

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DG 18-094

NORTHERN UTILITIES, INC.

**PETITION FOR AUTHORITY TO OPERATE
IN THE TOWN OF EPPING**

**OBJECTION TO LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS)
CORP.'S RENEWED PETITION FOR INTERVENTION**

Northern Utilities, Inc. (“Unitil” or the “Company”) filed its Petition for Authority to Operate in the Town of Epping on June 5, 2018, initiating the above-captioned docket. Liberty Utilities (EnergyNorth Natural Gas) Corp. (“Liberty”) thereafter sought to intervene in this docket by petition dated July 20, 2018. The Commission denied Liberty’s petition to intervene at the July 24, 2018 pre-hearing conference. On December 24, 2018, approximately two weeks prior to the final hearing in this matter, Liberty renewed its petition to intervene, citing its recently filed application to serve Epping in DG 18-194. For the reasons stated herein, Unitil opposes Liberty’s renewed petition to intervene.

1. Pursuant to RSA 541-A:32, the Commission will grant a petition for intervention if (a) the petition is submitted in writing at least three days before a noticed hearing; (b) the petition “states facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law”; and (c) the Commission “determines that the

interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” RSA 541-A:32, I. The Commission may also grant intervention at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings. RSA 541-A:32, II.

2. In the first instance, Liberty’s new petition for intervention is not timely. The deadline established by the Commission for intervention in this docket was July 20, 2018. Though Liberty filed a petition to intervene on July 20, the Commission subsequently denied that petition. DG 18-094, Transcript at 25:5-6 (July 24, 2018). Thus, Liberty’s new petition for intervention is not, as Liberty suggests, subject to the standard for mandatory intervention as set forth in RSA 541-A:32, I. Rather, it is subject to the discretionary standard set forth in RSA 541-A:32, II.

3. Notwithstanding the above, Liberty’s new petition for intervention in this docket does not sufficiently state facts demonstrating that Liberty’s rights, duties, privileges, immunities or other substantial interests” may be affected by this proceeding, or that Liberty qualifies for intervention as a matter of law. Rather, Liberty merely states that it has filed a petition for a franchise to serve Epping, and that this fact alone entitles Liberty to “mandatory” intervenor status in this case.

4. Liberty filed its new petition for intervention a mere two weeks prior to the final hearing in this case. Discovery in this matter ended many weeks ago. Liberty will offer no witnesses in this matter and will make no submissions of any substance. The Company has not requested the opportunity to cross-examine witnesses at the final hearing on January 8. Rather, it appears that Liberty’s sole purpose for intervening in this matter is to request that

the Commission indefinitely delay the issuance of an order until it reviews Liberty's franchise filing. Liberty does not require intervenor status in this case to make such a request; it can do so through submitted comments. Moreover, the Commission is well aware of Liberty's recent filing in DG 18-194 and does not require Liberty's participation as an intervenor in this docket to further apprise the Commission of that petition.

5. Furthermore, to the extent that submission of a "competing franchise request" could give rise to a substantial interest in this proceeding, Liberty's petition in DG 18-194, on its face, is insufficient to create such an interest. The prefiled testimony accompanying Liberty's petition acknowledges that service to Epping is contingent upon multiple regulatory approvals in connection with Liberty's "Granite Bridge" project, including approval but this Commission (Docket DG 17-198) as well as the New Hampshire Site Evaluation Committee. DG 18-194, Direct Testimony of William J. Clark and Mark E. Saltsman at p. 8 (Dec. 24, 2018). Docket DG 17-198 remains pending, and the procedural schedule in that proceeding has been suspended pending the submission of further information from Liberty. Liberty has yet to make a filing with the Site Evaluation Committee, and can only say that it is "planning" to do so in 2019. Based on Liberty's timeline, the Company expects that construction of the Granite Bridge project – *assuming that Liberty obtains the required regulatory approvals* – and the "initial phases" of construction for an Epping distribution system "could be" completed in 2022, more than three years (and perhaps longer) removed from its petition for a franchise.

6. Franchise authority under RSA 374:22 must be exercised within two years of being granted. RSA 374:27. According to Liberty, it *may* be able to begin the "initial phases" of construction of a distribution system in Epping at some time in 2022, a

minimum of three years from now. As such, Liberty's interest in a franchise to operate as a public utility in Epping is far from becoming ripe, and as such Liberty has no legitimate interest supporting its intervention in this docket.

7. For this same reason, Liberty's intervention, as well as its request, two weeks prior to the final hearing, that the Commission indefinitely delay issuing an order on Unitil's petition for a franchise in Epping, is not in the interests of justice and will very obviously "impair the orderly and prompt conduct of the[se] proceedings." Unitil filed its request in early June 2018 to allow for sufficient time for the evaluation of its petition prior to the commencement of construction and the delivery of natural gas service in Epping 2019. The Company has responded to multiple rounds of discovery and participated in at least one technical session, and the Commission Staff has filed testimony supporting the Company's petition. Unitil has every right to expect that it will receive a timely decision on the merits of its petition following the evidentiary hearing on January 8, 2019, so it can plan its 2019 construction accordingly.

8. Allowing Liberty to seek intervention shortly before the final hearing in this matter and demand the indefinite delay of the Commission's order, particularly where the request is merely based upon a potential and contingent ability to provide a similar service many years in the future, is manifestly inconsistent with the "orderly and prompt" conduct of these proceedings and contrary to the interests of justice. The Commission would have to wait until 2020, at least, to issue an order granting a franchise to Liberty that it *may* be able to exercise in two years' time. Granting Liberty's request would also set a dangerous precedent pursuant to which one utility can interfere with the expansion of natural gas infrastructure within the state – in this case, by at least three years – by asserting a potential, but by no means assured, ability to serve a particular area at some point in the future.

9. Finally, the Town of Epping, an intervenor in this matter, has expressed its preference that Liberty be the service provider in the Town. Thus, any interest that Liberty may wish to express in this docket likely has been, or will be, expressed by the Town of Epping.

For the reasons stated above, Unitil respectfully requests that the Commission:

- A. Deny Liberty's request for intervention in this proceeding; and
- B. Deny Liberty's request that the Commission indefinitely delay the issuance of an order in this docket.

Dated: January 7, 2019



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Certificate of Service

I hereby certify that on this 7th day of January, 2019, a copy of this Objection has been sent by electronic mail to the service list in the above-captioned matter.

Dated: January 7, 2019



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