REDACTED

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DG 15-289

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities
Petition for Expansion of Franchise to the Town of Hanover and the City of Lebanon, New Hampshire

REBUTTAL TESTIMONY

OF

WILLIAM J. CLARK
STEVEN E. MULLEN

February 26, 2016

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I. Introduction and Qualifications

Q. Please state your name and business address and positions.

A. My name is William J. Clark. My business address is 15 Buttrick Road, Londonderry, NH 03053. My title is Business Development Professional.

A. My name is Steven E. Mullen. My business address is 15 Buttrick Road, Londonderry, NH 03053. My title is Manager, Rates and Regulatory.

Q. By whom are you employed?

A. We are employed by Liberty Utilities Service Corp. ("Liberty Utilities") which provides services to Liberty Utilities (EnergyNorth Natural Gas) Corp. ("EnergyNorth" or "the Company") and Liberty Utilities (Granite State Electric) Corp.

Q. On whose behalf are you testifying today?

A. We are testifying on behalf of EnergyNorth.

Q. Did you both previously file testimony in this proceeding?

A. Yes. We both submitted pre-filed direct testimony that accompanied the Company's July 24, 2015, petition for franchise approval to provide natural gas service to customers in the Town of Hanover and the City of Lebanon.

Q. What is the purpose of your testimony today?

A. Our testimony provides comments in response to the testimonies of Stephen P. Frink of Commission Staff ("Staff") and Dr. Pradip Chattopadhyay of the Office of Consumer Advocate ("OCA") filed on January 22, 2016. Staff and OCA both expressed various concerns with the Company's filing and did not recommend approval at this time. Our testimony addresses those concerns, as well as certain other arguments made by Staff regarding EnergyNorth's main extension policy and its evaluation of the financial viability of main expansion projects.

II. Summary of Staff and OCA Testimony

Q. Please briefly summarize the concerns expressed by Staff and the OCA.

A. Staff and the OCA had shared concerns regarding what they viewed as the speculative nature of the revenue and sales estimates. These concerns were due in part to recent decreases in the market prices for alternative fuels and a lack of customer commitments, particularly from large customers. They also had a concern that without such commitments there was a possibility that if sales do not reach expectations, EnergyNorth's other customers could end up subsidizing the customers in the communities of Hanover and Lebanon, and/or the Commission could find that certain of the assets are not used and useful and deny full recovery of those assets.

Q. Can the Company address those concerns?

A. Yes. First, with respect to customer commitments, on February 5, 2016, the Company executed a Letter of Intent ("LOI") with Kleen, Inc. ("Kleen"), a commercial laundry and dry cleaning facility, which was described in the prefiled testimony of Mr. Clark as a potential anchor customer.[1] A copy of that LOI is included as Rebuttal Attachment WJC/SEM-1. Pursuant to that LOI, EnergyNorth has "the exclusive right to negotiate with Kleen for the delivery, storage, vaporization, odorization, and distribution of natural gas services to Kleen." for a period of one year and then continuing on a monthly basis thereafter. Kleen currently uses [redacted] annual dekatherms (ADTH) at its commercial facility, which is located approximately 5.5 miles from EnergyNorth's proposed LNG/CNG facility.

Q. Will bringing service to the Kleen facility help encourage additional customers to take service?

A. Yes. EnergyNorth has had discussions regarding gas service with five other large potential commercial customers and numerous small commercial customers along that route. In addition, residential customers along the route have received direct mail solicitations. To date, there have been expressions of interest (i.e., "interested" or "very interested") from 60 potential commercial and 36 potential residential customers in that

[1] See Attachment WJC-4 to Mr. Clark's July 24, 2015, testimony for additional information about Kleen.

area. Having a signed LOI from a large anchor customer will certainly aid in future conversations with potential new gas customers because it makes the possibility of natural gas service more of a reality in the potential customers' minds.

Q. How does the Company plan to address the concerns of Staff and the OCA with respect to potential cross-subsidization of Hanover and Lebanon customers by other EnergyNorth customers if sufficient revenues do not materialize to cover the revenue requirement associated with installed distribution investments in Hanover and Lebanon?

A. The Company is willing to discuss a mechanism that will ensure that any revenue requirement not covered by revenues from existing or anticipated customers (i.e., those who have signed service agreements, but have not yet begun taking service) will not be recovered from other EnergyNorth customers. Such a mechanism will alleviate concerns over the potential impact to EnergyNorth's distribution customers outside of the Hanover/Lebanon service territory, as well as concerns regarding potential insufficient sales volumes due to the current low market prices for competing fuels. Such a mechanism will also provide an incentive for the Company to sign up as many customers as possible, to avoid the potential exclusion of certain costs from recovery through distribution rates.

Q. Do the same cross-subsidization concerns also exist on the supply side?

A. No. As stated in the Company's filing dated July 24, 2015, because this is an off-pipeline system, the costs of the supply facility, as well as the commodity costs, will be included in a Cost of Gas rate that will be specific to the Hanover/Lebanon system and charged only to customers in those communities.

III. <u>Response to Staff Testimony Regarding EnergyNorth's Main Extension Policy</u>

Q. Please provide some background regarding EnergyNorth's current main extension policy.

A. EnergyNorth's service and main extension policy, included as Rebuttal Attachment WJC/SEM-2, was approved by the Commission in DG 13-198[2] and resulted from a settlement agreement between EnergyNorth, Staff and the OCA. Among other things, the policy, which is also referred to as Section 7 of EnergyNorth's tariff, provides that in evaluating whether a customer contribution is required for service and main extensions, a comparison must be made between the estimated construction cost and six years of annual margin for commercial and industrial customers, and eight years of annual margin for residential customers. In addition, for all extensions, the policy provides that "[i]f the main extension will serve more than one location, the Company will calculate the sum of the Estimated Annual Margin from all metered services and the sum of the Estimated

[2] See Order No. 25,624 (January 14, 2014).

Cost of Construction for the main extension and all service extensions to determine whether any payment will be required from the customers to be served. The Company will also include in such calculations the Estimated Annual Margin and the Estimated Cost of Construction for service extensions for all existing premises which the Company reasonably anticipates will take service, *using the assumption that 60% of such premises will take service*." (Emphasis added.) In its order approving the settlement agreement in DG 13-198, the Commission found that the main extension policy appropriately balanced the interests of current customers, new customers and EnergyNorth's investors and was consistent with the public interest. In its summary of the positions of the parties in that proceeding, the Commission also noted that Staff supported the agreement, and that Staff "noted that the proposed language for Section 7 was likely to stimulate growth in the customer base of Liberty, was consistent with accepted accounting and financial standards and was beneficial for existing Liberty customers." Order No. 25,624 at 5.

Q. Did the Company analyze its potential investment in the distribution system in Hanover and Lebanon consistent with its tariff, including the use of the 60% assumption highlighted above?

A. Yes.

Q. What comments did Staff have in this proceeding with respect to EnergyNorth's main extension policy?

A. Staff began its discussion of this topic by stating that New Hampshire's two natural gas utilities, EnergyNorth and Northern Utilities ("Northern"), have terms and conditions in their tariffs that serve as investment criteria that must be satisfied to expand their respective gas distribution systems. Staff stated that although the main extension policies of the two utilities differ in that Northern's uses a discounted cash flow ("DCF") methodology and EnergyNorth's uses a multi-year revenue test, "[b]oth utilities have roughly the same investment criteria."[3] Further, Staff states that "[a]lthough the Liberty line extension policy does not cite a payback period, the implicit payback is similar to Northern's…"[4] Despite those similarities, Staff stated that EnergyNorth's main extension policy is not applicable to this filing and that our analysis should have included a discounted cash flow ("DCF') analysis because, according to Staff, that is the Commission's "preferred methodology" for evaluating the viability of major capital projects.

[3] Frink testimony at 3, line 16.
[4] Id. at 4, lines 11-12.

Q. Please comment on Staff's position with respect to the appropriate methodology to use to evaluate the financial viability of expansion projects.

A. Staff's testimony on this topic is perplexing in that it recommends that EnergyNorth ignore the provisions of its tariff for assessing certain expansion projects. Staff's testimony states that the terms and conditions in the tariffs of the gas utilities provide the investment criteria that must be met to expand the system, and that both utilities have roughly the same investment criteria, yet EnergyNorth's tariff is not appropriate to use in performing the analysis. We note that in DG 14-154, Northern sought approval to operate in the Town of Brentwood and performed its analysis using a DCF analysis, which most importantly, is in accordance with its tariff. Given the similarities mentioned above, it is not logical that EnergyNorth should be criticized in this proceeding for following its tariff, as it is required to do.

Q. Why does Staff think that EnergyNorth's tariff is inapplicable to this proceeding?

A. Staff's position is that a utility's tariff is not applicable outside of its existing franchise area. While that is a true statement for day-to-day operations, it ignores the fact that in making a request for franchise approval an applicant must state the terms and conditions under which service will be provided in the franchise area. The Company's filing stated that, with the exception of the Cost of Gas provision, all proposed terms and conditions of service would be in accordance with EnergyNorth's existing tariff, which would include the service and main extension policy.[5] Therefore, once the franchise is granted and construction of the distribution system commences, any customers taking service *will* be located in EnergyNorth's existing franchise. EnergyNorth cannot then decide to apply different criteria to those customers, because such application would violate the terms of its tariff.

Q. What did Staff provide in support of its position that a DCF analysis was required?

A. Staff cited Order No. 22,297 (Aug. 28, 1996) and Order No. 22,667 (July 22, 1997). The 1996 order stated that the DCF methodology was the "appropriate framework in which to evaluate the financial viability of large system expansion projects," and the 1997 order simply said that it was an "accepted" method. In addition, there is a distinction between both of those dockets and the instant proceeding, because each of the prior cases included a request for approval of special contracts with large customers and required contributions from customers toward the cost of construction. Pursuant to RSA 378:18 and Puc 1606 of the Commission's administrative rules, when requesting approval of a special contract, the utility must make a showing of the special circumstances justifying the departure from existing tariff rates. The demonstration of the special circumstances to support a special contract can require a much more in-depth analysis than would otherwise be required. The Company's filing in this proceeding did not include a request to approve any special contracts. Should the Company wish to enter into a special

[5] Mullen July 24, 2015 testimony at lines 8-10.

contract with potential anchor customers in Hanover or Lebanon, those contracts would be submitted to the Commission for review and approval.

Q. Despite Staff's position that the gas utilities have roughly the same criteria, does Staff have a preference of one policy over the other?

A. Yes. Based on its testimony, Staff prefers the use of the DCF methodology found in Northern's tariff. While that may be Staff's stated preference in this proceeding, it is also important to note that Staff supported the settlement agreement in DG 13-198 and the Commission approved the changes to the service and main extension policy in that proceeding.

Q. Did Staff have any further comments about the appropriateness of using EnergyNorth's revenue test methodology for evaluating its proposed expansion into Hanover and Lebanon?

A. Yes. Staff stated that the revenue test methodology in EnergyNorth's main extension policy is only appropriate for evaluating "smaller" main extension projects.

Q. Did Staff provide a definition of what constitutes a "smaller" main extension in its testimony?

A. No. In response to discovery in this proceeding, Staff stated that "the Commission has not established a specific cost at which an expansion constitutes a 'major expansion.'"[6]

[6] See Rebuttal Attachment WJC/SEM-3. Staff's response to LU 1-3.

In that same response, Staff then determined a $1 million cut-off point for smaller versus larger expansion projects by using EnergyNorth's 2014 budget of $5 million for capital growth projects and applying a 20% factor[7] to it. It appears that Staff's delineation between "smaller" and "large" expansion projects—and, therefore, the use of revenue test versus a DCF analysis— is somewhat arbitrary and can vary from year to year based on a utility's annual growth budget.

Q. Was any distinction between "smaller" and "large" expansion projects made in DG 13-198 when the current main extension policy was approved?

A. No.

Q. Did Staff also comment on the appropriateness of the revenue test included in EnergyNorth's tariff in light of changes in fuel prices?

A. Yes. Staff stated that given current market prices, particularly for propane and No. 2 fuel oil, the financial incentive to convert to natural gas is reduced as compared to fuel prices at the time the main extension policy was approved and, therefore, the revenue test may no longer be appropriate.

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[7] Staff's response to LU 1-3 provided no support for the 20% factor or as to why the annual growth budget was the appropriate measuring stick.

Q. Have natural gas prices declined along with those of propane and No. 2 fuel oil?

A. Yes. In fact, over the current winter period EnergyNorth has decreased its Cost of Gas significantly due to changing market conditions, so the financial incentive to convert to natural gas certainly still exists for customers. In addition, there are many other reasons a customer may convert to natural gas in addition to price, as mentioned in Staff's testimony[8] and in response to a discovery request.[9] Those other factors include environmental benefits, reduced equipment maintenance costs, reduced trucking and on-site storage, reliability, and a multitude of uses for activities such as heating, cooking, manufacturing and others.

Q. Would adoption of Staff's position regarding main extensions make it difficult to deal with from a business perspective?

A. Yes. Appropriate planning for expansion of EnergyNorth's distribution system requires the establishment of specific guidelines with respect to whether customers should be charged an up-front Contribution in Aid of Construction. It would be extremely difficult, if not impossible, to plan for expansion if there were a subjective determination of whether to apply the policy (e.g., whether a project is small or large, or whether alternative fuel prices have decreased).

[8] Frink testimony at 13, lines 2-6.
[9] See Rebuttal Attachment WJC/SEM-4, Staff's response to LU 1-10.

Not only must a utility know what the rules are when planning its business, but potential customers must also be aware of the criteria that will be used when evaluating projects for future service. Customers are made aware of the criteria through the terms and conditions found in a utility's tariff and can utilize that information in making the determination on whether to take service from the utility.

We have no conceptual issue with the use of a DCF analysis. However, that analysis is not specified in EnergyNorth's tariff. EnergyNorth cannot deviate from the terms and conditions of its tariff without Commission approval (such as under a special contract).

For all of the above reasons, we disagree with Staff that the main extension policy in EnergyNorth's tariff should be abandoned in this particular case. That policy has been approved by the Commission and has already produced significant growth in customers. Unless and until there is sufficient reason to change it, and such change is approved by the Commission, EnergyNorth must continue to follow that policy.

Q. Does this conclude your testimony?

A. Yes, it does.