

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: August 6, 2020
AT (OFFICE): NHPUC

FROM: Steve Frink, Director, Gas & Water Division
Randall Knepper, Director, Safety Division
Lynn Fabrizio, Staff Attorney *LF*

SUBJECT: Dockets DG 15-362 and DG 16-852
Expiration of Liberty's Franchise Authority to Serve
Windham, Hanover, and Lebanon

TO: Debra A. Howland, Executive Director

CC: Service Lists for Dockets DG 15-362 and DG 16-852

Liberty's franchise authority to serve the Town of Windham, the Town of Hanover, and the City of Lebanon has expired. Staff recommends the Commission issue an order noting the expiration of Liberty's authority to serve gas to customers in each of those municipalities. Accordingly, if Liberty seeks to renew its requests for franchise authority, it should file new petitions to serve each municipality, with associated justifications.

Staff Recommendation:

On February 8, 2017, the Commission granted Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty, or the Company) permission and approval to serve natural gas to customers in the Towns of Pelham and Windham, New Hampshire. *See* Order No. 25,987 (2/8/17) in Docket DG 15-362.

On March 5, 2018, the Commission granted Liberty permission and approval to serve natural gas to customers in the Town of Hanover and the City of Lebanon, New Hampshire. *See* Order No. 26,109 (3/5/18) in Docket DG 16-852.

In each of the above dockets, the Commission granted Liberty franchise authority pursuant to RSA 374:26, which states that the Commission "may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest." In its orders, the Commission cited RSA 374:27, which states that authority granted under RSA 374:27 "may only be exercised within 2 years after the same shall be granted, and shall not be exercised thereafter." In Order No. 26,109 granting Liberty's requests for franchise authority in Hanover and Lebanon, the Commission stated, "We note that under RSA 374:27, our grant of a franchise to Liberty must be exercised within two years of the date of this order or such authority will expire.

In the event Liberty has begun but not completed construction and is not flowing gas *within* two years of the date of this order, it shall file a status update, and petition the Commission to continue the franchise authority.” Order No. 26,109 at 22 (emphasis added).

According to Liberty’s 2019 annual report, the Company has initiated service to customers in Pelham. However, to the best of Staff’s knowledge, based on its review of Company filings and reports to the Safety Division of project activities, the Company has not yet initiated construction, operation, or service in Windham, Hanover, or Lebanon. Furthermore, Liberty did not file a status update or petition the Commission to extend its franchise authority in Hanover or Lebanon within two years of the order granting franchise authority, as required by Order No. 26,109. Nor did the Company file a status update or petition to extend its authority in Windham within two years of the issuance of Order No. 25,987.

Liberty’s authority to operate and serve customers in the Town of Windham expired by statute on February 8, 2019; its authority to operate and serve customers in the Town of Hanover and the City of Lebanon expired by statute on March 5, 2020.

In the event Liberty wishes to renew its requests for authority to serve natural gas in Hanover, Lebanon, or Windham, it must submit new petitions for the Commission’s consideration. Staff notes that the above decisions were based on settlement agreements that included certain agreed upon conditions for the Company’s authority to operate in each municipality. Accordingly, Staff recommends that Liberty not resubmit any petition until it has reached out to the signatories of the applicable settlement agreement(s) and established plans to address the conditions approved in Commission Order No. 25,987 regarding Windham, or in Commission Order No. 26,109 regarding Hanover and Lebanon. Staff further recommends that, prior to submitting any new petitions, the Company include justification its requests by establishing a business plan and demonstration of customer interest warranting the further regulatory proceedings required for the Commission’s review.

Staff recommends that the Commission issue an order noting the expiration of franchise permissions with requirements as outlined above.

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