

**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 on Declaratory Ruling

ORDER NO. 26,065

October 20, 2017

In this Order, the Commission grants the Company's request for a declaratory ruling that it has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene, with conditions based on the Commission's existing authority regarding engineering and operational safety.

I. PETITION FOR DECLARATORY RULING

On April 26, 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 pertaining to the Company's plans for compressed natural gas ("CNG") and liquefied natural gas ("LNG") installations in Keene. For some time the Company has contemplated conversion of the system in Keene from a propane-air system to a CNG/LNG system. The conversion has been partially motivated by recent equipment failures on the propane-air system. Petition at 1-2. The Company's petition followed a discussion with Commission Staff in which, according to Liberty, Staff stated that the Company is required to file reports and "a petition under RSA 374:22 and RSA 374:26, the franchise statutes, for permission to distribute natural gas because ... the conversion from propane to natural gas constitutes a 'change in the character of service.'" Petition at 2. While Liberty did not object to reporting requirements associated with RSA 374:5,

it disagreed with the assessment that the Company needed to petition for new franchise rights. According to Liberty, it has a franchise to provide gas service in Keene which can be provided using various types of gas. Petition at 12.

Liberty presented a series of arguments to support its position. The Company first made reference to its original 1860 charter, which refers to "gas." The Company then pointed to N.H. Code Admin. Rules Puc 502.06, which defines gas as "any manufactured or natural gas or any combination thereof," in the context of CNG and LNG being produced from the compression and liquefaction of natural gas. Petition at 3. Liberty argued that the shift in supply technology from one subclass of Puc 502.06 gas (propane-air) to another (CNG/LNG) was allowed under its franchise authority, without any need for further Commission approval under RSA 374:22 and RSA 374:26. The Company cited to several instances in the 1970s and 1980s when natural gas utilities installed or acquired propane equipment, without requesting additional franchise permission from the Commission. Petition at 6-9. With regard to Liberty's own franchise for Keene, handed down through a chain of corporate successors in interest, the Company referred to a series of fuel conversions between various classes of gas (manufactured gas, butane, butane-air, propane-air) from the 1950s through the 1970s, without any Commission requirements for franchise approval. Petition at 8.

In conclusion, Liberty asked the Commission to declare that the Company did not need to seek permission under RSA 374:22 and RSA 374:26 to distribute natural gas in the form of CNG/LNG in Keene. Petition at 13. In making its request, the Company stated that it "also welcomes the [Commission's] Safety Division's review and inspection of the facility and related issues as it enforces applicable safety laws." Petition at 12.

II. COMMISSION ANALYSIS

Having reviewed the Company's petition and the arguments and information presented, we conclude that under RSA Chapter 374, Liberty has the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its current franchise. RSA 362:2, I, includes in the definition of "public utility" the activity of the "distribution or sale of gas." This statute does not differentiate among various types of gas.

We find the Company's arguments that CNG and LNG constitute gas of the same character as the propane-air mixture currently supplied to Liberty-Keene customers to be persuasive. This interpretation of gas service is consistent with prior Commission decisions allowing natural gas utilities to supplement natural gas supply with propane without requiring additional franchise approval under RSA 374:22 and RSA 374:26. *See, e.g., Gas Service, Inc.*, 58 NH PUC 48 (July 24, 1973); *Manchester Gas Company*, 58 NH PUC 71 (October 2, 1973); *Concord Natural Gas Corp.*, 58 NH PUC 78 (October 16, 1973). Consistent with this interpretation of gas service, we conclude that (1) Liberty possesses a franchise to provide gas service which includes CNG/LNG service in Keene, and (2) that Liberty has continually exercised this franchise, as referenced in RSA 374:22, I, to the present day.

While we agree with Liberty that it has the legal authority to offer CNG/LNG service in Keene, it is critical that any new CNG/LNG installations be accomplished safely. We note that CNG/LNG installations of the type contemplated by the Company include technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems. Pursuant to RSA 374:1 (utilities must provide safe and adequate service), RSA 374:3 (Commission's general supervision of utilities), RSA 374:4 (Commission's duty to keep informed), and related statutes, the Commission has the authority and responsibility to ensure

that all utility installations are safely and reliably engineered in conformance with all applicable standards, and that public utilities like Liberty meet their duty to provide safe and adequate service under RSA 374:1. To that end, pursuant to RSA 374:1, RSA 374:3, and RSA 374:4, with respect to the system conversion in Keene, we order Liberty to provide all final plans for engineering, construction, installation, testing, operations, public awareness, maintenance, emergency response, procedures, and schematics, including qualifications and training of personnel, in sufficient detail as requested by the Commission's Safety Division. Further, before gas flows through these installations, we must receive a report from the Safety Division assessing the adequacy of the Company's plans and the satisfactory completion of a physical inspection of all installations.

It has also come to the Commission's attention, within the context of the companion rate case (Docket No. DG 17-048), that the Company's affiliate, Liberty Utilities Corp. (EnergyNorth Natural Gas), seeks to consolidate the costs of the planned Keene installations into its larger customer rate base (which is much larger than that of just Liberty's Keene franchise). This Order does not address the appropriateness of such consolidation of rates under RSA Chapter 378, nor does it include any finding of prudence regarding the Keene installation. These matters should be examined in the rate case in the first instance, and potentially, as part of a separate review proceeding.

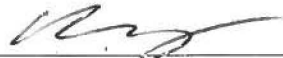
Based upon the foregoing, it is hereby

ORDERED, that Liberty's request for a declaratory ruling is GRANTED, subject to the reporting and operational requirements delineated in this Order; and it is

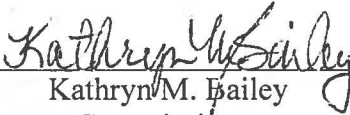
FURTHER ORDERED, that Liberty provide the final comprehensive plans and reports as described above; and it is

FURTHER ORDERED, that Liberty shall not flow any gas through the CNG/LNG installation in Keene until the Commission's Safety Division has found the required plans and reports adequate, and completed its physical inspection of the facilities as described above.


By order of the Public Utilities Commission of New Hampshire this twentieth day of October, 2017.



Martin P. Honigberg
Chairman

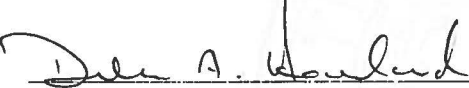


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director