

BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Re: Liberty Utilities (EnergyNorth Natural Gas) Corp.

d/b/a Liberty Utilities - Keene Division

Docket No. DG 17-068

**TERRY CLARK’S MOTION FOR REHEARING OR RECONSIDERATION
PURSUANT TO R.S.A. 541, AND CLARIFICATION**

Pursuant to R.S.A. Chapter 541 and [R.S.A. 541:3](#) and applicable Commission rules, including [Puc 203.07\(a\)](#), Terry Clark (“Clark”), an intervenor in this proceeding, by and through his undersigned counsel, hereby respectfully moves the New Hampshire Public Utilities Commission (“Commission”) to rehear or reconsider its [Order No. 26,065 \(Oct. 20, 2017\)](#) (“Declaratory Ruling”) and [Order No. 26,274 \(Jul. 26, 2019\)](#) (“Order”) (collectively the “Decisions”), and clarify its Decisions. As grounds for this motion, Clark says as follows:

BACKGROUND

1. The Decisions issued on a [revised petition for declaratory ruling](#) (“petition”) filed by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty”) on April 26, 2017, solely pursuant to [Puc 203](#) and [Puc 207](#), requesting a determination that the gas utility was not required to obtain permission from the Commission under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) to offer compressed natural gas (“CNG”) and liquid natural gas (“LNG”) services to its Keene franchise customers, with “a temporary CNG facility,” see [petition](#) at ¶ 1, in addition to its existing propane-air services, under the original 1860 Keene “gas” franchise granted to Liberty’s predecessor-in-interest.

2. In relevant part, [Puc 207.01](#), which governs declaratory rulings, provides that declaratory judgment petitions such as Liberty’s are to be processed in accordance with [Puc 203](#):

“Puc 207.01 Declaratory Rulings. (a) A person seeking a declaratory ruling on any matter within the jurisdiction of the commission shall request such ruling by submitting a petition **pursuant to Puc 203 ...**”

Id. (emphasis added).

3. [Puc 203](#) sets forth the rules for “Adjudicative Proceedings.” Under these rules, [Puc 203.12](#) requires published notice of, and a hearing on, all adjudicative proceedings:

“Puc 203.12 Notice of Adjudicative Proceeding. (a) The commission shall give notice of a pre-hearing conference, or of a hearing in a case for which no pre-hearing conference has been scheduled, which shall contain the information required by RSA 541- A:31, III ... (b) The commission shall direct the petitioner or other party to the docket to disseminate a notice issued pursuant to this section to the general public by causing the notice to be published in a newspaper of general circulation serving the area affected by the petition or by such other method as the commission deems appropriate and advisable in order to ensure reasonable notification to interested parties ...”

Id. [Puc 102.07](#) makes clear that the “hearing” required by the above “means a **properly noticed session ... which provides for opportunity for any party, intervenor or commission staff to present evidence and conduct cross-examination.**” *Id.* (emphasis added); *see also Appeal of Morin*, 140 N.H. 515, 519 (1995) (due process requires “the opportunity to present one’s case”)(citing *Appeal of Lathrop*, 122 N.H. 262, 265 (1982)). [Puc 203.18](#) additionally makes clear that interested persons are to be afforded a public comment session at the hearing (or prehearing conference, had one been scheduled).

4. Notwithstanding the clear requirements of its own rules, [Puc 203](#) and [Puc 207](#), the

very rules under which Liberty’s petition was brought, the Commission granted Liberty’s petition, subject to continuing safety supervision and conditions, by the [Declaratory Ruling](#), issued October 20, 2017, without notice or hearing.

5. Although not disclosed in Liberty’s [petition](#), the [Declaratory Ruling](#) acknowledged “that CNG/LNG installations of the type contemplated by the Company include technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems.”

[Declaratory Ruling](#), at 3. Although not discussed in the [Declaratory Ruling](#), the [Order](#) subsequently acknowledged that Liberty’s plans will

“require the construction, operation, and maintenance of decompression skids that will depressurize CNG delivered by truck to permit its introduction into Liberty’s existing distribution system. The conversion will also require the adjustment of all customer meters and certain behind-the-meter changes to customer appliances inside their homes and commercial premises. Liberty has also indicated its intent to construct, operate, and maintain LNG facilities to serve Keene. See Petition at Bates Pages 1 and 11.”

Id. at 7. “[M]uch of the existing system pipelines that currently provide propane-air gas to customers” will have to be replaced,¹ and the new LNG plant will include a 100,000 gallon LNG storage tank² and gas compression and injection equipment needed for the facility³—changes which are also not discussed in

¹ [Order](#) at 10.

² See [Initial Brief of Intervenor, Terry Clark](#) at 1 and [Exhibit “C”](#) (Liberty’s response to Clark Data Request No. 1-10 in Docket No. DG 17-152, discussing 100,000 gallon storage); [Reply Brief of Intervenor, Terry Clark](#) at 3 and Footnote 1.

³ See [Order](#) at 9 (“The conversion requires **gas decompression and injection**, the adjustment of customer appliance fittings, and the proposed replacement of pipes.”)(emphasis added). For additional LNG facility activities, see [Joint Motion for Rehearing Under R.S.A. 541 of Terry Clark, One Movant, and Beverly Edwards, Elizabeth Fletch, Douglas Whitbeck, Gwen Whitbeck, Susan Durling, Julia Steed](#)

Liberty's [petition](#) or the [Declaratory Ruling](#).⁴ In the end, as is also acknowledged by the [Order](#), there would be an "extensive whole-system" change, *id.* at 8, resulting in an all new "separate and distinct" natural gas system, *id.* at 13, with an all new LNG gas plant, *id.* at 7, in addition to the "temporary CNG facility" disclosed in the [petition](#).

6. The all new "separate and distinct" natural gas system will not be used just to convert existing propane-air customer to natural gas: it will be used for a new, expanding natural gas business, as well. Although generally called just a "conversion" of air-propane to natural gas in Liberty's [petition](#)⁵ and the [Declaratory Ruling](#)⁶ without reference to the expansion side of it, the [petition](#) confirms that the resulting new natural gas system will present "a lot of potential in the Keene area to expand and grow the system," in a footnote, *see id.* at Footnote 1, and the [Order](#) acknowledges that Liberty plans to expand off the new natural gas system during all five phases of the project.⁷ In fact, the [Order](#), at 12-13, relies on [Order No. 26,122 \(Apr. 27, 2018\)](#), which repeatedly discusses Liberty's expansion plans in Keene. *See id.* at 33, 36, 38-40, 53 It also references Bates pages 73-91 of Exhibit 24 from the underlying proceeding, [Docket No. DG](#)

[Mawson and Marilyn Learner, as They Collectively Comprise the NH Pipeline Health Study Group, and Individually](#) at ¶ 14.

⁴ But are established in the [Order](#) or Clark's pleadings, as indicated.

⁵ *See id.* at ¶¶ 1, 7, 9-10.

⁶ *See id.* at 1.

⁷ *Id.* at 12 ("Future reports with the requisite cost details shall be filed no later than 180 days in advance of each future expansion phase.").

[17-048](#), *see id.* at 33, which, together with its accompanying testimony,⁸ establishes maps and other ample confirmation of all five phases of planned Keene expansion. *See* Docket No. DG 17-048, [Exhibit 24A](#), [Bates pages 073-091](#).

7. While Staff contended that Liberty’s plans constitute “a change in the character of the utility’s service” requiring the submission of a petition under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) for approval, the [Declaratory Ruling](#) rejected this position over Liberty’s argument that CNG, LNG and propane-air all are *gas* “of the same character,” citing three Commission decisions in support of its reasoning. *Id.* at 1, 3. The [Declaratory Ruling](#) did not address why an “extensive whole-system” change, resulting in an all new “separate and distinct” natural gas system, using a whole new fuel, and a permanent LNG gas plant with a 100,000 gallon storage tank, compression and ejection equipment and CNG facilities, *etc., etc.*, as is otherwise established in the [Order](#) at 2, 8, 9, 12 13⁹ and Clark’s pleadings,¹⁰ would not constitute “a change in the character of *service*,” or otherwise require approval under that portion of [R.S.A. 374:22](#) which expressly provides that no utility

“ ... 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,

⁸ *See* Rebuttal Testimony of William J. Clark and Stephen R. Hall (Jan. 25, 2018) filed in Docket No. DG 17-048 as [Exhibit 24A](#).

⁹ *See* [Initial Brief of Intervenor, Terry Clark](#) at 1 and [Exhibit “C”](#) (Liberty’s response to Clark Data Request No. 1-10 in Docket No. DG 17-152, discussing 100,000 gallon storage); [Reply Brief of Intervenor, Terry Clark](#) at 3 and Footnote 1.

¹⁰ *See* [Initial Brief of Intervenor, Terry Clark](#) at 1, 44-48 and [Exhibit “C”](#); [Reply Brief of Intervenor, Terry Clark](#) at 3, 9 and Footnotes 1, 5.

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.”¹¹

See generally [Declaratory Ruling](#).

8. On November 17, 2017, Clark, an approximately 40-year resident of Keene, and the NH Pipeline Health Study Group, filed a joint motion for rehearing and reconsideration¹² of the [Declaratory Ruling](#), which argued, *inter alia*, that (a) the [Declaratory Ruling](#) did not meet [Puc 203](#) and [Puc 207](#) rule requirements, and [R.S.A. 374:22](#) and [R.S.A. 374:26](#) statutory requirements, including those mandating notice, a hearing, public comment period, *etc.* in declaratory and other adjudicative proceedings, and thus violated due process and should be vacated, (b) the Commission should have deferred to Site Evaluation Committee (“SEC”) jurisdiction over the matter, (c) the relief Liberty requested could only be afforded under a petition filed pursuant to [R.S.A. 374:22](#) and [R.S.A. 374:26](#), and (d) it could not be afforded because Liberty’s plans are contrary to the public interest and violate [R.S.A. 378:37](#). See generally *id.*
9. This proceeding continues Liberty’s aggressive expansion plans. Over the past few years, the utility has sought approval to expand its natural gas infrastructure, supply commitments and customer base through a number of Commission proceedings. See, e.g., [Order No. 25,965 \(Nov. 10, 2016\)](#)(Order entered in

¹¹ *Id.*

¹² See [Joint Motion for Rehearing Under R.S.A. 541 of Terry Clark, One Movant, and Beverly Edwards, Elizabeth Fletch, Douglas Whitbeck, Gwen Whitbeck, Susan Durling, Julia Steed Mawson and Marilyn Learner, as They Collectively Comprise the NH Pipeline Health Study Group, and Individually](#).

Docket No. DG 16-770 approving settlement agreement and transfer of assets between Concord Steam and Liberty to convert Concord Steam customers to Liberty gas service); [Order No. 25,987 \(Feb. 8, 2017\)](#)(Order entered in Docket No. DG 15-362 approving settlement agreement and Liberty franchise petition for Pelham and Windham); [Order No. 26,109 \(Mar. 5, 2018\)](#)(Order entered in Docket No. DG 16-852 approving settlement agreement and a Liberty franchise extension to expand its natural gas services in Hanover and Lebanon to include CNG and LNG through a new pipeline distribution system); *see also* pending [Docket No. DG 17-198](#) (Granite Bridge Project proceeding involving approval of over \$400 million in infrastructure to be used well into the next half of the century) and [Docket No. DG 17-152](#) (the “LCIRP case”)(five-year planning case concerning bulk of Liberty’s franchise expansion plans). Thus, while the [joint motion for rehearing and reconsideration](#) argued that numerous health, safety, economic and other costs associated with natural gas use (particularly, hydraulically fractured, or “fracked” natural gas use) should preclude the further expansion Liberty seeks herein as contrary to the public interest and violative of [R.S.A. 378:37](#), *see id.* at ¶¶ 2, 5-7, 28-41, it urged that Liberty’s plans must be denied “due to climate change concerns alone.” *Id.* at ¶ 30.

10. On December 18, 2017, over Liberty’s objection, the Commission granted the [joint motion for rehearing and reconsideration](#), in part, pursuant to [Order No. 26,087 \(Dec. 18, 2017\)](#), by ordering the reopening of the record and issuance of an Order of Notice for a conference, at which a briefing schedule would be established for “interested parties [to] submit legal briefs and additional public

comments on the question of whether the Company has the legal authority to offer CNG/LNG service in its existing City of Keene franchise area.” *Id.* at 5.

11. An [Order of Notice](#) issued March 1, 2018 for a prehearing conference on April 6, 2018, and Clark petitioned to intervene on April 4, 2018. [Clark’s petition to intervene](#) was granted, with Liberty stating that it had no objection to the intervention at the April 6, 2018 prehearing conference, *see* [Transcript of April 6, 2018 pre-hearing conference](#), at 4-5, which also resulted in a May 1, 2018 deadline for initial briefs and a May 15, 2018 deadline for reply briefs. *See* [Commission April 11, 2018 secretarial letter approving procedural schedule](#).
12. Clark opened the discussion of his position at the April 6, 2018 prehearing conference by referring the Commission to his filings for all of his concerns,¹³ raised some of his procedural concerns with the handling of the matter,¹⁴ then closed with a reminder of his position that the case must receive the full process afforded adjudicative proceedings:

“And finally, I would say that the Commission could only hear the request pursuant to 374:22, and as such, it would have to be a proceeding - a full, you know, a full adjudicative proceeding, with a final hearing at the end, witnesses, discovery, and all of that. But it's not scheduled for that, so it has to be dismissed.”

[Transcript of April 6, 2018 pre-hearing conference](#), at 15. Clark subsequently closed his initial brief with a reminder of the consequences of violating statutory

¹³ *See* [Transcript of April 6, 2018 pre-hearing conference](#), at 9.

¹⁴ *Id.* at 25-26.

and procedural requirements: resulting decisions are void, a nullity, of no force and effect, and should be vacated or expunged.¹⁵

13. Clark timely filed his initial brief¹⁶ and reply brief,¹⁷ as did Liberty,¹⁸ and, after Safety Division, Staff and Liberty input and submissions noted in the [Order](#), at 2-3, the [Order](#) issued July 26, 2019, just two days after Liberty filed a [request for the Commission to promptly resolve the Motion for Rehearing](#). The [Order](#) not only confirms and clarifies the scope of the [Declaratory Ruling](#), as styled, but additionally sets forth requirements and conditions for Liberty to meet in installing its new natural gas system, in five phases—apparently without the opportunity for Clark, or anyone outside of the Commission, to review, object to, comment on or otherwise provide input with respect to Liberty’s submissions and compliance. *See id.* at 10-14.
14. This timely motion followed, and moves for a rehearing or reconsideration, and clarification, of the Decisions, for the following reasons.

THE STANDARD

15. The standard for granting a motion for rehearing or reconsideration is set forth in [Order No. 25,546 \(Jul. 15, 2013\)](#):

“Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief and demonstrates that a decision is unlawful or unreasonable. See Rural Telephone Companies, Order No. 25, 291 (Nov. 21, 2011) at 9. Good reason may be shown by identifying specific matters that were

¹⁵ See [Initial Brief of Intervenor, Terry Clark](#) at 40 and Footnote 59, and cases cited therein.

¹⁶ See [Initial Brief of Intervenor, Terry Clark](#).

¹⁷ See [Reply Brief of Intervenor, Terry Clark](#).

¹⁸ See [Liberty’s Memorandum of Law](#) and [Liberty’s Reply Memorandum of Law](#), respectively.

‘overlooked or mistakenly conceived’ by the deciding tribunal, see *Dumais v. State*, 118 N.H. 309, 311 (1978), or 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) and *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25, 088 (Apr. 2, 2010) at 14. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. See *Connecticut Valley Electric Co.*, Order No. 24, 189, 88 NH PUC 355, 356 (2003), *Comcast Phone of New Hampshire*, Order No. 24, 958 (April 21, 2009) at 6-7 and *Public Service Company of New Hampshire*, Order No. 25, 168 (November 12, 2010) at 10.”

Id., at 5-6.

ARGUMENT

16. Thus, as this motion should focus on aspects of the Decisions that Clark believes were “unlawful or unreasonable,” *see also* [R.S.A. 541:4](#), and “not merely reassert prior arguments and request a different outcome,” [Order No. 25,546 \(Jul. 15, 2013\)](#), at 5-6, this motion will not repeat all of Clark’s prior arguments from his joint motion for rehearing and reconsideration, initial and reply briefs,¹⁹ but will, instead, incorporate those arguments herein in full by reference and identify those additional specific matters that Clark believes supports the requested relief, including matters that were “overlooked or mistakenly conceived” by the Commission, or new evidence arising after the May 15, 2018 briefing deadline that Clark could not present for consideration.
17. As [Order No. 26,087 \(Dec. 18, 2017\)](#) limited briefing to “the question of whether the Company has the legal authority to offer CNG/LNG service in its existing

¹⁹ See [Joint Motion for Rehearing Under R.S.A. 541 of Terry Clark, One Movant, and Beverly Edwards, Elizabeth Fletch, Douglas Whitbeck, Gwen Whitbeck, Susan Durling, Julia Steed Mawson and Marilyn Learner, as They Collectively Comprise the NH Pipeline Health Study Group, and Individually, Initial Brief of Intervenor, Terry Clark and Reply Brief of Intervenor, Terry Clark](#), respectively.

City of Keene franchise area,” *id.* at 5, Clark’s briefing focused on three arguments:

- The Commission cannot grant Liberty’s petition and the authority it seeks in this proceeding, to add natural gas to its propane-air services, as it is part of Liberty’s natural gas expansion plans, currently at issue in [Docket No. DG 17-152](#), the aforementioned “LCIRP case” concerning all of Liberty’s non-Keene expansion plans, which Clark contends are inconsistent with New Hampshire law, *i.e.*, unlawful, for being contrary to the public interest and the requirements of the official state energy policy codified under [R.S.A. 378:37](#), primarily due to climate, health, safety, economic and other concerns mirrored in Clark’s pleadings in both cases.²⁰ Clark requested that the Commission stay this proceeding to rule in a manner consonant with the LCIRP decision if it did not find it appropriate to dismiss the case at that time for the same and other reasons urged by Clark,²¹
- Even if Liberty’s plans were lawful, the Commission should not grant Liberty’s petition for the authority it seeks, but defer to the SEC’s

²⁰ This argument was made in Clark’s [initial brief](#), at 4-34, and in Clark’s [reply brief](#), at 3-6. As for the pleadings in this proceeding and the LCIRP case mirroring each other, compare the discussion generally in Clark’s [initial brief](#) in this case, and particularly at 4-34, with the discussion in Clark’s [motion to dismiss and for a moratorium](#) filed in the LCIRP case, at ¶¶ 2-38. *See also* [Reply Brief of Intervenor, Terry Clark](#), at 2 (“At the prehearing conference held on April 6, 2018 pursuant to the Order of Notice, Clark noted that his position was detailed in his filings in both this and Commission Docket No. DG 17-152 (the ‘LCIRP case’)”).

²¹ *See* [Initial Brief of Intervenor, Terry Clark](#), at 3-4, 50.

jurisdiction over Liberty’s proposed energy facility, and dismiss the matter;²² and

- Even if the Commission opted to not defer to the SEC’s jurisdiction, Liberty’s petition for a declaratory ruling should be dismissed as Liberty’s petition clearly concerns authority for a change in the character of Liberty’s service in the City of Keene, *i.e.*, a change to a whole new fuel and substantial change in operations and the exercise of rights and privileges “not theretofore actually exercised in [Keene],” including the addition of a whole new business, in fact, with a gas plant and associated LNG and CNG facilities, which could not have been contemplated and included in the original grant of franchise authority, requiring approval by petition brought under [R.S.A. 374:22](#) and [R.S.A. 374:26](#).²³

A. The Decisions are Unlawful and Unreasonable Because They Violate Due Process and Ignore Rule Requirements Mandating Dismissal

18. Again, as was raised in the [joint motion for rehearing and reconsideration](#), *see id.* at ¶¶ 23-27, again at the April 6, 2018 pre-hearing conference in this matter, *see* discussion in ¶ 15, *infra*, and finally, again, in Clark’s [initial brief](#), at 49 and Footnote 59, the determination Liberty seeks can only result from a full adjudicative proceeding, with notice, discovery, a hearing, testimony and other evidence, public comment period, *etc.* This is required under the Commission’s own rules for declaratory rulings, *see* [Puc 207.01](#), [Puc 203.12](#), [Puc 102.07](#) and [Puc 203.18](#), and in cases brought under [R.S.A. 374:22](#) and [R.S.A. 374:26](#). *See id.*

²² This argument was made in Clark’s [initial brief](#), at 34-41, and in Clark’s [reply brief](#), at 3.

²³ This argument was made in Clark’s [initial brief](#), at 41-49, and in Clark’s [reply brief](#), at 6-10.

19. Again, as was raised in the [joint motion for rehearing and reconsideration](#), *see id.* at ¶¶ 10-11, 16-17, Liberty’s [petition](#) should have been dismissed under the Decisions for several other reasons under [Puc 207](#), *i.e.*, under [Puc 207.01\(b\)](#) for lack of verification under oath, under [Puc 207.01\(c\)\(1\)](#) for insufficient specificity and under [Puc 207.01\(c\)\(2\)](#) as speculative and failing to claim a present justiciable right.²⁴
20. The Decisions were unlawful and unreasonable because they issued in violation of [R.S.A. 374:22](#) and [R.S.A. 374:26](#) and the Commission’s own rules, including the due process requirements thereof, for the reasons previously urged by Clark.
21. The [Declaratory Ruling](#) was unlawful and unreasonable not only because it was grounded in the processing of this case without notice, hearing, public comment period, *etc.* as required by statute and under its own rules, in violation of due process—but also because it thus chilled and precluded public knowledge of the proceeding and opportunity for public input and intervention involving one of the

²⁴ The [Order](#) clarified, subsequent to the filing of the [joint motion for rehearing and reconsideration](#), that the Decisions were subject to a Settlement Agreement and [Order No. 25,736 \(Nov. 21, 2014\)](#) approving that agreement, whereby Liberty agreed, in acquiring the Keene franchise, to continue the operation of the propane-air system “as is,” “until the Commission approves otherwise.” *See* [Order](#) at 8-9. Consequently, Clark’s position on SEC matters raised in the [joint motion for rehearing and reconsideration](#), *see id.* at ¶¶ 12-17, has adapted: it is clear under the Keene Settlement Agreement and [Order No. 25,736 \(Nov. 21, 2014\)](#) approving the same that Liberty must first receive permission and authority from the Commission to allow Liberty to install the new natural gas system and phase out the air-propane system, under [R.S.A. 374:22](#) and [R.S.A. 374:26](#), as discussed below, before the SEC’s jurisdiction would be triggered, as it is too speculative now. **If** Liberty ever properly receives Commission authority under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) for its new natural gas business, then final SEC review and approval would be required for Liberty to operate its proposed new gas facilities, for the reasons previously urged, but Clark will not raise, only reserve the right to reassert, the SEC issues at this time. However, as discussed further below, Clark’s position that Liberty’s [petition](#) should be dismissed under [Puc 207.01\(c\)\(2\)](#) as speculative and failing to claim a present justiciable right, although raised with respect to the SEC issue, *see* [joint motion for rehearing and reconsideration](#) at ¶¶ 16-17, applies equally to require dismissal of this proceeding for Liberty’s failure to obtain permission and authority under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) before requesting that the Commission find that it already has it.

greatest public concerns of our time, the climate crisis, as well as other important concerns discussed in Clark’s pleadings.

22. The [Order](#) was particularly unlawful and unreasonable because it issued and repeated its procedural mistakes, and ignored Liberty’s failings under the rules, despite ample notice of these issues from Clark—mistakes and notice the Commission apparently “overlooked or mistakenly conceived.” See *Dumais v. State*, 118 N.H. 309, 311 (1978). Even if the Commission felt that it had somehow provided Clark with sufficient due process through the procedure followed subsequent to [Order No. 26,087 \(Dec. 18, 2017\)](#), the Commission “overlooked or mistakenly conceived” that due process was still not afforded other members of the public.
23. The result of the due process violations is that the Decisions are void, a nullity, of no force and effect, and should be vacated or expunged. See *Appeal of Morin*, 140 N.H. 515, 519 (1995)(“An agency, like a trial court, must ... comply with the governing statute, in both letter and spirit.”); *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1077 (1982)(Commission imprudency finding, improperly made in financing hearing under wrong standard, violated due process and ordered expunged); *Clark v. New Hampshire Dept. of Health and Welfare*, 114 N.H. 99, 104 (1974)(NH Department of Health and Welfare regulations contrary to statutory requirements held void); *Appeal of Gallant*, 125 N.H. 832, 834 (1984)(NH Department of Employment Security regulations void for conflicting with statutory requirement); *Attitash Mt. Service Co. v. Schuck*, 135 N.H. 427, 429 (1992)(“The law of this State is well settled that an administrative

agency must follow its own rules and regulations, and that an agency's interpretation of its own regulations is erroneous as a matter of law when it fails to embrace the plain meaning of its regulations.")(quotations and citations omitted); *Appeal of Morin, supra*, 140 N.H. at 518 (“An agency, like a trial court, must follow fair procedures and provide due process ...”)(citing *Appeal of Lathrop*, 122 N.H. 262, 265 (1982)); *WorldWide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)(a judgment rendered in violation of due process is void)(citing *Pennoyer v. Neff*, 95 U.S. 714, 732-733 (1878)); 2 Am.Jur.2d Judgments § 29 (2004)(“It is not necessary to take any steps to have a void judgment reversed or vacated ... Such a judgment is open to attack or impeachment in any proceeding ... direct ... or collateral ... and at any time ...”); *see also id.* at § 31 (1994)(“... A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication. Indeed, a void judgment ... has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any rights be based in it ... All proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose.”).

B. The Decisions are Unlawful and Unreasonable Because They Are Contrary to the Public Interest and Violate R.S.A. 378:37

24. In addition to all of Clark’s arguments to date²⁵ as to why that the Decisions are

²⁵ See [Joint Motion for Rehearing Under R.S.A. 541 of Terry Clark, One Movant, and Beverly Edwards, Elizabeth Fletch, Douglas Whitbeck, Gwen Whitbeck, Susan Durling, Julia Steed Mawson and Marilyn Learner, as They Collectively Comprise the NH Pipeline Health Study Group, and Individually, Initial Brief of Intervenor, Terry Clark](#) and [Reply Brief of Intervenor, Terry Clark](#), respectively.

unlawful or unreasonable with respect to the public interest and [R.S.A. 378:37](#) concerns raised by Clark, Clark complains that the Decisions are unlawful or unreasonable with respect to this issue for the following reasons.

25. The [Order](#) was unlawful and unreasonable because *it did not even consider this issue*, which, again, is grounded in significant public concerns,²⁶ despite recognizing it:

“Mr. Clark argued that Liberty’s petition for a declaratory ruling could not be granted because the conversion is part of Liberty’s broader expansion plans under consideration in Docket No. DG 17-152. That docket concerns the Company’s Least Cost Integrated Resource Plan (LCIRP) under RSA 378:39. Mr. Clark challenged Liberty’s LCIRP as contrary to the public interest and to the requirements of the state energy policy codified in RSA 378:37. He argued that the Commission should stay its decision on the Petition until DG 17-152 has been decided.”

Id. at 5. Liberty clearly is planning on expanding in Keene, the [Order](#) will obviously further those plans, and the Commission knew both of these facts at the time of the [Order](#), *see* discussion in ¶ 6, *supra*; yet, again, the [Order](#) did not even consider the enormous concerns raised by Clark, although they are an obvious impact of the [Order](#).

26. The [Order](#) was unlawful and unreasonable because it is contrary to the only lawful, reasonable decision that could be made consistent with the public interest and [R.S.A. 378:37](#), *i.e.*, dismissal or other denial of the [petition](#) in some form, if the public interest/[R.S.A. 378:37](#) issue had been considered.
27. Besides the facts and arguments raised in Clark’s pleadings in this case, the [Order](#)’s consideration of the issue should have included three well-publicized, important matters which occurred subsequent to the final May 15, 2018 briefing

²⁶ See [Initial Brief of Intervenor, Terry Clark](#), at 6-13.

deadline in this matter. These matters should have been considered *sua sponte* or otherwise on the Commission’s own initiative, as (a) they are clearly extremely relevant to the correct outcome in the decision, (b) they should have been known to the Commission, as all were well-publicized and two (the reports) were discussed in Clark’s Docket No. DG 17-152 pleadings which were considered and decided by the Commission before the [Order](#),²⁷ (c) they concern matters of great potential public harms and real public interest, and therefore should have been considered by the Commission, and (d) the Commission clearly could have considered them, by administrative notice pursuant to [Puc 203.27](#). See [Order No. 26,057 \(Sept. 19, 2017\)](#) at 6. All strongly repudiate the lawfulness and reasonableness of the [Order](#):

- the Merrimack Valley gas disaster on September 13, 2018, caused by a high-pressure natural gas incident, which resulted in “a series of explosions and fires” that damaged 131 structures, including destroying five homes, killed one individual and injured 28 others;²⁸

²⁷ The IPCC report was discussed in [Intervenor, Terry Clark’s, Objection to and Motion to Strike Liberty’s Supplemental Filing](#) at 24-25, and “The Fourth National Climate Assessment,” Vol. 2, was discussed in ¶¶ 32-34 and Footnote 17 of the same pleading, filed on May 10, 2019 in Docket No. DG 17-152; and the IPCC report was discussed, again, at length in [Intervenor, Terry Clark’s, Response to Liberty Utilities’ June 28, 2019 Filing and Correspondence](#) at ¶¶ 9-10, 17, filed on July 8, 2019 in Docket No. DG 17-152. Both of these pleadings were decided under [Order No. 26,286 \(Aug. 12, 2019\)](#).

²⁸ See National Safety Transportation Board “Preliminary Report Pipeline: Over-pressure of a Columbia Gas of Massachusetts Low-pressure Natural Gas Distribution System, Executive Summary” online at <https://www.nts.gov/investigations/AccidentReports/Pages/PLD18MR003-preliminary-report.aspx>. See also https://en.wikipedia.org/wiki/Merrimack_Valley_gas_explosions.

- the release of a 13-agency federal government report, "[The Fourth National Climate Assessment](#)," Vol. 2,²⁹ by the Trump Administration in November, 2018, which finds, in part, that:

“In the absence of significant global mitigation action and regional adaptation efforts, rising temperatures, sea level rise, and changes in extreme events are expected to increasingly disrupt and damage critical infrastructure and property, labor productivity, and the vitality of our communities. Regional economies and industries that depend on natural resources and favorable climate conditions, such as agriculture, tourism, and fisheries, are vulnerable to the growing impacts of climate change. Rising temperatures are projected to reduce the efficiency of power generation while increasing energy demands, resulting in higher electricity costs. The impacts of climate change beyond our borders are expected to increasingly affect our trade and economy, including import and export prices and U.S. businesses with overseas operations and supply chains. Some aspects of our economy may see slight near-term improvements in a modestly warmer world. However, the continued warming that is projected to occur without substantial and sustained reductions in global greenhouse gas emissions is expected to cause substantial net damage to the U.S. economy throughout this century, especially in the absence of increased adaptation efforts. With continued growth in emissions at historic rates, annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century—more than the current gross domestic product (GDP) of many U.S. states.”

Id. at 25-26; and

- the issuance of the Intergovernmental Panel on Climate Change (“IPCC”) special report³⁰ in October, 2018.

²⁹ "[The Fourth National Climate Assessment](#)," Vol. 2, cited as USGCRP, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.

³⁰ IPCC, 2018: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A.

28. The IPCC report has caused tremendous concern. In this report, the IPCC, a United Nations intergovernmental body tasked with assessing climate change and the world's leading international authority on the matter,³¹ warns that:

- We are in desperate straits with climate change. Currently at only 1°C global warming, we are on a path for 3°C warming by 2100, with continuing warming afterwards;
- We will be much worse at even 1.5°C warming, with substantial increases in climate-related harms to health, food and water supplies, livelihoods, economic growth and human security;
- Just a half of a degree increase from 1.5°C to 2°C global warming will significantly increase the risks and harms of droughts, floods, extreme heat and other climate-related events;
- We have only until about 2030 to reduce emissions sufficiently to limit global warming to 1.5°C, and only then if we cut emissions by about 45% from 2010 rates (which have gone up since then), which will require an incredibly ambitious, united, sustained worldwide effort. Even then, to limit global warming to 1.5°C, we will have to achieve net-zero in human-caused emissions by about 2050;

Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press. The entire report may be downloaded at https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf or from <https://www.ipcc.ch/sr15/download/>.

³¹ See IPCC website <https://archive.ipcc.ch/organization/organization.shtml>.

-- *Everything* we do to mitigate, or increase, warming is important as every fraction of a degree will make a difference.³²

29. Had the aforementioned reports and Merrimack Valley gas disaster been properly considered under the [Order](#)—as they must be considered now, as new evidence,³³ and pursuant to [Puc 203.27](#) as Clark requests it—no lawful, reasonable, decision could be reached, particularly in light of the 2030 and 2050 deadlines under the IPCC report and knowledge that “everything matters,” but that Liberty’s plans are contrary to the public interest and [R.S.A. 378:37](#).
30. While it is impossible to know why the public interest/[R.S.A. 378:37](#) issue was not considered under the [Order](#), the [Order](#) was unlawfully and unreasonably grounded, and “overlooked or mistakenly conceived”³⁴ the facts and prior Commission orders, if it interpreted Clark’s position regarding expansion to be dependent upon the Keene franchise being covered by the LCIRP under

³² Again, the entire report may be downloaded at https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf or from <https://www.ipcc.ch/sr15/download/>. A “Summary for Policymakers” should be available at <https://www.ipcc.ch/sr15/chapter/spm/>. In any event, the “Summary for Policymakers” should be locatable by its citation: IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press. See also “IPCC Press Release” dated October 8, 2018 available at [file:///C:/Users/RMHus/Desktop/Pipeline/PUC%20Docket%20DG%2017-152%20\(LCIRP\)/Testimony/Attachments/pr_181008_P48_spm_en.pdf](file:///C:/Users/RMHus/Desktop/Pipeline/PUC%20Docket%20DG%2017-152%20(LCIRP)/Testimony/Attachments/pr_181008_P48_spm_en.pdf) (“Every extra bit of warming matters, especially since warming of 1.5°C or higher increases the risk associated with long-lasting or irreversible changes, such as the loss of some ecosystems,” said Hans-Otto Pörtner, Co-Chair of IPCC Working Group II.”).

³³ See [Order No. 25,546 \(Jul. 15, 2013\)](#) at 6, and cases cited therein.

³⁴ *Id.*

consideration in Docket No. DG 17-152. Clark’s claim is that Keene is part of **Liberty’s** expansion plans, which they are, and that those plans are being considered in the LCIRP case, which they are—the bulk of those plans. The fact that Liberty was conducting its business when this case commenced, as one corporation, under two books of business, one for the so-called “Keene Division,” the rest being covered by the LCIRP under consideration in Docket No. DG 17-152, does not make the Keene expansion plans being considered here any less **Liberty’s** expansion plans. There is only one entity, one Liberty involved in both proceedings, as there always has been at all relevant times: the “Keene Division” is just former NH Gas that Liberty acquired and swallowed up, by merger, under the terms of the [Settlement Agreement](#) approved by the Commission under [Order No. 25,736 \(Nov. 21, 2014\)](#) in Docket No. DG 14-155. This is all clearly established and acknowledged under the [Order](#), either directly in discussion or indirectly by repeated reference to the [Settlement Agreement](#), [Order No. 25,736 \(Nov. 21, 2014\)](#) and Docket No. DG 14-155, *see* [Order](#) at 8-12 and Footnote 3, and thus the Commission should not have overlooked or misconceived it, if it did. In any event, any potential defense grounded in a “Keene difference” appears to be mooted by the recent rate decision, [Order No. 26,122 \(Apr. 27, 2018\)](#) in Docket No. DG 17-048, one or the other of which (decision or docket) are discussed or cited several times in the [Order](#) as guiding the Commission’s decision-making. *See* [Order](#) at 9-10, 12. [Order No. 26,122 \(Apr. 27, 2018\)](#) seems to put the Keene business in the same book with the rest of Liberty’s business, thereby presumably requiring Keene coverage under the same LCIRP as all of the

rest of Liberty's franchises, if it was not already so covered. The real question is: how can the Keene franchise not be a part of the LCIRP case review? There does not appear to be any other proceeding covering Keene and, by law, there has to be a plan—it is part of the utility's service area. *See* [R.S.A. 374:38](#) Particularly, as it would seem to allow Liberty to skirt the law, the Commission should never even consider such a defense to Clark's claim.

31. The [Order](#) is unreasonable because, after no decision for 14 months following briefing, it issued less than four months before the LCIRP case hearing (November 21-22, 2019), the Commission should have been aware of this as part of the schedule for the docket, both cases are grounded in the same arguments and important concerns, there is no immediate need to advance Liberty's plans that is more compelling than the need to properly assess and address those concerns (especially one of the magnitude of the climate crisis), and yet the [Order](#) failed to grant Clark's request to stay this proceeding until the LCIRP case decision, to make sure that the decisions are consonant and the Commission gets the decision in this case right. Hopefully, the [Order](#) was not rushed due to Liberty's [request for the Commission to promptly resolve the Motion for Rehearing](#), but there is no rationale reason why the impacts of expansion should be deemed too much against the public interest and [R.S.A. 378:37](#) to be approved in the rest of New Hampshire, but not Keene, so Clark's stay request should have been granted.
32. The Decisions are unlawful and unreasonable because, even if the Commission could lawfully and reasonably deem that there was a compelling need supporting some aspect of the authorization Liberty seeks over the climate and other

concerns raised in this proceeding, such a need could only possibly go to the conversion part of Liberty's plans, *i.e.*, to ensure service to the existing propane-air customers, and should have been expressly limited to that: Liberty's expansion plans cannot be deemed superior to the climate and other concerns associated with their approval, for the reasons aforesaid, and the [Order](#) could and should have attempted to mitigate its potential harms, accordingly. Clark believes that a far better result, in terms of the public interest and policies of [R.S.A. 378:37](#), would be for Liberty to close this proceeding for converting existing propane-air customers to natural gas, and open a new docket for converting them to some form of sustainable, green energy, but the express limitation suggested herein would be far closer to supportable than the Decisions.

33. The Decisions are unlawful and unreasonable because there is no compelling need to convert Liberty's existing Keene propane-air customers to natural gas, especially as the conversion may take up to seven years. *See* Docket No. DG 17-048, [Exhibit 24A](#), [Bates page 077](#). New Hampshire has tremendous green energy potential. *See* discussion on DES website at <https://www.des.nh.gov/organization/divisions/air/tsb/tps/energy/categories/overview.htm>. Green energy projects are popping up all of the time in New Hampshire, and we may soon be looking at extremely large volume availability: offshore wind—which is one of the cheapest ways to produce electricity, and getting cheaper.³⁵ If it happens, and it should, given not only the public demand for green

³⁵ *See* August 28, 2017 online Scientific American article “Wind Energy is One of the Cheapest Sources of Electricity, and It’s Getting Cheaper,” by Robert Fares, at <https://blogs.scientificamerican.com/plugged-in/wind-energy-is-one-of-the-cheapest-sources-of-electricity-and-its-getting-cheaper/>.

energy but Governor Sununu’s strong support for offshore wind, as shown by the attached **Exhibit “A,”** we should be well on our way to completely transitioning New Hampshire to completely sustainable, local energy. “[O]ne of the strongest opportunities for offshore wind production in the world” is right off our coast, per our own governor (*see Exhibit “A”*), and turbine development may be as little as four years away.³⁶ Offshore wind presents as much as 3,400 megawatts of electric energy potential for New Hampshire—almost as much as *three* Seabrook nuclear power plants (roughly 1,244 MW rated capacity), only of clean, green energy—along with tremendous job opportunities and positive economic impacts.³⁷ So, again, there is no need to rush into the project at issue here; a more reasoned approach would be some patience.

34. The Decisions are unlawful and unreasonable because the City of Keene is attempting to wean off natural gas in favor of sustainable energy as soon as possible to responsibly address the climate crisis, and the Decisions only compound Keene’s task by potentially adding a lot more natural gas users to the current number of propane-users (approximately 1200) the city had to convert before the Decisions. The Decisions overlooked, misconceived, or simply ignored, this outcome.

³⁶ See March 29, 2019 online article “Energy Industry Says N.H. Could Soon See Offshore Wind, Modernized Grid, More E.V. Chargers,” at <http://www.nhenergyfuture.org/2019/03/29/energy-industry-says-n-h-could-soon-see-offshore-wind-modernized-grid-more-e-v-chargers/>.

³⁷ See March 8, 2019 online NH Business Review article, “Offshore wind getting its sea legs in New Hampshire,” by Michael Behrmann, at <https://www.nhbr.com/offshore-wind-getting-its-sea-legs-in-new-hampshire/>.

35. The [Order](#) is unlawful and unreasonable because, even if it is deemed otherwise supportable, it could and should have allowed Clark and the public to be involved in the approval process for each the five phases of the Keene project, but apparently eliminates them from that process. If true, the [Order](#) will result in continuing violations of the due process rights of Clark and the public, for the reasons aforesaid. **Clark requests clarification of this part of the [Order](#)**, as well, if this matter is not dismissed as otherwise requested.

C. The Decisions are Unlawful and Unreasonable Because the Requested Relief Could Only be Considered Under a Petition Pursuant to R.S.A. 374:22 and R.S.A. 374:26

36. In addition to all of Clark’s arguments to date³⁸ as to why that the Decisions are unlawful or unreasonable with respect to their determination(s) on the [R.S.A. 374:22/R.S.A. 374:26](#) issue, Clark complains that the Decisions are unlawful or unreasonable with respect to this issue for the following reasons.

37. The Decisions are unlawful and unreasonable because they fail to address, or, at least, adequately and reasonably address, why an “extensive whole-system” change, resulting in an all new “separate and distinct” natural gas system, using a whole new fuel, and a permanent LNG gas plant with a 100,000 gallon storage tank, compression and ejection equipment and CNG facilities, *etc., etc.*, as is

³⁸ See [Joint Motion for Rehearing Under R.S.A. 541 of Terry Clark, One Movant, and Beverly Edwards, Elizabeth Fletch, Douglas Whitbeck, Gwen Whitbeck, Susan Durling, Julia Steed Mawson and Marilyn Learner, as They Collectively Comprise the NH Pipeline Health Study Group, and Individually, Initial Brief of Intervenor, Terry Clark and Reply Brief of Intervenor, Terry Clark](#), respectively.

established in the [Order](#)³⁹ and Clark’s pleadings,⁴⁰ would not constitute “a change in the character of *service*,” and the exercise of rights and privileges “not theretofore actually exercised in [Keene],” or otherwise require approval under that portion of [R.S.A. 374:22](#) which expressly provides that no utility

“ ... 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). In fact, approval under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) was clearly required, as urged by Staff and Clark.

38. The Decisions are unlawful and unreasonable because they fail to address, or, at least, adequately and reasonably address, Clark’s meritorious arguments against a finding of authority under the original Keene franchise, including the arguments that (a) Liberty’s original franchise rights were fixed by the four corners of the grant and could not be changed, regardless of the business actually conducted, except by further legislative permission granted under [R.S.A. 374:22](#) and [R.S.A. 374:26](#), (b) CNG and LNG cannot be considered the same “gas” that was authorized under the Keene franchise grant as CNG and LNG, and even natural gas, were still unknown as of the time of the franchise grant in 1860 and cannot be considered to be included within the intent of the grant under *Allied New Hampshire Gas Co. v. Tri-State Gas & Supply Co.*, 107 N.H. 306, 308 (1966), (c)

³⁹ See *id.* at 2, 8, 9, 12 13.

⁴⁰ See [Initial Brief of Intervenor, Terry Clark](#) at 1, 44-48 and [Exhibit “C”](#); [Reply Brief of Intervenor, Terry Clark](#) at 3, 9 and Footnotes 1, 5.

Liberty has not established that the natural gas it proposes to use for its new system is of the “same character” as that authorized under the franchise grant—in fact, it claims that it does not even know what is in its “natural” gas, but admits that it is a new fuel compared to propane-air—and (d) even if such authority could be read into the original grant, it was never “theretofore actually exercised” and thus lost, requiring new permission under [R.S.A. 374:22](#) and [R.S.A. 374:26](#).⁴¹ The Decisions were especially unlawful and unreasonable in acknowledging under the [Order](#) that the only three decisions relied on for the Commission’s “same character” determination under the [Declaratory Ruling—Gas Service, Inc.](#), 58 NH PUC 48 (July 24, 1973); *Manchester Gas Company*, 58 NH PUC 71 (October 2, 1973); *Concord Natural Gas Corp.*, 58 NH PUC 78 (October 16, 1973), *see id.* at 3—are inapposite, as Clark argued in his [initial brief](#) at 48, without appropriately changing the outcome under the [Order](#).

39. The Decisions are unlawful and unreasonable in acknowledging that, by its own [Settlement Agreement](#) and [Order No. 25,736 \(Nov. 21, 2014\)](#) approving that agreement in Docket No. DG 14-155, Liberty was required to accept the Keene franchise “as is,” and to obtain prior permission from the Commission before making any changes to the Keene franchise, *see* [Order](#) at 8-9, and thus clearly did *not* have the authority found under the Decisions, but had to petition for it under [R.S.A. 374:22](#) and [R.S.A. 374:26](#). The Decisions overlooked or misconceived the legal significance of the [Settlement Agreement](#) and [Order No. 25,736 \(Nov. 21, 2014\)](#), despite having clear knowledge of both by its discussion of both in support

⁴¹ *See* [Initial Brief of Intervenor, Terry Clark](#) at 41-49; [Reply Brief of Intervenor, Terry Clark](#) at 6-10 and Footnotes 4, 5.

of the Decisions. *See* discussion, *supra*, at ¶ 30. The Decisions even expressly recognized that Liberty’s authority is “as approved in its acquisition of New Hampshire Gas Corp. in Docket No. DG 14-155,” *see* [Order](#) at 8, yet ruled to the contrary, in violation of the [Settlement Agreement](#) and its own [Order No. 25,736 \(Nov. 21, 2014\)](#) approving the agreement’s terms.

40. If the Decisions were guided by a Commission concern to bail Liberty out of a “bad deal” visa-a-vis the Keene franchise, the concern was unreasonable and ultimately unlawful in light of the result and far more compelling climate and other concerns raised by Clark, particularly as Liberty agreed to acquire and operate the Keene franchise “as is,” with no guarantee that the Commission would ever approve the new business and expansion it now seeks. Purely financial considerations do not outweigh the public good, especially in a crisis situation, and Liberty has offered nothing in this proceeding to show that the company, as a whole, will not be financially stable without Keene expansion, and thus nothing to argue that its plans may comport with the public interest and [R.S.A. 378:37](#).⁴²
41. The Decisions are unlawful and unreasonable in recognizing that declaratory judgments cannot be based on hypothetical, speculative rights, *see* [Order](#) at 8,⁴³

⁴² *See* discussion in [Intervenor, Terry Clark’s, Response to Liberty Utilities’ June 28, 2019 Filing and Correspondence](#) at ¶ 8 and Footnote 10, filed in Docket No. DG 17-152.

⁴³ The [Order](#) acknowledges that:

“A party seeking a declaratory ruling must ‘show that the facts are sufficiently complete, mature, proximate, and ripe ... to warrant the grant of ... relief.’ *Merchants Mutual Casualty Co. v. Kennett*, 90 N.H. 253, 255, 7 A.2d 249, 250–51 (1939) DG 17-068 - 7 - (quotations omitted). A petition for declaratory ruling ‘cannot be based on a set of hypothetical facts.’ *Silver Brothers, Inc. v. Wallin*, 122 N.H. 1138, 1140, 455 A.2d 1011, 1013 (1982) (citing *Salem Coalition for Caution v. Town of Salem*, 121 N.H. 694, 433 A.2d 1297 (1981)); *see also* Puc 207.01.”

Id. at 8.

then finding that Liberty was already authorized, without any additional approval or authority, to install and operate entirely new CNG and LNG systems when the [Settlement Agreement](#) makes clear that Liberty is not authorized to do anything new without further Commission approval. Decisions cannot find *existing* authority in their grant of it. The discussion of this issue in the [joint motion for rehearing and reconsideration](#) at ¶ 16-17, although focused on the SEC jurisdictional issue (not reasserted at this time, *see* Footnote 24, *supra*), should have been instructive, requiring dismissal of this proceeding under [Puc 207.01](#) as speculative and failing to claim a present justiciable right, but the Commission apparently overlooked or misconceived it.

42. The Decisions were particularly unlawful and unreasonable because they may prove horrible precedent which takes away a town or city's right to choose if it wants LNG and/or CNG services, with all of the various concerns they present without notice, the opportunity to intervene or otherwise be heard through public comment, or hearing, and pave the way for more natural gas expansion and greenhouse gas emissions throughout the state just 11 years before the IPCC report's circa 2030 deadline for drastically reducing emissions to responsibly address climate change. The public should have been involved in any decision involving a change of the [Settlement Agreement](#) terms, especially given the potential impact of such a change, as established in this matter, and such authorization should have occurred through the same full adjudicatory proceeding, with notice, the opportunity for intervention and public comment, and

a hearing, as the one approving the Settlement Agreement. See [Order of Notice in Docket No. DG 14-155](#). As discussed in Clark's [initial brief](#):

“As it is extremely broadly worded and not limited to the subject Keene franchise, or even petitioning utility, the [Declaratory Ruling] facially allows for Liberty and Unitil to ‘supplement’ their current gas services in the more than 50 New Hampshire municipalities they hold franchises for to include LNG and/or CNG, and build associated gas plants in every franchise, if they want, without having to seek further Commission or Site Evaluation Committee (‘SEC’) approval. Such services could be implemented, virtually overnight, again, without notice or a hearing, or the opportunity for any public challenge or even input respecting any of them. Thus, the [Declaratory Ruling] has the potential to dramatically increase gas use, and dependency, statewide, as it allows CNG/LNG to be transported to service areas that are unreachable by current pipeline constrained gas systems. See Testimony of William J. Clark in Commission Docket No. DG 16- 852 at 9:3-6. 1 Moreover, as it suggests no parameters as to what will be considered ‘gas’ going forward, the [Declaratory Ruling] stands for ‘gas is gas’ precedent that allows the industry to essentially sell whatever it wants for the fuel, without public scrutiny, so long as it continues to call it ‘natural.’”

Id. at 2-3. Despite the [Order](#)'s attempt to rein in the [Declaratory Ruling](#),⁴⁴ it falls far short of the mark, minimally, because it still does not require [R.S.A. 374:22](#) approval for the type of changes allowed by the Decisions, and thus still allows for changes without notice, hearing or other rights afforded the public under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) and full adjudicative proceedings.

“[R]egulatory oversight,” [Order](#) at 8, is not a substitute for statutory requirements and the public’s rights to notice and be heard.

43. Clark asserts that the aforementioned grounds establish why the Decisions are unlawful, unreasonable and otherwise unsustainable, and why his request for reconsideration of and a rehearing on the Order should be granted.

⁴⁴ See [Order](#) at 8 (“Order No. 26,065 was not intended to be read to permit a public utility that provides gas to customers in a defined franchise service territory to provide any type of gas in any manner that it might deem expedient, without further regulatory oversight or approvals.”).

WHEREFORE, for the reasons expressed, Clark respectfully requests that the

Commission:

- A. Grant this motion; and
- B. Vacate the Decisions, for violations of due process and to avoid the potential bad precedent discussed herein; and
- C. Dismiss this matter on the merits, as contrary to the public interest and [R.S.A. 378:37](#); or
- D. Dismiss this matter and order that Liberty file a petition for the relief it seeks under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) (any decision under such relief should clearly post-date the LCIRP case decision at this point, and thus be consonant therewith, so Clark drops his prior request for a stay of this proceeding pending the LCIRP case decision); and
- E. If this matter is not dismissed (contrary to Clark's Prayers C and D above), clarify the terms of its [Order No. 26,274 \(Jul. 26, 2019\)](#) as to the involvement of Clark and the public in the approval proceedings, and related Liberty filings, going forward (*see* ¶ 35, *supra*); and
- F. Grant such other and further relief as is just and proper.

Respectfully submitted,

Dated: August 26, 2019

//s//Richard M. Husband, Esquire
Richard M. Husband
10 Mallard Court
Litchfield, NH 03052
N.H. Bar No. 6532
Telephone No. (603)883-1218
E-mail: RMHusband@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 26th day of August, 2019, submitted an original and six copies of this motion to the Commission by hand delivery, with copies e-mailed to the petitioner and the Consumer Advocate. I further certify that I have, on this 26th day of August, 2019, served an electronic copy of this pleading on every other person/party 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
Richard M. Husband