

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

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7 RE: DG 15-442
LIBERTY UTILITIES (ENERGYNORTH NATURAL
8 GAS) CORP D/B/A LIBERTY UTILITIES:
9 Petition for Approval of a Gas
Franchise in Jaffrey, Rindge, Swanzey
and Winchester.
(Prehearing conference)10
11 PRESENT: Chairman Martin P. Honigberg, Presiding
12 Commissioner Robert R. Scott
Commissioner Kathryn M. Bailey
13 Sandy Deno, Clerk14
15
16 APPEARANCES: Reptg. Liberty Utilities (EnergyNorth
Natural Gas) Corp. d/b/a Liberty Utilities:
17 Michael J. Sheehan, Esq.
18 Reptg. Northern Utilities, Inc.:
Patrick H. Taylor, Esq.
19 Reptg. Municipalities of Rindge, et al:
20 Richard A. Kanoff, Esq. (Burns & Levinson)
21 Saqib Hossain, Esq. (Burns & Levinson)22
23 Court Reporter: Steven E. Patnaude, LCR No. 52
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APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:
Susan Chamberlin, Esq., Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Alexander F. Speidel, Esq.
Stephen Frink, Asst. Dir./Gas & Water Div.
Robert Wyatt, Asst. Dir./Safety Division

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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: Good morning
3 everyone. We're here this morning on Docket DG 15-442,
4 which is Liberty Utilities (EnergyNorth Natural Gas)
5 Corp.'s Petition for franchise approval in Jaffrey,
6 Rindge, Swanzey, and Winchester. For the most part, in a
7 prehearing conference, we deal with preliminary motions
8 that we can deal with. We allow the parties to state
9 their positions. But, for the most part, we leave you to
10 your technical session after a short time.

11 But we will want to hear from you this
12 morning. And, so, let's find out who's here and take
13 appearances.

14 MR. SHEEHAN: Good morning,
15 Commissioners. For the first time, I am Mike Sheehan, for
16 Liberty Utilities. And, present with me is Steve Mullen
17 and Mike Licata. Thank you.

18 CHAIRMAN HONIGBERG: Welcome,
19 Mr. Sheehan.

20 MR. SHEEHAN: Thank you.

21 MR. TAYLOR: Good morning,
22 Commissioners. My name is Patrick Taylor, Senior Counsel
23 for Northern Utilities, Incorporated. And, we filed a
24 Petition to Intervene in this case.

1 MR. KANOFF: Good morning,
2 Commissioners. Richard Kanoff, Burns & Levinson, and with
3 me is Saqib Hossain, also from the firm of Burns &
4 Levinson, he's making an appearance here. And, we
5 represent the municipalities as stated in the Petition to
6 Intervene.

7 MS. CHAMBERLIN: Good morning -- good
8 morning. Susan Chamberlin, Consumer Advocate for the
9 residential ratepayers.

10 MR. SPEIDEL: Good morning,
11 Commissioners. Alexander Speidel, representing the Staff
12 of the Commission. And, I have with me Stephen Frink,
13 Assistant Director of the Gas and Water Division, and
14 Robert Wyatt, Assistant Director of the Safety Division.

15 CHAIRMAN HONIGBERG: All right. Let's
16 see what we've got for preliminary matters issues we can
17 deal with. I know that the Company filed a request that
18 we waive the requirement that they file tariffs with their
19 petition, since they're planning on relying on their
20 existing tariffs. I assume there's no objection to that
21 motion?

22 *(Atty. Speidel conferring with Staff*
23 *representatives.)*

24 MR. SPEIDEL: Staff does not object to

1 that request.

2 CHAIRMAN HONIGBERG: You had us on pins
3 and needles, Mr. Speidel.

4 MR. SPEIDEL: I'm sorry.

5 CHAIRMAN HONIGBERG: We'll grant that
6 motion. I know there are intervention motions. The time
7 for response has not run.

8 Mr. Sheehan, do you expect to be
9 objecting to one or more of those motions?

10 MR. SHEEHAN: We filed responses last
11 night. And, I filed the paper copies this morning.
12 And, --

13 CHAIRMAN HONIGBERG: Excellent. I
14 wonder where they are?

15 MR. SHEEHAN: I mean, they went out by
16 e-mail 2:30 or 3:00 yesterday afternoon.

17 CHAIRMAN HONIGBERG: Care to give us the
18 highlights?

19 MR. SHEEHAN: Sure. We object to
20 Unitil's request, and we partially object to the
21 municipalities. Two of the municipalities are the towns
22 in which we are seeking a franchise; we do not object to
23 them, and that is Winchester and Rindge. The others are
24 towns along the route of the pipeline that are not subject

1 to this Petition, and we object to their formal
2 intervention. Obviously, they can comment as they see fit
3 as a nonparty.

4 That's a 10,000 view -- 10,000 foot view
5 of the objections.

6 CHAIRMAN HONIGBERG: We're probably not
7 going to rule on those as we sit here. We'd probably like
8 to see the Company's objection and have an opportunity to
9 consider the issues.

10 I know that, for the purposes of the
11 technical session, which you'll be discussing scheduling,
12 I think you can proceed as you normally would.

13 Mr. Taylor, refresh my memory. What's
14 the state of play of your petition in the other Liberty
15 franchising docket that's out there?

16 MR. TAYLOR: That's still pending. And,
17 so, we don't have a resolution on that yet.

18 CHAIRMAN HONIGBERG: I think you'll be
19 getting an order fairly soon on that. And, I wouldn't be
20 too comfortable about asserting yourself too aggressively
21 in the technical session.

22 Mr. Kanoff, Pelham?

23 MR. KANOFF: Yes.

24 CHAIRMAN HONIGBERG: Pelham intervened

1 in the other matter, through its town administrator.

2 MR. KANOFF: Yes, they did.

3 CHAIRMAN HONIGBERG: You're aware of
4 that, right?

5 MR. KANOFF: Yes, sir.

6 CHAIRMAN HONIGBERG: You want them in
7 here, and the other towns along the pipeline. You want to
8 give us a little bit more of an explanation as to why
9 they're appropriate intervenors in this?

10 MR. KANOFF: Sure. From the Petition to
11 Intervene, and I don't know if you had a chance to review
12 it yet, but --

13 CHAIRMAN HONIGBERG: Yes. We have read
14 your petition. That one, all three of us have read.

15 MR. KANOFF: Okay. So, as you know,
16 we've got thirteen towns that want to participate in this,
17 two of which are not objected to. So, it really leaves
18 eleven in question.

19 And, we look at this, and you're all
20 familiar from DG 380 [14-380?] of the Company's plans,
21 basically, regionally to expand along the NED route into
22 the communities that are referenced as municipalities in
23 the Petition to Intervene. And, the case essentially is a
24 regional expansion request. This is the first stage of

1 that. There are different towns in the Petition to
2 Intervene that will be subject, and the Company has
3 testified in DG 380 [14-380?] that they will be subject,
4 to franchise expansion cases down the road. And, these
5 towns, the eleven that are not specifically unobjected to,
6 want to begin to understand the Company's plans. The
7 proceedings that they will file are likely going to echo
8 what they have done here. They want to begin to get
9 information about schedule, about rates, about different
10 impacts that they will incur down the road. So, that's
11 the -- kind of the framework. Most of that is in the
12 Petition to Intervene.

13 And, there's a couple things that I do
14 want to say legally that I think you should consider as
15 well, because that implicates the request. There is a --
16 as issues, legal issues, that involve all these towns,
17 and, again, the framework here is that the towns have been
18 designated as towns that will be subject to franchise
19 rights. And, the question is really whether this
20 Petition, as it effects not only the two towns in play,
21 but those other towns, is premature. Is it timely now to
22 have a franchise request, given the uncertainties around
23 the NED project? And, that question involves all the
24 towns.

1 And, the second question that may be in
2 play here, is it appropriate to segment the Company's
3 franchise choices in, you know, involving three
4 communities -- four communities, two of which are clients,
5 as opposed to doing this in one specific hearing at some
6 other time?

7 So, those -- those questions really do
8 implicate all these communities. And, we can't get at
9 them unless we're representing them all.

10 CHAIRMAN HONIGBERG: Okay. That, that
11 last sentence, I understood what you were -- I understood
12 that. Mr. Sheehan, I'm going to give you a chance to
13 respond to much of what he said, but I want to follow up
14 on something before I give you a shot.

15 What do those towns that are not the
16 subject of this Petition lose by not being intervenors,
17 when their lawyer is here and they can read everything?

18 MR. KANOFF: My initial -- I think that
19 what they lose is, they lose substantive rights. It's the
20 same thing that any --

21 CHAIRMAN HONIGBERG: What substantive
22 right do they lose? Please explain.

23 MR. KANOFF: No, they would lose the
24 right to appeal, as one example, as not being intervenors.

1 So, that's a substantive right.

2 CHAIRMAN HONIGBERG: If their rights are
3 directly affected by the order, even if they're not
4 intervenors, doesn't the New Hampshire Supreme Court allow
5 them an appeal right?

6 MR. KANOFF: Maybe as *amicus*, but not as
7 direct --

8 CHAIRMAN HONIGBERG: Ooh, I'm not sure
9 about that. You might want to read that, read up on that
10 one.

11 MR. KANOFF: I'll certainly recheck.

12 CHAIRMAN HONIGBERG: But, in any
13 event, --

14 MR. KANOFF: Yes.

15 CHAIRMAN HONIGBERG: -- there are towns
16 that are here specifically representing identical
17 interests, are there not?

18 MR. KANOFF: I think an argument could
19 be made that the towns, if they're not allowed in, that it
20 would be more difficult to make a segmentation argument
21 than if they were allowed in. I'll just say it that way.

22 CHAIRMAN HONIGBERG: Okay.

23 MR. KANOFF: And, I also think the
24 question is, really, the way we look at it, particularly

1 among your -- with your discretionary intervention
2 authority, we look at it as the converse of what you
3 asked, which is, really, what's the disadvantage of
4 allowing the towns in?

5 CHAIRMAN HONIGBERG: Precedent.

6 MR. KANOFF: Fair enough.

7 CHAIRMAN HONIGBERG: Ms. Chamberlin,
8 before we circle back to you, --

9 MS. CHAMBERLIN: Well, may I speak in
10 support of the intervention?

11 CHAIRMAN HONIGBERG: Sure.

12 MS. CHAMBERLIN: There are very few ways
13 for the public to get information about these proceedings.
14 And, it vastly increases transparency if the towns are
15 allowed to intervene. Even if -- I don't expect them all
16 to show up, but, to allow them to have the intervention,
17 to allow them access, they also get access to discovery
18 material, which would not be allowed to non-intervenors.

19 The practical matter, and I -- having
20 worked with municipalities, I don't know that they could
21 even fund a representative, if they are not formal
22 intervenors into the proceeding. I don't know that, but
23 that's an issue.

24 So, I don't see any harm in increasing

1 the transparency of the hearing by allowing the
2 intervention. I think the harm would come if it limits
3 the orderly, timely, progressive nature of the proceeding,
4 and there's no evidence that that's going to happen. And,
5 in fact, there are methods of limiting questions, even
6 limiting discovery, if necessary, if things go beyond the
7 initial proceeding. But I certainly support the
8 intervention.

9 CHAIRMAN HONIGBERG: If there were
10 another law firm here offering to represent the other
11 towns, then I would -- I might be looking at some
12 different -- a different set of issues, but there's one
13 lawyer who represents all these towns. They're going to
14 get everything. They're going to see and understand
15 everything that's going on, because he's their lawyer,
16 too.

17 If he represents Pelham, the people --
18 the town officials of Pelham are going to talk to their
19 lawyer and they're going to find out what's going on.
20 Whether he's entered -- whether they are parties to this
21 or not, he's still their lawyer. Isn't that right,
22 Ms. Chamberlin?

23 MS. CHAMBERLIN: Lawyers cannot -- I
24 mean, whether he represents them or not, they will not

1 have a formal window into the proceeding. I mean, you can
2 say, "Sure, you can go and get all the pleadings online.
3 You can't get the discovery." People don't understand the
4 process.

5 I think, if towns find out that they're
6 not allowed in, I think that sends a negative signal to
7 communities that they are not welcome in the process.
8 And, I don't think that's true.

9 CHAIRMAN HONIGBERG: Mr. Sheehan. I
10 assume you want to say something?

11 MR. SHEEHAN: Yes. I thought you were
12 posing a question.

13 CHAIRMAN HONIGBERG: It did have that
14 tone of voice, didn't I? Sorry about that.

15 MR. SHEEHAN: I'll just run through the
16 points. First is a clarification. Mr. Kanoff's motion
17 references the 13 towns, he also references a municipal
18 coalition of sorts. My reading of his motion was that he
19 was seeking intervention solely on behalf of the towns,
20 and not this coalition. I just wanted to clarify that's
21 how we were understanding his motion, and the prayer for
22 relief says on behalf of the towns.

23 On the merits, Mr. Kanoff's argument
24 that "these other towns may be subject to franchise

1 requests in the future", that sentence alone betrays the
2 weakness of the argument. There is no interest now.

3 If the Company were to seek franchise in
4 some of the other towns, obviously, we would be back here
5 in a proceeding that would notify them, and they would
6 have every right to be involved.

7 Each town is different, different
8 economics, different possible customers, different
9 terrain. So, everyone rises or falls on its own merits.
10 These four towns subject today, we have done a thorough
11 preliminary analysis that says we can make it work in
12 these towns. And, when the time comes for the other
13 towns, if they're on a side of a mountain, far from a
14 pipe, we probably wouldn't, as an example.

15 An analogy is helpful. If this was a
16 Pennichuck Water case, and we were expanding into, I don't
17 know Pennichuck, but say they're not in Amherst, and we
18 were expanding into Amherst, would Pelham have a right to
19 come in and participate in that case? Probably not. And,
20 this is a similar kind of thing. We are expanding our
21 pipeline into towns, those towns have the right to
22 participate.

23 As far as the timeliness, the
24 pipeline -- the Commission has approved our agreement to

1 take gas off the pipeline. And, we all know it will be
2 several years at a minimum before that pipeline is built.
3 I think their projected date is Fall of '18. So, we are
4 just doing our due diligence now to be ready if it
5 happens.

6 We would be lax if we waited for the
7 pipeline to run through these towns, and then come here
8 and say "by the way, we would like a franchise in these
9 towns." So, we are setting the stage for the pipeline.
10 And, also, if the pipeline founders, we have the
11 technology to provide CNG. So, that is another option
12 that would be a backup.

13 I think you are correct on the "rights"
14 issue. These other towns don't have rights in this case.
15 If, for some reason, an order out of this case affected
16 them substantially, they do have the right to appeal. I
17 can't see that happening, but that option is there. So,
18 they are protected, should somehow you issue an order that
19 closed the door, some legal door in the Town of Pelham,
20 they would have the right to appeal that case.

21 And, finally, I think, as a practical
22 matter, as your questions illustrate, there is no harm by
23 excluding the other towns. They will have access to
24 everything, either in the normal course, as an outside

1 observer, and it's changed a bit because of the common
2 counsel. Certainly, he can't disclose confidential
3 information to those other towns, but he can certainly
4 keep them apprised. And, I'm not sure, other than the
5 dollars, particular dollars of these towns, there won't be
6 much confidential information.

7 So, for those reasons, we think the two
8 towns that he represents that are subject of this Petition
9 should be allowed in; the others should not.

10 CHAIRMAN HONIGBERG: Mr. Speidel, and
11 I'll give you an opportunity to weigh in on this if you
12 want, but I want to ask a specific question about access
13 to discovery. Ms. Chamberlin made a statement about who
14 can get discovery. I just want to make sure everyone
15 understands who can get what, as a member of the public,
16 as it pertains to discovery?

17 MR. SPEIDEL: Well, Mr. Chairman, that
18 would relate to matters of procedure, and regularization
19 of procedure that is associated with the status of formal
20 intervention. If you are a formal intervenor, you have
21 automatic rights to be formally added to the service list
22 for discovery and to receive discovery in real-time. You
23 also have the right to propound discovery, I think that's
24 the key.

1 So, if you have one of these towns
2 interested in propounding discovery questions, if they're
3 formal intervenors, they have the right to do so. If they
4 don't, it becomes rather awkward. And, Staff has
5 carefully policed the difference between an actual
6 intervenor and a mere interested party, or, for lack of a
7 better term, sort of a side observer, say, a member of the
8 public that would happen to sit in the back of this
9 hearing room, maybe you sit in on a tech session at random
10 moments, or monitor the docket online.

11 I don't know if this would be a good
12 opportunity, I will let you respond to that, but Staff
13 does have some thoughts about the towns' intervention.

14 CHAIRMAN HONIGBERG: Well, I just want
15 to make sure that we understand what a member of the
16 public, a non -- someone who has no status in the case,
17 can they come in here and say "I'd like to see discovery
18 materials from a particular docket"?

19 MR. SPEIDEL: That's essentially a 91-A
20 request. And, so, that's a little clunkier than having
21 that interested member of the public participate as a full
22 intervenor from day one, engaged in discovery, both asking
23 and receiving answers to questions, and also having the
24 right to have standing to essentially make even a

1 recommendation to the Commission.

2 CHAIRMAN HONIGBERG: Oh, I -- well,
3 recommendations, I think anybody can make. Anybody can
4 file anything. But I understand that they wouldn't have a
5 right to propound discovery and move to compel, if
6 questions asked by someone else aren't answered. And, it
7 wouldn't be -- they wouldn't have that kind of status.

8 But, in terms of accessing the
9 discovery, it's subject to 91-A. And, unless it's
10 confidential, it's available for review by members of the
11 public, copying at a reasonable charge, with all the
12 provisions of 91-A, correct?

13 MR. SPEIDEL: Yes. But it's more
14 administratively efficient to simply have them be a party,
15 in an instance if, for instance, Subpart II intervention
16 is available to them, and have them receive it
17 electronically via the service list in real-time, to
18 enhance their participation.

19 So, you have one avenue of participation
20 that's indirect and rather awkward, and it serves as an
21 administrative burden on internal staff, and is not as
22 timely as -- or as efficient as simply receiving the
23 material in real-time.

24 CHAIRMAN HONIGBERG: All right. I think

1 we're -- Commissioner Bailey.

2 COMMISSIONER BAILEY: Would it be
3 inappropriate for the lawyer to share the discovery
4 responses with other towns, without a 91-A request? I
5 mean, is that -- is there anything wrong with that?

6 MR. SPEIDEL: I'd rather not express an
7 opinion about that, because there could be circumstances
8 where it would be inappropriate, and there could be
9 circumstances where it's appropriate. If there's some,
10 for instance, a non-disclosure agreement, --

11 COMMISSIONER BAILEY: Well, if it's
12 confidential, I understand. That's a different story.

13 MR. SPEIDEL: Well, but even -- how to
14 explain. I don't want to opine on that without knowing
15 the facts. It's a hypothetical. And, I don't want to
16 have a response that says that it's appropriate or
17 inappropriate in all circumstances. It's a
18 facts-and-circumstances determination.

19 COMMISSIONER BAILEY: Okay.

20 CHAIRMAN HONIGBERG: All right. I think
21 we've almost morphed into your comments on the merits of
22 the interventions. You want to offer up your opinions
23 now?

24 MR. SPEIDEL: Yes. Staff has a few

1 ideas. I guess, if we could begin with the Northern
2 intervention request, Staff has no position on that.

3 Regarding the towns' intervention
4 request, I think it would be useful for the Commission to
5 have a sense of a potential approach for analysis in terms
6 of the different zones of interest. We have two towns
7 that are part of the combined municipal intervention
8 request that are actually within the area of the
9 franchise. Those two towns are Rindge and Winchester. In
10 the opinion of Staff, we support their intervention in
11 this proceeding, under Subpart I intervention standards,
12 that is mandatory intervention standards.

13 CHAIRMAN HONIGBERG: As a spoiler alert,
14 I think, Mr. Kanoff, you should feel pretty comfortable
15 that you're going to be able to participate on behalf of
16 those two towns.

17 MR. SPEIDEL: So, those two towns, they
18 lie within the franchise territory in question, and
19 municipalities have a right to participate to examine what
20 the implications are for their own communities.

21 Jaffrey and Swanzey have elected not to
22 participate, but they were also part of this actual
23 instant filing for the franchise.

24 The remaining towns, there's a couple of

1 zonal interests that would tend to weigh in favor of their
2 participation under Subpart II, permissive intervention
3 authority. Staff would not object to their participation
4 on that basis for the following reasons: There is a
5 general principle of state and municipality comity, in
6 wherein we have towns that have a great deal of
7 responsibilities in terms of land use and economic
8 development and other elements. And, they should have
9 good, fair, and open access to state government
10 proceedings in New Hampshire to be able to examine issues
11 that are of concern to them.

12 And, the key here is we have a series of
13 towns that all have something in common. They're along
14 the route of the proposed NED Pipeline, of which Liberty
15 is a potential subscriber through a precedent agreement.
16 If, for instance, just to throw out a couple towns, if we
17 had Errol or Plaistow or some random towns that have
18 nothing to do with the NED pipeline coming in, it would be
19 a question of "well, what is your basis for interest and
20 participation in this proceeding?"

21 But all these towns have the common
22 thread of the pipeline. And, therefore, I think Staff
23 would not object to their participation under Subpart II,
24 because, again, it would be administratively efficient.

1 It would enable them to have real-time information,
2 propound discovery. And, I think Mr. Kanoff did indicate
3 that, in his view, there are commonalities regarding
4 Liberty's activities related to the NED pipeline that are
5 of mutual concern, and they may want to weigh in on that.

6 So, we're open-minded about their
7 participation. Again, it's not some town that's 80,
8 100 miles away from the NED pipeline, they're all along
9 it. And, therefore, we would support Part I intervention
10 by Rindge and Winchester, and not object to Subpart II
11 intervention by the remaining towns. Thank you.

12 CHAIRMAN HONIGBERG: Mr. Taylor.

13 MR. TAYLOR: Thank you, Commissioner. I
14 was hoping to -- I'm mindful that there's an order coming
15 in the Pelham docket, and that that may inform this
16 docket. But we hadn't had a chance to be heard on the
17 petition in that case, because it was a late-filed
18 intervention. We were timely in our petition in this
19 case. And, I was hoping to have an opportunity to be
20 heard on the petition, just to explain our interest in
21 this case.

22 CHAIRMAN HONIGBERG: Go ahead,
23 Mr. Taylor.

24 *[Court reporter interruption.]*

1 CHAIRMAN HONIGBERG: Off the record.

2 *[Brief off-the-record discussion*
3 *ensued.]*

4 MR. TAYLOR: Northern has a direct
5 interest in this case, because the outcome of this docket
6 is very likely going to affect the way that it does
7 business going forward. Northern hasn't taken a position
8 on Liberty's Petition in this docket, but our interest is
9 very much related to the manner in which they've proposed
10 to expand into these towns and the manner in which they
11 have requested the franchises.

12 In our view or our reading of the
13 Petition, it appears that Liberty is departing from the
14 use of a discounted cash flow analysis for the purposes of
15 determining the economic viability of the expansion into
16 these towns. That's something that, if there is going to
17 be the development of an economic analysis in this docket
18 that is different than what has typically been adhered to
19 in the past, that's something that's going to affect the
20 way that Northern -- directly affect the way that Northern
21 does business and evaluates projects going forward in the
22 future.

23 Like Liberty, Northern very much
24 supports gas expansion, natural gas expansion within the

1 State of New Hampshire. And, so, it is something that is
2 really going to affect the Company directly. And, we do
3 feel that we should have a voice in the way that that goes
4 forward.

5 Similarly, there appear to be some
6 changes in the way that these investments would be treated
7 for ratemaking purposes, in terms of what gets included
8 and what doesn't get included. And, that is also
9 something that is going to affect Northern's evaluation of
10 its own projects going forward and the way that it does
11 business.

12 And, so, we certainly have very direct
13 interests in that way, and that the outcome of this docket
14 is going to directly affect us. And, we do need the
15 ability, we believe, to participate in this docket.

16 Similarly, the manner in which the
17 Commission evaluates requests for franchises is also going
18 to be an issue in this case. That's something that we
19 have an interest in. The proposal is based on potential
20 customers. It's based on a potential source of supply
21 that's coming in. It includes a proposal for backup in
22 LNG, if the gas pipeline, for whatever reason, is built.
23 And, so, they're requesting that they be granted a
24 franchise in this area, I think, in a way that departs

1 somewhat from the traditional way of doing it. And,
2 again, that's something where, you know, and we're not
3 saying that we support it or that we're against it, it's
4 just something that we're the only other natural gas
5 distribution company in the state. There are issues in
6 this docket that are going to directly affect the way that
7 we do business, and in the Pelham docket as well. And, we
8 really would appreciate the opportunity to have full
9 intervenor status and participate.

10 CHAIRMAN HONIGBERG: What's the limiting
11 principle on that? Doesn't every utility in every context
12 have an interest in how its brothers and sisters in the
13 industry are being regulated by the state? I don't see
14 how to limit that theory that you've just spun out to
15 Liberty and Eversource, and Unitil, in the electric, and
16 every water company coming in to every water docket.

17 MR. TAYLOR: Well, I think -- I think
18 the distinction in this case, from just sort of a
19 run-of-the-mill docket, where a company comes in, and
20 pursuant to either precedent or the regulations that are
21 in place, go through the process that has been in place
22 for many years.

23 Here, we have a petition -- we have,
24 sort of in two petitions that are now before the

1 Commission, that are proposing the development of natural
2 gas in the state and the granting of franchises that, in
3 our view, departs from the manner in which it's been done.
4 And, so, we have an interest in that. Because we are a
5 company that is going to be seeking a franchise expansion
6 in the future, is going to be seeking to expand its system
7 in the future. And, the outcome of this docket is going
8 to affect the way that we are able to do that in the
9 future.

10 And, so, if there is going to be the
11 development of a new either economic analysis or analysis
12 of what's required for the granting of a franchise, that's
13 something that Northern should have a voice in, because
14 it's going to affect the way that we do business going
15 forward. It's not the same as just they have a rate case
16 that's come in, and we're coming in to, you know, to
17 assert some principle in our interest.

18 This is something where there's actually
19 potentially going to be a change in the way that the
20 Commission evaluates these things. And, so, we really do
21 feel that we have a very direct interest in it. And, it's
22 much different than a lot of the cases that have been
23 cited in the objections from Liberty, which there are
24 people who have either tangential, you know, tangential

1 interests or want to come in for informational purposes.
2 This is something where, you know, the utility may very
3 well be able to participate in a very robust way, and we
4 would like the opportunity to do that.

5 CHAIRMAN HONIGBERG: Why is it not
6 sufficient for you to follow this closely, and be an
7 attentive reader of the schedule on the internet, read all
8 those pleadings, see the schedule, come to every public
9 event, and file comments and serve in that capacity? What
10 would intervenor status give you that you don't already
11 have?

12 MR. TAYLOR: It would give us the
13 opportunity to propound discovery. It would give us
14 the --

15 CHAIRMAN HONIGBERG: On whom? On whom?
16 On staff? Or, on Liberty?

17 MR. TAYLOR: I am not entirely sure at
18 this point. I mean, I think it depends, as the docket
19 goes along, we may have an interest. But it also gives us
20 an opportunity to, if necessary, put in our own testimony
21 and have discovery given to us. This is something where,
22 you know, it's not just a matter of seeing, because if
23 things begin to go in a direction in this docket, and
24 we're just sort of on the outside, and we need to

1 participate and we need to articulate ourselves, I
2 appreciate the ability to offer comments, but the ability
3 to actually put in testimony, the ability to take
4 discovery, the ability to participate in technical
5 sessions, the ability to participate in the hearing, these
6 are all going to be, I think, very vital to us as a
7 company that operates as a natural gas distribution
8 utility in this state that is going to be seeking to
9 expand its franchise and its system in the future.

10 CHAIRMAN HONIGBERG: Ms. Chamberlin, the
11 time for responding to Northern's motion hasn't run. Do
12 you anticipate taking any position on Northern's motion?

13 MS. CHAMBERLIN: I don't anticipate,
14 generally speaking, as long as they do not digress into
15 irrelevant matters, I have no objection to their
16 participation.

17 CHAIRMAN HONIGBERG: All right. Does
18 anyone have anything else on interventions? It looks
19 like, Mr. Sheehan, you have something?

20 MR. SHEEHAN: Just briefly. I covered
21 Mr. Taylor's points in my filing. But, at a high level,
22 from their motion and from what we heard today, it sounds
23 like they want to be on guard of a policy change that the
24 Commission may take in response to our filing, and maybe

1 going a way they do or don't like. And, as you suggest
2 from your questions, they have every right to file a
3 comprehensive brief to say "it looks like Liberty wants to
4 go down this road, you shouldn't do that because", and
5 they can argue till their heart's content of why that's a
6 bad policy.

7 And, second, even if you go down that
8 road and issue an order in this case that is a policy that
9 they don't like, that doesn't govern them. They file
10 their franchise request in a town in their neck of the
11 woods, and they say "Listen, you did this in the Liberty
12 case. We disagreed with that, and we filed so. Here's
13 how we want to do it, and here's why." And, then you get
14 to address their filing on the merits.

15 And, as an aside, for example, the DCF
16 argument, that's not in our tariff anymore. We have a
17 different way of doing that in our tariff that's been
18 approved by the Commission. So, there's one issue where
19 that policy change has already been approved by the
20 Commission on how we project whether an expansion is
21 economic.

22 CHAIRMAN HONIGBERG: And, Mr. Sheehan, I
23 appreciate what you just said. But I also anticipate the
24 possibility that Mr. Taylor may like very much what you're

1 doing.

2 MR. SHEEHAN: True.

3 CHAIRMAN HONIGBERG: And, may see
4 resistance from Staff, and may want to litigate with you.
5 And, which would be odd a situation to put Staff in, not
6 odd in that way, but odd in that you'd have an intervenor
7 arguing with Staff about how it's working with one of
8 its -- with someone else.

9 MR. SHEEHAN: And, that's very true.
10 And, Mr. Taylor called me, and we discussed this, and he
11 said "we very well may support your petition", and we
12 understand that. But, you know, this isn't a fight, if
13 you will, between us. It's more, as you suggest, a
14 precedent thing. If they're allowed in this case, on this
15 showing, what's to prevent the next case coming in? It
16 just opens a door that I don't think needs to be opened.
17 I'm not sure they're prejudiced by standing on the
18 sidelines and watching as you suggest.

19 And, if they're in this case and can
20 propound discovery, the discovery really is "is it economy
21 to extend a pipe down Route 10?" Now, Unitil has no care
22 about that. That's really what this case is about. There
23 aren't, Mr. Taylor suggests, policy changes. Really, I'm
24 not sure there are any, and he may take issue with that.

1 But this is a case of whether we can serve this town --
2 these towns under the broad standard of a franchise
3 expansion. And, the nuts and bolts of it aren't really
4 policy decisions to begin with.

5 CHAIRMAN HONIGBERG: All right. Does
6 anyone have anything else on intervention?

7 *[No verbal response]*

8 CHAIRMAN HONIGBERG: We're going to take
9 the pending motions under advisement and issue an order as
10 quickly as we can.

11 I want to go off the record for just one
12 second.

13 *[Brief off-the-record discussion*
14 *ensued.]*

15 CHAIRMAN HONIGBERG: All right. We're
16 back on the record. We're going to go around and get
17 people's preliminary positions, understanding that we are
18 just at the prehearing conference. Mr. Sheehan.

19 MR. SHEEHAN: Thank you. As stated in
20 our Petition, this is a request for Liberty to expand to
21 four towns near Keene and near the proposed pipeline that
22 we would like permission to serve. The standard for that
23 is "whether the Company is capable of doing so?" There is
24 more language to that standard, but that's the gist of it.

1 We believe we have made a preliminary showing that we are
2 comparable in our filing and our testimony. We believe,
3 through discovery, that capability will be borne out.
4 And, at the close of this case, we believe that and we
5 will ask the Commission to approve our request to serve
6 those four towns. Thank you.

7 CHAIRMAN HONIGBERG: Mr. Taylor.

8 MR. TAYLOR: Thank you. Northern takes
9 no position on Liberty's Petition at this point.

10 As for our own Petition to Intervene, we
11 believe that Northern meets the standard set forth in RSA
12 541-A:32, I, for mandatory inclusion. Our rights and
13 interests are directly affected in this case. And, the
14 interests of justice and the orderly prompt conduct of the
15 proceedings is not going to be impaired by our
16 participation. We're not here to make mischief. And, I
17 think that our participation in this docket will be of
18 considerable value to all the parties. Thanks.

19 CHAIRMAN HONIGBERG: That's -- I don't
20 recall hearing the "value" offer before. What value do
21 you anticipate bringing to the table?

22 MR. TAYLOR: Well, just the fact that
23 there is going to be the development of policy in this
24 case. We're a natural gas distribution company in this

1 state. And, I think that our participation in this docket
2 will round it out in such a way that it will be valuable
3 to the participants, as well as the public.

4 CHAIRMAN HONIGBERG: Thank you,
5 Mr. Taylor. Mr. Kanoff.

6 MR. KANOFF: Yes. The Towns echo your
7 statement in the order of notice of what the issues are
8 here. So, we looked at the issues that are in play on
9 Page 2 of the order, and specifically would participate
10 with those specific issues in mind.

11 As it relates to the specifics of the
12 filing, we would be looking at the impacts on the
13 community, with respect to health and safety. We'd be
14 looking at costs, rates, timing, schedule, and the normal
15 things that would go with any municipality understanding a
16 review of this type of ongoing construction project. But
17 the depth of the intervention is informed by the issues
18 raised in the notice.

19 CHAIRMAN HONIGBERG: Thank you, Mr.
20 Kanoff. Ms. Chamberlin.

21 MS. CHAMBERLIN: Thank you. The OCA
22 looks forward to exploring the economics of the franchise
23 development. We will be looking for opportunities for
24 residential customers, and having that come as soon as

1 possible. Often is the case that the large C&I customers
2 will get a hook-up, and residential customers are left out
3 in the cold. So, that's what we will be looking for.

4 CHAIRMAN HONIGBERG: Thank you,
5 Ms. Chamberlin. Mr. Speidel.

6 MR. SPEIDEL: Thank you, Mr. Chairman.
7 The Staff has examined the Petition as filed, and has come
8 to the initial conclusion that the request for the
9 franchise territory in question is premature, and that
10 more analysis would be needed to determine the financial
11 merits of the proposed expansion. Staff has had a
12 developing position, based on the Commission's past
13 precedent and our own research, that the discounted cash
14 flow, or so-called "DCF" methodology for franchise
15 expansions, would be the "best practices" approach for
16 major expansions such as that contemplated within this
17 instant filing.

18 So, Staff expects to have a good deal of
19 discovery to enter into and on an ongoing basis in this
20 proceeding, prior to the issuance of any recommendation.

21 But I think we can throw out to the
22 Company the potential suggestion that they may wish to
23 withdraw the filing and resubmit it at a more advance
24 timeframe, insofar as more certainty would be brought to

1 bear regarding the specifics of the NED Project, and other
2 potential aspects of franchise expansion related to the
3 NED Project in the near future, or perhaps the medium term
4 future.

5 So, that is not meant to be a coercive
6 suggestion, but rather an optional suggestion, insofar as
7 there are some uncertainties related to the NED Project at
8 the present time. I think it would largely relate to some
9 of the questions surrounding the FERC Certificate of Need
10 and other elements there.

11 But, that said, if the proceeding
12 continues on the current procedural track, what we will be
13 doing is beginning with a tech session today. And, on top
14 of that, we are going to develop an abbreviated procedural
15 schedule with some rounds of discovery prior to more fully
16 developing the schedule, just like for the last franchise
17 applications that we've been working on, Pelham/Windham
18 and also Lebanon/Hanover. That seems to have been pretty
19 useful in the recent past, insofar as all the parties,
20 many of whom are kind of citizen intervenors and
21 municipalities, can get their sea legs and get used to the
22 discovery process and the timing and flow of these
23 matters, before we agree to testimonial deadlines and
24 hearing deadlines. Thank you.

1 CHAIRMAN HONIGBERG: Commissioner
2 Bailey.

3 COMMISSIONER BAILEY: Mr. Speidel, can
4 you explain a little further why you think this is
5 premature?

6 MR. SPEIDEL: In general terms, it would
7 appear that these are communities that are along the
8 expected NED pipeline. And, there is a great deal of
9 uncertainty at the present time regarding the final
10 engineering features of the NED pipeline as it actually
11 would be constructed. There is certainly a proposal being
12 made. But all of the details haven't been filled in,
13 because some of it revolves around the amount of gas that
14 would be contracted for along the pipeline.

15 And, in connection with that, the amount
16 of load that would be served on the pipeline would feed
17 into decision-making by the pipeline developer regarding
18 take stations and other physical features. And, we have
19 seen in the recent past, such as with the Pelham/Windham
20 matter, that there's often a cost-sharing, wherein the
21 LDC, the local distribution company, actually chips in
22 some money for the take station in question off of an
23 interstate pipeline. And, so, Staff is trying to pencil
24 in and flesh out what the implications of pipeline service

1 would be on a cost structure basis. And, I think, as the
2 NED Project moves forward, in terms of its development
3 schedule, there would be more specific information
4 regarding what sort of take stations would be involved,
5 what sort of pressurizations would be involved, what sort
6 of pipeline diameter would be involved, how much service
7 can be provided in western New Hampshire, as opposed to
8 what capacity is being earmarked for service from Amherst
9 east.

10 We also need to get a sense of the
11 specifics of LNG and compressed natural gas service for
12 these very rural communities. I think, in the case of
13 Lebanon and Hanover, in that filing, the Company has
14 provided a good deal of engineering information that has
15 been well developed, in terms of the potentialities of
16 serving what can be described as an "urban" area, or at
17 least a micropolitan area, with quite a bit of industrial
18 plants, educational institutions and the like, based on
19 the fact that there is a population base there.

20 But, if you're talking about these
21 relatively rural areas or very rural areas, as a matter of
22 fact, Staff is concerned that there would be more analysis
23 needed in terms of what physical plant is advisable and
24 what potential customer base is out there for this

1 service.

2 You know, I think in a more built-up
3 area, like Hanover, like Lebanon, there's more low-hanging
4 fruit to choose from. But, in this instance, there could
5 be a significant differential, in terms of what pipeline
6 service would be provided for in terms of cost versus CNG
7 and LNG provided for in terms of cost.

8 So, there's a lot of -- there's a lot of
9 moving parts here. And, our general sense is that it
10 would be good to have it settled a little bit more, in
11 terms of watching how the project development process
12 moves forward with NED.

13 But, again, it's not something that
14 we're demanding. It's something that we are just
15 expressing our own point of view on.

16 COMMISSIONER BAILEY: Thank you.

17 CHAIRMAN HONIGBERG: Anyone have
18 anything else? Mr. Sheehan.

19 MR. SHEEHAN: If I could. What I heard
20 Mr. Speidel say was, in essence, an outline of discovery
21 requests that should happen in this case, we expect those
22 questions, we're prepared to answer those questions. And,
23 I think we'll be able to convince Staff that we are not
24 premature for the reasons he says or is thinking about.

