

State of New Hampshire
Public Utilities Commission

Docket No. DG 17-152

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

Least Cost Integrated Resource Plan

Object to Motion to Dismiss

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, through counsel, respectfully objects to *Intervenor, Terry Clark's, Motion to Dismiss and for a Moratorium on Gas Expansion Plans.*

In support of this motion, Liberty represents as follows:

1. The relief Mr. Clark seeks in the prayers for relief are to “reject Liberty’s LCIRP and other gas infrastructure and customer expansion plans as inconsistent with New Hampshire law and dismiss this proceeding to approve the LCIRP,” and to “place an immediate moratorium on all gas infrastructure and customer growth in this state.” Motion at 35.

2. Liberty objects for the following reasons.

3. In support of Mr. Clark’s request for dismissal, he first cites Order No. 25,290 (Oct. 6, 2016), which dismissed PSNH’s request for “approval of a contract to purchase capacity on the proposed Access Northeast gas pipeline.” The Commission dismissed that petition as “inconsistent with New Hampshire law,” the language that Mr. Clark cites.¹

¹ On May 22, 2018, the New Hampshire Supreme Court reversed Order No. 25,290, finding that “the PUC erred in dismissing Eversource’s petition as a matter of law.” Slip Opinion at 12.

4. Mr. Clark's request for dismissal fails for at least three reasons. First, Order No. 25,290 is not precedent for this case because it was centered on the electric utility restructuring statute, RSA 374-F, whereas RSA 378:38 governs this docket. There is nothing in Order No. 25,290 that has any bearing on the Commission's review of Liberty's LCIRP under the criteria listed in RSA 378:38.

5. Second, dismissal is an inappropriate remedy for an alleged failure to satisfy RSA 378:38. The statute requires Liberty to file an LCIRP: "each electric and natural gas utility ... shall file a least cost integrated resource plan with the commission." The Commission cannot dismiss what the Legislature commanded Liberty to file.

6. Third, the statute's directive is for the Commission to "decid[e] whether or not to approve the utility's plan." RSA 378:39. Dismissal is not an option available to the Commission.

7. Mr. Clark's second argument is that "Liberty's plans are inconsistent with New Hampshire law." Motion at 3. It is not clear whether Mr. Clark argues this inconsistency is another basis for dismissal or whether he is arguing that this alleged inconsistency with New Hampshire law is grounds to not approve the LCIRP. If the former, then Liberty incorporates the arguments above that dismissal is an inappropriate remedy in an LCIRP docket (and argues below that the LCIRP is consistent with New Hampshire law). If the latter, then this filing is premature because an ultimate finding of "whether or not to approve the utility's plan" must await the completion of this required "adjudicative proceeding." RSA 378:39.

8. As for the LCIRP's compliance with New Hampshire law, Liberty demonstrated in its filing, and will continue to prove during this adjudicative process, the LCIRP is consistent with applicable law, RSA 378:37 through RSA 378:39.

9. First, RSA 378:38 requires that “each such plan shall include, but not be limited to, the following, as applicable,” then the statute lists seven topical areas. Liberty’s LCIRP contains a “forecast of future demand for the utility's service area,” an “assessment of demand-side energy management programs, including conservation, efficiency, and load management programs,” an “assessment of supply options including owned capacity, market procurements, renewable energy, and distributed energy resources,” and an “assessment of plan integration and consistency with the state energy strategy under RSA 4-E:1.” RSA 378:38, I, II, III, and VII. The LCIRP does not contain the assessments requested by subsections IV, V, and VI, because they apply to power generating facilities owned and operated by electric utilities and are thus not applicable here. *See Public Serv. Co. of N.H.*, Order No. 25,828 at 8 (Oct. 19, 2015); *Public Serv. Co. of N.H.*, Order No. 25,659 at 8 (May 1, 2014).

10. Second, RSA 378:39 states that the standard for Commission review is “to evaluate the consistency of each utility’s plan with this subdivision, in an adjudicative proceeding,” and when “deciding whether or not to approve the utility’s plan, the commission shall consider potential environmental, economic, and health-related impacts of each proposed option.” (Emphasis added.)

11. The proposed options for Liberty are to choose the best cost sources of natural gas supply to serve its customers into the future. The composition of the product that the Company distributes does not vary depending on the supplier, as all natural gas that the Company buys meets the same pipeline quality standards. Thus, the “impacts” associated with Liberty’s supply would not vary depending on “each proposed option.” Through the course of this proceeding, Liberty will demonstrate that its choices as contained in the LCIRP are consistent with RSA 378:39 and RSA 378:39.

12. Mr. Clark’s environmental arguments do not change the fact that distribution of natural gas by utilities and utilization of natural gas by customers is legal in New Hampshire and that Liberty has the right, and duty, under its franchise to distribute natural gas to its customers. The state energy strategy, which is expressly referenced in the LCIRP statute, RSA 378:38, VII, was revised in April 2018. Both the previous and updated versions encourage the *increased* use of natural gas. See both versions of the *New Hampshire 10-Year State Energy Strategy*, located at the following links: <https://www.nh.gov/osi/energy/programs/documents/energy-strategy.pdf>
<https://www.nh.gov/osi/energy/programs/documents/2018-10-year-state-energy-strategy.pdf>

13. Mr. Clark’s last request is to “place an immediate moratorium on all gas infrastructure and customer growth in the state.” Motion at 35.

14. Liberty objects because the statute governing this docket does not authorize the Commission to issue a moratorium and a moratorium would not be consistent with RSA 378:38 and RSA 278:39.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Deny Mr. Clark’s motion to dismiss and for other relief; and
- B. Grant such other relief as is just and equitable.

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

By its Attorney,



Date: May 25, 2018

By: _____
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Certificate of Service

I hereby certify that on May 25, 2018, a copy of this objection has been electronically forwarded to the service list.

A handwritten signature in cursive script, appearing to read "M. Sheehan".

Michael J. Sheehan