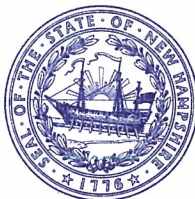


CONSUMER ADVOCATE
Susan W. Chamberlin, Esq.

ASSISTANT CONSUMER ADVOCATE
Rorie E.P. Hollenberg, Esq.



TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

Website:
www.oca.nh.gov

OFFICE OF CONSUMER ADVOCATE

21 S. Fruit St., Suite 18
Concord, NH 03301-2429

July 23, 2014

NHPUC JUL23'14 PM 3:36

Debra Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301-7319

**RE: DG 14-091 Liberty Utilities (EnergyNorth Natural Gas) Corp. D/B/A Liberty Utilities - Petition to Approve Special Contract and Lease Agreement
OCA Response to Order Approving Special Contract and Lease Agreement**

Dear Ms. Howland:

On July 15, 2014, the Commission issued Order No. 25,694 ("Order"), approving a special contract and lease agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. D/B/A Liberty Utilities (Liberty) and Innovative Natural Gas, LLC d/b/a iNATGAS (iNATGAS) that will govern the construction of a compressed natural gas station on the Liberty natural gas system and the sale of gas to that station. Please accept this letter as a response to certain dicta contained within the Order, to which the OCA takes exception.

Specifically, after determining that a checklist related to special contracts did not apply to this case and that approval of the special contract was warranted on other grounds, the Commission stated:

Even if the checklist did apply, those few items applicable to the surcharge present in this docket would militate in favor of granting the petition. One checklist item that the OCA specifically raised was whether the iNATGAS proposal complies with Liberty's most recent integrated resource plan (IRP). Tr. at 130. Liberty stated that this proposal conforms to its most recent IRP, approved in *National Grid NH*, Order No. 25,317 (Jan. 11, 2012). Tr. at 138. No party offered evidence suggesting otherwise.

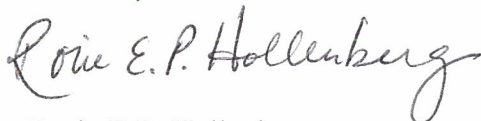
Order at 10. The OCA's response focuses on the last two sentences – the finding that the Company had provided evidence that its proposal “conforms to its most recent IRP,” and the finding that “no [other] party offered evidence” to refute the Company’s “evidence.”

As the Commission may recall, the statements to the effect that the Company’s proposal conformed to its most recent IRP were made by the Company’s counsel, after the closing of evidence and after the delivery of closing arguments. Transcript at 138. In the above-quoted portion of the Order, however, the Commission appears to treat these statements of the Company’s counsel as evidence. The Commission also goes on to suggest in its statement, “No party offered evidence suggesting otherwise[.]” that there was a burden on the OCA to refute this “evidence”(i.e., that the special contract conforms to the most recent IRP) that the Company never presented in its filing or evidentiary presentation at the hearing.

The OCA seeks through this letter to register its strong disagreement with any suggestions that 1) statements made by counsel after the close of evidence are evidence upon which a factual finding or legal ruling may be based; and 2) the OCA, as a non-petitioning party, bore the burden of proof in this case. Because these statements are dicta, *see, e.g., In re Estate of Norton*, 135 N.H. 62, 599 A.2d 138 (1991) (dicta is not deserving of the deference accorded by stare decisis to actual holdings), however, the OCA has chosen not to seek rehearing of the Order but to instead express its disagreement through the filing of this letter for inclusion in the Commission’s record for this proceeding.

Thank you for the opportunity to respond on behalf of the OCA to the Order. Please contact me with any questions.

Sincerely,



Rorie E.P. Hollenberg
Assistant Consumer Advocate

cc: Service List via electronic mail