



## OFFICE OF THE CONSUMER ADVOCATE

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January 19, 2022

New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301Re: Docket No. DG 20-105  
Energy North Natural Gas Corp. d/b/a Liberty  
Order No. 26,536 Rehearing Proceedings

To the Commission:

The Office of the Consumer Advocate (“OCA”) is in receipt of a letter filed yesterday in the above-referenced docket by the subject utility, Energy North Natural Gas Corp. d/b/a Liberty. In its letter, Liberty attempts to interpose an additional argument in support of its pending motion for rehearing of Order No. 26,536.

Although the letter from Liberty refers to the rehearing motion as having been “recently filed,” in fact the motion was submitted almost two months ago, on November 24, 2021. The OCA interposed a timely objection to the motion, filed on December 3, 2021.

Therefore, the OCA respectfully requests that the Commission disregard the letter filed yesterday by Liberty and strike it as untimely in light of the applicable statutory requirements. RSA 541:3 states that a motion for rehearing must be filed within 30 days of the applicable order or decision. Such a motion must “set forth fully *every* ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.” RSA 541:4 (emphasis added). Should appellate proceedings ultimately ensue, RSA 541:3 clearly provides that “no ground not set forth” in the rehearing motion “shall be urged, relied on, or given any consideration by the court.” Because these limitations are statutory in nature, the Commission is not free to waive or otherwise to bend them.

Moreover, the additional argument asserted in the January 18 letter from Liberty is not persuasive. Liberty urges the Commission to interpret RSA 378:30-a, which precludes the inclusion in a utility’s rate base of “construction work in progress” (“CWIP”) including construction work that is “not completed,” in light of the definition of “commencement of construction” in the enabling statute of the Site Evaluation Committee, RSA 162-H:2, III.

The two statutes are not *in pari materia* and, thus, the meaning of a phrase in RSA 162-H, which dates from 1991, sheds no light on what the General Court meant when it adopted the anti-CWIP statute 12 years earlier in 1979. See *New Hampshire Center for Public Interest Journalism v.*

*New Hampshire Dep't of Justice*, 173 N.H. 648, 653 (2020) (citation omitted); *cf. Appeal of Old Dutch Mustard Co.*, 166 N.H. 501, 509-510 (2014) (noting that some statutes must be construed together “so that one statute does not permit what the other statute prohibits”) (citation omitted). RSA 162-H:5 prohibits the commencement of construction of certain facilities without a certificate issued by the Site Evaluation Committee. It is a statutory regime whose purpose is the regulation of certain land uses, whereas the anti-CWIP statute protects ratepayers from providing a return on utility investments that are not used and useful in the provision of service to the public. The concepts are only distantly related, if at all.

This substantive argument notwithstanding, the OCA strongly urges the Commission to strike the January 18 letter from Liberty so as not to allow a party to evade the strict statutory limitations on rehearing and appeal adopted by the General Court so as to assure that these processes are fair to all concerned. Thank you for considering our views.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DKreis', written in a cursive style.

Donald M. Kreis  
Consumer Advocate

cc: Service list, via e-mail