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PUBLIC UTILITIES - NEW HAMPSHIRE

Appeal of Liberty Utilities (EnergyNorth Natural Gas) Corp.

Supreme Court of New Hampshire - November 15, 2023 - A.3d - 2023 WL 7557658

Natural gas utility appealed from order of Public Utilities Commission denying its request to recover development costs related to construction of proposed natural gas pipeline and tank system through temporary rate increase to utility's customers.

The Supreme Court held that pre-construction costs for cancelled project were costs associated with construction work, which utility was statutorily precluded from recovering by rate increase.

Statute prohibiting public utility rates or charges from being "based upon any costs associated with construction work if said construction work is not completed" precluded natural gas utility from recovering, through rate increase, engineering, environmental, consulting, and other pre-construction costs related to plan to construct natural gas pipeline and tank system, even though utility cancelled project before physical structure was built; costs were incurred on steps in process to construct physical structure, such that they were "associated with construction work" within meaning of statute, as confirmed by statute elsewhere treating costs of pre-construction activities like "owning" and "financing" as non-recoverable costs "associated with…construction work in progress."

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