

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-068

**Liberty Utilities (EnergyNorth Natural Gas) Corp.
d/b/a Liberty Utilities – Keene Division
Petition for Declaratory Ruling**

Order Closing Docket

O R D E R N O. 26,613

April 22, 2022

I. PROCEDURAL HISTORY

On April 24, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division (Liberty, or the Company) filed a petition for a declaratory ruling. In its petition, Liberty sought a determination by the Commission that it need not seek permission under RSA 374:22 and RSA 374:26 to distribute natural gas in the City of Keene, where its existing franchise authority already permits it to distribute “gas.”¹

On October 20, 2017, the Commission issued an order finding that compressed natural gas (CNG) and liquefied natural gas (LNG) fall within the definition of “gas” in Liberty’s franchise authority and that no additional permission under RSA 374:22 and RSA 374:26 is required for Liberty to serve natural gas to customers in Keene. Order No. 26,065 at 3. In the same order, the Commission observed that CNG and LNG installations require higher operating pressures than propane-air systems and, accordingly, established certain filing requirements to ensure the safety of any proposed CNG/LNG installations. Finally, the order clarified that the determination regarding the broader question posed in Liberty’s petition regarding Liberty’s authority

¹ Liberty filed an amended petition on April 26, 2017, correcting minor typographical errors but making substantially the same request for a declaratory ruling.

to serve CNG or LNG had no impact on Liberty's efforts in the separate proceeding in Docket DG 17-048 to consolidate the costs of the planned Keene system conversion into its larger customer rate base.

On November 16, 2017, a resident of Keene named Terry Clark and individual members comprising the NH Pipeline Health Study Group jointly and individually sought reconsideration of Order No. 26,065. The Commission granted the requests for rehearing, in part, on December 18, 2017, and scheduled a status conference for the movants to present their arguments. The subsequent order left the safety-related filing requirements in place. Order No. 26,087 at 5-6. Months of briefing and safety-related filings followed, culminating in an April 16, 2019, recommendation by staff of the then-Commission's Safety Division (now the Department of Energy's Enforcement Division Safety Bureau (Safety)) to accept Liberty's safety-related filings as to its first proposed conversion phase² and to allow that conversion to CNG to proceed.

On July 26, 2019, the Commission issued Order No. 26,274 affirming its earlier determination that Liberty need not seek approval under RSA 374:22 and RSA 374:26 for its proposed CNG/LNG conversion in Keene because "gas" service was covered by its existing franchise authority. The Commission further accepted Safety's recommendation with respect to phase one of the conversion plan. The Commission required Liberty to continue to file its safety-related documentation for phases two through five with Safety.

On August 26, 2019, Mr. Clark sought rehearing of Order No. 26,274.³ The Commission rejected Mr. Clark's arguments and denied his request for rehearing in Order No. 26,294, issued on September 25, 2019. Mr. Clark appealed to the New

² Liberty's conversion plan at the time consisted of five proposed phases.

³ Liberty also sought minor clarifications, principally of terminology used in the order. The Commission addressed Liberty's questions in the same order on September 25, 2019.

Hampshire Supreme Court on October 25, 2019. The Supreme Court rejected Mr. Clark's arguments without holding oral argument on August 20, 2020.

Shortly after the Supreme Court's decision, Mr. Clark filed identical motions in this docket and in Docket DG 17-152 (Liberty's Least Cost Integrated Resource Plan "LCIRP" docket) on August 28, 2020 (amended on August 31, 2020). In his motions, Mr. Clark asked the Commission to "condition the development of [Liberty's] Keene project...on RSA 378 consistency and compliance, and to order Liberty to supplement its filings in Docket DG 17-152 with the requisite RSA 378:38-39 filings for the project." Liberty objected - also in both dockets - on September 17, 2020. Mr. Clark sought leave to reply to Liberty's objection on September 22, 2020 (amended on September 23, 2020). The motions remain unresolved in both dockets.

II. COMMISSION ANALYSIS

This docket originated with a single question: Is Liberty required to seek further permission under RSA 374:22 and RSA 374:26 to distribute natural gas in its existing franchise in Keene? Four and one-half years ago, the Commission answered that question with a simple answer: No.

More specifically, Liberty disputed that its existing franchise authority precluded conversion of the existing propane-air distribution system in Keene to serve CNG/LNG without further Commission permission to do so. The Commission agreed and found that Liberty had the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its existing franchise. No subsequent activity in this docket, including numerous rehearing requests and a Supreme Court appeal has done anything to change that response. The Commission, therefore, sees no utility in keeping this docket open. Before we close this docket, however, we find it prudent to resolve two outstanding issues.

First, Mr. Clark's amended motion of August 31, 2020, remains outstanding. However, because Mr. Clark filed that motion concurrently in Docket DG 17-152, which relates to the statutory review requested in his motion, no purpose is served by keeping his request pending here. Moreover, Mr. Clark's argument in his motion pertains entirely to provisions of RSA 378 and makes no mention of the statutes at issue in this docket, namely RSA 374:22 and RSA 374:26. To the extent that there is an appropriate docket to rule on Mr. Clark's request to condition the Keene conversion project on consistency and compliance with RSA 378, that docket is DG 17-152. Mr. Clark's pending motion in this docket is, therefore, denied without prejudice as to his right to pursue appropriate relief in Docket DG 17-152.

Second, as noted, earlier orders in this docket required Liberty to make certain safety-related filings for review by the then-Commission's Safety Division. Following the Commission's reorganization on July 1, 2021, the responsibilities of the Safety Division were transferred to the Enforcement Division of the newly created DOE. The reorganization did nothing to change the safety-related filing requirements established in earlier orders of this docket for phases two through five of Liberty's proposed system conversion in Keene. Liberty must, however, submit those filings to DOE and not to the Commission. Any aspect of Liberty's conversion project that requires Commission approval will continue to take place in other dockets, including reviews of Liberty's LCIRPs, such as that filed in Docket DG 17-152, and related rate proceedings in which Liberty might request recovery of capital costs incurred in further conversion efforts. DOE's Enforcement Division may review Liberty's filings and make any necessary safety-related recommendations in the appropriate dockets.

Based upon the foregoing, it is hereby

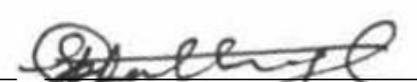
ORDERED, that Mr. Clark's pending motion in this docket is DENIED without prejudice as to his right to continue to seek appropriate relief through his identical motion in Docket DG 17-152; and it is

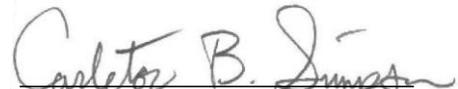
FURTHER ORDERED, that any safety-related filing requirements established by earlier orders in this docket pertaining to phases two through five of Liberty's proposed conversion remain in place, but are to be filed directly with the Department of Energy; and it is

FURTHER ORDERED, that this docket is CLOSED.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 2022.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 17-068

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