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August 24, 2017

VIA E-MAIL

Debra Howland Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord New Hampshire 03301

RE: DG 16-852
Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities
Petition for Expansion of Franchise to the Town of Hanover and City of Lebanon

Dear Ms. Howland:

Please file this letter as a public comment in the above-referenced docket, in supplementation of the August 3, 2017 and August 4, 2017 public comments that I previously submitted in this matter.

The petitioner seeks the permission and approval of the Public Utilities Commission (“PUC”) under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) to expand its gas distribution services into the Town of Hanover and City of Lebanon through the construction of a new pipeline system and related, complex facilities. See [petition](#), [Direct Testimony of Richard G. McDonald](#) and [Direct Testimony of William J. Clark](#).

In relevant part, R.S.A. 374:22 provides:

“374:22 Other Public Utilities. – I. No person or business entity, including any person or business entity that qualifies as an excepted local exchange carrier, shall commence business as a public utility within this state, or shall engage in such business, or begin the construction of a plant, line, main, or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission ...”

Id. (emphasis added).

R.S.A. 374:26 further provides:

“374:26 Permission. – The commission shall grant such permission whenever it shall, after due hearing, find that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise; and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest. Such permission may be granted without hearing when all interested parties are in agreement.”

Id. (emphasis added).

For the reasons already discussed in my prior public comments and reasons now to follow, the petition in this matter must be denied as it cannot meet R.S.A. 374:26 requirements.¹

The R.S.A. 374:26 terms “public good” and “public interest” are analogous, must be construed broadly, and require consideration of the needs of not only the persons and utility directly involved, but also “the needs of the public at large.” *See Waste Control Systems, Inc. v. State*, 114 N.H. 21, 24. 314 A.2d 649 (1974)(citing *Boston & Maine R.R. v. State*, 102 N.H. 9, 10, 148 A.2d 652 (1959)). Indeed, the PUC’s broad discretion in this area, *see Waste Control Systems, Inc. v. State, supra* at 24, compels it. Thus, while the PUC typically focuses on financial considerations in its statutory analysis, it also recognizes that it must determine “in general, whether the franchise petition’s approval would offer benefits to the public,” [Liberty Utilities \(EnergyNorth Natural Gas\) Corp. d/b/a Liberty Utilities, Order No. 25,987, at 11](#), and that asserted public benefits must be weighed against actual costs, including environmental costs. *See Public Service Company of New Hampshire d/b/a Eversource Energy, DE 1-241, Order of Notice, at 3-4.*

¹ For reasons similar to those discussed in my [July 25, 2017 comment letter](#) filed in PUC Docket No. DG 17-068, this matter should be dismissed for lack of jurisdiction as the Site Evaluation Committee (“SEC”) holds the sole authority to decide this matter under R.S.A. Chapter 162-H, and particularly [R.S.A. 162-H:5](#) with respect to certification of the petitioner’s proposed new facilities. As described in the petitioner’s testimony, *see Direct Testimony of Richard G. McDonald* and [Direct Testimony of William J. Clark](#), the petitioner’s proposed new facilities fit the definition of an “energy facility” under [R.S.A. 162-H:2\(VII\)](#), requiring certification of the facility under R.S.A. 162-H:5 prior to its construction. Should the PUC decide, inconsistently with its prior decisions discussed in Footnote 3 of my [July 25, 2017 comment letter](#), that the PUC *may* hold concurrent jurisdiction with the SEC over the subject matter, it *must* still decline the opportunity. Such reasoning would still have to consider the SEC’s jurisdiction to be primary, given the expressly applicable language of [R.S.A. 162-H:5](#), and the SEC has not delegated its authority to the PUC in any manner that will allow this proceeding to go forward, even under such reasoning. *See R.S.A. 162-H:4* (establishing exclusive criteria for delegation of SEC authority, including requirement of hearing under Section IV); *compare EnergyNorth Natural Gas, Inc., Order No. 23,657, at 17-18* (by order, SEC delegated its authority over matter to PUC). The PUC should address this issue before the final hearing but, should it fail to do this or disagree with my position herein, this letter addresses the merits.

As discussed in my prior comments, the petitioner’s gas expansion plans must be denied in light of climate change concerns alone. An opinion just handed down by the Court of Appeals for the District of Columbia Circuit establishes that the PUC not only has the authority to consider climate change in its public good/public interest analysis, but the obligation.

In *Sierra Club v. FERC*, Court of Appeals for the District of Columbia Circuit, Docket No. 16-1329 (Aug. 22, 2017), the Court vacated and remanded a Federal Energy Regulatory Commission (“FERC”) decision approving a gas pipeline project under FERC’s analogous [15 U.S.C. § 717f\(e\)](#) public interest analysis for failure to consider the downstream climate impacts of the project. The Court concluded that FERC’s analysis was deficient, noting, in pertinent part:

“... greenhouse-gas emissions are an indirect effect of authorizing this project, which FERC could reasonably foresee, and which the agency has legal authority to mitigate ... Quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals. Without such comparisons, it is difficult to see how FERC could engage in ‘informed decision making’ with respect to the greenhouse-gas effects of this project, or how ‘informed public comment’ could be possible ...”

See [article about decision](#) and page 24 of actual [decision](#).

The reasoning of *Sierra Club* applies equally here. The PUC has the legal authority—and obligation—under R.S.A. 374:26 to consider the impacts the petitioner’s proposed project will have on climate change to allow a comparison with non-fossil fuel alternatives, state, regional and national emissions, and climate change goals. How else will the PUC truly engage in informed decision-making on a matter of such paramount public interest and importance? Without such information, how will “informed public comment” on the matter be possible?²

If climate change is properly considered, the petitioner’s plans *must* be stopped.

R.S.A. 378:37, which sets forth New Hampshire’s official energy policy, supports this conclusion. In its Order of Notice for this matter, the PUC itself flags this statute as a concern, identifying one of the issues to be addressed as “whether the proposal by Liberty comports with

² Public comment periods are not provided as mere window dressing to lend the illusion of public input in agency decision-making; they are not just for “venting.” Public comments serve a vital function in the process. Observations made on the importance of such comments in rulemaking are equally applicable here. Their inclusion “encourages public participation in the administrative process and educates the agency, thereby helping to ensure informed agency decisionmaking.” *Chocolate Mfrs. Ass'n of United States v. Block*, 755 F.2d 1098, 1103 (4th Cir. 1985)(citing *Spartan Radiocasting Co. v. FCC*, 619 F.2d 314, 321 (4th Cir.1980); *BASF Wyandotte Corp. v. Costle*, 598 F.2d 637, 642 (1st Cir.1979), cert. denied, 444 U.S. 1096, 100 S.Ct. 1063, 62 L.Ed.2d 784 (1980)). They “allow the agency to benefit from the experience and input of the parties who file comments ...” *National Tour Brokers Ass'n v. United States*, 591 F.2d 896, 902 (D.C.Cir.1978). Thus, they “ensure that the broadest base of information [will] be provided to the agency by those most interested and perhaps best informed on the subject ...” *Phillips Petroleum Co.*, 22 F.3d 619, 620 (1994)(citing *Shell Oil Co. v. Fed. Energy Admin.*, 574 F.2d 512, 516 (Temp.Emer.Ct.App.1978)).

the New Hampshire Energy Policy [under R.S.A. 378:37].” See [Order of Notice at 2](#) . It does not. R.S.A. 378:37 provides:

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

Id. (emphasis added). Under this statute, the PUC is charged with considering the impacts of climate change here as state policy is to meet energy needs “at the lowest reasonable cost” while protecting our environment, safety, health and natural resources—and climate change indisputably comes at an enormous cost to all of these concerns, which is particularly unreasonable when considering the far lesser cost of non-fossil fuel alternatives.

By all authority, the situation is desperate and only an emergency or urgent need of a nature not found here could justify increasing methane emissions at this point. Yet, by its plans, the petitioner *will* increase methane emissions and climate damage to the public at large, and to a foreseeably far greater degree than the amount attributable to new Hanover and Lebanon emissions alone. As discussed in my [September 2, 2016 comment letter](#) filed on September 6, 2017 in PUC Docket No. DG 16-779, the petitioner’s collective expansion efforts are artificially creating the need for a huge new gas pipeline and long-term commitment to gas in New Hampshire, with all of the additional associated emissions and resulting climate damage those increases in volume and duration will bring.³ Moreover, not only is there no exigency here justifying the increase in emissions: the petitioner is force-feeding them, with all of the harms they bring, down the throats of the very communities it claims to want to “serve.” Again, as evidenced by the actions taken by Hanover and Lebanon and the multitude of public comments filed in this matter: Hanover and Lebanon do not want what the petitioner is selling. “[T]he needs of the public at large,” see *Waste Control Systems, Inc. v. State, supra*, 114 N.H. at 24, demand climate change mitigation, yet, what the petitioner is selling is exacerbation of the problem—hopefully a foreseeable outcome to the PUC, as Hanover and Lebanon made the connection very quick.

Indeed, the vast majority of the entire public at large has made the connection. With every heat wave, drought and superstorm, [Americans are taking climate change personally](#). [Over two-thirds of American voters are concerned about climate change and want to fight it—not take steps backwards \(like repealing remedial regulations, like increasing greenhouse gas](#)

³ It is unclear from the petition filed in this matter whether its approval would require the immediate infusion of new gas into the state by a new pipeline, but it is clear that this case is part of larger expansion plans and that the petitioner would not be proposing its elaborate, expensive new system if a pipeline were close enough to Hanover and Lebanon to allow normal gas distribution methods. See [Direct Testimony of William J. Clark at 008-009](#). Thus, either by overtaxing current pipeline capabilities through this and other expansions of its business, or by locking locals into gas such that a closer source would be “desirable,” the petition here is plainly a precursor to a call for a large new pipeline.

[emissions](#)). Right here at home, [more than a decade ago, the vast majority of New Hampshire cities and towns \(160+ out of 234\) called for action to address climate change.](#)

But, “natural” gas and its infrastructure inflict far more harm on the public at large than just the effects of climate change. Minimally, they come with these negatives, as well:

1. Gas pipelines are ticking time bombs. The industry claims that they are safe, but how can they be deemed safe when [they keep exploding](#)—[again](#) and [again](#) and [again](#) and [again](#)—and their “incineration zones” may extend for hundreds of feet? See [Page 14 List of Explosions](#). Please take a look at some of the horrific damage and injuries described on page 14 of the last link. Children should not be playing in yards with pipelines running through them—they should not be living anywhere near pipelines, period;
2. Today’s gas is not “natural” or “clean,” as touted, but is contaminated by the unnatural hydraulic fracturing (“fracking”) process and contains numerous carcinogens, hazardous chemicals, air pollutants, and other unhealthy impurities. See, e.g., [“California’s Fracking Fluids: the Chemical Recipe,” by Tasha Stoiber, et. al. \(EWG; August 2015\)](#). Hydraulically fractured (“fracked”) gas releases, from gas drilling, production, pipeline and other infrastructure leaks and emissions, cause health problems. See, e.g., *id.*, [“Gas Compressors and Nose Bleeds,” by Jessica Cohen \(Fall 2015\)](#); [“Porter Ranch Gas Leak Triggers State of Emergency in California,” January 7, 2016 CNN online news article](#); [“Potential Hazards of Air Pollutant Emissions from Unconventional Oil and Natural Gas Operations on the Respiratory Health of Children and Infants” by Ellen Webb, et. al. \(2014; published in Reviews on Environmental Health, 2016\)](#); [“Madison County, New York Department of Health Comments to the Federal Energy Regulatory Committee,” prepared for Madison County Department of Health by Thimble Creek Research \(September 30, 2014\), pp. 14-28](#); [“Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania,” by Nadia Steinzor, et. al. \(October 2012\)](#); [“Human Health Impacts Associated with Chemicals and Pathways of Exposure from the Development of Shale Gas Plays,” by Wilma Subra Subra Company \(January 9, 2012\)](#);
3. From construction and instillation to removal, pipeline projects cause enormous damage to the environment and natural resources—rivers, drinking water aquifers, wetlands, wildlife and conservation areas, *etc., etc., etc.* [They leak, they spill, they contaminate, there is no getting around it](#); and
4. Gas pipeline projects result in the forced taking of property by eminent domain. Unfortunately, takings often leaving property owners not only with a pipeline, but also with [substantially devalued](#), unmarketable homes they fear to even live in.

Takings are contrary to New Hampshire law and values, as [they result in the taking of private property for corporate profit, which is expressly prohibited under an amendment to the “Bill of Rights” of our state constitution passed by an overwhelming majority of 85% of New Hampshire voters just a decade ago⁴](#);

As with climate change, all of the above harms must be taken into account under the PUC’s R.S.A. 374:26 analysis, inclusive of R.S.A. 378:37 considerations, and all require denial of the petition filed in this matter.

Lastly, the petition fails under just a traditional financial analysis. As noted by PUC Staff and the Office of Consumer Advocate (“OCA”), the petitioner has not met Staff’s main concern that it lacks an anchor customer, the petition is not supported by a sound business plan, projected revenues are highly speculative and could fall short of actual costs, there is an insufficient current customer commitment to avoid financial risk and Hanover and Lebanon cannot be counted on to provide more customers as they do not support the petitioner’s plans. See [Direct Testimony of Stephen P. Frink](#) and [OCA Direct Testimony of Dr. Pradip Chattopadhyay](#).

Sincerely,

//s//Richard M. Husband

cc: Concerned citizens

⁴ Part I, Article 12-a of our Bill of Rights provides:

“**[Art.] 12-a. [Power to Take Property Limited.]** No part of a person’s property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.”