STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

DOCKET NO. DG 14-380

OBJECTION TO PLAN MOTION FOR REHEARING, RECONSIDERATION, AND CLARIFICATION

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth" or the "Company"), in accordance with Puc 203.07(f) and RSA 541:3, hereby objects to the motion for rehearing, reconsideration, and clarification filed by Pipe Line Awareness Network for the Northeast, Inc. ("PLAN"). In support of this objection, the Company states as follows:

1. On November 2, 2015, PLAN filed its motion requesting that the Commission reopen this proceeding, take more evidence and then change its decision approving the Precedent Agreement and the Settlement Agreement between Staff of the Commission and the Company. PLAN claims that there are specific matters that the Commission "unreasonably overlooked, mistakenly conceived or unlawfully determined as well as new evidence that the Commission should consider." PLAN Motion at 2. PLAN's Motion is a twenty page restatement of all of the arguments that it previously made to the Commission, all of which were rejected.[1] That is not a basis for rehearing under RSA 541:3. PLAN further argues that there is "new evidence" about

[1] On November 2, 2105, the Office of Consumer Advocate filed its concurrence with PLAN's Motion. OCA's letter suffers from the same infirmity as PLAN's Motion – it is nothing more than a recitation of evidence it presented that was rejected by the Commission. OCA's letter is also confused to the extent that it refers to the Company's "lack of analysis of the availability of LNG as a cost effective alternative," OCA letter at 2, and then points to a line of cross examination about the use of the Company's *propane systems* as though that were in any way relevant to an analysis of LNG, an entirely different fuel.

the possibility of developing LNG facilities to serve the Company's customers, and that as a result, the matter should be reopened so that the siting of LNG can be considered as an alternative to the firm transportation capacity to be purchased through the Precedent Agreement. As explained in detail below, this is not "new evidence" and in fact is a red herring. The Commission should reject PLAN's Motion and allow Order 25,822 (the "Order") to stand.

2. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,239 (Jun. 23, 2011) at 8. PLAN's Motion is nothing more than an effort to rehash its prior arguments. All of the issues in PLAN's motion were thoroughly vetted at the hearing, as well as in briefs. The fact that the Commission reached a conclusion that PLAN opposes does not create a legal basis for rehearing.

EnergyNorth Met Its Burden of Proof.

3. PLAN's claim that EnergyNorth did not meet its burden of proof because "the filing lacks an adequately developed cost-benefit analysis of the Company's need for the Precedent Agreement and does not provide for any meaningful evaluation that the Precedent Agreement is a least-cost , or even best-cost option for ratepayers" is unsupported by the record. PLAN Motion at 3. The Company's need for the Precedent Agreement is based on its demand forecast which was part of the record in this case. That forecast demonstrated that the Company

would not have enough capacity to serve its customers in the future, with deficits ranging from 32,262 Dth/day in ten years up to a 62,486 Dth/day deficit in twenty years. Exhibit 3 at 16. Every single witness in this proceeding, including PLAN's own witness, agreed that the Company needed to contract for additional firm gas capacity to serve customers over the next ten years. Exhibit 12 at 6, lines 23-25; Tr. Day Three at 21; Exhibit 17 at 21, lines 13-14.[2] The testimony further demonstrated that the Company evaluated three options to meet this need, and that the Company selected the option that was $537 million less than the next lowest cost option. Exhibit 3 at 35, lines 5-8. The Company presented additional evidence that the Precedent Agreement was the best option based on non-cost factors, such as reliability, flexibility, and viability, and that the tie into the western side of the Company's system presented unique benefits in the event that gas was constrained on the Concord Lateral. Exhibit 3 at 36-37; Exhibit 9 at 55. The Commission agreed with this assessment, holding that:

> The amount of capacity provided by the Precedent Agreement, as modified by the Settlement, is consistent with EnergyNorth's last approved IRP. EnergyNorth used appropriate methodology in the 2013 IRP to project 90,000 Dth of pipeline capacity, and EnergyNorth's analysis supporting the Precedent Agreement built upon the IRP result to reflect growth in demand since the IRP. EnergyNorth appropriately included as post-IRP demand growth the demand associated with large capacity-exempt customers who have migrated from transportation-only service to sales service. No party disputed EnergyNorth's obligation to procure capacity for those customers, or the possibility that EnergyNorth's remaining capacity exempt load could also migrate back to firm sales.

Order at 26. PLAN's claim that rehearing is justified because EnergyNorth did not meet its burden of proof on these issues is plain wrong.

Reliance on the Concord Lateral Upgrade Estimates Were Reasonable.

[2] If the Company's propane plants were retired, this would the increase the need for capacity by 34,600 Dth/d. Exhibit 10 at 24.

4. PLAN also disagreed with the Commission's conclusion that upgrades to the Concord Lateral would be costly, claiming that the Commission's reliance upon cost estimates provided by Tennessee was "unreasonabl[e]." PLAN Motion at 13. If EnergyNorth wanted to procure additional capacity on that pipeline, it would have to pay Tennessee Gas Pipeline Company for those upgrades, as Tennessee Gas Pipeline is the owner and operator of the Concord Lateral. A third party's assessment of those costs would be irrelevant. It is what Tennessee Gas Pipeline would charge EnergyNorth – which is exactly what the evidence demonstrated – that would be at issue. There is nothing unreasonable about relying on estimates from the owner of the pipeline about what the owner would charge to have the pipeline upgraded. Further, the fact that the estimates were high level estimates does not constitute "good reason" for rehearing. What the estimates demonstrated was that the cost of upgrade to the Concord Lateral would be significant, and that as a result, the price of the competing pipeline projects, which were predicated on such upgrades, exceeded the cost of the Precedent Agreement by hundreds of millions of dollars. Tr. Day One at 210-213; Exhibit 33. As a result, the Commission was justified in its conclusion that the upgrades would be "costly." Order at 28.

The Commission Did Not Act Unreasonably or Unlawfully When it Held that the Company Appropriately Planned for Its Future Needs by Securing Sufficient Long Term Supply Through the Precedent Agreement.

5. PLAN further claims that the Commission committed legal error by approving the Precedent Agreement because it "allows EnergyNorth to grow into the full amount of its originally proposed capacity requirement." PLAN Motion at 17. This is not a legal issue that forms a basis for rehearing. It is a disagreement with the Commission's conclusion that "it is prudent and reasonable for an LDC when entering into a capacity agreement, to acquire the capacity necessary to serve not only current load but also future load." Order at 26. There can

be nothing more fundamental to the operation of a utility than insuring that it has sufficient capacity to serve its customers both today and into the future. The fact that PLAN holds a different view of resource procurement does not constitute requisite grounds for rehearing. Moreover, reliance on PLAN's view of appropriate capacity planning would result in chronic shortfalls in capacity, since an LDC could not add capacity instantaneously to match its load growth.

6. PLAN goes to great lengths in its Motion to argue that the Commission was unreasonable when it concluded that there were more benefits than costs associated with replacing the Company's existing 50,000 Dth/day of supply at Dracut, MA with the supply to be procured through the Precedent Agreement. PLAN acknowledges that the Commission cited at least four reasons in support of its conclusion, PLAN Motion at 5, but apparently disagrees vehemently with the Commission's analysis and conclusions. The Commission considered extensive amounts of evidence on the cost to procure and the availability of gas at Dracut, MA, the cost of upgrading the Concord Lateral, which would be necessary if the Company were to procure more gas at Dracut, MA, the reliability benefits that would be achieved by having a second feed into the Company's system, the opportunities for expansion of gas service in Southern New Hampshire, and the benefits associated with being able to tap into supply in the Marcellus Shale region, which has the lowest cost gas in the United States. The fact that PLAN wishes either the Company or the Commission performed a different analysis, comparing the cost of the existing 50,000 Dth/day at Dracut, MA to procuring 65,000 Dth/day from the NED pipeline (for which EnergyNorth had no price since it did not have a contract to procure that amount), does not make the Order unreasonable or unlawful.

7. Further, PLAN's request that the Commission reopen the hearings in this docket to consider additional information about the replacement of the Company's propane facilities is nothing more than an attempt to get a second bite at the apple. PLAN Motion at 19. There was significant testimony on the issue of the propane plants, including testimony that "given the age of the facilities, the propane plants are not a viable long-term solution." Exhibit 8 at 51. It was not unreasonable or unlawful for the Commission, as it considered how much capacity the Company should procure for the next twenty years, to consider the potential impact of the retirement of the plants. In addition, the Settlement Agreement specifically provides for future analysis of the potential retirement of certain of the Company's propane facilities as part of the Company's next Least Cost Integrated Resource Plan filing. Exhibit 14 at 6. PLAN would have both the Company and the Commission adopt a "wait and see" approach to gas supply planning, which hardly would be prudent.

There is Ample Evidence in the Record to Support the Commission's Conclusion that LNG is Not a Viable Alternative to the Precedent Agreement.

8. PLAN next claims that rehearing should be granted because the Commission committed legal error when it failed to require the Company to evaluate and consider LNG as a possible option to meet its capacity shortfall, as well as the Commission's conclusion that expansion of the Company's existing LNG facilities was not possible. PLAN casts this as a failed prudence review. As the Commission stated in the Order, the Company used an appropriate methodology in the last approved IRP to determine its need for capacity. Order at 26. Mr. DaFonte testified that the Company evaluated all of the pipeline projects that could meet this need. Exhibit 3 at 31. At the hearing, he presented uncontroverted testimony that "[t]he existing facilities, LNG facilities of the company, are in, for the most part, densely populated areas, and are grandfathered because of the fact that they're, you know, 30-40 years old. Any

expansion would bring them under the new regulations, which clearly would not allow the plants to function even as they function today." Tr. Day 2 at 62-63. He further explained that the Company did not consider siting LNG because the site has to:

> be somewhere near where the Company's largest consuming part of its service territory is, because there has to be takeaway capacity, in a sense. So, for example, you couldn't put it on the extremities of the distribution system because there would be no demand out in those locations. So, it has to be closer to the urban, if you will, urban setting. And, it would certainly have to be a large facility or multiple facilities to provide the same 115,000 Dekatherms per day of capacity.

Tr. Day 2 at 65-66. Based on this and other testimony, there is sufficient record evidence to support the Commission's conclusion that LNG is not a viable long term supply option to meet the Company's need for 115,000 Dth/day, which as described above, was based on a reasonable forecast using a Commission approved methodology.

9. PLAN further argues that there is "new evidence" that demonstrates that LNG is in fact a viable alternative to the capacity to be procured through the Precedent Agreement. PLAN Motion at 11-12. Specifically, PLAN claims that because the Company has stated that it does consider LNG an important part of its portfolio, and that it may use LNG or CNG on a temporary basis in Keene or that it has proposed to build an LNG and CNG facility in Lebanon proves that LNG could be a viable alternative to firm pipeline capacity for the Company's existing franchise area. PLAN paints this as a black and white conclusion: "either LNG is available to serve customers as claimed in the above dockets or it is not available as claimed in the instant case." *Id*. at 12. This is not an "either or" proposition. The Company testified that it cannot expand its LNG facilities within its existing franchise area, which includes Nashua, Manchester and Concord, to meet its long term need for capacity. Mr. DaFonte explained that the LNG facilities would need to be close to where the LNG was being consumed. While it is possible for the Company to construct an LNG system in Lebanon to serve customers in

Lebanon and Hanover, that has no relevance to LNG service to customers in Nashua, Manchester or Concord. Further, the fact that the Company may consider using LNG to serve Keene for some period of time is nothing new. The Settlement Agreement in this case *requires* the Company to conduct an analysis in its next IRP on supply alternatives to service from a lateral pipeline. Exhibit 14 at 6.

10. PLAN further argues that "the Commission determined without analysis that the LNG global market is unstable and 'may compromise the reliability of EnergyNorth's service to customers at least-cost." PLAN Motion at 9. The Commission heard extensive testimony on the reduced production of LNG in Canada, the fact that Canadian utilities are now procuring natural gas from the United States instead of from Canadian producers, as well as testimony on the impact of global demand for LNG. Exhibit 9 at 38-39; Tr. Day 1 at 61-63. It was not unreasonable for the Commission to rely on this evidence in reaching its conclusion in this case. There is nothing new here, nor is there any "good reason" for rehearing.

PLAN's Arguments About the LDC Consortium, Affiliate Relationships and the Supply Path Precedent Agreement Are All Red Herrings.

11. There is no basis for PLAN's request for rehearing on the issue of information developed by the LDC Consortium. PLAN presents this as though it were a new issue, when in fact it was an issue addressed by the Commission in response to a PLAN Motion to Compel. In Order 25,789, the Commission held that PLAN was not entitled to take discovery on information relating to LDC negotiations over the Precedent Agreement. Order 25,789 at 3-5. The fact that the Commission denied cross examination on this issue does not constitute grounds for rehearing. Rather, the issue is *res judicata*, since PLAN did not move for rehearing on Order 25,789. Similarly, there is nothing new and no "good reason" for rehearing based on PLAN's complaint about alleged affiliate issues in this docket. The Commission was clear that the

Company demonstrated not only the need for the Precedent Agreement but that the Agreement was both prudent and reasonable. Order at 30. The fact that the Commission reached that conclusion without addressing the affiliate issue is not legal error.

12. Finally, PLAN argues that the Commission committed legal error when it considered the Market Path Precedent Agreement in isolation from any Supply Path Precedent Agreement. It claims that this resulted in an understatement of the costs and risks. PLAN Motion at 20. If this were PLAN's position, PLAN should have moved to dismiss the Company's filing at the time it was made, and not raised the issue for the first time on rehearing. There is nothing new to justify rehearing, and there is no good reason that the Commission should now reject the filing of the Precedent Agreement. The Commission had every right to review and rule the contract that was put before it and was under no obligation to require the Company to file the two Precedent Agreements for omnibus consideration.

13. For these reasons, the Company requests that the Commission deny PLAN's Motion.

WHEREFORE, EnergyNorth respectfully requests that the Commission:

A. Deny PLAN's Motion for Rehearing, Reconsideration and Clarification, and;

B. Grant such other relief as is just and equitable.

Respectfully submitted,

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

By Its Attorneys,

RATH, YOUNG AND PIGNATELLI,
Professional Association
One Capital Plaza
Post Office Box 1500
Concord, New Hampshire 03302-1500
(603) 226-2600

November 9, 2015 By: _____
Sarah B. Knowlton, Esquire

Certificate of Service

I hereby certify that on November 9, 2015, a copy of this Objection to Motion for Rehearing, Reconsideration, and Clarification has been forwarded to the service list in this docket.

_____
Sarah B. Knowlton