

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**

Motion for Rehearing

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the “Company” or “Liberty”), through counsel, respectfully moves the Commission pursuant to RSA 541 for rehearing of certain portions of Order No. 26,274 (July 26, 2019) to resolve ambiguities and to address issues the Commission may have misapprehended related to the reporting requirements imposed in the Order.

In support of this motion, Liberty represents as follows:

1. Order No. 26,274 (July 26, 2019) (the “Order”) resolved several outstanding issues in this docket and imposed a number of reporting requirements on the Company as it proceeds with the “conversion” and “expansion” of the Keene system. The Order commingled the terms “conversion” and “expansion,” making it difficult for the Company to ascertain precisely what it should file, and how. Therefore, the Company seeks rehearing to clarify the Order’s directives to ensure it can properly comply with them.
2. Since the Company’s confusion arises out of the Order’s use of the terms “conversion” and “expansion,” Liberty begins with its understanding and use of those

words as they relate to Liberty’s plans in Keene, which understandings Liberty believes are shared by Staff, the OCA, and others.

3. Liberty uses “conversion” to refer to the work necessary to convert existing customers from propane-air to natural gas. Thus the term “conversion” *only* applies to existing propane-air customers.
4. Liberty uses “expansion” to refer to the addition of new customers to the planned natural gas system in Keene. Expansion customers have never received, and never will receive, propane-air. Thus the term “expansion” *only* applies to customers that will be served natural gas through new distribution pipelines.
5. The Commission used the terms “expansion” and “conversion” precisely as defined above when it approved the consolidation of Keene and imposed certain financial conditions prior to Liberty commencing any of its planned expansion phases:

For any of the *expansionary Phases* planned by Liberty within the City of Keene, prior to beginning construction of any Phase, Liberty must secure a customer commitment level that will produce at least 50 percent of the revenue requirement associated with the new facilities from those customers in 10 years, as calculated in present value terms;

Order No. 26,122 at 39 (Apr. 27, 2018) (the “17-048 Order”) (emphasis added). The 17-048 Order further indicated its agreement with the above definitions by acknowledging the distinction between “conversion” and “expansion” when it ordered that the impending conversion of the Monadnock Marketplace from propane-air to CNG should be included in the risk sharing analysis, even though it was a “conversion,” because it could lead to “expansion,” or growth: “Furthermore, Liberty testified that the conversion [of the Monadnock Marketplace] could lead to additional growth, and it is therefore appropriate

to include the cost of the initial conversion to CNG in the risk sharing mechanism delineated above.” 17-048 Order at 41.

6. This distinction between conversion and expansion carries important financial implications.

7. Conversion of existing customers off propane-air is a necessity, not an option. The propane-air production facility on Emerald Street sits on land leased to the Company at no cost to Liberty since the lease was prepaid prior to the acquisition of the Keene system. The lease expires in 2026 and then has a maximum of three one-year extensions (at more than \$70,000 per year). Thus, Liberty *must* vacate the Emerald Street location no later than 2029.

8. If the Company intended to continue providing propane-air into the future, the Company would either move its existing equipment to a new site, or construct a new propane-air facility at that new location. The Company has no intention to incur these costs, however, because, first, the added cost to move the old propane-air facility or to construct a new one, and the added land costs the Company will incur for that new site would render propane-air more expensive than natural gas. Second, companies do not make appliances that burn propane-air at the BTU content currently supplied by the existing equipment; Liberty must retrofit customers’ appliances manufactured to consume natural gas at Liberty’s expense, which retrofits expose Liberty to added liability risks. Finally, consuming propane-air emits greater greenhouse gases than natural gas. It would thus be imprudent for the Company to plan for a future of serving propane-air, and imprudent not to plan for and begin the conversion of existing customers

to natural gas. That is, Liberty has no choice but to convert all its propane-air customers to natural gas by 2029.

9. The financial implication relevant here is that these conversion costs are not subject to the Company's line extension policies or the risk-sharing formula approved in the 17-048 Order. Rather, conversion is a mandatory reliability issue similar to replacement of cast iron mains. Liberty acknowledges it must convert these customers prudently and safely, but it must convert all propane-air customers.
10. Expansion, on the other hand, refers to new customers that require the installation of new distribution facilities. The costs to serve these new customers *are* subject to the Company's line extension requirements as modified by the 17-048 Order, quoted above. Of course, both conversion and expansion are subject to all applicable safety requirements.
11. Since the Order did not always use the terms "conversion" and "expansion" consistent with the above definitions, giving rise to confusion over the meaning of the Order's directives and reporting requirements, the Company seeks clarification.
12. Below are the directives in the Order for which Liberty seeks clarification, with comments and the Company's questions following each:

- a. The Order's directive:

In this order, we clarify our declaratory ruling in Order No. 26,065, accept the Safety Division's recommendation that we permit the Company to commence conversion of Phase I, and require the same reporting and assessment requirements for the conversion of Phases II through V of the Keene system.

Order at 6. Liberty understands and does not object to providing the same reporting and being subjected to the same Safety Division assessment as required by Order No. 26,065 before converting any propane-air customers beyond the Monadnock Marketplace (which conversion was approved in the Order).

Liberty's questions:

After the Safety Division finds the reporting and assessment as to the next conversion phase to be "adequate," must the Safety Division file with the Commission its finding of adequacy? Must the finding of adequacy be a full report as the Safety Division filed in this docket? Must the Commission affirmatively approve that finding or is the Order satisfied with the Safety Division's finding of adequacy?

Neither the Order nor Order No. 26,065 specified whether the Commission had to accept or approve the Safety Division's finding of adequacy, or whether the Safety Division's finding, alone, was sufficient for the Company to proceed, which resulted in substantial confusion as to the conversion of the Monadnock Marketplace. Clarity of the Order's intent as to the Safety Division's future reporting will be beneficial to all.

b. The Order's directive:

Given the five phases of conversion that Liberty has outlined in its filing and the extensive review and recommendations by Commission Staff for improvements to the Company's plans required for safety and reliability for the first of five phases of the conversion, we find that the same submission and review requirements should apply to each of the remaining phases.

Order at 10. Regardless of whether these "five phases" should be "conversion" or "expansion," the Company acknowledges that the Order requires it to submit the same

safety and reliability plans to the Safety Division before converting the propane-air customers or turning on the new natural gas customers.

Liberty's question:

As in (a) above, the Company seeks clarity on the mechanics of the Safety Division's adequacy finding.

c. The Order's Directive:

[W]e will require Liberty to file a detailed and comprehensive supplemental report specific to the Keene conversion project for each phase of system conversion and construction pursuant to RSA 374:5.

Order at 12. Regardless of whether this should be "conversion" or "expansion," the Company acknowledges that the Order requires it to submit the same safety and reliability plans to the Safety Division before converting the propane-air customers or turning on the new natural gas customers.

Liberty's question:

As in (a) and (b) above, the Company seeks clarity on the mechanics of the Safety Division's adequacy finding.

d. The Order's Directive:

Accordingly, we direct Liberty to include a detailed report that includes all [conversion] project costs to date as well as detailed projected cost estimates for all conversion projects to be included in the revenue requirement analysis that is required as part of the previously established risk sharing mechanism.

Order at 12 (emphasis added). The Company does not object to filing reports as to all "conversion" costs to date, and projected conversion costs (which will be tentative until

the Company finalizes the location of the permanent supply facility, since its location will dictate the sequence of conversions). However, as discussed in paragraphs 7 - 10 above, conversion costs are not “required as part of the previously established risk sharing mechanism” the 17-048 Order.

Liberty’s question:

What is the Commission’s intent with this directive? Should the Company report conversion costs to date? And how they would be included in more generic revenue requirement analysis? Or was this directive intended to apply only to expansion costs (the expansion costs incurred to date mostly consist of site selection efforts)?

e. The Order’s Directive:

A detailed report of the cost of the Company’s current efforts to convert the initial portion of the system to CNG shall be provided within 90 days of the issuance of this order. Future reports with the requisite cost details shall be filed no later than 180 days in advance of each future expansion phase.

Order at 12. The Company will file the requested information within 90 days as to its conversion efforts.

Liberty’s question:

With whom must the Company file this report – Staff, the parties to this docket, the Commission, others? Did the Commission intend the second sentence to require advance reports in advance of “conversion” phases? “Expansion” phases? Or both? What is the starting point from which the Company must calculate the 180-day advance notice? The start of the planning process, the start of construction, or some other event?

f. The Order's Directive:

We also direct Liberty to file updated system maps and drawings pursuant to Puc 507.04 as the Company completes each phase of the conversion of the Keene system.

Order at 13. Note that Puc 507.04 does not require the "filing" of any maps or drawings.

It states: "Each utility shall have on file at its principal office located within the state a map, maps or drawings showing the following ...." (Emphasis added.)

Liberty's question:

Did the Commission intend the Company to "file" maps and drawings as the Company proceeds with conversion and expansion? If so, with whom? Or did the Commission intend to simply insure that the Company would have up-to-date maps "on file" as Puc 507.04 requires? Would this apply separately to conversion and expansion?

g. The Order's Directive:

In addition, in accordance with the directives set forth in Order No. 26,122, Liberty must provide updated discounted cash flows (DCF's) based on detailed engineering plans and customer commitments that will produce at least 50% of the revenue requirement associated with the new facilities prior to the initiation of construction of each conversion phase.

Order at 13 (emphasis added). As discussed above, the requirements of Order No. 26,122 (the 17-048 Order) should only apply to the "expansion" phases, not the "conversion" work. There will be no new customer commitments for conversion phases because the Company will be converting existing propane customers, thus there is no basis for a DCF analyses.

Liberty's question:

What is the Commission's intent here? A simple repetition of the 17-048 requirements? Or new requirements for conversion customers? If the latter, how is the Company to calculate "customer commitments" given that conversion only applies to existing propane-air customers?

h. The Order's Directive:

ORDERED, the declaratory ruling in Order No. 26,065 is clarified to recognize that Liberty has the right, with conditions, under its existing franchise authority to serve compressed natural gas to its customers in the Keene Division of EnergyNorth.

Order at 14 (emphasis added). The Company's only request for relief in this docket was for the Commission to "declare that Liberty need not seek permission under RSA 374:22 and 374:26 to distribute natural gas in Keene." April 21, 2017, Petition at Bates 13. The ordering clause quoted above grants the requested relief only as to "compressed" natural gas. The Company's plans for a permanent facility, which have been regularly communicated to the Commission and to Staff (and others), have always included both compressed natural gas (CNG) and liquefied natural gas (LNG). There is no discussion in the Order that would explain why the Commission would grant relief as to CNG and not as to LNG (nor was there any discussion in this docket of approving one form of natural gas and not the other).

Liberty's question:

It appears to be an oversight, but given the litigious nature of this docket the Company must expressly ask whether the Commission intended to exclude LNG from its

ordering clause?<sup>1</sup> If so, Liberty expressly seeks rehearing on this issue as a fundamental misunderstanding of the relief Liberty sought in this docket and as having no basis in the record.

i. The Order's Directive:

FURTHER ORDERED, that within 90 days of this order, Liberty shall file with the Commission its business plan and its operations and maintenance plans for the conversion and operation of the proposed natural gas system.

Order at 15. The Commission's intent here is not clear because there are references to two features of Liberty's expansion plans ("business plan" and "proposed natural gas system") but explicit reference to "conversion." Liberty does not know whether to file the requested plans for its conversion or expansion of the Keene system.

Liberty's question:

Does the Commission intend to require the described plans as to Liberty's "conversion" of existing propane-air customers or the "expansion" to new customers?

13. The legal standard for reconsideration is well-established:

The Commission may grant a motion for reconsideration for "good reason" if the movant shows that the decision in question is unlawful or unreasonable. *See Public Service Co. of N.H.*, Order No. 26, 008 at 4 (April 20, 2017) (citing RSA 541:3 and :4). The movant may establish "good reason" by demonstrating that there were matters the Commission either overlooked or misapprehended, or by presenting new evidence that was unavailable before the decision issued. *Id.* The Commission may grant a motion for clarification if the Commission's intent was not made sufficiently clear in the original decision, and "evidence exists in the record to support the Commission's intent." *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26, 156 at 6 (July 10, 2018).

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<sup>1</sup> Note that the third ordering clause references the ability to serve "CNG/LNG," and the last ordering clause references "natural gas system."

*Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,193 at 3 (Nov. 20, 2018). Liberty submits that the Commission directives from the Order itemized above are instances in which “the Commission’s intent was not made sufficiently clear” and for which there “exists in the record to support the Commission’s intent.”

14. Liberty thus seeks reconsideration of Order No. 26,274 and for the Commission to clarify its intent.

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



Date: August 26, 2019

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Certificate of Service

I hereby certify that on August 26, 2019, a copy of this motion has been electronically provided to the service list.



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