

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-852

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
D/B/A LIBERTY UTILITIES**

Petition for Franchise Approval in Hanover and Lebanon

Order Approving Settlement Agreement with Conditions and Granting Franchise

ORDER NO. 26,109

March 5, 2018

APPEARANCES: Michael J. Sheehan, Esq., on behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; Julia Griffin, Town Manager, on behalf of Town of Hanover; Clifton C. Below, City Councilor, on behalf of City of Lebanon; Jonathan Chaffee, Ph.D., *pro se*; The Office of the Consumer Advocate, by Brian D. Buckley, Esq., on behalf of residential ratepayers; and Alexander F. Speidel, Esq., for the Staff of the New Hampshire Public Utilities Commission.

This order grants Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty”) a franchise extension for the pipeline distribution of natural gas in the Town of Hanover and the City of Lebanon, subject to the terms of a settlement agreement and additional reporting, risk-sharing, and safety conditions imposed by the Commission.

I. PROCEDURAL HISTORY

Liberty is a natural gas distribution utility that serves customers in more than 30 municipalities in New Hampshire. On December 21, 2016, Liberty filed a petition pursuant to RSA 374:22 and 374:26 to expand its natural gas franchise to provide re-gasified liquefied natural gas (“LNG”) and/or compressed natural gas (“CNG”) through a pipeline distribution system to customers in Hanover and Lebanon.¹ In support of its petition, Liberty included the written testimony and attachments of William J. Clark, Deborah M. Gilbertson, Richard G.

¹ Currently, there is no natural gas distribution pipeline service in either Hanover or Lebanon.

MacDonald, and David B. Simek, employees of Liberty Utilities Service Corp., a Liberty affiliate. *See* Exh. 1.

The Office of the Consumer Advocate (“OCA”) filed a letter on December 5, 2016, notifying the Commission that it would participate in this proceeding on behalf of residential ratepayers in accordance with RSA 363:28. Petitions to intervene were filed by the City of Lebanon on January 4, 2017, Ariel Arwen and Jonathan Chaffee jointly on March 17, 2017,² and Devin Wilkie and Samantha White jointly on March 20, 2017. The Commission granted those petitions to intervene at the prehearing conference held on March 23, 2017. On May 5, 2017, the Town of Hanover filed a late petition to intervene, which the Commission granted on May 18, 2017.

Staff, the OCA, the Town of Hanover, and Dr. Chaffee filed testimony. *See* Exhs. 3, 5, 7, 9. Liberty, the OCA, and Staff subsequently entered into a Settlement Agreement in which they agreed to recommend to the Commission that Liberty be granted a franchise subject to certain conditions. *See* Exh. 6. The Commission held a final hearing on Liberty’s petition on September 7, 2017.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission’s website at <http://puc.nh.gov/Regulatory/Docketbk/2016/16-852.html>.

II. THE FRANCHISE PETITION AND SETTLEMENT AGREEMENT

In its petition, Liberty proposed serving customers in Hanover and Lebanon with natural gas under the terms of its existing tariff, except that Liberty proposed a “Cost of Gas” (“COG”) clause that would be different for Hanover and Lebanon customers than it is for the rest of

² After Ms. Arwen and Dr. Chaffee’s petition to intervene was granted, Ms. Arwen moved to Vermont, such that she was no longer an intervenor. *See* Transcript of September 7, 2017, hearing at 8.

Liberty's customers. Exh. 1 at 2. Liberty stated it planned to build a self-contained, underground distribution system to provide gas from a facility located near the Lebanon landfill, which would be able to use both LNG and CNG. *Id.* at 1-2. Liberty would construct this "off-pipeline" system over a number of years from south to north in order to reach all areas of Hanover and Lebanon in which it would be economically feasible to provide service. *Id.* Liberty would charge customers in Hanover and Lebanon a gas rate based upon the costs unique to this LNG/CNG system. *Id.* at 2.

Through the Settlement Agreement, Liberty, the OCA, and Staff recommended that the Commission grant Liberty franchise rights to serve Hanover and Lebanon with natural gas subject to conditions relating to levels of customer commitment and risk sharing for Phases One and Two of the project.

Under the terms of the Settlement, before Liberty could begin construction of Phase One or Phase Two, Liberty would be required to demonstrate sufficient customer commitments "such that the present value over a ten-year period of the distribution revenue from such commitments is equal to at least 50 percent of the present value over a ten-year period of the revenue requirement of the facilities necessary to serve customers in each phase, respectively." Exh. 6 at 2-3 (Settlement Agreement provisions II.C and II.D).

Liberty shareholders would assume some risk of the recovery of construction costs. Liberty would be required to reduce its revenue requirement in gas distribution rate cases filed within five years of Phase One's in-service date, as provided in Appendix A to the agreement. *Id.* at 3 (Settlement Agreement provision II.D). In the first distribution rate case filed, the revenue requirement would be reduced by one-half of the difference between the anticipated average annual revenue from Phase One customers over three years from the date permanent

rates were implemented and the average annual revenue requirement over the same period of Phase One construction costs, if the difference were negative. *Id.* If a second distribution rate case were filed within five years of Phase One's in-service date, then the revenue deficiency would be reduced by the entire difference between the Phase One revenue requirement and revenues. *Id.* The "costs of construction" would include actual direct capital costs to date. *Id.* at 3 (Settlement Agreement provision II.D(1)). The agreement defines "anticipated revenue" as including "Estimated Annual Margin as defined in EnergyNorth's main extension provision of its tariff, plus the portion of the revenue obtained through the Cost of Gas rate charged to customers in Hanover and Lebanon that is attributable to recovery of the cost of the CNG plant." *Id.* at 3 (Settlement Agreement provision II.D(2)).

The same risk-sharing mechanism would apply separately to Phase Two. *Id.* at 2-4 (Settlement Agreement provisions II.C and II.E). For purposes of Phase Two, "anticipated revenue" is defined as for Phase I except it includes "the portion of the revenue obtained through the Cost of Gas rate charged to customers in Hanover and Lebanon that is attributable to recovery of the cost of the LNG plant" rather than the portion of the revenue attributable to the CNG plant associated with Phase One. *Id.* at 5 (Settlement Agreement provision II.E(2)).

Liberty would provide service to Hanover and Lebanon customers under its standard distribution rates and a cost of gas rate specifically calculated for the Hanover-Lebanon franchise area. *Id.* at 2 (Settlement Agreement provision II.B). Liberty would be required to comply with the terms of the line extension policy in its tariff with regard to customer commitments for revenue before beginning all other construction in Hanover or Lebanon. *Id.* at 2-3 (Settlement Agreement provision II.C).

III. POSITIONS OF THE PARTIES AND STAFF REGARDING THE FRANCHISE PETITION AND SETTLEMENT AGREEMENT

A. Liberty

Liberty asserted in its petition that it had the managerial, technical, financial, and legal expertise required to operate a natural gas distribution company. Exh. 1 at 3. Liberty noted that, in *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,736 (November 21, 2014), the Commission found Liberty possessed such expertise. *Id.* Further, Liberty stated that Staff acknowledged the Company's expertise in docket number DG 15-362, in which the parties reached a settlement regarding Liberty's petition for franchise approval in Pelham and Windham. *Id.* at 3-4.

Liberty contended that its proposed development in Hanover and Lebanon would be prudent, financially sound, and in the public good. *Id.* at 4. According to Liberty, the evidence demonstrated the existence of a favorable market for low-cost natural gas. *Id.* It argued that expanding Liberty's franchise to Hanover and Lebanon would provide customers in those areas with a more economical alternative fuel consistent with the New Hampshire's energy plan. *Id.*

Details regarding Liberty's experience as a natural gas distribution company and its plans for expansion into the Hanover-Lebanon franchise territory were provided by the direct testimony accompanying the petition. Mr. Clark, Director of Business Development, discussed Liberty's experience operating "off-pipeline" natural gas distribution systems, as well as the economic feasibility of operating such a system in the Hanover and Lebanon region. Exh. 2 at Bates Pages 6-9. Mr. Clark noted that one of Liberty's affiliates, Granite State Electric, provides electricity to Hanover and Lebanon, so that Liberty already has access to customers, personnel, and infrastructure in the area, including an operations center in Lebanon it could utilize in establishing and operating the new gas distribution system. *Id.* at Bates Pages 5-8, 17-18.

Mr. Clark's direct testimony included Liberty's business plan, entitled "Hanover and Lebanon Expansion Plan."

Ms. Gilbertson, Senior Manager of Energy Procurement, provided testimony regarding Liberty's experience managing the logistics of procuring and supplying fuel for its three LNG facilities and four propane facilities in New Hampshire. *Id.* at Bates Pages 293-298.

Mr. MacDonald, Director of Gas Operations, testified regarding Liberty's plans for construction of the pipeline distribution system and LNG/CNG facility in the proposed franchise area. *Id.* at Bates Pages 301-304. He stated that Liberty would have adequate resources to support operations and emergency response in connection with the new system. *Id.* at Bates Pages 303-305. Mr. Simek, a Lead Utility Analyst, testified that Liberty would charge customers in the Hanover and Lebanon franchise territory a separate COG rate, because those customers would not receive natural gas from an inter- or intra-state pipeline. *Id.* at Bates Pages 309-310. Instead, Hanover and Lebanon customers would receive their gas from Liberty's LNG and CNG supplies, so their gas supply costs would differ from those included in the COG charged to other Liberty customers. *Id.*

During the September 7, 2017, hearing, Mr. Clark reviewed the provisions of the Settlement Agreement. *See* Transcript of September 7, 2017, hearing ("Tr.") at 50-56. He stated that the agreement required a customer commitment level of 50 percent, twice the 25 percent customer commitment threshold for large capital projects contained in Liberty's tariff. *Tr.* at 51-52. Despite a July 11, 2017, letter from Dartmouth College (Exh. 8) stating that it had committed to obtaining energy from renewable sources and did not intend to use natural gas in the future Mr. Clark testified that he believed Liberty still had a viable market in the Hanover area. *Tr.* at 74. He explained how Liberty had estimated its potential market and projected

revenues in the franchise area and described Liberty's business model. *Id.* at 82-88, and 103-106.

Mr. Clark also gave an overview of the risk-sharing provisions contained in the agreement. *Id.* at 53-56. Relying on those provisions, Mr. Clark testified that Liberty would proceed carefully with construction, making sure its customer base and market were adequate to support the project. *Id.* at 55. Mr. Clark stated that Liberty would obtain an updated cost estimate both before and during the local planning review process. *Id.* at 64-65. He advised that Liberty would be willing to provide the Commission with annual status reports on the project. *Id.* at 100, 106.

In closing, Liberty requested that the Commission grant the Company franchise rights in Hanover and Lebanon under the terms of the Settlement Agreement. With that approval, Liberty could compete for customers in Hanover and Lebanon. *Id.* at 165, 167.

B. OCA

Dr. Pradip K. Chattopadhyay, the OCA's Assistant Consumer Advocate/Rate and Market Policy Director, stated in his direct testimony that the OCA had three recommendations. Exh. 5 at 10-11. First, the OCA recommended that the Commission not approve Liberty's franchise request unless Liberty demonstrated sufficient customer commitments to recover all of the projected distribution-related direct costs of the first phase of construction over eight years for residential customers and six years for commercial customers. *Id.* at 10. According to the OCA, that level of customer commitment would be necessary to protect Liberty's residential ratepayers, especially when Liberty's proposed off-pipeline system would be supplied only by LNG and CNG sources and neither Hanover nor Lebanon appeared to support the project. *Id.* at 12-14. Second, the OCA recommended that Liberty be required to demonstrate sufficient

contractual customer commitments to recover the projected distribution-related direct costs of any subsequent phase of construction over eight years for residential customers and six years for commercial customers. Exh. 5 at 11. Third, the OCA recommended that Liberty be required to file an annual status report regarding revenues and customers for the first five years of operation for each phase, with Liberty shareholders responsible for any revenue shortfalls during the first five years. *Id.* The OCA contended that Liberty had not proven its franchise in Hanover and Lebanon would be viable under the terms Liberty proposed. *Id.* at 20.

Dr. Chattopadhyay testified at the September 7 hearing that approval of the Settlement Agreement would be in the public interest. Tr. at 56. He maintained that the conditions of the Settlement Agreement, including the 50 percent customer-commitment provision, would ensure that a majority of the direct costs are recoverable from the beginning of the project. *Id.* at 57, 76-77. Dr. Chattopadhyay further stated that the risk sharing provisions were reasonable. *Id.* at 58.

C. City of Lebanon

The City of Lebanon did not submit any testimony or other evidence. Clifton C. Below, a Lebanon City Councilor, argued that the expanded use of natural gas is inconsistent with the City's goals to reduce its carbon footprint and develop renewable energy as expressed in the City's master plan, and is inconsistent with the orderly development of the region. Tr. at 160-161. He represented, however, that the City has no regulations or policies that prohibit the expansion of natural gas, that some businesses are already trucking in CNG and LNG, and that the City is not going to deny that choice to those customers. *Id.* at 162-163. Mr. Below pointed out that, according to Staff, Liberty used propane prices in its savings analysis that are probably higher than what potential anchor customers pay. He argued that propane dealers could be expected to aggressively lower their prices to retain customers, adding to the risk of the proposal.

Id. at 161-162. Mr. Below requested that, should the Commission approve the Settlement Agreement, Liberty should be required to demonstrate at a hearing before the Commission that it has the necessary customer commitments to proceed, and that interested parties be permitted to scrutinize the commitments. He also asked for confirmation that Liberty would work with the City with regard to local land-use regulations and fire and safety regulations. *Id.* at 164.

D. Town of Hanover

In her direct testimony, Julia N. Griffin, Hanover's Town Manager, stated that the residents of Hanover had voted to become a Sierra Club "Ready for 100 Action" community at the May 2017 town meeting. Exh. 7 at 2-3. She explained that the Town of Hanover is committed to using renewable energy sources for 100 percent of its electricity, heating, and transportation needs in the future. *Id.*³ Ms. Griffin advised that Hanover will begin its transition to biomass and solar energy sources for heating and cooling all town buildings in the 2017-2018 fiscal year. *Id.* at 3. According to Ms. Griffin, the town hopes to work with other large institutional energy consumers in Hanover to transition their use to renewable sources as well. *Id.* She asserted that Liberty's proposed natural gas project would be inconsistent with Hanover's commitment to using renewable energy sources. *Id.* Ms. Griffin confirmed in her testimony during the hearing that neither the Town of Hanover nor Dartmouth College, which is working with the town on several energy efficiency projects, intends to purchase natural gas at any time in the future. Tr. at 120-122. Also at the hearing, Ms. Griffin clarified that she knew little of the plans of the Dartmouth Hitchcock Medical Center for committing to using Liberty's gas distribution, but she knew that the Medical Center currently uses CNG to heat its campus.

³ It is unclear whether Hanover's target date is 2050 or 2030: Ms. Griffin referred to the date of 2030 twice in her direct testimony. See Exh. 7 at 3. Dr. Chaffee, however, used the date of 2050 on page 14 of his direct testimony; and Joanna Scharf and Judy Colla, members of the public who spoke during the September 7 hearing, likewise referred to 2050 as the target date. See Tr. at 22 and 26-27.

Id. at 123. She clarified as well that the Town's vote to use 100 percent renewable fuels is a goal and not a regulation.

E. Jonathan Chaffee, Ph.D.

Dr. Chaffee opined that Lebanon residents are unlikely to switch from oil, the heating fuel most commonly used by Lebanon residents, to natural gas for a number of reasons. Exh. 9 at 2-3. Those reasons include: the higher price of natural gas, even at the current tariffs and gas costs, the expectation that natural gas prices will increase in the future, the substantial costs of conversion from oil to natural gas, and the negative environmental impacts associated with natural gas, *Id.* at 3-15.

At hearing, Dr. Chaffee expounded on the reasons he believes using natural gas now and in the future could cost homeowners more than using other energy sources. Tr. at 127-129, 131-141. He testified further regarding the harmful effects of producing and transporting natural gas on the environment as well as the commitment of the City of Lebanon to using renewable energy sources. *See* Tr. at 143-154.

F. Staff

Stephen P. Frink, Assistant Director of the Commission's Gas and Water Division, recommended in his direct testimony that the Commission conditionally approve Liberty's franchise petition based on Staff concerns about the economic feasibility of Liberty's plan. Exh. 3 at 2, 4-5. Mr. Frink stated that Liberty's proposal was nearly identical to its prior franchise proposal for Hanover and Lebanon filed in docket number DG 15-289. *Id.* at 3. Staff's primary concern, as in the earlier docket was that Liberty had secured no anchor customer. *Id.* at 3-4. Another concern was that Liberty's business plan was not comprehensive, in that it did not

include details such as specific routes and supply requirements, or provide enough assurance that Liberty's cost and revenue projections used in its financial analysis were reasonable. *Id.* at 4-6.

Because Liberty's projected revenue from Hanover and Lebanon customers was "highly speculative" in Staff's opinion, actual revenue could be insufficient to cover the cost of service to those customers. *Id.* at 9-10. This could harm Hanover and Lebanon customers if the new pipeline distribution system could not continue to operate, and Liberty's existing customers could end up paying for a portion of the Hanover-Lebanon franchise operations. *Id.* at 4, 9-10. Staff found that the 25 percent customer-commitment level required before construction by Liberty's current tariff did not adequately address this financial risk. *Id.* at 10-11. Accordingly, Staff recommended that, before commencing construction, Liberty be required to obtain customer commitments that would satisfy 50 percent of the revenue requirement of a Discounted Cash Flow ("DCF") analysis that produces a zero net present value over ten-years ("50 percent customer commitment level"). Staff recommended that the pre-construction calculation be based on an updated, comprehensive business plan and an updated DCF analysis. *Id.* at 2 and 12. Staff also recommended an updated business plan and DCF analysis demonstrating a 50 percent customer commitment level for Phase 2 of the construction. *Id.*

Mr. Frink testified at the hearing that the Commission's approval of Liberty's franchise petition would be in the public interest given the Settlement Agreement's provisions, which addressed Staff's previous concerns. Tr. at 59-60. Granting Liberty this franchise, he stated, would allow Liberty to gauge the level of customer interest and determine whether proceeding with the project would in fact be profitable. Tr. at 60-62, 80-81.

Mr. Frink also testified about the terms of the Settlement Agreement and Staff oversight of Liberty's project. He clarified what the "revenue requirement" included and the meaning of

the “reducing the revenue requirement” language in the Settlement Agreement’s risk sharing provisions. Tr. at 67-69, 109-113. Mr. Frink stated that Liberty would present the Commission with an updated business plan and updated DCF analysis before proceeding. Tr. at 63-64. He represented that Staff would review Liberty’s figures to determine whether Liberty had achieved the 50 percent customer commitment level. Tr. at 90-95, 106-108. Mr. Frink observed that Liberty would then provide the Commission with an updated DCF analysis whenever it files a rate case within the first five years. Tr. at 70-71. Furthermore, Staff would audit Liberty’s costs as part of the Commission’s determination of the cost of gas rate. Tr. 90-91, 109.

G. Public Comment

In addition to the numerous written public comments that were received regarding this matter, the majority of which opposed Liberty’s franchise petition, *see* Tr. at 39 (Remarks of Chairman Honigberg), several members of the public spoke during the September 7, 2017, hearing on the merits. Laura Simon, a resident of Vermont, spoke against Liberty’s proposal, citing safety and environmental concerns. Tr. at 15-18. Sam Shain, a student from Kearsarge Regional High School, voiced environmental concerns in connection with Liberty’s proposed pipeline system. Tr. at 18-19. Geoffrey Gardner, a Vermont resident, framed environmental concerns about Liberty’s proposal as a moral and ethical issue. Tr. at 19-20. Joanna Scharf, a resident of Cornish, opined that Liberty’s proposal would not serve the public good, because the public was interested in pursuing renewable energy sources. Tr. at 21-24. Ariel Arwen, a Vermont resident who, as noted above, was originally an intervenor in this matter when she lived in New Hampshire, stated that Liberty’s efforts would be better spent focusing on its electric business. Tr. at 24-25. Judy Colla, a resident of Hanover and the Vice Chair of the Sierra Club Upper Valley Group, endorsed the statements of others and added that the lack of public support

in the Upper Valley for Liberty's proposal indicated that it would not serve the public good. Tr. at 26-29. Bart Guetti reiterated previous concerns about the environmental impacts of Liberty's proposed natural gas pipeline system. Tr. at 29-31.

Lee Oxenham, a resident of Plainfield and a state representative raised safety concerns about Liberty's facility being located on Route 12A in Lebanon, stating that Route 12A is at the commercial center of the Upper Valley and is subject to heavy traffic. Tr. at 32. Representative Oxenham expressed concern about the potential for leakage of methane at various points in the supply chain, and stated her opinion that focusing on renewable energy sources instead of natural gas would be more beneficial for New Hampshire's environment and economy. Tr. at 33-39.

IV. REQUEST TO WAIVE PUC 1603.02(a); MOTIONS FOR PROTECTIVE ORDERS

Liberty requested a waiver of N.H. Code Admin. Rules Puc 1603.02(a), which requires a public utility proposing an initial franchise to file its proposed tariff with the Commission. Liberty argued that Puc 1603.02(a) does not apply, because the proposed Hanover and Lebanon franchise is not its "initial" franchise. Even if the rule does apply, Liberty maintained that a waiver is warranted under Puc 201.05, because a waiver of Puc 1603.02(a) would have no negative impact on the Commission's ability to resolve this matter and would serve the public good by conserving resources. Liberty contended that requiring it to file its tariff would be burdensome, in that this tariff is over 150 pages long and any changes to it, such as adding the names of the two municipalities, would be minor. Moreover, Liberty asserted that filing would be unnecessary, as the tariff is available on both Liberty's and the Commission's websites.

Liberty also filed two motions for protective orders. The first motion, which was included in Liberty's initial filing, pertained to certain attachments to the written testimony of Mr. Clark. Liberty argued that information contained in those attachments constitutes

“confidential, commercial, or financial information” entitled to protection under Puc 203.08(a), as the attachments include commercially sensitive information, proprietary information about business practices and plans, and private customer information. Liberty stated that this information should be protected as confidential, because Liberty, its potential new customers, and third parties have privacy interests in this information that outweigh any public interest in disclosure.

Ms. Arwen and Mr. Chaffee objected to Liberty’s motion. They delineated specific information that is known to the public, has been stated in prior filings made with the Commission, or which was provided in Mr. Clark’s testimony in unredacted format. The OCA filed a letter on April 4, 2017, in which the OCA argued that Liberty’s “justifications for confidentiality likely only apply to a portion of the document for which Liberty is seeking full confidential treatment.” On September 7, 2017, Liberty filed a second motion for protective order relating to discovery responses. The second motion incorporated, in part, its first motion for protective order. No objection to the second motion was filed.

V. COMMISSION ANALYSIS

A. Franchise Petition

We encourage parties to settle issues through negotiation and compromise, because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Granite State Electric Co.*, Order No. 23,966 at 10 (May 8, 2002); *see* RSA 541-A:31, V(a) (“[I]nformal disposition may be made of any contested case...by stipulation [or] agreed settlement.”). Even when all parties join a settlement, however, we must independently determine that the result comports with “applicable standards.” *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972 at 48

(May 29, 2009). We analyze settlements to ensure that a just and reasonable result has been reached. *Id.*; see N.H. Code Admin. Rules Puc 203.20(b) (“The commission shall approve a disposition of any contested case by stipulation [or] settlement ... if it determines that the result is just and reasonable and serves the public interest”).

The “applicable standards” governing the proposed settlement in this franchise petition case are those of RSA 374:22, I and 374:26. Under RSA 374:22, I:

No ... business entity shall commence business as a public utility within this state, or shall engage in such business, or begin the construction of a plant, line, main or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.

Further, pursuant to RSA 374:26:

The Commission shall grant such permission whenever it shall, after due hearing, find that such engaging in business, construction, or exercise of right, privilege, or franchise would be for the public good, and not otherwise; and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest.

For the Commission to approve the settlement, we must find that granting a franchise to Liberty in Hanover and Lebanon is for the public good, and that conditions we find necessary to impose are in the public interest. In examining whether a franchise petition is in the public good, we consider whether the franchise applicant has the financial, managerial, and technical expertise to successfully and safely serve customers in the intended territory; whether the financial projections used to economically justify the franchise petition are reasonable and in conformance with accepted financial, accounting, and business standards; in the case of existing New Hampshire public utilities, whether the franchise expansion would pose an unacceptable risk of cross-subsidization or other financial risk to existing utility ratepayers; and in general, whether the franchise petition’s approval would offer benefits to the public. *See Lakes Region Water Co.,*

Inc., Order No. 25,964 at 3-4 (November 10, 2016) (citing *Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000)); *see also Northern Utilities, Inc.*, Order No. 25,700 (August 1, 2014); *Hampstead Area Water Company*, Order No. 25,672 (May 30, 2014); *EnergyNorth Natural Gas, Inc.*, 85 NH PUC 71, 71-72 (2000). Before utilities make extensions into new territory, they must be reasonably certain that the new revenues the extension will generate will support the cost of the extension, at reasonable rates, and within a reasonable time. *C. Julian Tuthill Et Al. v. Plaistow Electric Light & Power Company*, 8 N.H.P.S.C. 509, 510 (1922). Extensions that do not meet this test are not for the public good. *Id.* When appropriate, we will impose conditions on new development to ensure that extensions are not paid for by increasing rates on other customers.

While the “risk provisions” of the Settlement Agreement may adequately address the initial concerns of Staff and the OCA, we find that additional conditions are necessary to satisfy the public interest. Prior to beginning construction of either phase, the Settlement Agreement calls for a customer commitment level that will produce at least 50 percent of the revenue requirement associated with the new facilities from those customers in ten-years,⁴ The Settlement Agreement calls for Liberty to reduce its revenue requirement by 50 percent of any revenue shortfall in the first rate case filed within five years following construction of each phase and by 100 percent of any revenue shortfall in the second rate case filed in five years following construction of each phase. “Customer commitment” and these “risk sharing” provisions are described in the Settlement Agreement and were explained at hearing. Tr. at 67-71. The revenue requirement includes both production costs and distribution costs. Production costs recovered in the COG rate applicable to Hanover and Lebanon include the cost of the land on which the production plant is located and the direct cost of the production facilities. The direct

⁴ Calculated in present value terms.

cost of the distribution system is to be recovered through Liberty distribution rates applicable to all Liberty distribution rate customers. Customer commitment requirements apply to the revenue requirement reflected in both the Hanover-Lebanon COG and Liberty distribution rates.

Revenue reductions under the terms of the Settlement Agreement and risk-sharing conditions set forth in this order will apply to both the Hanover-Lebanon COG and Liberty distribution rates based on the Hanover-Lebanon investment costs reflected in each.

Because production costs are to be included in the COG rate for Hanover and Lebanon customers, we must ensure that the Settlement Agreement affords those customers adequate protection, in addition to protecting Liberty's distribution customers from cross subsidization on a company-wide level. Mr. Clark testified that it would be possible for Liberty to meet the 50 percent customer commitment level necessary to begin construction of Phase One with just one large customer. Tr. at 84. We find that reliance on one large customer to satisfy all or a substantial portion of the commitment level would place commodity customers in Hanover and Lebanon, and all of Liberty's distribution customers, at an unacceptable risk should that one large customer cease using natural gas. In addition, we are concerned that Liberty has not adequately gauged the viability of a distribution franchise in Hanover and Lebanon, both of which have taken energy policy positions as municipalities that, while not prohibitory, do not appear to be welcoming to the distribution of gas. To better ensure the public interest, we take notice of the settlement agreement filed and our approval of it in *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,987 (February 8, 2017). In that franchise expansion, we required risk-sharing mechanisms similar to those proposed in the Settlement Agreement even though the communities involved, Pelham and Windham, actively supported the requested franchise. We find that an additional risk-sharing mechanism is

necessary here to protect Liberty's commodity customers in Hanover and Lebanon from capital expenses that would be collected through COG rates if Liberty is not successful in maintaining an adequate customer base following construction. We also find that an additional mechanism is necessary to protect against the over-expenditure of capital investment funds that could lead to the cross-subsidization of the Hanover-Lebanon franchise expansion by Liberty's other distribution customers. We therefore condition our approval of Liberty's natural gas franchise on the following additional requirements, which are necessary to justify a finding that the franchise expansion will be for the public good.

1. We will require Liberty to report to the Commission whenever its revenues from customers in Hanover and Lebanon fall to 40 percent of its revenue requirement or below for each phase. Once reported, Liberty shall file an adjustment to its gas and distribution rates in the cost of gas or cast iron/bare steel filing immediately following the reported deficiency. In making that adjustment to rates, Liberty shall reduce its revenue requirement by 100 percent of any revenue shortfall not actually being recovered from customers in Lebanon and Hanover. Revenue requirement for purposes of this calculation shall be based on actual costs. Revenue deficiency shall be the difference between revenue requirement based on actual costs and revenue received from Hanover and Lebanon customers.

2. The risk-sharing condition we impose will terminate following the date on which Hanover and Lebanon customers have consistently produced at least 50 percent of the revenue requirement associated with the new facilities for each phase for a period of ten-years, provided Liberty petitions the Commission to terminate the applicable risk-sharing provision and provides the necessary documentation to demonstrate that the condition for termination has been met.

3. Liberty will file updated DCF analyses at the in-service date of each of Phases One and Two, respectively, and annually thereafter, until ordered otherwise. The initial and annual reports will include the following:

- i. A comparison of the original and updated DCF analyses;
- ii. A comparison of the original annual projected residential and C&I customer conversions and gross profit margins, by fuel type, with the actual annual conversions and gross profit margin; and
- iii. A Current Heating Fuel Value table comparing the annual average residential heating rate calculated using the Liberty bill impact schedule in its winter cost of gas filing and the cost of alternative fuels in effect at the time as reported by the New Hampshire Office of Strategic Initiatives.

4. With regard to the safety concerns raised, we take notice of Docket No. DG 17-068 and *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division*, Order No. 26,065 (October 20, 2017), *rehearing granted in part* Order No. 26,087 (December 18, 2017).⁵ In that docket, we determined that Liberty's existing gas franchise in Keene entitled Liberty to use CNG/LNG without obtaining additional franchise approval. Order No. 26,065 at 3. Nonetheless, due to the higher operating pressures of CNG/LNG installations than in Liberty's distribution systems, we required Liberty to satisfy our Safety Division of the adequacy of Liberty's plans for its conversion to CNG/LNG before gas flows through the system. As we stated there:

[I]t is critical that any new CNG/LNG installations be accomplished safely. ... Pursuant to RSA 374:1 (utilities must provide safe and adequate service), RSA 374:3 (Commission's general supervision of utilities), RSA 374:4 (Commission's duty to keep informed), and related statutes, the Commission has the authority and responsibility to ensure that all utility installations are safely and reliably engineered in conformance with all applicable standards, and that public utilities like Liberty meet their duty to provide safe and adequate service under RSA 374:1. To that end, pursuant to RSA 374:1, RSA 374:3, and RSA 374:4,

⁵ In Order No. 26,087, the Commission granted rehearing and decided to allow additional parties to present legal argument on the issue whether Liberty has the legal authority to offer CNG/LNG service in its existing City of Keene franchise area. The Commission maintained all of the safety and operational conditions that it imposed on Liberty in connection with its CNG/LNG installations.

with respect to the system conversion in Keene, we order Liberty to provide all final plans for engineering, construction, installation, testing, operations, public awareness, maintenance, emergency response, procedures, and schematics, including qualifications and training of personnel, in sufficient detail as requested by the Commission's Safety Division. Further, before gas flows through these installations, we must receive a Safety Division report assessing the adequacy of the Company's plans and the satisfactory completion of a physical inspection of all installations.

Order No. 26,065 at 4. We will require Liberty to take the same safety-based measures before gas flows through its systems in Lebanon or Hanover.

The risk-sharing condition we impose operates in addition to the risk-sharing mechanism in the Settlement Agreement. We believe the following examples are useful to demonstrate the difference between the two. The first example shows risk sharing under the Settlement Agreement. In this example, Liberty obtains sufficient customer commitments such that the present value of the distribution revenue from those commitments is equal to 50 percent of the revenue requirement of the facilities necessary to serve customers in Phase One, all on a present value basis over a ten-year period. Liberty then commences construction and begins operations. Two years later, Liberty files its second updated DCF and its first distribution rate case. The updated DCF shows that Liberty was correct in its projection of distribution revenues. Liberty underestimated construction costs, however, and the revenue requirement is now double Liberty's original estimate. Assuming Liberty's original estimate of distribution revenues was \$25,000 and its original estimate of its revenue requirement was \$50,000, but its actual revenue requirement is \$100,000, Liberty's customer commitment is now 25 percent. Under the risk-sharing mechanism in the Settlement Agreement, Liberty will be required to reduce its revenue requirement by 50 percent of its revenue shortfall of \$75,000, or \$37,500. Rates will be calculated based on a revenue requirement of \$62,500. Customers will be responsible for

\$62,500, subsidizing \$37,500 of the revenue shortfall. Shareholders will forego recovery of \$37,500.

The second example demonstrates risk sharing under the additional condition imposed by the Commission. In this example, Liberty files an updated DCF after commencing operations but does not file a rate case. Otherwise, the facts are the same. Liberty has 25 percent (or anything less than 40 percent) customer commitment. Adjustments will be calculated in Liberty's next COG or cast iron/bare steel case. Liberty will reduce its revenue requirement by 100 percent of the revenue shortfall, or \$75,000. New rates will be calculated based on a revenue requirement of \$25,000. Customers will be responsible for \$25,000, and will not subsidize any of the revenue shortfall. Shareholders will forego recovery of \$75,000. As noted above, unlike the risk-sharing provision in the Settlement which will expire after five years, this condition applies until Hanover and Lebanon customers have consistently produced at least 50 percent of the revenue requirement associated with the new facilities for each phase for a period of ten-years.

The examples above are simplified to demonstrate the sharing of risk. Adjustments would not be made in one unified rate. Instead, credits would flow to commodity customers in Hanover and Lebanon and to distribution customers separately, through a variety of potential mechanisms such as rate adjustments, adders, or credits to Liberty's Local Distribution Adjustment Factor.

We find that, with the conditions imposed above, Liberty possesses the financial, managerial, and technical expertise to successfully serve customers in Hanover and Lebanon, as demonstrated by its ongoing operations in other parts of New Hampshire. This is a finding specific to this petition as conditioned by the Settlement Agreement and this Order, and is dependent on the current position of Liberty. Liberty remains subject to the ongoing safety- and

operations-related inspection and enforcement authority of the Commission, and all other responsible local, state, and federal agencies. This Order does not preempt such authority. Our finding today does not authorize future franchise expansions, does not authorize the leasing of or contracting for operations of any of the pipeline including appurtenant equipment and facilities, and is not a determination that any of Liberty's capital investments in Hanover or Lebanon are prudent or will be recoverable in rates.

We note that under RSA 374:27, our grant of a franchise to Liberty must be exercised within two years of the date of this order or such authority will expire. In the event Liberty has begun but not completed construction and is not flowing gas within two years of the date of this order, it shall file a status update, and petition the Commission to continue the franchise authority.

Last, while we acknowledge Hanover's, Lebanon's, and the public commenters' environmental and public policy objections to the use of gas, energy and environmental policy is the purview of the legislature and none of the parties or commenters has demonstrated that any law or regulation would prohibit the expanded distribution of natural gas in the state. In addition, if there are specific environmental issues, environmental regulatory decisions are better left to an agency that is expert in the subject matter and has the jurisdiction to regulate effects on the environment, such as the Department of Environmental Services.

B. Request to Waive Puc 1603.02(a)

In considering a waiver request, the Commission shall waive the provisions of any of its rules if it finds that the waiver serves the public interest and that the waiver will not disrupt the orderly and efficient resolution of matters before the Commission. Puc 201.05(a). To determine the public interest, the Commission considers whether (1) compliance with the rule would be

onerous or inapplicable given the circumstances of the affected person, or (2) the purpose of the rule would be satisfied by an alternative method proposed. Puc 201.05(b). Here, Liberty filed “cost of gas language” it proposes to apply in the Hanover and Lebanon franchise area and revisions to existing tariff pages to include Hanover and Lebanon in its service area. Liberty plans to apply the balance of its existing tariff to service provided in Hanover and Lebanon, and has asked to be relieved of the requirement found in N.H. Code Admin. Rules Puc 1603.02(a) to file a complete tariff with its petition for franchise authority. Liberty’s tariff is posted on the Commission’s website and Liberty proposes to revise only a few pages to make its existing tariff applicable to customers in Hanover and Lebanon. We find that the purpose of Puc 1603.02(a) is satisfied, as the tariff provisions Liberty plans to apply in Hanover and Lebanon are readily available to parties and the general public. We therefore grant the waiver.

C. Motion for Confidential Treatment

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008); *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,863 at 2 (February 1, 2016) (citation omitted). Under the balancing test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Order No. 25,863 at 2. Finally, the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.*

The Commission routinely protects information related to commercial customers' fuel pricing and usage profile information, and pricing information related to pipeline contracting. *See, e.g., Northern Utilities, Inc.*, Order No. 25,700 (August 1, 2014); *Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012) (protecting pricing and fuel-usage data of commercial gas-utility customers); *see also Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,861 (January 22, 2016) (protecting Tennessee Gas Pipeline Company, LLC-related pricing information filed by Liberty). The Commission has also found that commercial customers' identities, in the context of their dealings with a gas utility, may be protected if their privacy interests warrant it; for instance, when disclosure would harm those customers' competitive positions. *See EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,208 at 5-7 (March 23, 2011).

We agree with Liberty that the information contained in the documents and discovery responses it seeks to protect constitute confidential and commercial information under RSA 91-A:5, IV. While the public may have some interest in the information (*e.g.*, to aid in its understanding of the Commission's analysis in this proceeding), we find that the public's interest is outweighed by Liberty's, its third-party advisors', and its potential customers' privacy interests, and that disclosure of some of the information could result in commercial harm to Liberty, its advisors, and to Liberty ratepayers. In the case of the identities of potential customers, disclosure could harm the competitive position of Liberty and the economic interests of Liberty ratepayers insofar as competing energy suppliers could attempt to "poach" these potentially valuable anchor and non-anchor customers.

Nonetheless, Liberty's request goes too far in seeking to protect the entirety of those documents. Ms. Arwen and Dr. Chaffee adequately demonstrated that some of the information

is publicly known and that some of the information is sufficiently aggregated so as not to affect the privacy interests of any party. We find that most of the privacy interests and competitive harm raised by Liberty could be resolved simply by redacting potential customers' names from the documents. In addition, while third-party advisors have an interest in protecting proprietary information and closely guarded methodologies, the fatal-flaw analysis is based primarily on publicly known information about the area and the Lebanon Landfill, and the property appraisal report is based primarily on public land records. Because Liberty's request is over-inclusive, we direct Liberty to refile the documents with the appropriate redactions and a revised motion for protective treatment within 15 days of this order. Following that filing, other parties will be allowed 10 days to file objections. We will continue to protect the information in accordance with our rules through that process. *See* N.H. Code Admin. Rules Puc 203.08(i).

VI. CONCLUSION

We hereby grant Liberty a franchise to distribute natural gas through distribution pipelines in the City of Lebanon and the Town of Hanover, under the terms of the Settlement Agreement and the additional conditions outlined above; and we incorporate the terms of the Settlement and the further conditions of this order into the franchise grant. To facilitate the efficient administration of the Settlement Agreement, we authorize the parties to modify the Settlement Agreement so long as any modification is agreed upon, is clerical or ministerial in nature, involves timing, scheduling, or other non-substantive terms. The parties shall file any such modification with the Commission and provide a copy to all parties on the service list. The Commission will approve the request via secretarial letter, if appropriate, but will not require notice or hearing.

Based upon the foregoing, it is hereby

ORDERED, that the petition by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, for a franchise expansion to distribute natural gas in the Town of Hanover and the City of Lebanon is **GRANTED**, subject to the terms and conditions delineated in the Settlement Agreement, which is hereby **APPROVED**, all conditioned on the reporting, risk-sharing, and safety conditions described in this order, and it is

FURTHER ORDERED, that Liberty shall update its Gas Tariff appropriately to reflect this expansion of its franchise; and it is

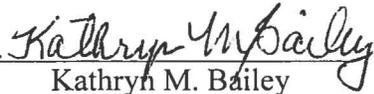
FURTHER ORDERED, that Liberty's motion for waiver of N.H. Code Admin. Rules Puc 1603.02(a) is **GRANTED**; and it is

FURTHER ORDERED, that Liberty's motion for protective treatment is **GRANTED** in part and **DENIED** in part, and Liberty is required, within 15 days, to file the protected documents with more limited redactions and revised motion for confidential treatment consistent with this order; and it is

FURTHER ORDERED, that Liberty shall provide all final plans for engineering, construction, installation, testing, operations, public awareness, maintenance, emergency response, procedures, and schematics, including qualifications and training of personnel, in sufficient detail as requested by the Commission's Safety Division; and it is

FURTHER ORDERED, that Liberty shall not flow any gas through the proposed CNG/LNG installation for the Hanover and Lebanon franchise area until the Commission's Safety Division has found the required plans and reports adequate, completed its physical inspection of the facilities, and reported such to the Commission.

By order of the Public Utilities Commission of New Hampshire this fifth day of March,
2018.

		
Martin P. Honigberg Chairman	Kathryn M. Bailey Commissioner	Michael S. Giaimo Commissioner

Attested by:


Debra A. Howland
Executive Director