

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 17-152

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

Least Cost Integrated Resource Plan

CONSERVATION LAW FOUNDATION MOTION

TO FIND LIBERTY'S APRIL 30 SUPPLEMENT NON-COMPLIANT

Conservation Law Foundation (“CLF”) hereby moves that the Commission find Liberty Utilities’ April 30, 2019 supplemental filing non-compliant with law. CLF also asks that any proceedings on major project proposals under Liberty’s LCIRP, including the Granite Bridge project, be placed on hold pending full compliance with the LCIRP filing laws. In addition, the Commission should clarify that no major project approvals can be issued prior to approval of the LCIRP in this proceeding. In support of this motion, CLF states as follows.

I. Background

On February 9, 2015, the Commission issued Order No. 25,762, finding that Liberty’s Least Cost Integrated Resource Plan (“LCIRP”) for the period November 1, 2013 through October 31, 2018 was adequate, but directing Liberty to file additional categories of information in its 2017 LCIRP in order to comply with a law passed in 2014. Order 25,762, 4-5 (Feb. 9, 2015). At that time, the Commission granted Liberty dispensation not to comply with all of the terms of the new law in its 2013-2018 LCIRP due to the fact that the law was passed after Liberty had already filed its plan in Docket No. DG 13-313. *Id.* However, the Commission directed that “for the purposes of the next LCIRP, we ask that Liberty address all of the statutory

elements of RSA 378:38 and RSA 378:39 in its plan development in a granular way, so that reviewing parties may track the correspondence of the plan with the relevant statutory standards.” *Id.* at 5.

On October 2, 2017, Liberty filed its LCIRP for the period November 1, 2017 to October 31, 2022, initiating this proceeding in Docket No. DG 17-152. On May 15, 2018, Terry Clark, an intervenor in Docket No. DG 17-152, filed a Motion to Dismiss and for a Moratorium on Gas Expansion Plans. On May 15, Liberty filed an objection to Mr. Clark’s motion to dismiss, and on March 13, 2019, the Commission issued Order No. 26,225. The Commission’s Order denied the motion to dismiss but found that Liberty’s LCIRP was not in compliance with the LCIRP requirements as updated in 2014, and directed Liberty to make an additional filing complying with each of the “statutory elements of RSA 378:38 and RSA 378:39,” as previously directed in Order No. 25,762, 6-7 (Feb. 9, 2015). The Commission instructed Liberty “to submit a supplemental filing, including supporting testimony, to address each of the specific elements required under RSA 378:38 and RSA 378:39 that are not already addressed in its LCIRP, with adequate sufficiency to permit the Commission’s assessment of potential environmental, economic, and health-related impacts of each option proposed in the LCIRP, as required by RSA 378:39. Those specific elements are set forth in RSA 378:38, V and VI, and in RSA 378:39.”

Id. at 7.

On April 30, 2019, Liberty submitted a brief supplemental filing and the Testimony of William Killeen, Director for Energy Procurement of Liberty Utilities (Canada) Corp., a parent of Liberty Utilities. Liberty submitted no testimony from experts with specialized knowledge of environmental, public health, or economic impacts, nor did it submit data or other supporting evidence.

II. Motion

CLF asks the Commission to find Liberty’s April 30, 2019 supplemental filing non-compliant with law. The filing fails to adequately address the LCIRP requirements and provides only cursory testimony dismissive of the clear legal requirements. The LCIRP process is required by law. Indeed, it is mandated by a law that recently expanded and strengthened the requirements for evaluation of utility plans. *See* RSA 378:38, RSA 378:39; *see also* Order Nos. 25,762, 26,225. As the state faces conflicts in federal-state jurisdiction, the climate crisis, grid modernization, and other major challenges, the utility LCIRP process must be a process that the state can rely on to make sound decisions on rates, infrastructure and power needs. The complete failure of the supplemental filing to address the statutes’ mandates requires the Commission to reject the filing as non-compliant.

New Hampshire law mandates a rigorous review of the environmental, public health, and economic impacts of a utility resource plan. RSA 378:38 (V, VI), which governs the submission of plans to the Commission, requires “an assessment of the plan’s long- and short-term environmental [and] economic...impact on the state,” as well as “an assessment of plan integration and impact on state compliance with the Clean Air Act of 1990, as amended, and other environmental laws that may impact a utility’s assets or customers.” RSA 378:39 makes approval of any utility’s resource plan contingent on consideration of the risk of environmental, economic, and public health impacts. Language such as “in deciding **whether or not to approve** the utility’s plan, the commission **shall** consider potential environmental, economic, and health-related impacts,”¹ spells out this mandate. Bolstering the premise that this review must be meaningful in character, the statute encourages the Commission “to consult with

¹ RSA 378:39 (emphasis added).

appropriate state and federal agencies, alternative and renewable fuel industries, and other organizations in evaluating such impacts.”

These statutory provisions were recently updated and cannot be ignored. As the Commission described in Order 25,762 (at 4-5), both of these statutes were amended following Liberty’s 2014 LCIRP filing, but before the 2017 filing that is the focus of this proceeding. The 2014 updates include language extending the statutory standards to gas utilities, and requiring full disclosure of environmental issues – to include the Clean Air Act and “other environmental laws,” as well as “an assessment of plan integration and consistency with the state energy strategy under RSA 4-E:1.”²

In addition, as Liberty acknowledged in its LCIRP filing dated October 1, 2017 (at 55), “[t]he Commission’s charge in this docket...is to evaluate whether [Liberty’s] LCIRP is consistent with the State’s energy policy as articulated in RSA 378:37.” The state’s energy policy under RSA 378:37 requires not only that the state’s energy choices be met “at the lowest reasonable cost,” but also that they must “protect the safety and health of the citizens, the physical environment of the state, and the future supply of resources”:

378:37 New Hampshire Energy Policy. – The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.

As a consequence, any resource plan that seeks the approval of this Commission must demonstrate, *inter alia*, that it protects safety, health, and the physical environment.

² House Bill 1540, N.H. General Court, 2014 Session, effective date August 15, 2015, available at <http://www.gencourt.state.nh.us/legislation/2014/HB1540.pdf>.

In accordance with these laws and state policy, the Commission directed Liberty to submit meaningful analysis on the environmental, public health, and economic impacts of Liberty's plan. In its March 13, 2019 Order, the Commission found Liberty's initial LCIRP filing inadequate and directed Liberty to provide by supplement "granular" information about the environmental, public health, and economic impacts of the resource choices Liberty proposes. Order 26,225 at 6, citing Order 25,762 at 5. The Commission specified that Liberty should provide testimony that supports its assessment of the potential environmental, economic, and health-related impacts. The filing should be detailed enough to allow other parties and the Commission to assess the extent of the plan's impacts. Order 26,225 at 6, citing Order 25,762 at 5.

Liberty's April 30 filing contains no meaningful or detailed analysis of the public health, environmental, or economic impacts of its plan, including the Granite Bridge project that Liberty proposes to develop. Liberty's filing primarily consists of the Testimony of William Killeen, who holds a Master's degree in business administration and procures energy for Liberty. Killeen at Bates 3. There is no testimony from any witness with expertise in the areas of environmental, health, or economic impacts. Mr. Killeen's professional experience is in the areas of "regulation, supply, operations, and customer service." Killeen at Bates 3. Mr. Killeen is not qualified by knowledge, skill, experience, training, or education to provide expert testimony on the environmental, health, or economic impacts of the proposed plan.³

Mr. Killeen's conclusions are summary, omit a baseline, omit specific or measured impacts, and offer nothing more than a generalized non-expert and wholly unsupported company position that more gas is cleaner than less gas. Mr. Killeen concludes that "it is the Company's

³ See NH Rules of Evid., Rule 702.

position” that “any choices that increase the likelihood of expanded natural gas usage would have a positive impact on New Hampshire’s achievement of its requirements under the [Clean Air Act of 1990]” by “increased displacement of other higher polluting fuels.” Killeen at Bates 11. Mr. Killeen does not set forth the scope of other potential resources, does not specify the impacts of gas compared with those of other resources, or even identify the impacts of more gas compared to the current gas usage. *See generally*, Killeen. Mr. Killeen’s testimony lacks any data to compare the impacts of gas expansion to the impacts of electrification, demand reduction such as energy efficiency, oil usage, or some mixture of these other resources. *Id.* Indeed, no meaningful comparisons or conclusions are possible. *See id.* Devoid of any analysis or data, Mr. Killeen’s testimony is not sufficient to enable the Commission to assess the environmental, health, and economic impacts of the proposed plan.

In addition, although the statute requires consideration of “other environmental laws,” and the “long- and short-term environmental...impacts,” Mr. Killeen does not mention this requirement, and neither identifies nor addresses any laws other than the Clean Air Act of 1990.⁴ He also does not identify or distinguish between long- and short-term impacts, as required.⁵ Liberty’s filing thus falls woefully short of anything “granular” and is not sufficient “to permit the Commission’s assessment of potential environmental...impacts of the project.” Order

⁴ *See generally*, Killeen Testimony. For example, Mr. Killeen does not identify or address RSA 125-O or the New Hampshire Climate Action Plan. Past LCIRP filings of regulated entities have addressed, *inter alia*, the federal Acid Rain Program, the Ozone Transport Region regulations, the New Hampshire Clean Power Act, the Regional Haze Rule, the Clean Air Transport Rule, and the Clean Water Act.

⁵ *See id.* Climate change-induced impacts are known to be among the short- and long-term impact of gas leaks and gas combustion. *See, e.g.*, NASA, Global Climate Change, <https://climate.nasa.gov/causes/>. Scientific analysis has thoroughly documented various short- and long-term impacts of fossil fuel combustion and related emissions (including methane leaks). *See, e.g.*, National Renewable Energy Laboratory, 2000, Life Cycle Assessment of a Natural Gas Combined-Cycle Power Generation System, <https://www.nrel.gov/docs/fy00osti/27715.pdf>; Tollefson, J., 2013, Methane leaks erode green credentials of natural gas, *Nature* 493, doi:10.1038/493012a. Climate change is currently impacting New Hampshire and its neighbor states, and is expected to have additional long-term impacts on the state. *See, e.g.*, U.S. Global Change Research Program, Fourth National Climate Assessment, 2018, at Chapter 18 <https://nca2018.globalchange.gov/>.

26,225 at 7. It neither meets the legal standard nor evidences a good faith attempt to comply with the LCIRP process with regard to the disclosure of environmental impacts and preservation of the “physical environment of the state.” RSA 378:37.

Moreover, Liberty provides no assessment of the public health impacts of its resource plan. Mr. Killeen simply dismisses the need for an assessment of public health impacts by saying that public health is “subsumed in the environmental analysis.” Killeen at 10. This blatantly disregards a clear statutory requirement enumerated as distinct from environmental impacts. RSA 378:39. Liberty should provide baseline data on the health impacts of gas, data on the impacts of any proposed gas expansion, and data on the health impacts of reasonable alternatives including electrification, demand reduction, other fuels, or a reasonably projected mix of these. Absent data and an analysis of health impacts, the supplemental filing fails to comply with the express legal requirements for an LCIRP.

Liberty likewise provides no assessment of the economic impacts of the plan. Despite the Commission’s directive that Liberty file additional information detailing the economic impacts of its plan, Mr. Killeen claims that Liberty adequately addressed economic impacts in the initial LCIRP filing. Killeen at Bates 11. He provides no citation or support for how this satisfies the Commission’s directive and the law. *Id.*

New Hampshire law and good faith LCIRP compliance requires Liberty to provide specific and useful information, based on knowledgeable analysis, not mere cursory and factually unsupported company positions. Liberty must provide baseline information setting forth the current environmental, public health, and economic status of the region impacted by its gas plans, indicate with specificity the difference between status quo impacts and the impacts of alternatives including such options as gas expansion, demand reduction, or electrification, and

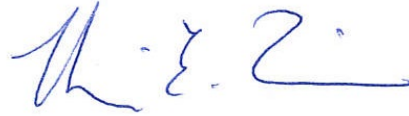
identify and include information about a reasonable scope of short- and long-term impacts. *See* RSA 378:38, RSA 378:39; *see also* Order Nos. 25,762, 26,225.

Any proceeding reviewing gas expansion plans proposed pursuant to the Liberty LCIRP for November 1, 2017 to October 31, 2022 should be put on hold pending compliance with the LCIRP filing laws, and no projects should be approved unless and until the LCIRP is approved. The LCIRP statutes are the fundamental planning statutes for the New Hampshire utilities, and the Commission cannot ensure that utility projects have been soundly selected and planned in the absence of compliance with these laws. *See* RSA 378:37-39; RSA 4-E:1.⁶ This Commission has repeatedly urged Liberty Gas and its sister company Liberty Electric to be more forthcoming with information and to comply fully with the LCIRP laws. *See, e.g.,* Orders No. 25, 762 (2015), 25,625 (2015), and 26,039 (2017). This time, there is no justification for a pass – indeed, Liberty was already given a pass and put on notice in 2015. Order No. 25,762, 6-7. Most importantly, the Commission cannot adequately review the prudence and reasonableness of the Granite Bridge project if that project’s impacts -- including its short- and long-term environmental, public health, and economic impacts -- have been subject to no meaningful review, or even disclosure. *See* RSA 378:37-39.

WHEREFORE, Conservation Law Foundation respectfully asks that the Commission find Liberty Utilities non-compliant and direct Liberty Utilities to submit a new supplemental filing that accords with state law and this Commission’s prior orders. CLF also asks that the Commission make clear that no major project proposal, including the Granite Bridge project, can be approved until Liberty has complied with the governing New Hampshire planning requirements.

⁶ The prior Liberty Utilities LCIRP extended only through Oct. 31, 2018 and did not include any information about, e.g., the selection or planning of the Granite Bridge project.

Respectfully submitted,



Melissa E. Birchard
Senior Attorney
CONSERVATION LAW FOUNDATION

May 10, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appearance has, on this 10th day of May, 2019, been sent by email to the service list in Docket No. DG 17-152.



Melissa E. Birchard