

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DG 15-289

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES

Petition for Franchise Approval

**Response to Ariel Arwen Motion *In Limine* for an Order Determining
That Certain Evidence may be Admitted into the Record**

Now comes Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or “the Company”), by and through its attorneys, Orr & Reno, P.A., and responds to Ariel Arwen’s Motion *in Limine* for an Order Determining that Certain Evidence may be Admitted into the Record dated February 17, 2016 in the above-captioned docket (“Motion *in Limine*”). In support of this Response EnergyNorth states the following:

1. On February 17, 2016 Ms. Arwen filed the Motion *in Limine*, requesting that the Commission issue an order prior to commencement of the hearing on the merits in the above-captioned docket allowing certain evidence to be admitted into the record. Ms. Arwen is asking that the Commission make the Climate Action Plan part of the record in this proceeding. She is also asking the Commission to allow certain of EnergyNorth’s responses to her discovery requests and one response to a Staff data request to be placed in the record: EnergyNorth’s response to Arwen 1-9 (along with the two attachments to this response 1-9.1 and 1-9.2) and EnergyNorth’s responses to Arwen 1-10, Arwen 2-4, Arwen 2-6, Arwen 2-7, Arwen 2-9, Arwen 2-10, Arwen 3-1, and Staff 3-9. In addition, in her *Motion in Limine* Ms. Arwen is asking the Commission to take administrative notice of U.S.

Energy Information Administration (“USEIA”) data on carbon dioxide coefficients; baseline data for NH carbon dioxide emissions for 1980 through 2013; USEIA Profile and Energy Estimates for New Hampshire; and USEIA fuel data specific to New Hampshire. Ms. Arwen argues that the information which she is asking the Commission to take administrative notice of “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.” Motion *in Limine*, at 4.

2. On February 19, 2016 the Commission issued Order No. 25,868 in this docket. In that Order the Commission denied Ms. Arwen’s Motion to Compel a further response to Arwen 3-1. In denying the Motion to Compel the Commission noted that it enjoys broad discretion in the management of discovery, but that if it perceives “no circumstance in which the requested data would be relevant”, it would deny a request to compel production. Order No. 25,868, at 4-5. The Commission went on to say: “We do not find questions relating to the Climate Action Plan, adopted by the New Hampshire Climate Change Policy Task Force in March 2009, relevant to our inquiry concerning Liberty’s ability to operate as a natural gas public utility in Lebanon and Hanover, New Hampshire.” Order No. 25,686, at 5.

3. Given what the Commission said in Order No. 25,868 as noted above, EnergyNorth submits that Ms. Arwen’s request to make the Climate Action Plan a part of the record in this proceeding should be denied as being irrelevant.

4. In so far as the responses to data requests which Ms. Arwen is seeking to introduce in the proceeding EnergyNorth submits that for the same reason noted above, the Commission should deny the admission of the responses to Arwen 1-10, Arwen 2-10 and

Arwen 3-1 because they relate to the Climate Action Plan, which the Commission has determined is not relevant to this docket.

5. Because the response to Arwen 1-9 pertains to classes of assets to be added to the rate base this response should be allowed into the record. Similarly, because the response to Arwen 2-4 pertains to the depreciable lives of various asset classes this response should also be allowed. Arwen 2-6 asks for information about carbon dioxide emissions and the comparison of emissions from natural gas to emissions from home heating oil and propane. EnergyNorth considers this response to be relevant to the issue of whether or not it would be for the public good to provide natural gas as an alternative to home heating oil and propane to customers in the Hanover/Lebanon area. The response to Arwen 2-7 pertains to liquefied natural gas (“LNG”) operations and potential sources of methane emissions. Because EnergyNorth’s proposal in this docket is to use LNG as one of the fuels to supply Hanover and Lebanon the Company considers this response relevant to this proceeding and thus it should be allowed. The response to Arwen 2-9 pertains to EnergyNorth’s exploration of methane currently being collected and flared at the Lebanon Landfill as an additional supply option and for this reason it should be allowed.

6. In Order No. 25,868 the Commission granted Ms. Arwen’s request that a portion of the response to Staff 3-9 pertaining to estimated rates should be public information and granted EnergyNorth’s request that the financial forecasts contained in the response to Staff 3-9 remain confidential. The Commission then required EnergyNorth to file a redacted form of the response to Staff 3-9 that shows column and row headings and the estimated customer rates. This Order also allowed Ms. Arwen to obtain an unredacted answer to Staff 3-9 which contains the confidential material provided she signs a non-

disclosure agreement.

7. Given what the Commission said about the response to Staff 3-9 in Order No. 25,868 the Commission should allow the redacted response to be placed into the public record, but should provide that the unredacted response, which contains the financial forecasts, remain confidential. This means that the unredacted response should only be placed in the record under seal.

8. In terms of the documents with regard to which Ms. Arwen has asked the Commission to take administrative notice, the first document (USEIA carbon dioxide emissions coefficients) pertains to carbon dioxide emissions and the response to Arwen 2-6 which EnergyNorth has noted above should be allowed in the record. This data request and the response to it concerns the fact that natural gas produces less carbon dioxide emissions when combusted compared with the fuels currently being utilized in Hanover and Lebanon. While EnergyNorth considers this particular information relevant to this proceeding, given the Commission's ruling on the Climate Action Plan the Company believes that taking administrative notice of this document should be for the limited purpose of accessing information that relates to the comparison of emissions from the combustion of natural gas as compared to other fuels like home heating oil and propane. Therefore EnergyNorth does not object to taking administrative notice of this document for this limited purpose.

9. The second document with regard to which Ms. Arwen is requesting the Commission to take administrative notice concerns baseline data for NH carbon dioxide emissions for 1980 through 2013. This document is referred to in Arwen 1-10, which EnergyNorth has argued should not be allowed into the record because it pertains to the Climate Action Plan. Therefore, given the Commission's ruling on the Climate Action Plan

EnergyNorth believes that the Commission should deny the request to take administrative notice of this document.

10. The third document pertains to USEIA energy estimates for New Hampshire and the fourth document pertains to USEIA fuel data specific to New Hampshire. EnergyNorth takes no position on these two requests, but recommends that if the Commission is inclined to grant the request to take administrative notice that it deny the request to the extent that these documents contain information relevant to the Climate Action Plan and that it only give these documents the weight it deems appropriate.

Wherefore, EnergyNorth respectfully requests that the New Hampshire Public Utilities Commission:

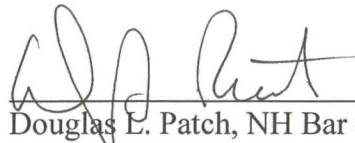
- A) Deny Ariel Arwen's request to admit the Climate Action Plan;
- B) Deny Ariel Arwen's request to admit the responses to Arwen 1-10, 2-10 and 3-1;
- C) Grant Ariel Arwen's request to admit the responses to Arwen 1-9, 2-4, 2-6, 2-7 and 2-9;
- D) Grant Ariel Arwen's request to admit the redacted response to Staff 3-9 and admit the unredacted response under seal;
- E) Grant or deny Ariel Arwen's request to take administrative notice of various USEIA documents consistent with the reasons noted above; and
- F) Grant such other relief as may be just and equitable.

Respectfully submitted,

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

By Its Attorneys

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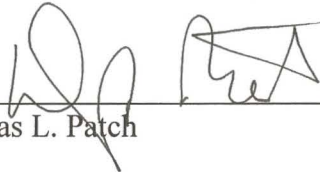
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Dated: February 26, 2016

Certificate of Service

A copy of this Response has been served by email this 26th day of February 2016 on the service list in DG 15-289.

Dated: February 26, 2016



Douglas L. Patch

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