

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty

Docket No. DG 21-050

**Keene Division Summer 2021 Cost of Gas**

**Objection to Motion to Compel**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty” or the “Company”) respectfully objects to Commission Staff’s Motion to Compel responses to certain data requests because the Company provided responsive answers.

In support of this objection, the Company states as follows:

1. Staff’s motion to compel arises from two data requests made on April 5, following the April 1, 2021, technical session in this docket: Staff TS 1-1(d) and selected subparts of Staff TS 1-3.
2. These data requests focus on the new CNG contract that will go into effect on July 1, 2021, as the existing CNG contract expires on that date. As stated during the recent hearing in this docket, the new CNG contract was the result of a competitive bid process, has more favorable terms, and results in lower CNG costs.
3. As detailed below, Staff’s motion should be denied because (1) on most items Staff failed to meet its burden in that Staff offered no argument and no explanation supporting its request for an order compelling further responses; (2) on the few items where Staff made an argument, the Company’s response were nonetheless sufficient to warrant denial of the motion to compel; and (3) in several instances Staff seeks an order to compel an answer when the Company clearly and directly answered the question, e.g., on three occasions Staff seeks an order to

compel when Staff asked the Company to “confirm” a fact and Liberty response “confirmed” that fact.

4. Note that the Company is following the Commission’s directive to attempt to renegotiate the XNG contract to address Staff’s concerns, to include a conversation with Staff and the OCA to discuss and address those concerns, all of which essentially renders this motion moot.

**Staff TS 1-1(d)**

5. Staff TS 1-1 asked,

While not an exhaustive list, please comment on the following aspects of the new contract, and explain whether the Company agrees that there is a contradiction, inconsistency, or ambiguity between the new contract and PUC requirements and safety directives.

Staff’s motion to compel argues the Company did not adequately respond to subpart d., which asked:

Are there any services that XNG is offering Liberty other than a new contract that includes a demand and supply charges. If there are services please identify and list them.

The Company responded to the question as follows:

XNG is not providing any more or any less service than the original contract. As with the first contract, this contract includes demand and supply charges.

*See* the document marked as Exhibit 9 in this docket.<sup>1</sup>

6. Staff’s motion to compel provides no explanation or argument as to why the above answer is inadequate. The *entirety* of Staff’s argument as to Staff TS 1-1(d) follows:

---

<sup>1</sup> The Company recognizes that the Exhibits referenced in this objection were not introduced into evidence at the April 19, 2021, hearing. However, the exhibits are appropriately available to the Commission and parties for review of Staff’s motion to compel and Liberty’s objection.

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.

Motion to Compel at 1.

7. Staff carries the burden of demonstrating why the above response is insufficient and thus grounds for a motion to compel. See Puc 201.09(i)(3) ("Motions to compel responses to data requests shall ... (3) Specify the basis of the motion"); *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,789 at 12 (June 5, 2015) (noting the that the moving party "fail[ed] to sustain its burden of proving how the information requested by these data requests are relevant to, or likely to lead to the discovery of relevant evidence bearing on, our determinations of" the issues before the Commission); see also Puc 203.25 ("Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence").
8. Since Staff makes no attempt to provide any such explanation, Staff has failed to meet its burden and there is no meaningful way for the Company to respond and to cure its allegedly insufficient response. Staff's motion to compel a response to Staff TS 1-1(d) should thus be denied.
9. The Company nonetheless offers that it interpreted Staff TS 1-1 to generally ask for an explanation of whether language in the new contract somehow gives rise to a "contradiction, inconsistency, or ambiguity between the new contract and PUC requirements and safety directives."
10. Understanding that context, TS 1-1(d) specifically asked whether the new contract provides for services beyond "demand and supply charges." The Company assumed that Staff

understood that Liberty will be paying these “demand and supply charges” in return for the supply of CNG and for use of the decompression facility that would deliver the CNG to Liberty’s system. In that regard, as the answer states, the new contract provides essentially the same services as the old contract.

### **Staff TS 1-3**

11. Staff TS 1-3 included a copy of the new CNG contract with comments and questions handwritten by Mr. Knepper, numbered 1 through 29. Staff TS 1-3 simply asked the Company to “provide Liberty’s clarifications of, and comments on, those items.” (Emphasis added.)
12. The Company provided clarifications of and comments on” all 29 of the items. *See* Exhibit
13. The Motion to Compel argues that Liberty’s “clarifications” and “comments” were insufficient as to items 1, 2, 3, 11, 16-20 and 22, and 27-28. Each of these items will be addressed below.
  
14. **Item 1**, referring to the contract definition of “delivery point” as “meter installed immediately prior to Buyer’s [Liberty’s] flanged pipe connection,” states: “Please confirm with photo if this is the location of delivery point. Is it prior?”
15. The Company’s clarification and comment was the following:

The Safety Division approved Liberty’s CNG operating and emergency management procedures and conducted a physical inspection of the CNG skid prior to operation in 2019. The “delivery point” has not changed from what the Safety Division reviewed and approved as part of that initial start-up.

Exhibit 11 at 11 (emphasis added).
16. Staff’s only critique of this response is that the Company did not provide a photograph. However, Staff TS 1-3 did not request photographs – it asked the Company for clarifications

and comments, which were provided. Handwritten comments on a document attached to a data request do not constitute a document request.

17. Nonetheless, Liberty marked as Exhibit 19 a series of photographs of the CNG facility. The meter is beneath the square, gray box in the center of the third photograph (page 3 of 6). The “flanged pipe connection” is immediately downstream of that meter.
18. Note that Staff also filed more extensive photographs of the delivery point as part of Exhibit 21, at Bates 000013 and 000014. Staff knows exactly where the delivery point is and has its own photographs. As stated above “the ‘delivery point’ has not changed from what the Safety Division reviewed and approved” prior to the 2019 startup of the CNG facility.
19. Staff’s motion to compel further response to Item 1 should be denied.
20. **Item 2** asks the Company to “specify which flange & connection and delineate on site plan,” again referring to the delivery point. It appears that Staff’s objection is that it did not receive a site plan.
21. The Company’s response was “See #1 above.” Given the lack of a document request in the question, and given the above description and photographs, this response is a perfectly appropriate “clarification and comment” on the location of the delivery point.
22. Nonetheless, the Company notes that Commission Staff was provided many drawings, diagrams, and “as built” of the CNG facility as part of the Safety Division’s review and inspection, which the Safety Division found to be adequate when it recommended that the Commission approve the conversion of customers to CNG. And since the CNG facility has not changed since the Safety Division’s approval, Staff thus has a “site plan” with the delivery point delineated.

23. **Item 3** says, “Staff assumed Delivery Point and Demarcation Point of responsibilities is same location. Please confirm.” The Company’s response was “See #1 above.”
24. Staff does not explain why the Company’s response was inadequate. Indeed, Staff makes no argument in support of its request to compel further response. The Commission should deny the motion to compel for this reason alone.
25. The Company can again offer that the Delivery Point has always been at the same location, as described above. The “demarcation point,” although never referenced in the contract, is the location that divides overall responsibility as between Liberty and XNG. The demarcation point has always been where the hose from the CNG facility connects to the truck trailer.
26. **Item 11** says, “This seems to be written in reverse. Liberty has more experience than XNG in this area. Please confirm.” “This area” refers to the following contract language regarding testing:
- If the period of such error is not known definitely or agreed upon, the Parties agree that Seller truck delivery logs for the period in question provide an audit record acceptable for invoicing. Buyer may witness all testing and gauging; provided however, if no representative for Buyer is present, Seller’s measurement and/or determination of quantity shall be final.
27. Liberty’s response to Item 11 was, “Both Liberty and XNG have the right to witness the test of the other party’s meter. However, if the non-owning party is not present, then the test results are deemed final.”
28. Staff made no attempt to explain why it believes this response to be inadequate -- none. As Staff bears the burden of establishing the merits of its motion to compel, and Staff offered no explanation or argument as to why this response was insufficient, the request to compel this items should be denied.

29. **Item 16** says, “Seems to be in conflict with demarcation point?” referring to the following contract language: “Custody transfer metering to be provided on outlet of skid.”

30. Liberty’s explanation was, “See #1. Note that the Commission approved recovery of CNG costs incurred under the similar 2016 CNG contract with similar language as referenced here. Again, nothing has changed with respect to the physical setup or operation of the facility.”

31. Once again, Staff makes no attempt to explain why this response was insufficient and thus its request to compel a further response should be denied. And again, “demarcation point” does not even appear in the contract, the “custody transfer metering” located at the “outlet of skid” has been explained above as the Delivery Point.

32. **Item 17** says, “Who is responsible for what? Please show on site plan Buyer’s and Seller’s responsibility.” This comment refers to the following contract language:

Safety systems to include gas and flame detection. Methane detection system to be included with process skid. Flame detector located along truck loading area. Flame detectors coverage area shall include the connection end of the transports and the process skid. Detectors will input alarms and faults into the control system.

33. The Company’s response was,

See #1 and #5. Note that the Commission approved recovery of CNG costs incurred under the similar 2016 CNG contract with similar language as referenced here.

The reference to #1 is to the discussion of the “delivery point,” and the reference to #5 is to the following Company response:

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 thus resolve this item.

34. Staff did not explain why this response was inadequate. The Company acknowledged shortcomings in the contract and stated the Company will endeavor to remedy the language consistent with the Commission's decision during the April 19, 2021, hearing in this proceeding to bifurcate these non-price contract-related issues. The request to compel further response should be denied.
35. Also, note that this contract language comes under the heading of "CNG Equipment," listing the equipment that will be part of the CNG skid. This section of the contract did not delegate responsibility as between Liberty and XNG.
36. **Item 18** states, "Under what conditions is XNG allowed to shut down system? When can they not?" This refers to the following contract language:
- Control system required to monitor key process conditions, switch trucks when empty, provide emergency shutdown, and remotely communicate system condition. System shall have a method to transmit data or screen control to remote site for customer monitoring. Seller will provide Buyer access to all transmitted data.
37. The Company's response, "See #1 and #5."
38. Staff made no effort to explain why this response is inadequate – the Company referred to its acknowledgement that the language may need improvement (quoted above), and that the Company will attempt to revise the agreement. Staff again failed to meet its burden to even make an argument in support of its motion to compel, and thus it should be denied.
39. Note again that this contract language also falls under the heading "CNG Equipment," listing what equipment will be included in the skid, and does not purport to allocate authority to one part or the other to shut down the skid.

40. **Item 19** states, “Maintenance is Liberty’s responsibility. Please confirm.” Liberty confirmed: “See #5. Confirmed that maintenance is Liberty’s responsibility. Note that the Commission approved recovery of CNG costs incurred under the similar 2016 CNG contract with similar language as referenced here.”
41. Staff again offered no explanation for how this response was inadequate. Indeed, what more could Liberty say – the Company was asked to confirm, and the Company “confirmed.” The request to compel further response should be denied.
42. **Item 20** says, “Identify which covered tasks,” referring to the following contract language:
- During the Delivery Period the Seller shall be responsible for all maintenance and support for the CNG Equipment. Seller will provide maintenance personnel that are qualified per Buyer’s Operator Qualification (OQ) plan. In the event of emergency, Seller commits to having the personnel on-site one hour after being notified of an emergency by the Buyer.
43. Liberty’s response was “See #5,” acknowledging the language could better define the covered tasks for which drivers must obtain certification. This was a direct and appropriate comment.
44. Staff failed to meet its burden to explain why this response was insufficient; Staff simply provided no explanation or argument. The motion to compel further response should thus be denied.
45. **Item 22** states, “I thought Liberty did this? Please confirm,” referring to the contract language that, “Seller will be responsible for connecting its equipment to existing utilities.”

Liberty's response was, "Confirmed that Liberty connected the skid to the distribution system."

46. This is the second time that Liberty was asked to confirm a fact, Liberty directly confirmed that fact, yet Staff somehow sees this as inadequate, but offers no explanation.

The Company does not say this lightly, but a motion to compel under these circumstances is illogical, and should be denied.

47. **Item 27** says, "Please describe with photo; annotated site plan," referring to contract language that says, "Gas Piping, All piping downstream of Buyer meter to be installed per state and local code." Liberty's response was, "The Safety Division has previously inspected and approved the piping of the CNG skid."

48. Once again, Staff does not explain why this is insufficient, and the request to compel should be denied for that reason alone.

49. Note, however, that Staff is well aware that the piping "downstream of the Buyer meter" is the Liberty-owned distribution piping that takes the gas from the CNG facility to customers at the Monadnock Marketplace. There can obviously be no photographs of this piping because it is underground. And the Company regularly files with Staff updated maps of its distribution system, and specifically filed an updated Keene map as part of the conditions to bring the CNG facility online. See Order No. 26,294 at 15 (Sept. 25, 2019) ("Updated system maps and drawings must be filed with the Commission's Safety Division within 90 days of the completion of each successive phase of conversion/expansion of the Keene system. That requirement will apply to each phase of the proposed conversion/expansion, including Phase I").

50. Finally, **Item 28** states, “Please confirm that Liberty is operating decompression equipment, not XNG,” referencing the contract language that, “Buyer will provide a wired internet connection with a static IP address and adequate bandwidth capacity for Seller to operate and monitor decompression equipment on a 24 hours per day, 7 days per week basis.”

51. Liberty’s response was, “Confirmed. See #5.” Once again, Staff is seeking an order compelling a response to a data request that the Company answered directly and completely. And once again, Staff does not even try to articulate a reason supporting its request.

Wherefore, Liberty respectfully asks the Commission to:

- a. Deny Staff’s motion to compel;
- b. Grant any further relief deemed just and proper.

Respectfully submitted,  
Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a  
Liberty  
By its Attorney,



Date: April 29, 2021

By: \_\_\_\_\_

Michael J. Sheehan, Esq. #6590  
116 North Main Street  
Concord, NH 03301  
Telephone (603) 724-2135  
Michael.Sheehan@libertyutilites.com

Certificate of Service

I certify that on April 29, 2021, a copy of this objection has been electronically forwarded to the service list.



\_\_\_\_\_  
Michael J. Sheehan