

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 15-362**

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

**Petition for Franchise Approval in Pelham and Windham**

**Order on Petitions to Intervene**

**ORDER NO. 25,864**

**February 4, 2016**

In this Order, the Commission confirms its approval of the petition to intervene filed by the Town of Pelham, and denies the late-filed motion to intervene filed by Northern Utilities, Inc. Further, in a companion supplemental Order of Notice, Northern Utilities, Inc., will be required to appear as a mandatory party regarding the question of whether it has a current franchise territory in the Town of Pelham.

**A. TOWN OF PELHAM INTERVENTION**

This docket reviews the petition by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) for a gas utility franchise in the towns of Pelham and Windham. On October 23, 2015, the Town of Pelham (Pelham) timely filed a Petition to Intervene, pursuant to RSA 541-A:32, I, to which no party objected. The Commission granted Pelham's petition at the October 28, 2015, prehearing conference (PHC) for this matter (*see* Transcript of Oct. 28, 2015, PHC (Tr.) at 14). By this Order, the Commission confirms the granting of Pelham's motion to intervene, pursuant to the standards of RSA 541-A:32, I. *See* N.H. Code Admin. Rules Puc 203.17. Under this standard, the Commission reviews the facts alleged in the petition and determines whether the petition has demonstrated "rights, duties, privileges, immunities or

other substantial interests [that] may be affected by the proceeding....” RSA 541-A:32, I(b).

The Commission finds that Pelham, a municipality over which Liberty seeks gas utility franchise rights, has demonstrated such substantial interests, and therefore, Pelham is entitled to intervention pursuant to RSA 541-A:32, I.

## **B. NORTHERN UTILITIES INTERVENTION**

At the October 28, 2015 PHC, Commission Staff (Staff) indicated that certain materials, including Northern Utilities, Inc.’s (Northern), official filings in annual reports, indicated that Northern, a gas utility serving customers in southeastern New Hampshire, possessed an existing franchise right over Pelham, for which Liberty is filing for an exclusive franchise right.

Tr. at 9-10. According to Staff, it appears that Northern has no existing customers in Pelham.

Tr. at 9.

On November 6, 2015, Northern late filed a petition to intervene in this proceeding (Northern Petition). In its petition, Northern asserted that “Northern, like Liberty, is a public utility engaged in the business of distributing natural gas to towns in New Hampshire. As such, positions taken by Liberty, Commission Staff, the Office of Consumer Advocate [OCA], or other intervenors, as well as the Commission’s ultimate analysis in this docket, may impact Northern’s business and its ability or efforts to expand and extend gas service to New Hampshire customers in the future.” Northern Petition at 2. Northern further argued that, “As a natural gas utility that may seek to extend its gas distribution system and franchise in the future, Northern has a substantial and direct interest in the policy developments implicated by Liberty’s petition” and that “... Northern has a substantial and direct interest in the ability of a natural gas utility to obtain a franchise to expand service to customers.” *Id.* Northern indicated that the OCA and Staff took no position on its petition to intervene. Northern Petition at 3.

On November 12, 2015, Liberty filed an objection (Liberty Objection) in which it argued that Northern had not demonstrated any “rights, duties, privileges, immunities or other substantial interests,” and that “[i]f the Commission were to grant Northern’s petition, it could create a precedent where every utility that spots a ratemaking issue that is similar to one it may face in the future could seek to intervene in the docket in question. This could create a large administrative burden not only for the Commission but for parties in the proceeding. This would not be in the ‘interests of justice and the orderly and prompt conduct of the proceedings.’ In addition, Northern can follow this proceeding sufficiently through monitoring the Commission’s [online] docket book.” Liberty Objection at 2-3.

On November 18, 2015, Northern submitted a response, styled a “Request of Northern Utilities, Inc. To Submit Reply,” to the Liberty Objection, in which Northern submitted further arguments in support of its petition, largely related to Northern’s purported interest in maintaining Commission precedent regarding Discounted Cash Flow (DCF) methodology in assessing franchise expansions by gas utilities.

The Commission finds that Northern has not demonstrated rights, duties, privileges, immunities, or other substantial interests that may be affected by this proceeding. A general interest in franchise expansions, and the Commission’s policy approaches thereto, by a peer utility is insufficient to entitle Northern to intervene pursuant to RSA 541-A:32, I. In addition, the Commission declines to grant intervention pursuant to RSA 541-A:32, II to Northern. It is not possible to discern a limiting principle that would prevent peer utilities in New Hampshire, and beyond, from intervening in proceedings involving other utilities’ petitions, insofar as all Commission rulings regarding such petitions implicate matters of policy of some interest to similarly-situated utilities, and allowing such interventions would result in unwarranted

administrative burden. We therefore deny Northern’s petition to intervene. Nonetheless, entities that do not have intervenor status may monitor this proceeding through the Commission website, and further, may file comments in this docket regarding matters of policy interest.

Notwithstanding Northern’s failure to raise the issue in its intervention pleadings, as indicated by Staff at the PHC, and confirmed through a review of Northern’s Tariff, Northern does list Pelham as a town within Northern’s franchise territory. *See* Northern Tariff, NHPUC No. 11-Gas, Original Revised Page 1. Given Liberty’s petition for a franchise in Pelham, this is an ambiguity that must be resolved. To that end, the Commission will issue a Supplemental Order of Notice in this docket to address this issue.


**Based upon the foregoing, it is hereby**

**ORDERED**, that the Town of Pelham’s petition to intervene is **GRANTED**, and the petition to intervene filed by Northern Utilities, Inc. is hereby **DENIED**.

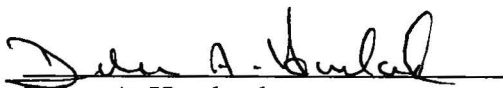
By order of the Public Utilities Commission of New Hampshire this fourth day of February, 2016.

  
 Martin P. Honigberg  
 Chairman

  
 Robert R. Scott  
 Commissioner

  
 Kathryn M. Bailey  
 Commissioner

Attested by:

  
 Debra A. Howland  
 Executive Director

**SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED**

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**Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.**

Executive.Director@puc.nh.gov  
al-azad.iqbal@puc.nh.gov  
alexander.speidel@puc.nh.gov  
amanda.noonan@puc.nh.gov  
epler@unitil.com  
karen.sinville@libertyutilities.com  
mark.naylor@puc.nh.gov  
maureen.karpf@libertyutilities.com  
ocalitigation@oca.nh.gov  
pradip.chattopadhyay@oca.nh.gov  
randy.knepper@puc.nh.gov  
sbk@rathlaw.com  
selectmen@pelhamweb.com  
Stephen.Hall@libertyutilities.com  
steve.frink@puc.nh.gov  
steven.mullen@libertyutilities.com  
susan.chamberlin@oca.nh.gov  
taylorp@unitil.com

**INTERESTED PARTIES**

**RECEIVE ORDERS, NOTICES OF HEARINGS ONLY**

SAQIB HOSSAIN

PEGGY HUARD

RICHARD A KANOFF  
125 SUMMER ST  
BOSTON MA 02110

REGULATORY NH LIBERTY UTILITIES

DAVID SULLIVAN  
3 NORTH LOWELL RD  
PO BOX 120  
WINDHAM NH 03087-0120