

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
D/B/A LIBERTY UTILITIES

Docket No. DG 17-068

Petition for Declaratory Ruling

Docket No. DG 17-152

Least Cost Integrated Resource Plan

**Objection to Intervenor Terry Clark's Amended Motion to Condition Keene  
Project on RSA 378 Consistency and Compliance, and to Order Supplemental  
RSA 378 Filing**

Liberty Utilities (EnergyNorth Natural Gas) Corp. ("EnergyNorth"), through counsel, respectfully objects to Mr. Clark's *Amended Motion to Condition Keene Project on RSA 378 Consistency and Compliance, and to Order Supplemental RSA 378 Filing*, because the Supreme Court recently affirmed the Commission's rejection of the first request for relief, and because the second request comes too late in the docket and is otherwise without merit.

In support of this objection, Liberty states as follows:

1. Mr. Clark's motion seeks relief in two separate dockets. The first, Docket No. DG 17-068, addressed the Company's request that the Commission declare that its existing franchise in Keene included the right to distribute natural gas. The second, Docket No. DG 17-152, is EnergyNorth's Least Cost Integrated Resource Plan ("LCIRP").
2. Since Mr. Clark filed the motion in both dockets, the Company similarly files this single objection in both dockets.

**Docket No. DG 17-068**

3. As to DG 17-068, Mr. Clark asked the Commission to “Condition the development of the Keene project which is the subject of Docket No. DG 17-068 on RSA 378 consistency and compliance.” Motion at 10. The Commission should deny this request because it has previously denied the very same request in this docket, which decision the New Hampshire Supreme Court affirmed only a few weeks ago.
4. As a preliminary matter, Mr. Clark opened his motion with a mischaracterization of the issue raised in this docket, stating this docket “concern[s] Liberty’s natural gas conversion/expansion plans for Keene.” Motion at ¶1. That is not accurate. As repeated many times during the litigation of this docket, Liberty’s Petition for Declaratory Ruling presented the narrow issue of whether the Company’s existing franchise included the right to distribute natural gas in Keene. The petition did not present for approval any conversion or expansion plans.

As Liberty noted in its objection to Mr. Clark’s motion, many of his arguments must fail because they fall outside the scope of the narrow legal issue decided in this proceeding and/or because the Commission has already considered and rejected them. In particular, this is a declaratory ruling proceeding in which we decided that no further statutory approvals were required under RSA 374:22 and RSA 374:26 because Liberty already has the franchise authority to provide natural gas service in its Keene Division.

Order No. 26,294 at 9 (Sept. 25, 2019). Acknowledging the precise issue presented in DG 17-068 renders most of Mr. Clark’s arguments irrelevant.

5. On the merits of that narrow issue, the Commission repeatedly ruled in Liberty’s favor, confirming that Liberty’s existing franchise included the right to serve natural gas. *See* Orders No. 26,065 (Oct. 20, 2017) (the “Declaratory Ruling”), No. 26,274 (July 26, 2019) (the “Confirming Order”), and Order No. 26,294 (the “Order on Rehearing”).

6. Mr. Clark has nonetheless argued throughout his participation in this docket, as he does with the current motion, that the Commission should apply RSA 378:37 and :38, the statutes governing LCIRPs, in reviewing Liberty's request for declaratory ruling. The Commission acknowledged Mr. Clark's argument in the Order on Rehearing:

Mr. Clark contended that Liberty's Petition cannot be granted because the conversion is part of its broader expansion plans to be considered in the context of its LCIRP filed under RSA 378:37 and RSA 378:39 in Docket No. DG 17-152.

Order on Rehearing at 4-5.

7. However, the Commission explicitly rejected that argument, saying a review under the LCIRP statutes was not relevant to the narrow question in this docket of whether Liberty had the franchise right to serve natural gas in Keene:

In addition, we decline to dismiss this matter on the merits as contrary to the public interest under the LCIRP statute, RSA 378:37-39, or out of deference to the jurisdiction of the SEC, as requested by Mr. Clark. Liberty's LCIRP has been filed and will be evaluated in DG 17-152; and any application submitted to the SEC with respect to the proposed Keene system conversion facilities, if required, will be addressed by that committee subject to its separate rules and procedures. We therefore deny Mr. Clark's request for rehearing or reconsideration.

*Id.*, at 10.<sup>1</sup>

8. Mr. Clark appealed this very issue to the New Hampshire Supreme Court: "On appeal, the appellant argues that the commission's decisions are contrary to the public interest and RSA 378:37 (Supp. 2019) because of alleged environmental costs and safety issues attributable to natural gas production and consumption." N.H. Supreme Court Order

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<sup>1</sup> The Commission informed Mr. Clark that he may participate in any further proceedings in this docket in response to Liberty's filings that are necessary before each phase of the Keene conversion: "members of the public will have the opportunity to submit comments to the Commission on the submissions made should the Keene gas system conversion from propane-air to natural gas progress." *Id.*

of August 17, 2020, in Case No. 20-0629, at 1, attached as Exhibit A to Mr. Clark's motion.

9. The Supreme Court rejected Mr. Clark's argument and affirmed the Commission's decision not to consider RSA 378:37 when deciding the declaratory ruling issue:

In his challenge to the merits of the commission's decision, the appellant makes several policy arguments inapplicable to the narrow issue before the commission concerning the scope of Liberty Utilities' franchise. \* \* \* The appealing party has the burden on appeal of demonstrating reversible error. Based upon our review of the commission's orders, the appellant's challenges to them, the relevant law, and the record submitted on appeal, we conclude that the appellant has not demonstrated reversible error.

Affirmed.

*Id.*, at 2 (citations omitted, emphasis in original).

10. This is plainly the correct outcome since the petition only asked the Commission to confirm the Company's existing right to distribute natural gas. The petition did not seek approval of any plan for expansion or conversion in Keene.
11. Despite this clear procedural history and binding nature of the Supreme Court's order, Mr. Clark's prayer for relief nonetheless asks the Commission to "[c]ondition the development of the Keene project which is the subject of Docket No. DG 17-068 on RSA 378 consistency and compliance." Motion at 10.
12. This is an inappropriate attempt to revive an argument to this docket that the Supreme Court just rejected.
13. Liberty thus asks the Commission to deny Mr. Clark's request in DG 17-068 to "Condition the development of the Keene project which is the subject of Docket No. DG 17-068 on RSA 378 consistency and compliance."

**Docket No. DG 17-152**

14. The Commission opened DG 17-152 to review EnergyNorth's LCIRP for the 2017/18 through 2021/22 planning period.

15. As to this docket, Mr. Clark's request is to

Order Liberty to supplement its LCIRP filings in Docket No. DG 17-152 with the requisite RSA 378:38-39 filings for the Keene project, specifically including, but not limited to, all such filings relating to proposed Keene LNG/CNG facilities and equipment and the option information required under RSA 378:38-39 as to the land/equipment purchase/lease option(s) Liberty considered in lieu of the Keene project.

Motion at 10.

16. The Commission should deny this request because:

(1) The purpose of DG 17-152 is to review EnergyNorth's LCIRP, i.e., its plans to provide a reliable and least cost gas supply portfolio for the legacy EnergyNorth service territory, which does not include Keene. A similar plan for Keene is thus irrelevant to this docket and would cause unnecessary delay and confusion;

(2) Mr. Clark's request is untimely, coming almost three years after the original filing in this docket and with no explanation for the failure to raise the issue earlier; and

(3) Neither Liberty nor the prior owners of the gas utility in Keene have made such a filing, nor would such a filing be appropriate for the Keene Division.

17. First, it is important to recall that the Commission opened DG 17-152 to review the LCIRP for EnergyNorth's legacy system. The "legacy system" consists of the Company's service areas that are connected to Tennessee Gas Pipeline's transmission line known as

the Concord Lateral. The legacy system serves 99% of Liberty's customers<sup>2</sup> through a complex supply portfolio that warrants the careful review that is the center of this docket.

18. The Company's Keene Division is not part of that legacy system. The Keene Division is a non-contiguous service territory that is not served by any EnergyNorth gas supply resources. The Keene Division is not connected to any pipeline and is completely reliant on propane and, more recently, CNG. Both of these fuels are trucked into Keene, and neither source of supply is part of the EnergyNorth gas supply Portfolio (except that EnergyNorth and the Keene Division share the Amherst propane storage facility).

19. Therefore, requiring EnergyNorth to supplement its LCIRP with a review of the Keene Division's supply portfolio would be introducing new information that is irrelevant to the scope of this docket. A Keene supplement would also cause substantial delay as the Commission would have to extend this docket to allow the Company time to prepare and file the supplement, then allow the usual procedural steps of discovery on the supplemental filing, non-utility testimony, discovery, rebuttal testimony by Liberty, further discovery, then a hearing.

20. Such a disruption to this docket warrants denial of Mr. Clark's motion.

21. Second, Mr. Clark's request is untimely.

22. EnergyNorth filed its LCIRP on October 2, 2017, and supplemented the plan twice, once with an April 30, 2019, Supplemental Filing and again on June 28, 2019, with testimony of three additional witnesses.

23. The Commission granted Mr. Clark's motion to intervene in Order No. 26,134

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<sup>2</sup> Per the Company's 2019 Annual Report.

(May 11, 2018). Given the absence of Keene in the LCIRP, it was readily apparent at the outset of this docket that EnergyNorth's LCIRP did not address the Company's plans in Keene.<sup>3</sup>

24. Thus, nothing prevented Mr. Clark from asking that the Company supplement the LCIRP with Keene specific information when he first intervened, yet Mr. Clark failed to do so until this filing. Instead, Mr. Clark raised many other arguments.

25. In May 2018, only days after being granted intervention, Mr. Clark filed a *Motion to Dismiss and for a Moratorium on Gas Expansion Plans*. This motion did not raise the issue Mr. Clark argues here -- that EnergyNorth should supplement its LCIRP to include Keene, but requested other relief. Mr. Clark asked the Commission to,

Reject Liberty's LCRIP and other gas infrastructure and customer expansion plans as inconsistent with New Hampshire law and dismiss this proceeding to approve the LCRIP accordingly; and

Place an immediate moratorium on all gas infrastructure and customer growth in the state, including, but not limited to, all such growth associated with the approvals sought under Commission Docket No. DG 16-852 (Lebanon/Hanover), Commission Docket No. DG 17-068 (Keene) and Commission Docket No. DG 17-198 (the Granite Bridge Project) ....

Motion at 35. Although Mr. Clark's discussion of the Company's "customer expansion plans" did include references to Keene, Mr. Clark never argued that the LCIRP should be supplemented. Rather, Mr. Clark elected to request the draconian relief of a gas moratorium.

26. The Commission rejected Mr. Clark's motion as premature.

Applying that standard, we deny Mr. Clark's Motion. The existence of elements in Liberty's LCIRP that may conflict with statutory requirements is not a basis for dismissal before relevant facts and arguments

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<sup>3</sup> If there was any doubt, the Company confirmed through its response to data request Clark 5-13 that "the Keene Division is not included in the LCIRP in the DG 17-152 proceeding." A copy of Clark 5-13 is attached.

in the proceeding are fully developed. Nor are they grounds for us to impose a moratorium on all of Liberty's natural gas infrastructure and customer expansion plans, as Mr. Clark has requested. Rather, they are factors to be considered in our review of the LCIRP. At this stage in the proceeding, we have before us only Liberty's petition with supporting testimony; we do not yet have the benefit of any responsive testimony or briefing of the legal issues involved, beyond the Motion, Objection, and Reply. Any party may assert arguments concerning dismissal or denial at the end of the proceeding after the record has been closed, if the facts warrant such action.

Order 26,225 at 6 (Mar. 13, 2019).

27. This order also found EnergyNorth's LCIRP lacking in some respects, and directed Liberty to "submit a supplemental filing, including supporting testimony, to address each of the specific elements required under RSA 378:382 and RSA 378:39 that are not already addressed in its LCIRP ...." *Id.* at 7. EnergyNorth made that supplemental filing in April 2019.
28. Mr. Clark responded with a motion to strike the supplemental filing. Again, Mr. Clark's motion did not ask the Commission to direct EnergyNorth to supplement the LCIRP with Keene-specific information. His request for relief was to "Adjudge that Liberty's supplement filing and LCIRP filings are noncompliant." Motion at 20.
29. While those motions were pending, EnergyNorth further supplemented its filing with additional testimony on June 28, 2019.
30. The Commission denied Mr. Clark's motion, and a similar motion filed by CLF:

In Order No. 26,225, this Commission declined to dismiss Liberty's LCIRP petition while directing the Company to submit a supplemental filing to address each of the specific elements required under RSA 378:38 and RSA 378:39. The issue before us now is whether Liberty has complied with that directive, not whether to accept Liberty's plan. We find Liberty's supplemental filings comply with the directive contained in Order No. 26,225. We therefore deny Mr. Clark's and CLF's motions. This docket will proceed and we will determine whether Liberty has met its burden of proving the adequacy of its LCIRP based on the evidence presented at hearing, including not only the testimony presented by Liberty, but also the



testimony presented by other parties.

Order No. 26,286 at 6 (Aug. 12, 2019).

31. After EnergyNorth's supplemental filings and extensive discovery on all of EnergyNorth's filings, Staff, Mr. Clark, and CLF filed testimony in early September 2019. Once again, Mr. Clark's testimony did not include a request that the Commission direct EnergyNorth to supplement its LCIRP to address Keene. Rather, Mr. Clark's testimony supported his argument that the Commission should not approve the plan that EnergyNorth had already filed.
32. EnergyNorth filed rebuttal testimony in late October 2019 and responded to further discovery, which completed the pre-hearing proceedings in this case.
33. In November 2019, the Commission suspended this docket and the Granite Bridge Docket, DG 17-198, which allowed EnergyNorth time to negotiate the new contract with Tennessee Gas Pipeline, which the Company recently filed in DG 17-198.
34. The only remaining steps in this docket are for the Commission to schedule and conduct a hearing.
35. Given this procedural history, it is simply too late for Mr. Clark to request relief now that he could have asserted earlier in the docket. Mr. Clark gives no reasons for his failure to raise the issue earlier and, as described above, there are likely none.
36. As described above, granting Mr. Clark's request would cause further, substantial delay and would not change the gas supply portfolio decisions described in the LCIRP because Keene does not impact the various supply decisions discussed the LCIRP that are related to the legacy system.
37. Third, neither Liberty nor the prior owners of the gas utility in Keene have made

an LCIRP-type filing in the past, nor would such a filing be appropriate for the Keene Division.

38. When Liberty obtained approval to acquire the Keene utility from its prior owner, neither the settlement agreement nor the order approving it imposed a requirement to file an LCIRP for Keene Division. *See* Order No. 25,736 (Nov. 21, 2014). Indeed, neither Liberty nor the prior owners have made such a filing for the gas utility in Keene in at least the past 20 years.

39. Indeed, requiring such a filing for the Keene Division would not be appropriate because the Commission, and Mr. Clark, have other opportunities to examine the Company's planning for the Keene Division, plans that are far less complicated than what is presented in EnergyNorth's LCIRP.

40. Much of the load forecasting and supply planning that would be in a Keene-specific plan are already contained in the Keene Division's twice annual cost of gas filings. These dockets allow the opportunity to examine the Company's forecasts and supply planning in detail. Further, the Commission's most recent order in DG 17-068 established a thorough review process that the Company must follow prior to any further natural gas expansion or conversion in Keene, a process that requires Commission orders before any construction:

We do, however, further clarify the provisions of Order No. 26,274 with respect to the involvement of Mr. Clark and members of the public in future approval proceedings and related Liberty filings regarding the Keene system conversion. As noted below, each of the required reports and filings mandated by Order No. 26,274 must be filed in this docket. As a result, upon each filing, members of the public will have the opportunity to submit comments to the Commission on the submissions made should the Keene gas system conversion from propane-air to natural gas progress. Similarly, the public may comment on the reports filed by the Safety Division.

Order No. 26,294 at 10.

41. Mr. Clark will thus have an opportunity to comment on the Company's plans in Keene prior to further construction without having to upset the proceedings in the unrelated LCIRP docket for the EnergyNorth legacy system, which renders moot his request to have the Company supplement the EnergyNorth LCIRP with unrelated Keene planning.

**WHEREFORE**, Liberty respectfully requests that the Commission:

- A. Deny Mr. Clark's request in DG 17-068 to "Condition the development of the Keene project which is the subject of Docket No. DG 17-068 on RSA 378 consistency and compliance;"
- B. Deny Mr. Clark's request in DG 17-152 to require the Company to supplement its EnergyNorth LCIRP with Keene specific information; and
- C. 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: September 17, 2020

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**Certificate of Service**

I hereby certify that on September 17, 2020, a copy of this objection has been electronically forwarded to the service list in this docket.



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Michael J. Sheehan