

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

Docket No. DG 18-092

Petition for a License to Construct and Maintain a
Natural Gas Pipeline beneath Ashuelot River in Keene

Objection to Motion for Reconsideration

Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (Liberty), through counsel, respectfully objects to *Intervenor Terry Clark's Motion for Reconsideration, Clarification and/or In Limine*. Liberty also asks the Commission to accept the late filing of this objection.

In support of this objection, Liberty states as follows:

1. Mr. Clark's motion argues that the legal standard the Commission intends to apply to this crossing petition, as articulated in the October 11, 2018, secretarial letter, is incorrect. Mr. Clark thus requested "reconsideration, clarification and/or an evidentiary ruling *in limine*" in his effort to persuade the Commission to adopt his interpretation of the applicable statutes. Liberty objects. Liberty agrees with the secretarial letter's statement of the law as it correctly summarized *Northern Pass Transmission, LLC*, Order No. 25,190 (June 28, 2016) (the "Order").
2. Mr. Clark made three related arguments in support of his motion. Mr. Clark argued, first, that the threshold question of RSA 371:17, i.e., whether a crossing is "necessary in order to meet the reasonable requirements of service to the public," should include consideration of environmental concerns, the utility's ability to recover costs for the project, and the utility's "actual need for the project."

3. However, the Order makes clear that the threshold question of RSA 371:17 only asks whether the reason for the proposed crossing “is to provide a service that historically has been provided by a public utility,” *i.e.*, a review of “the functional use and safety of the proposed crossing.” *Id.* at 1. The statute does not require a review of the specific reasons for the project, a review of environmental issues, or cost recovery issues.
4. The Commission specifically ruled in the Order that the purpose of the project (e.g., to improve system reliability, update facilities, improve safety) is irrelevant. The utility only must show that the crossing will “provide a service historically ... provided by a public utility.” Order at 1. And the Commission specifically did not hold that environmental considerations fall under the scope of this 371:17 threshold inquiry – the Order did not resolve the question. *Id.* at 8.
5. Mr. Clark’s second argument is that the Order “cannot be read to limit the scope of review in this proceeding to the ‘functional use and safety’” of the proposed river crossing. Clark argued that, “given the environmental concerns posed by river crossings, it makes perfect sense that a successful crossing applicant would have to demonstrate that the crossing may be accomplished without ‘substantially affecting the public rights in said waters’—including those rights that would be affected by pollution of the water caused by the crossing.” Motion at 6, 13.
6. The Order did leave open the possibility that the Commission may conduct an environmental review in the context of a RSA 371:20 crossing petition, but deferred that review, and condition its approval, on a favorable decision from the Site Evaluation Committee (“SEC”). Order at 11. The Commission did so because the SEC process included an environmental review:

Without definitively holding that environmental and aesthetic issues are beyond the scope of impacts to public use to be considered under RSA 371:20 in crossing licenses, we hold on the facts of these cases before us, that the Commission's review under RSA 371:20 will focus on the functional use and safety of the proposed crossing. We leave the environmental and aesthetic issues to the SEC.

Order at 11.

7. The Commission has the same option here. Without having to resolve whether RSA 371:20 requires review of environmental issues, the Commission can again defer that review to a more appropriate state agency. Liberty has already applied for and received DES approval for the crossing. Mr. Clark's request for environmental review are thus moot.

8. Mr. Clark's last argument fails for the same reason. Mr. Clark asserted that, while there may be a reasonable argument for such a limitation on the scope of Commission review under both statutes if there is otherwise a competent review, including environmental concerns, of a proposed river crossing by another state agency—as is the case in the Northern Pass Order—such a limitation cannot be read into R.S.A. 371:17 and R.S.A. 371:20 to apply to the facts of this case as there will be no other agency review of the proposed proceeding.

Motion at 19. Again, DES's review answers Mr. Clark's concern. Just as the Order deferred environmental review to DES in the subsequent SEC process for the Northern Pass project, the Commission should similarly defer to DES's approval here, which approval Liberty has already obtained.

9. The Commission should thus reject Mr. Clark's request to expand the scope of this docket to require that the Commission repeat the environmental review already performed by the agency most appropriate to conduct that review.

10. Finally, Liberty seeks Commission leave to accept this late filing. Liberty saw Mr. Clark's motion as plainly without merit in light of Order No. 25,910, which directly addressed Mr. Clark's arguments in a fully litigated docket and lengthy order. And Liberty

viewed, perhaps incorrectly, that Mr. Clark's arguments were issues that could be resolved at the outset of a hearing in this matter. To the extent Liberty was mistaken, it makes this filing and seeks leave for exceeding the normal deadline for objections.

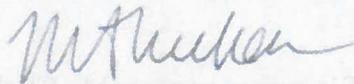
11. Given that the hearing in this docket is more than two weeks away, accepting this objection will cause no prejudice.

12. Counsel for Mr. Clark objects to the Commission accepting this late filing. Counsel for Staff does not object.

WHEREFORE, Liberty respectfully asks that the Commission:

- a. Accept this late-filed objection;
- b. Deny Mr. Clark's motion; and
- c. Grant such other relief as is just and reasonable.

Respectfully submitted,
Liberty Utilities (EnergyNorth Natural Gas) Corp.
By its Attorney,

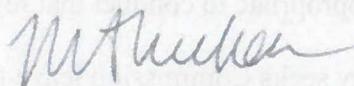


Date: November 9, 2018

By: _____
Michael J. Sheehan, Senior Counsel #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
michael.sheehan@libertyutilities.com

Certificate of Service

I hereby certify that on November 9, 2018, a copy of this objection has been electronically forwarded to the service list.



By: _____
Michael J. Sheehan