

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 14-180

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES**

**RESPONSE OF COMMISSION STAFF TO MOTION FOR
DETERMINATION OF SCOPE OF AUDIT INQUIRY**

Commission Staff (Staff) hereby respectfully responds to the Motion for Determination of Scope of Audit Inquiry (Motion) filed on February 2, 2016 by Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (the Company or EnergyNorth), which requested that the Commission clarify the scope of permissible inquiry in the targeted audit of the Company's customer service and financial areas that was approved in this docket by Order No. 25,797 (June 26, 2015). The Company claims that certain data requests and interview requests issued by the Commission's consultant engaged to conduct the targeted audit exceed the limited scope of the required audit. For the reasons set forth below, Staff believes that the contested information and interview requests fall squarely within the defined scope and related areas for the audit and ask the Commission to so confirm through issuance of a clarifying order.

1. In Order No. 25,797, the Commission approved a Stipulation and Settlement Agreement Regarding Permanent Rates (Settlement Agreement) that, among other things, provided for the performance of a "targeted audit" to be conducted by "an independent consultant selected by the Commission following a competitive bid process." Settlement Agreement Sec. II.L. The scope of this required audit is outlined in Attachment 7 to the Settlement Agreement and includes areas such as account creation and management, meter data management, billing processes, payment and collections processes, call center operations, vendor

relationships, corporate and information technology (IT) services, and related staffing, accounting, budgeting, and business planning. Settlement Agreement Attachment 7. The listed areas are expressly designated for review during the course of the audit, but do “not limit the scope of the audit should the independent consultant, . . . determine a review of related areas is appropriate.” *Id.* If a difference of opinion exists regarding what constitutes a “related area” as that term is used in Attachment 7, then “such difference shall be brought to the Commission for its determination.” Settlement Agreement Sec. II.L.

2. In July 2015, the Commission issued a request for proposals (RFP) for an independent consultant to conduct a “targeted management audit focused on the customer service and accounting functions of Liberty Utilities.” Commission RFP 2015-001 at 1. Based on proposals submitted in response to this RFP, the Commission selected The Liberty Consulting Group (LCG) to perform the required audit of EnergyNorth. LCG began the process of requesting information and interviews from the Company in late 2015. Under the contract executed by LCG and the Commission, LCG was to substantially complete its gathering of data by February 19, 2016, to submit a draft audit report no later than March 1, 2016, and to issue a final audit report no later than April 30, 2016. Agreement with LCG dated October 2015, Exhibit A, Sec. B.

3. The Company now claims that the scope of LCG’s data and interview requests exceeds the agreed-upon and approved scope of the targeted audit – which it argues is not a “management audit” – with respect to two primary areas of inquiry. First, the Company contests inquiries regarding the business, strategic and financial plans of its upstream parent company, Algonquin Power & Utilities Corp. (APUC), as well as APUC’s non-New Hampshire subsidiaries, including requests for APUC’s strategic plans and strategy books, five-year plan,

internal quarterly audit reports, and “balance scorecards” for non-New Hampshire entities owned by APUC, both regulated and unregulated. Motion at 2-3. Second, the Company objects to data and interview requests it claims are redundant with the range of topics that were the subject of the IT transition and security assessment conducted by Gorham Gold Greenwich & Associates LLC (G3) in Docket DG 11-040, including the IT transition from National Grid, the development and implementation of new IT applications, the use, selection, management and monitoring of IT vendors, the processes for fixing IT troubles and defects, IT security and disaster recovery processes, IT change control processes, and IT training processes. Motion at 4-5.

4. The Company maintains that the scope of certain audit inquiries issued by LCG, which it asserts are overly-expansive, will result not only in a significant use of the Company’s “time and resources, both at the local and parent company levels, but also increased costs incurred by [LCG], which will ultimately be charged to the Company and borne by the Company’s customers.” Motion at 8. The Company also expresses concern that the APUC corporate strategy information requested by LCG may include “material nonpublic information thereby implicating securities law issues if it is disclosed.” Motion at 4.

5. Staff does not concur with the Company’s characterization of the required audit as restricted solely to the customer service and finance functions of its New Hampshire utility operations.¹ The audit scope described in Attachment 7 specifically includes corporate services, IT services, accounting, budgeting, and business planning as areas to be covered by the “targeted audit.” Nor does Staff agree that the audit was in no way intended to be a “management audit.”

¹ As noted by the Company, while the audit was agreed to in the context of an EnergyNorth rate case settlement, because the IT system and processes used for the gas utility business are largely the same used in the electric business, the Company has provided information about Granite State Electric in the course of the audit. Motion at 4, fn. 4.

While not identified as such in the Settlement Agreement, Staff witness Noonan testified at the hearing on the proposed settlement that, “while this is not a comprehensive management audit, it’s styled loosely on that, and more targeted and focused to the areas that we know to be of concern.” Transcript of May 26, 2015 Hearing (Tr.) at 35. Ms. Noonan also emphasized that the audit scope areas listed in Attachment 7 were not to be considered exhaustive, rather

as the consultant gets into his or her work, if they identify other related areas, the scope is not limited just to that list, if there are other related areas they identify during the course of their work.

Tr. at 33. The Commission approved the Settlement Agreement, finding in particular that the independent audit requirement was reasonable and “will contribute to Liberty’s future success.” Order No. 25,797 at 15. The mere fact that the breadth of the audit scope may not be as extensive as that of a full utility management audit does not also mean that its depth must be unduly constrained.

6. With respect to LCG’s pending information and interview requests that are subject to the Company’s objection, Staff believes that this discovery falls squarely within the scope of the audit, whether considered to be within directly-included areas or matters determined to be related areas. In particular, the discovery requests regarding parent company strategic planning, performance metrics and incentives, enterprise budgeting, and corporate decision-making are relevant to determine the level of management attention to and involvement in the relevant New Hampshire utility operations. The focus of this inquiry is the extent to which top-level strategic, financial, and business plans guide, support, constrain, or otherwise influence budget development, adoption, and execution, and the extent to which applicable performance metrics do or do not sufficiently support the effective provision of services and execution of responsibilities in the specified audit scope areas.

7. The LCG data requests subject to the Company's objection inquire into the strategic, financial, and business planning, parameters, internal auditing and reporting, and the corresponding performance measurements, that drive utility budgeting and business planning. *See* Motion Exhibit B. Staff understands these matters are routinely reviewed by independent auditors in order to effectively review utility budgeting, because they establish the overall framework within which the budgeting takes place. In Staff's view, it is all the more appropriate in a holding company structure, with many functions managed by or coordinated with the corporate parent company, to examine how operations and functions directly performed by or affecting the utility subject to audit fit and are treated within the parent-level context. The multi-utility holding company context may necessarily involve competition for and prioritization of resource application between and among various corporate affiliates through, among other things, the budgeting process.

8. With respect to performance measurement through balance scorecards, key performance indicators (KPIs), or other means, Staff believes it is an important attribute of effective budgeting, business planning and resource allocation that there be well-defined management accountability. In particular, "effectiveness" in many of the areas other than budgeting that are expressly covered by the audit scope also is in part a function of where and what accountability exists for meeting goals and targets, thus making scorecards and KPIs generally relevant to each of the audit scope areas and not only to those concerning budgeting. Staff understands it is LCG's view that the contested data requests in fact represent a minimum level of inquiry that is fully warranted to inform its review as an independent consultant engaged to conduct the required audit, and Staff concurs with this view of the appropriate scope of inquiry.

9. The Company's objection to the interview requests regarding IT matters as redundant with the earlier G3 monitoring and assessment efforts is perplexing, given that the Attachment 7 audit scope specifically covers "Effectiveness and Efficiency of Corporate Services / IT Support and Service," and G3's prior work in this general area was well known at the time the Settlement Agreement was executed. Staff acknowledges there may be some potential overlap between the monitoring and assessment previously performed by G3 and the IT matters outlined in the pending LCG interview requests to which the Company has objected. However, the focus of the two consultant reviews is quite different. The work performed by G3 was focused primarily on the development and execution of the plan for IT migration from National Grid to the Company and the security of the Company's IT systems following the migration. The focus of LCG's inquiry is the effectiveness of the IT systems and processes currently used by the Company in connection with its customer account creation and management, meter data management, call center operations, vendor relationships, and customer billing, payment and collections processes – the areas that represent the primary target of the pending audit. The role of IT systems in these areas can hardly be questioned and is specifically identified in the targeted audit scope. Staff believes that LCG should be permitted to conduct the requested interviews and inquire into these IT matters in order to fully inform its review of the relevant areas of concern.

10. Staff appreciates the substantial commitment of time of resources that is required for the Company to respond to the necessary audit inquiries.² The process is taxing for Staff as well. However, the significant and ongoing "customer-impacting issues" identified in this docket have necessitated the targeted audit requirement that was agreed to by the parties to the Settlement

² The Company argues that an expanded audit scope may increase LCG's costs to the ultimate detriment of its ratepayers, but the Commission's contract with LCG was executed and approved with a not-to-exceed contract price specified therein.

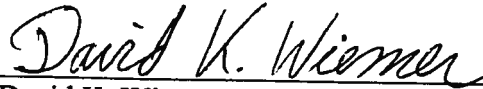
Agreement and approved by the Commission last year. *See* Order No. 25,797 at 15. Staff continues to believe that the benefits of the targeted independent audit should outweigh its costs, as it is anticipated that the audit will identify the root causes of and potential solutions for the ongoing issues that affect customers of the Company. With respect to the Company's expressed concern regarding potential disclosure of commercially-sensitive, non-public corporate strategy and business planning information, Staff understands that LCG has executed a non-disclosure agreement with the Company and has offered to make reasonable accommodations intended to protect such information, including limited redaction of clearly irrelevant information and limited on-site review of certain specified documents. Staff believes these measures should be sufficient to prevent disclosure of confidential and proprietary information beyond those with a need to know the information for the purposes of the audit.

11. In general, Staff encourages the Commission to view the current phase of the audit as analogous to pre-hearing discovery in an adjudicatory proceeding, the scope of which may encompass information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *See, e.g., Public Service Company of New Hampshire*, Order No. 25,592 (Nov. 1, 2013) at 4. The scope of discovery should not be unduly restricted when the results of the inquiry may produce relevant facts that will inform the decision maker, or, in this case, the independent auditor engaged by the Commission. When interpreting the scope of the audit at this phase and in this context, Staff believes the preference should be for broader and deeper inquiry so that the relevant facts and issues may be brought to light.

12. Finally, Staff urges the Commission to resolve the audit scope issues raised by the Company in its Motion on an expedited basis, so as to minimize the delay in audit completion.

Respectfully submitted,

Date: February 8, 2016



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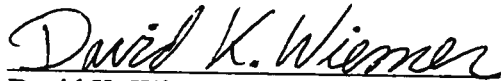
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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically served a copy of this filing upon each party on the official Service List compiled by the Secretary in this proceeding.

Dated at Concord, New Hampshire, this 8th day of February, 2016.



David K. Wiesner, Esq.