

**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 Affirming and Clarifying Declaratory Ruling**

**ORDER NO. 26,274**

**July 26, 2019**

In this Order, the Commission confirms its prior declaratory ruling, clarifies the scope of that ruling, approves the initiation of Phase I of the proposed conversion of the Keene distribution system from propane-air to compressed natural gas, and directs Liberty to comply with reporting and operational requirements for Phases II through V of the system conversion.

**I. PROCEDURAL HISTORY**

On April 24, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division (Liberty or the Company) filed a Petition for Declaratory Ruling and two days later, the Company submitted a Revised Petition for Declaratory Ruling (Petition) pursuant to N.H. Code Admin. Rules Puc 203 and Puc 207. Specifically, Liberty requested a ruling “that it need not seek permission under RSAs 374:22 and 374:26 to distribute natural gas in the City of Keene, because Liberty’s existing franchise to distribute ‘gas’ already includes ‘natural gas.’” Petition at 1.

On October 20, 2017, the Commission issued Order No. 26,065 granting the requested ruling and imposing conditions relating to engineering and operational safety.

On November 16, 2017, Terry Clark, a resident of Keene (Mr. Clark), and the NH Pipeline Health Study Group (the Pipeline Health Group) jointly filed a motion asking the Commission to reconsider Order No. 26,065. On November 20, 2017, Mr. Clark and the Pipeline Health Group filed an amendment to their motion. Liberty filed a timely objection.

On December 18, 2017, the Commission issued Order No. 26,087 granting the motion for reconsideration in part. The Commission subsequently issued an Order of Notice on March 1, 2018, scheduling a Prehearing Conference to be followed by a technical session in early April. The Order of Notice directed the parties to discuss a procedural schedule for submitting legal briefs.

Mr. Clark filed a petition to intervene on April 4, 2018. A Prehearing Conference was held as scheduled on April 6, 2018. The Commission granted Mr. Clark's intervention at the Prehearing Conference, with no objections from any party. On April 10, 2018, Staff filed a proposed procedural schedule agreed to by all parties, and the Commission approved the schedule the following day. Mr. Clark and Liberty filed legal briefs on May 1, 2018, followed by reply briefs on May 15, 2018.

On October 5, 2018, the Commission's Safety Division (Staff) filed an adequacy assessment (Assessment) of the Company's proposed compressed natural gas (CNG) installation in Keene.<sup>1</sup> The Assessment identified multiple deficiencies and found Liberty's installation plans to be inadequate. On November 14, 2018, the Commission issued a secretarial letter directing Liberty to file a status report on its plans for the conversion of the Keene system. Liberty filed the requested report on December 7, 2018. On February 28, 2019, Liberty filed a letter informing the Commission that it had filed a response to Staff's Assessment, which

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<sup>1</sup> See Safety Division Adequacy Assessment of the Proposed Compressed Natural Gas Installation by Liberty Utilities – Keene, NH Division (filed October 3, 2018).

included a cover letter to Randall S. Knepper dated February 21, 2019, and copies of the Company's amended and annotated plans for the conversion of the Keene gas system.

On April 16, 2019, Staff filed a memorandum stating that the Company's February 28 response, including its amended and annotated plans, addressed Staff's comments and recommendations in the Assessment. Staff reported that the Company's amended conversion plan complied with Commission Order No. 26,065. Staff recommended that the Commission accept the Company's filing and permit the commencement of the proposed Monadnock Marketplace system conversion from propane-air to natural gas (Phase I).

The petition for declaratory ruling and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <http://puc.nh.gov/Regulatory/Docketbk/2017/Docketbk/2017/17-068.html>.

## **II. ORDER NO. 26,065**

In Order No. 26,065, the Commission ruled that Liberty "has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene." Order No. 26,065 at 1. The Commission required that any new CNG or liquefied natural gas (LNG) installations be accomplished safely, noting that the CNG/LNG installations contemplated by the Company included technology and piping that would require much higher operating pressures than are found in gas distribution systems in New Hampshire. *Id.* at 3-4. The Order directed 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.

Order No. 26,065 at 4. In addition, the Commission decided that before gas flows through the proposed CNG/LNG installations, the Safety Division must submit a report assessing the

adequacy of the Company's plans and the satisfactory completion of a physical inspection of all installations. *Id.*

### **III. STAFF'S ADEQUACY ASSESSMENT**

Staff's Assessment included over 170 recommendations for design, installation, operational, and maintenance changes, and other actions regarding the Company's engineering plans that Liberty would have to address before the Company could begin operation of Phase I. Staff further recommended that the Company refile an amended and annotated plan that demonstrated compliance actions taken in response to the Assessment. The Assessment stated that, upon receipt of the amended plan, Staff would review the Company's amendments and recommend final approval for the commencement of the initial system conversions and the supply of CNG for Phase I.<sup>2</sup>

In its April 16, 2019, memorandum, Staff found that the Company's February 28 amended plan adequately addressed the Safety Division's comments and recommendations detailed in the Assessment. Accordingly, Staff recommended that the Commission accept the information provided by Liberty in its response to the Assessment. Staff stated that the Commission's acceptance of Staff's recommendation would permit Liberty to begin Phase 1 of the proposed conversion. Staff also recommended that, given the extensive list of issues and required amendments highlighted in the Assessment of the Phase I plans, Phases II through V should be reviewed carefully when the Company's plans for each phase are fully developed and filed.

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<sup>2</sup> See Cover Letter to Debra A. Howland, Executive Director, from Randall S. Knepper, Director, Safety Division, filed on October 5, 2018, with the Assessment.

#### **IV. POSITIONS OF THE PARTIES**

##### **A. Terry Clark**

Mr. Clark argued that Liberty's petition for a declaratory ruling could not be granted because the conversion is part of Liberty's broader expansion plans under consideration in Docket No. DG 17-152. That docket concerns the Company's Least Cost Integrated Resource Plan (LCIRP) under RSA 378:39. Mr. Clark challenged Liberty's LCIRP as contrary to the public interest and to the requirements of the state energy policy codified in RSA 378:37. He argued that the Commission should stay its decision on the Petition until DG 17-152 has been decided.

Mr. Clark further argued that, even if Liberty's plans were lawful, the Commission should defer to the Site Evaluation Committee's jurisdiction over Liberty's proposed energy facilities and dismiss the Petition. Mr. Clark contended that the Petition should be dismissed because it should have been filed under RSA 374:22 and RSA 374:26. In Mr. Clark's view, the Petition clearly proposed a change in the character of Liberty's service in the City of Keene. Mr. Clark asserted that the Petition would result in a substantial change in operations and the exercise of rights and privileges "not theretofore actually exercised in the town," and therefore requires statutory approval.

##### **B. Liberty Utilities**

Liberty argued that it holds the franchise right to distribute gas to its Keene customers and does not need to seek permission pursuant to RSA 374:22 and RSA 374:26 to convert the propane-air system to a CNG or LNG system. Liberty contended that its existing franchise rights have been used to distribute coal gas, butane, and propane-air through the years, and those franchise rights permit the Company to distribute natural gas, including CNG or LNG. Liberty

maintained that the Commission reached the correct decision in Order No. 26,065 when it stated that Liberty “has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene.” Liberty Objection to Motion for Rehearing at 1 (citing Order No. 26,065 at 3).

## V. COMMISSION ANALYSIS

In Order No. 26,065, the Commission ruled that Liberty “has the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its current franchise.” Order No. 26,065 at 3. To ensure that any such activity would be done safely, the Commission also directed the Company to provide Staff all final plans for the proposed conversion. Order No. 26,065 further conditioned final approval for operation of the converted system on the receipt of a report from Staff “assessing the adequacy of the Company’s plans and the satisfactory completion of a physical inspection of all installations.” *Id.* at 4.

In this order, we clarify our declaratory ruling in Order No. 26,065, accept the Safety Division’s recommendation that we permit the Company to commence conversion of Phase I, and require the same reporting and assessment requirements for the conversion of Phases II through V of the Keene system.

A declaratory ruling constitutes a binding agency determination to dispose of legal controversy or to remove legal uncertainty. *See North Country Environmental Services, Inc. v. Town of Bethlehem*, 150 N.H. 606, 621, 843 A.2d 949, 961 (2004). The issuance of a declaratory ruling is a discretionary matter for the agency. *Delude v. Town of Amherst*, 137 N.H. 361, 363, 628 A.2d 251, 253 (1993). A party seeking a declaratory ruling must “show that the facts are sufficiently complete, mature, proximate, and ripe ... to warrant the grant of ... relief.” *Merchants Mutual Casualty Co. v. Kennett*, 90 N.H. 253, 255, 7 A.2d 249, 250–51 (1939)

(quotations omitted). A petition for declaratory ruling “cannot be based on a set of hypothetical facts.” *Silver Brothers, Inc. v. Wallin*, 122 N.H. 1138, 1140, 455 A.2d 1011, 1013 (1982) (citing *Salem Coalition for Caution v. Town of Salem*, 121 N.H. 694, 433 A.2d 1297 (1981)); *see also* Puc 207.01.

RSA 374:22 states that “[n]o person or business entity ... shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.” RSA 374:26 requires the Commission to:

grant such permission whenever it shall, after due hearing, find that such ... exercise of right, privilege or franchise would be for the public good ... and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest.

In Order No. 26,065, the Commission found that, while Liberty did not need new franchise authority to serve its Keene customers with CNG rather than propane-air, the Company’s proposal to construct new system facilities or to convert existing facilities warrants regulatory oversight over financial costs as well as further approvals regarding the safe and reliable operation of the system.

Based on the filings in this proceeding, the conversion of the existing system will require the construction, operation, and maintenance of decompression skids that will depressurize CNG delivered by truck to permit its introduction into Liberty’s existing distribution system. The conversion will also require the adjustment of all customer meters and certain behind-the-meter changes to customer appliances inside their homes and commercial premises. Liberty has also indicated its intent to construct, operate, and maintain LNG facilities to serve Keene. *See* Petition at Bates Pages 1 and 11.

In its Petition, Liberty cited a series of orders concerning New Hampshire gas utilities switching from natural gas to propane to serve customers without requiring commission permission. Petition at Bates Pages 9-11. Liberty argued that those orders confirm the interchangeability of natural gas and propane. In Order No. 26,065, we found the prior orders persuasive with respect to the Company's argument that CNG and LNG constitute gas service for which Liberty had a franchise. None of the cases cited by Liberty, however, involved extensive whole-system conversions such as those required in Keene. Moreover, in each case, the Commission at the time was notified of the change in gas product and the reasons why the substitution was required. As a result, we determined that Liberty had the legal authority to offer CNG and LNG service in Keene, but recognized that certain conditions and approvals related to the safety and reliability of the service of CNG or LNG were warranted before Liberty could proceed to exercise that authority.

We clarify that the decision in Order No. 26,065 was limited to a ruling that Liberty has the general right to change the type of gas that it provides to its customers under its franchise authority. In that order, we recognized that Liberty has the authority to provide "gas" service to customers within the franchise territory of the City of Keene, as approved in its acquisition of New Hampshire Gas Corp. in Docket No. DG 14-155. The ruling stated 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." Order No. 26,065 at 3.

Order No. 26,065 was not intended to be read to permit a public utility that provides gas to customers in a defined franchise service territory to provide any type of gas in any manner that it might deem expedient, without further regulatory oversight or approvals. When Liberty



acquired New Hampshire Gas Corporation (now Liberty Utilities – Keene Division) in November 2014, the Company agreed to continue operation of the existing system “as is.”<sup>3</sup> The terms of the settlement agreement were to remain in effect “until the Commission approves otherwise.” Order No. 25,736 at 4. Here, Liberty proposes to convert its entire existing gas system in Keene by switching from propane-air to natural gas in the form of CNG. The conversion requires gas decompression and injection, the adjustment of customer appliance fittings, and the proposed replacement of pipes. Such a conversion raises a number of regulatory issues that warrant further oversight and approval – notably with respect to careful review of conversion plans and progress to ensure safe and reliable service to the affected customers. Accordingly, in Docket No. DG 17-048, Liberty’s most recent rate case, we required regulatory oversight over financial costs of the proposed conversion, as well as the further approvals regarding safety and reliability concerns associated with the conversion plans, consistent with Order No. 26,065.

As noted above, Order No. 26,065 conditioned the approval on the Safety Division’s assessment of the adequacy of the Company’s plans, and a complete physical inspection of all installations before Liberty would be permitted to initiate operations and serve gas through the converted installations. The Commission also directed 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

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<sup>3</sup> See *Liberty Utilities (EnergyNorth Natural Gas, Corp., et al.,* Order No. 25,736 at 2 (November 21, 2014) (“The overriding theme of the Settlement Agreement is that [Liberty] will separately account for the Keene Division and will operate the Keene Division largely without change,” *citing* Tr. at 14, 21 (“[Liberty] characterized its proposal to operate the Keene Division “as is”)), at 3 (“The Settlement Agreement requires [Liberty] to operate the Keene Division largely without change from existing operations.”), and at 6 (“The Settlement Agreement requires [Liberty] to manage and operate...the Keene Division separately...without substantial changes in the Keene Division’s operation.”).

personnel, in sufficient detail as requested by the Commission's Safety Division." Order No. 26,065 at 4.

Although satisfied with the Assessment after more than a year's work, that process identified many additional complex issues not anticipated by the Commission when it issued Order No. 26,065. Given the five phases of conversion that Liberty has outlined in its filing and the extensive review and recommendations by Commission Staff for improvements to the Company's plans required for safety and reliability for the first of five phases of the conversion, we find that the same submission and review requirements should apply to each of the remaining phases.

#### **A. Financial Costs**

According to assertions made by the Company in dockets that touch upon the Keene conversion, including the general rate case in Docket No. DG 17-048 and the recent summer cost of gas (COG) rate proceedings in Docket No. DG 19-068, the conversion of the Keene system will also include the replacement of much of the existing system pipelines that currently provide propane-air gas to customers. Liberty provided only limited testimony in its general rate case as to how the proposed conversion might be economically just and reasonable.

In Order No. 26,065, we cautioned that the declaratory ruling did not include any finding of prudence. *Id.* In this order, we clarify that Order No. 26,065 should not be construed to constitute pre-approval of as yet undefined proposals for future capital projects within Liberty's Keene service territory. *See, e.g., Silver Brothers, Inc. v. Wallin*, 122 N.H. 1138 (1982). The Company stated in the acquisition proceeding that it would pursue conversion to CNG or LNG "[i]f it's economical to do so, and results in lower cost to customers." *See Liberty Utilities*

*(EnergyNorth Natural Gas) Corp., et al.*, Docket No. DG 14-155, Hearing Transcript of October 30, 2014, at 25-26.

As Staff testified in Liberty's most recent rate case, the Company has not provided a comprehensive business plan for the Keene system conversion and has provided little to no economic analysis or justification of the costs of the proposed system to ratepayers.<sup>4</sup> In the meantime, the Company is already pursuing recovery of certain costs associated with the conversion of the Keene system in its petition for recovery of 2019 summer COG expenses in Docket No. DG 19-068. *See, e.g.*, Order No. 26,241, permitting the requested inclusion of CNG supply costs in the 2019 summer COG rates.

We note that Puc 503.04(a) requires gas utilities to "provide certain services to its customers when service conditions such as change in pressure or composition of gas affect or would affect efficiency of operation or adjustment of appliances." Puc 503.04(b) further requires that if any such change occurs, the "utility shall, without undue delay and without charge, inspect the appliances of its customers and, if necessary, readjust those appliances for the new conditions." Based on the Staff Assessment, it appears that these provisions will apply to the Keene system conversion, and we direct Liberty to address these rules when it seeks to recover Keene conversion costs from ratepayers.

## **B. Reporting Requirements**

In its Petition, Liberty stated that it did not object to filing the reports required by RSA 374:5. Indeed, the Company said it would do so through its annual E-22 report and through a more detailed supplemental report specific to this project.<sup>5</sup> RSA 374:5 requires:

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<sup>4</sup> *See Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Docket No. DG 17-148, Hearing Exhibit 5 at Bates Page 10.

<sup>5</sup> Petition at Bates Page 2.

[E]very public utility, before making any addition, extension, or capital improvement to its fixed property in this state, except under emergency conditions, shall report to the commission the probable cost of such addition, extension, or capital improvement whenever the probable cost thereof exceeds a reasonable amount to be prescribed by general or special order of the commission .... Reports shall be filed in writing with the commission within such reasonable time as may be prescribed by the commission before starting actual construction on any addition, extension, or improvement. The commission shall have discretion to exclude the cost of any such addition, extension, or capital improvement from the rate base of said utility where such written report thereof shall not have been filed in advance as herein provided.

The Petition notes that the Settlement Agreement in Docket No. DG 14-155, involving Liberty's acquisition of the Keene gas system, required Liberty to "notify the Staff and OCA of Keene Division capital projects other than ... [the E-22 reports] referenced in Puc 509.11(c) with projected costs greater than \$50,000 at least 60 days prior to commencement, where feasible." Revised Petition at Bates Page 2. In light of Liberty's commitment to file such reports, the E-22 reports filed to date, and Staff's testimony in Docket No. DG 17-048, we will require Liberty to file a detailed and comprehensive supplemental report specific to the Keene conversion project for each phase of system conversion and construction pursuant to RSA 374:5.

Accordingly, we direct Liberty to include a detailed report that includes all project costs to date as well as detailed projected cost estimates for all conversion projects to be included in the revenue requirement analysis that is required as part of the previously established risk sharing mechanism. *See Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a/ Liberty Utilities*, Order No. 26,122 at 39 (April 27, 2018) (item 3). A detailed report of the cost of the Company's current efforts to convert the initial portion of the system to CNG shall be provided within 90 days of the issuance of this order. Future reports with the requisite cost details shall be filed no later than 180 days in advance of each future expansion phase. Receipt of the reports shall not be deemed pre-approval of projected expenditures or a finding of prudence.

We also direct Liberty to file updated system maps and drawings pursuant to Puc 507.04 as the Company completes each phase of the conversion of the Keene system. In addition, in accordance with the directives set forth in Order No. 26,122, Liberty must provide updated discounted cash flows (DCFs) based on detailed engineering plans and customer commitments that will produce at least 50% of the revenue requirement associated with the new facilities prior to the initiation of construction of each conversion phase.

The gas supply and production facilities and the distribution system used to provide natural gas to Keene customers will be separate and distinct from the system used to provide propane-air. Once a customer begins receiving natural gas, that customer will no longer be able to receive propane-air as a fuel source. In essence, until Phases II through V of the proposed conversion are completed and in operation, Liberty will be operating two separate systems in Keene. The Company's supply planning and reporting should reflect that. Commission rules applicable to supply planning and reporting, such as on-site storage requirements, will be applicable to each of the two distinct systems while Liberty is providing both natural gas and propane-air in Keene. *See e.g.*, Puc 506.03 (On-Site Storage Requirements).

With respect to Mr. Clark's argument regarding the Site Evaluation Committee (SEC), it is apparent from review of RSA Ch. 162-H, that the SEC's jurisdiction and responsibilities have no bearing on the issues raised in this docket.

## **VI. CONCLUSION**

As stated in the Order of Notice issued on March 1, 2018, Liberty's petition for a declaratory ruling raised issues related to the scope of Liberty's existing gas franchise and whether RSA 374:22 and RSA 374:26 required Liberty to obtain additional franchise permissions from the Commission before converting the type of gas Liberty delivers to

customers. Based on our review of the record, we clarify that Liberty has the general authority to offer gas service to its customers in Keene under the franchise authority granted to it when it acquired the New Hampshire Gas Corporation from Iberdrola USA Enterprises, Inc. in Docket No. DG 14-155. Although the Commission is requiring additional approvals pursuant to its general supervisory authority, no additional permissions are required under RSA 374:22 and RSA 374:26.

The declaratory ruling in Order No. 26,065 was not intended to grant the Company *carte blanche* to substantially change its system operations. Based on the record in this proceeding, we confirm that further regulatory oversight to ensure compliance with all applicable rules and statutory requirements is warranted. We find that the conditions related to engineering and operational safety of the proposed system conversion are necessary to ensure safe and reliable service and are therefore in the public interest. Accordingly, we grant Liberty the permission and approval to undertake the conversion of the Keene system, subject to the conditions set forth herein.

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

**ORDERED**, the declaratory ruling in Order No. 26,065 is clarified to recognize that Liberty has the right, with conditions, under its existing franchise authority to serve compressed natural gas to its customers in the Keene Division of EnergyNorth; and it is

**FURTHER ORDERED**, that the Commission's Safety Division's recommendation that Liberty be permitted to initiate the conversion of the Keene propane-air distribution system to compressed natural gas to customers in the Keene Division for Phase I is approved; and it is

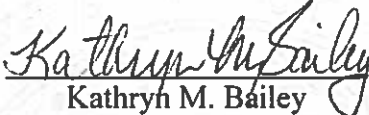
**FURTHER ORDERED**, that Liberty shall not flow any gas through Phases II through V of CNG/LNG installations in Keene until the Director of the Commission's Safety Division has

found the required plans and reports to be adequate and has completed its physical inspection of the facilities; and it is

**FURTHER ORDERED**, that within 90 days of this order, Liberty shall file with the Commission its business plan and its operations and maintenance plans for the conversion and operation of the proposed natural gas system.

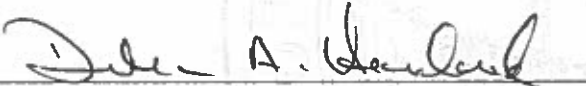
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 2019.

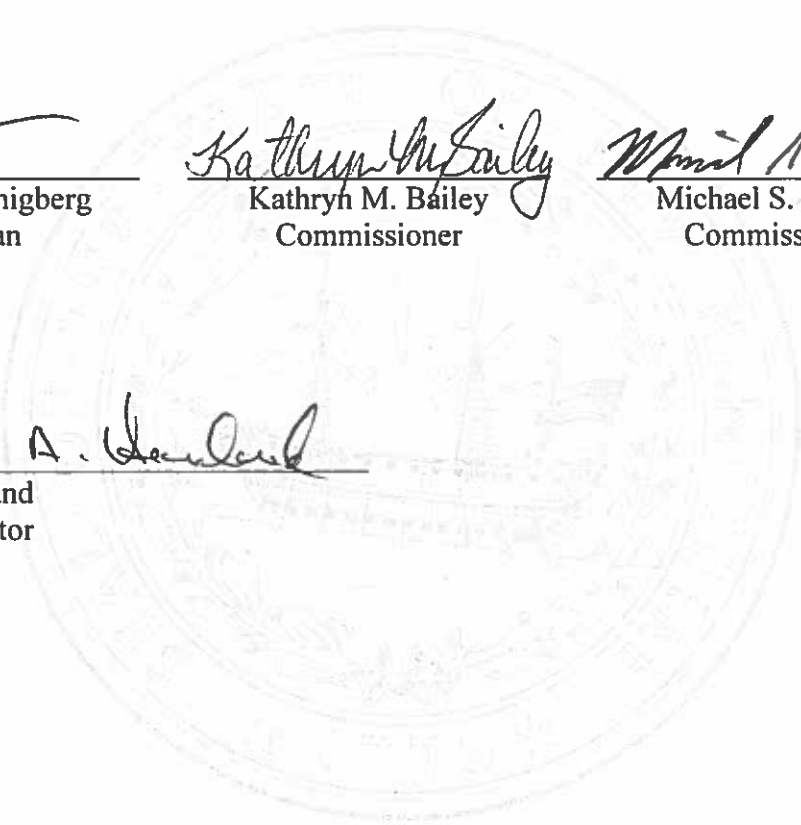
  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Attested by:

  
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