

State of New Hampshire
Public Utilities Commission

Docket No. DG 17-152

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

Least Cost Integrated Resource Plan

Liberty's Objection to Terry Clark's Motion to Compel

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, through counsel, respectfully objects to *Intervenor, Terry Clark's, Motion to Compel Response to Data Request*, because the request seeks information that does not exist.

In support of this objection, Liberty represents as follows:

1. Mr. Clark moves to compel a response to Data Request Clark 5-26. The request and Liberty's response follow:

REQUEST:

Please state how the inclusion of the projected emissions from the Epping LNG facility in Paul J. Hibbard's emissions calculations and assessments would change them (including relevant tables and figures) and Mr. Hibbard's conclusions.

RESPONSE:

Mr. Hibbard has not estimated emissions from the Granite Bridge LNG facility as the Granite Bridge LNG facility is not a component of the Company's resource portfolio during the LCIRP forecast period.

2. Mr. Clark argues that Clark 5-26 seeks relevant, material, and admissible information. Motion at 2-3.

3. Without conceding that the requested information would be relevant or admissible, Liberty does concede that the requested information would be discoverable *if it existed*. The Company’s response to Clark 5-26 was that the requested information *does not exist*: “Mr. Hibbard has not estimated emissions from the Granite Bridge LNG facility”

4. Mr. Clark’s motion should thus be denied because he cannot compel the creation of information through a data request.

5. As for discovery related to an expert’s opinion, a litigant can only request disclosure of that expert’s opinions and of the information that supports those opinions:

Disclosure of facts or data underlying expert opinions is permissible in discovery. In superior court, a party is entitled to disclosure of the opposing party’s experts, the substance of the facts and opinions about which they are expected to testify, and the basis of those opinions.

City of Nashua, Order No. 24,681 at 9 (Oct. 23, 2006).

6. Although the Commission is not bound to follow the statutes and rules governing discovery in court, it often looks to those authorities for guidance:

Although we do not adopt the requirements of the statute titled “Disclosure of Expert Testimony in Civil Cases,” we generally agree with its requirements that a party must provide, either through prefiled testimony or discovery, “a complete statement of: (a) All opinions to be expressed and the basis and reasons therefor; (b) The facts or data considered by the witness in forming the opinions; [and] (c) Any exhibits to be used as a summary of or support for the opinions.” RSA 516:29-b, II. Therefore, we will compel production of the facts, data, and supporting exhibits the witnesses considered in preparing testimony.

Public Service Co. of New Hampshire, Order No. 25,646 at 7 (Apr. 8, 2014).

7. The “opinions to be expressed” by Mr. Hibbard, along with the “facts or data considered by [Mr. Hibbard] in forming [his] opinions,” are contained in his June 28, 2019, prefiled testimony. Mr. Hibbard’s opinions do *not* include an assessment of the

emissions from the proposed Granite Bridge LNG facility. The proposed LNG facility was not included in the Plan nor in Mr. Hibbard's testimony.

8. Because Mr. Hibbard did not express an opinion on the emissions from the proposed Granite Bridge LNG facility and because the Company will not ask Mr. Hibbard for such an opinion at hearing, there are simply no "facts or data" to be produced in response to Clark 5-26.
9. Mr. Clark's motion to compel should thus be denied.
10. To the extent Mr. Clark argues that he can compel Liberty to formulate and offer an opinion that Liberty chose not to develop or present, and compel Liberty to conduct the supporting analysis, such an argument should also be rejected. *See Farnum v. Bristol-Myers Co.*, 107 N.H. 165, 169 (1966) ("In declining to compel answers to the interrogatories which called for opinions or conclusions rather than disclosure of facts, the Trial Court committed no error"). Ruling otherwise would open a Pandora's Box of parties compelling others to incur the time and expense to prepare and present their opponent's cases.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Deny Mr. Clark's motion to compel; and
- B. Grant such other relief as is just and equitable.

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

By its Attorney,



Date: September 20, 2019

By: _____

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Certificate of Service

I hereby certify that on September 20, 2019, a copy of this filing has been electronically forwarded to the service list.



Michael J. Sheehan