

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. 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

MOTION FOR REHEARING UNDER R.S.A. 541 OF JONATHAN CHAFFEE

Pursuant to R.S.A. Chapter 541 and R.S.A. 541:3, Jonathan Chaffee (“Chaffee”), an intervenor in this proceeding, by and through his undersigned counsel, Richard M. Husband, Esquire, hereby respectfully moves for reconsideration of and a rehearing on [Commission Order No. 26,109](#) (the “Order”) entered on March 5, 2018 in this matter. As grounds for this motion, Chaffee says as follows:

1. This proceeding is a part of Liberty’s aggressive plans to expand its gas infrastructure, supply commitments and customer base, as is evidenced by Commission approvals it has recently obtained for Concord, *see* [Commission Order No. 25,965 \(November 10, 2016\)](#) and Pelham/Windham, *see* [Commission Order No. 25,987 \(February 8, 2017\)](#), as well as Lebanon/Hanover in this case, and is seeking for Keene, *see* [Commission Docket No. DG 17-068](#) (the “Keene case”) and the Granite Bridge Project. *See* [Commission Docket No. DG 17-198](#) (the “Granite Bridge Project case”). The lead case concerning Liberty’s plans is [Commission Docket No. DG 17-152](#) (the “LCIRP case”), in which Liberty seeks approval of its 2017 LCIRP for the forecast period 2017/2018 - 2021/2022.

2. The approvals sought in this case fall within the scope of the LCIRP considered in the LCIRP case, and is referenced as such on [page 58 of the LCIRP](#).

3. A rehearing is appropriate in light of new evidence that was unavailable at the time of the September 7, 2017 hearing in this matter. *See Consumers New Hampshire Water Co., Inc.*, 80 NH PUC 666 (1995), cited in *Verizon New Hampshire Petition to Approve Carrier to Carrier Performance Guidelines*, Order No. 23, 976 (May 24, 2002).

4. The LCIRP case was not commenced until October 2, 2017, after the September 7, 2017 hearing in this matter and, on March 6, 2018, the day after the Order issued, a petition to intervene was filed in the LCIRP which establishes, on its face, that Liberty's expansion plans—including those which are the subject of this proceeding—are inconsistent with New Hampshire law and unapprovable. *See [Petition to Intervene of Terry Clark](#)* filed in [Commission Docket No. DG 17-152](#). Together with the evidence presented by Chaffee in this matter, the new evidence presented in the LCIRP case provides more than sufficient grounds for denying the petition in this proceeding—and the Commission should. However, should the Commission disagree, to ensure that there is consistency in its decision-making, a uniformity of results, and that it acts in accord with the law, the Commission should vacate or stay the Order until such time as the LCIRP case has been decided, and then rule in this matter consonant with the LCIRP determination. Undersigned counsel also represents Terry Clark ("Clark"), the intervenor contesting the legality of Liberty's plans in the LCIRP case, and represents that the issue should soon be decided as the attached, *i.e.*, *Intervenor, Terry Clark's, Motion to Dismiss and for a Moratorium on Gas Expansion Plans*, or a substantially similar version of the same (but with exhibits), will be filed in the LCIRP case as soon as Clark is allowed to intervene in the matter. As Clark clearly meets the standard for intervention (for the reasons set forth in his [petition to intervene](#)), no objection to Clark's intervention has been made and Commission Staff supports the intervention, *see [Trans. of March 9, 2018 prehearing conference at pp. 11-12](#)*, Clark's intervention in the LCIRP case and

filing of a motion to dismiss to bring the lawfulness of Liberty’s plans—including the approvals sought in this proceeding—to a decision, should be imminent.

5. Chaffee additionally requests a rehearing on the Order because it fails to provide a proper, necessary procedure for confirming that Liberty has met customer commitment requirements under the settlement agreement approved by the Order, as was reasonably requested at the hearing. The Order notes this request, on page 9:

“Mr. Below requested that, should the Commission approve the Settlement Agreement, Liberty should be required to demonstrate at a hearing before the Commission that it has the necessary customer commitments to proceed, and that interested parties be permitted to scrutinize the commitments. “

Id. Chaffee opposes the approvals sought in this proceeding, but should they be allowed with conditions, compliance must be assured through a full hearing subject to scrutiny before the approvals become final. Lacking this reasonable requirement, the Order is unsustainable.

6. Finally, a rehearing is appropriate because it would be unlawful and unreasonable for the Order to become final, *see Investigation as to Whether Certain Calls are Local*, 101703 NHPUC, 24, 218, as that would improperly absolve Liberty of its contempt of the Order and constitute a violation of RSA 91-A, the so-called “Right to Know Law,” by the Commission itself. The issue is over-redaction. The Order addresses it as follows:

“We agree with Liberty that the information contained in the documents and discovery responses it seeks to protect constitute confidential and commercial information under RSA 91-A:5, IV ...

Nonetheless, Liberty’s request goes too far in seeking to protect the entirety of those documents ... We find that most of the privacy interests and competitive harm raised by Liberty could be resolved simply by redacting potential customers’ names from the documents ... Because Liberty’s request is over-inclusive, we direct Liberty to refile the documents with the appropriate redactions and a revised motion for protective treatment within 15 days of this order ...

FURTHER ORDERED, that Liberty’s motion for protective treatment is GRANTED in part and DENIED in part, and Liberty is

required, within 15 days, to file the protected documents with more limited redactions and revised motion for confidential treatment consistent with this order ...”

Order at 24-26. As is also noted in the Order, *id.* at 14, the above requirements specifically afford relief to Chaffee in response to his objection to the redactions (as well as the objection of Ariel Arwen), so Chaffee has a very clear interest in demanding compliance with that relief.

7. But, Liberty has not complied with the Order’s redaction requirements, as is shown by the attached Exhibits “B” and “C,” meaning it is in plain contempt of the Order. Especially as Liberty has engaged in a pattern of redaction abuses causing great public consternation, *see, e.g.* [Opposition of the Office of the Consumer Advocate to Motion for Protective Order and Confidential Treatment](#) and [Petition for Disclosure](#) filed in Commission Docket DE 16-241; [Opposition of the Office of the Consumer Advocate to Motion for Protective Order](#) and public comments filed in the Granite Bridge Project case, the Commission cannot ignore Liberty’s clear contempt in this proceeding and encourage continuing like behavior. Indeed, until the contempt issue is resolved, Liberty is in full compliance with the redaction requirements of the Order and the Commission has complied with the request to turn these documents over to Chaffee evidenced by the attached Exhibit “B,” the Commission cannot allow the Order to become final as the agency would then violate the Right to Know Law and its own rules by failing to comply with a request made appropriately under both that it could comply with simply by enforcing its own Order and rules. Concurrent with the filing of this motion, Chaffee is filing a motion for contempt with the Commission, which should be addressed and resolved before there can be any consideration of a final order in this proceeding.

WHEREFORE, Chaffee respectfully requests that the Commission:

- A. Vacate or stay the Order; and
- B. Deny the petition in this proceeding or enter a new decision in accord with the LCIRP decision; or
- C. Vacate or stay the Order and do not allow the Order or any order in this proceeding to become final until such time as the contempt issue discussed herein has been decided and resolved and a proper hearing, with examination, has been held to confirm the requisite customer commitment; and
- D. Grant such other and further relief is reasonable, lawful, just and otherwise appropriate.

Respectfully submitted,

Dated: April 4, 2018

//s//Richard M. Husband, Esquire
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CERTIFICATE OF SERVICE

I hereby certify that I have on April 4, 2018, served an e-mail copy of this motion on each person identified on the Commission's service list for this docket, by delivering it to the e-mail address identified on the Commission's service list for the docket.

//s//Richard M. Husband
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