

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DG 21-050**

**LIBERTY UTILITIES d/b/a LIBERTY, KEENE DIVISION
Summer 2021 Cost of Gas—Bifurcated- Contract Terms**

COMMISSION STAFF’S MOTION TO COMPEL
LIBERTY UTILITIES d/b/a LIBERTY, KEENE DIVISION, TO
FULLY ANSWER DATA REQUESTS PROPOUNDED BY STAFF APRIL 5, 2021

NOW COMES the Commission Staff (Staff) pursuant to New Hampshire Administrative Rule Puc 203.09 (i), and respectfully moves this honorable Commission to compel Liberty Utilities d/b/a Liberty, Keene Division, (Liberty or Company) to fully answer Staff Technical Session Data Request Nos. TS 1-1(d) and TS 1-3 (Items 1, 2, 3, 11,16-20, 22, 27-28) filed on April 5, 2021. By agreement of the parties, in this expedited proceeding, Company responses were to have been provided on or before April 12, 2021.

Without conceding that Liberty’s other answers to TS 1-1 are fully responsive, Liberty has not provided a responsive answer to TS 1-1(d), “Are there any services that XNG is offering Liberty other than a new contract that includes a demand and supply charge. If there are other services, please identify and list them.” *See* Staff’s Request to Produce Witnesses (dated April 13, 2021), attachments TS 1-1 responses and TS 1-3 packet.

Without conceding that Liberty’s other answers in TS 1-3 are fully responsive, Liberty has not provided responsive answers or requested photographs or marked site plans, to TS 1-3 as listed below. (“Item” refers to Staff’s handwritten numbered annotations of the new contract, provided by Staff in

request TS 1-3). Staff notes Liberty's answer to Item 5 does not relieve Liberty of the obligation to answer Staff's requests. Liberty's answer to Item 5 states:

Some language in the contract is superseded or rendered irrelevant by Liberty's CNG facility operating procedures and emergency management procedures, which procedures the Company intends to have specifically incorporated into the contract by an amendment. This is one such example of superseded or irrelevant information in the contract in light of those procedures. The proposed amendment will resolve this item.

(Note: Staff does not agree that the proposed amendment will resolve the items).

The TS 1-3 items which Staff requires responsive supplemental narrative answers to, including photographs and marked site plans, include:

Item 1 "Please confirm with photo if this ['delivery point –meter installed immediately prior to Buyer's flanged pipe connection'] is the location of delivery point. Is it prior?"

Item 2 "specify which flange & connection [is delivery point] and delineate on site plan.

Item 3 Staff assumed Delivery Point and Demarcation Point of responsibilities is same location. Please confirm. [See referenced text]

Item 11 "...This seems to be written in reverse [see referenced text] Please confirm Liberty has more experience in [referenced area]. Please confirm.

Item 16 "[Referenced text] Seems to be in conflict with demarcation point?"

Item 17 Who is responsible for what? [See referenced text] Please show on site plan Buyer's and Seller's responsibility

Item 18 Under what conditions is XNG allowed to shut down system? When can they not? [See referenced text]

Item 19 Maintenance is Liberty's responsibility. Please confirm.

Item 20. Identify which covered tasks [see referenced text].

Item 22. I thought Liberty did this [see referenced text]. Please confirm.

Item 27 Please describe [referenced text "All piping downstream of Buyer meter.."] with photo; annotated site plan.

Item 28. Please confirm that Liberty is operating decompression equipment, not XNG.

Staff further notes Liberty did not object to providing answers to the data requests at issue, as evidenced by its (incomplete) response, provided on April 12, 2021. *See* Staff's Request to Produce Witnesses, attachments TS 1-1 responses and TS 1-3 packet.

In addition, by email in the early evening of April 12, 2021, the day Liberty filed its responses, Staff asked Liberty to provide the marked photographs and annotated site plans requested in TS 1-3 and noted that Liberty had failed to provide them. On April 13, 2021, Liberty's Counsel stated the Company would try to provide "one" photo later that week, "if you really want a photo." The undersigned Staff clearly communicated Staff's on-going interest in receiving the requested photographs and site plans. Responsive photograph(s) and site plan(s) were not provided.

To date, Liberty has not provided responsive answers. Indeed, Liberty initially refused to identify Mr. Rokes, (who provided responses to TS 1-1) and Mr. Mullen (who provided responses to TS 1-3) as witnesses for the hearing. Staff thereafter filed a request to the Commission to direct the Company to produce Mr. Rokes and Mr. Mullen. *See* Staff Request to Produce Witnesses (dated April 13, 2021). The Company took the position that it would make Mr. Rokes and Mr. Mullen available but did not agree that they could be compelled to testify. *See* Company Response to Staff Request to Produce Witnesses (dated April 13, 2021).

At the April 19, 2021 hearing, the Commission bifurcated the hearing to separately address Staff's concerns with the Company's new prospective CNG contract. Accordingly, assuming witnesses might have testified, Staff did not have an opportunity at the hearing to question Liberty witnesses about the Company's response to TS 1-1 (d) or TS 1-3 Items 1, 2, 3, 11, 16-20, 22, 27-28 or photographs premarked as Exhibit 19 from Liberty and Exhibit 21 from Staff, or to otherwise make an oral motion to compel their testimony at hearing. Staff is thus unable to gain clarity regarding Liberty's nonresponsive answers and contract terms at issue.

From the bench, the Commission directed Liberty to work with Staff and the OCA to address Staff's concerns, and otherwise directed Liberty to file an amended executed contract on or before June 1, 2021. Time is thus of the essence. Given that Liberty did not exert itself to provide the photographs or site plans in time for the hearing, Staff concludes this motion to compel is necessary in order to obtain responsive answers to TS DRs as identified above.

The Commission has stated that:

Data requests are a “vehicle for developing factual information.” *Freedom Ring Communications, LLC d/b/a Bay Ring Communications*, Order No. 24,760 at 2 (June 7, 2007). The Commission weights “the effort needed to gather [the requested information], the availability of the information from other sources, and other relevant criteria.” *Public Service Co. of N.H.* Order No. 25,595 at 2-3 (Nov. 15, 213); *City of Nashua*, Order No. 24,485 at 4. The Commission “enjoys broad discretion in the management of discovery.” *Public Service Co. of N.H.* Order No. 24,342 at 23 (June 29, 2004) (quotations and citations omitted).

DE 11-250 *Investigation of Merrimack Station Scrubber Costs and Cost Recovery*, Order No. 25,646 (April 8, 2014).

In Staff's view the contract terms at issue are confusing, inaccurate and contradictory. Therefore, only the Company itself can provide the responsive supplemental narrative answers and annotated photographs and site plans that Staff has requested. In addition, as set forth above, Staff made a good-faith effort to obtain complete answers to TS 1-3, as required by Puc 203.09 (i) (4). Without the specific information Staff requested on April 5, 2021, in the form of TS 1-1(d) and TS 1-3, Staff will be handicapped in understanding the Company's intent, and working with the parties to remedy Staff's concerns (as directed).

While Staff contemplates additional meetings with the Company and OCA to address Staff's concerns, consistent with the Commission's bench order, Staff needs Liberty's responsive answers in advance, and promptly, in order to make working sessions productive in the limited time available before

the June 1, 2021 deadline established by the Commission by which time Liberty must file an executed amended contract, and before the new CNG contract (in some form) goes into effect on July 1, 2021.

WHEREFORE, Commission Staff respectfully request that this honorable Commission:

- A. COMPEL Liberty to fully respond to TS 1-1(d) and TS 1-3 Items 1, 2 ,3, 11, 16-20 and 22, 27-28, by providing responsive supplemental narrative answers, annotated photographs and cite plans as requested; and
- B. GRANT such other relief as may be just and equitable.

Respectfully submitted,

/s/ Mary.E.Schwarzer

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CERTIFICATE OF SERVICE

I hereby certify that this 21 day of April, 2021, an electronic copy of the foregoing motion is being sent to the entire Service List, consistent with the Commission's Temporary Changes in Filing Requirements (March 17, 2020) due to the COVID -19 state of emergency.

/s/ Mary E. Schwarzer

Mary E. Schwarzer, Staff Attorney