

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

September 9, 2015 - 9:04 a.m.
Concord, New Hampshire

NHPUC SEP23'15 AM 9:47

RE: DG 15-289
LIBERTY UTILITIES (ENERGYNORTH NATURAL
GAS) CORP. d/b/a LIBERTY UTILITIES:
Petition for Approval of a Gas Franchise
in Lebanon and Hanover, New Hampshire.
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth
Natural Gas) Corp. d/b/a Liberty Utilities:
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. NG Advantage, LLC:
Susan S. Geiger, Esq. (Orr & Reno)

Reptg. the City of Lebanon, N.H.:
Tim Corwin, Planning Dept.
Chris Christopolous, Fire Chief

Ariel Arwen, pro se

Court Reporter: Steven E. Patnaude, LCR No. 52

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APPEARANCES: (c o n t i n u e d)

Reptg. Residential Ratepayers:

Susan Chamberlin, Esq., Consumer Advocate
Pradip Chattopadhyay, Asst. Consumer Adv.
Office of Consumer Advocate

Reptg. PUC Staff:

Alexander F. Speidel, Esq.
Stephen P. Frink, Asst. Dir./Gas & Water Div.
Robert Wyatt, Safety Division
Al-Azad Iqbal, Gas & Water Division

Also Present: Michael Fradette (Prometheus Energy)

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P R O C E E D I N G

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2 CHAIRMAN HONIGBERG: We're here this
3 morning in Docket DG 15-289, which is Liberty Utilities'
4 Petition for Franchise Approval up in Hanover and Lebanon.
5 And, frankly, we expected more interventions. We have
6 four interventions here. Maybe there's some people here
7 who haven't filed. I'm not going to read the Order of
8 Notice, because no one wants me to do that.

9 Let's take appearances before we go any
10 further.

11 MR. PATCH: Good morning, Mr. Chairman
12 and Commissioners. Douglas Patch, from the law firm of
13 the Orr & Reno, on behalf of Liberty Utilities
14 (EnergyNorth Natural Gas). And, with me this morning,
15 Steven Mullen, William Clark, and Michael Licata.

16 MS. GEIGER: Good morning, Mr. Chairman
17 and Commissioners. I'm Susan Geiger, from the law firm of
18 Orr & Reno, and I represent NG Advantage, LLC.

19 MS. ARWEN: Good morning, Mr. Chair.
20 I'm Ariel Arwen, appearing *pro se*, on behalf of myself, as
21 a resident of Lebanon, New Hampshire.

22 MR. CORWIN: Good morning. My name is
23 Tim Corwin. I'm with the City of Lebanon. And, with me
24 this morning is Chief Chris Christopolous. Thank you.

1 MR. FRADETTE: Good morning. Mike
2 Fradette, with Prometheus Energy. I'm hear just observing
3 the process.

4 CHAIRMAN HONIGBERG: I'm sorry, who are
5 you with?

6 MR. FRADETTE: Prometheus Energy.

7 MS. CHAMBERLIN: Good morning,
8 Commissioners. Susan Chamberlin, Consumer Advocate. And,
9 with me today is Pradip Chattopadhyay.

10 MR. SPEIDEL: Good morning, Commission.
11 Alexander Speidel, representing Commission staff. And, I
12 have with me Steve Frink, Bob Wyatt, and Iqbal Al-Azad of
13 Commission Staff.

14 CHAIRMAN HONIGBERG: All right. We have
15 Motions to Intervene from Ms. Arwen, who is here, I see;
16 from Attorney Geiger; we have from the City. So, you're
17 here for -- are you from Mr. Waugh's firm, is that --

18 MR. CORWIN: No. Attorney Waugh is not
19 here today. I'm with the City of Lebanon Planning
20 Department.

21 CHAIRMAN HONIGBERG: You're actually a
22 City employee, rather than counsel?

23 MR. CORWIN: Correct.

24 CHAIRMAN HONIGBERG: Okay. All right.

1 Those are, I think, the only three intervention motions
2 that we've received. And, as I said at the beginning, I'm
3 a little surprised. Perhaps, as the parties give little
4 talks about what they expect is going to be happening
5 here, and I know you have a technical session scheduled
6 later, how come we had so many people for the other one,
7 and some of those people aren't here for this one? Well,
8 maybe someone can talk about that a little bit.

9 Anyway, Mr. Patch, why don't you begin.

10 MR. PATCH: First of all, Mr. Chairman,
11 if it would be helpful, Liberty has no objection to any of
12 the Petitions to Intervene that you have mentioned.

13 CHAIRMAN HONIGBERG: Thank you.

14 MR. PATCH: As I think the Commissioners
15 know, EnergyNorth is in this docket seeking the
16 Commission's approval to commence business in Hanover and
17 Lebanon as a gas utility, so that it may construct, own,
18 and operate an off-pipeline and self-contained natural gas
19 distribution system. And, we believe we've made at least
20 a prima facie showing in the documents that we have filed
21 that we should be entitled to obtain that franchise.

22 Obviously, you have before you another
23 docket with a competing franchise. We're here today,
24 obviously, to cooperate with the Staff and the OCA and the

1 intervenors to try to come up with a schedule that we
2 think works. The other docket has a schedule that I think
3 only takes us through discovery. And, so, we want to work
4 with the Staff and the others to try to come up with a
5 reasonable schedule to do this, and to make sure the
6 Commission has before it all of the information that it
7 needs in order to make an informed decision about this
8 franchise request.

9 I think that's all I have to say at this
10 point in time.

11 CHAIRMAN HONIGBERG: Thank you,
12 Mr. Patch. Ms. Arwen, do you have anything you want to
13 put on the record at this time? I know you've -- we have
14 your written Motion to Intervene, which we'll -- I don't
15 know if we'll rule on it as we're sitting here, but I
16 think you can assume that you're going to have an
17 opportunity to participate. Is there anything you want to
18 put on the record right now?

19 MS. ARWEN: Yes. I'd like to take the
20 opportunity to point out that the Commission granted me
21 intervenor status in DG 15-155. And, my interests are the
22 same in each case.

23 CHAIRMAN HONIGBERG: Thank you.
24 Ms. Geiger.

1 MS. GEIGER: Yes. Thank you, Mr.
2 Chairman. As our Petition to Intervene has indicated,
3 Liberty does not object, and they've reiterated that this
4 morning. NG Advantage is participating in this docket
5 because it believes it has relevant experience as a
6 participant with an island or an off-pipeline system in
7 Vermont that enables it to provide useful information to
8 the Commission and Staff and other parties in this docket,
9 as the Commission faces issues of first impression here.

10 For example, NG Advantage will pursue
11 the issues of assuring that backup supply plans for this
12 franchise area include or provide the opportunity for LNG
13 and CNG mixes, and that interruptible customers are
14 properly accounted for.

15 However, NG Advantage's primary concern
16 here is that any competitive -- any supply procured for
17 this franchise area is done as the result of a fair and
18 open, competitive process, and that NG Advantage,
19 obviously, is interested in participating in that.

20 So, toward that end, NG Advantage's
21 preliminary position here is that the Commission should,
22 as a condition, if it decides to award a franchise, either
23 to Liberty or to another party, that it require that
24 supply for the system be procured as a result of the

1 competitive process.

2 CHAIRMAN HONIGBERG: Thank you.

3 Mr. Corwin, is there anything you want to offer at this
4 time?

5 MR. CORWIN: No. Thank you. We don't
6 have anything to add, other than what's already contained
7 within our Petition to Intervene.

8 CHAIRMAN HONIGBERG: Ms. Chamberlin.

9 MS. CHAMBERLIN: Thank you. The Office
10 of Consumer Advocate is intervening to represent the
11 interests of residential customers. In a situation like
12 this, it's typically a large anchor customer or two that
13 will negotiate the first deal, and then we are seeking to
14 make sure that residential customers have an opportunity
15 to participate, to the extent that it's economically
16 feasible.

17 CHAIRMAN HONIGBERG: Mr. Speidel.

18 MR. SPEIDEL: Thank you, Mr. Chairman.
19 Staff will not venture a guess as to why there are fewer
20 or more intervenors in one docket or another. We
21 genuinely don't know.

22 But that said, with regards to
23 Prometheus Energy, considering that they are not a private
24 citizen and they are a corporate entity, I would strongly

1 encourage the Prometheus folks to consider filing a late
2 Motion for Intervention, if they want to have a meaningful
3 role in the technical sessions or in the discovery
4 process. Because, if you do not have intervention status,
5 you do not have a right to propound discovery. And, so,
6 perhaps they think that at this stage it would be
7 advantageous for them not to file intervention. But I
8 would like to just send that flag up that, if they do want
9 to have any sort of active role at all in the process, and
10 that would include asking an oral question at a technical
11 session of any kind, that they should seek a late
12 intervention request approval from the Commission, I would
13 encourage them to do that.

14 CHAIRMAN HONIGBERG: Kind of like that
15 technical session that's going to start after we're done
16 here?

17 MR. SPEIDEL: Yes.

18 CHAIRMAN HONIGBERG: Is that what you're
19 referring to?

20 MR. SPEIDEL: Exactly, yes. Things of
21 that nature. Because, if you're an intervenor, you have
22 rights, and you count noses, and you say "such-and-such is
23 an intervenor, and the other person's an intervenor, and
24 then you have an entity that's an intervenor." It's much

1 cleaner that way.

2 In the distant past, there have been
3 instances where folks have said "Well, I don't want to be
4 an intervenor, but I want to participate and propound
5 discovery", and it was actually a matter of conscience for
6 one such person, and we kind of did a workaround, but they
7 actually had to file for intervention.

8 So, in this instance, I would like to
9 say that the Staff has received and reviewed the Liberty
10 filing, and it is being reviewed on its own merits. And,
11 it is being carefully examined, and there's going to be a
12 series of questions that are going to be issued by Staff
13 over the pendency of this proceeding.

14 It's going to be handled on its own.
15 After internal deliberation and discussion, Staff came to
16 the conclusion that it's very important to examine the
17 merits of this proposal and the Valley Green proposal as
18 separate corporate entities, separate approaches, and not
19 to intertwine the two.

20 So, in this instance, we look forward to
21 working with the Company and the intervenors and examining
22 the issues, and determining whether Liberty is in a
23 position to offer safe, economical, and reliable service
24 to the people of Lebanon and Hanover. Thank you.

1 CHAIRMAN HONIGBERG: You don't have any
2 objection to the Motions for Intervention that have been
3 filed, do you?

4 MR. SPEIDEL: No objection.

5 CHAIRMAN HONIGBERG: Mr. Fradette, if
6 you were to file a motion to intervene and want to
7 participate in this docket, what might it say? What would
8 your interests be in this proceeding?

9 MR. FRADETTE: I think it --

10 CHAIRMAN HONIGBERG: If you take a
11 microphone, that will be helpful.

12 MR. FRADETTE: From the -- can you hear
13 me okay?

14 CHAIRMAN HONIGBERG: Off the record.

15 (Brief off-the-record discussion
16 ensued.)

17 MR. FRADETTE: There we go. Prometheus
18 Energy would be in line with the position of NG Advantage,
19 in that we'd want to ensure there were a competitive, fair
20 and open process for supply of LNG and/or related services
21 for the facility, in the event we were to submit a late
22 intervention status. As well as we provide
23 industrial-scale and commercial-scale LNG solutions
24 throughout the U.S. In the event that were of value to

1 the Staff or to -- throughout the process, we could
2 provide that.

3 A question, if you're able to answer,
4 when are we -- when would be the deadline for submitting a
5 late intervention notice?

6 CHAIRMAN HONIGBERG: I mean, the short
7 answer is "once you're late, you're late", and there was a
8 deadline set. But there are statutes and rules that
9 govern intervention. They are -- there are many people in
10 the room who can work with you on what the -- what the
11 pluses and minuses are of being an intervenor. I think
12 that there are lots of things non-intervenors who are
13 interested in the docket can do to keep themselves
14 informed and offer comments. There are limits, however,
15 if one is not an intervenor.

16 I guess what I would say is, after we're
17 done, I mean, if you haven't made your decision before
18 we're done, and I think there's no reason why you wouldn't
19 necessarily have done that, at the beginning of the
20 technical session you can speak with the folks who are
21 here about what it is you would want to do, and what it
22 makes sense for you to do as a result of those desires in
23 the context of deciding whether to try to intervene.

24 Before I go any further, I'm going to

1 consult with the other Commissioners here.

2 (Chairman and Commissioners conferring.)

3 CHAIRMAN HONIGBERG: All right. So,
4 there's two things I'm going to say. One is, the Motions
5 to Intervene that have been filed, we're granting those
6 motions. So, all of the intervenors who have filed are
7 now parties to the case.

8 One thing that I was encouraged to
9 remind you, Mr. Fradette, is that, if you choose not to
10 intervene now, but want to at a later date, you'll be
11 living with the schedule that the parties decide is the
12 schedule. And, if, at some later date, say "oh, I want to
13 come into the case, because I need to know X, Y or Z",
14 that may be a problem. And, that said, that may not be
15 important to you.

16 You may realize that Attorney Geiger is
17 going to be doing all of the things you would do, or you
18 may conclude that merely keeping abreast of what's going
19 on and being able to provide public comment, which you can
20 do, written or, in some context, oral, before hearings
21 begin, it may be sufficient. I don't think we can answer
22 those questions for you.

23 I don't think there's anything else we
24 necessarily need to do. Is there? I'll look at the

1 counsel and the parties to see if there's anything else
2 you need from us?

3 (No verbal response)

4 CHAIRMAN HONIGBERG: Mr. Fradette, do
5 you have any other questions that we probably won't
6 answer, but you'll alert the lawyers to before you get to
7 the technical session?

8 MR. FRADETTE: No. I appreciate that,
9 the opportunity to speak.

10 CHAIRMAN HONIGBERG: All right. If
11 there's -- yes, Ms. Arwen?

12 MS. ARWEN: Yes. Regarding scheduling,
13 I wondered if it's possible to consider scheduling the
14 conferences, the technical sessions, and the hearings for
15 both dockets, 15-155 and 15-289, so that they occur on the
16 same day, if at all possible? Many of the issues in the
17 two dockets will be identical. I intend to have expert
18 witnesses provide testimony, and having those witnesses
19 appear on separate days increases the convenience for them
20 and the expense for me. It also reduces my effectiveness
21 as an intervenor.

22 CHAIRMAN HONIGBERG: I think, in the
23 first instance, to the extent you can work out scheduling
24 issues with the other parties, that's how things would

1 normally work. I expect you are not the only one who will
2 have people who will be working in both dockets on many of
3 the same issues. I expect lots of people will agree with
4 you, that that's a very efficient way to proceed. If, at
5 the end of whatever negotiated process, you or anyone else
6 isn't satisfied with the schedule that's being set, you
7 would need to bring it to our attention to try and fix it,
8 try and get us to fix it.

9 But, in the first instance, you're all
10 going to try and set a schedule that makes sense for you,
11 many -- everyone here, I think, is aware of the schedule
12 that's in the other docket. It would make sense to me to
13 be coordinating those schedules.

14 As I said, if, at the end of the day,
15 something doesn't match, and you or anybody else needs us
16 to consider changing it, the way to do that is to ask us
17 to do that at that time.

18 MS. ARWEN: Thank you.

19 CHAIRMAN HONIGBERG: Attorney Speidel.

20 MR. SPEIDEL: Yes. Thank you, Mr.
21 Chairman. Just sort of and by way of clarification, we
22 haven't set a hearing date yet in the Valley Green
23 proceeding, DG 15-155. And, we are working through two
24 rounds of discovery at the present time and haven't

1 established a testimonial deadline. Certainly, their
2 written prefiled testimony, it's not germane as to what
3 actual hearing dates are, if the written testimony is
4 similar in both dockets for Ms. Arwen. So, that's one
5 issue that is kind of a nonissue.

6 The second piece is, we don't know if
7 we're going to necessarily be in a position to generate a
8 full Staff recommendation on this docket at the same time
9 as we do for Valley Green, given that Valley Green filed
10 that much farther in advance. And, there has been more
11 work ongoing in discovery.

12 So, yes, perhaps Ms. Arwen is right, in
13 that, and from her perspective, there are some
14 similarities in the case. Certainly, the franchise
15 territory is the same. But, in Staff's view, we firmly
16 believe that one is not dependent on the other, and we're
17 working through both on their own tracks.

18 CHAIRMAN HONIGBERG: And, I understand
19 that. And, I know that Valley Green, from what they said
20 in their prehearing conference, they feel very strongly
21 that they are entitled to their own schedule, and I don't
22 think anybody is going to disagree with that. And, I
23 think Liberty is entitled to its own schedule. If, at
24 some point, they end up on the same track, that's what's

1 going to happen. And, if not, that's what's going to
2 happen.

3 Anything else, before we leave you to
4 your technical session?

5 (No verbal response)

6 CHAIRMAN HONIGBERG: Seeing no one
7 jumping up, we will adjourn then, and wish you good luck
8 with your technical session. Thank you all.

9 **(Whereupon the prehearing conference was**
10 **adjourned at 9:21 a.m., and a technical**
11 **session was held thereafter.)**

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