

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

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September 5, 2018 -1:35 p.m.
Concord, New Hampshire

**RE: DG 18-092
LIBERTY UTILITIES (ENERGYNORTH NATURAL
GAS) CORP., D/B/A LIBERTY UTILITIES
PETITION FOR LICENSE TO CONSTRUCT AND
MAINTAIN A NATURAL GAS PIPELINE
BENEATH THE ASHUELOT RIVER IN KEENE
(Prehearing Conference)**

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth
Natural Gas) Corp. d/b/a Liberty
Utilities:
Michael J. Sheehan, Esq.

Rptg. Terry Clark, Intervenor:
Richard M. Husband, Esq.

Reptg. PUC Staff:
Paul B. Dexter, Esq.

Court Reporter: Susan J. Robidas, NH LCR No. 44

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P R O C E E D I N G S

CHAIRMAN HONIGBERG: Good afternoon, everyone. Please be seated. We are here this afternoon in Docket DG 18-092 for a prehearing conference on Liberty Utilities (EnergyNorth Natural Gas) Corp.'s petition for a license to construct and maintain a natural gas pipeline beneath the Ashuelot River in Keene. Before we do anything else, let's take appearances from the Company and from Staff.

MR. SHEEHAN: Good afternoon, Commissioners. Mike Sheehan for Liberty Utilities (EnergyNorth Natural Gas.) With me are: Steve Mullen; Andy Mills, who is the engineer who designed this project; and Steve Rokes, who's the manager of our Keene Division.

MR. DEXTER: Good afternoon, Commissioners. My name is Paul Dexter, Staff Counsel, representing Staff in this matter. Joining me today are the director and assistant director of the Commission's Safety and Security Divisions, Randy Knepper and

1 Paul Kasper.

2 CHAIRMAN HONIGBERG: All right.
3 I'm aware of one petition to intervene filed
4 by Mr. Husband on behalf of Mr. Clark. I see
5 Mr. Husband back there.

6 MR. HUSBAND: Thank you,
7 Commissioners. Yes, Attorney Husband here
8 today with my client, Terry Clark.

9 CHAIRMAN HONIGBERG: All right.
10 Any position from the Company or from Staff
11 on the petition to intervene?

12 MR. SHEEHAN: The Company will not
13 object to this petition in this docket.

14 CHAIRMAN HONIGBERG: Mr. Dexter.

15 MR. DEXTER: Staff has no objection
16 to the petition.

17 CHAIRMAN HONIGBERG: Mr. Husband,
18 is Mr. Clark an abutter to the crossing
19 location?

20 MR. HUSBAND: No.

21 CHAIRMAN HONIGBERG: So the only
22 grounds you've articulated, as I understand
23 it, is that the crossing is part of Liberty's
24 larger plans in Keene. Mr. Clark is a party

1 to proceedings related to that, and
2 therefore, he should be a party here? Is
3 that how it works for you?

4 MR. HUSBAND: And also a resident
5 of Keene, yes.

6 CHAIRMAN HONIGBERG: Well, I'm
7 telling you all residents of Keene do not
8 standing to intervene in this matter. I'm
9 telling you that now. So you're going to
10 have to come up with something more specific.
11 And I think you articulated what I just said
12 as something more specific in your petition.
13 Do I have that right?

14 MR. HUSBAND: You have that right.

15 CHAIRMAN HONIGBERG: I'm not
16 certain that that's the right kind of direct
17 interest in a crossing petition to have
18 standing here to intervene. We're going to
19 take the matter under advisement. But for
20 today, you're welcome to participate as any
21 member of the public would and stay for the
22 technical session that's going to follow and
23 interact with the parties as you normally
24 would. And we'll issue an order later on the

1 petition to intervene. Okay?

2 MR. HUSBAND: Okay thank you.

3 CHAIRMAN HONIGBERG: All right.

4 Are there other preliminary matters before we
5 hear from the parties with their preliminary
6 positions?

7 [No verbal response]

8 CHAIRMAN HONIGBERG: I see nothing.
9 Mr. Sheehan, why don't you start us off.

10 PRELIMINARY STATEMENTS

11 MR. SHEEHAN: Thank you. I'd like
12 to start with a couple of corrections or
13 clarifications to the petition itself.

14 In the opening paragraph, in the
15 prayer for relief, I asked for the Commission
16 to approve the license to maintain a "natural
17 gas pipeline." The line is now being used
18 for propane air and will be continued to be
19 used for propane air until if and when we
20 convert the system to natural gas.

21 The second correction is in
22 Paragraph 6, I refer to the easement that we
23 need to get from the City of Keene. That
24 paragraph correctly states the Company will

1 have the easement in place prior to
2 construction. Later on I make a statement in
3 Paragraph 10 that we have all easements that
4 are required. So we don't have an easement
5 from Keene yet. We will obtain that should
6 the petition be granted.

7 And last was a suggestion from the
8 City of Keene in my opening paragraph talking
9 about Keene repairing the bridge. My
10 statement seemed to make that more of a
11 certainty than is actually the case. Keene
12 plans to replace or repair this bridge, but
13 it may be further off in the future than this
14 petition suggests. So that was an editorial
15 comment that the City of Keene asked that I
16 make here today.

17 As for our position on this
18 petition, we are asking the Commission to
19 approve a crossing of the Ashuelot River to
20 install a new pipe. The reasons that the
21 requirements under the law for us to do that
22 are stated in the petition, and that is that
23 we must show that the proposed crossing is
24 necessary for Liberty to meet the reasonable

1 requirements of reliable service to the
2 public and that the requested license may be
3 exercised without substantially affecting the
4 public rights and the waters in question.

5 Taking the second one first, we are
6 going to -- we plan to install a pipe
7 underneath the river by a horizontal
8 directional drill. We will not touch the
9 river. We will be beneath it. There will be
10 no impact to the public's rights to use the
11 river. Now, there may be a temporary -- I'm
12 not sure how the HDD happen, if there's a
13 temporary pause while they're drilling. But
14 that would be the extent of any interference
15 with the public's rights.

16 And the other requirement is that
17 the crossing is necessary for Liberty to meet
18 the reasonable requirements of reliable
19 service. We are proposing -- the plan is as
20 follows: There is an existing crossing
21 nearby, about a block away, that is hanging
22 on a bridge. It was installed on the bridge,
23 as some crossings are. That is the only pipe
24 that serves a particular line of customers.

1 By adding this second crossing, it achieves
2 two service goals: The first is it is a
3 redundancy should there be a problem with the
4 existing pipe, we can close it down and still
5 serve customers with the new pipe. So there
6 is a reliability piece of it there. And
7 similarly, if and when the City does repair
8 this bridge, we can also turn off that pipe,
9 the existing one, during construction. So we
10 wouldn't have to do a more complex
11 work-around during construction. We would
12 have the second system. So, for both
13 reliability reasons and the repair of the
14 bridge, this is reasonable for the service of
15 our customers.

16 We filed a petition hoping to do
17 construction this year. We have a very
18 favorable quote from the drilling company
19 that is roughly half of what they typically
20 cost because this particular company had some
21 room in their schedule this fall. There is a
22 risk we lose that schedule with this
23 proceeding. And we understand we will
24 probably get -- the other two quotes we

1 received are twice as much, \$60-, \$70,000
2 versus \$30,000. So there is decent chance
3 that come next year we get all quotes in the
4 \$60-, \$70,000 range. So there is a cost
5 impact as well. And that's our position in
6 this case.

7 CHAIRMAN HONIGBERG: You
8 articulated an intention to show the purpose
9 for the crossing. You're familiar with Order
10 No. 25,910 --

11 MR. SHEEHAN: Not by number.

12 CHAIRMAN HONIGBERG: It's from the
13 Northern Pass proceedings relating to the
14 scope of a crossing docket.

15 MR. SHEEHAN: I reviewed it when it
16 came out. I haven't read it recently.

17 CHAIRMAN HONIGBERG: They do place
18 limits on the scope of the purpose review
19 during a crossings proceeding. I think Mr.
20 Mullen may be pulling it up for you now.
21 It's something you might want to review. I
22 would certainly recommend that Mr. Husband
23 and his client and others review it if they
24 need some more information about what the

1 scope of review of a crossings docket is.

2 MR. HUSBAND: Sir, if I could ask
3 you one more time for the number on that?

4 CHAIRMAN HONIGBERG: It's 25,910.
5 It's dated June 28, 2016.

6 MR. HUSBAND: Thank you.

7 CHAIRMAN HONIGBERG: All right.
8 Mr. Husband, I'll come to you third. I'll
9 let Mr. Dexter do his remarks next.

10 MR. DEXTER: Thank you, Mr.
11 Chairman. The Commission sees a lot of these
12 crossings dockets, and the Staff will take
13 the approach that they take in all the
14 crossing dockets, which is to do a thorough
15 investigation of what's been submitted by the
16 Company and make a recommendation at the
17 appropriate point in time. We don't have a
18 position on the crossing. There are some
19 questions that Staff plans to look at in the
20 tech session and potentially through
21 discovery. Mr. Sheehan toughed on a few of
22 them already. Staff is particularly
23 interested in the situation of the two
24 bridges and the possibility of one being

1 repaired and the timing of all that and
2 whether or not the redundancy that Mr.
3 Sheehan referred to is significant enough, if
4 the benefit is significant enough to meet the
5 statutory standard.

6 CHAIRMAN HONIGBERG: I recommend
7 you read that case as well, Mr. Dexter.

8 MR. DEXTER: Absolutely. Staff
9 will be looking at the easements that have
10 been obtained, in addition to the one that
11 needs to be obtained from the City. And the
12 petition also mentions an upgrade to the West
13 Street pipe. Staff is interested in the
14 status of the upgrade, as well as the status
15 of the repair to the drainage at the
16 Winchester Street bridge that was mentioned
17 in the petition. All this goes to the
18 question of whether or not the crossing is
19 reasonably necessary. Staff does not plan to
20 review energy alternatives, natural gas or
21 propane gas versus renewables, as was
22 mentioned in several comments that were filed
23 with the Commission. We don't believe that's
24 appropriate for the scope of a crossing

1 docket.

2 CHAIRMAN HONIGBERG: This petition
3 was filed the end of may. Has Staff started
4 working with the Company on discovery and
5 data requests?

6 MR. DEXTER: Yes, the Company --
7 Staff did issue some data requests, and the
8 Company responded to those earlier in the
9 summer. I don't have an exact date on the
10 responses. But, yes, Staff has begun its
11 investigation.

12 CHAIRMAN HONIGBERG: Commissioner
13 Bailey.

14 CMSR. BAILEY: Does Staff have any
15 plans to review safety, or is that not
16 something that you do with an HDD and the
17 pipeline?

18 MR. DEXTER: I'd like to defer that
19 question to the director of safety.

20 CHAIRMAN HONIGBERG: Mr. Knepper.

21 MR. KNEPPER: Yes. As listed in
22 the Order of Notice, we'll look at how it
23 meets the requirements of 49 part -- CFR Part
24 192. We'll probably look also at -- although

1 it's not a standard, we'll probably look at
2 how it incorporates the Best Practices or
3 Good Practices Guidelines for horizontal
4 directional drills, which is a standard out
5 there put together by the North American
6 Trenchless Technology Group.

7 CHAIRMAN HONIGBERG: All right.
8 Before I turn to you, Mr. Husband, I'll note
9 that there are some members of the public who
10 stated they wish to speak. I'll give people
11 a chance to do that in a few minutes.

12 Mr. Husband.

13 MR. HUSBAND: Thank you, again, Mr.
14 Chairman. It is Mr. Clark's position that we
15 are now looking at a petition that makes many
16 factual assertions which must be proven. As
17 you know in the PUC rules, the burden of
18 proof is n the petitioner. There's been no
19 opportunity yet to test any of the
20 allegations or claims in the petition, and
21 that would require discovery. We would ask
22 that there be some period of discovery to
23 allow for this. There are many issues that
24 have been raised and appear to be still

1 coming up.

2 There was a filing by the Ashuelot
3 River Advisory Committee, I believe, which
4 noted a number of issues, some which I
5 couldn't get to asking my own discovery
6 questions until I know the responses to
7 those. So I think that there has to be a
8 period of discovery certainly far beyond
9 today's technical session.

10 Mr. Clark's concern set forth in
11 the petition will largely be addressed if
12 this proceeding goes forward as it has been
13 noticed as to the issues and what I'm hearing
14 the PUC Staff Attorney say they intend to
15 explore. But I want to make it clear that
16 Mr. Clark is concerned with the actual intent
17 of this project. He is petitioning to
18 intervene as an ordinary citizen. But he has
19 also been a city councilor in Keene, and he
20 knows from his involvement with the council
21 that the terms of this project being ready to
22 go next month, I guess, there are two permits
23 that are needed from the city council for
24 this project to go forward, and they have not

1 been granted. One is not on the agenda yet
2 and has not even been asked for to be placed
3 on the agenda. He also knows that this
4 proposed river crossing is a half-mile from
5 the other pipeline crossing. So the
6 purported convenience of locating it next to
7 another one and avoiding all -- you know,
8 having two pipelines side by side so work
9 could be done on one while the other is shut
10 down doesn't really seem to apply. The fact
11 is the pipeline seems, from all the
12 conversations he's heard at the city council
13 the last couple years, seems to be directed
14 supplying gas to people in the mall area of
15 Keene. That's why it really seems that this
16 petition is all about getting approval up
17 front to go forward with starting the
18 conversion that is the subject of DG 17-068,
19 which is still under consideration. No
20 approval's been given there. It's looking to
21 get a approval that is really contingent the
22 approval in that proceeding. And this
23 approval ultimately should be conditioned on
24 that. But there has to be discovery in the

1 meantime before we get there.

2 CHAIRMAN HONIGBERG: You made
3 reference to the Ashuelot River Local
4 Advisory Committee filing, which I have. It
5 was filed as comments. They didn't, as far
6 as I could tell, seek intervenor status. Is
7 there anyone here who represents the Ashuelot
8 River Advisory Committee?

9 Yes, ma'am. Would you identify
10 yourself, please.

11 MS. SKULY: I'm Barbara Skuly. I'm
12 chairman of the Ashuelot River Local Advisory
13 Committee, and I wrote that.

14 CHAIRMAN HONIGBERG: Coincidentally
15 I see your name here on the list of people
16 who wish to speak.

17 MS. SKULY: Correct.

18 CHAIRMAN HONIGBERG: Is it your
19 intention to seek intervenor status in this
20 proceeding?

21 MS. SKULY: Not at this time.

22 Is that not working?

23 CHAIRMAN HONIGBERG: It's not.
24 Let's go off the record.

1 (Discussion off the record.)

2 MS. SKULY: No, we are not seeking
3 intervenor status at this time.

4 CHAIRMAN HONIGBERG: Okay. You
5 should probably speak with Staff, the
6 Company, and probably Mr. Husband about
7 how -- about the ways you can participate and
8 make your positions known. You've done a
9 good job with this letter. I mean, you guys
10 obviously know how to participate in
11 proceedings generally. I can tell that by
12 the quality of this letter. But there are
13 things that you can do as an intervenor that
14 you can't do as a member of the public. You
15 can do lots as a member of the public, as a
16 commenter. You can observe, you can see --
17 you can get access to virtually everything
18 that happens. But it's a slightly different
19 status, and I think you should have a
20 conversation with some folks about whether it
21 might make sense for you to seek intervenor
22 status. And I'll give you a chance to speak
23 in just a moment.

24 Anything else before we turn to

1 members of the public who wish to speak?

2 [No verbal response]

3 CHAIRMAN HONIGBERG: All right. I
4 have, I think, two. Ms. Skuly, you're
5 already here. And the other one is Peter
6 Majoy? And you'd also like to speak? All
7 right. Why don't you go first. Just make
8 sure the mic is on and close enough to you.

9 Just before you start, I think it
10 may be correct that you sent us a letter as
11 well that we just received.

12 MR. MAJOY: Yes. But what I would
13 like permission to do is to read parts of
14 that letter that I had sent you.

15 CHAIRMAN HONIGBERG: We won't be
16 reading from your letter. We have it. It's
17 here. It's part of our record. It's in the
18 docket. If there's something you'd like to
19 add to it, that would be fine. But reading
20 the letter isn't really going to be very
21 helpful.

22 MR. MAJOY: Then I'll just have a
23 few words from my heart and soul.

24 I know everybody here is working

1 hard to reach some kind of an outcome
2 regarding the environment and environmental
3 issues. This is a huge environmental issue,
4 and it must be addressed as such, especially
5 given the state of global climate change.
6 And I know many people like myself who are
7 very, very deeply opposed to moving forward
8 with Liberty Utilities' goal, as it has
9 expressed itself. And everybody should
10 understand that Liberty Utilities is owned by
11 Kinder Morgan. And if you want to do some
12 homework for yourself, all you have to do is
13 go online and find out the relationship
14 between Kinder Morgan and many of the
15 horrible things that have happened with
16 pipelines and fracking that they were part of
17 and in charge of. I don't say simultaneous
18 to that, that the people who work for Kinder
19 Morgan are no good. They're doing their job
20 as best they can. But that job, I hope, and
21 the goals that they have, I hope, will be
22 opposed by the people for the common good of
23 our country and for the common good of the
24 towns and local areas where these situations

1 are arising. Thank you. Thank you very
2 much.

3 CHAIRMAN HONIGBERG: Ms. Skuly.

4 MS. SKULY: Yes. Since you have
5 assured us that our comments will be accepted
6 and considered, I won't bother to reiterate
7 those, other than to say that environmental
8 oversight is of major concern to us. The
9 record for Liberty Utilities and Kinder
10 Morgan, you know, have shown that accidents
11 do happen. And we definitely would like to
12 see some contingency plans be in place and
13 again with an environmental monitor during
14 construction, if this should so happen.
15 Thank you.

16 CHAIRMAN HONIGBERG: All right.
17 You have a technical session scheduled. Is
18 there anything else you need from us before
19 we leave you to your technical session?

20 Sir, what can I do for you?

21 MR. DAVIS: My name is John Davis.

22 CHAIRMAN HONIGBERG: We use
23 microphones here. Just use the one that's
24 working and we'll be good. Doesn't sound

1 like it's on. Just make sure you're close
2 enough to it.

3 MR. DAVIS: My name's John Davis,
4 and I believe I signed up when we came in
5 that I would like to make a public comment.

6 CHAIRMAN HONIGBERG: I'll write
7 your name on the list I have in front of me.
8 Why don't you go ahead.

9 MR. DAVIS: Yeah, it seems like
10 this project, with all we've read in the
11 newspapers is the main goal is to change over
12 to natural gas from the propane and service
13 the mall area of Keene. And I'm just
14 wondering, when you think of the Public
15 Utilities Commission, we mainly think about
16 ratepayers and the price we have to pay for
17 things. But I'm wondering if you're
18 concerned about the health of people. Keene
19 is a poor air-quality place, and all reports
20 and as new information comes out about
21 natural gas, it appears it's not much cleaner
22 than coal. So I'm wondering if it's a good
23 idea to switch this over to natural gas where
24 it's already an area of poor air quality.

1 CHAIRMAN HONIGBERG: I guess I
2 would recommend that you confer with Mr.
3 Sheehan, Mr. Dexter and others about what's
4 going on in this proceeding and what's going
5 on in other proceedings and what other
6 agencies of state government and local
7 government have responsibilities for all
8 kinds of issues that are relevant to a
9 company like Liberty when it engages in
10 whatever activities it engages in. We all
11 have very specific responsibilities, areas of
12 jurisdiction, and sometimes multiple areas of
13 jurisdiction within the same agency. I don't
14 think I can give you any more than that.

15 So, any other things we need to do
16 for you before we leave?

17 [No verbal response]

18 CHAIRMAN HONIGBERG: All right. We
19 will adjourn the prehearing conference and
20 leave you to your technical session.

21 (Hearing adjourned at 1:58 p.m.)
22
23
24

C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
Shorthand Court Reporter and Notary Public
of the State of New Hampshire, do hereby
certify that the foregoing is a true and
accurate transcript of my stenographic
notes of these proceedings taken at the
place and on the date hereinbefore set
forth, to the best of my skill and ability
under the conditions present at the time.

I further certify that I am neither
attorney or counsel for, nor related to or
employed by any of the parties to the
action; and further, that I am not a
relative or employee of any attorney or
counsel employed in this case, nor am I
financially interested in this action.

Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
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