

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 14-380

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES**

Petition for Approval of Long-term Firm Transportation Agreement

Order Denying Richard M. Husband's Motion for Rehearing

ORDER NO. 25,843

November 20, 2015

In this order, the Commission denies Richard M. Husband's motion for rehearing of Order No. 25,822 because Mr. Husband lacks standing to petition for rehearing.

I. PROCEDURAL HISTORY

On December 31, 2014, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Energy North") filed a Petition for Approval of a Firm Transportation Agreement ("Precedent Agreement") with Tennessee Gas Pipeline Company, LLC ("TGP"). The Precedent Agreement is a 20-year contract between EnergyNorth and TGP for firm capacity on the proposed Northeast Energy Direct Market Path pipeline project ("NED Pipeline"). On June 26, 2015, Commission Staff ("Staff") filed a Stipulation and Settlement Agreement ("Settlement") between EnergyNorth and Staff. Following hearings, the Commission issued Order No. 25,822, in which the Commission approved the Settlement and the Precedent Agreement as modified by the Settlement. *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,822 at 31 (October 2, 2015) (the "Order"). In addition, the Commission found that EnergyNorth's acquisition of capacity from TGP was prudent and reasonable. *Id.* On November 2, 2015,

Richard M. Husband moved the Commission for rehearing of the Order, and on November 5, 2015, Energy North objected.

II. STANDING

Mr. Husband asserts that he is directly affected by the Order because the NED Pipeline is planned to run through his town, near his property, and under the pond on which his property is located. According to Mr. Husband, the pipeline and its construction will affect wetlands, the town's drinking water aquifer, wildlife, environmentally sensitive areas, the water level of the pond, and the value of his property. He also asserts that he is directly affected by the Order, because he has participated in this docket by submitting and withdrawing a petition to intervene, submitting comments, and attending hearings.

EnergyNorth argues that Mr. Husband lacks standing to move for rehearing because he is not a party, is currently not a customer of the company, and cannot be a customer given that EnergyNorth does not provide service to the area where Mr. Husband resides.

We find that Mr. Husband is not directly affected by the Order and therefore lacks standing to move for rehearing. A person has standing to move for rehearing of a Commission order when he or she is a "party" or is "directly affected" by the Commission's action. RSA 541:3; N.H. Code of Admin Rules Puc 203.07. We have previously considered and rejected the notion that landowners along the proposed route of the NED Pipeline are directly affected by our decision in this docket. Because our decision relates to EnergyNorth's financial prudence in contracting with TGP for capacity, and in no way relates to siting of the NED Pipeline, we held that:

Only [PLAN's] EnergyNorth-customer members possess "rights, duties, privileges, immunities or other substantial interests [that] may be affected by the proceeding," RSA 541-A:32, I(b). It will be EnergyNorth customers who will bear the costs of the Precedent Agreement if the Commission approves it.

PLAN's landowner members possess no such direct interest or cost responsibility; their interests, while important, are not pertinent to the Commission's determinations in this proceeding To ensure an orderly and focused proceeding, we limit PLAN's participation to the interest of its EnergyNorth-customer members in the prudence, justness and reasonableness of the Precedent Agreement and its associated costs, to EnergyNorth and its customers.

Liberty Utilities (EnergyNorth Natural Gas) Corp., Order 25,767 (March 6, 2015) at 4. These same principles apply to Mr. Husband. While we recognize that his interests in the siting of the NED Pipeline are important, they are not directly affected by our approval of EnergyNorth's contract for capacity with TGP. Accordingly, we deny Mr. Husband's motion for rehearing for lack of standing.

III. PUBLIC COMMENT AND THE PUBLIC INTEREST

While the standing issue disposes of Mr. Husband's motion, were we to consider his substantive arguments, we would still deny the motion. Mr. Husband disagrees with the Commission's determination that the Settlement is in the public interest. He argues that the Commission applied an incorrect and unduly narrow standard in making this public interest determination. The crux of Mr. Husband's motion for rehearing is his assertion that the Commission ignored public comments and ignored or excluded other evidence relating to negative effects of siting the NED Pipeline. He reiterates a number of comments that were previously submitted to the Commission by other members of the public. He then argues that the Commission was required to consider these negative comments and that the Commission was not preempted from doing so.

Mr. Husband also alleges that the Commission violated the equal protection guarantees of the state and federal constitutions and abused its discretion by considering the purported benefits of the NED Pipeline, while at the same time ignoring public comments concerning the negative

effects of siting that pipeline. This he claims benefited EnergyNorth customers over the vast majority of the State's population without a compelling state reason.

EnergyNorth argues that Mr. Husband has not demonstrated good reason for rehearing as required by RSA 541:3. According to EnergyNorth, Mr. Husband did not identify new evidence that could not have been presented previously and did not demonstrate that the Commission overlooked or mistakenly conceived evidence before it. EnergyNorth believes that the Commission did not ignore public comment regarding the effects of siting, but instead explicitly acknowledged that the comments were outside the scope of this proceeding. EnergyNorth further argues that consideration of siting issues associated with the NED Pipeline is outside the Commission's statutory authority and within the authority of the Federal Energy Regulatory Commission and possibly the New Hampshire Site Evaluation Committee.

The standard for rehearing is well known. We will grant rehearing when:

a party states good reason for such relief and demonstrates that a decision is unlawful or unreasonable. *See Rural Telephone Companies*, Order No. 25,291 (Nov. 21, 2011) at 9. Good reason may be shown by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal, *see Dumais v. State*, 118 N.H. 309, 311 (1978), or by identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977); *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25,088 (Apr. 2, 2010) at 14.

Freedom Logistics, LLC, d/b/a Freedom Energy Logistics, Order No. 25,788 (DE 14-305, June 5, 2015) at 3-4.

The Commission did not overlook or mistakenly conceive the public comments referred to by Mr. Husband. We accepted the comments for filing in the docket, considered them, and understood them to identify numerous potential negative impacts of siting the NED Pipeline in southern New Hampshire. The comments alleged negative effects on, among other things, water

wells and aquifers, wildlife, environmentally sensitive land areas, property values, the general economy, public health and safety, and the rural character of the region.

The types of concerns raised by Mr. Husband, and stated in the public comments that he cites, are not within our purview in this case. This is not, as Mr. Husband alleges, a matter of federal preemption or a matter of discretion, but a matter of our statutory role and the roles of other agencies. We reiterate that our statutory review in this instance is limited to consideration of EnergyNorth's financial prudence in securing gas transportation capacity for its customers. *See* RSA 374:1 and 374:2 (public utilities to provide reasonably safe and adequate service at "just and reasonable" rates); RSA 378:7 and RSA 378:28 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable); RSA 363:17-a (Commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities). We are approving a contract for pipeline capacity to supply EnergyNorth's natural gas customers, not the construction and siting of the NED pipeline.

We are not charged with determining whether it is in the public interest to locate the NED Pipeline in southern New Hampshire. Nor are we charged with balancing the interests of the NED Pipeline developers and the interests of the communities through which the NED Pipeline will run. Those considerations are for other agencies. *See Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order 25,767 (March 6, 2015) at 3, *and* Order 25,822 (October 2, 2015) at 24; 15 U.S.C. § 717f(c)(1)(A) (requiring certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission before constructing gas pipelines); and RSA 162-H:10-b (requiring New Hampshire Site Evaluation Committee to "establish criteria or standards governing the siting of high pressure gas pipelines in order to ensure that the potential

benefits of such systems are appropriately considered and unreasonable adverse effects avoided”).

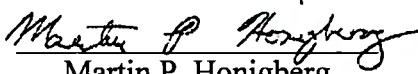
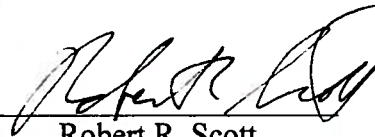

Mr. Husband further argues that a new piece of information justifies rehearing. That information is an article published by the New Hampshire Union Leader, titled “PUC Backs Liberty-Kinder Morgan Pipeline Deal.” Motion Exh. D. Although the article was published after the Order was issued, the article refers to pre-existing facts and analysis and does not contain any information that was not or could not have been produced at hearing.

Accordingly, even if Mr. Husband had standing to seek rehearing or reconsideration, we would deny rehearing on the merits of his motion.

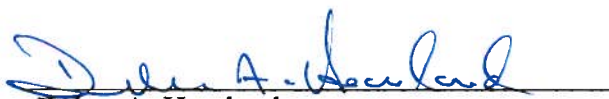
Based upon the foregoing, it is hereby

ORDERED, that the motion for rehearing is **DENIED**.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 2015.

 Martin P. Honigberg Chairman	 Robert R. Scott Commissioner	 Kathryn M. Bailey Commissioner
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Attested by:


Debra A. Howland
Executive Director