

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

Liberty Utilities (EnergyNorth Natural Gas Corp.) d/b/a Liberty Utilities

**Petition for Declaratory Ruling**

Objection to Motion for Rehearing

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the “Company” or “Liberty”), through counsel, respectfully objects to the *Joint Motion for Rehearing* filed by a number of individuals and the NH Pipeline Health Study Group because the movants do not have standing and, alternatively, because the motion lacks merit.

In support of this objection, Liberty states as follows:

1. In Order No. 26,065 (Oct. 20, 2017) (the “Order”), “the Commission grant[ed] 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.” The Order merely confirmed the status quo:

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. 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.

Order at 3 (citations omitted). Contrary to the Movants' assertions, the Order did not expand any rights to provide gas distribution service, did not increase the territory in which Liberty may provide those services, and did not approve any particular project at any particular location. The Order simply granted the Petition's sole request "that the Commission ... declare that Liberty need not seek permission under [the franchise statutes] to distribute natural gas in Keene." Petition at 13.

2. A number of individuals and an "unincorporated association of New Hampshire residents" operating under the name "NH Pipeline Health Study Group" (together, the "Movants") filed a Joint Motion for Rehearing which asked the Commission to vacate the Order based on several arguments.
3. For the reasons discussed below, the Movants do not have standing to seek rehearing of the Order and, if addressed on the merits, their reasons for rehearing should be rejected.

#### The Movants Do Not Have Standing.

4. Puc 203.07(a) provides: "A motion may be filed [1] by any party or, [2] in the case of a motion for rehearing, a person directly affected by a commission action pursuant to RSA 541:3." First, the Movants are not parties to this docket. Had the Movants tried to gain party status pursuant to RSA 541-A:32, the Commission would likely have denied the request because none of the Movants are Liberty customers. The Commission denied a similar motion for intervention by non-customer members of an organization similar to NH Pipeline Health Study Group.

[W]e grant PLAN's intervention on behalf of its members who are also EnergyNorth customers and deny its intervention on behalf of

landowners along the proposed TGP route who are not EnergyNorth customers. Only 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. Consequently, it is likely that the participation of PLAN landowner members would “impair the orderly and prompt conduct of [these expedited] proceedings.” RSA 541-A:32, II.

Order No. 25,767 at 4 (Mar. 6, 2015). The Movants are analogous to the landowner members of PLAN – “their [environmental] interests, while important, are not pertinent to the Commission’s determination” that Liberty has the right to serve natural gas in Keene.

5. Thus, the Movants are not now parties and would not qualify as parties under RSA 541-A:32 and Order No. 25,767 if they so requested.
6. Second, for similar reasons the Movants do not have standing to invoke the second clause of Puc 203.07(a) and seek reconsideration of the Order (“a motion for rehearing [may be filed by] a person directly affected by a commission action”).
7. The “directly affected” language of Puc 203.07(a) is the well-accepted legal test for standing: “To have standing to appeal an administrative agency decision to this court, a party must demonstrate that his rights ‘may be directly affected by the decision, or in other words, that he has suffered or will suffer an injury in fact.’” *In re Stonyfield Farm*, 159 N.H. 227, 231 (2009) (citation omitted); see *Appeal of Campaign for Ratepayer Rights*, 142 N.H. 629, 632 (1998) (“Any injury suffered by ratepayers ... is neither immediate nor direct because any potential injury would arise only through increased rates imposed during a subsequent ratesetting proceeding”).

8. The Movants based their standing argument on their places of residence and on their environmental concerns. One movant lives in Keene, two live in other towns served by Liberty, and the rest live in towns not served by Liberty. Motion at 2-4. The Movants' environmental concerns can be summarized, for purposes of this objection, as opposition to the expansion of natural gas. Motion at 3.
9. The Movants' places of residence do not provide standing. The Order simply confirmed what was already the case -- that Liberty can offer natural gas in Keene. That declaration, by itself, did not cause "injury in fact" to non-customers, regardless of where they live (and arguably did not "directly affect" any customers because it did not change rates or terms of service).
10. The Movants' environmental concerns were also "not pertinent to the Commission's determination." The Commission's conclusion that Liberty can offer natural gas in Keene did not take environmental arguments into account, and had no reason to do so. Liberty posed a legal issue: whether PUC-related statutes, rules, and Commission-approved tariffs allow Liberty to offer natural gas in Keene. Liberty did not ask any environmental questions, and the Commission did not address any because they would have been irrelevant to the docket.
11. Therefore, the motion for rehearing should be denied for lack of standing because the Movants do not meet the requirements of Puc 203.07.
12. In the event that the Commission finds one or more of the Movants have standing, Liberty will address their arguments in the motion for rehearing.

Liberty Did Not Need to Verify Petition.

13. Movants first argued that the petition should have been dismissed because it was not “verified.” Puc 207.01(b) states that a petition for declaratory ruling “shall be verified under oath or affirmation by an authorized representative of the petitioner with knowledge of the relevant facts.”
14. It is reasonable to interpret this rule to require verification when the petition alleges facts that are subject to challenge. The material “facts” in Liberty’s petition are from the public record, are not subject to challenge, and would likely qualify for official notice. *See* Puc 203.27. Thus, there was nothing to verify.
15. The facts supporting the petition fall into three categories and all come from public and commission approved documents. The first category contains the various definitions of “gas”: the 1860 legislation that granted Liberty’s predecessor the franchise to serve “gas” in Keene; the Commission rule that defines “gas” to include “natural gas,” Puc 502.06; and the Commission-approved tariffs that define gas to include propane and natural gas. *See* Petition at 3.
16. The second category includes sources that defined the phrase a “change in the character of service” (a franchise filing may be necessary if serving natural gas in Keene is a “change in the character of service”). The facts supporting Liberty’s argument that serving natural gas was not such a change again consisted of Commission rules and Commission-approved tariffs. *See* Petition at 4 - 6.
17. The third category consists of Commission orders and testimony filed in other Commission dockets which supported Liberty’s argument that the Commission has never required franchise filings when gas utilities changed fuels. Petition at 6 - 12.

18. Since the material facts in this case are drawn from rules, Commission orders, Commission-approved tariffs, and testimony by other witnesses in other dockets, there is nothing in the petition that required verification by a Liberty witness. It was thus reasonable for the Commission not to require verification to find the facts on which to support its decision.

Liberty Did Not Violate Puc 207.01(c)(1).

19. Movants next faulted Liberty for failing to “describe the proposed changes to the Keene system at all, precluding a fair opportunity to challenge – or even understand – the Petition.” Motion at 7. Movants claimed this violates Puc 207.01(c)(1), which requires petitions for declaratory rulings to “set forth factual allegations that are definite and concrete.”

20. The Company did not include a description of the Keene facility because that was not relevant to Liberty’s request. Liberty asked the Commission to confirm that the Company possessed the right to serve natural gas in Keene, nothing more. The particulars of the Keene facility had no bearing on answering that question.

21. Thus, the Petition’s “failure” to include a description of the Keene facility did not violate Puc 207.01(c)(1) because such a description was not relevant to the question posed.

The SEC Does Not Have Jurisdiction Over the Keene Facility.

22. Movants argued that the Commission lacked jurisdiction over the petition because “the approval sought ... falls squarely to the SEC.” Motion at 7. Movants argued that

the Keene facility is an “energy facility” under RSA 162-H:2 that is subject to the exclusive jurisdiction of the Site Evaluation Committee. Movants are wrong because they failed to read the balance of that statute.

23. The SEC does not have jurisdiction over every energy facility constructed in the state, only energy facilities above a certain size. RSA 162-H:2 provides clear guidance on which energy facilities are large enough to fall under its review.

24. The definition of “energy facility” that is applicable to a CNG/LNG project like Liberty’s Keene facility follows:

Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities

RSA 162-H:2, VII(a) (emphasis added). The quantity of CNG/LNG that Liberty will store at the Keene facility is far less than the 30 megawatt standard above.

25. The SEC has no jurisdiction over the Keene facility. Rather, the facility is subject to the jurisdiction of the usual mix of state and local agencies. The Commission should thus reject the Movants’ argument that the Commission must defer to SEC jurisdiction.

The Petition Does Not Raise Hypothetical Questions in Violation of Puc 207.01(c)(2).

26. Puc 207.01(c)(2) states that “the commission shall dismiss a petition for declaratory ruling that ... (2) Involves a hypothetical situation.” The Movants argued

that the Keene facility is a “hypothetical” situation because the SEC has not yet approved its construction. The SEC does not have jurisdiction, as discussed above, and the Petition did not seek approval of the Keene facility, only confirmation of the right to distribute natural gas. Thus, there is nothing hypothetical about the relief sought in the Petition.

Liberty Need Not Satisfy the Franchise Standard in this Docket.

27. The Movants argued that Liberty’s petition had to satisfy the “public good” standard that applies in franchise proceedings governed by RSA 374:22 and 374:26. Motion at 12. Liberty objects because the petition did not seek franchise approval, but sought confirmation that Liberty need not travel that road. Had the Commission decided the petition differently and ruled that Liberty did not already have the right to serve natural gas, then Liberty then would have filed a franchise petition and presented sufficient evidence to meet the public good standard.

The Order Properly Granted Liberty the Relief Sought.

28. The Movants’ last argument is that the Order is “un[sus]tainable, as the petitioner’s gas expansion plans are not for the ‘public good’ or ‘public interest’ as must be shown for approval under” RSA 374:26.
29. As discussed above, the petition did not seek approval of its “gas expansion plans,” but only a declaration of its existing right to serve natural gas. Thus, the “public good” standard of the franchise statute did not apply.

WHEREFORE, Liberty Utilities respectfully asks that the Commission to:

- A. Deny the Motion for Rehearing; and
- B. Grant such other relief as is just and reasonable.

Respectfully submitted,

Liberty Utilities (EnergyNorth Natural Gas) Corp.  
d/b/a Liberty Utilities



Date: November 27, 2017

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Certificate of Service

I hereby certify that on November 27, 2017, a copy of this objection has been electronically provided to the service list and to Richard Husband, Esq.



By: \_\_\_\_\_  
Michael J. Sheehan