

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-068

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division

Petition for Declaratory Ruling

Order Granting Motion for Reconsideration in Part

ORDER NO. 26,087

December 18, 2017

The Commission hereby grants in part and denies in part the motion for reconsideration of Order No. 26,065, which granted Liberty’s request for a declaratory ruling that it has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene, with conditions based on the Commission’s existing authority regarding engineering and operational safety. The Commission will grant movant Mr. Clark’s request for an opportunity to be heard regarding the matters addressed in Order No. 26,065, while leaving in place the conditions placed on approval that are related to safety and operations matters.

I. PROCEDURAL BACKGROUND

On April 26, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division (“Liberty” or “the Company”) filed a petition for a declaratory ruling pertaining to the Company’s plans for compressed natural gas (“CNG”) and liquefied natural gas (“LNG”) installations in Keene. After due consideration of the matter, the Commission issued Order No. 26,065 (October 20, 2017), ruling that Liberty has the authority under RSA 374:22 to supply CNG and LNG service in Keene under its current franchise. The basis of the Commission’s decision was that RSA 362:2, I, includes in the definition of “public utility” the activity of the “distribution or sale of gas,” and that statute does not differentiate among types of

gas. Order No. 26,065 at 3. With respect to the system conversion, the Commission also placed a series of conditions on the Company, pursuant to RSA 374:1, RSA 374:3, and RSA 374:4, including a requirement that the Company may not flow any gas through the CNG/LNG installation in Keene until the Commission's Safety Division has found the required plans and reports adequate, and completed its physical inspection of the facilities as described in the Order. Order No. 26,065 at 4-5.

On November 16, 2017, a number of people represented by Richard Husband, an attorney from Litchfield, filed a timely Motion for Rehearing of Order No. 26,065. Those individuals included Terry Clark of Keene, and a group called the "NH Pipeline Health Study Group." The group's members were identified as Susan Durling, Beverly Edwards, Elizabeth Fletcher, Richard Husband, Marilyn Learner, Julia Steed Mawson, and Douglas and Gwen Whitbeck. The Company filed a timely objection. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-068.html>.

II. POSITIONS OF THE PARTIES

A. Motion for Rehearing

The movants allege mistakes of procedure, law, and facts in the consideration and issuance of Order No. 26,065. They argue first that the Commission erred in issuing the Order "without notice, a hearing, or any opportunity for intervention, challenge or even public input on issues raised in the proceeding" Motion at 2. They presented a series of arguments regarding alleged technical defects in the Company's Petition for Declaratory Ruling, more details regarding their arguments that notice and opportunity to participate were not properly

given by the Commission, and arguments that granting the Company's request was not in the public interest because of the movants' concerns surrounding climate change and the use of natural gas products as a contributor to climate change. Motion at 6-23.

In particular, the movants asserted that Order No. 26,065 violated the Commission's regulation governing Declaratory Rulings. They argued that N.H. Code Admin. Rules Puc 207.01, which cross-cites Puc 203, required a full evidentiary hearing, subject to the usual rules regarding notice, interventions, evidence, and other elements, before the Company's request for relief could be granted (or denied). Motion at 14-16. The movants' requested that the Commission "vacate (or reverse) the Order, and, after due notice, schedule this matter for a full evidentiary hearing on the merits." Motion at 23.

B. Liberty

In its objection, the Company argued that the movants are not "directly affected" by the matter under the terms of N.H. Code Admin. Rules Puc 203.07(a) and RSA 541:3, which govern motions for reconsideration, and therefore lack standing to challenge Order No. 26,065. The Company then made a series of arguments in opposition to the allegations of procedural or technical defects with the Liberty Petition for Declaratory Judgment, as well as arguments that approval by the Commission was correct.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4-5 (December 7, 2016), *appeal docketed*, No. 2017-0007 (N.H. Sup. Ct. February 15, 2017). A successful motion must establish

“good reason” by showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4-5 (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

As a threshold matter, there is an issue of standing. Pursuant to RSA 541:3 and RSA 541-A:30-a, the Commission has promulgated N.H. Code Admin. Rules Puc 203.07(a) to govern requests for reconsideration, which states: “A motion may be filed by any party, or, in the case of a motion for rehearing, a person directly affected by a commission action pursuant to RSA 541:3.” With the exception of Mr. Clark, the movants and their representative, Mr. Husband, do not appear to have a direct interest in the proceeding. Mr. Clark, on the other hand, has a direct interest in the matter as a resident of Keene, as he resides in the franchise territory that was the subject of the Company’s Petition for Declaratory Ruling. Accordingly, we will focus on Mr. Clark as the person for whom procedural relief may be due, because he alone has a direct interest in the matter.

Of all of Mr. Clark’s grounds for seeking reconsideration of this matter, the most important is procedural. The procedural argument raises the question of what constitutes due process for the issuance of a Declaratory Ruling by the Commission. In this docket the Company sought to clarify a matter of law; namely, whether its existing franchise provides it with the authority to offer CNG/LNG services in the City of Keene. Certainly, engaged

individuals are able to monitor proceedings like the Company's petition through the Commission's public website. The Commission considered the petition over a period of months, and a number of public comments were duly filed during that time, including one by Mr. Husband. As a matter of administrative law, that process may be sufficient. Notwithstanding the prior administrative process in this case, however, to accommodate Mr. Clark's wishes to be heard before the Commission, we will afford Mr. Clark and other interested persons the opportunity to present their legal arguments to the Commission in this matter.

Therefore, we hereby reopen the record and we will schedule a Status Conference for public participation in early 2018 through an Order of Notice to be issued shortly. The Order of Notice will provide details as to how interested parties can submit legal briefs and additional public comments on the question of whether the Company has the legal authority to offer CNG/LNG service in its existing City of Keene franchise area.

We will not address the various arguments presented by Mr. Clark related to purported technical defects with the Petition, matters in connection with Site Evaluation Committee jurisdiction, or the supposed violation of the public interest by our grant of the Company's initial Petition for Declaratory Ruling. In light of Mr. Clark's prayer for relief, which seeks an opportunity to be heard, and our decision to reopen the proceeding, we find that it is unnecessary to address those arguments at this time.

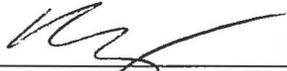
Having dealt with the issues identified by the movants and the Company, we still must address what Liberty may do at this time. Neither Mr. Clark nor Liberty raised any issue with the conditions placed on the Company. We believe that the public interest requires us to maintain all of the safety and operations conditions imposed on the Company in connection with

its CNG/LNG installations in Keene by Order No. 26,065; and therefore, we leave those conditions in place throughout the pendency of this reopened proceeding.

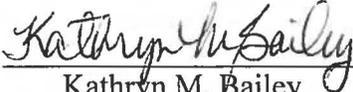
Based upon the foregoing, it is hereby

ORDERED, that the Motion for Reconsideration by Mr. Clark is GRANTED IN PART and DENIED IN PART, subject to the terms delineated in the body of this Order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 2017.



Martin P. Honigberg
Chairman

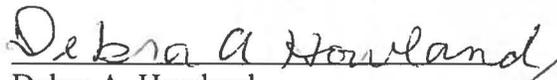


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 17-068-1 Printed: December 15, 2017

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:** DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**