

**BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**Re: Liberty Utilities (EnergyNorth Natural Gas) Corp.**

**d/b/a Liberty Utilities - Keene Division**

**Docket No. DG 17-068**

**INITIAL BRIEF OF INTERVENOR, TERRY CLARK**

Intervenor, Terry Clark (“Clark”), by and through undersigned counsel, Richard M. Husband, Esquire, hereby respectfully submits his initial brief to the Public Utilities Commission (“Commission”) pursuant to the [Order of Notice](#) and [approved schedule](#) for this proceeding.

**I. INTRODUCTION**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities -- Keene Division (“Liberty”) commenced this case by a petition for declaratory ruling pursuant to N.H. Code of Admin. Rules [Puc 203](#) and [Puc 207](#) filed on April 26, 2017. The gas utility is currently supplying propane-air gas to the City of Keene through a system that stores the gas in above-ground tanks and distributes it via approximately 30 miles of existing underground pipe. It requests a declaration that its franchise authorizes it to convert to compressed natural gas (CNG) and liquefied natural gas (LNG) distribution without seeking permission under [R.S.A. 374:22](#) and [R.S.A. 374:26](#). Although not discussed in the petition, this would also allow for the construction of the necessary associated facilities (including a 100,000 gallon LNG storage tank and gas compression equipment), and replacement of the existing piping with piping needed for the new, much higher operating pressures associated with such CNG/LNG installations. While Commission Staff advised Liberty that its plans would constitute a change in the character of Liberty’s service requiring the submission of a petition under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) for approval, it is the company’s position that the proposed new service (including gas)

will be of the same character previously provided, that the broad definition of “gas” under [Puc 502.06](#) supports their petition, and that the distribution of coal gas, propane-air and other forms of gas under the franchise over the years without further approval obviates the need.

On October 20, 2017, the Commission granted Liberty’s petition under [Commission Order No. 26,065](#) (“Approval Order”) which determined that Liberty has authority under the existing franchise to offer CNG and LNG service to Keene (albeit with conditions pertaining to engineering and operational safety). Entered without notice or a hearing, the Approval Order found Liberty’s “arguments that CNG and LNG constitute gas of the same character as the propane-air mixture currently supplied to Liberty-Keene customers to be persuasive.” [Id. at 3](#). Citing three unchallenged 1973 Commission decisions allowing gas utilities to temporarily supplement natural gas supplies with propane without seeking additional approval under [R.S.A. 374:22](#) and [R.S.A. 374:26](#), the order determined that “consistent with this interpretation of gas service,” Liberty’s gas franchise has always included the right to distribute CNG/LNG and granted Liberty’s request for a declaratory ruling. [Id. at 3-4](#). Nonetheless, it noted with concern that “CNG/LNG installations of the type contemplated by the Company include technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems,” in placing a number of safety conditions on Liberty’s plans. [Id.](#)

As it is extremely broadly worded and not limited to the subject Keene franchise, or even petitioning utility, the Approval Order facially allows for Liberty and Unitil to “supplement” their current gas services in the more than 50 New Hampshire municipalities they hold franchises for to include LNG and/or CNG, and build associated gas plants in every franchise, if they want, without having to seek further Commission or Site Evaluation Committee (“SEC”) approval. Such services could be implemented, virtually overnight, again, without notice or a hearing, or

the opportunity for any public challenge or even input respecting any of them. Thus, the Approval Order has the potential to dramatically increase gas use, and dependency, statewide, as it allows CNG/LNG to be transported to service areas that are unreachable by current pipeline-constrained gas systems. See [Testimony of William J. Clark in Commission Docket No. DG 16-852 at 9:3-6](#).<sup>1</sup> Moreover, as it suggests no parameters as to what will be considered “gas” going forward, the Approval Order stands for “gas is gas” precedent that allows the industry to essentially sell whatever it wants for the fuel, without public scrutiny, so long as it continues to call it “natural.”

On November 16, 2017, Clark and members of the NH Pipeline Health Study Group (as a group and individually) filed a joint motion for rehearing of the Approval Order. Over Liberty’s objection, the Commission granted the motion, in part, under [Commission Order No. 26,087](#), finding that only Clark had standing to file the motion, but that Clark and “any other person with a direct interest in the outcome of the proceeding” should be afforded the opportunity to brief the propriety of Liberty’s petition. This brief is submitted, accordingly.

As is discussed below, it is Clark’s position that:

- Liberty’s petition in this proceeding cannot be granted as it is part of Liberty’s expansion plans being considered under [Commission Docket No. DG 17-152](#) (the “LCIRP case”), which Clark is [challenging](#) as inconsistent with New Hampshire law (primarily because they are contrary to the public interest and the requirements of the official state energy policy codified under [R.S.A. 378:37](#)).

If the Commission does not agree that this proceeding should be dismissed for the reasons to follow, to ensure that there is consistency in its decision-making,

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<sup>1</sup> [Commission Docket No. DG 17-152](#) involves the petitioner’s request for authorization to build similar CNG/LNG facilities to serve the Town of Hanover and City of Lebanon.

uniformity in results, and that it acts in accord with the law, the Commission should stay its decision in this matter until such time as the LCIRP case has been decided, and then rule in this matter consonant with the LCIRP determination.

- Even if Liberty’s plans were lawful, the Commission should defer to the SEC’s jurisdiction over Liberty’s proposed energy facility, and dismiss its petition;
- Even if the Commission does not defer to the SEC’s jurisdiction, Liberty’s petition should be dismissed because it should have been filed under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) as Liberty’s petition clearly does propose a change in the character of Liberty’s service in the City of Keene, *i.e.*, a substantial change in operations and the exercise of rights and privileges “[not theretofore actually exercised in the town](#),” requiring statutory approval.

## **II. LIBERTY’S PETITION CANNOT BE GRANTED BECAUSE IT IS INCONSISTENT WITH NEW HAMPSHIRE LAW**

This proceeding is a part of Liberty’s aggressive plans to expand its natural gas infrastructure, supply commitments and customer base, as is evidenced by Commission approvals it has recently obtained for Concord, *see* [Commission Order No. 25,965 \(November 10, 2016\)](#) and Pelham/Windham, *see* [Commission Order No. 25,987 \(February 8, 2017\)](#), and is seeking for Lebanon/Hanover, *see* [Commission Docket No. DG 16-852](#) (the “Lebanon/Hanover case”) and the Granite Bridge Project. *See* [Commission Docket No. DG 17-198](#) (the “Granite Bridge Project case”). The lead case concerning Liberty’s plans is the [LCIRP case](#), in which Liberty seeks approval of its 2017 LCIRP for the forecast period 2017/2018 - 2021/2022 and Clark has filed a [petition to intervene](#), which should be allowed at any time.<sup>2</sup> On information and belief, much, if

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<sup>2</sup> As Clark clearly meets the standard for intervention for the reasons set forth in his [petition to intervene](#), no objection to Clark’s intervention has been made and Commission Staff supports the intervention, *see* [Trans. of March 9, 2018 prehearing conference at pp. 11-12](#).

not the vast majority, of the natural gas that Liberty is currently distributing and will distribute under its expansion plans is, and will be, respectively, hydraulically fractured (“fracked”) natural gas.

In the Granite Bridge Project case, Liberty avers that a moratorium on all of its expansion plans will be necessary if the project is not approved. See [Granite Bridge Project case petition, ¶ 4](#). Clark opposes Liberty’s expansion plans and asserts that, under the circumstances, a moratorium on growth—not increasing and extending our fracked gas fuel commitment for decades, as is called for under Liberty’s plans—is, indeed, the proper course under New Hampshire law. As soon as he is allowed to intervene in the LCIRP case, Clark intends to file a motion to dismiss the matter making the same argument, and on the same grounds set forth in this second part of Clark’s initial brief.

As is noted in his [joint motion for rehearing](#), Clark is an approximately 40-year resident of Keene, in his third term as a city councilor representing Ward 3. While he has intervened in this matter solely in his individual capacity and not as a city councilor, Clark believes that a rapid transition to sustainable energy sources is necessary to address the climate change crisis, is working with many citizens from within and outside of his ward who are concerned with climate change and/or the health and safety concerns related to fracked gas use to make solar and other sustainable energy sources available to the city, and is concerned that the approvals sought by Liberty herein and under the LCIR case, to expand its fracked gas services in Keene, will likely impede the development and availability of sustainable alternatives in the city for at least another generation. Clark opposes Liberty’s expansion plans as largely creating, not addressing, demand, as being contrary to the public interest, and as not presenting the lowest reasonable cost option for addressing any real demand.

For the same reason the Commission dismissed the petition in [Commission Docket No. DE 16-241](#), it should deny Liberty's petition and dismiss this proceeding: Liberty's plans are inconsistent with New Hampshire law. See [Commission Order No. 25,950 \(October 6, 2016\)](#).

The Commission must act consistent with the public interest and has broad discretion in carrying out this obligation. See, e.g., *Waste Control Systems, Inc. v. State*, 114 N.H. 21, 24 (1974); *Boston & Maine R.R. v. State*, 102 N.H. 9, 10 (1959); *Harry K. Shepard, Inc. v. State*, 115 N.H. 184, 185 (1975); *Browning-Ferris Industries of New Hampshire, Inc. v. State*, 115 N.H. 190, 191 (1975).<sup>3</sup> This requires consideration of not only the needs of the persons and utility directly involved, but also "the needs of the public at large." See *Waste Control Systems, Inc. v. State, supra*, 114 N.H. at 24 (citing *Boston & Maine R.R. v. State, supra*, 102 N.H. at 10). To meet its charge, the Commission must weigh asserted public benefits against actual costs, including environmental costs. See *Public Service Company of New Hampshire d/b/a Eversource Energy, Commission Docket No. DE 16-241, Order of Notice, at 3-4*.

The "needs of the public at large" are obvious: the public demands climate action, particularly energy decision-making that results in fewer greenhouse gas emissions, and has for years, as is shown by:

- the 2001 issuance of "[The New Hampshire Clean Power Strategy](#)" to address, in part, state greenhouse gas emissions and climate change;
- a 2007 state referendum whereby [more than a two-thirds majority of New Hampshire cities and towns \(160+ out of 234\) voted for strong federal](#)

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<sup>3</sup> Of course the Commission must act in the public interest: it would be irrational for the legislature to create a state agency that did not carry such a charge.

[climate initiatives](#);<sup>4</sup>

- the state’s 2008 enactment of the Regional Greenhouse Gas Initiative program under [R.S.A. 125-O:20-29](#) to lower greenhouse gas emissions from large power plants to address climate change;
- the 2009 "[New Hampshire Climate Action Plan](#)", which reflects the input of public comment sessions, *see id.* at iv, calling for state reductions in greenhouse gas emissions. *See id.* at 1-2;
- the 2014 "[New Hampshire 10-Year State Energy Strategy](#)", which also reflects the public will through public comments, *see id.* at “Acknowledgments,” and emphasizes efficiency, promoting sustainable energy and otherwise diversifying our (gas and other fossil fuel heavy) fuel portfolio, and emissions mitigation, going forward;
- the 2016 entry of the United States into the [Paris Climate Accord](#), with emission pledges that including cutting U.S. emissions by 26-28% compared to 2005 levels by 2025;<sup>5</sup>
- a June 2017 *Washington Post*-ABC News poll, conducted just after President Trump announced his intention to withdraw from the [Paris Climate Accord](#), indicating that an overwhelming majority of registered voters opposed the decision—nearly 60% against to less than half that in

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<sup>4</sup> For readers of a non-pdf version of this brief not having blue URL links to sources, please see: [http://www.newhampshirelakesandmountains.com/Articles-c-2010-04-15-151000.113119\\_Plymouth\\_leads\\_the\\_way\\_to\\_new\\_energy\\_future.html](http://www.newhampshirelakesandmountains.com/Articles-c-2010-04-15-151000.113119_Plymouth_leads_the_way_to_new_energy_future.html); and [http://www.nytimes.com/2007/03/19/us/19climate.html?\\_r=1](http://www.nytimes.com/2007/03/19/us/19climate.html?_r=1).

<sup>5</sup> *See* September 6, 2016 online article “U.S. and China Formally Commit to Paris Climate Accord,” by Jean Chemnick (ClimateWire), available in the online edition of the *Scientific American* at <https://www.scientificamerican.com/article/u-s-and-china-formally-commit-to-paris-climate-accord/>.

favor.<sup>6</sup> Grounded in steady emissions mitigating goals, the terms of the [Paris Climate Accord](#) have been accepted by every nation among the nearly 200 in the world, including the United States—the United States is a current signatory and therefore committed to its terms until such time as it may actually withdraw from the agreement, with the earliest possible time for withdrawal not until November, 2020.<sup>7</sup> Even then, *should* the nation formally withdraw from the [Paris Climate Accord](#), most Americans, including New Hampshire residents, want to abide by the commitments of the agreement, as just noted, New Hampshire millennials, in particular, are clamoring for it (see below), and our state cities are taking the initiative on their own (see below);<sup>8</sup>

- a 2017 nationally representative survey conducted by the Yale Program on Climate Change Communication and the George Mason University Center for Climate Change Communication, which shows that [a majority of registered voters believe that government, industry and society as a whole](#)

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<sup>6</sup> This poll is discussed in the June 6, 2017 online article “Washington Post/ABC poll: Nearly 60% of registered US voters oppose Trump’s decision to leave the Paris agreement,” by Madeleine Sheehan Perkins, in the online edition of the *Washington Post* at <http://www.businessinsider.com/trump-paris-climate-accord-opposition-support-poll-2017-6>. The poll itself is at [https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2017/06/05/National-Politics/Polling/question\\_18757.xml?uuid=4yijsEohEeeYfEKrV0XbLg](https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2017/06/05/National-Politics/Polling/question_18757.xml?uuid=4yijsEohEeeYfEKrV0XbLg).

<sup>7</sup> See [https://en.wikipedia.org/wiki/Paris\\_Agreement](https://en.wikipedia.org/wiki/Paris_Agreement).

<sup>8</sup> Whether the United States ultimately withdraws from the [Paris Climate Accord](#) or not, its standard cannot be ignored here, both because we are “in” until we are actually “out” of the agreement and because so many New Hampshire and other American citizens have committed, or want to commit, to its goals, either way, and because the agreement establishes an objective standard for determining reasonableness, as is discussed below. Dereliction of a world standard of propriety does not create its own lesser standard. As Justice Oliver Wendell Holmes noted:

“What usually is done may be evidence of what ought to be done, but what ought to be done is fixed by a standard of reasonable prudence, whether it usually is complied with or not.”

*Texas & Pacific Railway v. Behymer*, 189 U.S. 468, 470 (1903).

should be doing more to address global warming, and two-thirds of registered voters say the U.S. should reduce its greenhouse gas emissions, regardless of what other countries do;<sup>9</sup>

- a March 1-5, 2017 Gallop poll finding that a clear majority of Americans prioritize environmental protection over measures designed to grow our energy supplies or economy;<sup>10</sup>
- the 2017 Annual Report from the Governor’s Millennial Advisory Council, which concludes, in relevant part, that:

“It is overwhelmingly clear through polls and studies that a progressive and proactive stance on Climate Change and Climate Policy is important to members of the Millennial Generation. Regardless of background, political affiliation, or other personally-held beliefs, a large majority of Millennials believe that climate change is happening and that the earth's warming is due to human activity.

Millennials are particularly in favor of sustainable energy generation. Approximately 71% of Millennials believe we should prioritize alternative energy generation over oil, gas, and coal exploration, and 82% favor increased funding for wind, solar, and hydrogen technologies ...

**The State of New Hampshire should demonstrate its leadership and dedication to a healthy and viable climate by ... committing to meeting the emissions targets agreed upon in the Paris Climate Accord ...”;**<sup>11</sup>

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<sup>9</sup> See Leiserowitz, A., Maibach, E., Roser-Renouf, C. Rosenthal, S. & Cutler, M. (2017) *Politics & Global Warming, May 2017*. Yale University and George Mason University, New Haven, CT: Yale Program on Climate Change Communication, “Key Findings,” at 4, available at <http://climatecommunication.yale.edu/wp-content/uploads/2017/07/Global-Warming-Policy-Politics-May-2017.pdf>.

<sup>10</sup> See <http://news.gallup.com/opinion/polling-matters/207608/public-opinion-context-trump-environmental-actions.aspx>.

<sup>11</sup> See p. 14 (emphasis added) at [http://mediad.publicbroadcasting.net/p/nhpr/files/201712/governor\\_s\\_millennial\\_advisory\\_council\\_2017\\_annual\\_report\\_0.pdf](http://mediad.publicbroadcasting.net/p/nhpr/files/201712/governor_s_millennial_advisory_council_2017_annual_report_0.pdf).

- the fact that over 40% of Americans, through their states or otherwise—including the citizens of Nashua, Portsmouth, Keene, Lebanon and Concord, New Hampshire—have now adopted the emissions reduction goals of the [Paris Climate Accord](#). *See* [https://en.wikipedia.org/wiki/United\\_States\\_Climate\\_Alliance](https://en.wikipedia.org/wiki/United_States_Climate_Alliance); <http://hippopress.com/read-article/mayors-vs-climate-change>;
- the [strong public support in New Hampshire for environmental protection in general](#);<sup>12</sup>
- the state’s commitment to reduce greenhouse gas emissions to near net-zero by 2050 as a member of the [Under2Coalition](#);
- the public comments in recent Commission proceedings;
- the public comments submitted in response to the state’s recent request for public comments on revisions to the [“New Hampshire 10-Year State Energy Strategy”](#). *See generally* comments posted on the New Hampshire Office of Strategic Initiatives website at <https://www.nh.gov/osi/energy/programs/energy-strategy-revision.htm>.

The public demands climate action because it is one of the all-time greatest “needs of the public at large.” *Waste Control Systems, Inc.*, 114 N.H. at 24. The situation is truly dire, with a rapidly closing window for action. In 2013, the Intergovernmental Panel on Climate Change (“IPCC”), the world’s leading international body for the assessment of climate change,<sup>13</sup> issued

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<sup>12</sup> *See* February 17, 2017 online NHPR article “UNH Poll: There’s Strong Support for Environmental Protections in New Hampshire,” by Jason Moon, at <http://nhpr.org/post/unh-poll-theres-strong-public-support-environmental-protections-new-hampshire#stream/0>.

<sup>13</sup> *See* IPCC website at <http://ipcc.ch/organization/organization.shtml>.

its Fifth and most recent assessment report,<sup>14</sup> which found that the world’s “carbon budget,” *i.e.*, the total amount of greenhouse gases that can be burned before we risk increasing, dangerous climate impacts associated with post-industrial global warming exceeding two degrees, will run out about 2040.<sup>15</sup> However, last June, 2017, climate change experts, including former United Nations climate chief Christiana Figueres and Hans Joachim Schellnhuber of the IPCC, published a [letter](#) in the journal *Nature* warning that an immediate, monumental acceleration in climate change efforts is needed between now and 2020 to ensure that we do not exhaust the budget much sooner.<sup>16</sup> Similarly, two different studies published in the journal *Nature Climate Change* on July 31, 2017, [one using a statistical analysis](#), the [other relying on an analysis of past greenhouse gas emissions](#), conclude that only a rapid escalation in climate action may keep us within the two degree warming goal and prevent rising seas, mass extinctions, super droughts, increased wildfires, more intense hurricanes, decreased crops and freshwater, and the melting of

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<sup>14</sup> IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 1535 pp, doi:10.1017/CBO9781107415324, available at [http://www.climatechange2013.org/images/report/WG1AR5\\_ALL\\_FINAL.pdf](http://www.climatechange2013.org/images/report/WG1AR5_ALL_FINAL.pdf).

<sup>15</sup> See October 23, 2013 online article “Carbon Briefing: Making Sense of the IPCC’s New Carbon Budget” at <https://www.carbonbrief.org/carbon-briefing-making-sense-of-the-ipccs-new-carbon-budget> and September 27, 2013 (updated November 18, 2013) World Resources Institute online article “World’s Carbon Budget to Be Spent in Three Decades” at <http://www.wri.org/blog/2013/09/world%E2%80%99s-carbon-budget-be-spent-three-decades#fn:2>.

<sup>16</sup> See June 28, 2017 online article “Three Years to Safeguard Our Climate,” by Christiana Figueres, Hans Joachim Schellnhuber, et. al., in the online edition of *Nature* at <https://www.nature.com/news/three-years-to-safeguard-our-climate-1.22201>. See also June 28, 2017 online article “World has three years left to stop dangerous climate change, warn experts,” by Fiona Harvey in the online U.S. edition of *The Guardian* at <https://www.theguardian.com/environment/2017/jun/28/world-has-three-years-left-to-stop-dangerous-climate-change-warn-experts>.

the Artic.<sup>17</sup> Consistently, “The Emissions Gap Report 2017,” published by the United Nations only five months ago, urges the implementation of more ambitious national emissions cutting targets by 2020, *spurred by local action*, finding it [“clear that if the emissions gap is not closed by 2030, it is extremely unlikely that the goal of holding global warming to well below 2°C can still be reached ... \[as\] the carbon budget for limiting global warming to below 2°C will be about 80 percent depleted by 2030.”](#) “The Emissions Gap Report 2017” (UNEP, Nov. 2017), p. xiv, available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR\\_2017.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR_2017.pdf).

We are running out of time to cut emissions; the United States is, in fact, already falling short of its goals under the [Paris Climate Accord](#), and a major reason is that we use too much methane.<sup>18</sup>

The crisis is not debatable. We cannot continue to ignore all of the warning signs: record-breaking global temperatures year after year,<sup>19</sup> New Hampshire’s own prolonged recent drought, the Santa Rosa wildfires—[the U.S. was hit by three Category 4 hurricanes last year!](#)<sup>20</sup>

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<sup>17</sup> These studies are discussed in the July 31, 2017 CNN/cnn.com online article “Earth to warm two Degrees by the end of this century, studies say,” by Ashley Strickland at <https://www.cnn.com/2017/07/31/health/climate-change-two-degrees-studies/index.html>.

<sup>18</sup> Please see September 26, 2016 online article “The U.S. is on course to miss its emission goals, and one reason is methane,” by Chris Mooney, in the online edition of the *Washington Post* at [https://www.washingtonpost.com/news/energy-environment/wp/2016/09/26/the-u-s-is-on-course-to-miss-its-emissions-goals-and-one-reason-is-methane/?utm\\_term=.779077ebc886](https://www.washingtonpost.com/news/energy-environment/wp/2016/09/26/the-u-s-is-on-course-to-miss-its-emissions-goals-and-one-reason-is-methane/?utm_term=.779077ebc886).

<sup>19</sup> 17 of the 18 warmest years on record have occurred since 2001. See January 18, 2018 online article “2017 Was One of the Hottest Years on Record. And That Was Without El Niño.,” by Henry Fountain, Jugal K. Patel and Nadja Povovich, in the online edition of *The New York Times* at <https://www.nytimes.com/interactive/2018/01/18/climate/hottest-year-2017.html>.

<sup>20</sup> For readers of a non-pdf version of this brief, please see: <https://weather.com/storms/hurricane/news/hurricane-maria-irma-harvey-three-united-states-category-4-landfalls#/>.

In records going back to 1851, [the contiguous U.S. states had never been struck by two Category 4 hurricanes in one year before](#).<sup>21</sup> Understandably, as noted by NASA:

"... 97 percent or more of actively publishing climate scientists agree: Climate-warming trends over the past century are extremely likely due to human activities. In addition, most of the leading scientific organizations worldwide have issued public statements endorsing this position."

See NASA website at <https://climate.nasa.gov/scientific-consensus/>. [A 13-agency U.S. government report](#)<sup>22</sup> recently released by the Trump Administration plainly acknowledges that climate change is real and largely caused by Man:

"This assessment concludes, based on extensive evidence, that it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th Century. For the warming over the last century, there is no convincing alternative explanation ..."<sup>23</sup>

If Man is causing climate change by his greenhouse gas producing activities, Man can likewise ameliorate it by cutting back on greenhouse gas emissions. Again, the report acknowledges this:

"The magnitude of climate change beyond the next few decades will depend primarily on the amount of greenhouse gases (especially carbon dioxide) emitted globally."<sup>24</sup>

These facts should be administratively noticed by the Commission under [Puc 203.17](#).

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<sup>21</sup> For readers of a non-pdf version of this brief, please see: <https://twitter.com/bhensonweather/status/904868150298021888>.

<sup>22</sup> USGCRP, 2017: *Climate Science Special Report: Fourth National Climate Assessment, Volume I* [Wuebbles, D.J., D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 470 pp., doi: 10.7930/J0J964J6. For readers of a non-pdf version of this brief unable to access the full report by the provided blue URL link, please see [https://science2017.globalchange.gov/downloads/CSSR2017\\_FullReport.pdf](https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf).

<sup>23</sup> *Id.* at 10 at [https://science2017.globalchange.gov/downloads/CSSR2017\\_FullReport.pdf](https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf). For further discussion of the report and its release, please see the November 3, 2017 CNN/cnn.com online article "Trump Administration report attributes climate change to 'human activities,'" by Gregory Wallace at <https://www.cnn.com/2017/11/03/politics/trump-climate-change-report/index.html> and August 7, 2017 online article "Scientists Fear Trump Will Dismiss Blunt Climate Report," by Lisa Friedman, in the online edition of *The New York Times* at <https://www.nytimes.com/2017/08/07/climate/climate-change-dramatic-warming-trump.html>.

<sup>24</sup> *Id.* at 11.

Of course, as emissions of methane, which typically comprises 87-97% of natural gas,<sup>25</sup> are a potent greenhouse gas<sup>26</sup> causing about 25% of the global warming we are experiencing,<sup>27</sup> any sincere effort to climate change must include curtailing reliance on gas to reduce methane emissions. Indeed, as stated on page 10 of former President Obama’s Climate Action Plan from *five years ago*: [“curbing emissions of methane is critical to our overall effort to address global climate change.”](#)<sup>28</sup> *Increasing*, rather than reducing, methane emissions, as New Hampshire is doing by continually approving more gas use through Commission proceedings, brings us that much closer, that much faster, to the edge. Gas is not the “bridge fuel” to carry us to clean, sustainable energy that everyone had hoped. [Original EPA estimates drastically underestimated the impact of the use of gas on climate change](#)<sup>29</sup> and it is not better than using oil or coal, despite cutting back on their greenhouse gas (CO2) emissions: [methane warms the planet 86 times as much as carbon dioxide for the first couple of decades after its use, and 34 times as much for a](#)

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<sup>25</sup> See <https://www.uniongas.com/about-us/about-natural-gas/Chemical-Composition-of-Natural-Gas>.

<sup>26</sup> See ["Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking \(Unconventional Gas and Oil Extraction\)" by Physicians for Social Responsibility \(Fifth Edition, March 2018\), p. 21 \(and sources cited therein\).](#)

<sup>27</sup> See discussion on Environmental Defense Fund website at <https://www.edf.org/methane-other-important-greenhouse-gas>.

<sup>28</sup> For readers of a non-pdf version of this brief, please see <https://www.scribd.com/document/149809454/President-Obama-s-Climate-Action-Plan>.

<sup>29</sup> For readers of a non-pdf version of this brief, please see: <http://www.theenergycollective.com/david-lewis/48209/epa-confirms-high-natural-gas-leakage-rates>.

[century](#).<sup>30</sup>

Yet, despite the clear public clamor and need for climate action emphasizing greenhouse gas emissions mitigation, from now through 2038, just 12 years before New Hampshire has pledged to achieve near net-zero greenhouse gas emissions as a member of the [Under2Coalition](#) and while the nations of the world (hopefully still including the United States) are [ratcheting up their efforts](#)<sup>31</sup> to meet a similar mid-century zero emissions goal under the [Paris Climate Accord](#), Liberty's LCIRP and overall expansion plans call for it to *increase* its use of methane gas use—a potent greenhouse gas, as discussed below—by nearly 50%, from a current Design Day demand of 156,822 to a Design Day demand of 229,590 for 2037/2038. This increase is shown by the following table presented by Liberty in the Granite Bridge Project case.<sup>32</sup>

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<sup>30</sup> For readers of a non-pdf version of this brief, please see ["Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking \(Unconventional Gas and Oil Extraction\)" by Physicians for Social Responsibility \(Fifth Edition, March 2018\), p. 21](#) (citing, per its footnote 780, the Intergovernmental Panel on Climate Change. (2013). *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T. F., D. Qin, G.-K. Plattner, M. Tignor, S. K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex & P. M. Midgley (eds.)]. Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press. doi: 10.1017/CBO9781107415324). See also EPA discussion "Understanding Global Warming Potentials" at <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials> (methane has 20-year GWP of 84-87 and 100-year GWP of 28-36).

<sup>31</sup> For readers of a non-pdf version of this brief, please see the online article "Timeline: the Paris Agreement's 'ratchet mechanism,'" by Sophia Yeo (Jan. 19, 2016) at <https://www.carbonbrief.org/timeline-the-paris-agreements-ratchet-mechanism>.

<sup>32</sup> The table is found at [page 59 of 104 of the Pre-filed Direct Testimony of William R. Killeen and James M. Stephens, submitted in DG 17-198](#).

**Table 7: EnergyNorth Design Day Resource Shortfall (Dth)<sup>63</sup>**

Split-Year (Nov-Oct)	Design Day Demand	Design Day Resources, including Propane	Reserve / (Deficiency) including Propane	Reserve / (Deficiency) excluding Propane
2017/18	156,822	162,033	5,211	(29,389)
2018/19	160,989	155,033	(5,956)	(40,556)
2019/20	164,640	155,033	(9,607)	(44,207)
2020/21	168,934	155,033	(13,901)	(48,501)
2021/22	173,917	155,033	(18,884)	(53,484)
2022/23	179,382	155,033	(24,349)	(58,949)
2023/24	184,432	155,033	(29,399)	(63,999)
2024/25	188,856	155,033	(33,823)	(68,423)
2025/26	192,933	155,033	(37,900)	(72,500)
2026/27	196,785	155,033	(41,752)	(76,352)
2027/28	199,954	155,033	(44,921)	(79,521)
2028/29	203,491	155,033	(48,458)	(83,058)
2029/30	206,790	155,033	(51,757)	(86,357)
2030/31	210,016	155,033	(54,983)	(89,583)
2031/32	212,972	155,033	(57,939)	(92,539)
2032/33	215,843	155,033	(60,810)	(95,410)
2033/34	218,828	155,033	(63,795)	(98,395)
2034/35	221,631	155,033	(66,598)	(101,198)
2035/36	224,148	155,033	(69,115)	(103,715)
2036/37	226,863	155,033	(71,830)	(106,430)
2037/38	229,590	155,033	(74,557)	(109,157)

The Granite Bridge Project alone renders Liberty’s LCRIP and expansion plans, including those which are the subject of this proceeding, unapprovable.

The Granite Bridge Project calls for the outrageously expensive<sup>33</sup> huge *future* development of, and commitment to, fracked gas infrastructure and supplies—including approximately 27 miles of 16-inch diameter pipeline, a 2 billion cubic feet LNG facility and a 22 year gas supply contract—at a time when the climate crisis and our own energy policies and greenhouse gas reduction commitments compel a freeze on expansion and a reduction in emissions.<sup>34</sup> Liberty’s cost analysis for the project proposes a 55-year life span for the pipeline and 40-year life span for the LNG facility. [See Pre-filed Directory Testimony of Timothy S. Lyons submitted in the Granite Bridge Project case, Commission Docket No. DG 17-198, at pp. 15 and 19 of 22.](#) Consequently, if approved, the pipeline will have to be used until at least 2076 and the facility will have to be used until at least 2062 for ratepayers to avoid stranded

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<sup>33</sup> Over \$310 million to be passed on to ratepayers. *See* pp. 15 and 18 of the [Pre-filed Directory Testimony of Timothy S. Lyons, submitted in the Granite Bridge Project case, Commission Docket No. DG 17-198.](#) Some estimates, including one by Liberty, place the total cost of the project at \$340 million or more. *See, e.g.*, Slide 4 of Liberty’s presentation at [http://www.biaofnh.com/uploads/5/9/9/2/59921097/final\\_infrastructure\\_updates\\_120617.pdf](http://www.biaofnh.com/uploads/5/9/9/2/59921097/final_infrastructure_updates_120617.pdf); the online WMUR article and newscast at <http://www.wmur.com/article/liberty-utilities-proposes-dollar340-million-underground-natural-gas-pipeline-project/14109140>; the online seacoast.com article at <http://www.seacoastonline.com/news/20180208/340m-gas-pipeline-planned-along-route-101>; and the online article at <https://manchesterinklink.com/a-look-at-liberty-utilities-proposed-underground-gas-pipeline/>.

<sup>34</sup> Climate concerns aside, the project is still a huge overbuild: Epping’s 2 Bcf LNG facility would have roughly half of the LNG storage capacity of all of New Jersey, *see* [http://www.northeastgas.org/about\\_lng.php](http://www.northeastgas.org/about_lng.php), which serves a far greater population (approximately 9 million) than New Hampshire (approximately 1.4 million). Contemplated similar facilities in Keene and Lebanon would have only a fraction of the storage capability of the Epping facility: whereas the Keene facility would only be capable of fueling a 30 MW electric generating facility for approximately 2.2 days, and the Lebanon facility would only be capable of fueling a 30 MW electric generating facility for roughly 5.2 days, the Epping facility will be able to fuel a 30 MW electric generating facility for approximately **77 weeks!** *See* Liberty’s responses to discovery in attached **Exhibit “C.”** Yet, Liberty claims that the Epping facility will be largely for just potential customers along the Granite Bridge Pipeline. *See id.*

costs,<sup>35</sup> while at least one government projection, admitted in evidence just over six months ago in [Commission Docket No. DG 16-852](#), shows the price of gas starting to spike about the time the project first becomes operational and continuing to rise into the distant future (as sustainable energy prices almost certainly decrease). [See Exhibit 14 admitted in Commission Docket No. DG 16-852](#). If New Hampshire intends to abide by its commitments as a member of the [Under2Coalition](#) and (through the United States) [Paris Climate Accord](#) to reduce greenhouse gas emissions to near net-zero by 2050 and otherwise act responsibly in the face of climate change, and adhere to the requirements of [R.S.A. 378:37](#) to make the “lowest reasonable cost” energy choices, protect the environment and health and safety of citizens in the state’s energy choices and diversify our energy portfolio, *see* discussion, *infra*, the Granite Bridge Project pipeline and LNG facility should never be built to begin with—but, if they are, they will have to be abandoned long before the end of their projected lifetimes.

A recent opinion from the Court of Appeals for the District of Columbia Circuit establishes that the Commission not only has the authority to consider climate change in its public interest analysis, but the obligation. In *Sierra Club v. Federal Energy Commission*, 867 F.3d 1357 (Cir. 2017), the Court vacated and remanded a Federal Energy Regulatory Commission (“FERC”) decision approving a gas pipeline project under FERC’s analogous 15 U.S.C. § 717f(e) public interest analysis for failure to consider the downstream climate impacts of the project. The Court concluded that FERC’s analysis was deficient, noting, in pertinent part:

“... greenhouse-gas emissions are an indirect effect of authorizing this project, which FERC could reasonably foresee, and which the agency has legal authority to mitigate ...”

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<sup>35</sup> The pipeline is not projected to be operational until late 2021, while the facility will not be running before 2022, at the earliest (both likely subject to the usual project specific and general construction delays). [See Pre-filed Direct Testimony of William R. Killeen and James M. Stephens submitted in the Granite Bridge Project Case, Commission Docket No. DG 17-198, at p. 11 of 104.](#)

*Id.* at 1374.

The reasoning of *Sierra Club* applies equally here. The Commission has the legal authority—and obligation—under its required public interest analysis to consider the impacts that Liberty’s expansion plans will have on greenhouse gas emissions and the state’s commitments and obligations to address climate change, largely through emissions mitigation, and conclude that a moratorium on Liberty’s expansion plans is called for, accordingly.

Even assuming *arguendo* that the public demand and need for climate action, emphasizing emissions mitigation, were not sufficient to invoke the Commission’s obligation to consider the climate crisis, and thus compel a determination that Liberty’s expansion plans are contrary to the public interest, Section VI of [R.S.A. 378:38](#) leads to the same result under its requirement that the LCIRP include:

“An assessment of the plan's long- and short-term **environmental**, economic, and energy price and supply impact on the state.”

[Id.](#) (emphasis added). The climate crisis plainly falls within an “environmental ... impact” required to be considered under the statute. While the LCIRP states that the requirement is inapplicable, [see id. at 57](#), it expressly applies to “each ... natural gas utility,” without exception, there is no rational support for such an exception, and the LCIRP fails to cite any persuasive authority for its position. The statutory requirement cannot be ignored, and does not require a complicated analysis: increasing methane use for decades contrary to emission mitigation goals will come with an enormously negative environmental impact, the exacerbation of climate change, which is not in the public interest. The Commission cannot stand idly by, holding the button on the breaks to a runaway train, blaming the job description or lack of clarity in orders for not doing the obviously **only** right thing—not when it *must* act in the public interest and the button is in its hand. *See, e.g., Waste Control Systems, Inc.* at 24; *Boston & Maine R.R.*,

*supra*, 102 N.H. at 10; *Harry K. Shepard, Inc. v. State*, *supra*, 115 N.H. at 185; *Browning-Ferris Industries of New Hampshire, Inc. v. State*, *supra*, 115 N.H. at 191. Besides, again, to meet its charge, the Commission *must* weigh asserted public benefits against actual costs, including environmental costs, *see Public Service Company of New Hampshire d/b/a Eversource Energy, Commission Docket No. DE 16-241, Order of Notice, at 3-4*, and climate change is a well-established environmental cost of methane use.

Nor is the expansion of fracked gas use and extension of our reliance on it for decades, as called for under Liberty's LCRIP and associated future plans, in the public interest from health and safety standpoints.

Study after study warns us that fracked gas releases, from gas drilling, production, compressor station, pipeline and other infrastructure leaks and emissions, cause respiratory, heart and other health problems. *See, e.g.*, the following online sources: ["Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking \(Unconventional Gas and Oil Extraction\)" by Physicians for Social Responsibility \(Fifth Edition, March 2018\), pp. 17-20, 198-210](#); ["Gas Compressors and Nose Bleeds," by Jessica Cohen \(Fall 2015\)](#); ["Porter Ranch Gas Leak Triggers State of Emergency in California," January 7, 2016 CNN online news article](#); ["Potential Hazards of Air Pollutant Emissions from Unconventional Oil and Natural Gas Operations on the Respiratory Health of Children and Infants" by Ellen Webb, et. al. \(2014; published in \*Reviews on Environmental Health\*, 2016\)](#); ["Madison County, New York Department of Health Comments to the Federal Energy Regulatory Committee," prepared for Madison County Department of Health by Thimble Creek Research \(September 30, 2014\), pp. 14-28](#); ["Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania," by Nadia Steinzor, et. al. \(October 2012\)](#); ["Human Health Impacts Associated](#)

[with Chemicals and Pathways of Exposure from the Development of Shale Gas Plays,” by Wilma Subra Subra Company \(January 9, 2012\).](#)

Nor should it be surprising if health problems are linked to fracked gas releases as fracked natural gas is, unfortunately, *not* the same as conventional, relatively “clean” natural gas:<sup>36</sup> at least, not in all stages of the manufacturing and distribution process. Rather, fracked gas samples have been found to contain hundreds of chemicals, many of which the industry refuses to disclose. See <https://insideclimatenews.org/news/31032015/fracking-companies-keep-10-chemicals-secret-epa-says>; see also [“Analysis of Hydraulic Fracturing Fluid Data from the FracFocus Chemical Disclosure Registry 1.0,” by the EPA \(March 2015\)](#); [“California’s Fracking Fluids: the Chemical Recipe,” by Tasha Stoiber, et. al. \(EWG; August 2015\).](#)

In fact, in addition to harmful particulates, studies and data have associated as many as two dozen or more of the New Hampshire regulated toxic air pollutants (“RTAPs”) identified in [Env-A 1450.01](#) with fracked gas tested at one or more stages of the manufacturing and distribution process, either as additives or a product of its combustion. See attached **Exhibit “A”** identifying 22 such ingredients. From its recent response to Clark’s discovery, see attached as **Exhibit “B,”** the various forms of gas Liberty distributes in New Hampshire “come from a variety of different geographic locations and extraction methods,”<sup>37</sup> Liberty cannot or will not articulate the approximate percentages of the gas that is derived from fracking versus conventional methods,<sup>38</sup> and Liberty would not be able to tell you the chemical composition of

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<sup>36</sup> Although fracked gas has been around for decades, it has only replaced conventional gas as the market’s “gas” of choice in recent years. See [Tiemann and Vann, "Hydraulic Fracturing and Safe Drinking Water Act Regulatory Issues," Introduction \(Congressional Research Service\)\(2015\).](#)

<sup>37</sup> See Response to Clark Data Request 1-1 in attached **Exhibit “B.”**

<sup>38</sup> See Response to Clark Data Request 1-2 and Response to Clark Data Request 1-1, respectively, in attached **Exhibit “B.”**

the gas it distributes until it had purchased it and had it in its possession.<sup>39</sup> This is not comforting, especially given the long list of chemicals that apparently may be found in just the sulfur Liberty uses to odorize its gas, some of which, *i.e.*, Hydrogen sulfide, Carbon disulfide, Dimethyl disulfide, are themselves [RTAPs](#), and all of which may have a combined cumulative health impact that transcends the individual low limits of these chemicals.<sup>40</sup>

Moreover, it is not clear that Liberty's gas analyses (**Exhibit "B"**) identify all of the chemicals in its gas, as it is undersigned counsel's understanding from communications with the New Hampshire Department of Environmental Services that analyses will only cover those chemicals a laboratory is specifically requested to test for, and that a complete identification of all fracked gas components would likely require more than was undertaken for Liberty's analyses given that, as is discussed in the attached **Exhibit "D"**:

- "No single laboratory has the capability of analyzing natural gas for all of the constituents of interest. This means each class of analyte may require collection of multiple containers to be sent to multiple laboratories. In addition, the gas volumes needed for some analyses may require multiple containers per sample." It does not appear that Liberty's analyses derive from multiple samples sent to multiple laboratories.
- "Samples of natural gas cannot be analyzed directly for metals or for Formaldehyde, Acetaldehyde, Gluteraldehyde, and Propionaldehyde (aldehydes) but must be collected in a sampling media." It does not appear that this testing method was employed for Liberty's analyses.
- Chemicals could be included in a "vague" component found in fracked

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<sup>39</sup> See Response to Clark Data Request 1-3 in attached **Exhibit "B."**

<sup>40</sup> See Attachment Clark 1-4, Attachment Clark 1-6 and Attachment Clark 1-8 in attached **Exhibit "B."**

gas called “C6+,” which is not identified as a component of the gas covered by Liberty’s analyses.

The climate issue aside, a moratorium should be placed on gas expansion until the contents of the gas that Liberty distributes in New Hampshire are completely, unequivocally disclosed, the potential health impacts of its use are analyzed and better understood, and clear standards are established for the content of the gas Liberty may distribute in New Hampshire.

Then, there are the safety issues. Perhaps all concerns can be explained away, but it should not be overlooked that the Granite Bridge Project proposal calls for its pipeline to be largely constructed within the NHDOT’s right-of-way along one of the busiest conduits of traffic (Route 101) in our state, which itself serves as an emergency evacuation route in the event of an incident at Seabrook, and that some residences and businesses along the pipeline’s route will undoubtedly be in its danger zone, as well. Pipelines do explode.<sup>41</sup> Nor may the risk associated with the proposed 2 billion cubic feet LNG storage facility in Epping be underestimated: an explosion at a far smaller LNG facility near the town of Plymouth, Washington in 2014 is reported to have propelled 250-pound pieces of steel up to 300 yards through the air, injuring five, and resulting in an initial two-mile evacuation radius.<sup>42</sup>

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<sup>41</sup> Like the one in New Mexico discussed at <http://abcnews.go.com/US/story?id=96090&page=1>; the one in Illinois discussed at <http://www.chicagotribune.com/news/nationworld/midwest/ct-nachusa-gas-pipeline-explosion-20171206-story.html>; or, the one in California discussed at <http://www.kcra.com/article/pg-e-no-leaks-found-in-fresno-county-gas-line-that-exploded/6421851>—and their “incineration zones” may extend for hundreds of feet. See page 14 chart of explosions at <http://www.pipelinesafetytrust.com/docs/C-FerCircle.pdf>. Since 1987, the PHMSA has identified more than 3,200 gas pipeline accidents deemed serious or significant, with many involving fatalities. See generally [https://en.wikipedia.org/wiki/List\\_of\\_pipeline\\_accidents\\_in\\_the\\_United\\_States\\_in\\_the\\_21st\\_century](https://en.wikipedia.org/wiki/List_of_pipeline_accidents_in_the_United_States_in_the_21st_century).

<sup>42</sup> See April 2, 2014 online article “‘Miracle’ nobody died in blast at Eastern Washington LNG plant” by Jeff Barnard (Associated Press) in the online edition of the *The Seattle Times* at <https://www.seattletimes.com/seattle-news/lsquomiraclersquo-nobody-died-in-blast-at-eastern-washington-lng-plant/> and March 31, 2014 (updated August 24, 2015) online article “UPDATE: Evacuation radius near Plymouth plant to be reduced” in the online edition of *The Tri-City Herald* at <http://www.tri-cityherald.com/news/local/article32173386.html>.

[Gas utilities, including Liberty, do not always follow safety regulations.](#)<sup>43</sup> [Accidents happen,](#)<sup>44</sup> as do just plain [leaks.](#)<sup>45</sup>

If the climate crisis, health and safety issues, and the potential for enormous stranded costs are properly considered, Liberty’s expansion plans cannot be approved, as they are not in the public interest, but, on their face, irresponsibly responsive to “the needs of the public at large.” See, e.g., *Waste Control Systems, Inc.* at 24. See also *Boston & Maine R.R.*, *supra*, 102 N.H. at 10; *Harry K. Shepard, Inc. v. State*, *supra*, 115 N.H. at 185; *Browning-Ferris Industries of New Hampshire, Inc. v. State*, *supra*, 115 N.H. at 191. Indeed, [millions will die from climate change in just the next few decades.](#)<sup>46</sup> Plainly, the asserted public benefits are outweighed by the actual costs. See *Public Service Company of New Hampshire d/b/a Eversource Energy*, [Commission Docket No. DE 16-241, Order of Notice, at 3-4.](#)

[R.S.A. 378:37](#), which sets forth New Hampshire’s official energy policy, mandates the rejection of Liberty’s plans, as well. Besides meeting the public interest requirement, Liberty must also satisfy this statute—as is acknowledged in the LCIRP. See [LCIRP at p. 55](#) (“The

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<sup>43</sup> For readers of a non-pdf version of this brief, please see: <https://www.puc.nh.gov/Safety/Pipeline%20Safety%20Enforcement/CY%202017/PS1706LU.pdf>.

<sup>44</sup> For readers of a non-pdf version of this brief, please see the March 30, 2018 online *Nashua Telegraph* article “‘Significant’ Hudson gas leak caused by surveyor’s equipment,” by Dean Shalhoup at <http://www.nashuatelegraph.com/news/2018/03/30/significant-hudson-gas-leak-caused-by-surveyors-equipment/>.

<sup>45</sup> For readers of a non-pdf version of this brief, please see the April 24, 2018 online *Keene Sentinel* article “Gas leak on Keene’s West Street repaired,” by Sierra Hubbard at [http://www.sentinelsource.com/news/local/gas-leak-on-keene-s-west-street-repaired/article\\_30b6a32e-5e2b-535b-9400-a891b7233eb3.html?utm\\_source=Weekday+Newsletter&utm\\_campaign=373fe20f1b-EMAIL\\_CAMPAIGN\\_2018\\_04\\_24&utm\\_medium=email&utm\\_term=0\\_be271ac818-373fe20f1b-136251925](http://www.sentinelsource.com/news/local/gas-leak-on-keene-s-west-street-repaired/article_30b6a32e-5e2b-535b-9400-a891b7233eb3.html?utm_source=Weekday+Newsletter&utm_campaign=373fe20f1b-EMAIL_CAMPAIGN_2018_04_24&utm_medium=email&utm_term=0_be271ac818-373fe20f1b-136251925).

<sup>46</sup> See September 23, 2014 online article “Premature Deaths Multiply as Climate Changes,” by Daniel Cusick, available in the online edition of the *Scientific American* at <https://www.scientificamerican.com/article/premature-deaths-multiply-as-climate-changes/>.

Commission’s charge in this docket, therefore, is to evaluate whether EnergyNorth’s LCIRP is consistent with the state’s energy policy as articulated in RSA 378:37.”).

However, Liberty’s expansion plans *do not comport* with [R.S.A. 378:37](#).

[R.S.A. 378:37](#) provides:

“378:37 New Hampshire Energy Policy. – The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.”

*Id.* (emphasis added). Under this statute, the Commission is charged with considering the climate, health and safety concerns of fracked gas use as our state policy is to meet energy needs “at the lowest **reasonable** cost” while protecting our environment, safety, health and natural resources. As with other fossil fuels, fracked gas use comes at anything but “the lowest **reasonable** cost” to the citizens and businesses of New Hampshire. Rather, it comes at enormous, largely hidden, costs not associated with sustainable energy:

- **to ratepayers in subsidizing huge infrastructure costs**, for example, the nearly one-third of a billion dollar price tag for the Granite Bridge Project. A study from the University of New Hampshire released last year, generally known as the “[Carsey report](#),” concludes that pipeline expansion projects bring an annual average bill of about \$66 million to ratepayers.

See page 6 of Carsey report at

<https://scholars.unh.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1296&context=carsey>;

- **to one of our leading industries, tourism**, by the negative impacts of climate change on winter recreation, hunting (by the decimation of the moose population), fishing and foliage—threatening hundreds of millions in annual revenues. *See* 2008 DES Fact Sheet “Global Climate Change and its Impact on New Hampshire” at <https://www.des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-23.pdf>;
- **to our sugar industry**, again, due to climate change, as “[s]ugar maples are extremely susceptible to mid-winter thaws and summer droughts.” *See* 2008 DES Fact Sheet “Global Climate Change and its Impact on New Hampshire’s Fall Foliage and Maple Sugar Industry” at <https://www.des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-25.pdf>;
- **to our moose and loon populations (also fueling tourism)**: Moose and loons are climate change “canaries in a coal mine.” *See* February 22, 2018 online NHPR article at <http://nhpr.org/post/moose-loons-are-climate-change-canaries-coal-mine-say-nh-conservationists#stream/0>. In fact, climate change is the leading cause of their decline. *See* August 1, 2017 online NHPR article “Climate Change is the Leading Cause of Moose and Loon Population Decline in New Hampshire” by The Exchange, at <http://nhpr.org/post/climate-change-leading-cause-moose-and-loon-population-decline-new-hampshire#stream/0>. Moose hunters and wildlife watchers inject over \$340 million a year into the New Hampshire

economy. See June 1, 2015 *National Geographic* online article “What’s a Ghost Moose: How Ticks Are Killing an Iconic Animal,” by Christine Dell’Amore, at <https://news.nationalgeographic.com/2015/06/150601-ghost-moose-animals-science-new-england-environment/>;

- **to our dairy industry**, by [increasing, intensifying droughts](#) (associated with climate change). See August 30, 2016 “Concord Monitor” online article “Dying dairies: How drought, low milk prices lead to decline in N.H. farms” by Elodie Reed, at <http://www.concordmonitor.com/NH-Dairy-Farms-Struggle-Close-Because-of-Drought-Low-Prices-Yeaton-Farm-Epsom-NH-4346716>;
- **to agriculture**, an annual \$330 billion U.S. industry, from [climate change induced stresses ranging from extreme weather events to increased insect pests and diseases](#). See National Climate Assessment Report, summarized and available at <https://nca2014.globalchange.gov/report/sectors/agriculture#intro-section-2>;
- **to our health and health costs**, for example, by the increase in the tick population caused by climate change and associated increase in Lyme disease, and by all of the respiratory and other health problems caused by breathing the pollutants from fossil fuels. New Hampshire has experienced one of the largest state increases in Lyme diseases since 1991. See EPA online article “Climate Change Indicators: Lyme Disease” at <https://www.epa.gov/climate-indicators/climate-change-indicators-lyme->

disease, *see id.* New Hampshire also has an enormous number of impacted asthma sufferers. In fact, "New Hampshire's asthma rate is among the highest in the nation. Approximately 110,000 NH adults and 25,000 NH children have asthma." *See* page 22 of "Greater Manchester, New Hampshire Health Improvement Plan" online at <https://www.manchesternh.gov/Portals/2/Departments/health/GManCHIP.pdf>;

- **to seacoast towns and homes**: one study has determined that it will cost just three New Hampshire coastal towns between \$1.9 and \$2.9 billion to address the impacts of climate change. *See* p. 23 of "Changing Tides How Sea-Level Rise Harms Wildlife and Recreation Economies Along the U.S. Eastern Seaboard" 2016 National Wildlife Federation, available at [http://www.nwf.org/~media/PDFs/Global-Warming/Reports/Changing-Tides\\_FINAL\\_LOW-RES-081516.ashx;another](http://www.nwf.org/~media/PDFs/Global-Warming/Reports/Changing-Tides_FINAL_LOW-RES-081516.ashx;another). Another concludes that over 7,000 New Hampshire homes could be under water by 2100 due to sea rise caused by climate change. *See* Nov. 30, 2016 *Union Leader* online article "Study: 7,000 Seacoast properties could be under water by 2100," by Dave Solomon, at <http://www.unionleader.com/apps/pbcs.dll/article?AID=/20161130/NEWS11/161139963&template=printart>;
- **to taxpayers and ratepayers** in cleaning up from ice and other destructive storms caused by climate change, and addressing all of the above other harms.

- **to everyone’s cost of insurance** as the price of addressing all of the negatives rise for insurance companies.

Add to all of the above whatever price can be placed on all of the premature deaths caused by climate change, and the still-too-many premature deaths caused by gas safety “incidents,” and you approach the total *actual* environmental and other costs of using fracked gas. See *Public Service Company of New Hampshire d/b/a Eversource Energy*, [Commission Docket No. DE 16-241, Order of Notice, at 3-4](#).

The costs associated with fracked gas use are plainly not the “lowest reasonable cost” to meet the state’s energy needs, particularly given the availability of sustainable alternatives, which come without such costs—and they are especially not the “lowest reasonable cost” to meet the energy needs of those targeted by the Granite Bridge Project, who currently clearly have no “need” for Liberty’s proposed new fracked gas infrastructure and supply sources, as they are not among its current customers.<sup>47</sup>

Then, of course, there are the astronomical stranded costs of gas projects, like those associated with the Granite Bridge Project—which should be considered *per se* unreasonable under [R.S.A. 378:37](#), as the only way to avoid them, *i.e.*, by committing to exacerbating the climate problem for decades with methane use when we should and could be working to

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<sup>47</sup> Whether the gas contracts under consideration in the Granite Bridge Project case might provide *some* gas for current customers, and whether that gas could be provided without the project, is unclear from Liberty’s filings. But, it is clear from Liberty’s filings that the project is all about meeting Liberty’s expansion goals, not serving current customers. See, e.g., [Granite Bridge Project petition, ¶¶ 2-4](#). Liberty’s spokesman, John Shore, further confirmed this in a 2017 interview with WMUR, in which he noted that the utility would have to decline *future* customers without the project:

“They’re looking at things like access to natural gas, and if we can’t get more capacity to our service area, **we would have to turn down customers who make requestsm [sic], probably just within a couple years ...**”

See December 5, 2017 online WMUR article “Liberty Utilities proposes \$340 million underground natural gas pipeline project,” by Mike Cronin, at <http://www.wmur.com/article/liberty-utilities-proposes-dollar340-million-underground-natural-gas-pipeline-project/14109140> (emphasis added).

ameliorate it right now, is morally repugnant: indeed, the entire cost of the project should be deemed *per se* unreasonable for compelling ratepayers to make that choice. Again, the Granite Bridge Project, alone, would come with an almost one-third of a billion dollar (or more) price tag, and the average *annual* gas infrastructure bill for ratepayers is roughly \$66 million, much of which will have to be stranded costs going forward, if we are to responsibly address climate change. As is shown by the table reproduced in paragraph 10 above, Liberty's expansion plans will create continuing supply shortages over at least the next two decades which will, in turn, continue to create a demand for gas pipelines and other infrastructure.

Again, the touchstone of the "cost" analysis of [R.S.A. 378:37](#) is reasonableness: costs cannot just be the "lowest cost," they must be the "lowest **reasonable** cost." *Id.* (emphasis added). While the statute does not provide a "reasonable cost" standard, such a standard plainly must be objective, not subjective, and can be drawn from jurisprudence. New Hampshire follows the Restatement (Second) of Torts, § 283 (1965). *See Shimkus v. Caesar*, 95 N.H. 286, 288 (1948); *Filip v. Gagne*, 104 N.H. 14 (1962). Section 283 provides the objective standard of the famous, hypothetical "reasonable *man*," and its Comment b is often quoted as the definition of what makes the man reasonable:

"those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interest and the interests of others."

*Id.* *See also, e.g.*, "Law Dictionary, Second Edition," by Steven H. Gifis (Barron's Educational Series, Inc.; 1984), p. 388 (defining "reasonable man [person]" by quoting Comment b); *Berberian v. Lynn*, 179 N.J. 290, 297, 845 A.2d 122, 126 (N.J. 2004)(quoting Comment b in identifying the qualities of a "reasonable man").

The Restatement (Second) of Torts, § 283 standard is instructive in two ways. First, by analogy: as a “reasonable *man*” is one who protects the interests of others, not just themselves, at the level society expects of its members, a “reasonable *cost*” must similarly be one that protects the interests of others in the manner society expects. As virtually the entire world has unequivocally rejected the hidden costs of fracked gas use as violative of that standard and is demanding less, not more, of it, the fracked gas fuel option cannot be deemed the “lowest” *reasonable* cost at this point because society clearly does not consider it a “reasonable” price to pay at all. Second, straight application of the standard leads to the same conclusion: again, the standard is not what Liberty or Clark or the Commissioners in the proceeding personally believe is reasonable—the standard must be objective, *i.e.*, what a “reasonable man” would consider a “reasonable” cost for fuel. As a reasonable member of society attentively, knowledgably and intelligently protects “the interests of others” and not just themselves under the Restatement standard, a reasonable man would reject the climate change and other hidden costs of fracked gas use as an unreasonable cost to pay for the fuel since such costs are horrific to the point of potentially apocalyptic, well-established by mountains of studies, nearly all world scientists, leaders and countries condemn them, and everyone on the planet is being injured by them. Whether or not the United States as a nation ultimately remains in or withdraws from the [Paris Climate Accord](#)—and, again, until we actually withdraw, we are still a signatory—a world standard of reasonable prudence has been adopted under that agreement which cannot be ignored, and which establishes the price of Liberty’s future methane commitments as being patently unreasonable.

Moreover, our current overdependence on gas is already inconsistent with the energy source diversification requirement of [R.S.A. 378:37](#). [Our gas reliance is usually more than half](#)

of the total share of all of the available energy alternatives. See current use percentage at <https://www.iso-ne.com/>. Are we trying for 80% reliance? 100%? How “cheap” will gas be when all of the gas contracts term-out, and we have no alternative but to renew them, as everything depends on gas? Those arguing a gas “need” usually point to the gas shortages and price spikes of the winter of 2013-2014 as proof positive. However, the New Hampshire Office of Energy and Planning (“OEP”)<sup>48</sup> concluded that “increasing reliance on one fuel, namely natural gas, is what caused the wholesale price spikes in the winter of 2013-2014 in the first place ...” See [October 15, 2015 OEP letter to Commission, p. 2, filed in Commission Docket No. IR 15-124](#). Studies have shown that more large gas projects are not needed to lower energy rates and, indeed, provide no real benefit to ratepayers. See [http://www.masslive.com/news/index.ssf/2015/11/ag\\_healy\\_grid\\_reliability\\_fine.html](http://www.masslive.com/news/index.ssf/2015/11/ag_healy_grid_reliability_fine.html); <https://www.clf.org/blog/iso-forward-capacity-auction-results-show-in-energy-plant-not-needed/>; <https://www.unh.edu/unhtoday/news/release/2017/03/07/unh-research-finds-increased-energy-use-not-needed-grow-economy>; <http://www.nhbr.com/February-20-2015/Will-NH-really-benefit-from-major-energy-projects/>.

The just released 2018 [“New Hampshire 10-Year State Energy Strategy”](#) provides no clear guidance on our expansion of gas use and gas infrastructure in general, beginning and ending the discussion by deeming it an open question subject to our “sensibilities and needs” and state determinations as to what energy options “best protect its citizens, economy, and natural resources”:

“New Hampshire’s energy policy must be realistic about the necessity of natural gas into the foreseeable future while ensuring that infrastructure projects or expansions are in keeping with natural resource protection ...

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<sup>48</sup> Now known as the New Hampshire Office of Strategic Initiatives.

It is essential that any infrastructure improvements or expansions fit with New Hampshire sensibilities and needs. New Hampshire must answer the questions of what resources and infrastructure will best protect its citizens, economy, and natural resources ...”

[Id. at 7-8.](#)

“There is tension between the increasing demand for low-cost natural gas, the countervailing risk of dependence on the fuel, and production alternatives should natural gas supply infrastructure remain a chokepoint ...

New Hampshire energy policy must be realistic about the necessity of natural gas into the foreseeable future while ensuring that infrastructure projects or expansions are in keeping with natural resource protection ...

It is essential that any infrastructure improvements or expansions fit with New Hampshire sensibilities and needs ...

New Hampshire must answer the questions of what resources and infrastructure will best protect its citizens, economy, and natural resources ...”

[Id. at 31-32](#) (emphasis is original). However, being realistic about the necessity for gas now to meet **current customer demands** into the foreseeable future does not mean that we have to commit current non-gas customers and **future generations** to dependency on the fuel—and we cannot as, for all of the reasons cited above, such a commitment is not in accord with our “sensibilities and needs” and does not “best protect [New Hampshire’s] citizens, economy, and natural resources ...”

Moreover, as specifically concerns the Granite Bridge Project, the 2018 [“New Hampshire 10-Year State Energy Strategy”](#) is wholly unresponsive, as the project does not comport with the energy policy goals set forth in pages 12-20 of the strategy, particularly the following:

“New Hampshire stakeholders should seek policies that limit economic waste, maximize the useful competitive lifespan of energy infrastructure, and avoid policy preferences that select for technologies or resources without regard to cost.”

[Id. at 20](#) (emphasis in original). If the State adheres to its climate change commitments and otherwise responsibly addresses the crisis, the Granite Bridge Project will result in decades of economic waste attributable to lost infrastructure use; if the project is approved to begin with, it is only because of an ill-informed holdover policy preference for gas which fails to take into account its true cost.

The burden is on Liberty to show that its expansion plans committing the state to increasingly more methane use for decades responsibly address the state’s climate action commitments and obligations, including greenhouse gas emissions mitigation targets, and that our commitments and obligations will still be met notwithstanding its plans. See [Commission Order No. 26,039 \(July 10, 2017\), at 6](#). Liberty has failed to show this, and cannot show this. This proceeding should be dismissed, accordingly.

**III. EVEN IF LIBERTY’S PLANS WERE LAWFUL, THE COMMISSION SHOULD DEFER TO THE SEC’S JURISDICTION AND DISMISS THIS MATTER**

Should the Commission not agree with the preceding grounds for dismissal, it should dismiss it on jurisdictional grounds, as the approval sought under it falls squarely within the purview of the SEC. As noted in its petition, the first step in Liberty’s conversion plans involves “the construction of a temporary CNG **facility**.” See [id. at ¶ 1](#) (emphasis added). The ultimate goal is the construction of a “[permanent facility](#).” In relevant part, [R.S.A. 162-H:5](#) provides:

**“162-H:5 Prohibitions and Restrictions. –**

I. No person shall commence to construct **any energy facility** within the state unless it has obtained a certificate pursuant to this chapter ...”

*Id.* (emphasis added).

The broad definition of “energy facility” under Section VII of [R.S.A. 162-H:2](#) clearly encompasses Liberty’s proposed Keene gas facility:

“VII. ‘Energy facility’ means:

(a) Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, **including ancillary facilities** as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. **This shall include but not be limited to** industrial structures such as oil refineries, **gas plants, equipment and associated facilities** designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network. ”

*Id.*<sup>49</sup>

Liberty contends that it is exempt from the statute because it does not meet a “minimum” fuel storage requirement: “The quantity of CNG/LNG that Liberty will store at the Keene facility is far less than the 30 megawatt standard above.” [Objection to Motion for Rehearing, at ¶ 24.](#)

Liberty’s interpretation of the statute should be rejected, for several reasons.

First, Liberty isolates the following specific language of the statute for its argument:

“...which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station ...”

See [Objection to Motion for Rehearing, at ¶ 24.](#)

However, in isolating this language, Liberty ignores important modifying terminology, and corresponding rules of construction.

The sentence providing the language Liberty relies on begins with the phrase “This shall include but not be limited to ...” and follows with a list of specified items, including “gas plants, equipment and associated facilities” ...which store on site a quantity to provide 7 days of

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<sup>49</sup> The facility may also fall under subsection (g) of the statute: there is insufficient information in the petition to make this determination.

continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities ... [R.S.A. 162-H:2, VII](#). The language Liberty isolates, read in context, does not limit the statute’s coverage to the exact items then enumerated, but indicates that the list is *not exhaustive* and coverage also extends to “those *types* of [items] therein particularized.” *Conservation Law Foundation v. New Hampshire Wetlands Council*, 150 N.H. 1, 6-7 (2003)(quoting *Roberts v. General Motors Corp.*, 138 N.H. 532, 538 (1994)). This construction is “is well-settled and long-standing.” *State v. Njogu*, 156 N.H. 551, 553-554 (2007). Thus, “the 30 megawatt standard” of the statute, as Liberty labels it, is not an exact standard, if it is a “standard” at all. More properly termed, it provides just one example of a gas plant that would fall within its coverage.

Liberty’s interpretation reads much into the statute that is not there, and leads to prohibited results. Again, Liberty deems the “7 days ... 30 megawatt” language a “standard” which sets a *minimum* applicability requirement. [Objection to Motion for Rehearing, at ¶ 24](#). But, the subject language is exact—precisely 30 megawatts, no more or less, for precisely seven days, no more or less—it does not provide a *minimum*, but a specific, storage requirement, which facially does not apply to greater storage capabilities. Yet, as the statute otherwise uses similar language clearly establishing minimum and maximum standards, the enacting legislature plainly could have expressed the subject language as only a threshold, if it wanted to:

- (1) Subsection (b) of [R.S.A. 162-H:2, VII](#) identifies “Electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts **or more** ...” *Id.* (emphasis added);

(2) Subsection XII of [R.S.A. 162-H:2](#) distinguishes between renewable energy facilities with name plate capacity “of **greater than** 30 megawatts” and such facilities with “30 megawatts **or less** nameplate capacity ...” *Id* (emphasis added).

Liberty cobbles a *minimum* standard out of the statute as it would not be credible to argue that the statute only applies to facilities with exactly “7 days ... 30 megawatt” fuel storage capacity. But, Liberty is inappropriately pulling language out of the air to reach this construction. “We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language it did not see fit to include.” *State v. Addison*, 160 N.H. 732, 754 (2010). The terminology Liberty relies on *is* so limiting, and leads to absurd, illogical results when read as *the* “standard” for statutory applicability that Liberty urges: for example, facilities with sufficient fuel storage capacity to operate for 6 days at 50 megawatts, or 12 days at 29 megawatts, or 100 weeks at 50 megawatts would not be covered. The statute cannot be read to have intended such results, especially as they would substantially nullify the purpose of the statute, *i.e.*, to provide comprehensive oversight of energy facility construction and operation. *See State v. Kay*, 115 N.H. 696, 698-699 (1975).

Liberty’s position should be rejected as leading only to a dead end: the language just does not get us there.

Until and unless the legislature amends [R.S.A. 162-H:2, VII](#) to allow the interpretation Liberty proffers, the Commission is left with language and well-settled rules of statutory construction which preclude it, and provide for coverage of the subject facility.

The “associated facilities” language of the statute compels this conclusion, as well. Under the statute, the fuel storage capacity to be considered is not just that of the gas plant being reviewed, but also that of “associated facilities”:

“This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities ... which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities ...”

[R.S.A. 162-H:2, VII.](#)

While the proposed Keene gas plant would only store, *on its Keene site*, enough fuel to operate a 30 megawatt electric generating facility for approximately 2.2 days, the gas plant Liberty proposes for the Lebanon/Hanover case would be capable of fueling the same facility for approximately 5.2 days, and the Epping plant proposed in the Granite Bridge Project case could fuel it for approximately **77 weeks**. See Liberty’s responses to discovery in attached **Exhibit “C.”** Maybe Liberty can sell bridges in Manhattan, but New Hampshire should not buy that the three proposed Liberty gas plants will not be “associated facilities,” *i.e.*, that they will not actively interact to service Liberty’s customers, including, minimally, sharing the fuel stored at all three plants—and especially the huge quantity of fuel stored in Epping that clearly exceeds the needs of any project customers. In fact, Liberty openly touts this as a reason to approve the Granite Bridge Project. In its [petition](#) for that case, Liberty argues that:

“the Granite Bridge LNG Facility would have the ability to liquefy and store the gas delivered from either the PNGTS or TGP pipelines in the low-cost summer period, and vaporize that same gas to serve **EnergyNorth’s customers** in the winter when other supplies are more expensive ...”

*Id.* at ¶ 10 (emphasis added). Note that Liberty does not limit those customers to only ones acquired through the project—they could be any customers in the state, including in the City of Keene—and Liberty’s response to Clark’s discovery (Clark 1-14; **Exhibit “C”**) confirms this:

**“REQUEST:**

Please identify all planned and potential interaction between the facilities being considered for Keene under Docket DG 17-068, Lebanon under Docket DG 16-852 and Epping under Docket DG 17-198, including, but not limited to, the potential sharing of gas stored at any of the facilities.

**RESPONSE:**

As stated in the Company's response to Clark 1-13, the proposed Granite Bridge LNG facility has been designed to serve the needs of EnergyNorth's current and future customers **within the Company's existing service territories** and the potential franchise areas along the Granite Bridge pipeline.

LNG required at the smaller LNG facilities proposed in Keene and Lebanon would be received by truck from several potential LNG suppliers in the region. While LNG supplies could also be physically received from the Granite Bridge LNG facility, it has not been designed for that purpose. No other physical interaction is anticipated besides personnel used to maintain and operate each of these facilities, as required for safe operation and to cover for employees on vacation and sick leave."

Liberty claims that:

"The proposed LNG facility at Epping has not been designed to supply the needs of Keene or Hanover-Lebanon. The supply needs for Keene and Hanover-Lebanon are yet to be finalized. **The Company will identify a range of supply alternatives, including a competitive solicitation of supply from third parties, and determine which is the best-cost supply alternative to meet the needs of the Company's customers in these locations ...**"

Liberty Response to Request No. Clark 1-13 (**Exhibit "C"**) (emphasis added). But is there any doubt that, after all of the analysis has been completed, Liberty will determine that the "best-cost-supply alternative to meet the needs of the Company's customers in" Keene is the fuel in Epping? If not, then Liberty's entire promotion of the project, as a way to secure gas at its best rates for **all of its customers**,<sup>50</sup> is a sham: if the Epping facility has the cheapest gas, why would Liberty look elsewhere for gas for Keene customers?

Consequently, when the almost 1 ½ years of fuel located on site at the associated Epping facility is properly factored into the analysis, the proposed Keene gas plant clearly exceeds any "7 days ... 30 megawatt" "minimum standard" for [R.S.A. 162-H](#) applicability. From delivery to

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<sup>50</sup> See, e.g., Slide 4 ("Granite Bridge is a \$340 million natural gas pipeline and storage project **designed to serve the residents and businesses of New Hampshire**")(emphasis added) and Slide 5 ("**By New Hampshire. For New Hampshire.**")(emphasis in original) at [http://www.biaofnh.com/uploads/5/9/9/2/59921097/final\\_infrastructure\\_updates\\_120617.pdf](http://www.biaofnh.com/uploads/5/9/9/2/59921097/final_infrastructure_updates_120617.pdf).

distribution and all of the processing and traffic in-between, there are more [health, safety, environmental and other concerns](#) involving gas plants than just the size of their storage tanks. Gas plants are composites of potential mishaps and “other concerns,” and, when those concerns are present, it should make no difference to the triggering of the SEC’s reviewing authority whether the fuel used by the plant is all stored on site or, in part, at a nearby associated facility—especially when *many, many times* that amount of fuel is readily available from the facility for delivery, processing, distribution, *etc.*, at the gas plant.

Should it not dismiss this proceeding as being inconsistent with New Hampshire law for the reasons previously stated, the Commission should find that the SEC has jurisdiction over this matter and, consistent with its prior decisions, defer to it, *see, e.g.*, [Commission Order No. 25,822 dated October 2, 2015 at 24 and Footnote 8](#) (refusing to consider gas pipeline siting issues, in part, because such matters “ may also come before the New Hampshire Site Evaluation Committee under RSA ch. 162-H”); [Commission Order No. 25,843 dated November 20, 2015 at 5](#) (gas pipeline siting issues are “considerations for other agencies,” citing, *inter alia*, [R.S.A. 162-H:10-b](#)), and dismiss this proceeding, accordingly.

Keene has a pollution/health problem. Specifically: [pollution, including particulates, can be trapped in the Keene valley by air inversions, sometimes rising to a level which may cause respiratory and other health problems.](#)<sup>51</sup>

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<sup>51</sup> For readers of a non-pdf version of this brief, please see the January 22, 2018 online *Keene Sentinel* article “Efforts to raise awareness about fine particle pollution continue in Keene,” by Meghan Foley, at [http://www.sentinelsource.com/news/environment/efforts-to-raise-awareness-about-fine-particle-pollution-continue-in/article\\_f4631c0f-06db-507c-9b10-509168924ced.html](http://www.sentinelsource.com/news/environment/efforts-to-raise-awareness-about-fine-particle-pollution-continue-in/article_f4631c0f-06db-507c-9b10-509168924ced.html). This problem is further discussed in a 2014 Keene State College environmental studies report titled “Characterizing the Spatial and Temporal Variability of Particulate Matter in Keene- Results and Findings,” overseen by Dr. Nora Traviss (Rachel Guerin, Alex Olson, William Lorenzen, Austin Conran, William Heitsmith, (Environmental Studies Senior Seminar: Spring 2014), as supplemented by a 2017 data update, which, unfortunately, is not available online and too voluminous to attach as an exhibit. It should be online soon, though, on the [www.nhscienceforcitizens.org](http://www.nhscienceforcitizens.org) website.

Keene does not need more gas and potentially more of a pollution/particulate problem, which Liberty's expansion plans may bring.

Again, someone has to assess and consider and factor the health implications of Liberty's plans into the equation, and that will not be done under this declaratory judgment proceeding. While Clark, again, avers that this proceeding should be dismissed on the grounds of unlawfulness, and that a moratorium should be placed on all of Liberty's gas expansion plans, including those in Keene, until the contents of the gas that it distributes in New Hampshire are completely, unequivocally disclosed, the potential health impacts of its use are analyzed and better understood, and clear standards are established for the content of the gas Liberty may distribute in New Hampshire, the SEC would at least provide scrutiny not afforded under this matter, should the Commission not agree with Clark's first position.<sup>52</sup>

**IV. IF THE COMMISSION COULD AFFORD THE RELIEF LIBERTY SEEKS, IT WOULD HAVE TO BE PURSUANT TO R.S.A. 374:22 AND R.S.A. 374:26**

Even if it is not dismissed due to unlawfulness or deference to the SEC's jurisdiction, Liberty's petition should still be dismissed because it was required to be filed under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) as Liberty's petition clearly does propose a change in the character of Liberty's service in the City of Keene, *i.e.*, a substantial change in operations and the exercise of rights and privileges "[not theretofore actually exercised in the town](#)," requiring statutory approval.

In relevant part, [R.S.A. 374:22](#) provides:

**"374:22 Other Public Utilities. –**

**I. No person or business entity**, including any person or business entity that qualifies as an excepted local exchange carrier, 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

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<sup>52</sup> In fact, under the same scenario and for the same reasons, the SEC should review the gas plant proposed under the Hanover/Lebanon case, as well.

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 ...”**

*Id.* (emphasis added).

[R.S.A. 374:26](#) further provides:

**“374:26 Permission. – 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. Such permission may be granted without hearing when all interested parties are in agreement.”**

*Id.* (emphasis added).

While admitting that it has *never* distributed CNG or LNG under its Keene franchise, *see* [petition, ¶ 17](#), Liberty contends that the “right” is broadly bestowed by its original 1860 franchise grant. [See generally petition and particularly ¶¶ 6 and 14-24](#). It would have to be, as Liberty acknowledges that the original grant has never been modified to allow for any specific gas use in Keene. *Id.* at ¶ 18 (“No Commission orders could be found approving any of these changes in fuels.”). But, if the right *were* covered under the franchise, the failure to have “theretofore actually exercised” it still requires permission under [R.S.A. 374:22](#). *Id.*

Liberty’s Keene gas franchise, granted by the legislature under Laws 1860, Chapter 2451, [see petition, ¶ 6 and Exhibit “1,”](#) gives it the right:

**“to carry on the manufacture, distribution and sale of gas, for the purpose of lighting the streets, manufactories, machine shops, and all other buildings in the town of Keene, and to construct or purchase such buildings, works, furnaces, reservoirs, gas holders, gas pipes, and other things as may be requisite and proper for such purpose.”**

[Id. at ¶ 15](#) (emphasis added).

Liberty's franchise rights are fixed by the four corners of the grant and cannot be changed except by further legislative permission granted under [R.S.A. 374:22](#) and [R.S.A. 374:26](#). See *State v. Hutchins*, 79 N.H. 132, 139 (1919)(rights in public waters are fixed by the legislative grant and cannot be changed except by further legislative action). As the franchise grant bestowed rights not known under the common law, "strict compliance with its terms is required." *Buatti v. Prentice*, 162 N.H. 228, 230 (2011). Obviously, the meaning given to words used in the grant must comport with the meanings used and understood at the time it was enacted. See *Attorney General ex rel. Abbot v. Town of Dublin*, 38 N.H. 459, (1859)("This is but the application to a particular subject of a well settled general rule, applicable to all trades, professions and customs, that the meaning of the word is to be ascertained by the usage of the time when employed ..."). Subsequently enacted Commission rules do not broaden or otherwise alter the original grant. See *Milette v. New Hampshire Retirement System*, 141 N.H. 342 (1996)(legislature's grant of rulemaking authority to agency is not grant of power to agency to modify statutory law by regulation). See also *In re Campaign for Ratepayers' Rights*, 162 N.H. 245 (2011)(rules adopted by state boards and agencies may not add to, detract from, or in any way modify statutory law). See also *In re Appeal of Morrill*, 145 N.H. 692 (2001)(generally, substantive changes to statutes or rules are applied prospectively).

Properly construed, then, Liberty's gas franchise gives it the right to distribute and sell in Keene whatever "gas" was being used to light street lights at the time the 1860 franchise was granted, and to construct facilities and infrastructure to effectuate that purpose—and no more. As Liberty contends that the 1860 legislature intended that this right include the right to distribute and sell CNG and LNG, and to construct associated necessary facilities, the burden is on Liberty to prove these facts. [Puc 203.25](#) provides:

“Puc 203.25 Burden and Standard of Proof. Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence.”

*Id.*

Clearly, CNG and LNG are not the same “gas” that was authorized under the Keene gas franchise: CNG and LNG were still unknown as of 1860; even natural gas was not used by a utility until 1865.<sup>53</sup> Thus, as the Commission’s Approval Order found, Liberty must establish that CNG and LNG have the “same character” as the gas authorized under its franchise to prevail on its petition. [Approval Order at 3](#).

However, the issue is not what gas has been distributed and sold in Keene *since* 1860. Whatever that gas may have been, is irrelevant. As the Keene gas franchise is a legislative grant of authority which cannot exceed the actual grant, it cannot be expanded by time and reliance-type defenses, such as those grounded in the expiration of any statute of limitations, laches, or the like. *See State v. Hutchins, supra*, 79 N.H. at 139.<sup>54</sup> Normal principles of estoppel should likewise preclude such arguments, as those breaking the law (exceeding their statutory authority) should not be rewarded with ill-gotten rights. Moreover, as noted, the legislative grant could not be expanded by subsequently enacted Commission rules, either—especially those promulgated more than 100 years after the statute. *See Milette v. New Hampshire Retirement System, supra*, 141 N.H. at 347; *In re Campaign for Ratepayers’ Rights, supra*, 162 N.H. at 252; *In re Appeal of Morrill, supra*, 145 N.H. at 699. This includes the [Puc 502.06](#) definition of “gas” that Liberty relies on.

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<sup>53</sup> *See* <http://www.madehow.com/Volume-6/Natural-Gas.html>.

<sup>54</sup> This is as should be expected since, as *State v. Hutchins* notes, *see id.* at 139-140, it is not the obligation of town officials (or ordinary citizens) to continually check for compliance with legislative grants of authority.

The issue is: what gas was first distributed and sold under the franchise?

While Liberty claims that CNG and LNG have the same character as *all* the gas that has been distributed and sold under the franchise since its inception, it does not come close to meeting its burden of proof on this issue. **Liberty acknowledges that it does not even know what “gas” was used in Keene at the inception of the franchise.** From Liberty’s response to Clark Data Request No. 1-7 (**Exhibit “B”**):

**“REQUEST:**

Please identify the complete chemical composition of the gas that was first distributed under the Keene gas franchise at issue in Docket DG 17-068 when the franchise was first awarded in or circa 1860. Should the composition be unclear at this time, please identify the likely composition to the best of Liberty’s ability, identifying the supporting source(s).

**RESPONSE:**

The Company’s records do not contain the requested information.”

While Clark does not agree that such extrapolation is appropriate, “best guesses” from the [petition](#) as to the gas first used in Keene would be either an unidentified “manufactured gas,”<sup>55</sup> water gas, coal gas,<sup>56</sup> or a mixture of water gas and coal gas. Even then, not enough facts are pled about the character of the first possible gas to conclude that CNG and LNG would be

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<sup>55</sup> Paragraph 17 of the petition states that “The Company’s earliest predecessor distributed manufactured gas.”

<sup>56</sup> Paragraph 16 of the [petition](#) states:

“In its first iteration of the *Rules Prescribing Standards of Purity, Pressure and Heating Value of Gas, and Providing for the Periodic Testing thereof, and for the Testing of Meters, and Otherwise Regulating the Service of Gas Utilities*, the then-named Public Service Commission defined ‘gas’ within its definition of ‘utility’ as follows: ‘the word ‘utility’ shall be taken to mean any public utility engaged in supplying to the public water gas, coal gas or a mixture of the two.’ 2 NH PUC 115, 116 (1913).”

[Petition Exhibit “2B”](#) provides:

“A study of Keene Gas Company's past reveals an intriguing history of fuel technology over the years. Like many other gas utilities in the first part of this century, Keene Gas manufactured gas from coal. In 1954, Keene Gas changed to reformed butane ...”

comparable, and Liberty acknowledges that it also has no idea what was even in the water gas and coal gas. From Liberty's response to Clark Data Request No. 1-8:

**“REQUEST:**

Reference Liberty's Amended Petition in Docket DG 17-068, ¶ 16. Please identify the likely complete chemical composition of any coal gas that was sold to Keene customers under the Keene gas franchise, as of 1913 and otherwise.

**RESPONSE:**

The Company does not have this information.”

From Liberty's response to Clark Data Request No. 1-9:

**“REQUEST:**

Reference Liberty's Amended Petition in Docket DG 17-068, ¶ 16. Please identify the likely complete chemical composition of any coal gas that was sold to Keene customers under the Keene gas franchise, as of 1913 and otherwise.

**RESPONSE:**

The Company does not have this information.”

While Clark does not agree that the composition of propane-air is relevant to Liberty's rights under its 1860 franchise, it appears from [Exhibits “2B” and “3”](#) to its petition that Liberty's propane-air is roughly 71% air—which hardly seems the same character as the gas in CNG and LNG.<sup>57</sup> **Indeed, Liberty acknowledges that it is switching to a new fuel.** See [petition at Footnote 1](#) (“... what we will do, following acquisition, is look into the economics of converting the system from a propane/air system to some **other fuel** source, like CNG or LNG”)(emphasis added).

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<sup>57</sup> From the vitally important climate and health perspectives, propane-air would seem likely to have far less harmful impacts.

Moreover, as discussed above, there are questions surrounding the content and other characteristics of the CNG and LNG that Liberty will distribute and sell, as well. Given the health questions, the “gas is gas” stamp should be applied with extreme caution and absolutely only on proper proof: again, we should be discussing a moratorium here, not expanded use. With the health questions, and the legislature’s obligation to act for the public good, it is hard to believe that the legislature granting the Keene gas franchise would have intended it to include fracked gas.

So, Liberty plainly has not met its burden of establishing that the new CNG and LNG gas will be of the “same character” as the gas authorized under Liberty’s gas franchise.

Nor has Liberty shown that its proposed conversion will not otherwise result in a substantial change in the character of Liberty’s gas service in Keene, requiring [R.S.A. 374:22](#) and [R.S.A. 374:26](#). It will. Again, Liberty proposes to completely switch from propane-air and a conventional distribution system to CNG/LNG service, with corresponding new, extensive, complex facilities (including a 100,000 gallon LNG storage tank and gas compression equipment) and “technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems.” [Approval Order at 3](#). Liberty’s testimony in the Lebanon/Hanover case concerning a similar planned “off pipeline” distribution system, certainly sounds like a substantial change from a conventional distribution system:

“Q. How does an ‘off pipeline’ distribution system work?”

A. An ‘off pipeline’ distribution system has two key components. The first component is the underground gas distribution piping along with service risers and meters located at the customer’s premises. This component of the system is identical to the existing distribution network that has been operated safely, reliably, and efficiently by Company employees for decades. The second unique component of the “off pipeline” distribution system is the fueling facility that will be utilized to supply the distribution system with natural gas.

A conventional local distribution network has an interconnection with an interstate pipeline company. At this interconnection an LDC would receive shipments of natural gas from its supplier, regulate pressure down to LDC operating pressure (typically 60 PSI), add mercaptan, which is a gas odorant, and distribute the gas to customers. Because there is not an interstate pipeline within 50 miles of the Hanover/Lebanon franchises with which to interconnect, the Company plans to construct an LNG storage and vaporization facility along with a CNG decompression facility to supply the natural gas to the distribution system and customers.

LNG will be trucked to the facility and off-loaded into LNG storage tanks. From the tanks the liquid will be vaporized into gaseous form, odorized as needed, and injected into the distribution system. This same procedure has been working reliably and safely at the Company's current LNG plants for approximately 40 years. CNG will also be trucked to the facility and attached to decompression skids, which will decompress the gas from approximately 3600 PSI to the working LDC pressure of 60 PSI and injected [sic] into the system ...”

[Testimony of William J. Clark in Docket No. DG 16-852 at 8:12-9:13.](#)

Liberty's proposal is plainly a huge change in service. But, again, the change is not to be measured against Liberty's current service, but that which it is actually authorized to provide under its franchise grant, and going from an authorization to sell what was likely water gas or coal gas “for the purpose of lighting” to fracked (or even conventional) CNG/LNG for heating, is a quantum leap that should be met with a lasso and a tethering back to the original grant.

The three 1973 cases cited in support of the Approval Order, [see id. at 3](#), are inapposite. This is not a case where a utility is requesting permission to *temporarily* supplement natural gas supplies on essentially an emergency basis and, unlike the requests in those proceedings, this one is contested. [See id. at 3-4 \(and cases cited therein\)](#).

Liberty has failed to prove that its proposed new service does not need new permission. The use of CNG and LNG and the infrastructural and operational changes accompanying the new service clearly constitute a change in the service authorized under Liberty's Keene gas franchise, requiring permission under [R.S.A. 374:22](#).and [R.S.A. 374:26](#), and, even if the Commission does not agree and believes that the new service is authorized under Liberty's

original franchise grant, the failure to have “theretofore actually exercised” it requires permission. [R.S.A. 374:22](#). Liberty’s [petition](#) should be dismissed, accordingly.

## V. CONCLUSION

Liberty is close to a dream that is part of the next generation’s nightmare. With the approval it seeks in this proceeding—the approval it once had under the [Approval Order](#)—Liberty would have the ability to set up a network of CNG and/or LNG plants in every one of its 30+ New Hampshire franchises, avoid Commission, SEC and public scrutiny for any of them,<sup>58</sup> expand a fracked gas empire throughout the state and start using an even more harmful “gas” without notice or scrutiny, should it so choose. This would, obviously, not be a good result. Ironically, it would not be a good result for Liberty, either, as an approval improperly granted under the wrong standard would always be subject to challenge.<sup>59</sup> The Commission should save Liberty from itself (along with the rest of us) and dismiss its petition, accordingly.

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<sup>58</sup> As long as Liberty kept their sizes below its proffered “7 days ... 30 megawatt” minimum standard.

<sup>59</sup> See *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1077 (1982)(Commission imprudency finding, improperly made in financing hearing under wrong standard, violated due process and ordered expunged); *Clark v. New Hampshire Dept. of Health and Welfare*, 114 N.H. 99, 104 (1974)(NH Department of Health and Welfare regulations contrary to statutory requirements held void); *Appeal of Gallant*, 125 N.H. 832, 834 (1984)(NH Department of Employment Security regulations void for conflicting with statutory requirement); *WorldWide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)(a judgment rendered in violation of due process is void)(citing *Pennoyer v. Neff*, 95 U.S. 714, 732-733 (1878)); 2 Am.Jur.2d Judgments § 29 (2004)(“It is not necessary to take any steps to have a void judgment reversed or vacated ... Such a judgment is open to attack or impeachment in any proceeding ... direct ... or collateral ... and at any time ...”); see also *id.* at § 31 (1994)(“... A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication. Indeed, a void judgment ... has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any rights be based in it ... All proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose.”).

WHEREFORE, for the reasons expressed, Clark respectfully requests that the

Commission:

- A. Dismiss this case or stay the proceeding until such time as the LCIRP case has been decided, and then rule in this matter consonant with the LCIRP determination; or
- B. Schedule a hearing on this matter

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: May 1, 2018

//s//Richard M. Husband, Esquire  
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### **CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 1<sup>st</sup> day of May, 2018, submitted seven copies of this brief to the Commission by hand delivery, with copies e-mailed to the petitioner and the Consumer Advocate. I further certify that I have, on this 1<sup>st</sup> day of May, 2018, served an electronic copy of this brief on every other person/party identified on the Commission's service list for this docket by delivering it to the e-mail address identified on the Commission's service list for the docket.

//s//Richard M. Husband, Esquire  
Richard M. Husband, Esquire