

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-093

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

**Petition for a License to Construct and Maintain a Natural Gas Pipeline
Beneath Beaver Brook in Pelham**

Order *Nisi* Granting License

ORDER NO. 26,077

November 22, 2017

In this order *nisi*, the Commission grants, subject to conditions, the request of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty”) for a license to construct and maintain a natural gas pipeline beneath and across Beaver Brook in Pelham, New Hampshire. This order is being issued on a *nisi* basis to ensure that all interested parties receive notice of the Commission’s order and have the opportunity to comment or request a hearing before the order becomes effective.

I. SUMMARY OF PETITION

On June 8, 2017, Liberty filed a petition pursuant to RSA 371:17 for a license to construct and maintain a natural gas pipeline under and across the public waters of Beaver Brook in Pelham. This crossing is part of Liberty’s plan to extend its distribution mains from a new regulator gate station off Route 38 to the Pelham municipal buildings on Route 111A.

In support of its petition, Liberty submitted two exhibits: Attachment A, consisting of engineering diagrams showing construction details; and Attachment B, an aerial photograph of the crossing location. On September 12, 2017, Commission Staff (Staff) submitted data requests

to Liberty. Liberty filed responses on September 19th and subsequently submitted a supplement to its response to Staff Data Request 1-5. This supplemental response contained Liberty's final design plan for the proposed pipeline crossing, which showed that the proposed crossing length increased from 624.1 feet, as shown in the initial petition, to approximately 664.5 feet. On October 18, 2017, Staff issued a memorandum recommending that Liberty's petition, as supplemented, be granted subject to conditions. The final design plan was attached to Staff's memorandum.

The petition, its exhibits, Staff's recommendation and other docket filings, excluding 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/2017/17-093.html>.

A. Crossing Location and Construction

The proposed crossing will begin at an entry pit on the northern side of Willow Street, to the east of Beaver Brook, located on property owned by Theresa Straughan. It will continue west within the right of way of Willow Street and will then continue along the northern side of Willow Street on property owned by the Pelham School District. The crossing will then exit on property owned by the Pelham School District. Approximately 664.5 feet of 8-inch diameter pipeline will be installed about 15 feet below the bed of Beaver Brook where it crosses underneath Willow Street.

Liberty stated that it will be responsible for construction of the pipeline, which qualified contractors will perform. Further, it stated that the pipeline will be constructed so that pipeline

integrity checks can be done. After the pipeline is constructed, Liberty will own the pipeline and be responsible for maintaining it.

B. Regulatory Requirements

Since construction of the pipeline will occur within the protected shoreland associated with Beaver Brook, Liberty has filed an application for a shoreland permit with the New Hampshire Department of Environmental Services (NHDES). Liberty represented that a wetland permit is not required because the construction of the pipeline will not disturb wetlands.

C. Property Rights

Liberty stated that it will obtain easements from the two owners of the property where the pipeline will be located, Theresa Straughan and the Pelham School District, before construction of the pipeline begins. The Town of Pelham has issued a permit for construction that will occur within the public right of way.

D. Necessary for Service to the Public; Effect on Public Rights

Liberty asserted that construction of the new gas pipeline is necessary to provide natural gas service to new customers in Pelham in connection with the franchise rights the Commission granted it in Order No. 25,987 (February 8, 2017). Liberty contended that constructing the gas pipeline under Beaver Brook is the only way for its distribution system to reach the Pelham municipal buildings on Route 111A.

According to Liberty, construction of the gas pipeline will result in a minimal impact to the public rights in Beaver Brook given the directional bore and depth at which the pipeline will be installed under Beaver Brook's riverbed.

II. SUMMARY OF STAFF REVIEW

Staff reviewed Liberty's petition and supporting documentation; applicable statutes, rules, and the requirements of 49 CFR Part 192; and ownership of the affected land, as well as public need, safety, and impact of the proposed crossing. In a memorandum filed on October 18, 2017, Joseph Vercellotti, a Utility Engineer in the Commission's Safety Division, determined that the proposed construction would meet the requirements of 49 CFR Part 192 under certain conditions. Staff recommended approval of Liberty's petition subject to the following conditions:

1. Approval should be limited to Liberty's natural gas pipeline under consideration in this docket;
2. Liberty must construct, operate, and maintain the piping consistent with the requirements of both N.H. Code Admin. Rules Puc 506.02 and 49 CFR Part 192;
3. Liberty must operate and maintain the crossing in conformance with the latest 49 CFR Part 192 amendments; all future alterations to the crossing that may impact the public shall conform to the most current 49 CFR Part 192 amendments in effect at the time of submittal of the alteration; and
4. Liberty must use above-ground pipeline markers for identification of the pipeline with appropriate warning and company contact information along the project, including on each bank of the Beaver Brook crossing.

III. COMMISSION ANALYSIS

"Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same." RSA 371:17. The Commission is authorized to

grant such a license if it “may be exercised without substantially affecting the public rights in said waters or lands.” RSA 371:20.

RSA 371:17 defines public waters to include all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof that the Commission may prescribe. The NHDES prepares, maintains and publishes an official list of all public waters in the state. Beaver Brook, the body of water listed in Liberty’s petition, is included on the official list, which is maintained at http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm.

Based on the information presented in Liberty’s petition and attachments, and Staff’s recommendation, we find that the proposed crossing is necessary for Liberty to meet the reasonable requirements of service to the public, as required by RSA 371:17, and that the requested license may be exercised without substantially affecting the public rights in the affected public waters, as required for approval under RSA 371:20. We therefore approve the petition subject to the conditions contained in the ordering clauses set forth below to ensure safe construction, operation, and maintenance of the proposed crossing. Our approval is only for a pipeline with the final specifications proposed by Liberty in this proceeding. We issue our decision on a *nisi* basis to provide any interested person the opportunity to submit comments regarding Liberty’s petition, or to request a hearing.

We note that Liberty is responsible for obtaining any and all other permits for the construction and installation of the proposed pipeline crossing from any federal, state, and local authorities having jurisdiction. Because the NHDES is responsible for maintaining the official list of public waters, we require that notice of the proposed crossing be sent to the NHDES. We

also require notice to be provided to the Office of the Attorney General, the Town of Pelham, and to the owners of property bordering Beaver Brook on which the pipeline will be placed.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Liberty is authorized pursuant to RSA 371:17, *et seq.*, to construct, install, operate, and maintain a natural gas pipeline under and across the public waters of Beaver Brook described in Liberty's petition and depicted in its filings; and it is

FURTHER ORDERED, that the construction of the pipeline shall be implemented as depicted in the petition and related documents and consistent with Staff's recommendations as follows:

1. Approval is limited to Liberty's natural gas pipeline under consideration in this docket;
2. Liberty must construct, operate, and maintain the piping consistent with the requirements of both N.H. Code Admin. Rules Puc 506.02 and 49 CFR Part 192;
3. Liberty must operate and maintain the crossing in conformance with the latest 49 CFR Part 192 amendments; all future alterations to the crossing that may impact the public shall conform to the most current 49 CFR Part 192 amendments in effect at the time of submittal of the alteration; and
4. Liberty must use above-ground pipeline markers for identification of the pipeline with appropriate warning and company contact information along the project, including on each bank of the Beaver Brook crossing; and it is

FURTHER ORDERED, that Liberty shall submit to the Commission any future proposed alterations to the crossing license granted herein at least 60 days prior to undertaking any such alterations; and it is

FURTHER ORDERED, that Liberty shall provide a copy of this Order *Nisi* to the (i) Town Clerk of Pelham, New Hampshire; (ii) the New Hampshire Attorney General and all owners of the land bordering on said public waters at the location of the crossing, as required by RSA 371:19; and (iii) the New Hampshire Department of Environmental Services, no later than December 4, 2017, and to be documented by affidavit filed with this office on or before December 19, 2017; and it is

FURTHER ORDERED, that Liberty shall cause a summary of this Order *Nisi*, issued concurrently with this Order, to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than December 4, 2017, and to be documented by affidavit filed with this office on or before December 19, 2017; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing that states the reason(s) for a hearing no later than December 11, 2017, for the Commission's consideration; and it is

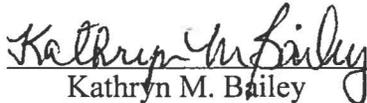
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 18, 2017; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 22, 2017, unless Liberty fails to satisfy the notice and publication obligations set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-second day
of November, 2017.



Martin P. Honigberg
Chairman

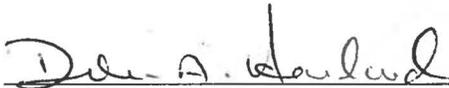


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director