

BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Re. Liberty Utilities (EnergyNorth Natural Gas) Corp.

Docket No. DG 15-289

**MOTION *IN LIMINE* FOR AN ORDER DETERMINING THAT CERTAIN EVIDENCE  
MAY BE ADMITTED INTO THE RECORD**

NOW COMES Ariel Arwen, an intervenor with full party status in the above-captioned proceeding, and moves *in limine* pursuant to Rule Puc 203.07 for an order determining prior to the commencement of the merits hearing on March 9, 2016 that certain evidence may be admitted into the record. Ruling on these issues prior to the commencement of the hearing will serve the cause of administrative efficiency and the effective use of the parties' resources. It is also in the interest of justice because it will allow me, as a citizen-intervenor not represented by counsel, to address (and hopefully persuade the Commission to resolve in my favor) certain issues that are critical to the positions I am advancing before the Commission but would be challenging for me as a non-lawyer to litigate in real time over the course of the hearings.

**A. Scope of RSA 374:26 Review**

RSA 374:26 provides that the Commission may only grant the pending petition upon a finding that the exercise of the requested utility franchise would be "for the public good." When conducting such a review, the Commission has historically considered the "managerial, technical and financial abilities" of the petitioner – "among other factors." *Hampstead Area Water Co.*, Order No. 25,803 (Docket No. DW 15-254, Aug. 24, 2015) at 4 (citing *Lower Bartlett Water Precinct*, 85 NH PUC 635, 641-643 (2000)). In particular, the Commission has long treated as a key question "the need for the service" the petitioner intends to provide pursuant to the franchise. *See, e.g., New Hampshire Yankee Electric Corp.*, Order No. 17245 (Docket No. DF 84-299, Oct. 12, 1984), 1984 WL 1020562 at \*4; *EUA Power Corp.*, Order No. 18,058 (Docket Nos. DF 85-338 and DF 85-351, Jan. 15, 1986), 1986 WL 1299865; *Claremont Gas Light Co.*, Order No. 18,755 (Docket No. DE 86-239, Jul. 13, 1987), 1987 WL 1497248; *Resort Waste Services Corp.*, Order No. 19,016 (Docket No. DS 87-218, Feb. 23, 1988), 1988 WL 1663932; *West Epping Water Co.*, Order No. 19, 112 (Docket Nos. DE 87-095 and DE 87-248, Jun. 27, 1988), 1988 WL 1664000; *Northern Utilities, Inc.*, Order No. 19, 147 (Docket No. DE 88-096, Aug. 22, 1988), 1988 WL 1664020. The Commission has regarded other practical and policy implications germane to the RSA 374:26 inquiry as well. *See, e.g., Restructuring New Hampshire's Electric Utility Industry*, Order No. 22,514 (Docket No. 96-150, Feb. 28, 1997), 1997 WL 155394 at \*137 (effect on competition).

Although there have been many RSA 374:26 determinations in the Commission's recent history that have focused exclusively on the managerial, technical and financial capacity of the petitioner, this is because no other issues germane to the "for the public good" standard were raised in those proceedings. That stands in stark contrast to the situation here. In my view, it would be unconscionable, and therefore not "for the public good" pursuant to RSA 374:26, for the Commission to grant a utility franchise that further commits New Hampshire to reliance on fossil fuels in light of the greenhouse gas crisis we confront at the local, national and planetary scale. To avoid a protracted argument about this during the upcoming merits hearing, I seek a determination *in limine* that the scope of the RSA 374:26 inquiry is not limited to managerial, financial and technical expertise and encompasses as well questions related to the need (in light of the greenhouse gas crisis and other considerations) for the service the petitioner intends to provide. I further request that the Commission clarify *in limine* that the burden of demonstrating the need for the service at issue rests with the petitioner, rather than requiring me in particular to prove that the petition is not for the public good, given the urgent need to reduce greenhouse gas emissions. *See* Rule Puc 203.25 (allocating the burden of proof to "the party seeking relief through a petition, application, motion or complaint").

## **B. Admissibility of Certain Evidence**

### **a. Climate Action Plan**

A key contention I intend to make at hearing is that the Commission should deny the petition because the service that Petitioner intends to provide would be inconsistent with the greenhouse gas emission reduction goals in the New Hampshire Climate Action Plan. The Petitioner has refused to provide a meaningful response in discovery to my query about whether the service the Petitioner intends to provide would thwart the achievement of these goals in the long run. My motion to compel a substantive response to this discovery query remains pending. At this point, I can only assume Petitioner will succeed in resisting my efforts to require it to provide analysis of this question, and will persist with its contentions that it lacks sufficient knowledge to frame an adequate response. The Petitioner has also argued that the consistency of its proposal with the Climate Action Plan is irrelevant because the Plan lacks the force of law.

The advisory and aspirational nature of the Climate Action Plan notwithstanding, lack of consistency with the plan is relevant to the public interest determination the Commission must make under RSA 374:26. Because I am not presenting any direct testimony in the proceeding, and cannot assume any efforts I might undertake to add evidence (including exhibits) to the record through cross-examination will succeed, I respectfully request a determination *in limine* that the Climate Action Plan can be made a part of the record in this proceeding.

## **b. Petitioner Discovery Responses**

For similar reasons, I request that the Commission determine *in limine* that certain of the Petitioner's responses to my discovery requests be placed in the record. All are highly probative of the extent to which granting the petition is consistent with the public interest but, for the reasons already stated, I cannot simply assume hostile witnesses and parties will cooperate in my non-attorney efforts to cause them to be admitted into evidence. These documents are:

Petitioner 'sResponse to Arwen 1-9, including Attachment Arwen 1-9.1 and Attachment Arwen 1-9.2: This response gives the useful/depreciable lives of various components to be included in the rate base. I intend to compare these useful lives with the time frame for greenhouse gas emission reductions in the Climate Action Plan, among other things.

Petitioner 'sResponse to Arwen 1-10: This is the Petitioner's initial attempt to answer the question of how the proposed expansion of the Liberty Utilities service territory is consistent with the goals of reducing overall greenhouse gas emissions pursuant to the Climate Action Plan. The response cites U.S. Energy Information Administration data, "Carbon Dioxide Emissions Coefficients," which will be highly relevant additions to the record.

Petitioner 'sResponses to Arwen 2-4, 2-6, 2-7, 2-9 and 2-10: These responses are relevant to the issues raised in the responses to Arwen 1-9 and Arwen 1-10, concerning methane leaks, landfill gas and other issues related to greenhouse gas emissions.

Petitioner 'sResponse to Arwen 3-1, including any supplemental response arising out of the pending motion to compel discovery: For reasons already stated, the Commission should have the benefit of Petitioner's view, and/or its refusal or inability to form a view, of the consistency of its proposed utility service with the Climate Action Plan.

Petitioner 'sResponse to Staff 3-9: This is the discovery response of which an unredacted version is being sought via the pending motion to compel discovery. For the reasons stated in that motion, this document should be made part of the record in unredacted form.

## **C. Administrative Notice of Certain Information**

Rule Puc203.27(a) requires the Commission to take administrative notice when a party offers any fact that could be judicially noticed in a New Hampshire court, the relevant portion of the record of other Commission proceedings, and "[g]enerally recognized technical or scientific facts within the commission's specialized

knowledge.” Pursuant to this standard, and in the interest of administrative efficiency, I request that the Commission rule *in limine* that it will take administrative notice of:

U.S. Energy Information Administration data, “Carbon Dioxide Emissions Coefficients”, [https://www.eia.gov/environment/emissions/co2\\_vol\\_mass.cfm](https://www.eia.gov/environment/emissions/co2_vol_mass.cfm). (Petitioner cites this data in its response to Arwen 1-10. I intend to use it in conversions from fuel volume to carbon dioxide emissions.)

Baseline data for New Hampshire carbon dioxide emissions for 1980 through 2013, published by the U.S. Energy Information Administration (EIA) at <http://www.eia.gov/environment/emissions/state/excel/new%20hampshire.xls>

U.S. Energy Information Administration Profile and Energy Estimates for New Hampshire, <http://www.eia.gov/state/data.cfm?sid=NH#ConsumptionExpenditures>, and US EIA data that can be accessed through links on that page.

U.S. Energy Information Administration fuel data specific to New Hampshire, including but not limited to Supply, Demand, Consumption, Sales, at <http://www.eia.gov/state/search/#?1=96&2=211&5=126&r=false>

All of the above-referenced information is relevant to the question of whether greenhouse gas impacts render the petition inconsistent with the public good and thus not suitable for granting under RSA 374:26.

#### **D. Conclusion**

Resolving the evidentiary issues raised above will allow the Commission to use the hearing time reserved for this case in an efficient manner, rather than squandering hearing time on arguments about the scope of the record. It will allow parties, particularly those not represented by counsel, to focus their attention during the hearing on the merits of the Petition rather than on evidentiary issues. Therefore, the Commission should determine *in limine* that the above-referenced documents and information will be a part of the record in this proceeding. For the same reasons, the Commission should take this opportunity to resolve any uncertainty prior to hearing about the broad scope of the RSA 374:26 inquiry.

RESPECTFULLY SUBMITTED this 17th day of February, 2016.

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 17, 2016, I served an electronic copy of this filing with each person identified on the Commission's service list for Docket No. DG-15-289 pursuant to Rule Puc 203.02(a)

/s/

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Ariel Arwen