

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Northern Utilities, Inc.

Docket No. DG 18-094

Petition for Authority to Operate in the Town of Epping

Motion for Clarification and, Alternatively, Rehearing of Order No. 26,220

Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (“Liberty”), through counsel, respectfully moves the Commission pursuant to RSA 541:3 for clarification, and to the extent such clarification is not granted, rehearing of Order No. 26,220 (Feb. 8, 2019) (the “Order”) to confirm that the franchise awarded to Northern is only for the area described in its filing and that Liberty may still seek authorization for the right to serve other areas of Epping.

In support of this motion, Liberty states as follows:

Request for Clarification.

1. Northern filed its petition in this docket seeking the franchise right to provide natural gas distribution service in the Town of Epping. The petition and attachments described Northern’s plans to serve a largely commercial district of Epping, located at the intersection of Route 101 and Route 125 (the “Route 125 Corridor”). Although Northern did not present plans to serve other areas of Epping, Northern did not explicitly limit its franchise request to solely the Route 125 Corridor. *See* Northern’s Petition at 3 (“Northern respectfully requests that the Commission ... Grant Northern authority to expand its operations to provide natural gas service as a public utility within the Town of Epping”).

2. In granting Northern’s petition, the Order contains three statements, and the Commission made a fourth statement in the Order of Notice in Liberty’s docket, that raise the question of whether the Commission intended to grant Northern the exclusive right to serve all of Epping or just the Route 125 Corridor.

3. First, the operative ordering clause suggests an exclusive franchise for the entire town: “FURTHER ORDERED, that the request filed by Northern for approval of franchise authority in the Town of Epping is GRANTED.” Order at 11. This important sentence contains no qualifications or limitations on the extent of the franchise awarded. However, the Commission’s choice of wording “in the Town of Epping” could suggest that the Commission intended to award Northern franchise rights to serve a geographic area contained within the town, as opposed to the entirety of the town.

4. Second, the body of the Order contains a statement that suggests the Commission only granted the franchise for the Route 125 Corridor: “Accordingly, based on the record in this proceeding, we grant Northern’s petition for franchise rights in the Town of Epping, *as filed*, with conditions.” Order at 9 (emphasis added). Northern’s petition contained plans and a financial analysis to provide service to only the Route 125 Corridor.

5. Third, the Order specifically indicated that the Commission “will review Liberty’s petition on its own merits in a separate proceeding,” Order at 10, suggesting that the Commission has the authority to award Liberty the right to operate in areas of Epping outside the Route 125 Corridor.

6. Finally, the February 12, 2019, Order of Notice in the Liberty franchise docket contains another statement that suggests the franchise awarded to Northern was limited:

In addition, the petition raises the issues of whether Liberty’s petition should be considered at this time ... in light of Order No. 26,220 (February 8, 2019) issued in

Docket No. DG 18-094, in which the Commission granted Northern Utilities, Inc. franchise rights *in the Epping territory designated in its petition in that docket.*

Order of Notice in Docket No. DG 18-194 at 2 (emphasis added).

7. Liberty files this motion asking the Commission to clarify (a) that it did not grant Northern the exclusive right to serve the entire Town, but only the right to serve that portion of Epping that is described in Northern's filing, i.e., the Route 125 Corridor, and (b) that the Commission retains the authority to award Liberty the right to serve the rest of Epping.

8. If the Commission does not clarify this issue now, Liberty runs the risk of having the Order become final and later being interpreted as having granted Northern the exclusive right to serve the entirety of Epping.

9. Therefore, Liberty asks the Commission to clarify that it intended to grant Northern the exclusive right to serve only the Route 125 Corridor as described in Northern's filing, and that the franchise rights to the balance of Epping are available for Liberty to acquire.

Request for Rehearing

10. To the extent the Commission intended to grant Northern the exclusive right to serve the entirety of Epping, and to the extent that the Commission concluded that it does not have the authority to award a portion of Epping to Liberty as described in Liberty's Request for Rehearing above, then Liberty asks the Commission to reconsider the Order because, by doing so, the Commission deprived Liberty of the opportunity to present evidence and be heard on its request to acquire the same franchise rights prior to issuing the Order in violation of law, RSA 541-A:31 et seq., which statute embodies the procedural due process requirements of Part I, Article 15 of the New Hampshire Constitution. *See Petition of Preisendorfer*, 143 N.H. 50, 52 (1998).

WHEREFORE, Liberty respectfully requests that the Commission

- a. Clarify that the franchise rights granted to Northern are limited to the Route 125 Corridor;
- b. If the Order granted Northern exclusive rights to all of Epping, grant this motion for a rehearing for the reasons stated above; and
- c. grant such further relief as may be just and equitable.

Respectfully submitted,
LIBERTY UTILITIES (ENERGYNORTH NATURAL
GAS) CORP. D/B/A LIBERTY UTILITIES
By its Attorney,



Date: March 7, 2019

By: _____

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Certificate of Service

I hereby certify that on March 7, 2019, a copy of this motion has been electronically sent to the service list in this docket.



Michael J. Sheehan