

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

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

Revised Petition for Declaratory Ruling

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the “Company” or “Liberty”), through counsel, respectfully petitions the New Hampshire Public Utilities Commission pursuant to Puc 203 and Puc 207 for a declaratory ruling that it need not seek permission under RSA 374:22 and 374:26 to distribute natural gas in the City of Keene, New Hampshire, because Liberty’s existing franchise to distribute “gas” already includes “natural gas.”

In support of this petition, the Company states as follows:

1. As promised in late 2014 when Liberty was in the process of acquiring New Hampshire Gas Corporation, the Company has begun planning for the conversion of the Keene system from propane-air to compressed natural gas (CNG) and liquefied natural gas (LNG). *See* Transcript of October 30, 2014, hearing in Docket No. 14-155, at 25-26.¹ The first step in the conversion process is the construction of a temporary CNG facility to be ready for the 2017-2018 winter season. This temporary CNG facility carries the added

¹ “And, what we will do, following acquisition, is look into the economics of converting the system from a propane/air system to some other fuel source, like CNG or LNG. If it’s economical to do so, and results in lower cost to customers, we would go forward and do it. And, if we’re able to do that, we think there’s a lot of potential in the Keene area to expand and grow the system. Obviously, the more you grow the system, the more volume there is over which to spread fixed costs, and it thereby benefits all customers.”

benefit of allowing the Company to permanently retire the blower system that gave rise to the December 19, 2015, incident.

2. The Company has communicated and met with Staff on several occasions to describe its plans for the temporary CNG facility. *See* Settlement Agreement in DG 14-155, at 4 (“EnergyNorth shall also notify the Staff and OCA of Keene Division capital projects other than those referenced in Puc 509.11(c) with projected costs greater than \$50,000 at least 60 days prior to commencement, where feasible”).
3. During the most recent of those discussions, a March 27, 2017, meeting with Staff, Staff advised that the Company is required to: (1) file reports required by RSA 374:5,² and (2) file a petition under RSA 374:22 and RSA 374:26, the franchise statutes, for permission to distribute natural gas because, according to Staff, the conversion from propane to natural gas constitutes a “change in the character of service” provided to Liberty’s Keene customers.
4. The Company does not object to filing the reports required by RSA 374:5. Indeed, the Company will do so through its annual E-22 report and through a more detailed supplemental report specific to this project.
5. The Company does object, however, to the suggestion that it must obtain new franchise rights to provide customers with natural gas in Keene. The existing franchise allows the Company to distribute “gas,” and it has exercised that right and provided several forms of “gas” over the past 150 years without any change in its franchise. This

² “374:5 Additions and Improvements. – For the purpose of enabling the commission to perform its duty to keep informed as provided in RSA 374:4, every public utility, before making any addition, extension, or capital improvement to its fixed property in this state, except under emergency conditions, shall report to the commission the probable cost of such addition, extension, or capital improvement whenever the probable cost thereof exceeds a reasonable amount to be prescribed by general or special order of the commission.”

is entirely consistent with the law, Commission rules, and Commission precedent. Staff's suggestion, on the other hand, has no legal basis. Liberty thus files this petition for a declaratory ruling that it does not need permission under RSA 374:22 and RSA 374:26 to distribute natural gas in Keene.

Liberty Has the Franchise Right to Serve Keene with Natural Gas.

6. First and foremost, the Company has a legislatively granted franchise “to carry on the manufacture, distribution and sale of gas” in Keene, Laws 1860, Chapter 2451, attached as Exhibit 1, and “gas” includes “natural gas.” Commission rules define “gas” as “any manufactured or natural gas or any combination thereof,” Puc 502.06 (emphasis added), and the Commission has approved the Keene-Division tariff that allows for natural gas: “Manufactured gas or equivalent will be supplied at a heat content value greater than or equal to the heat content value specified on Original Page 17.” Keene Tariff NHPUC No. 1 at Original Pages 13 and 15 (emphasis added); *see id.*, at Original Page 4 (“This tariff applies only to the supply of gas at the company’s standard heat content value, adjusted for temperature and pressure, in the locality in which the premises to be served are situated”).³ Therefore, the Company already has permission to serve natural gas in Keene.

³ Note that the tariff of EnergyNorth, known as a natural gas utility, conversely allow the use of propane. “Gas” is defined as “Natural Gas that is received by the Company from a Transporting Pipeline” and “the term shall include amounts of vaporized liquefied natural Gas and/or propane-air vapor that are introduced by the Company into its system and made available to the Customer as the equivalent of natural Gas that the Customer is otherwise entitled to have delivered by the Company.” Original Page 86. The tariff of Northern Utilities contains the same definition, at Original Page 102.

A “Change in the Character of Service” Does Not Require a Franchise Filing.

7. Staff based its requirement that the Company make a tariff filing on its argument that the conversion from propane to natural gas constitutes a “change in the character of service.” The only references to that phrase that the Company could find are at Puc 503.04 and in the Keene tariff itself, and neither supports Staff’s position.
8. Puc 503.04, titled “Change in Character of Service,” requires utilities to “readjust [customer] appliances” if a “change in pressure or composition of the gas” affects their operation, but the rule does not require a franchise (or any other) filing. Rather, Puc 503.04 supports this petition. If there is a “change in ... composition of the gas,” e.g., if the gas changes from propane-air to natural gas, then the Company must “readjust those appliances for the new conditions,” again without the need to make a franchise filing.
9. There are three sections of the Keene tariff titled “character of service.” Two of these sections are identical, they appear on the residential and commercial rate schedules, and they consist of the following sentence already quoted above: “CHARACTER OF SERVICE: Manufactured gas or equivalent will be supplied at a heat content value greater than or equal to the heat content value specified on Original Page 17.” Original Pages 13 and 15. Since natural gas and propane are both “equivalent” to “manufactured gas,” the conversion from propane to natural gas does not constitute a change in the “character of service.”
10. The third tariff section titled “Character of Service” provides as follows:
 2. CHARACTER OF SERVICE
 2. (a) Gas Supply. This tariff applies only to the supply of gas at the company’s standard heat content value, adjusted for temperature and pressure, in the locality in which the premises to be served are situated.

2. (b) Delivery of Gas Supply. The rates specified in this tariff are based upon the supply of service to a single customer through one delivery and metering point.

2. (c) Combined Service on Same Property. A single customer may be permitted to take service at two or more locations on the same premises or property provided that the customer shall pay the cost of all additional service connections required. Service so used will be combined for billing purposes.

2. (d) Use of Service at Separate Properties. The use of service at two or more separate properties will not be combined for billing purposes.

Original Page 4. A conversion to natural gas does not constitute a change in the provisions of this section except for section 2(a), and the Company has this date filed a request to add the heat content value of natural gas to the Tariff. Such a filing does not implicate the franchise statutes.

11. The “Standard Heat Content Value” section of the Keene tariff states, “Propane-air gas will be used to meet the needs of the Keene customers,” and then describes how the Company will convert the quantity of propane-air delivered into therms: “The standard heat content value for the propane-air gas sold will be 0.74 therms per hundred cubic feet and will apply to all bills rendered for the same meter reading month.”

Original Page 17. A “therm” is a generic unit of heat energy that is equivalent to 100,000 Btu. Although it takes different volumes of each fuel to comprise a therm (just like it takes a different volume of potato chips than peanut butter to comprise a pound), the Keene tariff -- like the tariffs of most gas utilities -- converts the volume of delivered gas into therms and bills customers by the therm. The Company’s “heat content” filing simply discloses that the standard heat content value for the natural gas sold will be one therm per hundred cubic feet, as compared to the heat content of propane-air which is 0.74 therms per hundred cubic feet. The Company will convert the cubic feet delivered

to the customer into therms, and bill the customer the same per-therm price, whether the customer received natural gas or propane-air.

12. Even assuming Staff's reference to "character of service" intended a broader interpretation outside the specifics of the tariff, providing natural gas is not a change in the character of service because every material aspect of the Company's service will remain the same. The Company will continue to use the same underground pipeline system to distribute gas from a central facility to its customers, the nature of the gas delivered will be the same, customers use the same appliances with only minor modifications at the Company's expense, the Company will bill the customers at the same per-therm rate approved by the Commission in the cost of gas proceedings, and the Company will provide the same customer service. There will be no change in the character of service.

13. Otherwise, the Company could find no reference to the phrase "change in the character of service" that is the purported grounds for requiring a new franchise filing. Specifically, the Company found no franchise order based on a utility's change in the character of its service.

Historically, Gas Utilities Have Changed Fuels Without Commission Filings.

14. The Company's history in Keene is consistent with this interpretation that the existing franchise is for gas, not propane air, and that the Company and its predecessors were free to change the fuel distributed to its customers without having to obtain permission from the Commission.
15. The Legislature established the original gas utility in Keene and granted it the franchise to distribute "gas" 50 years before the Commission's 1911 birth.

Section 1. That Thomas H. Loverett, Josiah H. Carter [and others], their associates and successors, are hereby constituted a body politic and corporate, by the name of the Keene Gas Light Company, and vested with all the powers and privileges, and subject to all the restrictions and liabilities by law incident to corporations of a similar nature.

Sec. 2. That said corporation is authorized to purchase and hold all such real and personal property as may be necessary and proper to enable them to carry on the manufacture, distribution and sale of gas, for the purpose of lighting the streets, manufactories, machine shops, and all other buildings in the town of Keene, and to construct or purchase such buildings, works, furnaces, reservoirs, gas holders, gas pipes, and other things as may be requisite and proper for such purpose.

Laws of 1860, Chapter 2451, Exhibit 1 (emphasis added); *see* Laws 1850, Chapter 1046, for a similar franchise grant to the Concord Gas Light Company. The Company has continuously possessed the franchise for delivering “gas” since 1860.

16. In its first iteration of the *Rules Prescribing Standards of Purity, Pressure and Heating Value of Gas, and Providing for the Periodic Testing thereof, and for the Testing of Meters, and Otherwise Regulating the Service of Gas Utilities*, the then-named Public Service Commission defined “gas” within its definition of “utility” as follows: “the word ‘utility’ shall be taken to mean any public utility engaged in supplying to the public water gas, coal gas or a mixture of the two.” 2 NH PUC 115, 116 (1913). The definition broadened in a subsequent version of the rules, which carried a shorter title *Rules and Regulations Prescribing Standards for Gas Utilities*, as follows: “The word ‘gas’ shall be taken to mean any gas as manufactured by any process in which the gas is delivered from generating or producing equipment into utility transmission or distribution systems.” 24 NH PUC 401, 402 (1942). The definition took its final form in 1962: “‘Gas’ – any manufactured or natural gas or any combination thereof.” *Rules and*

Regulations Prescribing Standards for Gas Utilities, 44 NH PUC 5, 6 (1962); *see* Puc 502.06 (“‘Gas’ means any manufactured or natural gas or any combination thereof”).

17. Consistent with its franchise right to distribute “gas” and with these broad definitions of gas, the Company changed the fuel distributed over the last 150 years without franchise approval or other permission from the Commission. The Company’s earliest predecessor distributed manufactured gas. According to two similar news articles from about 1991, Exhibit 2, the Company switched from manufactured gas to butane in 1954, then to butane-air in 1968, then to propane air in 1974 (although the articles suggest some overlap of butane and propane in the 1960s). An internal Gas Service, Inc., memorandum dated July 25, 1974, fixes August 1, 1974, as the date of conversion to propane. Exhibit 3.
18. No Commission orders could be found approving any of these changes in fuels. Nor were any orders found that authorized similar changes in fuels by the other New Hampshire gas distribution utilities as they moved from manufactured gas to natural gas over the decades, most using propane and other fuels along the way, which strongly supports the notion that no Commission permission was necessary
19. Rather, there are many references in Commission orders to the fact that gas utilities distributed different fuels, or changed from one fuel to another, and of a utility being able to distribute “natural gas” under the franchise acquired from a “propane distribution utility” without mention of the need for Commission approval of franchise changes.
20. In Liberty’s recent request for the franchise to serve Pelham and Windham, an issue arose over whether Northern’s possession of the franchise for a now-closed propane

distribution system in Pelham conflicted with Liberty's request to provide natural gas in Pelham. In an explicit acknowledgement that Northern's Pelham franchise was to serve "gas," not just propane, Staff highlighted that the Northern franchise may conflict with Liberty's request to serve natural gas Pelham:

Also, there's one small minor technical element that hasn't been examined in the Order of Notice, and that would be the fact that there are a number of official and semi-official materials that indicate that the Town of Pelham is part of the Northern gas franchise territory. And, to our knowledge, that reference is made within Northern's official filings in annual reports. However, there are no customers served by Northern, to Staff's knowledge. And, so, that's an area of factual inquiry that we'll be making regarding whether, number one, Northern maintains some level of franchise exclusivity within the Town of Pelham; whether that so-called "franchise exclusivity" has lapsed; and the exact nature of the franchise that Liberty is seeking, insofar as they may be seeking a border-to-border franchise for both towns, wherein, after approval by the Commission, they would have the inclusive right to offer natural gas service within the entire borders of each town.

Transcript of October 28, 2015, prehearing conference in Docket No. DG 15-362, at 9.

21. In a series of 1973 orders arising from Tennessee Gas Pipeline Company's inability to provide sufficient capacity in which the Commission granted requests for a moratorium, the orders noted, without any comment on the issues related to this petition, that the companies relied heavily on propane to provide baseload service due to the shortage of natural gas:

Gas Service, Inc. has been notified by its supplier of natural gas (Tennessee Gas Pipeline Company) that it will be unable to increase its supply. In addition, Gas Service, Inc. has been unable to obtain firm commitments for the necessary quantities of propane to supplement the natural gas supply.

The testimony of the Petitioner's witness indicated that Gas Service, Inc. had made every reasonable effort to obtain commitments, including the leasing of 40 tank cars, the installation of a railroad sidetrack, and the

installation of eight storage tanks, to provide storage facilities for propane gas. Accordingly, it appears to be consistent with the public interest to permit the restrictions as outlined in Supplement No. 5 to its Tariff to become effective with the date of this Order. Our order will issue accordingly.

Gas Service, Inc., 58 NH PUC 48 (July 24, 1973); *see Manchester Gas Company*, 58 NH PUC 71, (Oct. 2, 1973); *Concord Natural Gas Corp.*, 58 NH PUC 78 (Oct. 16, 1973).

Similarly, Liberty's EnergyNorth system stores large amounts of propane at its Amherst facility, which it distributes through its pipeline system for pressure support, peaking supply, and as otherwise needed. There is no record of EnergyNorth obtaining the franchise to distribute propane.

22. In *Petrolane-Southern New Hampshire Gas Co.*, 74 NH PUC 43 (Jan. 17, 1989), the Commission approved the asset transfer of a propane distribution company to Northern Utilities (the same propane facility referenced in the Pelham docket mentioned above). The Commission found that the transfer, which included Petrolane-Southern's franchise under which it only distributed propane, was for the public good because Northern intended to provide natural gas:

Notwithstanding the history of gas supply to the Salem-Pelham area the commission finds that Northern has demonstrated that it has the necessary supplies and expertise to make good its intention to deliver natural gas. Such an outcome will benefit not only existing customers of Southern but also new customers and in the process benefit the local economy. The commission, therefore, finds that the settlement agreement between the parties is in the public good.

74 NH PUC at 44. The Commission did not require Northern to obtain a separate natural gas franchise, but accepted that Northern would provide natural gas service under a franchise that Petrolane-Southern exercised to provide only propane service. Also note that the ordering clause provided "that Northern Utilities, Inc. be, and hereby is,

authorized to engage in the business of a gas utility in the Towns of Salem and Pelham.”

Id. (emphasis added). The Commission was agnostic as to which fuel Northern would supply. Liberty similarly intends to provide natural gas service under a tariff that authorizes distribution of “gas” and under which the franchisee currently provides propane service. *See also Southern New Hampshire Gas Company*, 65 NH PUC 101, 105 (Feb. 28, 1980) (Commission approved the sale of a propane distribution utility to Petrolane-Southern including the authority “to engage in business as a gas public utility,” and requiring Petrolane-Southern to “pursue all reasonable steps to provide natural gas service to [its] customers”).

23. Finally, in offering testimony partially supportive of Liberty’s purchase of the Keene system, Staff did not suggest that conversion to natural gas would require a separate filing to obtain franchise rights that were not already part of the Keene acquisition:

Q. Liberty has suggested that NHGC customers could see substantial savings if the Keene system were converted to natural gas, would you please comment on that?

A. A number of entities, including the current owners, have considered building an LNG plant to serve Keene but to date none have brought a viable plan forward to do so. Liberty’s plans to bring natural gas to Keene as provided in testimony and explored further through the discovery process are highly speculative and lack specifics. The supply savings would have to be substantial to offset the capital costs associated with building an LNG plant, and the existing customer base is insufficient to support such an investment. Staff does appreciate Liberty’s willingness to pursue other supply sources for Keene in an effort to produce customer savings and growth.

Q. What are some of the benefits you expect if Liberty acquires NHGC.

A. Four benefits I see are: i) NHGC customers will not have to pay the costs incurred to settle the KGC law suit; ii) supply cost to serve NHGC should be lower and more stable under Liberty, as Liberty has propane

storage capacity available to serve NHGC; iii) affiliate charges from the current owner of approximately \$200,000 per year will now be provided by Liberty or its affiliate companies; and, iv) Liberty has shown a willingness to pursue various energy projects intended to bring natural gas to Keene, a potentially less costly and cleaner alternative to propane.

Staff's September 25, 2014, pre-filed testimony in DG 14-155, at 13, 14 (emphasis added). If Liberty did not already hold the franchise for natural gas, as Staff now suggests, surely Staff would not have presumed in the Keene acquisition docket that the Company would automatically acquire the franchise when Staff considered the conversion to natural gas to be "speculative."

Liberty Does Not Need Franchise Permission to Serve Natural Gas.

24. The above all lead to the conclusion that Liberty need not seek permission under the franchise statutes to distribute natural gas in Keene, because it already has such authority.
25. The Company understands the Commission will review the prudence of the decision to convert to natural gas and the prudence of the costs incurred to implement the transition when the Company seeks to recover the costs through its cost of gas rates. The Company also welcomes the Safety Division's review and inspection of the facility and related issues as it enforces applicable safety laws.
26. However, the Company disputes that it must seek permission under the franchise statutes to convert to natural gas, which also suggests that the natural gas franchise is currently available in Keene and others could compete for it. And carrying Staff's logic further means that Liberty (and Northern) has (or should have) separate natural gas and propane franchises for each of the communities it serves. That is not the case. Liberty

has the franchise to provide gas service to its customers, which gas may be propane, natural gas, or another appropriate fuel that meets applicable tariff requirements.

WHEREFORE, Liberty Utilities respectfully asks that the Commission to:

- A. declare that Liberty need not seek permission under RSA 374:22 and 374:26 to distribute natural gas in Keene; and
- B. grant such other relief as is just and reasonable and consistent with the public interest.

Respectfully submitted,

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



Date: April 25, 2017

By: _____
Michael J. Sheehan, Senior Counsel #6590
15 Buttrick Road
Londonderry, NH 03053
Telephone (603) 216-3635
michael.sheehan@libertyutilities.com

Certificate of Service

I hereby certify that on April 25, 2017, a copy of this *revised* petition has been forwarded to the Office of Consumer Advocate.



By: _____
Michael J. Sheehan