

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 21-036

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY

Petition for Approval of a Renewable Natural Gas Supply and Transportation Agreement

Motion to Suspend Procedural Schedule

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, through counsel, respectfully moves the Commission to suspend the procedural schedule in this docket, including the February 17-18, 2022, hearing dates, to allow time for the Legislature to act on a proposed law that, if passed, would substantially change the standard under which the Commission would review the Renewable Natural Gas Supply and Transportation Agreement that is at issue in this docket (the “RNG Agreement”).

In support Liberty’s request to suspend the docket, the Company states as follows:

1. As described in the Company’s filing, Liberty’s counterparty in the RNG Agreement, RUDARPA North Country LLC (“RUDARPA”), is now constructing a facility that will clean and treat landfill gas from the landfill in Bethlehem, New Hampshire, making renewable natural gas (RNG) that meets the quality specifications of pipeline natural gas. RUDARPA will then compress the RNG and deliver it to Liberty via truck. Under the RNG Agreement at issue in this docket, Liberty will buy all the RNG produced by RUDARPA’s facility at prices set in the agreement. The projected deliveries of RNG are estimated to comprise 2% to 3% of

Liberty's annual throughput. RUDARPA expects to begin deliveries during the summer of 2022.

2. The central issue in this case, as articulated in the November 12, 2021, testimonies of the Office of the Consumer Advocate, the Conservation Law Foundation, and the Department of Energy (the "Parties"), is that when the RNG contract price is higher than the market price of natural gas, it gives rise to concerns of non-participating customers subsidizing the RNG purchased by participating customers. That is, the Parties argue that the Commission is bound by least cost principles to not approve the contract because RNG is priced higher than natural gas.
3. Proposed legislation will substantially alter how those principles relate to RNG projects.
4. Prime sponsor Sen. Jeb Bradley and cosponsors Sen. Kevin Avard, Sen. David Watters, Sen. Bob Giuda, Sen. Tom Sherman, Rep. Michael Vose, Rep. Peter Somssich, and Rep. Brodie Deshaies have filed LSR 2022-2878, which is titled, "relative to renewable energy and natural gas." The bill language, which will be available around the end of the year, was drafted with the input of various stakeholders, is now in the hands of the Office of Legislative Services, and will be introduced as a Senate Bill in the coming weeks. If the bill successfully travels the usual legislative route, it will become law in about June 2022.
5. Liberty acknowledges the uncertainty of the legislative process, but given this bill's broad support from legislators and stakeholders, a final bill containing the core language of the draft bill has the potential to become law in 2022.
6. The proposed legislation will state that its purpose is to encourage gas utilities to procure RNG and to make investments in RNG infrastructure, provided that the Commission finds the utility proposals to be in the "public interest."

7. The proposed legislation will define a public interest standard that will direct the Commission to consider several specific factors when presented with a gas utility's request to approve an RNG project, such as (1) consideration of the project's monetary and non-monetary benefits to customers and to the state, including the value of environmental attributes, as compared to the cost to achieve those benefits through other means; (2) whether the cost of the RNG is unreasonably higher than the cost of RNG delivered elsewhere in New England, and (3) the extent to which the project advances the objectives of the state's energy policies as stated in RSA 378:37, the 10-year energy strategy, or elsewhere, including increased customer choice and improved gas system resiliency through diversification of supply.
8. This new public interest standard would apply to this docket and would require a substantially different analysis than under a straightforward least cost analysis.
9. Rather than proceeding forward with this docket under the existing standard with knowledge that legislation may soon change how the Commission should review the RNG Agreement, Liberty asks the Commission to suspend the procedural schedule in this docket, with direction for the Company to re-activate the docket with an appropriate filing after the fate of the proposed resolution is known.
10. Suspension of a procedural schedule is a common occurrence, often ordered to accommodate the resolution of issues that could have an impact in the pending docket.
11. For example, Commission Staff requested the suspension of the procedural schedule in the Least Cost Integrated Resource Plan (LCIRP) docket for Liberty's electric affiliate to allow time for Staff to resolve the loss of key personnel: "Due to recent staff attrition, the Electric Division of the Commission currently lacks access to the engineering expertise necessary to

thoroughly evaluate the LCIRP.” June 15, 2021, letter from Commission Staff in Docket No. DE 21-004. The Commission approved the request on August 20, 2021.

12. Northern Utilities moved to suspend the procedural schedule in its LCIRP docket, citing the need to “to make a supplemental filing in this docket to address certain issues raised by Staff and OCA.” Northern’s January 8, 2020, Assented-To Motion to Allow for Supplemental Filing and Suspend Procedural Schedule in Docket No. DG 19-126, at 1. The Commission granted the request: “The Commission has suspended the procedural schedule effective immediately, which suspension shall remain in effect until it approves a new procedural schedule.” January 13, 2020, Secretarial Letter.
13. Commission Staff and the OCA moved to suspend the procedural schedule in Eversource’s 2017 Energy Service Reconciliation filing “to allow the Commission time to consider the Motion [for Confidential Treatment] and Objection, and for Staff and the OCA to determine whether additional discovery is needed.” November 21, 2017, letter in Docket No. DE 17-075; *see* OCA’s November 21, 2017, objection to Eversource’s motion for confidential treatment at 5. The Commission granted the request that same day: “The Commission has granted Staff and the OCA’s request. Accordingly, the procedural schedule is suspended until further notice.” November 21, 2017, secretarial letter.
14. Other examples include suspension of a procedural schedule to accommodate settlement discussions in a PSNH rate case (April 14, 2010, secretarial letter in Docket No. DE 09-035); and suspension of Liberty’s LCIRP to allow for resolution of “an issue that may have

significant impact on this docket,”¹ (November 16, 2019, motion in Docket No. DG 17-152, and December 2, 2019, secretarial letter approving the request).

15. The alternative to suspending the docket -- dismissal without prejudice -- is not the best solution for the following reasons.
16. First, under the RNG Supply Agreement, Liberty has the obligation to “obtain[] approval from the New Hampshire Public Utilities Commission for the transactions contemplated under this Agreement.” Initial filing at Bates 037. Withdrawing the petition, even under the unique circumstances described here, may run counter to Liberty’s contractual duties.
17. Second, withdrawal and re-filing will result in several months of unnecessary delay when the time comes to re-file, especially if the bill does not become law. When re-filed, the Commission will have to issue a new order of notice and schedule another prehearing conference to kick off the new docket, which efforts would be unnecessary and cause undue delay if the bill fails. If the docket is merely suspended, however, the docket can pick up from where it stands today with a simple filing from the Company. If the legislation is successful, then the docket would resume with a more comprehensive supplemental filing to address the requirements of the new law and the Company would work with the Parties to also propose an appropriate procedural schedule to provide for review of the supplemental filing in light of the new law. In either event, there will be no burden on the Commission or the Parties to do anything while the docket remains suspended.

¹ This issue was later disclosed to be the negotiation of the contract with Tennessee Gas Pipeline for additional capacity on the Concord Lateral, which the Commission approved in Order No. 26,551 (Nov. 12, 2021).

18. The Company provided a draft of this motion to the Parties and asked them to indicate their positions. The OCA and CLF indicated they object. The Department of Energy declined to state a position.

19. For the reasons stated above, Liberty respectfully asks the Commission to simply suspend this docket until such time as Liberty makes a filing after the fate of the proposed legislation is known.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Suspend the procedural schedule in this docket until such time as Liberty makes an appropriate filing following the Legislature's consideration of the proposed RNG legislation;
- B. Grant such further relief as is just and equitable.

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

By its Attorney,



Date: December 15, 2021

By:

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Certificate of Service

I hereby certify that on December 15, 2021, a copy of this Motion has been electronically forwarded to the service list.



Michael J. Sheehan