

**BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

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

**Docket DG 14-380**

**POST-HEARING BRIEF OF  
PIPE LINE AWARENESS NETWORK FOR THE NORTHEAST, INC.**

Pursuant to Puc 203.32(a), Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”) respectfully submits this brief in opposition to the Precedent Agreement<sup>1</sup> and Settlement Agreement<sup>2</sup> under review in this Proceeding.

## I. INTRODUCTION

On December 31, 2014, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”) filed a Petition for Approval of a Firm Transportation Agreement (“Liberty Petition”) with Tennessee Gas Pipeline Company, LLC (“Tennessee”), seeking the Commission’s approval of the Company’s precedent agreement (“Precedent Agreement”) for a twenty-year transportation contract with Tennessee.<sup>3</sup> The terms of the Precedent Agreement provide for transportation service on a proposed interstate pipeline extending from Wright, New York (“Wright”) to Dracut, Massachusetts (“Dracut”), the market path of Tennessee’s Northeast Energy Direct Project (“NED Project”). As provided for in the Precedent Agreement, the Company has contracted for 115,000 dekatherms (“Dth”) per day of firm transportation capacity on the NED Project with an expected in-service date of November 1, 2018.<sup>4</sup>

In terms of its scope, the NED Project is the largest pipeline project ever built in the Northeast. Exhibit 41 at 2. In New Hampshire alone it would traverse over 70 miles (not including laterals) through numerous communities in southern New Hampshire Id.; Exhibit 12 at 65. The Precedent Agreement/Settlement, if approved, will require

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<sup>1</sup> See Exhibits 3 & 7.

<sup>2</sup> See Exhibit 14 (“Settlement”).

<sup>3</sup> See Exhibit 3 at 1-3. The Company’s forecast actually extends over a 24 year planning period. Id.

<sup>4</sup> Id. at 046; for purposes of this brief, PLAN assumes the originally proposed 100,000-115,000 Dth/day as referenced in the Precedent Agreement. The Settlement does not materially change the calculations or conclusions herein.

consumers in New Hampshire to pay at least **BEGIN CONFIDENTIAL**  
**END CONFIDENTIAL** in additional fixed pipeline demand charges over 20 years.<sup>5</sup>

## II. STANDARD OF REVIEW

On January 21, 2015, the Commission issued its Order of Notice (Tab 4). The Order stated specifically that the Commission would evaluate “whether EnergyNorth reasonably investigated and analyzed its long term supply requirements and the alternatives for satisfying those requirements, and whether EnergyNorth’s entry into the Precedent Agreement for additional pipeline capacity is prudent, reasonable and otherwise consistent with the public interest.” Order at 3. In assessing the Settlement, the Commission undertakes a similar public interest review to determine whether “*the result is just and reasonable and serves the public interest.*” Puc 203.20(b) (emphasis added). Under those standards, among other things, the Company has the burden to demonstrate, based upon a rigorous analysis, that its proposed capacity resource addition is necessary, at least cost, and reasonable given alternatives.

Accordingly, in order to justify granting EnergyNorth’s Petition and accept the Settlement, the Commission must determine that:

- The Company’s analysis is a credible and detailed evaluation consistent with prudent utility practice and Commission requirements.
- The Company’s proposal to terminate 50,000 Dth/day of relatively low-cost market-area transportation service and contract for an additional 50,000 Dth/d on the NED Project is prudent and in the public interest.

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<sup>5</sup> This is the additional cost of replacing EnergyNorth’s existing Tennessee contracts from Dracut with 50,000 Dth/d of NED transportation service from Wright, which is **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** million per year, plus the cost of 65,000 Dth/d of incremental NED service, which is **BEGIN CONFIDENTIAL** \$ **END CONFIDENTIAL** per year. **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** million per year over the 20-year initial term of the NED service is **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**. Exhibit 15 at 5.

- The Company’s proposed procurement of an additional 65,000 Dth/day from the NED Project is prudent and in the public interest.
- The Company’s analysis of available alternatives, including LNG, and its assessment of costs to upgrade the Concord Lateral is reasonable.
- The Settlement is a reasonable plan that serves the public interest.

### **III. THE COMMISSION SHOULD REJECT THE SETTLEMENT AND DENY ENERGNORTH’S PETITION**

#### **A. EnergyNorth Failed to Reasonably Investigate its Long Term Supply Requirements**

All three non-Company witnesses that filed testimony in the case<sup>6</sup> determined that EnergyNorth failed to undertake the detailed evaluation and review required for a 20-year commitment of this scope, size and cost. This rigorous review is particularly important here, where the “contract results in excess capacity,” exposes ratepayers to increased risks and costs, requires strict economic review of various mitigation strategies, and runs counter to the IRP goal of minimizing long-term cost of gas. Exhibit 12 at 15-16.

A prudent utility evaluating a significant capacity addition such as this should use econometric models that quantify changes in customers, evaluate efficiency implications, demographics, and macroeconomic variables by rate class and heating and non-heating customers. Exhibit 13 at 13. A resource portfolio under review must have sufficient flexibility to meet obligations to service firm customers on a design peak day, over a design winter, in a least cost manner. *Id.* at 14. The company must select a resource portfolio that minimizes the long-term cost of gas supply without increasing risk. *Id.*

EnergyNorth agrees that a supply plan should (1) be based on an evaluation of the reasonable alternatives, (2) consider whether the resource compares favorably to the

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<sup>6</sup> See Exhibit 12, Confidential Testimony of Melissa Whitten for Staff; Exhibit 15, Confidential Testimony of Dr. Pradip K. Chattopadhyay for the Office of Consumer Counsel (“OCA”); Exhibit 17, Confidential Testimony of John A. Rosenkranz for PLAN.

range of alternatives reasonably available to the Company, and (3) be “robust” over a range of potential market demand and price scenarios, with a diverse portfolio to reduce risks. Day 1 Tr. at 172-173. Consequently, the Commission should determine “whether the information presented by EnergyNorth in this Filing supports its conclusion that the ‘FT NED’ capacity agreement is necessary to meet existing and future customer load requirements *and* will do so in a reliable and least-cost manner.” Exhibit 12 at 5 (emphasis added).

The record clearly shows that the Company did not undertake even a rudimentary evaluation of whether the Precedent Agreement represented a least cost choice, given alternatives, and is in the public interest. Instead, the Company determined to undertake one analysis of one scenario assuming 115,000 Dth/day of gas transportation capacity without any further consideration of customer requirements. Day 1 Tr. at 178. It did not use a range of forecast scenarios; it simply used the Integrated Resource Planning (“IRP”) process base case and inaccurately extended the annual growth factor of 1.46 percent. Exhibit 12 at 17. It did not use any econometric models in the years beyond the first five years. *Id.* “Instead of providing an analysis based on industry best practices rooted in the IRP process, the company has effectively presented a procurement effort in lieu of a plan.” *Id.*, at 55. In short, EnergyNorth utterly failed to apply the sound principles that this Commission has required in evaluations of similar capacity resource determinations, requirements that are part of any reasonable and appropriate determination of need. *See, e.g., EnergyNorth Natural Gas, Inc.*, Order No. 24,825 at 19.

These significant deficiencies, both in the methodology and assumptions are identified in the record as follows:

- Failure to estimate least cost and needs, revise its demand forecast, assess additional resource options, reevaluate its NED analysis with a lower quantity, and develop additional information regarding the cost of the Concord Lateral upgrade. Exhibit 12 at 46-50.
- Failure to undertake a cost benefit analysis to determine the value of excess capacity at any given level of risk (Exhibit 12 at 49) and to provide a fully quantified cost benefit analysis to support contracting for NED Project capacity, instead using a SENDOUT dispatch model and inconclusive subjective factors. Exhibit 12, at 50-51; Day 1 Tr. at 130-142, 196.
- Failure to specifically evaluate how a second western interconnection will generate new customers and allow for distribution system expansion and provide a fully developed plan estimating the costs to obtain targeted levels of growth and the associated levels of required investment to serve those customers. Exhibit 12 at 54.
- Failure to undertake a scenario analysis with respect to whether the supply risk at Wright (e.g., the unavailability of pipelines to provide service to Wright) would increase costs and as a result reduce the assumed benefits associated with the NED Project compared to both the Atlantic Bridge and C2C projects. Exhibit 12 at 52-53.
- Failure, notwithstanding the significant environmental impacts of this project in New Hampshire and the associated risks and costs to ratepayers, to understand and evaluate the significant challenges associated with the construction and operation of NED Project. Day 2 Tr. at 45-49.

Similarly, with respect to key assumptions, the Company:

- assumed an unwarranted, excessive maximum capacity usage by iNATGAS of 8,800 Dth/d after rampup (Exhibit 12 at 33);
- overestimated the level of assumed capacity exempt reverse migration (Exhibit 12 at 35, n. 28 (citing DG 13-313 IRP, Appendix A at 75-77); *id.* at 37-38);
- ignored historical trends and overestimated growth in both the residential and Commercial and Industrial (“C&I”) sectors (Exhibit 12 at 38 & 68-69);
- limited its evaluation of the Atlantic Bridge and C2C projects as the only options for the NED and failed to undertake a more robust evaluation of alternatives and consider other options (Exhibit 12 at 42-43);
- neither considered nor negotiated a lower maximum daily quantity with Tennessee and produced no evidence that such a request, if made, would have been rejected (Exhibit 12 at 44));

- failed to assess cost impacts on the market of the excess capacity associated with the NED Project that would result from other utilities, e.g., utilities in the LDC Consortium group, executing precedent agreements (Exhibit 12 at 45); and
- failed to develop a plan to mitigate cost associated with excess capacity (Exhibit 12 at 54).

These failures undermine the Company's assertion that it reasonably investigated its long-term supply requirements as required. Not only was the Company's use of a single demand forecast methodology deficient, but the end result, if accepted, would also leave the company with excessive reserve/excess supply capacity.<sup>7</sup> "Justification for the PA is based upon aggressive single scenario demand forecast that would leave the Company with significant excess capacity that it could not completely absorb or grow into over the life of the contract." Exhibit 12 at 55. This results in excessive costs and risks to the Company's ratepayers. *Id.* at 10.

Accordingly, PLAN requests that the Commission reject the Company's deficient proposal as filed. Its filing lacks an adequately developed cost-benefit analysis<sup>8</sup> of the Company's need for the Precedent Agreement and any meaningful evaluation that the Precedent Agreement is a least-cost, or even a best cost option for ratepayers. Exhibit 12 at 11. These deficiencies are not remedied in the Settlement, as set forth in Section E, *infra*.

B. The Company Does Not Require Replacement Capacity on NED

The Company proposes to replace two existing contracts for 50,000 Dth/day from Dracut with transportation service from Wright. Exhibit 17 at 5. EnergyNorth typically

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<sup>7</sup> EnergyNorth's forecast predicts excessive reserve/excess capacity with a design day as high as 55,507 Dth in first year of the NED Agreement (2018/2019) and 2,514 after 20 years. Exhibit 12 at 54.

<sup>8</sup> Any further consideration of the Precedent Agreement by the Company should be directed toward developing a complete cost benefit analysis to include a fully developed demand forecast, quantification of cost, and benefits and ranges of supply configurations. Exhibit 12 at 56.

utilizes transportation service from Dracut mainly for winter supply. Exhibit 17 at 6. EnergyNorth's proposal to change the receipt point for existing Tennessee transportation service is based upon overblown concerns and incorrect assumptions with respect to the availability of gas at Dracut. Id. at 7.

With respect to supply, there was much discussion in the case about illiquidity at Dracut. There is no reason to believe that Dracut supply will not be available in the future. Even if winter gas prices at Dracut are relatively high, EnergyNorth could continue to meet its design day requirements by purchasing a portion of its gas supply at Dracut at less cost than replacing the capacity on NED. Exhibit 12 at 53; Day 3 Tr. at \_\_\_\_\_. Both Portland Natural Gas Transmission System ("PNGTS") and Maritimes & Northeast ("M&N") deliver gas into Tennessee at Dracut.<sup>9</sup> Despite the long-anticipated declines in offshore gas production in Nova Scotia, winter gas deliveries at Dracut have remained relatively constant and gas supplies from TransCanada Pipelines ("TCPL") through PNGTS and vaporized LNG from the Canaport terminal in New Brunswick continue to be available.

It is likely that future projects will increase the quantities of gas deliverable at Dracut, but there is no indication that EnergyNorth undertook any evaluation of these additional gas supply resources. Day 3 Tr. at \_\_\_\_; Exhibit 17 at 9-10. These projects include the FERC-approved Algonquin Incremental Market ("AIM") project that will allow additional gas supplies that are currently delivered by M&N at Beverly to be redirected to Dracut. Id. at 10. Further, the proposed Atlantic Bridge project will allow additional physical sources of gas supply deliverable to Dracut. Id. at 10-15. In addition,

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<sup>9</sup> PNGTS controls up to 210,000 Dth/d of capacity into Dracut; M&N can deliver up to 440,000 Dth/d into Tennessee at Dracut. Exhibit 17 at 4-14.



the expansion of the receipt capacity from TCPL would also increase the supply of gas at Dracut. Id. at 10. Moreover, the NED Project itself, if constructed, will create additional capacity at Dracut (whether or not EnergyNorth participates). In short, there is no basis to assume any lack of supply at Dracut.

With respect to prices, Dracut pricing reflects New England market pricing and Dracut, like other New England supply points, is priced off of Tennessee Zone 6-200 leg index. Exhibit 17 at 7-8; Day 3 Tr. at \_\_\_\_\_. It is very unlikely that the extraordinarily high prices relative to other Northeast markets that have been experienced in New England during the past three winters will persist for another 15-20 years, but the Company's analysis of the NED Project relies on this assumption. Id. at 11. It is more reasonable to expect that projects to expand pipeline capacity into New England and increase deliverability from LNG Storage and peaking facilities within the region will act to narrow the difference between New England prices and prices in New York and New Jersey. Id.; Exhibit 12 at 45 (gas supplies in the region will increase with new pipelines and the Company's assumptions with respect to pricing are questionable). Moreover, forward curves showing basis prices for the New England market have moderated considerably as the market has responded to high gas prices. Exhibit 17 at 12, Table 3.

In fact, it is very likely that the proposed shift of Tennessee transportation service from Dracut to Wright will cause EnergyNorth's ratepayers' gas costs to increase. Exhibit 15, Table 5.<sup>10</sup> Mr. Rosenkranz evaluated the net costs that would result from changing the receipt point for the 50,000 Dth/day of existing Tennessee transportation service from Dracut to Wright and moving the capacity that EnergyNorth actually

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<sup>10</sup> EnergyNorth has simply failed to evaluate the impact of substituting fixed transportation service from Dracut to Wright given its load factor, e.g., the relationship between actual utilization and maximum capacity. Id.

purchased in the New England market during the 2014-2015 winter season to Wright.

Exhibit 17 at 13-14. EnergyNorth's customers will pay more than **BEGIN**

**CONFIDENTIAL** **END CONFIDENTIAL** per year with the unnecessary shift in supply to Wright, with a reasonable certainty that the cost will be much higher in the future. Id. at 15.

Moreover, the Company's assumptions of the costs and benefits of moving the receipt point to Wright from Dracut are inaccurate and distort the results. EnergyNorth used assumptions developed by the LDC Consortium to determine the forward basis numbers for Wright. Day 1 Tr. at 196, 201. These numbers do not account for the possibility that limits on pipeline capacity between the Marcellus region and Wright could cause the gap between the gas prices in Pennsylvania and gas prices at Wright to remain wider than the LDC Consortium has assumed. Exhibit 17 at 16.

On the other hand, EnergyNorth developed its own basis projections for Dracut based on the highest levels of daily gas prices for the last three winters. Exhibit 17 at 16. The use of relatively high historical price basis for Dracut and a relatively low price basis for Wright based on forward curves for the Marcellus producing area and an assumed future relationship between Marcellus prices and prices at Wright biased the EnergyNorth analysis in favor of transportation service from Wright. Exhibit 17 at 17.

Accordingly, the Commission should reject the Company's request to replace its existing gas supply at Dracut with capacity on the NED Project.

C. The Company Has Not Demonstrated Any Need For the Level of Incremental Capacity Proposed

EnergyNorth's proposal to contract for an additional 65,000 Dth/day of long haul transportation capacity at Wright does not benefit ratepayers and results in significant

excess supply. EnergyNorth's proposal would meet its projected design day requirements for a 24-year planning horizon and results in a 2018-2019 design day reserve margin of 42 percent. Exhibit 17 at 18. The Company does not require the proposed incremental capacity to meet its peak design day requirements. Exhibit 12 at 54; Exhibit 15 at 11-13.

There are numerous fundamental flaws in EnergyNorth's evaluation of its need for NED Project capacity. In addition to the flaws referenced in Section III.A, EnergyNorth used a very extended 20-year planning horizon starting in 2018, instead of a projected 10-year requirement that is more appropriate for pipeline capacity contracting decisions and is used by other LDC's to evaluate their need for NED capacity. Exhibit 17 at 19-20; Exhibit 15 at 19-20; Day 3 Tr. at \_\_\_\_\_. Moreover, even assuming that EnergyNorth's long range forecasts are correct (and as noted in Section III.A, there is no evidence in the record to support this assumption), contracting for firm transportation capacity based upon projected design day requirements in 2037-38 would give EnergyNorth an unprecedented, unnecessary and unreasonable surplus design day capacity over the entire 20-year term of the proposed transportation contract. Exhibit 17 at 19; Exhibit 12 at 54.

There is a significant cost to ratepayers from this unnecessary incremental pipeline capacity. This capacity has a fixed demand cost of **BEGIN CONFIDENTIAL**

**END CONFIDENTIAL** per year for 20 years and with no guarantee that any benefit from the excess capacity will accrue to ratepayers. Exhibit 17 at 5. Overall, the proposed agreement would cause EnergyNorth's total transportation demand costs to triple from 23.3 million per year to 76.5 million per year. Id.

It would be more reasonable for EnergyNorth to contract for additional firm gas supply resources today based upon its projected requirements over the next ten years and contract at a later day for supply resources to meet any requirements beginning in 2025 or later. Based upon the projected design day shortfall of 27,388 Dth/day for the 2024 planning year, as shown on Table 7<sup>11</sup>, and considering the uncertainty associated with any long term requirements forecast, EnergyNorth should consider (as part of a revised least cost analysis) an additional long-term firm supply between 25,000 Dth/day and 30,000 Dth/day. This need could more appropriately be met with long haul firm transportation service or a combination of new pipeline capacity, including various projects listed in Table 8, and other supply resources. Exhibit 17 at 21.

Accordingly, the Commission should deny EnergyNorth's request for incremental capacity on NED Project and require a further evaluation of available supply source options based on projected requirements over a 10-year planning horizon.

D. The Company Failed to Adequately Evaluate Alternatives to the NED Project

EnergyNorth compared Tennessee's NED Project to only two other pipeline transportation paths—Atlantic Bridge and the PNGTS/C2C projects, both of which would require expansion of the Concord Lateral. See Day 1 Tr. at 63-64; Day 2 Tr. at 51. For each option, EnergyNorth assumed that 115,000 Dth/day is added from either Wright or Ramapo, NY beginning November 1, 2018. Exhibit 17 at 22.

For each of those two alternatives, EnergyNorth only assumed one scenario, i.e., 115,000 Dekatherms a day long-haul transportation without any evaluation of a reduced quantity or timetable, as “an apples-to-apples” comparison. Day 2 Tr. at 59.

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<sup>11</sup> Exhibit 17 at 18.

Accordingly, EnergyNorth failed to evaluate a range of alternatives as required by prudent utility planning, and instead arbitrarily limited its review to a subset of options that it deemed “viable for long-term planning purposes.” Id. at 172-173. EnergyNorth rejected out of hand any supply option that would not, by itself, provide 115,000 Dth/day of additional supply.

The witnesses take issue with the Company’s limited review and its failure to consider other quantities and scenarios from these and other capacity options. Mr. Rosenkranz notes the abundance of supply options that would be available to the Company for its consideration on the same time frame, including the recently proposed Access Northeast Project and PNGTS’ recently announced expansion. Exhibit 17 at 19-23. Ms. Whitten noted that the Company’s cost comparison of the NED Project as compared to other alternatives does not conform to industry practices or evaluate least cost because it does not consider all feasible resource configurations using NED capacity or include a reasonable range of demand forecasts. Exhibit 12 at 43-44.

Moreover, EnergyNorth analysis does not consider LNG as a viable alternative to NED. Exhibits 49 & 51. EnergyNorth acknowledges that LNG is a significant and important resource available to gas companies/LDCs generally to support peaking requirements. See Day 2 Tr. at 69. However, EnergyNorth “did not consider the expansion of its existing LNG peaking facilities as an alternative, because it does not have the ability under federal regulation to expand those facilities”; EnergyNorth’s witness identified the federal regulation to which he was referring as “NFPA 59A.” See Day 2 Tr. at 62-63.

NFSA 59A will not necessarily prevent EnergyNorth (or anyone else) from developing or expanding an LNG facility in New Hampshire. The regulation as it existed in 2007 remained the same until 2010, when it simply added select references to the portions of NFPA 59A (2006 edition, approved Aug. 18, 2005) “pertaining to the seismic design of stationary LNG storage tanks” and “for the ultrasonic examination of LNG tank welds for storage tanks.” See 75 FR 48593, 48599, 48604 (Aug. 11, 2010). The standards regarding “vapor dispersion” and “thermal radiation zones” – referenced specifically by Mr. DaFonte (see id. at 62) – are set forth at 49 C.F.R. §§ 193.2057 & 193.2059, and neither one has been materially amended regarding the portions referencing NFPA 59A.

EnergyNorth was unable to provide any reason on the record, beyond NFPA 59A, as to why it did not and could not consider LNG as a more cost effective option for NED. See Day 2 Tr. at 63-64. EnergyNorth should have considered LNG as a feasible supply option. See DG 07-101.<sup>12</sup>

In its assessment of alternatives, EnergyNorth placed great emphasis on the prohibitive cost of expanding the Concord Lateral. See, e.g., Day 3 Tr. at \_\_\_\_\_. EnergyNorth asserts that alternatives requiring a Concord Lateral expansion from Dracut are uneconomic given the high cost associated with expanding the Concord Lateral.

The Commission should not accept at face value EnergyNorth’s estimates regarding the cost to expand the lateral. The Company has not provided any information regarding the availability of alternatives and the associated cost of upgrading the Concord Lateral at levels below the 115,000 Dth/d proposed in this case. Day 1 Tr. at 213-215;

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<sup>12</sup> EnergyNorth’s predecessor, National Grid, indicated that up to 25,000 Dth/day was feasible from an expansion of existing LNG facilities.

Day 2 Tr. pp. 59-61; Exhibit 12 at 38-53; Exhibit 15 at 6-7; Exhibit 17 at 22-25. The record confirms that capacity levels below 115,000 Dth/d will reduce costs to upgrade the lateral, and combined with other supply choices, may be least cost as compared to other capacity choices. See Day 1 Tr. at 214.

In addition, the numbers produced were “ballpark” and do not support a technical conclusion that the cost to upgrade the Concord Lateral would be as high as proposed in this case at this time. The Company used an estimate requested in 2013 for a totally unrelated purpose to justify its decision to sign up for NED’s Open Season. Exh. 55 at 5 (April 22, 2013 email). See Day 1 Tr. at 210-212. This gave EnergyNorth only “the initial understanding of where the expansion costs may end up.” Id. at 210. On the basis of that initial estimate, EnergyNorth agreed to its 115,000 Dth/day contract with Tennessee and ultimately executed the Precedent Agreement with that limited information. EnergyNorth’s subsequent estimates of Concord Lateral cost estimates were procured after the Precedent Agreement was executed and were *post hoc* justifications for its decision not to pursue what otherwise could have been valid alternatives.

EnergyNorth’s numbers show the need for more definitive information of cost associated with upgrading the Concord Lateral. On the record, for different purposes, amounts, locations and assumptions the cost to upgrade the Concord Lateral ranged from **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** in 2013 to more than double at **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** in 2015 as the latest estimate in the case. Given the admittedly significant implications surrounding the

costs associated with the Concord Lateral,<sup>13</sup> the Company was obligated to use a detailed and accurate analysis of upgrade costs from the outset in its comparative assessment of NED and alternatives. It had ample opportunity beginning in April, 2013, to request detailed information from Tennessee and evaluate different scenarios with varying levels demand and distinct locations.<sup>14</sup> The Company's ballpark, indicative analysis of the upgrade costs of Concord Lateral, based upon one scenario should not be accepted by the Commission in support of any approval, Settlement or otherwise, of the Precedent Agreement. The Company should be required to undertake another analysis using more refined, independently supportable information incorporating additional scenarios of Concord Lateral upgrade costs as part of any evaluation of the Precedent Agreement.

E. The Settlement Does Not Remedy the Deficiencies in the Company's Proposal

The Commission should reject the Settlement and accept Ms. Whitten's testimony as filed in the case and her recommendations in that May 8, 2015 testimony. Ms. Whitten's change in position (and consequently the Settlement) is unavailing for the following reasons:

1. Firm City Gate Deliveries

Ms. Whitten previously indicated that EnergyNorth could continue to meet design day deficits through citygate deliveries. Exhibit 12 at 53. Yet during her testimony at the hearing, Ms. Whitten averred that "the continuation of receiving citygate supply at Dracut is a general concern recognized in the marketplace" and that "relying upon a third party

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<sup>13</sup> Its last estimate increased the estimates associated with the Concord Lateral by an incremental **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** over its initial estimate. Day 1 CONFIDENTIAL Tr. at 3.

<sup>14</sup> The numbers produced by EnergyNorth were requested from Tennessee and it is clear that Tennessee was aware that this information would be used in this regulatory proceeding. Tennessee had every incentive to provide as high a number as possible.



to commit and deliver firm at that point, is less secure than having your own pipeline capacity.” See Day 1 Tr. at 88-89. The record as set forth in Section B above does not support these statements—supplies will be available at Dracut at competitive pricing as compared to Wright.

## 2. Excess Capacity

Ms. Whitten previously was concerned by EnergyNorth’s “65,000 Dth/d of incremental capacity that results in excess capacity of as much as 55,000 Dth/d in the first year of the FT-NED agreement.” Exhibit 12 at 53-54. This is not addressed by the Settlement, which if adopted will still result in significant excess capacity for an extended period. This is not addressed by compelling the Company (1) to bear the cost (i.e., by being “at risk of paying a penalty associated with missing those targets”) of over-contracting; and (2) to explain in the next IRP how customer growth by class was forecast, do not address the real actual risk to ratepayers of overcapacity. See Day 1 Tr. at 89. The penalty payment under the Settlement has not been shown to compensate ratepayers for the cost of excess capacity.

## 3. Customer Growth

Ms. Whitten characterized EnergyNorth’s forecast of growth in Design Day Demand as “very aggressive and speculative,” and still insufficient to consume all the excess capacity even after 20 years. Exhibit 12 at 54. She now posits that the required reduction in capacity should demand not be realized at some point in the future “directly addresses that concern,” (see Day 1 Tr. at 91) but in reality, it does not. It may eliminate some portion of the excess capacity, but it still does not explain – or correct – the “very aggressive and speculative” growth figures Ms. Whitten previously identified. Indeed,

the customer growth target metric in the Settlement Agreement is 2,000 customer additions per year, which according to Mr. Clarke “will be the biggest number that we’ve ever done” and “would be on the order of a 65 percent increase of what [EnergyNorth’s] best year was” and seems to be as aggressive and speculative as Ms. Whitten claimed the original forecast to be. Day 1 Tr. at 71 & 76. The bottom line doesn’t change—whether or not EnergyNorth adds new customers, all of its customers will continue to pay the costs of the Precedent Agreement long before it creates any benefits. *Id.* at 164, 166.

#### 4. Cost Mitigation Measures

Ms. Whitten previously concluded that “in order to make sure that the PA represents the least-cost, or even just the best-cost alternative, the Company *would have* to be certain that it could recoup a significant percentage of the total costs of the excess capacity through cost-mitigation measures. However, this would require an even more speculative assumption about the future value of excess pipeline capacity in the secondary market.” Exhibit 12 at 54. But EnergyNorth’s recovery of such a “significant percentage of the total costs” is not at all “certain.” EnergyNorth considers “a critical element of the day-to-day management of the portfolio” “[t]hat all fixed costs are . . . mitigated, to the extent possible, through various optimization efforts, including asset management agreements, off-systems sales, and capacity release via the Electronic Bulletin Boards on the pipelines.” Day 1 Tr. at 137. EnergyNorth may claim to do its best in order to justify the Settlement, but there is no plan or certainty in the record that provides any assurance that ratepayers will reap any substantial benefits from cost mitigation measures.

## 5. Second High-Pressure Interconnect

Ms. Whitten challenged EnergyNorth's argument for a second high-pressure interconnect on the west side of the EnergyNorth system, because (1) the cost would be borne by all firm ratepayers, even though EnergyNorth would retain all of its propane peaking capacity (the cost of which ratepayers also bear), and (2) EnergyNorth had not provided "any details about its growth expectations or a fully-developed plan estimating the cost to obtain targeted levels of new customer growth and the required investment in distribution system expansion to serve these customers." Exhibit 12 at 54-55.

EnergyNorth's agreement to undertake a study falls short of any definitive solution and adds no value to what EnergyNorth should undertake in any case—review its propane requirements before or in conjunction with review of additional capacity resources. Similarly, EnergyNorth still has not provided any definitive plan – only aspirations at this point -- to grow into its admitted excessive capacity and the Settlement does not address the lack of any specific proposal as discussed by Mr. Clarke. Day 1 Tr. at 72-76.

Accordingly, the Settlement does not cure the significant deficiencies in the Company's proposal as filed. The Settlement, like Company's Petition, is "speculative, not "least cost"", "not supported", and based, not upon "industry standards" but instead upon an "aggressive single-scenario demand forecast." Exhibit 12 at 54- 56. Accordingly, the Settlement should not be approved by the Commission.

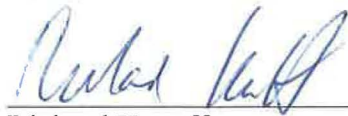
**IV. CONCLUSION**

PLAN respectfully requests, for all the reasons set forth herein, that the Commission reject the Company's Petition for Approval of a Firm Transportation Agreement and the associated Settlement.

RESPECTFULLY SUBMITTED,

PIPE LINE AWARENESS  
NETWORK FOR THE  
NORTHEAST, INC.

By its attorneys,



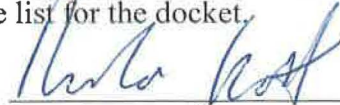
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Dated: August 7, 2015

**Certificate of Service**

I hereby certify that on August 7, 2015, pursuant to Puc 203.02 & 203.11, I served an electronic copy of this Brief on each person identified on the Commission's service list for this docket and with the Office of the Consumer Advocate, by delivering it to the email address specified on the commission's service list for the docket.



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Richard Kanoff

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