

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 15-289**

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

**Petition for Franchise Approval**

**Order on Motion *in Limine* to Admit Evidence and for Administrative Notice**

**ORDER NO. 25,872**

**March 15, 2016**

In this order we deny intervenor Ariel Arwen's requests to admit evidence and take administrative notice of facts concerning the greenhouse gas emissions goals of the New Hampshire Climate Action Plan, and grant requests to admit certain other evidence concerning Liberty's proposed delivery of natural gas to Hanover and Lebanon.

**I. PROCEDURAL HISTORY**

On July 24, 2015, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Liberty" or the "Company") filed a petition seeking Public Utilities Commission approval of its franchise to supply natural gas to customers located in Lebanon and Hanover, New Hampshire.

Ariel Arwen, among others, sought and was granted intervenor status.<sup>1</sup> On February 18, 2016, Ms. Arwen filed a motion *in limine* requesting admission of information concerning Liberty's compliance with the New Hampshire Climate Action Plan (Climate Action Plan),<sup>2</sup> and responses to certain data requests. The motion also requested that the Commission take

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<sup>1</sup> For additional procedural detail *see* Order No. 25,868 (February 19, 2016).

<sup>2</sup> The New Hampshire Climate Action Plan was issued by the Department of Environmental Services in March 2009 [http://des.nh.gov/organization/divisions/air/tsb/tps/climate/action\\_plan/documents/nhcap\\_final.pdf](http://des.nh.gov/organization/divisions/air/tsb/tps/climate/action_plan/documents/nhcap_final.pdf)

administrative notice of certain emissions information found on the federal Energy Information Administration (“EIA”) website. Liberty filed a timely response, which objected to some of Ms. Arwen’s requests and agreed with others.

## **II. POSITIONS OF THE PARTIES**

### **A. Ms. Arwen**

In her motion, Ms. Arwen first argues that the scope of the “public good” standard for granting a utility franchise under RSA 374:26 should include issues beyond the managerial, technical, and financial capacity of the party seeking utility status. Ms. Arwen maintains that the public good under RSA 374:26 should also encompass questions related to the need for the service the petitioner intends to provide, given greenhouse gas emissions and other considerations. Arwen Motion at 2. Ms. Arwen thus seeks to have the Climate Action Plan introduced as evidence in this docket. Further, Ms. Arwen seeks admission of a number of Liberty data responses containing information Ms. Arwen believes is relevant to compliance with the Climate Action Plan. Those include Liberty’s responses to Arwen 1-10 (how expansion of the franchise is consistent with the New Hampshire Climate Action Plan), Arwen 2-6, 2-7, 2-9 and 2-10 (methane leaks, landfill gas and greenhouse gas emissions), and Arwen 3-1 (consistency with Climate Action Plan).

In addition, Ms. Arwen requests that the Commission take administrative notice of data found at four links to the EIA website relating to carbon dioxide emissions. Ms. Arwen claims that this emissions data is “relevant to the question of whether greenhouse gas impacts render the petition inconsistent with the public good and thus not suitable for granting under RSA 374:26.” Arwen Motion at 4.

Finally, Ms. Arwen seeks admission of Liberty's responses to data requests related to the finances of the proposed service. Those include Arwen 1-9 (classes of assets to be added to the rate base), and Arwen 2-4 (depreciable lives of various utility assets), and Staff 3-9 (projected cost of service in new franchise area).

### **B. Liberty**

Liberty objects to some of Ms. Arwen's requests and agrees with others. Liberty objects to the admission of the Climate Action Plan based on the Commission's refusal to compel responses by Liberty to Ms. Arwen's data requests (Arwen 3-1) concerning the Climate Action Plan in Order No. 25,686, at 5 (Feb. 19, 2016). Liberty argues on that basis that the Climate Action Plan is not relevant to the franchise determination in this case. Similarly, Liberty objects to admission of its responses to Arwen 1-10, Arwen 2-10 and Arwen 3-1, because those responses relate to the Climate Action Plan and, according to Liberty, are not relevant.

Liberty agrees to the admission of responses to Arwen 1-9, 2-4, 2-6, 2-7, and 2-9. Arwen 1-9 pertains to classes of assets to be added to the rate base, and Arwen 2-4 asks for depreciable lives of various utility asset classes. Liberty agrees that such information is relevant. Arwen 2-6 requests information on carbon dioxide emissions from natural gas versus home heating oil and propane. Arwen 2-7 deals with liquefied natural gas (LNG) and potential sources of methane emissions. Based on its proposal to use LNG as part of the fuel supply for Hanover and Lebanon, Liberty believes this evidence is relevant. Arwen 2-9 asks about methane collected at the Lebanon Landfill. Because this methane is proposed as additional supply in the new franchise area, Liberty agrees with Ms. Arwen that the evidence is relevant. Liberty also agrees to the admission of its response to Staff 3-9, but asks that the confidential portions of that response be protected from disclosure consistent with Order No. 25,868.

Liberty supports Ms. Arwen's request for administrative notice of the first EIA link, which relates to carbon dioxide coefficients for natural gas and other fuels, such as heating oil and propane. Because those fuels are currently in use in Hanover and Lebanon, Liberty believes the information is relevant. Nonetheless, Liberty wishes to limit the Commission's administrative notice to the fuels comparison aspect of the emissions levels, and to exclude issues of compliance with the Climate Action Plan.

Liberty objects to Ms. Arwen's request for administrative notice of the second EIA link, which contains baseline data for New Hampshire for carbon dioxide emissions from 1980 to 2013, because Liberty claims that data relates only to the Climate Action Plan which is not relevant. Liberty takes no position on Ms. Arwen's request for administrative notice of the last two EIA links. According to Liberty, those links include energy estimates, and fuel data specific to New Hampshire.

### **III. COMMISSION ANALYSIS**

To prevail on her motion, Ms. Arwen must demonstrate that the evidence she seeks to admit is relevant to the issues raised in this docket. Although the rules of evidence do not apply to the Commission's adjudicatory hearings, we exclude evidence which is not relevant to the issues to be determined. *See Petition of Grimm*, 138 N.H. 42, 54 (1993); RSA 541-A:33, II (presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence). Based on that standard, we grant in part and deny in part Ms. Arwen's motion *in limine* as discussed below.

In our previous Order No. 25,868 at 5, we found that the Climate Action Plan is not relevant to Liberty's ability to operate as a natural gas public utility in Lebanon and Hanover. We thus deny Ms. Arwen's request to admit the Climate Action Plan into evidence. Because

Liberty's responses to Arwen 1-10, Arwen 2-10 and Arwen 3-1 relate to the Climate Action Plan, we also deny Ms. Arwen's request to admit those responses into evidence.

Staff 3-9 requests information concerning the revenue requirement and rates forecast by Liberty. Information concerning Liberty's projected costs to provide natural gas service to its proposed franchise area is relevant to questions of whether it is for the public good to grant Liberty such a franchise. *See* RSA 374:26 (Commission may grant franchises for the public good and not otherwise); *see also* Order No. 25,868 at 5. Having found Liberty's financial forecasts contained in Liberty's response to Staff 3-9 confidential, with the exception of the resulting customer rates, we will allow the response into evidence but will continue to protect its confidential status.

We agree with Ms. Arwen and Liberty that responses to Arwen 1-9 and 2-4 may be admitted as evidence at hearing, because the responses relate to utility equipment proposed for use in the new franchise, as well as the depreciable lives of that equipment. We will not admit responses to Arwen 2-6, 2-7, and 2-9 as evidence at this time, because no party has demonstrated the relevance of those responses to this franchise request.

We decline to take administrative notice of the four EIA links. *See* N.H. Code of Admin. R. Puc 203.27. The first EIA link is to carbon dioxide emission coefficients by fuels, and shows the comparative production of carbon dioxide by volume of fuel and amount of energy produced for natural gas, and for a number of other fossil fuels. The second EIA link is to total carbon dioxide emissions for all fossil fuels during the years 1980 through 2013 in New Hampshire. Emissions are shown by sector for, residential, commercial, industrial, transportation and electric power. The third EIA link shows total energy use of fossil fuels (natural gas, petroleum, and coal) for the same five sectors in New Hampshire during 2013 and

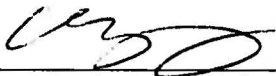
allows a comparison against energy consumption in other states. The fourth EIA link is to New Hampshire data on natural gas and other fossil fuels with consumption and pricing data that allows comparison with total United States consumption. These links deal generally with fossil fuel emissions and consumption in New Hampshire and we do not find the data relevant to our consideration of Liberty's natural gas franchise request. Thus, we deny Ms. Arwen's request to take administrative notice of the information found at these four EIA links.

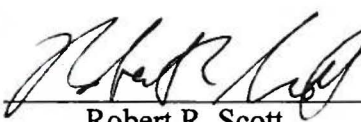
**Based upon the foregoing, it is hereby**

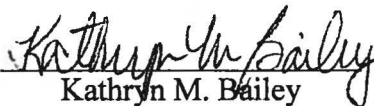
**ORDERED**, Ms. Arwen's motion to admit evidence is **GRANTED** in part and **DENIED** in part as discussed herein; and it is

**FURTHER ORDERED**, that Ms. Arwen's request that we take administrative notice of certain EIA data is **DENIED** as discussed herein.

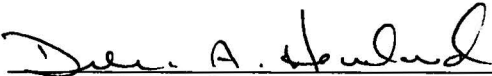
By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 2016.

  
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Martin P. Honigberg  
Chairman

  
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Robert R. Scott  
Commissioner

  
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Kathryn M. Bailey  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director