

**THE 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 Granting Petition to Intervene

ORDER NO. 25,767

March 6, 2015

In this order we grant the intervention of PLAN for its members who are EnergyNorth customers, deny the intervention of PLAN for its members who are not EnergyNorth customers, and limit PLAN's participation in this docket to issues related to the interests of EnergyNorth customers in the prudence, justness, and reasonableness of the agreement EnergyNorth has brought to us for approval.

I. PROCEDURAL HISTORY

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (EnergyNorth) is a public utility pursuant to RSA 362:2, that provides natural gas service to approximately 86,000 customers in southern and central New Hampshire and in Berlin. On December 31, 2014, EnergyNorth filed a Petition for Approval of a Firm Transportation Agreement (Precedent Agreement) with Tennessee Gas Pipeline Company, LLC (TGP), and supporting testimony. EnergyNorth seeks pre-approval – by July 1, 2015 – of a twenty-year Precedent Agreement with TGP on the proposed Northeast Energy Delivery (NED) pipeline project. Certain terms of the Precedent Agreement are protected from disclosure to the public under RSA 91-A:5, IV. *See* Secretarial Letter (February 19, 2015) (granting EnergyNorth's motion for confidential treatment).

On February 13, 2015, the Commission convened a prehearing conference presided over by a Hearing Examiner. In addition to EnergyNorth's motion for confidential treatment, the Hearing Examiner ruled on one of two petitions to intervene. The other petition to intervene, filed by Pipeline Awareness Network of the Northeast, Inc. (PLAN), remained undecided at the close of the prehearing conference, pending the filing of responses to two record requests. Hearing Examiner's Report (February 13, 2015) at 2.

The Commission affirmed the Hearing Examiner's rulings and approved a proposed procedural schedule on February 19, 2015. Responses to the Hearing Examiner's record requests were filed on February 19 (PLAN response to Record Request #1), February 20 (Commission Staff's response to Record Request #2), and February 25 (EnergyNorth's response to Record Request #2). In addition, on March 2, 2015, PLAN filed an unanticipated reply to EnergyNorth's response to Record Request #2.

II. COMMISSION ANALYSIS

This proceeding concerns a proposed long-term contract for natural gas pipeline capacity between EnergyNorth and TGP. The Commission will determine whether the terms of the Precedent Agreement are prudent, just, and reasonable, from the perspective of an arbiter of Liberty's shareholders' and customers' interests. 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); and RSA 363:17-a (Commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities).

This proceeding does not concern and will not result in any approval of, or permissions for, siting or construction of TGP's NED project. Those matters are pending determination by other regulatory agencies, including the Federal Energy and Regulatory Commission (FERC).

In support of its request for mandatory or discretionary intervention, PLAN asserted in its petition, and later attested in an affidavit, *see* Response to Record Request 1 (February 18, 2015), that its membership includes customers of EnergyNorth as well as owners of property along the TGP pipeline route, and that these members' rights, duties, privileges and interests will be substantially affected by the outcome of this proceeding. PLAN has asked to participate in the proceeding without limitation.

EnergyNorth objects to PLAN's intervention, taking the position that PLAN has not adequately supported its assertions that its members include customers of EnergyNorth. In the alternative, EnergyNorth has asked the Commission to require PLAN to coordinate its participation with the Office of the Consumer Advocate (OCA), which is participating in the proceeding on behalf of EnergyNorth's residential customers. *See* RSA 363:28, II.

The Commission's Staff does not object to PLAN's intervention on behalf of any members who are also EnergyNorth customers. Only these member customers – who will ultimately pay the costs of the Precedent Agreement if the Commission approves it – have an interest in the Commission's determinations in this proceeding. Staff agrees with EnergyNorth's request that PLAN's participation be coordinated with the OCA.

The OCA does not object to PLAN's intervention. The OCA, however, objects to Staff's (and, presumably, EnergyNorth's) request to require PLAN's mandatory coordination with the OCA. The OCA views mandatory coordination as a limitation on its statutory right to participate in the proceeding.

Having considered PLAN's, the OCA's and Staff's positions, we 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.

To ensure an orderly and focused proceeding, we limit PLAN's participation to the interests of its EnergyNorth-customer members in the prudence, justness and reasonableness of the Precedent Agreement and its associated costs, to EnergyNorth and its customers.

While we recognize that PLAN and the OCA may have overlapping interests related to EnergyNorth's residential customers, we deny EnergyNorth's and Staff's requests to require PLAN to consolidate its participation with the OCA, because we also recognize that PLAN may seek to represent interests of commercial EnergyNorth customers. Nevertheless, to the extent possible and when interests are aligned, we encourage PLAN and the OCA to work together in the interests of the orderly and prompt conduct of the proceedings.

We also deny EnergyNorth's request for additional information about PLAN's membership. While PLAN's affidavit did not specifically identify its EnergyNorth-customer

members, we disagree that such specificity – particularly in the context of a sworn statement – is required for our ruling granting limited intervention.

Absent a confidentiality agreement between EnergyNorth and PLAN, PLAN shall not have access to confidential information produced during discovery, discussed during technical sessions, or presented at the hearing. N.H. Code Admin. Rules Puc 203.08. Upon our granting of PLAN's petition to intervene, we authorize Staff to furnish all existing, non-confidential discovery requests and responses to PLAN. Due to the timing of this order, we modify the approved procedural schedule, and extend the deadline for first round data requests from PLAN until 4:30 pm, Wednesday, March 11. EnergyNorth shall make every effort to respond prior to the March 17 technical session.

Based upon the foregoing, it is hereby

ORDERED, that PLAN's petition to intervene is GRANTED pursuant to RSA 541-A:32. I, on behalf of its members who are also customers of EnergyNorth; and it is

FURTHER ORDERED, that PLAN's petition to intervene is DENIED pursuant to RSA 541-A:32, I and II, on behalf of its members who are not EnergyNorth customers and own land along the proposed TGP pipeline route; and it is

FURTHER ORDERED, that PLAN shall abide by the scope of their participation as set forth in this order.

By order of the Public Utilities Commission of New Hampshire this sixth day of March,
2015.

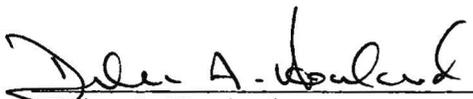


Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director