

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

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

**Petition for Declaratory Ruling**

Liberty's Reply Memorandum of Law

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the “Company” or “Liberty”), through counsel, respectfully submits the following reply memorandum in response to the *Initial Brief of Intervenor Terry Clark*.

Mr. Clark’s 50-page brief makes three broad arguments. First, Mr. Clark argues that this docket “is part of Liberty’s expansion plans being considered under” Liberty’s integrated resource plan filing, Docket No. DG 17-152, that Mr. Clark is arguing in the IRP docket that such expansion plans violate the state’s energy policy, and that, at a minimum, the Commission should stay its decision here until it resolves the IRP docket. Second, Mr. Clark argues the Site Evaluation Committee (“SEC”), not the Commission, has jurisdiction over “Liberty’s proposed energy Facility.” And third, Mr. Clark argues Liberty is required to satisfy the franchise statutes, RSA 374:22 and :26 because the addition of natural gas in Keene is a “substantial change in operations” triggering franchise review. *See Clark Brief at 3-4*. None of Mr. Clark’s arguments have merit for the reasons discussed below, and which were raised in Liberty’s Objection to Motion for Rehearing (which Liberty incorporates here by reference).

First, Liberty’s petition for declaratory ruling does not seek approval of any “expansion plans.” It merely asks the Commission to confirm that Liberty has always had the franchise right to distribute natural gas. Nothing more. The Commission should reject Mr. Clark’s attempt to convert this case into one about “expansion plans.”

Second, Mr. Clark argues that the SEC has jurisdiction over this docket. Mr. Clark is wrong. The SEC has authority to “Evaluate and issue any certificate under this chapter for an energy facility.” RSA 162-H:4, I(a). In the context of Mr. Clark’s argument, the statute defines an “energy facility” as follows:

Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network.

RSA 162-H:2, VII(a) (emphasis added).

In response to Mr. Clark’s discovery requests in the IRP docket, Liberty informed Mr. Clark that, if the Company were to fully build out its distribution system to serve potential customer demand, the planned facility in Keene (which, again, is *not* the subject of this docket) would store LNG or CNG in an amount equivalent to only 2.2 days of continuous operation at a rate equal to the energy requirements of a 30 MW electric generating facility. *See* Liberty’s response to Clark 1-10 in Docket No. DG 17-152, attached as Exhibit 1. Mr. Clark does not challenge this information.

Thus, Mr. Clark's argument that the SEC has jurisdiction over this docket is not relevant because this docket does not seek approval of an energy facility and, even if it were, the facility is not large enough to fall under the SEC statute.

Finally, the Commission should reject Mr. Clark's argument that Liberty is required to satisfy the franchise statutes, RSA 374:22 and :26 because the addition of natural gas in Keene is a "substantial change in operations" triggering franchise review. This *is* the issue raised in this docket which the Commission resolved correctly in Order No. 26,065 (Oct. 20, 2017). Since Mr. Clark failed "to direct attention to matters that have been overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309, 311 (1978), his motion for rehearing should be denied.

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



Date: May 15, 2018

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Certificate of Service

I hereby certify that on May 15, 2018, a copy of this memorandum has been electronically provided to the service list.



By: \_\_\_\_\_  
Michael J. Sheehan