

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

January 5, 2016 - 10:08 a.m.  
Concord, New Hampshire

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(FOR PUBLIC USE)

NHPUC JAN19'16 AM 8:47

RE: DG 15-494  
LIBERTY UTILITIES (ENERGYNORTH NATURAL  
GAS) CORP. d/b/a LIBERTY UTILITIES:  
Petition for Approval of Supply Path  
Precedent Agreement with Tennessee Gas  
Pipeline Company, LLC.  
(Prehearing conference)

**PRESENT:** Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott  
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

**APPEARANCES:** Reptg. Liberty Utilities (EnergyNorth  
Natural Gas) Corp. d/b/a Liberty Utilities:  
Sarah B. Knowlton, Esq. (Rath Young)

Reptg. Pipe Line Awareness Network (PLAN)  
and N.H. Municipal Pipeline Coalition:  
Richard A. Kanoff, Esq. (Burns & Levinson)  
Saqib Hossain, Esq. (Burns & Levinson)

**Reptg. Residential Ratepayers:**  
Susan Chamberlin, Esq., Consumer Advocate  
Nicholas Cicale, Esq.  
Office of Consumer Advocate

**Reptg. PUC Staff:**  
Rorie E. Patterson, Esq.  
Stephen P. Frink, Asst. Dir/Gas & Water Div.  
Al-Azad Iqbal, Gas Division

Court Reporter: Steven E. Patnaude, LCR No. 52

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**P R O C E E D I N G**

1  
2 CHAIRMAN HONIGBERG: We're here this  
3 morning in Docket DG 15-494, which is Liberty Utilities  
4 (EnergyNorth Natural Gas) Corp. Petition for Approval of a  
5 Precedent Agreement. I think we're going to have to start  
6 referring to it as the "Supply Path" portion of their  
7 plans. But we're here for a prehearing conference.  
8 There's going to be a technical session following the  
9 prehearing conference. I know we have a couple of motions  
10 to intervene and a response to just one of those motions,  
11 I believe.

12 And, before we do anything further,  
13 let's take appearances.

14 MS. KNOWLTON: Good morning,  
15 Commissioners. Sarah Knowlton, from Rath, Young &  
16 Pignatelli, here on behalf of Liberty Utilities  
17 (EnergyNorth Natural Gas) Corp. And, with me today from  
18 the Company is Mr. Mullen, Mr. Hall, Mr. Licata, and Mr.  
19 DaFonte.

20 CHAIRMAN HONIGBERG: Mr. Kanoff.

21 MR. KANOFF: Yes. Excuse me. Richard  
22 Kanoff, with me is Saqib Hossain. We're from Burns &  
23 Levinson. We're appearing on behalf of the Pipeline  
24 Awareness Network for the Northwest and for the New

1 Hampshire Municipal Pipeline Coalition.

2 MS. CHAMBERLIN: Good morning. Susan  
3 Chamberlin, Consumer Advocate for the residential  
4 ratepayers. And, with me today is our new staff attorney,  
5 Nick Cicale.

6 MR. CICALE: Good morning,  
7 Commissioners.

8 CHAIRMAN HONIGBERG: Good morning.

9 MS. PATTERSON: Good morning,  
10 Commissioners. Rorie Patterson, on behalf of Commission  
11 Staff. And, with me today is Al-Azad Iqbal, who is a  
12 Utility Analyst in the Gas Division, and Stephen Frink,  
13 who is the Assistant Director of the Gas & Water  
14 Division.

15 CHAIRMAN HONIGBERG: What do we want to  
16 talk about first? Want to talk about interventions,  
17 Ms. Knowlton?

18 MS. KNOWLTON: Yes. Thank you.

19 CHAIRMAN HONIGBERG: Is there an  
20 objection to the PLAN Petition to Intervene?

21 MS. KNOWLTON: It's not an objection.  
22 It is a request that the Commission, to the extent that it  
23 were to grant the intervention, to limit the scope to the  
24 same scope of the PLAN intervention in DG 14-380, the

1 Market Path docket.

2 I would note that, on Page 3, Paragraph  
3 8, of the PLAN intervention, PLAN states that it's  
4 "dedicated to representing the economic and property  
5 rights, privileges, and interests of its members before  
6 the Commission". The Commission has previously made  
7 clear, in DG 14-380, that property right issues, you know,  
8 environmental issues are beyond the scope of that  
9 proceeding. And, I would argue that the same limitations  
10 should apply here.

11 That's my only position with regard to  
12 the PLAN intervention.

13 CHAIRMAN HONIGBERG: Mr. Kanoff, I'm  
14 going to ask you to talk about the Municipal petition in a  
15 moment. But you understand what Ms. Knowlton said about  
16 the PLAN petition. Do you have anything you want to say  
17 further on that?

18 MR. KANOFF: Just that --

19 CHAIRMAN HONIGBERG: Is your microphone  
20 on?

21 MR. KANOFF: Is this better?

22 CHAIRMAN HONIGBERG: Much.

23 MR. KANOFF: Just that, to the extent  
24 there's something in the case that would require us to

1 seek a scope, as a hypothetical, that may be different  
2 from what was in the previous case, we will raise that in  
3 the case, and everyone will have an opportunity to respond  
4 to it.

5 At this point, we don't see -- I don't  
6 see any difference in the scope of this case versus the  
7 other case. And, I think our petition was consistent with  
8 that.

9 CHAIRMAN HONIGBERG: Ms. Knowlton.

10 MS. KNOWLTON: I would argue that this  
11 case is even more attenuated than the other case. We're  
12 talking about a gas pipeline that's going to be  
13 constructed wholly outside of the State of New Hampshire  
14 with the Supply Path. So, I mean, to me there can be no  
15 question that PLAN's intervention should be limited to  
16 issues relating to rates that could impact PLAN members as  
17 customers.

18 CHAIRMAN HONIGBERG: Mr. Kanoff.

19 MR. KANOFF: And, just for the record,  
20 and this will come up in the Coalition discussion as well,  
21 we take issue with the notion somehow that this is not one  
22 pipe. It's one pipe. And, the Precedent Agreement that's  
23 at issue here affects ratepayers and property owners and  
24 communities in New Hampshire, regardless of any notion

1 that somehow it can be segmented to apply to New Hampshire  
2 in one piece and New York in the other.

3 CHAIRMAN HONIGBERG: Ms. Chamberlin or  
4 Ms. Patterson, do you have anything you want to add on  
5 this one? I think Commissioner Bailey may have a  
6 question, but do you have anything you want to say about  
7 the interventions, Ms. Chamberlin?

8 MS. CHAMBERLIN: The OCA does not object  
9 to the intervention. I believe that intervention should  
10 be allowed to the full extent possible, and that  
11 limitations of scope should then be applied so that the  
12 focus remains on topic.

13 CHAIRMAN HONIGBERG: Ms. Patterson.

14 MS. PATTERSON: Yes. Thank you. I  
15 agree with the Company that the -- that PLAN's  
16 intervention should be limited to advocating on behalf of  
17 its customer members. And, that there is no basis, other  
18 than discretionary basis, for the Commission to allow the  
19 non-customer members to participate. But, consistent with  
20 DG 14-380, the Commission decided that PLAN's  
21 participation should be limited to customer interests  
22 only.

23 I would just comment, with responding to  
24 Mr. Kanoff, who said that he would argue a different scope

1 if PLAN is granted intervention. And, I guess what I  
2 wonder is that, if PLAN is granted intervention to  
3 represent customer member interests, how does it have  
4 standing to advocate for a scope that's different that's  
5 representing non-customer member interests?

6 CHAIRMAN HONIGBERG: I didn't understand  
7 Mr. Kanoff to say exactly that. I think what he -- I  
8 think what he was saying was that, if something comes up  
9 and he feels the need to try to expand the level of  
10 participation, he would argue it at that time. I  
11 understand that you and Ms. Knowlton might take strong  
12 issue with his ability to do that, but I don't think he  
13 was making an assertion now trying to reserve some right  
14 to expand his participation on behalf of PLAN, you know,  
15 without having that gone through some sort of process.

16 MS. PATTERSON: Okay. Thank you.

17 CHAIRMAN HONIGBERG: Commissioner  
18 Bailey, do you have a question?

19 COMMISSIONER BAILEY: Yes, I do. Mr.  
20 Kanoff, in your Motion to Intervene, you state that you  
21 are the "duly appointed representative of ratepayers  
22 ultimately affected by this proceeding". Can you explain  
23 that a little bit and tell me how that differs from the  
24 Consumer Advocate's role?

1 MR. KANOFF: The Consumer Advocate's  
2 role -- and, you're talking about the PLAN intervention  
3 here?

4 COMMISSIONER BAILEY: Yes. It's in  
5 PLAN's Motion to Intervene on Page 5. It says you're the  
6 "duly appointed representative of ratepayers ultimately  
7 affected by this proceeding".

8 MR. KANOFF: I think that the case that  
9 we had in DG 380 [14-380?] clearly demonstrated the  
10 relationship and the coordination between Office of  
11 Consumer Advocate and PLAN. We may, as part of  
12 participation in the case, take consistent views and  
13 participate in a consistent way with respect to ratepayer  
14 interests, but they're not necessarily the same. We may,  
15 on behalf of ratepayers, see things that are substantively  
16 different than OCA. We're not an institutional  
17 intervenor.

18 And, I don't believe -- and I believe in  
19 the last case, when we had a similar discussion of OCA,  
20 and I'll let OCA speak for itself, noted the coordination  
21 and the collaboration and the ability of both parties to  
22 assist the Commission in its deliberation. And, so, I  
23 think that the notion that somehow we're consistent is not  
24 necessarily indicative of any barrier to intervention.

1                   CHAIRMAN HONIGBERG: Just to be  
2 specific, Mr. Kanoff, you are representing, however, that  
3 some of PLAN's members, whom you represent, are  
4 ratepayers, is that correct?

5                   MR. KANOFF: That's correct. And --  
6 that's correct. And, we appreciate that. We're  
7 representing customers, and not the property interests at  
8 this point. That's the whole point of the discussion.

9                   COMMISSIONER BAILEY: And, what did you  
10 mean by "duly appointed"? Who appointed you?

11                   MR. KANOFF: I'll have to -- I'll have  
12 to go back into that petition, and I didn't bring it.  
13 And, maybe that just needs to be amended. And, we  
14 certainly -- I'm trying to remember from the intervention  
15 petition where that appears and how that was used. And,  
16 if you give me just a moment, I can try to be more  
17 specific about that. But maybe I'm just going to amend  
18 the petition.

19                   CHAIRMAN HONIGBERG: That may not be  
20 necessary. What you mean to be saying, regardless of how  
21 it was written, is that you represent PLAN. You've been  
22 duly appointed or retained by PLAN to do its legal work,  
23 including representing PLAN here. And, you are  
24 representing, at least in the 14-380 way of framing it,

1 representing PLAN's members to the extent they are  
2 ratepayers. And, that's how you get where you are, right?

3 MR. KANOFF: That's the nub of it,  
4 absolutely. Yes.

5 CHAIRMAN HONIGBERG: Okay.

6 COMMISSIONER BAILEY: Okay. Thank you.

7 CHAIRMAN HONIGBERG: Ms. Knowlton.

8 MS. KNOWLTON: Is it possible to have a  
9 clarification from PLAN regarding whether any of those  
10 customers are commercial and industrial customers or  
11 whether those customers are limited to residential  
12 customers?

13 CHAIRMAN HONIGBERG: Mr. Kanoff, do you  
14 have -- do you have an answer to that? It's not an  
15 unreasonable question.

16 MR. KANOFF: No. I'd have to go back to  
17 PLAN to specifically -- for that specific information.  
18 I'm happy to do that. I don't have that with me at the  
19 moment.

20 CHAIRMAN HONIGBERG: Ms. Knowlton, what  
21 are you thinking? What would the -- how would you use  
22 such an answer, depending on how it came back?

23 MS. KNOWLTON: I think it's helpful to  
24 know that, because Mr. Kanoff has indicated that, you

1 know, he's aligned with the Office of Consumer Advocate in  
2 presenting a position in this docket, and the Consumer  
3 Advocate's position is limited to residential ratepayers.  
4 So, I think it will be helpful if we all could understand  
5 whether or not Mr. Kanoff is bringing to the table  
6 residential interests only or residential and  
7 commercial/industrial interests. Because there are  
8 differences, in terms of the needs of customers that are  
9 C&I customers and the interests of C&I customers. The  
10 Company has heard from many C&I customers that support its  
11 efforts to bring more gas into the state.

12 So, it would be helpful for us to  
13 understand, as we go forward in discovery and otherwise,  
14 whether the PLAN membership base includes both or is  
15 limited to the residential interest only, which is, you  
16 know, then completely coterminous -- you know, parallel to the  
17 OCA interest.

18 CHAIRMAN HONIGBERG: Mr. Kanoff.

19 MR. KANOFF: PLAN's interests are really  
20 a function of its membership. The only question I have  
21 is, and its membership is broad across two states, the  
22 only -- and encompasses essentially commercial and  
23 industrial and residential, certainly, in the region. The  
24 only question I have is, since I haven't looked at the

1 membership list, is to answer the question specifically as  
2 it relates to today, commercial/industrial, with respect  
3 to Liberty.

4 I will say that, as in the DG 380  
5 [14-380?] case, PLAN would seek a very broad  
6 representation and the ability not to have its position  
7 and its arguments constrained by some notion that somehow  
8 we speak for one ratepayer and not another. And, I think  
9 that it's very important at the outset that the Commission  
10 allow whatever the ultimate standard is, whether it's  
11 representing ratepayers as discussed generally, that it be  
12 a broad representation allowed for PLAN. That I think is  
13 we sustained that in DG 380 [14-380?], we participated in  
14 a way that was consistent with that. And, there's no  
15 basis to have that changed, revised, limited in this  
16 proceeding versus the other one.

17 CHAIRMAN HONIGBERG: Ms. Chamberlin.

18 MS. CHAMBERLIN: Thank you. Residential  
19 ratepayers are not a homogenous group. It's certainly  
20 possible for residential ratepayers of different areas to  
21 have slightly different opinions. The OCA cannot -- I  
22 believe that PLAN brings a level of expertise and a level  
23 of focus and a level of interest that is different from  
24 what the OCA is bringing on behalf of residential

1 ratepayers in general. And, I believe it adds to the  
2 record.

3 I don't think that we are -- as the  
4 Commission requires, we're happy to coordinate, to avoid  
5 duplication, that sort of thing. But I object it to being  
6 linked as the PLAN's representative. I just don't believe  
7 that our Office appropriately does their representation.  
8 It just is -- I just don't believe that that's the way the  
9 State has set up the Office.

10 CHAIRMAN HONIGBERG: All right. I think  
11 we've got what we need on the PLAN motion. I think, if  
12 there's a question, Ms. Knowlton, that you want answered  
13 from Mr. Kanoff, you might want to do that through  
14 discovery, regarding membership. I'm not sure if there's  
15 another way to do it right now. He's not prepared to  
16 provide the information. And, I'm not sure it would  
17 affect PLAN's ability generally to be -- to participate in  
18 the case.

19 MS. KNOWLTON: I thought he said he was  
20 "happy to provide it"?

21 CHAIRMAN HONIGBERG: I think he will.  
22 Or, actually, I think he did say that. Are you prepared  
23 to provide it outside of any kind of formal process, Mr.  
24 Kanoff?

1 MR. KANOFF: I think that the Chairman  
2 had it right in saying that "the best way to go", I mean,  
3 maybe not necessarily said the best way, but "a way to go  
4 here is through discovery". We don't see that that's  
5 necessarily dispositive of the intervention request.

6 CHAIRMAN HONIGBERG: I'm not sure -- I  
7 think that's right. I think -- I'm not sure anybody has  
8 made an argument that it is.

9 MR. KANOFF: And, that's --

10 CHAIRMAN HONIGBERG: That's why I asked  
11 Ms. Knowlton why she was asking the question. So, I don't  
12 hear that coming. I'm going to ask the two of you to work  
13 it out. If you need a discovery request to answer the  
14 question, she'll give it to you, and you'll respond  
15 promptly and thoroughly. If you're willing to do that  
16 outside of discovery, that's fine, too. But I'm going to  
17 have the two of you work that out between yourselves.

18 With respect to the Municipal Coalition,  
19 I will say we need clarification regarding Merrimack.  
20 But, other than that, Mr. Kanoff, do you have anything  
21 else you want to say regarding that motion, having had the  
22 opportunity to review Ms. Knowlton's objection?

23 MR. KANOFF: I do. Thank you. And I  
24 want to first start with putting out what we agree with

1 and what the Company and the municipalities agree to, in  
2 terms of just some of the facts. I think that would be  
3 helpful here. And, I'll address Merrimack as part of  
4 that.

5 The intervention is on behalf of 13  
6 towns, as you know, in New Hampshire, that would be  
7 substantially affected by the Precedent Agreement and the  
8 construction, operation, and maintenance of the NED  
9 Project. Some towns are ratepayers or their citizens are  
10 ratepayers of the Company now, and that would include  
11 Milford and Litchfield.

12 Merrimack is also listed, to get to your  
13 question, because Merrimack is considering joining the  
14 case, and is an existing town of the Company per their  
15 tariffs. They're still -- they hadn't been able to  
16 formally approve the request, so they weren't listed as  
17 one of the 13 towns as part of this, but we wanted to put  
18 them in there. We should know in the next couple days  
19 whether they're formally going to come in or not. But  
20 that was where they're at. So, they're in the tariff.  
21 They're going to be voting on intervention formally. And,  
22 it's under review.

23 So, I would either leave them out of the  
24 consideration here in the 13 towns, plus maybe Merrimack,

1 or put them in, since the Company doesn't have an  
2 objection to them. And, if they decide to formally come  
3 in, either way, we'll notify the Commission. But that's  
4 where they are. And, part of that is the holidays, and it  
5 just was something that is up in the air.

6 In addition to Milford and Merrimack,  
7 the Company has no objection to -- I'm sorry. In addition  
8 to Milford and Merrimack, I wanted to talk about  
9 Litchfield. And, Litchfield is a case where the town has  
10 apparently no town municipal offices or other structures  
11 that are served by Liberty, but have citizens that are.  
12 So, they were also listed in their tariff, and also a town  
13 that wants to participate in this.

14 We couldn't find a case that supports  
15 the Company's proposition that a town can't represent its  
16 citizen ratepayers, much like an organization can  
17 represent ratepayers. The Company didn't cite anything in  
18 its petition. And, we think that Litchfield, having  
19 citizen taxpayers -- ratepayers served by Liberty should  
20 be allowed in as a matter of right as the same with  
21 Milford and Merrimack.

22 There's also in this case -- so, those  
23 are "existing ratepayer" kind of package. There's also  
24 companies that -- sorry, communities that are future

1 ratepayers. As you remember from 14-380, the Company, in  
2 testimony and in examination, listed a number of  
3 southwestern area towns that were going to be served, and  
4 that they plan to serve, by NED and subject to precedent  
5 agreements. The towns that were listed as future  
6 franchise expansion in those dockets, and the testimony  
7 was clear in those dockets, were Richmond, Troy,  
8 Fitzwilliam, New Ipswich, Greenville, and Brookline. So,  
9 there were additional towns listed there as well.

10 Those towns, as far as the record shows  
11 from the last case, are as much ratepayers as the existing  
12 towns that we mentioned earlier are ratepayers, in that  
13 this project is going to be -- is scheduled to be  
14 operational, and the Precedent Agreement is only effective  
15 when it's operational, somewhere between 2018 and 2020.  
16 At that time, when it becomes effective, the towns,  
17 according to the Company and its plans, will be  
18 ratepayers. And, their only opportunity really to  
19 function in any way to review this particular process,  
20 before it is in the ground and before it's operational and  
21 is part of the reality that they're going to be impacted  
22 by this when it is operational, is now. And, so, I think  
23 that they have as much basis as on-the-record, future,  
24 existing -- future ratepayers as the towns that are right

1 now ratepayers of the Company.

2 So, we agree with the Company and the  
3 Coalition agree that there are 11 towns in the Coalition,  
4 or 12 towns, if you want to include Merrimack, that will  
5 be impacted by this contract as ratepayers, future  
6 ratepayers, or have citizens that will be ratepayers.

7 The two additional towns, and I want to  
8 talk about them, Mason and Temple, they're on the route.  
9 If you looked at a map, and you saw it going from the  
10 western part of New Hampshire across, the towns of Mason  
11 and Temple are right in the cluster, right in the -- in  
12 the area geographically of the existing 11 towns that we  
13 just discussed.

14 Although the Company hasn't stated any  
15 plans to serve those towns, they are just as concerned as  
16 the other 11 that, because of the proximity to the  
17 construction and operation of this pipeline, that they  
18 will be eventually subject to a proceeding. They are  
19 asking that they be allowed to participate as a coalition  
20 in the review now.

21 And, so, their justification, although a  
22 little bit less -- how do I put this? A little bit less  
23 obvious than the other towns, is still within the zone of  
24 concern as the original 11. So, they're in the bulls-eye,

1 close to it, and they're looking for participation as  
2 well.

3 Where we did -- so, we agree, towns as  
4 ratepayers, we agree, as the Company has acknowledged,  
5 that there are towns that are future ratepayers, and, you  
6 know, we agree that there are two towns that aren't as, in  
7 the moment, directly as affected, but will be and are as  
8 likely down the road to be as affected, by the Precedent  
9 Agreement and the construction.

10 Where we disagree with the Company is on  
11 their notions of the implications around segmentation and  
12 how it parse the statute, and the conclusion that the  
13 Commission should deny intervention. Those are the areas  
14 legally that we disagree.

15 We -- and, I just want to say this. The  
16 NED Project consists of Supply Path and Market Path, we  
17 heard this in DG 380 [14-380?]. It's one pipe. It's one  
18 pipeline. It's one pipeline at FERC. It's -- the Market  
19 Path segment is dependent upon the Supply Path segment,  
20 and that was also stated at -- in the last hearing. And,  
21 in the contract for Supply Path will be paid for by New  
22 Hampshire ratepayers under the Precedent Agreement, the  
23 same as Market Path. So, there's no -- there's really no  
24 basis to separate the two. Just because somehow one is in

1 New York now and one is in New Hampshire doesn't change  
2 the reality that it's one pipe. And, it's going to be --  
3 they're going to be connected, and gas is going flow  
4 through one transportation structure.

5 The Company also suggests that the  
6 Coalition's concerns about future ratepayers does not rise  
7 to the level of a substantial interest, notwithstanding  
8 the Company's clearly stated on-the-record plans to  
9 expand. We disagree. We think a substantial interest  
10 exists, given the stated record intentions of the Company  
11 to serve towns by the transportation capacity in the NED  
12 Project pursuant to precedent agreements in Market Path  
13 and Supply Path.

14 The related impacts of these towns  
15 involves rates, as ratepayers, health and safety,  
16 environmental concerns, and are more than an adequate  
17 basis, as we stated in our petition, to support  
18 intervention.

19 We also think, as a obvious note here,  
20 that the request falls within the discretionary powers of  
21 the Commission. It involves 14 towns and a review of an  
22 unprecedented gas contract by the state's largest gas  
23 utility. And, because these are cities and towns --  
24 because these are towns, we would just also, as we stated

1 in our petition, believe that the Commission should look  
2 at this in a more expansive way under its discretionary  
3 powers, assuming that it needs to even review this as a  
4 discretionary point, and consider comity of governmental  
5 interests and the need to be more accommodating with  
6 respect to petitions by governmental entities in New  
7 Hampshire. Thank you.

8 CHAIRMAN HONIGBERG: I want to make sure  
9 I understand. I think I heard four categories within the  
10 Coalition. There's towns that are customers, those towns  
11 also have customers in them. There's at least one town  
12 that isn't a customer, but has customers who live in it.  
13 So, that's two categories. The third category is towns  
14 with potential customers, the ones that have been either  
15 identified in existing franchise petitions or were  
16 identified in 14-380 as good locations. And, then,  
17 there's the two towns that don't fall within any of those  
18 categories, but are on the route.

19 Did I miss any of those categories?

20 MR. KANOFF: No.

21 CHAIRMAN HONIGBERG: All right.

22 Ms. Chamberlin, your position on the Coalition?

23 MS. CHAMBERLIN: The OCA supports the  
24 Coalition's intervention. One of the goals of these

1 proceedings is transparency. And, to have -- to have a  
2 broad definition of "intervention" is a valuable thing to  
3 the proceedings. Particularly where these entities have  
4 coordinated, to the extent that they now have a single  
5 representative, it should not have any impact on the  
6 orderly proceedings, and any limitation should be done  
7 through scope.

8 CHAIRMAN HONIGBERG: Ms. Patterson.

9 MS. PATTERSON: Thank you. I think that  
10 I had one additional category, which is -- which is  
11 Litchfield, which is not a town -- is not participating as  
12 a town administrator, because I think PLAN said that they  
13 didn't have an official town actor, and that yet that they  
14 did have ratepayers within Litchfield. Am I -- did I  
15 misunderstand?

16 CHAIRMAN HONIGBERG: I think that was my  
17 second category, towns with customers who are  
18 not customers -- the town is not a customer itself, but it  
19 has customers within it.

20 MS. PATTERSON: Okay. But I guess I  
21 understood that, from Mr. Kanoff, that there was no town  
22 actor that was participating in the Coalition. Did I  
23 misunderstand that?

24 CHAIRMAN HONIGBERG: I think you may

1 have. Mr. Kanoff, can you clarify?

2 MR. KANOFF: Yes. Litchfield is a  
3 member of the Coalition. The distinction is, and this is  
4 from the Company's Petition, that Litchfield is not, as a  
5 town, served by Liberty. It's citizen ratepayers are.

6 MS. PATTERSON: Okay. Okay. Thank you.  
7 My response would be that I think that -- oh, the Staff  
8 has no position, but I would offer just a few comments.

9 I do think the Commission has already  
10 determined that ratepayers have an interest in the costs  
11 of supply and capacity, which will be passed along to them  
12 in a rate case. And that, to the extent that the Company  
13 is seeking permission to incur costs at some later point  
14 in time, and to commit to those costs, that the ratepayers  
15 have an interest.

16 I don't take a position on whether or  
17 not the town has the ability to represent ratepayers  
18 without some specific edict from the ratepayers within  
19 their municipality that they do that. For instance, in  
20 the Nashua eminent domain case, there was a collective  
21 decision that the town do something on behalf of the  
22 ratepayers. So, I don't know what the answer is to that.

23 What I would say, though, is that what  
24 struck me in PLAN's argument is its reference a couple of

1 times to the "one pipe"/"one pipeline", and that that's  
2 the way that this Project, the NED Project, is being dealt  
3 with at FERC. And, what I would say is that I disagree  
4 with that.

5 The Market Path capacity, the supply of  
6 that capacity to customers has already been determined by  
7 the Commission in DG 14-380. The Supply Path capacity  
8 is -- the Company purchasing Supply Path capacity now is  
9 just like it going and purchasing supply, some sort of  
10 capacity downstream from the Market Path to supply its  
11 customers.

12 The fact that it's connected to the  
13 Market Path I think is a red herring. Because, if you  
14 were to say that the NED -- the Market Path and the Supply  
15 Path are the same pipeline, you're basically saying the  
16 whole entire country's pipeline infrastructure is the same  
17 pipeline.

18 So, I just wanted to say that as a  
19 response to that argument, which came up a couple of  
20 times. Thank you.

21 CHAIRMAN HONIGBERG: Ms. Knowlton.

22 MS. KNOWLTON: Thank you. I want to  
23 address the "one pipeline" comment as well. The way Mr.  
24 Kanoff paints this, and Ms. Chamberlin, is that this

1       literally is one pipeline that starts in Pennsylvania, and  
2       it just comes up and then it takes a right turn and comes  
3       towards our coastline, and then into New Hampshire. It's  
4       not one pipe. It is two separate pipelines that are  
5       bisected by the Iroquois pipeline in Wright, New York.  
6       You know, there is metering equipment, you know, where  
7       different pipelines all come together. But it isn't like  
8       this is just one pipe that comes from Susquehanna County  
9       Pennsylvania to, you know, to near the western side of the  
10      Company's system in Nashua.

11                   The Market Path is not contingent on the  
12      Supply Path. The Commission has approved the Market Path.  
13      If, for some reason, the Supply Path was not approved, the  
14      purchase was not approved, either by this Commission or by  
15      FERC, the Company is still going to purchase capacity on  
16      the Market Path pipeline. So, I think it is -- it really  
17      truly is a "red herring", as Attorney Patterson has said,  
18      you know, to characterize this as "one pipeline".

19                   I want to address the different  
20      categories that the Commission has laid out. With regard  
21      to towns that are -- may be customers or may be -- may be  
22      franchise areas served by the Company at some time in the  
23      future, that is really a speculative interest. That does  
24      not fall within the ambit of RSA 541-A:32. I feel like

1 Mr. Kanoff's characterization really turns the  
2 Administrative Procedures Act on its head, when he claims  
3 that, you know, that's an interest that should be able to  
4 participate in this docket and meet the "substantial  
5 interest" threshold of A:32, as set forth fully in the  
6 statute.

7 With regard to the Towns of Mason and  
8 Temple, Mr. Kanoff referred to them as being "in the  
9 bulls-eye" and being "close to it". And, I would argue,  
10 close to what? We're talking about capacity on a pipeline  
11 in Pennsylvania and New York. I don't think that Mason  
12 and Temple, New Hampshire are in the bulls-eye of either  
13 of those states. So, there's just --

14 CHAIRMAN HONIGBERG: What about the  
15 other two categories? The ones that -- the two, I think,  
16 towns that are customers themselves, --

17 MS. KNOWLTON: Right.

18 CHAIRMAN HONIGBERG: -- and a third that  
19 is in the current Company's territory -- the Company's  
20 current territory and has customers within it?

21 MS. KNOWLTON: Right. The Company does  
22 not object to Merrimack, assuming that it elects to be  
23 represented by Mr. Kanoff, and Milford, because they are  
24 customers of the Company. So, you know, that's not an

1 issue, as far as I'm concerned.

2 With regard to Litchfield, I would argue  
3 that customer interests are already going to be doubly  
4 represented in this docket, if the Commission were to  
5 grant PLAN's intervention. Because PLAN has said "we're  
6 here for customers", the Consumer Advocate is here for  
7 customers. I mean, how many different representatives of  
8 customers do we need?

9 So, I recognize there could be differing  
10 interests. But, you know, I don't think that the  
11 Commission should allow Litchfield, because it is a town  
12 that is within the Company's franchise territory, to  
13 separately participate in this proceeding, you know,  
14 especially there's no representative of Litchfield here as  
15 well to advocate that.

16 So, our view is that the Coalition's  
17 participation should be denied. That, if the Towns of  
18 Merrimack and Milford wish to participate in this docket,  
19 that the Company does not object to that. But that there  
20 is no basis for the Coalition, as an entity, to  
21 participate here.

22 CHAIRMAN HONIGBERG: I guess I have two  
23 questions about that, about what you said, Ms. Knowlton.

24 On the notion that the towns would come

1 in not as part of the Coalition, I mean, Mr. Kanoff has  
2 lots of clients here, that's a good thing for Mr. Kanoff.  
3 You know, at some point maybe those clients will start  
4 disagreeing with each other on what their goals are, and  
5 that becomes Mr. Kanoff's problem and his clients' problem  
6 together and they'll work through it. Can he -- in your  
7 view, even though they're not called "the Coalition", if  
8 we were to grant the interventions of the two towns that  
9 are customers and the town -- with Litchfield, the town  
10 with customers, just hypothetically, Mr. Kanoff could  
11 represent them? Is that --

12 MS. KNOWLTON: I really think that's a  
13 matter between him and his clients.

14 CHAIRMAN HONIGBERG: So, there's no --  
15 that whether we call them "the coalition" or we call them  
16 the individual towns, that doesn't really matter to you,  
17 right?

18 MS. KNOWLTON: No. As long as it's  
19 clear who he's here for.

20 CHAIRMAN HONIGBERG: Okay.

21 MS. KNOWLTON: Who he's here for.

22 CHAIRMAN HONIGBERG: Yes.

23 MS. KNOWLTON: I think one other point I  
24 also just want to add, with regard to Mr. Kanoff's point

1 about the interest of potential customers in the future to  
2 participate. This is different than electric service.  
3 We're talking about gas service. And, in the case of gas,  
4 customers have a choice about whether or not they take gas  
5 service. You know, you can have propane, you can heat  
6 with oil, you can have a, you know, wood-burning stove in  
7 your house. I realize, you know, in the case of electric,  
8 in theory, you could go off the grid. There's not too  
9 many people who have done that.

10 But just because you're a potential  
11 future customer of the Company doesn't necessarily mean  
12 that you're, you know, going to become a customer of the  
13 Company, even if the Company were to serve that franchise  
14 territory. Everyone within a franchise area is still  
15 going to make their own decision about whether or not they  
16 elect gas. So, it's just -- it's just another  
17 illustration of how speculative that interest is for that  
18 category of --

19 CHAIRMAN HONIGBERG: You actually went  
20 in the place that I wanted to bring you, which is to talk  
21 about the ones that you call "speculative", that he's  
22 identified in being places you said you want to serve  
23 potentially, either with existing franchise petitions or  
24 the places that were identified in 14-380.

1                   And, I think you then answered the  
2 question I would have asked is, are these potential  
3 customers exposed, if you, the Company, over purchase? Is  
4 somebody left holding the bag here? And, the answer I  
5 think you would give is "No, this isn't like electric. It  
6 just becomes pricier than would make sense for them to  
7 purchase as they get their fuel, they heat their home some  
8 other way." Is that --

9                   MS. KNOWLTON: That's correct.

10                  CHAIRMAN HONIGBERG: That would be your  
11 answer, right?

12                  MS. KNOWLTON: That's correct.

13                  CHAIRMAN HONIGBERG: Okay. Mr. Kanoff,  
14 since this is your motion, I'll give you one more crack.  
15 Is there anything else you think we need to hear regarding  
16 the towns?

17                  MR. KANOFF: I just want to clarify for  
18 the record at this stage that we've heard testimony about  
19 the relationship -- I'm sorry, we've heard discussion  
20 about the relationship between Supply Path and Market  
21 Path. There was also a discussion about that, sworn  
22 testimony, in the prior case about that. And, I'll leave  
23 it to the factual record in this case as it evolves. But  
24 it's not clear at this stage, given the testimony in the

1 past, and also given discussions that are ongoing outside  
2 of this proceeding at FERC, whether, in fact, if Supply  
3 Path doesn't happen, whether Market Path will happen.

4 So, I just think that the notion somehow  
5 that "one is going to occur without the other" is  
6 something we need to --

7 CHAIRMAN HONIGBERG: Okay. Got it. I'm  
8 not -- we'll decide whether that's a significant issue in  
9 determining whether the towns or, in fact, any part of  
10 PLAN can come in here. I don't think we need to say any  
11 more about the one project/two project issue at this  
12 point.

13 All right. Having talked out  
14 interventions, I know we have a motion for confidential  
15 treatment. I know that Commissioner Scott has at least  
16 one question about that.

17 But, before I turn to Commissioner  
18 Scott, are there other preliminary matters that we're  
19 going to be dealing with, before we leave you to your  
20 technical session?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: And, Mr. Kanoff,  
23 just to close the loop for today regarding interventions,  
24 I think you can pretty comfortable that you're going to be

1 able to participate in this case in some capacity. And,  
2 so, you should expect to participate in the technical  
3 session and help the parties work through the schedule and  
4 all the issues that are attendant thereto.

5 All right. Commissioner Scott.

6 COMMISSIONER SCOTT: Thank you,  
7 Mr. Chair. When I look at the material that's been  
8 requested to have confidential treatment, some of it is  
9 not obvious to me why it would be confidential. And, I'll  
10 ask the Company, I'll direct them to their December 8th  
11 prefiled direct testimony, Bates 007 is an example.  
12 That's not obvious to me why that would be confidential.  
13 So, I was just curious if you could help me with that  
14 please.

15 CHAIRMAN HONIGBERG: And, Ms. Knowlton,  
16 if you need to answer that question in a way that would  
17 disclose what's redacted, we can -- we can create an  
18 appropriate part of the record.

19 MS. KNOWLTON: With regard to that  
20 reference, the Company has redacted it because that  
21 information, if revealed, would provide competitively  
22 sensitive information to competing projects of the Supply  
23 Path pipeline.

24 I mean, do we need to go on a

1 confidential record?

2 CHAIRMAN HONIGBERG: I think we're going  
3 to -- yes, let's go off the record for a minute.

4 *[Brief off-the-record discussion*  
5 *ensued.]*

6 CHAIRMAN HONIGBERG: All right. We're  
7 going to have Mr. Kanoff and his associate leave the room  
8 for a few minutes. We're going to create a confidential  
9 portion of this record.

10 (Pages 35 through 39 are contained under  
11 separate cover and deemed to contain  
12 information that is **confidential** and  
13 **proprietary**.)

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***[Public portion of the record resumes.]***

1  
2 CHAIRMAN HONIGBERG: Mr. Kanoff,  
3 understanding that you don't know what we just talked  
4 about, do you have any other issues or issues you want to  
5 raise with respect to the Motion for Confidential  
6 Treatment?

7 MR. KANOFF: No. I don't.

8 CHAIRMAN HONIGBERG: Ms. Chamberlin?

9 MS. CHAMBERLIN: No. Thank you.

10 CHAIRMAN HONIGBERG: Ms. Patterson, do  
11 you have a position on the confidentiality motion?

12 MS. PATTERSON: I would only note that  
13 the Commission continues to retain jurisdiction over  
14 determinations of confidentiality throughout the  
15 proceeding and afterwards.

16 So, at this point, we don't have an  
17 objection to the confidential request. Thank you.

18 *(Chairman and Commissioners conferring.)*

19 CHAIRMAN HONIGBERG: All right. We're  
20 not going to rule on the Motion for Confidentiality now.  
21 We'll issue a separate order on that.

22 All right. Is there any other business  
23 we need to transact before we leave you to your technical  
24 session?

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*[No verbal response]*

CHAIRMAN HONIGBERG: All right.

MS. PATTERSON: No thank you.

CHAIRMAN HONIGBERG: Seeing none, thank  
you all very much.

***(Whereupon the prehearing conference was  
adjourned at 10:58 a.m., and a technical  
session was held thereafter.)***