

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

Objection to Terry Clark's Motion for Rehearing

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the "Company" or "Liberty"), through counsel, respectfully objects to *Terry Clark's Motion for Rehearing or Reconsideration Pursuant to RSA 541, and Clarification*.

In support of this objection, Liberty states as follows:

1. In Order No. 26,274 (July 26, 2019) (the "Order"), the Commission "confirm[ed]" Order No. 26,065 (Oct. 20, 2017), which declared that Liberty "has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene." Order at 3.
2. Mr. Clark's motion for rehearing argues that the above declaration is "unlawful and unreasonable" for a number of reasons. Most of Mr. Clark's arguments must fail because they fall outside the scope of the narrow legal issue decided in this docket and/or because the Commission already considered and rejected them. The few relevant arguments that were not previously raised and rejected fail on their merits.
3. It is crucial to recall the single, narrow issue Liberty raised in this docket. The Petition's sole request for relief 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.”

Petition at 13.

4. The Commission granted this request, finding that Liberty’s original legislatively-granted franchise to serve “gas” in Keene included the right to serve “natural gas” today.

Having reviewed the Company’s petition and the arguments and information presented, we conclude that under RSA Chapter 374, Liberty has the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its current franchise. RSA 362:2, I, 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.

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. 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.

Order No. 26,065 at 3 (citations omitted).

5. Given this narrow ruling, the scope of possible issues for rehearing is similarly narrow.
6. The standard for review a motion for rehearing is well-known:

RSA 541:3 authorizes the Commission to grant rehearing when the movant shows good reason for such relief. This may be shown by new evidence that was unavailable at the original hearing, or by identifying specific matters that were either “overlooked or mistakenly conceived.” *A successful motion does not merely reassert prior arguments and request a different outcome.*

Verizon New Hampshire, Order No. 24,629 at 7 (June 1, 2006) (citations omitted; emphasis added).

7. Nearly every argument in Mr. Clark's motion for rehearing are issues that he previously argued and for which he now seeks a different outcome, and/or are issues simply outside the narrow scope of this docket and thus not relevant.

Change in the Character of Service in Keene.

- a. Mr. Clark argues in his motion that Liberty's petition should be denied on its merits because a change from propane-air to natural gas involves the use of higher pressures, a "separate and distinct" system, and an "extensive whole system change," and thus natural gas could not be part of the existing franchise rights. Motion at 3-4, 12, 25. Mr. Clark made all these arguments in prior filings. *See* Clark Brief at 41-49; Reply Brief at 3, 6-10. And the Commission rejected these arguments, finding Liberty has the right to serve natural gas. Order at 7-9.

The Commission acknowledged that distributing natural gas is different than the propane air currently provided to Keene customers, and requires different facilities, but the Commission clearly found this difference not to cause natural gas to fall outside Liberty's existing franchise. Rather, the Commission addressed these differences by exercising its regulatory authority to impose certain conditions and reporting requirements on Liberty's conversion to natural gas.

This previously-raised argument does not warrant reconsideration.

- b. Mr. Clark also argued that the Settlement Agreement and Order in the Keene acquisition docket forever bound Liberty to only distributing propane-air in Keene. This new argument, one Mr. Clark had not asserted before, is based on the terms in the settlement agreement and order in Docket No. DG 14-155 that

Liberty would operate and keep the Keene Division books “separate” from those of the Liberty system. Clark Motion at 27-28, 29-30.

However, the settlement agreement, which PUC approved in Order No. 25,736 (Nov. 21, 2014), says its terms “shall remain in effect until the Commission approves otherwise.” In Docket DG 17-048, the Commission “approve[d] otherwise” and allowed Liberty to consolidate the Keene Division into the rest of the Liberty system. Order No. 26,122 at 37-38 (Apr. 27, 2018). Similarly, to the extent the settlement agreement in DG 14-155 limited the Company’s existing franchise rights to propane,¹ the Order has now “approve[d] otherwise” and modified the DG 14-155 settlement agreement to allow for the distribution of natural gas.

Mr. Clark’s motion does not warrant rehearing of the Order’s fundamental conclusion that Liberty may serve natural gas in Keene.

Franchise Approval.

- c. Mr. Clark argues that Liberty should have sought franchise approval to serve natural gas under the standards of RSA 374:22 and RSA 374:26. Clark Motion at 13, 25. Clark raised this issue in his Brief at 4, 41-19, and in his Reply Brief at 2, 7, and the Commission specifically rejected the argument in both Order No. 26,065 and in the Order: “In Order No. 26,065, the Commission ruled that

¹ This is not the case. Liberty clearly stated its intention in DG 14-155 to convert Keene to natural gas. Direct Testimony of Stephen Hall, Hearing Exhibit 1, at Bates 168-170, which the Commission acknowledged: “[W]e recognized that Liberty has the authority to provide ‘gas’ service to customers within the franchise territory of the City of Keene, as approved in its acquisition of New Hampshire Gas Corp. in Docket No. DG 14-155.” Order at 8.

Liberty ‘has the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its current franchise.’ Order No. 26,065 at 3.” Order at 6. More directly, the Order states: “Although the Commission is requiring additional approvals pursuant to its general supervisory authority, no additional permissions are required under RSA 374:22 and RSA 374:26.” Order at 14.

Mr. Clark’s re-hashing of this argument does not support rehearing.

Mr. Clark also complains, apparently for the first time, that the Order infringed towns’ and cities’ “right to choose if it wants LNG and/or CNG services.” Clark Motion at 29. The Order did not grant a franchise, but merely confirmed that the franchise already exists. And towns and cities do not choose franchises; that is the realm of the Commission (and previously the legislature).

SEC Jurisdiction.

- d. Mr. Clark argued that the Commission should defer to the Site Evaluation Committee because the proposed Keene facility, combined with Liberty’s proposed LNG facilities in Lebanon and Epping, would satisfy the definition of an “energy facility” under RSA 162-H. Clark Motion at 11; Clark Brief at 34-41; Clark Reply Brief at 3. Although apparently both withdrawing and reserving his SEC argument, *see* Clark Motion at 13, n. 24, the Order directly decided this argument against Mr. Clark: “With respect to Mr. Clark’s argument regarding the Site Evaluation Committee (SEC), it is apparent from review of RSA Ch. 162-H, that the SEC’s jurisdiction and responsibilities have no bearing on the issues raised in this docket.” Order at 13.

Mr. Clark presents no viable reason for rehearing.

Arguments under the LCIRP Statute, RSA 378:39.

e. As the Commission acknowledged in the Order:

Mr. Clark argued that Liberty's petition for a declaratory ruling could not be granted because the conversion is part of Liberty's broader expansion plans under consideration in Docket No. DG 17-152. That docket concerns the Company's Least Cost Integrated Resource Plan (LCIRP) under RSA 378:39. Mr. Clark challenged Liberty's LCIRP as contrary to the public interest and to the requirements of the state energy policy codified in RSA 378:37. He argued that the Commission should stay its decision on the Petition until DG 17-152 has been decided.

Order at 5; *see* Clark Motion at 11, 16, 20-23; Clark Brief at 3-4, 6-13, 34, 50; Clark Reply Brief at 3-6. Although the Order does not contain a specific analysis of these arguments, by granting the Company's request after explicitly acknowledging Mr. Clark's arguments related to the LCIRP statute, environmental and climate issues, and Liberty's "expansion plans", the Commission clearly intended to reject those arguments.

Again, Mr. Clark presents nothing new that would support rehearing.

Due Process Arguments.

f. Mr. Clark argues that, after prevailing on his due process arguments to have the Commission reconsider Order No. 26,065 and issue an Order of Notice in March 2018, *see* Order No. 26,087 (Dec. 18, 2017), the balance of this docket also required the elements of due process -- notice, discovery, testimony, hearing,

etc. Clark Motion at 12, 13-14. Again, these arguments were raised in his initial Brief at 49, n. 59. Other than conclusory statements, however, Mr. Clark does not explain how the process afforded to him was deficient. He received notice through March 1, 2018, Order of Notice. He was granted intervention. He participated in the prehearing conference, and provided comments and arguments in counsel's various filings. To the extent the process of this docket did not involve fact finding (testimony, discovery, and cross-examination), that is because the Commission agreed the only issue raised (whether Liberty had the right to distribute natural gas) was a question of law that did not require the resolution of any factual disputes. *See* Transcript of the April 6, 2018, prehearing conference at 24-26.

Mr. Clark did not point to any factual disputes that affected the Order's central conclusion, thus he was afforded sufficient due process. And Mr. Clark did not request formal discovery from Liberty and did not take up the Chairman's suggestion to file a motion with regard to the Commission's decision to resolve this case via briefings, *id.* at 25.

Thus, there was no deficiency in the "process" afforded Mr. Clark in this matter.

8. Mr. Clark raises three "new" matters that "should have been considered *sua sponte* or otherwise on the Commission's own initiative": (1) the September 2018 natural gas incident in Andover, Massachusetts; (2) the November 2018 release of "the Fourth National Climate Assessment, Vol. 2," and (3) the October 2018 issuance of a

special report by the Intergovernmental Panel on Climate Change. Clark Motion at 17.

None of these matters, however, have any bearing on whether Liberty had the franchise right to serve natural gas in Keene, and thus do not support a motion for rehearing.

The Order did not expand any rights to provide gas distribution service and did not increase the territory in which Liberty may provide those services. The Order simply granted the Petition's sole request that Liberty always had the right to serve natural gas in Keene, nothing more.

WHEREFORE, Liberty Utilities respectfully asks that the Commission to:

- A. deny Mr. Clark's Motion for Rehearing; and
- B. grant such other relief as is just and reasonable and consistent with the public interest.

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



Date: September 5, 2019

By: _____

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Certificate of Service

I hereby certify that on September 5, 2019, a copy of this objection has been electronically provided to the service.



By: _____
Michael J. Sheehan