

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 18-094**

**NORTHERN UTILITIES, INC.**

**Petition for Authority to Operate in the Town of Epping  
Order on Motion for Clarification and, Alternatively, Rehearing**

**ORDER NO. 26,229**

**March 25, 2019**

In this order, the Commission grants in part and denies in part a Motion for Clarification filed by Liberty and denies Liberty's alternative request for rehearing.

**I. PROCEDURAL HISTORY**

Northern Utilities, Inc. (Northern or the Company), filed a petition pursuant to RSA 374:22 and RSA 374:26 on June 5, 2018, for authority to provide natural gas service as a public utility in the Town of Epping (Epping or the Town). On January 8, 2019, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) was granted intervention at the evidentiary hearing held in this proceeding, based on its own petition for authority to provide natural gas service in the Town of Epping, filed on December 24, 2018, in Docket DG 18-194.

On February 8, 2019, the Commission issued Order No. 26,220, granting Northern's petition for franchise rights to serve natural gas in the Town of Epping. Liberty filed a timely Motion for Clarification and, Alternatively, Rehearing of Order No. 26,220 (Motion), and Northern filed a timely Objection to Liberty's Motion (Objection). The Motion, Objection, and all other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission are available at <http://puc.nh.gov/Regulatory/Docketbk/2018/18-094.html>.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Liberty**

In its Motion, Liberty asked the Commission to confirm that Order No. 26,220 (the Order) awarded Northern franchise rights only for a limited portion of Epping and that Liberty may seek authorization for the right to serve other areas of Epping. Specifically, Liberty requested clarification that the Commission intended to grant Northern the right to serve only the predominantly commercial district of Epping located at the intersection of Route 101 and Route 125 (the Route 125 Corridor) described in Northern's petition, and that franchise rights to other areas of Epping are available for Liberty to acquire. Liberty further requested that, to the extent the Commission intended to grant Northern exclusive rights to serve the entirety of Epping, the Commission reconsider its order.

### **B. Northern**

In its Objection, Northern maintained that the Order unambiguously granted Northern authority to provide natural gas service in Epping without limitation. Northern stated that nothing in its petition limited its request for franchise authority to a specifically delineated region or specific streets within Epping; rather, the petition explicitly requested franchise authority without limitation "in the Town of Epping."

Northern noted that, when granting a public utility authority to conduct business in a new town, the Commission may "prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest," pursuant to RSA 374:26. Northern added that the Commission expressly exercised that authority by prescribing certain reporting conditions in connection with Northern's Epping franchise, but did not limit the geographic scope of that authority.

With respect to Liberty's request for clarification that the Commission retains the authority to award Liberty the right to serve the rest of Epping, Northern stated that the question of Liberty's "right" to serve any part of Epping was not before the Commission in Docket DG 18-094 and that it would be inappropriate for the Commission to make such a determination in this case. Northern added that Liberty has not identified any specific matters that were overlooked or mistakenly conceived by the Commission in its order, nor has it identified any new evidence that could not have been presented in the underlying proceeding. Northern contended that the Commission has not deprived Liberty of any due process rights, since the Commission has opened Docket DG 18-194 for the review of Liberty's petition to serve Epping on its own merits in a separate proceeding.

### **III. COMMISSION ANALYSIS**

The Order granted Northern franchise rights to expand its existing natural gas service to customers in the Town of Epping. The Order approved Northern's initial plans to begin its franchise expansion in a specific area delineated in its petition, but did not preclude Northern from expanding into other parts of Epping. Accordingly, the Commission clarifies Order No. 26,220 by stating that the franchise rights granted to Northern pursuant to RSA 374:22 and RSA 374:26 in this proceeding encompass the entire Town and are not limited to the precise geographic area in which Northern has proposed to initiate its expansion of gas service within Epping.

In the Order, the Commission stated it would review Liberty's petition on its own merits in a separate proceeding. We believe that portion of our Order requires no clarification. Although the Order does not limit Northern's right to serve any area of the Town, it also does not preclude Liberty from requesting franchise authority in the Town. To the extent Liberty

continues to seek franchise authority to serve some area of the Town, its request will be given due consideration in Docket DG 18-194, or in a future proceeding if Liberty withdraws its current petition and files for franchise authority at a later date, as Liberty suggested it might at the Prehearing Conference in DG 18-194. *See Appeal of Public Service Company of New Hampshire*, 141 N.H. 13 (1996).

We read Liberty's petition to request rehearing in the event that our clarification of the Order declines to limit Northern's right to serve the Town to the specific area delineated in its petition. Under RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the Commission, *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,239 at 8 (June 23, 2011).

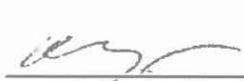
As Northern noted, Liberty has not identified any specific matters that were overlooked or mistakenly conceived in the Order, nor has it raised any new evidence that could not have been presented in the underlying proceeding. As stated above, there is nothing in the Order that precludes Liberty from seeking franchise authority to serve some area of the Town. In fact, the Order clearly states the "Commission will review Liberty's petition on its own merits in a separate proceeding." Order at 10. Liberty's request for rehearing is therefore denied.

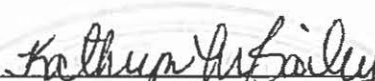
**Based upon the foregoing, it is hereby**


**ORDERED**, that Liberty's Motion for Clarification is GRANTED in part and DENIED in part; and it is

**FURTHER ORDERED**, that Liberty's alternative request for rehearing is DENIED.


By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 2019.

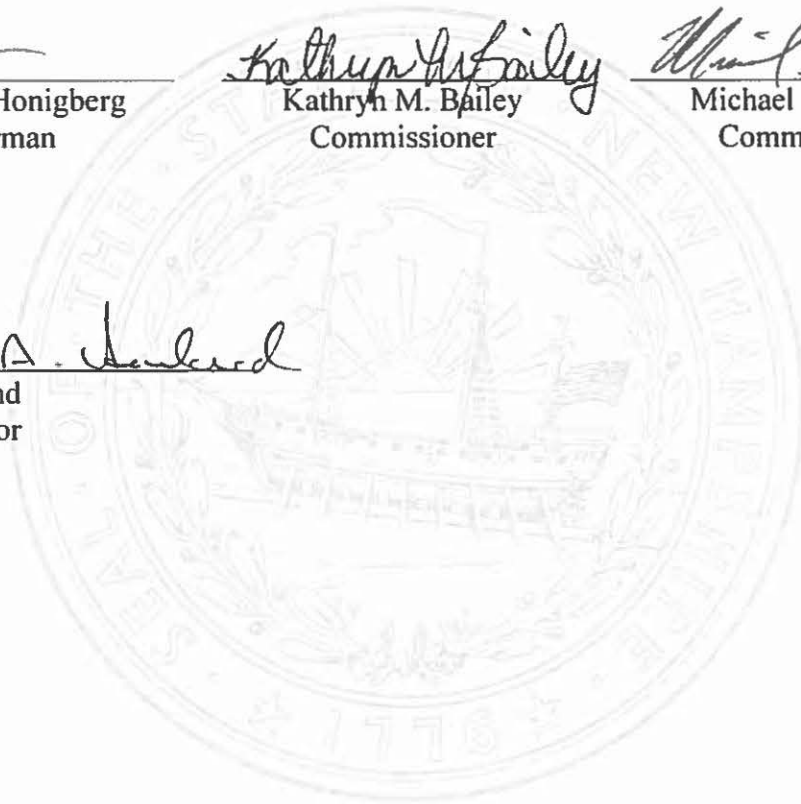
  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director



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**Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.**

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Docket #: 18-094-1      Printed: March 25, 2019

**FILING INSTRUCTIONS:**

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND  
EXEC DIRECTOR  
NHPUC  
21 S. FRUIT ST, SUITE 10  
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**