

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

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

**Petition for Declaratory Ruling**

Liberty's Memorandum of Law

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the "Company" or "Liberty"), through counsel, respectfully submits the following memorandum of law on the sole question before the Commission in this docket: whether Liberty currently holds the right to distribute natural gas to its Keene customers, and thus need not seek such permission pursuant to RSA 374:22 and RSA 374:26.

**Background**

By petition dated April 24, 2017, the Company asked the Commission to declare that Liberty need not seek franchise approval to serve natural gas in its Keene franchise area. By Order No. 26,065 at 3 (Oct. 20 2017), the Commission granted Liberty's request, finding that the Company already "has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene."

Mr. Clark filed a motion to intervene and a motion for rehearing. By Order No. 26,087 (Dec. 18, 2017), the Commission granted both motions. The order described the process to be afforded to Mr. Clark and stated the sole issue to be addressed: "[W]e will afford Mr. Clark and other interested persons the opportunity to present their legal arguments to the Commission in

this matter” by “submit[ting] legal briefs and additional public comments on the question of whether the Company has the legal authority to offer CNG/LNG service in its existing City of Keene franchise area.” Order at 5.

The Commission later issued an order of notice which repeated that the issue to be decided in this docket is “whether RSA 374:22 and RSA 374:26 require Liberty to obtain additional franchise permissions from the Commission before converting the type of gas Liberty delivers from propane . . . to CNG and LNG, decompressed to a suitable pressure for local distribution.” The order of notice also scheduled a prehearing conference and technical session to develop a schedule for filing legal briefs. By secretarial letter dated April 11, 2018, the Commission ordered that briefs are due May 1, 2018, and reply briefs may be filed through May 15, 2018.

### Argument

It is Liberty’s position that the Commission already reached the correct decision in this matter in Order No. 26,065 when it stated that Liberty already “has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene.” *Id.* at 3. The Commission supported this conclusion with language from the franchise statute itself, which “includes in the definition of ‘public utility’ the activity of the ‘distribution or sale of gas.’ This statute does not differentiate among various types of gas.” *Id.* (citing RSA 374:22). The Commission’s reasoning is straightforward:

We find the Company’s arguments that CNG and LNG constitute gas of the same character as the propane-air mixture currently supplied to Liberty-Keene customers to be persuasive. This interpretation of gas service is consistent with prior Commission decisions allowing natural gas utilities to supplement natural gas supply with propane without requiring additional franchise approval under RSA 374:22 and RSA 374:26. See, e.g., *Gas Service, Inc.*, 58 NH PUC 48 (July 24, 1973); *Manchester Gas Company*, 58 NH PUC 71 (October 2, 1973); *Concord Natural Gas Corp.*, 58 NH PUC 78 (October 16, 1973). Consistent with this

interpretation of gas service, we conclude that (1) Liberty possesses a franchise to provide gas service which includes CNG/LNG service in Keene, and (2) that Liberty has continually exercised this franchise, as referenced in RSA 374:22, I, to the present day.

*Id.*

The Commission's analysis and conclusion in Order No. 26,065 are correct, and there is no basis to change that conclusion on reconsideration.

The rest of this memorandum restates in summary fashion the contents of the Company's original petition, which underscores the folly of requiring Liberty to seek franchise approval for changing fuel when neither Liberty's predecessor in Keene nor any other gas utilities in New Hampshire have been required to seek franchise permission as they changed fuels over the past 150 years.

### **Summary of Liberty's Petition**

#### **"Gas" includes "natural gas"**

The current Commission rule defines "gas" as "any manufactured or natural gas or any combination thereof," Puc 502.06 , 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.<sup>1</sup> Therefore, the Company already has

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<sup>1</sup> 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.

permission through definition of gas in Puc 502.06 and through the Commission-approved tariff to serve natural gas in Keene.

Switching to Natural Gas is not a Change in the Character of Service

The argument that moving from propane to natural gas is a “change in the character of service” that warrants a new franchise petition is without merit. The only references to that phrase do not support the argument.

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 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.

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.”

The third section in the Keene tariff titled “Character of Service” provides as follows:

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.

Original Page 4. Although conversion to natural gas would constitute a change in the provisions of this section because propane air and natural gas have different heat content values, the Company has filed a request to add the heat content value of natural gas to the Keene Tariff. See Docket No. DG 17-069. Such a ministerial tariff filing does not implicate the franchise statutes.

Even assuming the reference to “character of service” intended a broader interpretation outside the Puc 500 rules and the specifics of the Keene 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 will 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. Thus, there will be no change in the character of service.

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.

#### **Gas Utilities Have Historically Changed Fuels Without Commission Filings**

Liberty’s history in Keene is consistent with the interpretation that its existing franchise is for gas, not propane air, and that the Company and its predecessors were free to change fuels without having to obtain franchise permission from the Commission.

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. The Company has continuously possessed the franchise for delivering “gas” since 1860.

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: “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).

Consistent with its 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. Liberty’s earliest predecessor distributed manufactured gas. The Company switched from manufactured gas to butane in 1954, then to butane-air in 1968,

then to propane-air in 1974. Note that the two changes from butane to butane-air, then from butane-air to propane-air occurred under the current definition of “gas.” There is no record of Commission involvement in these fuel switches in Keene. Liberty’s proposed change from propane-air to natural gas is simply another such change.

Nor were any orders found that authorized similar changes in fuels by the other New Hampshire gas distribution utilities. Rather, there are references in Commission orders to the fact that gas utilities distributed different fuels, 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.

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, and mixes in propane as needed from other facilities located in Manchester, Nashua, and

Tilton, 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.

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 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 (and could) 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 under a tariff that authorizes distribution of "gas" and under which the franchisee currently provides for 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”).

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.

Respectfully submitted,

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



Date: May 1, 2018

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Certificate of Service

I hereby certify that on May 1, 2018, a copy of this memorandum has been provided to the service list.



By: \_\_\_\_\_  
Michael J. Sheehan