REDACTED VERSION

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

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

Re: Approval of Firm Transportation Agreement

Docket No. DG 14-380

Liberty Utilities (EnergyNorth Natural Gas) Corp.'s Brief

August 7, 2015

Liberty Utilities (EnergyNorth Natural Gas) Corp. ("EnergyNorth" or the "Company") submits this brief requesting that the New Hampshire Public Utilities Commission ("Commission") approve the Stipulation and Settlement Agreement (the "Settlement") between Staff of the Commission ("Staff") and EnergyNorth providing for the Company's purchase of capacity on the Northeast Direct pipeline (the "NED Pipeline"). The Settlement recommends that the Commission approve the Precedent Agreement between EnergyNorth and Tennessee Gas Pipeline Company, LLC ("TGP") in which EnergyNorth would procure 115,000 dekatherms/day ("Dth/d") of capacity on the NED Pipeline, or alternatively, 100,000 Dth/d if a certain level of capacity needs were not achieved by the Company by April 1, 2017. The testimony in the case – both prefiled and at the hearing – establishes that: (1) EnergyNorth needs additional capacity to serve customers in the future; (2) the amount of capacity to be procured is appropriate; (3) the Company has sufficient plans to mitigate reserve capacity it may have at any point in time; (4) the NED Pipeline is the best cost option for customers, appropriately balancing cost and non-cost benefits including the construction of a new gate station feeding the west end of the Company's distribution system; (5) the growth incentives and associated financial penalties to shareholders in the Settlement are beneficial to customers by ensuring costs to customers are minimized, and; (6) the future analysis required in the Company's next Least Cost Integrated Resource Plan ("LCIRP") filing will provide important information to direct the Company's supply planning in the future.

I. The Legal Standard for Commission Approval of Settlement Agreements.

The applicable standard of review for a settlement agreement is governed by N.H. Code Admin. Rules Puc 203.20 (b), which provides that the Commission shall approve disposition of any contested case by settlement "if it determines that the result is just and reasonable and serves

the public interest." *Concord Steam Corp., 94 N.H. P.U.C. 233 (May 23, 2009); see also* RSA 541-A:31, V(a). The Commission's findings with respect to whether the Settlement is in the public interest must be supported by competent evidence in the record. *See Appeal of Stetson*,138 NH 293, 296 (1994). In general, "the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise, as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation." *Unitil Energy Systems, Inc.*, Order No. 24,677 (October 6, 2007), slip op. at 17-18, quoting from *Concord Electric Company*, 87 NH PUC 694, 708 (2002) and *Concord Electric Company*, 87 NH PUC 595, 605 (2002), and orders cited therein. However, even where all parties enter into a settlement agreement, the Commission cannot approve it without "independently determining that the result comports with applicable standards." *Id.* In the case of the purchase of capacity that involves a long term commitment of substantial dollars, the Commission evaluates whether the Company's decision to enter to such an arrangement is prudent and consistent with the public interest. *EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery*, Docket DG 07-101, Order No. 24,825 at 29 (February 29, 2008).

II. The Settlement Between the Company and the Staff.

After extensive discovery in the docket, direct testimony filed by all parties, rebuttal testimony by the Company, and then additional discovery on that testimony, Staff and the Company entered into the Settlement which was filed at the Commission on June 26. The Settlement provides that the Company shall procure capacity on the NED Pipeline at 115,000 Dth/d, unless the Company does not achieve at least 10,000 Dth/d from specified sales, in which case the amount of purchased capacity shall be reduced to 100,000 Dth/d. Exhibit 14 at 3. The

Settlement requires the Company to report in its Cost of Gas filings the amount of design day capacity being utilized by the specified sales, and to amend the Precedent Agreement, within 30 days of a Commission order approving the Settlement, to provide for the option to reduce the 115,000 Dth/d to 100,000 Dth/d. *Id.* In the event that the Company keeps certain of its propane facilities in service while taking capacity from the NED Pipeline, starting in 2019, the Company is subject to certain targets for annual average growth in terms of new customers or annual dekatherms for certain additional sales on the Company's system. *Id.* at 4-5. If the Company fails to achieve either of the targets, it will be subject to the disallowance of certain costs in its annual winter Cost of Gas proceeding. The Settlement also requires the Company to provide information in its next filed LCIRP beyond what the statute requires (*see* RSA 378:38), such as a cost benefit analysis of constructing a lateral off the NED Pipeline to serve customers in Keene, a forecast of load on a customer-class basis, an analysis of the impact of energy efficiency in its demand forecast, and an analysis of the retirement of the Company's propane facilities. *Id.* at 6.

III. The Decision to Purchase Capacity on the NED Pipeline is Prudent and in the Public Interest When Cost and Non-Cost Factors are Considered.

The Company's decision to enter into the Precedent Agreement and purchase additional capacity was based on an update to its demand forecast from its last Commission approved LCIRP.[1] This new forecast determined the Company's design day customer requirements over a 24-year period, Exhibit 3 at 8-9, and made adjustments to accommodate the return of capacity exempt customers. Mr. DaFonte explained at the hearing that:

[1] The LCIRP forecast that was approved by the Commission included an additional 90,000 Dth/d of 365 day capacity on the TGP-NEX project from Wright, NY to its citygate starting November 1, 2017. *See* DG 13-313, Exhibit 1 at 64. The Commission approved this LCIRP in Order No. 25,762, stating that "we concur with Staff that this LCIRP meets the standards of RSA Chapter 378, and we will accept this plan as adequate under the new statutory scheme for natural gas utility LCIRP filings. Liberty plainly took a careful approach to examining its demand-and-supply-side planning forecasting needs…" Order No. 25,762 at 4-5.

> this is a recent trend that's occurred as a result of the lack of capacity in the region and the high prices that are paid by these customers and others for market area supply. And, so, as these contracts roll off with their third party supplier, some of which may have been entered into three years ago, two years ago, when prices were muted, the repricing has caused these customers to rethink how they're going to manage their fuel procurement. And, so, we've had quite a few that have returned. And, like I said, there is also a trend within the New England region overall of these customers returning. So we have had to prepare to serve these customers.

Tr. Day One at 52, lines 1-13. The forecast was further updated for design day capacity needed to serve iNATGAS under a Commission approved special contract (*see* Order No. 25,694 in Docket DG 14-091). Pursuant to the special contract, iNATGAS is required to transport certain minimum amounts of natural gas from the Company over the 15 year contract term, and to be a sales customer for one year. This means that iNATGAS must purchase capacity from the Company for at least the first year of operation, and continue to pay for its maximum calculated peak day capacity should it ever convert to being a transportation customer. Tr. Day One at 56.

The demand forecast demonstrates that the Company will not have enough capacity to serve customers on a design day (the triggering event for which the Company must plan) as early as 2016/17. While this shortfall is relatively modest at 2,006 Dth/day in 2016/17, it grows steadily over ten years to 32,262 Dth/day and then to 62,486 Dth/day in another ten years. Exhibit 3 at 16. There is no dispute among all the parties to the proceeding that the Company needs additional capacity in the immediate future to serve its customers. Staff's witness, Melissa Whitten, confirmed this: "I find that the Company has demonstrated a need for incremental capacity to meet design-peak-day and annual-throughput requirements within the next five years," Exhibit 12 at 6, lines 23-25. The Office of Consumer Advocate's ("OCA") witness, Dr. Chattopadhyay, confirmed it as well at the August 6, 2015 hearing, stating that the Company needed anywhere from 106,000 Dth/d to 109,600 Dth/d to as high as 124,600 Dth/d. Tr. Day

Three.[2] PLAN Witness Rosenkranz testified that "[i]t would be reasonable for EnergyNorth to contract for additional firm gas supply resources based on its projected requirements over the next ten years." Exhibit 17 at 21, lines 13-14.

It should be noted that the Company's projections of its design day shortfall for purposes of this procurement included the continued reliance on the Company's three propane facilities that provide 34,600 Dth/d of vaporization capacity. Tr. Day Two at 58. These facilities, while currently serving customer's needs, are more than forty years old. *Id.* at 101. As Dr. Chattopadhyay testified at the hearing, given their age, the propane facilities could not be used for the long term. Tr. Day Three.

Having determined that it required additional capacity to serve its customers in the future, the Company identified three viable resource alternatives in the form of proposed pipeline projects that could satisfy all or a portion of its design day needs: the NED Pipeline, Spectra's Atlantic Bridge Project and Portland Natural Gas Transmission System's ("PNGTS") Continent to Coast (C2C) Project. Exhibit 3 at 31, lines 9-11. As compared to the NED Pipeline, both of the alternative projects offer capacity at a much greater cost for the Company's customers. As Mr. DaFonte testified, purchase of capacity from the NED Pipeline would cost approximately *$537 million less* than the next lowest cost of the Spectra and PNGTS pipeline alternatives. *Id.* at 35, line 5-8. Dr. Chattopadhyay agreed that of the pipeline alternatives, the NED Pipeline "is the more cost effective option." Tr. Day Three; Exhibit 16 at 9.

This more than half a billion dollar cost differential is driven not only by higher demand charges for one of the pipeline alternatives**,** but also the cost of expanding the existing Concord

[2] The Company does not have the particular cite to the transcript as the transcript for August 6 was not available at the time the brief was submitted.

Lateral, which is required in order for the additional capacity to make its way to the Company's distribution system in New Hampshire. The Concord Lateral runs from Dracut, MA and interconnects with the Company's system in New Hampshire, and is currently the only upstream delivery source into the Company's distribution system in Southern and Central New Hampshire. Because existing capacity on the Concord Lateral is fully subscribed, the Concord Lateral would have to be expanded to accommodate additional capacity coming through either the Spectra or PNGTS system at Dracut, MA. Tr. Day One at 63-64. The cost of the Concord Lateral upgrade is significant, whether one relies on TGP's initial estimate, or the later estimate which was even higher.[3] *Id*. at 210-13; Exhibit 33. While PLAN attempted to make much ado about the estimates, the fact is that using either estimate, both the Spectra and PNGTS pipeline projects will be significantly more expensive than the NED Pipeline. More importantly, even without factoring in the cost of the Concord Lateral expansion, the NED Pipeline is more cost effective than the two alternatives the Company considered. Tr. Day One at 212.

The Company also evaluated the reliability, flexibility and viability of each of the pipeline options, so-called "non-cost factors." Exhibit 3 at 36-37. The NED Pipeline is unique in that it will provide the Company with a second connection to the interstate natural gas transmission network. Exhibit 9 at 55. This connection, which will be in the area west of Nashua, will allow the Company to inject gas into one of the most densely populated parts of its franchise area and lower its withdrawals of gas from the Concord Lateral. *Id*. This is significant not only for the potential growth opportunities in that part of the Company's system, but because of the operational flexibility it will provide. If gas were ever constrained or unavailable at

[3] The $537 million difference in cost between the NED Pipeline and the Spectra and PGNTS options was based on a 2014 quote from TGP of the cost of expanding the Concord Lateral. Based on a more recent estimate for the cost of upgrading the Concord Lateral, that cost differential would now approach one billion dollars. Tr. Day One at 64-65.

Dracut, MA, the Company could still receive gas into its distribution system at the west Nashua gate station. *Id*. In addition, the Company demonstrated that delivery into this new gate station will provide opportunities to connect its distribution system in Nashua to its Manchester distribution system in Merrimack, or to expand its distribution system in Amherst and Milford to connect with the expansion of its distribution system in Bedford, which is now underway. Tr. Day 2 at 110. Even the OCA Witness agreed that the NED Pipeline benefitted customers based on the non-cost factors of flexibility and reliability. Tr. Day 3. Based on this evidence of cost and non-cost factors, it is clear that the Company's decision to purchase capacity on the NED Pipeline is a prudent undertaking to serve customers.

IV. The Settlement is in the Public Interest Because the Amount of Capacity to be Purchased is Reasonable Given the Company's Forecast and Events That Have Occurred Since Then Demonstrating Even More Demand in the Future.

The Settlement stipulates that the Company will purchase 115,000 Dth/d under the Precedent Agreement ("the Purchased Capacity"), unless as of April 1, 2017, the Company needs less than 10,000 Dth/d to serve the design day capacity for: (a) iNATGAS firm sales; (b) existing capacity-exempt transportation customers that switch to firm sales after July 1, 2015, and; (c) the design day capacity needed to serve any customers of Concord Steam who convert to gas after July 1, 2015, in which the case the Purchased Capacity will be reduced to 100,000 Dth/d (the "Revised Purchased Capacity"). Exhibit 14 at 3. The amount of Purchased Capacity is reasonable not only based on the Company's design day forecast, but because of events that have occurred subsequently that create the need for even more capacity into the future.

The NED Pipeline is scheduled to come online in the winter of 2018/19, Tr. Day One at 100, which would immediately address the Company's projected capacity shortfall. Exhibit 3 at 16. OCA and PLAN do not support the amount of Purchased Capacity based on the view that

the Company is purchasing more than customers will need. The growth in demand that was included in the Company's forecast was conservative. It was based on National Grid's growth on the system, which in 2011 resulted in the addition of 596 customers, and in 2012, 698 customers. Exhibit 11 at 8. Under Liberty Utilities' ownership, the Company added 1,100 new customers in 2013 and 1,195 in 2014. *Id*. at 8. The Company projects adding 2,000 customers in 2015. *Id*. at 14. As Mr. DaFonte explained, "[t]he 2,000 customer additions [in the Settlement] were not reflected in any forecast provided by the Company. So, if the Company does reach the 2,000, it will actually get to a higher design day much sooner than what is forecast in the filing, where I believe our estimate was somewhere in the 600 to 800 customer adds per year." *Id*. at 166. OCA's Dr. Chattopadhyay testified that it is "very possible that more capacity will be needed in the future." Tr. Day Three. Thus, having some reserve capacity built-in to the Purchased Capacity is not only reasonable but prudent planning.

Mr. Clark explained that the Company has devoted substantially more resources to gas sales than did National Grid, adding seven more people to the gas sales force. *Id*. at 7-8. As a result of these stepped-up sales activities, it is not surprising that the Company has a host of growth projects underway, and has identified specific expansion projects over the next two years that will increase annual load by 406,234 Dth. *Id*. at 10-13. In addition to these specific projects, the Company has identified approximately 14,000 potential customers that are within 100 feet of the Company's existing mains (and thus would qualify for free connection to the Company's system under the Company's tariff), and 80,000 "off main" candidates. *Id*. Staff Witness Whitten, after having received this information in technical sessions, discovery responses, and rebuttal testimony, found that the concerns expressed in her pre-filed testimony

about the Company's ability to grow into this capacity had been addressed. Tr. Day One at 89-91.

In addition to these specific expansion projects and growth opportunities within the Company's current franchise area, Mr. DaFonte testified that the forecast upon which the 115,000 Dth/d purchase was based did not take into account any increased growth in its customer base that could occur as a result of future distribution system expansion opportunities or the addition of customers currently taking service from Concord Steam. *Id*. at 13. For example, based on the current route of the NED Pipeline, which would go through eleven towns in Southern New Hampshire, the Company has projected a potential increase in annual load ranging from 850,000 to 1.2 million Dth. Tr. Day One at 77. This also does not take into account any load that the Company could add as a result of building a lateral off the NED Pipeline to Keene, *id.*, where it could serve not only its 1,250 existing customers in Keene**,** but also large commercial customers which are not EnergyNorth customers. The addition of these large commercial customers could result in more than tripling the throughput of the existing system in Keene. Tr. Day Two at 109. [redacted] [redacted] Confidential Tr. Day One at 5.

In addition to growth in demand caused by new customers, the Company presented uncontroverted evidence that there is a trend of capacity exempt customers returning that will drive its need for capacity now and into the future. As of June 1, 2015, nineteen capacity exempt customers returned to firm sales service, including Hitchiner Manufacturing, Nashua Corp., Webster Valve, Osram Sylvania, and St. Gobain Performance Plastics, to name a few. Exhibit 10 at 27. All told, these nineteen capacity exempt customers have added [redacted] Dth/d of design day demand back on the Company's system. *Id*. Since the Company's rebuttal testimony was

filed, other capacity exempt customers have returned to firm service adding 200 Dth/d to the Company's design day requirement. Tr. Day One at 52. Neither the Company, nor the Commission, can ignore that there is approximately 14,000 more Dth/d of design day capacity exempt load that could still yet return to sales service.

Mr. DaFonte explained at the hearing that these capacity exempt customers only have to give the Company short notice of their impending return to sales service. *Id*. at 53 (explaining that only ten business days' notice of the commencement of the next billing cycle is required). As a result, "the Company has to be ready and prepared to serve these customers, particularly, in the winter period, where the Company already plans for their supplies in advance." *Id*. The Company must undertake advance planning to serve these customers, and must have sufficient capacity to meet their needs without knowing at any given time how many will return. *Id*. at 53-54. Further, once a capacity exempt customer returns to firm sales service, the customer must continue to pay for the capacity the Company procures to serve it, regardless of whether it migrates back to transportation service. Tr. Day Two at 54. Thus, these customers create a long term need for capacity, even if they only stay on firm sales service for a short period of time. Given the return of many of these customers, the Company's adjustment to its design day forecast to include them is also prudent planning. Mr. DaFonte summarized the circumstance aptly, explaining that:

> [w]e've had capacity exempt customers that are coming back to our system. So, they're looking for price stability and supply security by getting our capacity. And, so, that is akin to…adding new customers to the system. And, you know, again, more recently, the fact that Concord Steam customers are looking at taking gas directly from EnergyNorth, it's just another indicator of what some of these larger consumers are looking for, and which is the low-cost natural gas option.

Id. at 85-86.

In the event that the Company does not meet the Settlement metric for the Purchased Capacity, the Company will purchase at the Revised Capacity level, which as Mr. DaFonte testified, is a "no cost option" since TGP has agreed to amend the Precedent Agreement to permit that change without a corresponding change in the negotiated rate. Tr. Day One at 54. Thus, whether at the Purchased Capacity or the Revised Capacity Amount, the Settlement is in the public interest because it will meet the needs of the growing customer base of the Company.

V. The Company's Plan to Mitigate Reserve Capacity Will Benefit Customers.

The Company presented sufficient evidence of its plan to mitigate any reserve capacity that remains such that the Commission could find those mitigation plans reasonable. The Company will undertake a number of options to mitigate any reserve capacity, including employing the services of an asset manager to sell capacity into the market, Tr. Day One at 67-68, making off system sales, *id*. at 68, releasing capacity via the Electronic Bulletin Boards on the pipelines, *id*. at 137, and retiring certain propane plants, if necessary. *Id*. at 80. Ms. Whitten testified that she reviewed the Company's assumptions that it would achieve a very high percentage of cost recovery for the capacity, and testified that "the fact that it flows directly through dollar-for-dollar to the customers is a particularly attractive feature of this." *Id*. at 91-93. Mr. DaFonte's testimony that the Company could successfully make "off system" sales and achieve compensation at higher than the tariffed rate was unchallenged. Tr. Day 1 at 68-69, 137. Perhaps most importantly, there is uncontroverted evidence that the Company could retire the propane plants, if it determined that they were no longer needed to serve customers. Tr. Day 1, 79-80. This alone could reduce the Company's portfolio by approximately 34,600 Dth/d, which is significant, *Id*.; Exhibit 10 at 24, and by Dr. Chattopadhyay's calculations, bring the Company's forecasted need for design day capacity anywhere from 109,600 Dth/d to 124,600

Dth/d. The Company presented evidence that even with the purchase of 115,000 Dth/d of capacity on the NED pipeline, when the retirement of the propane plants is factored into the Company's design day resources and compared against its updated design day demand, the Company reaches a capacity shortfall of 2,807 Dth/d as early as 2023/24, which is only five years after the expected in-service date of the NED pipeline. Exhibit 9 at 24, lines 4-5. For all of these reasons, the Purchased Capacity is appropriate based on the Company's forecast, developments that have occurred in the marketplace since the forecast, and the uncontroverted record evidence that the Company should be able to mitigate any reserve or excess capacity through mitigation efforts.

VI. The Precedent Agreement Contains Provisions Protecting the Company and Its Customers Should the Pipeline Not be Constructed in a Timely Manner or the Supply Path Not Materialize.

The Precedent Agreement contains termination provisions and conditions that provide appropriate protection to the Company and its customers. For example, [redacted] Exhibit 3 at 65.

The Precedent Agreement provides certain protections to the Company regarding the availability of capacity from the Marcellus Shale region to Wright, New York[4], such that its obligation to purchase Market Path capacity from Tennessee on the NED Pipeline does not arise [redacted]

- [redacted]

[4] PLAN witness Rosenkranz testified that approximately 1.2 to 1.6 million Dth/d of capacity is planned for Wright, NY which is substantially more than is planned for Dracut. Tr. Day Three.

the Constitution project has received its FERC approval, it nonetheless provides an important safety valve from the contractual obligation, which is beneficial to the Company and its customers. Further, the Company informed the Commission that it is in negotiations with TGP to purchase Supply Path capacity so that it can purchase commodity directly from producers in the Marcellus Shale region. The Company expects to file the Supply Path precedent agreement with the Commission within the next month. Tr. Day One at 66.

VII. The Growth Incentive and Associated Penalty in the Settlement Shifts the Risk to the Company From Customers, Which is in the Public Interest.

The Settlement is a fair compromise of the Company's position – that 115,000 Dth/d is necessary – and the Staff's position, which was initially skeptical of the Company's ability to grow its customer demand, particularly among residential customers, sufficient to require this level of purchased capacity.[5] To this end, the Settlement provides incentives to the Company to assertively grow demand on its system, by establishing a Customer Target and Dekatherm Target that would apply starting in 2019, assuming that the NED Pipeline and the Company's propane

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[5] This is not the first time that Staff has been initially skeptical about the purchase of long term pipeline capacity but then modified its position after obtaining additional information about the projected demand. *See EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery*, Docket DG 07-101, Order No. 24,825 at 18 (February 29, 2008).

facilities are both in service. Exhibit 14 at 4. If the Company did not meet either of the targets under the applicable circumstances, the Company would be subject to a financial penalty. *Id*. at 4-5. As the Company explained at the hearing, the Company's shareholders bear all of the risk of this penalty, since it would take the form of a cost disallowance in the Company's Cost of Gas proceeding. Tr. Day One at 78.

The purpose of this provision is to provide the Company with an incentive to achieve specific levels of growth, if it decides to keep the propane plants online. *Id*. at 79-80, 166. The penalty does not apply should the Company achieve even higher levels of growth; specifically, an average annual customer growth rate of 2,400 or greater over any consecutive three-year period, or average annual dekatherm growth of 780,000 of greater over any consecutive three-year period. Exhibit 14 at 5. This incentive for the Company to "grow into" the reserve capacity, coupled with the potential financial penalty to shareholders, adequately protects customers against the risk of reserve capacity from the NED Pipeline purchase. As the Staff witness testified, this shareholder risk was "a key selling point of the Settlement Agreement" from her perspective. Tr. Day One at 97.

VIII. Customers Will be Exposed to Market Risk if the Company Does Not Secure a Firm Long Term Pipeline Solution to Meet Customer Needs Now and Into the Future.

The evidence in this case demonstrates that a pipeline solution is the best option for meeting customers' increasing needs for capacity in the future, particularly given the realities of the market for gas at Dracut, MA. Mr. DaFonte explained that Dracut is an illiquid market given the lack of supply and suppliers at that location:

> We have declining supplies coming off of Atlantic Canada, Offshore Sable Island project, and the Deep Panuke project. As explained in my rebuttal testimony, the producer or owner of the Deep Panuke production…they recently announced back in February that they were reducing the proven reserves of that field by 50 percent. There is also

> indications from several sources, including some independent consultants, that Deep Panuke and Sable Island volumes may be reduced, and, ultimately, you know, shut down within the next two to three years. So, that is an important component of the supply that comes to Dracut. Additional supply comes in from PNGTS as well. And, some of that supply is now going north, into Canada, to serve some of the growing demand of the utilities up there. And, there is also LNG from the Canaport facility in New Brunswick. That is owned by Repsol. And, those volumes also make their way to Dracut. But, with LNG, it's a global commodity. So, it won't necessarily come to the U.S., unless the price point is such that it's more cost effective, there's more margin to be gained by delivering to the U.S. versus Europe or to Asia or other countries that may require LNG as a sole source supply. So, those all contribute to a lack of liquidity, and that accounts for a lot of the price spikes, particularly where demand continues to increase in the region.

Tr. Day One at 61-63. The Staff witness echoed this concern, stating that:

> to continue to rely upon supply received at Dracut would mean that they would be further subject to price volatility, especially during the winter period, at the same time that they expect to be adding residential and commercial customers to their design day requirements…Citigate (sic) supply, which is a delivered gas supply, not relying upon this Company's own pipeline capacity, but relying upon a third party to commit and deliver firm at that point, is less secure than having your own pipeline capacity under contract.

Id. at 88.

PLAN argues that the Company should rely on either market area purchases (i.e. purchases at Dracut, MA) or the additional purchase of liquefied natural gas ("LNG") in order to meet the demands of its customers when its own evidence demonstrates otherwise. PLAN agreed that more capacity will be built to Wright, NY than Dracut, MA. Tr. Day Three. PLAN also testified to the fact that there was clearly demand for more gas supply in New England, and that there was a pipeline capacity bottleneck at the Eastern New York border. *Id*. Ironically, PLAN's witness seemed to lament the fact that it was taking a long time for pipeline projects, which could alleviate this bottleneck, to come online. *Id*. Mr. DaFonte explained that this bottleneck is why the Company is seeking approval of the Precedent Agreement: "…that was the whole point of going back to Wright, and ultimately, to Marcellus, so that it [the Company] can avoid these price spikes, and it can avoid having to try to forecast what the peak prices might

be on a 10 day, 20 day or 30 day average." Tr. Day One at 147. Even PLAN agreed that if the NED Pipeline was built, it would affect the basis disparity between Wright, NY and Dracut, MA "in a big way." Tr. Day Three. If approved, the agreement with TGP would put the Company in a position where it would be able to purchase capacity at a more liquid point than Dracut, MA: "that's why we're trying to avoid all of those variables, by going back to a supply source that has little to no volatility, and has plentiful proven resources," *id*. at 155, and so that the Company "could go from purchasing supplies at the highest prices in the country to the lowest prices." Exhibit 10 at 54.

PLAN's evidence on LNG supply from Canada also supports the Company's position. PLAN presented information from the Canadian National Energy Board stating that "production [is] expected to continue to decline from Sable Island" and "with uncertainty surrounding the remaining life of Deep Panuke's output, it is possible that the Maritimes region could consider switching to imports of liquefied natural gas by tanker into New Brunswick, or pipeline imports from the U.S." Exhibit 59, page 2. Ironically, at the very time that the Canadian Energy Board is projecting that Canadians will rely on natural gas pipelines in the US to meet their needs, PLAN is suggesting that the Company rely on dwindling Canadian supply to meet its customers' needs. This approach would not be prudent planning if adopted by the Company, and should be given no weight by the Commission. The Company determined that pipeline capacity was the best supply option for its customers for this very reason – that relying on market purchases at Dracut, MA and/or the purchase of LNG to meet additional demand on its system - would place customers in a precarious position.

PLAN also argues that on-system storage is another viable option that the Company should have explored and possibly adopted. Mr. DaFonte explained at the hearing that the

Company could not expand its current LNG facilities under federal regulations, Tr. Day Two at 62, and that he was not aware of any sites within the Company's service territory that would be able to provide the level of service necessary to satisfy applicable regulatory requirements for LNG storage. *Id*. at 65-66. Nor could the Company supply its needs through an LNG option via GDF Suez or Repsol because it could not get the gas from Dracut, MA to New Hampshire via the Concord Lateral, given that it is fully subscribed. *Id*. at 84. While it is not surprising that PLAN advocates for these options, given its position that the NED Pipeline should not be built, they are not realistic, reliable options that would meet the Company's obligation to serve its customer on a design day, and thus should be rejected.

IX. Concerns About "Intergenerational Equity" Should Not Thwart the Approval of the Settlement.

The OCA argues that the Commission should not approve the Precedent Agreement (as well as the Settlement) because current customers would pay for pipeline capacity today that is not needed until some time in the future. Exhibit 15 at 13-14. Applying OCA's position, a utility should never acquire, construct, or obtain rights in any asset that is sized to meet the needs of future customers. Yet that is exactly what utilities do, which is part of the prudent planning process. Tr. Day One at 167-68 ("as part of prudent planning is that you can't plan…on a day-to-day basis. You have to look out long term, with the expectation that you're adding customers. And, so when you're looking at contracting for a new resource, you have to consider what your expected growth is going to be so that you can serve those customers in a reliable fashion…as those customers come on line, those customers reduce the overall cost, the overall unit cost of that fixed capacity charge." *Id*. at 168. Ms. Whitten testified that the allocation of such costs are addressed in the Company's Cost of Gas proceeding, Tr. Day One at 169. To the extent there

was a concern about mis-allocation of those costs among customer classes, the Commission could always consider that issue in a cost of gas docket.

X. The Affiliate Ownership Interest in Northeast Expansion LLC is a Red Herring and Does Not Provide a Basis to Reject the Settlement.

At the hearing, PLAN made much ado about the fact that the Company's affiliate, Liberty Utilities (Pipeline & Transmission) Corp., has an ownership interest in Northeast Expansion LLC, the entity that will own the NED Pipeline. The apparent suggestion by PLAN was that there is something improper about the proposed Precedent Agreement, including the Company's decision to purchase capacity from TGP, or the amount to be purchased. The facts do not support that hypothesis. First, there is no affiliate transaction. The parties to the Precedent Agreement are Liberty Utilities (EnergyNorth Natural Gas) Corp. and Tennessee Gas Pipeline Company, LLC, which is wholly owned by Kinder Morgan. Exhibit 3 at 41; Exhibit 36. Thus, the Company does not have any agreement with its affiliate[6], and is not a subsidiary of Kinder Morgan. Tr. Day One at 34. Even if there were an affiliate relationship, that would not be an indication of any impropriety. PLAN's witness verified that in fact the parent company (Unitil) of at least one local distribution utility (Northern Utilities) has an ownership interest in an interstate gas pipeline (Granite State Gas Transmission, Inc.) on which it is a shipper and holds approximately 80% of all capacity on its affiliated pipeline. Tr. Day Three.

To dispel PLAN's insinuations, Mr. DaFonte explained that in 2013, he began negotiating the pipeline capacity purchase with TGP, and that he was the sole negotiator of the Precedent Agreement for the Company. Tr. Day Two at 29. Further, in its 2013 LCIRP, the Company had indicated its intention to contract for 90,000 Dth/d of pipeline capacity on the TGP

[6] Even if it did have an agreement with an affiliate, there is no prohibition on affiliate agreements in New Hampshire. Rather, there are requirements governing the filing of such agreements with the Commission, *see e.g.* RSA 366:3, and over matters such as terms and conditions of affiliate agreements. *See* Puc 2105.09.

Northeast Expansion project, which was the precursor to the NED project. In discovery, PLAN requested documents between the Company and its affiliates regarding the Precedent Agreement, and as the Company explained at the hearing, it had none. Tr. Day Two at 33. Mr. DaFonte was asked point blank at the hearing "[w]ere you pressured by anybody above you in your chain of command, if you will, for a particular outcome for that negotiation," to which he responded "[n]o I was not." *Id*. at 82. As the Commission pointed out at the hearing, the relevant inquiry is whether the Company needs the capacity that is proposed to be purchased, not who is investing in its development. For all of these reasons, this issue is a red herring and should not affect the Commission's determination of whether the Settlement is in the public interest.

XI. The Settlement Requirements Governing the Company's Next LCIRP Will Provide Important Information on Future Supply Planning.

In addition to terms and conditions governing the amount of capacity to be procured, the Settlement also contains requirements for the Company's next LCIRP that dove-tail with the capacity purchase and the Company's plans for expansion. For example, the Company is required to submit in its LCIRP a cost benefit analysis of the construction of a lateral to serve its Keene Division from the NED Pipeline, a forecast of load on a customer-class basis, an analysis of the impact of energy efficiency in its demand forecast, and an analysis of the retirement of the Company's propane facilities. Exhibit 14 at 6. This information, which will be submitted to the Commission by February 9, 2017 (18 months before the NED Pipeline's scheduled in service date), will inform the Company's supply planning for the next five-year planning horizon and will provide the Commission and others with a preview of the potential options prior to the Company's decision on how to proceed. *Id*. at 80-81. These provisions reflect another benefit to the Settlement because they require the Company to provide particular analyses as part of its LCIRP which it is not otherwise obligated to do under the LCIRP requirements. *See* RSA

378:38. That is part of the “creative problem solving” that the Commission has recognized as a beneficial outcome of the settlement process. *See Unitil Energy Systems, Inc.*, Order No. 24,677 (October 6, 2007), slip op. at 17-18.

XII. Conclusion

As stated above, the Company’s decision to enter into the Precedent Agreement reflects prudent planning on the Company’s part to meet its design day requirements well into the future, and to take advantage of an opportunity to purchase capacity that provides added reliability and operational flexibility to its system. The Settlement is in the public interest because it assures sufficient firm capacity, provides access for customers to lower cost supplies, and removes the vulnerability associated with the market at Dracut, MA and provides sufficient incentives for the Company to either grow into the new capacity or undertake efforts to mitigate any reserves that may exist. For all of the reasons stated in this Brief, the Company requests that the Commission approve the Settlement as proposed and without condition, and find it in the public interest.

Respectfully submitted,

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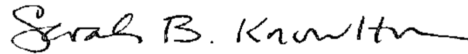
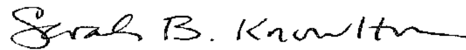


August 7, 2015 By: __________________________
Sarah B. Knowlton, Esquire

Certificate of Service

I hereby certify that on August 7, 2015 a copy of this Brief has been forwarded to the service list in DG 14-380.



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