues based on historical weather patterns and customer usage. However, actual winter temperatures often fluctuate from historical norms. Such fluctuations are reflected in customer usage which in turn impacts Liberty’s revenues. Liberty’s proposal is to introduce a normalization adjustment which would “normalize” its revenue stream and customers’ bills in months that are colder or milder than historical norms. In colder than normal months, when customers’ consumption is higher than normal, each customer’s bill would be reduced to their “normal level” and in milder than normal months, when customers’ consumption is lower than normal, each customers’ bill would be adjusted upwards to their “normal level”. To avoid extreme swings, Liberty proposes to implement a 20% cap on any adjustment.
- [54] The Public Intervener does not oppose the weather normalization adjustment in principle but in his evidence, Mr. Madsen expressed concern about the risk transfer. Mr. Madsen stated that Liberty’s return on equity incorporates the risk related to warmer and colder weather and believes that the implementation of weather normalization adjustment

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would change that risk. Any reduction of risk should be reflected in distribution rates in some way.

- [55] Liberty disputes the suggestion that the adjustment mechanism would change its risk profile.
- [56] The Board sees some benefit in a weather normalization adjustment for SGS customers but agrees with Mr. Madsen. Adopting a full weather normalization adjustment or other revenue decoupling mechanism may very well alter Liberty’s risk profile.
- [57] Mr. Madsen recommended and the Public Intervener contended that the Board approve a weather normalization adjustment mechanism for either SGS and MGS customers or for SGS customers only.
- [58] The Board approves the proposed weather normalization adjustment for SGS customers only, starting in 2025. Any further expansion of the adjustment mechanism or other revenue decoupling mechanism to other rate classes must be linked to a review of Liberty’s return on equity. The Board is of the view that consideration of any further expansion of the weather normalization adjustment would benefit from the experience gained from the operation of weather normalization adjustment with SGS customers first.

7 Deferral and Variance Account

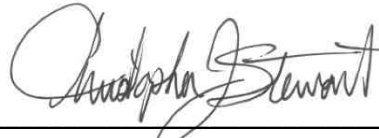
- [59] Liberty’s regulatory financial statements contain several deferral or variance accounts that have been set out in legislation or previously approved by the Board.
- [60] The Board approves the continued use of variance accounts for Single End Use Franchise Fees, Large Industrial Class Service revenue, and incentives.
- [61] The Board also approves the use of a Revenue True-up Variance Account to collect the difference between the revenue collected in 2024 and the approved rates had they been in place in January of 2024.
- [62] The use of a revenue true-up account was approved following a series of regulatory delays that were beyond Liberty’s control. At the time the Board felt the circumstances were exceptional. However, the Board is concerned that Liberty’s reliance on this tool may provide a rationalization for delayed applications.
- [63] The Board does not intend to approve the continued use of this regulatory variance account in 2025 without persuasive evidence of fresh, special and overriding circumstances.

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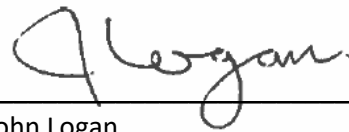
8 Conclusion

[64] Following the issuing of the Oral Decision Liberty, refiled its revenue requirement incorporating the adjustments discussed above. It also filed a revised rates schedule with supporting documentation. The Board has approved the revised revenue requirement and the resulting rate schedule.

Dated at Saint John, New Brunswick, this 30th day of April, 2025.



Christopher J. Stewart
Chairperson



John Logan
Member



Kenneth McCulloch, K.C.
Member