

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-152

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

2017 Least Cost Integrated Resource Plan

Order Denying Motion to Dismiss

ORDER NO. 26,225

March 13, 2019

In this order, the Commission denies a motion to dismiss this proceeding and the Least Cost Integrated Resource Plan filed by Liberty Utilities. The Commission also directs Liberty to submit a supplemental filing 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. The Commission will review Liberty's LCIRP and the supplemental filing to determine whether it meets the public interest, consistent with all applicable statutory requirements.

I. PROCEDURAL HISTORY

On October 2, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a petition for approval of its 2017 Least Cost Integrated Resource Plan (LCIRP) for natural gas distribution pursuant to RSA 378:38 and Order No. 25,762 (February 9, 2015) issued in DG 13-313.

On March 6, 2018, the Commission granted intervention to Terry Clark, a Liberty natural gas customer in Keene, New Hampshire. On May 15, 2018, Mr. Clark filed a motion to dismiss

this proceeding and to place a moratorium on Liberty's gas infrastructure and customer expansion plans as outlined in its LCIRP (Motion). Liberty filed a timely objection (Objection), to which Mr. Clark filed a reply (Reply). The Motion and related docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <http://puc.nh.gov/Regulatory/Docketbk/2017/17-152.html>.

II. POSITIONS OF THE PARTIES

A. Terry Clark

In his Motion, Mr. Clark argued that Liberty's expansion plans contained in its LCIRP are inconsistent with New Hampshire law and, therefore, that the Commission should place a moratorium on all of Liberty's natural gas infrastructure and customer expansion plans.

Mr. Clark asserted that Liberty's LCIRP does not comport with RSA 378:37 because the proposed projects do not reflect the lowest reasonable costs for gas supply. According to Mr. Clark, Liberty's proposed expansion projects instead suggest "enormous, largely hidden, costs," including ratepayer subsidization of huge infrastructure expansions, such as the Granite Bridge Project proposed in Docket DG 17-198. He also maintained that other potential cost impacts would affect various industries in New Hampshire, including tourism and agriculture, and would have adverse effects on public health and insurance, on seacoast towns and homes, and on taxpayers and ratepayers. In addition, Mr. Clark expressed concern regarding what he called the "astronomical stranded costs" of gas projects that would be borne by ratepayers. *See* Motion at 25-30.

In particular, Mr. Clark argued that the Granite Bridge Project proposed by Liberty calls for "the outrageously expensive huge *future* development of, and commitment to, fracked gas infrastructure and supplies ... at a time when the climate crisis and our own energy policies and

greenhouse gas reduction commitments compel a freeze on expansion and a reduction in emissions.” *Id.* at 14. Mr. Clark added that Liberty’s cost analysis for the project proposes a 55-year lifespan for the proposed natural gas pipeline and a 40-year lifespan for the proposed liquefied natural gas (LNG) storage facility. According to Mr. Clark, those lifespan parameters indicate that, if approved, the pipeline would have to be used until at least 2076 and the LNG storage facility would have to be used until at least 2062, in order to avoid imposing stranded costs on ratepayers.

Mr. Clark stated that Liberty failed to include any discussion of the potential environmental, health, and safety impacts of the proposals described in its LCIRP. He argued that the Commission “not only has the authority to consider climate change in its public interest analysis, but the obligation,” and therefore its public interest analysis must consider the impacts that Liberty’s expansion plans would have on greenhouse gas emissions and the State’s commitments and obligations to address climate change. *Id.* at 15-16. In support of that argument, Mr. Clark cited a federal court decision which vacated and remanded a Federal Energy Regulatory Commission (FERC) decision for failing to consider the downstream climate impacts of a proposed natural gas pipeline. *Id.* (citing *Sierra Club v. Federal Energy Regulatory Commission*, 867 F.3d 1357 (D.C. Cir. 2017) (requiring FERC to quantify and consider pipeline project’s downstream greenhouse gas emissions, or explain specifically why it could not have done so)).

Mr. Clark stated that Liberty failed to cite any persuasive authority supporting its assertion that RSA 378:38, V does not apply to its LCIRP.¹ *Id.* at 16 (referring to Liberty’s

¹ Pursuant to RSA 378:38, V, each LCIRP shall include “[a]n 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.”

assertion in its LCIRP filing that RSA 378:38, IV, V, and VI do not apply to its LCIRP). He argued that issues related to the potential impacts of the proposed expansion projects on greenhouse gas emissions and the State's commitments and obligations to address climate change must be considered, because RSA 378:38, VI requires that the LCIRP include an "assessment of the plan's long- and short-term environmental, economic, and energy price and supply impact on the state." Those considerations include how the proposed expansions comply with the requirements of "the Clean Air Act of 1990, as amended, and other environmental laws that may impact a utility's assets or customers," pursuant to RSA 378:38, V. *Id.* at 16, 34.

Mr. Clark described in detail studies that have been conducted regarding the effects of natural gas emissions and the need for climate actions to address those effects, concluding that the "climate crisis" and state energy policies and national greenhouse gas reduction commitments compel a freeze on the expansion of gas production and infrastructure. *Id.* at 16-17. He contended that the Commission has an obligation to consider climate change in its public interest analysis of Liberty's proposed infrastructure expansion, under RSA 378:38, VI. *Id.* at 15-16. Mr. Clark also referenced the potential impact on public health from fracked gas releases resulting from drilling, production, and infrastructure leaks, and raised safety concerns associated with Liberty's proposal to install a pipeline in the New Hampshire Department of Transportation right-of-way. *Id.* at 17-24.

In his Reply, Mr. Clark contended that Liberty's Objection mischaracterized "and/or [attempted] to bury the main arguments" in the Motion, which include the inconsistency of Liberty's plans with the public interest from environmental, health, and safety perspectives, and with the state energy policies under RSA 378:37. Reply at 1.

B. Liberty

Liberty argued that dismissal of the LCIRP petition is not appropriate because, by statute, Liberty is required to file an LCIRP for the Commission to evaluate.

According to Liberty, Mr. Clark's arguments regarding the LCIRP's supposed inconsistency with state law are unclear as to whether he is seeking dismissal or requesting disapproval of the plan. Objection at 2. Liberty argued that it has demonstrated and will prove compliance with applicable law, and asserted that RSA 378:38, IV, V, and VI do not apply to its LCIRP, based on earlier Commission decisions issued in 2014 and 2015 concerning Public Service Company of New Hampshire. *Id.* at 3 (citing *Public Serv. Co. of N.H.*, Order No. 25,828 at 8 (October 19, 2015), and *Public Serv. Co. of N.H.*, Order No. 25,659 at 8 (May 1, 2014)). Liberty contended those decisions determined that RSA 378:38, IV, V, and VI apply only to electric generation, and not to natural gas distribution systems.

Liberty asserted that all the natural gas it purchases meets the same pipeline quality standards, that both the distribution of natural gas by utilities and its use by customers are legal, and that RSA 378:38, VII encourages increased use of natural gas. *Id.* at 3-4. Finally, Liberty argued that the LCIRP statute does not authorize a moratorium on gas infrastructure and customer growth in the state, as Mr. Clark has argued, and that a moratorium would not be consistent with RSA 378:38 and 39, which require filing and assessment of the LCIRP. *Id.* at 4.

III. COMMISSION ANALYSIS

When ruling on a motion to dismiss, we assume that the factual allegations in the petition are true and all reasonable inferences therefrom must be construed in favor of the petitioner. *See Public Service Company of New Hampshire Petition for Approval of Power Purchase Agreement with Laidlaw Berlin BioPower, LLC*, Order No. 25,171 at 9 (November 17, 2010) (citing

Southern New Hampshire Water Company, Inc., Order No. 19,826, 75 NH PUC 282, 284 (1990)).

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 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.

Based on our review of the filings, however, we find that Liberty has overlooked the directives included in Order No. 25,762 (February 9, 2015). In that Order, the Commission found Liberty's previous LCIRP adequate but, in light of recent statutory changes, specifically directed Liberty to

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.

Liberty has misconstrued a prior Commission order that granted Eversource Energy a limited waiver of certain environmental requirements for a specific LCIRP filing. That limited waiver granted in *Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,828 (October 19, 2015), in Docket DE 15-248, was approved because of Eversource Energy's pending divestiture of electric generation assets at the time and does not represent a

precedent that Liberty may avail itself of in the present proceeding. Nor did that Order shift the burden of assessing the applicable statutory factors to the Commission without the benefit of a substantive filing from Liberty addressing each required factor.

As stated in Order No. 25,828, the Commission waived certain requirements for the LCIRP before it at that time, but required “full consideration of all elements of RSA 378:38 for Eversource Energy’s next LCIRP, including those items waived in this more abbreviated proceeding.” *Id.* at 9. Liberty failed to acknowledge that directive.

Accordingly, we direct 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, 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. We will review Liberty’s LCIRP and the supplemental filing to determine whether it meets the public interest, consistent with all applicable statutory requirements.

We note that this proceeding is currently suspended until March 15, 2019, pursuant to the secretarial letter issued on February 7, 2019. We will therefore direct Liberty to supplement its LCIRP filing, as discussed above, no later than April 30, 2019.

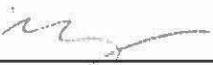
Based upon the foregoing, it is hereby

ORDERED, that Terry Clark’s motion to dismiss Liberty’s petition for approval of its Least Cost Integrated Resource Plan is DENIED; and it is

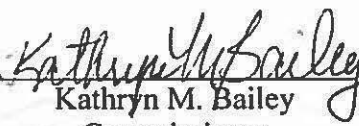
² Except RSA 378, IV, which applies only to electric distribution utilities.

FURTHER ORDERED, that Liberty shall supplement its LCIRP filing to address the requirements and issues set forth in RSA 378:38, V and VI and RSA 378:39, by no later than April 30, 2019.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 2019.



Martin P. Honigberg
Chairman

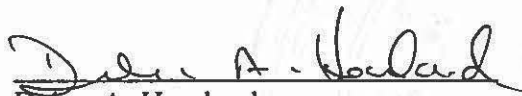


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

Executive.Director@puc.nh.gov
al-azad.iqbal@puc.nh.gov
alexander.speidel@puc.nh.gov
amanda.noonan@puc.nh.gov
aperry@scottmadden.com
bill.killeen@libertyutilities.com
chico.dafonte@libertyutilities.com
donald.kreis@oca.nh.gov
drosen@kwplaw.com
jroberge@clf.org
jvanrossum@clf.org
karen.sinville@libertyutilities.com
kerri-lyn.gilpatric@puc.nh.gov
kimdao@scottmadden.com
Liz.stanton@aeclinic.org
lynn.fabrizio@puc.nh.gov
maureen.karpf@libertyutilities.com
mbirchard@clf.org
michael.licata@libertyutilities.com
michael.sheehan@libertyutilities.com
michael@libertyconsultinggroup.com
mkoehler@kwplaw.com
ocalitigation@oca.nh.gov
pradip.chattopadhyay@oca.nh.gov
rkanoff@burnslev.com
rmhusband@gmail.com
shossain@burnslev.com
Stephen.Hall@libertyutilities.com
steve.frink@puc.nh.gov
steven.mullen@libertyutilities.com
tirwin@clf.org