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February 13, 2015

TO: Commissioners

FROM: Alexander F. Speidel, Hearing Examiner

RE: DG 14-380, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, Petition for Approval of Long-Term Firm Transportation Agreement

HEARING EXAMINER'S REPORT

At your request, I served as the presiding officer over today's prehearing conference (PHC) in the above-referenced case.

On December 31, 2014, Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (Company) filed a petition requesting the Commission's approval for a 20-year contract with Tennessee Gas Pipeline (TGP) pursuant to which the Company would purchase on a firm basis up to 115,000 Dekatherms of gas transportation capacity over a new TGP pipeline. The Company also filed a motion for confidential treatment of certain material in the filing. On January 21, 2015, an Order of Notice scheduling a PHC on February 13, 2015 was issued by the Commission. The Company filed its affidavit of publication of the Order of Notice on February 3, 2015.

Appearances

Sarah Knowlton, Esq. for the Company

Rorie Patterson, Esq. for Staff

James Hall, Esq. for Town of Dracut, Massachusetts (Dracut)

Richard Kanoff, Esq., for Pipeline Awareness Network of the Northeast, Inc. (PLAN)

Intervention Requests

(Office of Consumer Advocate participating pursuant to RSA 363:28, letter of participation filed on January 6, 2015. No OCA representative was present at the PHC).

A. Dracut (**MOTION DENIED**)

In its motion to intervene and supplement both filed on February 12, 2015, Dracut argued that, as it was the host community for significant elements of the physical infrastructure associated with the TGP expansion project from which the Company intends to take service, it has substantive interests granting it intervention rights under RSA 541-A:32. At the PHC, Dracut expressed its interest in intervention as partly being driven by its desire to have access to confidential versions of documents in this proceeding. (From the bench, I advised Dracut that such access to materials

granted confidential treatment by the Commission would generally require a non-disclosure agreement with the Company, which Dracut acknowledged).

On February 13, 2015, the Company filed an objection to Dracut's petition to intervene. At the PHC, reflecting arguments made in its objection, the Company stated that the proper venues for Dracut regarding its concerns would be proceedings before the Massachusetts authorities and Federal Energy Regulatory Commission (FERC), not this proceeding in New Hampshire, as the Commission and New Hampshire authorities in general have no jurisdiction over matters directly impacting Dracut.

Staff, at the PHC, also opposed Dracut's motion to intervene, on both RSA 541-A:32, I mandatory and 541-A:32, II discretionary grounds, as Dracut failed to establish that its rights or interests were directly implicated in this proceeding, and its participation could slow down the needed expedited schedule in this docket.

As the presiding officer, I DENIED Dracut's motion to intervene, as failing to meet the standards for both mandatory intervention under RSA 541-A:32, I, and discretionary intervention under RSA 541-A:32, II. Dracut is not a customer of the Company; as a franchise territory, it is served by a Massachusetts gas utility outside of the Commission's jurisdiction. The Commission, and all other New Hampshire governmental agencies, lack jurisdiction over the pipeline siting, construction, and eminent-domain matters involving Dracut and its citizens. Massachusetts and FERC federal proceedings offer Dracut the proper venues for the redress of its citizens' concerns, while its participation in this New Hampshire proceeding would not offer it any remedy for its cause, nor be in the interests of justice.

B. PLAN (MOTION PENDING; OUTSTANDING RECORD REQUESTS)

In its motion to intervene filed on February 11, 2015, PLAN noted that it was a Massachusetts-incorporated association concerned with environmental and economic impacts associated with fossil-fuel infrastructure, including gas pipelines. PLAN also asserted that its membership included customers of Liberty in New Hampshire, and private landowners along the TGP expansion proposal's route, potentially facing eminent-domain takings and other impacts. On these bases, PLAN asserted intervention rights under both RSA 541-A:31, I mandatory and 541-A:32, II discretionary standards.

On February 13, 2015, the Company filed an objection to PLAN's motion to intervene. Its arguments were reiterated at the PHC. The Company views the proper venue for PLAN's concerns to be the FERC proceedings regarding siting and eminent domain for the pipeline at large, rather than the Commission's review of the Company's proposed agreement with TGP. The Company also argued that the environmental concerns raised by PLAN were beyond the scope of this proceeding. On these bases, the Company opposed PLAN's intervention. As an alternative, if the Commission were to grant discretionary intervention to PLAN, the Company urged the Commission to limit PLAN's participation to align with its core area of interest, and require coordination with the OCA by PLAN. The Company also recommended that the Commission seek an offer of proof, specifically, an affidavit, from PLAN showing that it in fact had members that were customers of the Company, in keeping with past Commission practice. Staff, at the PHC, concurred with the Company's request that an offer of proof be made regarding PLAN's New Hampshire membership.

As the presiding officer, I ordered two RECORD REQUESTS regarding the outstanding question of fact relating to PLAN's membership. RECORD REQUEST #1, to be answered by PLAN no later than February 19, 2015, requires PLAN to produce an affidavit attesting that its membership includes customers of the Company. RECORD REQUEST #2, to be answered by the Company

DG 14-380

Liberty Utilities Petition for Approval of Long-Term Firm Transportation Agreement
Hearing Examiner's Report (Alexander F. Speidel)

Page 3

and Staff no later than February 26, 2015, require the Company and Staff to give their responses to PLAN's filing made in response to Record Request #1. **I will provide the Commissioners with a supplemental Hearing Examiner's Report addressing the issue of PLAN's intervention shortly thereafter.** In the meantime, Staff and the Company agreed to allow interested non-intervenor parties, including PLAN, to observe technical session discussions not involving confidential information.

Motion for Confidential Treatment (MOTION GRANTED)

The subject material of the Company's motion for confidential treatment is a series of pricing and other confidential commercial terms for the Company's proposed agreement with TGP. Staff and the Company supported this motion at the PHC, with no objection voiced by other parties present. As the presiding officer, on the basis of my review of the subject material, and the standards of RSA 91-A:5, IV, I GRANTED the Company's motion for confidential treatment, as the material includes sensitive commercial data that, if disclosed, would harm the Company's bargaining position with TGP and other pipeline companies, and disclosure would not substantively serve the public interest.

PHC Initial Positions of the Parties

Staff did not take a substantive initial position regarding the Company's filing, but did note the importance of the subject agreement to the Company's capacity planning, and the corresponding need for an expedited procedural schedule. Staff noted that two sets of data requests have been propounded on the Company, and that Staff would collaboratively develop a procedural schedule proposal with the Company and OCA.

The Company reiterated its arguments presented in support of its petition to enter into this Agreement with TGP, and the need for an expedited procedural schedule, in light of the Company's need for a final Order approving its agreement no later than July 1, 2015.

By 
Alexander F. Speidel, Hearing Examiner

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 14-380-1 Printed: February 13, 2015

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
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21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**