

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 18-094**

**NORTHERN UTILITIES, INC.**

**Petition for Authority to Operate in the Town of Epping**

**Order Granting Franchise Authority and Motion for Confidential Treatment**

**ORDER NO. 26,220**

**February 8, 2019**

**APPEARANCES:** Patrick Taylor, Esq., on behalf of Northern Utilities, Inc.; the Office of the Consumer Advocate, Brian Buckley, Esq., on behalf of residential ratepayers; Michael J. Sheehan, Esq., on behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, Inc.; and Lynn Fabrizio, Esq., on behalf of Commission Staff.

In this order, the Commission grants Northern authority to provide natural gas service in the Town of Epping. The Commission also requires Northern to submit certain reports on the costs and revenues associated with the service expansion.

**I. PROCEDURAL HISTORY**

On June 5, 2018, Northern Utilities, Inc. (Northern or the Company), filed a petition pursuant to RSA 374:22 and RSA 374:26 for authority to provide natural gas service as a public utility in the Town of Epping. The filing included supporting testimony and maps, and a motion for confidential treatment with respect to certain information.

On June 11, 2018, the Office of the Consumer Advocate (OCA) filed notice of its participation pursuant to RSA 363:28. On June 25, 2018, the Town of Epping filed a motion to intervene.<sup>1</sup> On June 20, 2018, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) filed a petition to intervene.

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<sup>1</sup> The Commission treated the Town's motion as a petition to intervene pursuant to N.H. Code Admin. Rules Puc 203.17 and RSA 541-A:32.

The Commission issued an order of notice on July 11, 2018. A prehearing conference and technical session were held as scheduled on July 24, 2018. At the prehearing conference, the Commission granted intervener status to the Town and denied Liberty's petition to intervene. A procedural schedule for the docket was approved on September 17, 2018; that schedule was modified on November 9, 2018, and again on December 3 and December 12.

Staff filed the direct testimony of Stephen P. Frink, Director of the Gas and Water Division, on November 15, 2018; the Town filed direct testimony of George E. Sansoucy, P.E., and Adam Munguia, Chairman of the Epping Board of Selectmen, on December 3, 2018.

On December 24, 2018, Liberty filed a renewed petition to intervene based on its filing of a competing petition for franchise rights in Epping in Docket No. DG 18-194. With its petition, Liberty included a request that the Commission not issue a decision on the Northern petition until the Commission has reviewed Liberty's petition in DG 18-194. On January 3, 2019, the Town filed an assent to Liberty's petition to intervene and request to withhold a decision until Liberty's petition in DG 18-194 is reviewed. In the alternative, the Town suggested that the two dockets be consolidated.

An evidentiary hearing was held as scheduled on January 8, 2019. At the hearing, the Commission granted Liberty limited intervention, without access to confidential information.

Northern's petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2018/18-094.html>.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. Northern

Northern is a public utility providing natural gas service to approximately 33,000 customers in 21 municipalities in southern New Hampshire and the seacoast region. Exh. 2 at 8.<sup>2</sup> Northern owns and operates natural gas distribution facilities pursuant to authority previously granted by the Commission, including in Brentwood, which is adjacent to Epping. *Id.* Northern has provided natural gas service as a regulated public utility for many years in the seacoast region and has a record of providing safe and reliable natural gas service at just and reasonable rates. *Id.* at 9. Northern also provides natural gas service in Maine and, through its affiliate Fitchburg Gas and Electric Light Company, in Massachusetts. *Id.*

Northern's plan is to install approximately six miles of new main to serve potential customers along Route 27 in Brentwood and Epping, as well as along Route 125 in Epping, including the commercial development clustered near the intersection of Routes 125 and 101. *Id.* at 18. Northern proposed a target timeframe for construction and service for an initial extension area (Zone 1) in 2019 and for a second area (Zone 2) in 2020. *Id.* at 52. Northern stated that it will construct, operate, and maintain the proposed gas main and associated facilities in accordance with all applicable federal, state, and municipal regulations. Upon Commission approval of the petition and prior to construction, Northern will obtain all necessary regulatory permits and approvals, including those required from the New Hampshire Departments of Transportation and Environmental Services. *Id.* at 8-9. Northern stated that it would file a separate petition to obtain licenses to cross public waters and state-owned lands, as applicable, pursuant to RSA 371:17, *et seq.* *Id.* at 3, 20.

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<sup>2</sup> Unless otherwise noted, references to page numbers in exhibits are to the sequential Bates numbers on the various exhibits.

Northern stated that it met with Epping officials to inform them of the proposed expansion. *Id.* at 9, 19. Northern's petition included letters of support from then-State Senator William Gannon and the Exeter Area Chamber of Commerce.<sup>3</sup> *Id.* at 39-40. Northern stated further that granting the requested operating authority in Epping would be for the public good, because the Town has experienced strong growth over the past decade and would benefit from the availability of natural gas service as a desirable alternative to other fuels historically used in New Hampshire due to its abundance, domestic availability, lower cost, and lower environmental impact. *Id.* at 10.

In objecting to Liberty's request that the Commission not rule on Northern's petition at this time, Northern stated that the Commission should not delay the orderly and prompt conduct of the proceeding or consolidate this docket with Liberty's competing franchise request in Docket No. DG 18-194. Northern requested the Commission rule on its petition for the following reasons: (1) the Liberty petition is not ripe, since Liberty is waiting for other regulatory approvals and by its own admission cannot commence construction until 2022; Liberty therefore will not be able to exercise its franchise within two years as required by law; (2) Northern is prepared to commence work and begin serving Epping customers this year; (3) a delay would impair the prompt and orderly disposition of the matter where Northern filed its petition in June of 2018 and the Commission conducted a final hearing on January 8, 2019; and (4) Northern's petition meets the public good standard. Hearing Transcript of January 8, 2019, Afternoon Session ("1/8/19 p.m. Tr.") at 94-100.

Northern also filed a Motion for Confidential Treatment and Protective Order. In its motion, Northern requested that certain testimony and exhibits be treated as confidential,

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<sup>3</sup> The Exeter Area Chamber of Commerce represents businesses in Brentwood, East Kingston, Epping, Exeter, Kensington, Kingston, Newfields, Newmarket, Raymond and Stratham.

specifically information pertaining to the Company's plans for future franchise expansion, proprietary methodologies developed to assess competitive markets and the financial viability of potential new markets, and the design and cost estimates associated with mains. Exh. 2 at 3-4. The company asserted that disclosure of the information would likely result in commercial harm to Northern and its customers as the Company's competitors could use the information to Northern's disadvantage. *Id.* at 4.

### **B. Town of Epping**

The Town testified that a request for proposals (RFP) was issued in July 2018 and that, based on responses from both Northern and Liberty, Epping's Board of Selectmen "voted to express preference for the Liberty Utilities RFP response over the Northern Utilities RFP response." *See, e.g.*, Exh. 4, Prefiled Direct Testimony of Adam Munguia (Munguia) at 2, 3, and Prefiled Direct Testimony of George E. Sansoucy, P.E. (Sansoucy) at 4.<sup>4</sup> The Town requested that the Commission suspend its review of Northern's petition to allow Liberty to submit its own petition to serve natural gas in Epping. Exh. 4, Munguia at 4-5; 1/8/19 p.m. Tr. at 89. The Town stated its desire that franchise rights not be granted to Northern without a comparative analysis of Liberty's petition. Exh. 4, Munguia at 5; Town Assent to Liberty's Petition to Intervene at 2 (1/3/19); 1/8/19 p.m. Tr. at 89. The Town concluded that infrastructure in a larger area of town, as Liberty proposed in its response to the Town's RFP, would serve the public good more than a smaller area, as Northern has proposed. 1/8/19 p.m. Tr. at 90. Mr. Munguia acknowledged, however, that the two competing petitions did not provide an "apples-to-apples" comparison. Hearing Transcript of January 8, 2019, Morning Session ("1/8/19 a.m. Tr.") at 85. Both

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<sup>4</sup> The Town did not Bates stamp the pages of its filings or otherwise provide page numbers, as required by Puc 203.22(c); therefore, citations herein refer to specific documents by name, as filed by the Town, with pages counted from the first physical page of each document. Counsel for the Town is advised to become familiar with the Commission's rules of practice and procedure, including proper filing of documents and marking of exhibits.

witnesses for the Town stated that they would “absolutely” support Northern’s petition if Liberty’s petition were not under consideration at the same time. 1/8/19 a.m. Tr. at 87-88; 1/8/19 p.m. Tr. at 54, 87-88.

According to the Town’s filings, Liberty has proposed a target timeframe of 2022 or later for the initiation of construction and service in Epping, contingent on approval of a separate petition in Docket DG 17-198 for the future construction of a natural gas pipeline that would extend through Epping and a number of other towns. Exh. 4, Attachment to Direct Testimony of A. Munguia at 25. At hearing, the Town acknowledged that Liberty’s proposal is contingent on a number of regulatory approvals. 1/8/19 p.m. Tr. at 16.

### **C. Liberty**

Recognizing that Northern has successfully and safely operated its business for years, Liberty did not challenge Northern’s technical, managerial, or financial ability to develop the Epping franchise. 1/8/19 p.m. Tr. at 84. Liberty, however, objected to the Commission awarding the Epping franchise to Northern before it considered Liberty’s petition for franchise rights in the same town. *Id.* at 84 and 89. Liberty contended that it also has the technical, managerial, and financial ability to operate the Epping franchise. *Id.* at 85. Liberty argued that it can serve more residential customers than Northern, based on the geography of the Town; that its residential rates are lower than Northern’s; that its shareholders have offered a conversion fund for customers; and that the Town has expressed a preference for Liberty. *Id.* at 86-88. Liberty also argued that a delay on a decision on Northern’s petition would be minimal, with the expectation that an order on Liberty’s petition could be made within six months. *Id.* at 88.

**D. OCA**

The OCA generally supported the granting of franchise rights to Northern, based on the Company's willingness to serve residential customers should expansion to customers be economic and not unfairly shift the costs of expansion to existing customers. *Id.* at 90. The OCA stated that it saw a fatal flaw in the analysis provided by the Town's expert witness in support of Liberty's proposal – that is, the lack of accounting for the rate and bill impacts associated with Liberty's proposed Granite Bridge facility, which is a prerequisite of Liberty serving the franchise area. *Id.* at 90-91.

The OCA also agreed with the testimony provided by Staff's witness regarding the potential for disallowances in a future rate case based on projected net present values, which might vary from what Northern has estimated for the proposed expansion. *Id.* at 91. In conclusion, the OCA did not object to the Company's request for a franchise, on the conditions outlined by Staff through the testimony of Mr. Frink. *Id.*

**E. Staff**

Staff recommended that the Commission issue an order without delay approving Northern's petition for franchise authority to serve natural gas in the Town of Epping, with certain reporting requirements, based on the Company's filings as well as the testimony provided at the evidentiary hearing. 1/8/19 p.m. Tr. at 92. Based on its review of all financial filings accompanying the petition, as well as clarifications and further information provided in responses to discovery, Staff concluded that Northern has the requisite financial, technical, and managerial capability to operate in the service territory, as proposed in its petition. *Id.* According to Staff, the results of the Discounted Cash Flow (DCF) analysis conducted by

Northern indicate that the proposed expansion will benefit existing customers through lower rates. *Id.*

Staff agreed with Northern that, because the Company currently provides service in Brentwood, within a mile of the Epping town line, that Northern should be able to offer service to a significant number of large commercial customers that are currently using propane. *Id.* at 92-93. Staff concluded that large commercial customers are likely to realize substantial energy savings from converting to natural gas. *Id.* at 93. Finally, Staff found that Northern's expansion of its service territory into Epping would not adversely affect existing gas supply resources. Exh. 3 at 3.

Staff recommended that Northern be required to file a detailed cost summary within 60 days after the in-service date of the proposed line extensions, with a variance analysis of those costs compared to the cost projections used in the updated DCF analysis filed by Northern in support of its petition. In addition, Staff recommended that Northern be required to provide a variance analysis of the DCF analysis provided in the attachment to its response to Staff's Tech 1-2 data request, submitted as Exh. 8, and an updated analysis that uses actual costs and revenues and updated projections when Northern files its next general rate case. According to Staff, the requested reports will be useful in evaluating Northern's cost and revenue forecasting, its ability to manage project costs, its market planning and execution, and the effectiveness of its DCF modeling in determining the profitability of the expansion project. Exh. 3 at 9.

### **III. COMMISSION ANALYSIS**

#### **A. Northern's Franchise Petition and Liberty's Motion to Suspend**

Before Northern can provide natural gas service "in any town in which it shall not already be engaged in such business," Northern must first obtain "the permission and approval of

the commission.” RSA 374:22, I. The Commission exercises its authority under RSA 374:22 by assessing the managerial, technical, and financial expertise of the petitioner to determine whether the request is for the public good. *Northern Utilities, Inc.*, Order No. 25,700 at 4-5 (August 1, 2014).

Based on the record in this case, the Commission finds that Northern has the required capabilities to provide natural gas service in Epping and that the proposed expansion of its service territories is for the public good. Northern is an established public utility that has maintained its natural gas distribution system in this state for many years consistent with its obligation to provide safe and adequate service. Northern proposes to start construction of the gas main expansion from Brentwood into Epping during the summer of 2019 and to initiate service to customers in the winter of 2019/2020.

Staff, the OCA, the Town, and Liberty all stated that Northern has the technical, managerial, and financial ability to develop the Epping franchise. Northern is already within one mile of the Epping town boundary and Epping has indicated support for the expansion of natural gas service, as proposed by Northern.

Accordingly, based on the record in this proceeding, we grant Northern’s petition for franchise rights in the Town of Epping, as filed, with conditions. We condition Northern’s franchise on the reporting requirements proposed by Staff through the testimony of Mr. Frink. Northern has noted its willingness to comply with those requirements. We find that the recommended reporting requirements will help in determining whether Northern’s expansion into Epping is economic and does not unfairly burden Northern’s existing ratepayers. We will require the following cost report and analyses, as proposed by Staff:

1. a detailed cost summary within 60 days after the in-service date of Phase 1 and Phase 2 line extensions,<sup>5</sup> with a variance analysis of those costs compared to the cost projections used in Exhibit 8;
2. a variance analysis comparing the DCF analysis in Exhibit 8 and a DCF analysis using actual costs and revenues and projected future revenues when Northern files its next general rate case.

We deny Liberty's request that we delay ruling on Northern's petition. The basis for Liberty's request, which is supported by the Town, is that Liberty has its own plans for Epping. Liberty suggests that we and the Town would be better served by having us consider the two proposals together. We disagree. The Commission finds no basis on which to suspend Northern's petition until a regulatory review of Liberty's petition is completed. The Commission will review Liberty's petition on its own merits in a separate proceeding.

#### **B. Motion for Confidential Treatment**

Under RSA ch. 91-A, records of "confidential, commercial, or financial information" are exempt from public disclosure. *See* RSA 91-A:5, IV. The New Hampshire Supreme Court and the Commission apply a three-step test to determine whether information falls within the scope of that statutory exemption. *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 26,166 at 5 (August 1, 2018) citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008). Under this test, the Commission first inquires whether the information at issue involves a privacy interest and then asks if there is a public interest in disclosure. The Commission then balances those competing interests and decides whether disclosure is appropriate. *Id.*

Applying the *Lambert* test, the Commission grants Northern's motion. The Commission routinely protects information related to commercial customer fuel pricing and usage profile

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<sup>5</sup> Northern's proposed Zone 1 and Zone 2 extension areas.

information, as well as the financial and commercially sensitive information of third parties, including cost estimates and related information factored into proprietary financial and market analyses, such as the DCF analysis and market assessments conducted by Northern in this docket. *See, e.g., Northern Utilities, Inc., Order No. 26,178 at 15 (October 3, 2018).*

While the public may have some interest in the information, such as aiding its understanding of the Commission's analysis, we find that the public's interest is outweighed by the commercial harm that disclosure could cause. To the extent the DCF analysis contains details addressing financial and commercially sensitive information, such as customer fuel pricing and usage profiles, the Company's conversion factors and their derivation by customer class, cost estimates of service line installations by customer class, and confidential information included in the Company's financial model, those details are likewise protected from disclosure.

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

**ORDERED**, that Liberty's request that the Commission not issue an order in this proceeding at this time is DENIED; and it is

**FURTHER ORDERED**, that the request filed by Northern for approval of franchise authority in the Town of Epping is GRANTED; and it is

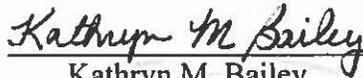
**FURTHER ORDERED**, that the motion for confidential treatment filed by Northern is GRANTED; and it is

**FURTHER ORDERED**, that Northern develop and file a detailed cost summary within 60 days after the in-service date of Phase 1 and Phase 2 line extensions, with a variance analysis of those costs compared to the cost projections used in Exhibit 8; and it is

**FURTHER ORDERED**, that Northern file a variance analysis comparing the DCF analysis in Exhibit 8 and a DCF analysis using actual costs and revenues and projected future revenues when Northern files its next general rate.

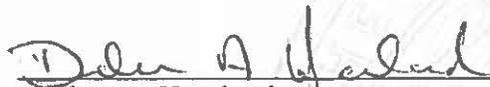
By order of the Public Utilities Commission of New Hampshire this eighth day of February, 2019.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director

