

# **EXHIBIT “A”**



## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2019-0629, Appeal of Terry Clark, the court on August 17, 2020, issued the following order:**

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We affirm.

The appellant, Terry Clark, appeals decisions of the New Hampshire Public Utilities Commission (commission) granting a petition of Liberty Utilities (EnergyNorth Natural Gas) Corporation (Liberty Utilities) for a declaratory ruling, see N.H. Admin R., Puc 207, thereby establishing that Liberty Utilities has the right, under its existing franchise, to provide compressed natural gas and liquefied natural gas to its customers in Keene, and that Liberty Utilities was not required to seek a new franchise in a proceeding pursuant to RSA 374:22 and :26 (2009 & Supp. 2019). On appeal, the appellant argues that the commission's decisions are contrary to the public interest and RSA 378:37 (Supp. 2019) because of alleged environmental costs and safety issues attributable to natural gas production and consumption. The appellant further argues that the commission erred by not expressly addressing all of his arguments, by determining that Liberty Utilities' existing franchise encompasses the provision of natural gas, by not providing rights of discovery and cross-examination allegedly in violation of the commission's rules and due process, and by allegedly not holding Liberty Utilities to its burden of proof.

RSA chapter 541 governs our review of the commission's decisions. RSA 365:21 (Supp. 2019); Appeal of Northern New England Tele. Operations, LLC, 165 N.H. 267, 271 (2013). Under RSA 541:13 (2007), we will not set aside the commission's order except for errors of law, unless we are satisfied, by a clear preponderance of the evidence, that it is unjust or unreasonable. The commission's findings of fact are presumed prima facie lawful and reasonable. RSA 541:13. The party seeking to set an order of the commission aside bears the burden of demonstrating that the order is contrary to law or, by a clear preponderance of the evidence, unjust or unreasonable. Northern New England Tele., 165 N.H. at 270.

In his challenge to the merits of the commission's decision, the appellant makes several policy arguments inapplicable to the narrow issue before the commission concerning the scope of Liberty Utilities' franchise. In his procedural challenges, the appellant takes issue with a process to which he did not meaningfully object. The appealing party has the burden on appeal of

demonstrating reversible error. Gallo v. Traina, 166 N.H. 737, 740 (2014). Based upon our review of the commission's orders, the appellant's challenges to them, the relevant law, and the record submitted on appeal, we conclude that the appellant has not demonstrated reversible error. See id.

Affirmed.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

**Timothy A. Gudas,  
Clerk**

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# **EXHIBIT “B”**



THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

NO. 2019-0629

APPEAL OF TERRY CLARK

**AFFIDAVIT OF MARK STEVENS IN SUPPORT OF APPELLEE'S OBJECTION TO  
APPELLANT'S EMERGENCY MOTION**

I, Mark Stevens, hereby depose and state as follows:

1. I am a Business Development Professional at Liberty Utilities (EnergyNorth Natural Gas) Corp. ("Liberty"). I make this Affidavit on personal knowledge.
2. In my capacity as a Business Development Professional, I have been the point person for Liberty's work in Keene with regard to the conversion of the existing propane-air system to natural gas, as well as the expansion of Liberty's capabilities to deliver natural gas within the Keene area, which will occur in 5 total phases (the "Project").
3. To my knowledge, Liberty initially received approval to distribute natural gas under its existing franchise right in Keene by the Public Utilities Commission (the "Commission") in Order No. 26,065 (Oct. 20, 2017).
4. After Appellant intervened in the Commission Docket No. 17-068, the Commission published Orders No. 26,274 (Jul. 26, 2019) and No. 26,294 (Sep. 25, 2019) (collectively, with Order No. 26,065, the "Commission Orders") which contain various approvals, clarifications, and conditions that apply to Liberty for conversion and expansion of natural gas in Keene. True and accurate copies of the Commission Orders are attached hereto as Exhibits A, B, and C, respectively.

5. The Commission Orders confirmed that Liberty has authority to supply compressed natural gas (“CNG”) and liquefied natural gas (“LNG”) in Keene under its existing franchise and it did not need to petition the Commission for the grant of a new franchise to do so. The Commission Orders also contain certain conditions for the Project related to engineering and safety.

6. With the Commission’s knowledge and approval, Liberty began work on Phase I in September 2019 and completed that Phase on approximately October 4, 2019.

7. Phase I of the conversion consisted of converting 18 customers in the Monadnock Marketplace from an antiquated propane-air system to natural gas distributed from a temporary facility.

8. Phase I took several months of advanced planning, arranging for contractors to be available, obtaining necessary supplies, and then several days of the actual conversion work in order to safely complete the conversion.

9. Specifically, Liberty accomplished the Phase I conversion as follows: shut down the customers’ equipment; isolated the piping that would be used to deliver natural gas from the piping that will continue to deliver propane-air to other customers; purged the propane-air from that piping; modify customers’ equipment so that it could burn natural gas, in some occasions replacing it entirely; injected natural gas into the newly isolated underground piping; tested all the new connections and valves; opened the customer meters to allow the natural gas to enter their property; relit the appliances; and finally, conducted extensive safety checks.

10. Since it was necessary for all gas and heat to be turned off entirely to accomplish the conversion, it was vital that Liberty was able to complete Phase I before temperatures began to drop. For this reason, conversion is difficult to complete safely in typical winter temperatures.

11. The natural gas serving the 18 Monadnock Marketplace customers is being distributed from a temporary compressed natural gas (“CNG”) facility on Production Avenue in Keene (the “Temporary Facility”). This temporary facility was inspected by the Public Utilities Commission Safety Division (“Staff”) in November 2017, prior to pressure testing, and in April 2018, after pressure testing. Staff inspected the Temporary Facility again in April 2019, shortly before filing its April 16, 2019 recommendation. Staff personnel were also present during the Phase I conversion process of the Project in September and October 2019.

12. Following certain clarifications and changes that Liberty made, as noted in a February 28, 2019 letter and status report filed with Staff and the Commission, Staff deemed the Temporary Facility adequate effective April 16, 2019. Attached hereto as Exhibits D and E are true and accurate copies of both Liberty’s February 28, 2019 filing and Staff’s April 16, 2019 recommendation letter filed with the Commission, respectively.

13. The Temporary Facility is sufficient for the existing Monadnock Marketplace customers but would not be capable of serving many additional customers. As such, Liberty has been in the process of identifying the land and relevant permits in order to construct a permanent distribution facility in Keene (the “Permanent Facility”).

14. Liberty will need to take several steps before it can proceed with construction of the Permanent Facility. This is estimated to take at least 12 months.

15. Once the Permanent Facility is fully constructed, Liberty will need to receive various approvals from the Commission before the facility is fully and legally operational. The construction and receipt of safety approvals are estimated to take at least 3 months.

16. Liberty cannot commence with Phase II of the conversion until the Permanent Facility is fully operational, which is not estimated to be until the spring of 2021 at the earliest.

17. Liberty is not engaged in any ongoing construction activity related to the conversion in Keene at this time, and will not resume any conversion work until the Permanent Facility is constructed and Phase II receives Commission approval as described in the Commission Orders.

18. Phases II through V will involve the staged conversion of Liberty's 1,200 existing propane-air customers to natural gas and the addition of new customers who choose natural gas for their heating and process needs. These remaining phases of the Project are phased geographically, spreading out from the general vicinity of the Permanent Facility. Liberty anticipates no more than one phase will be completed per year (i.e. one phase for each construction season), with total completion estimated in approximately 5 years.

19. To my knowledge, Commission Orders No. 26,274 and No. 26,294 required Liberty to make certain filings within 90 days of July 26, 2019. On October 24, 2019, Liberty filed several documents with the Commission in compliance with those Orders. This filing included conversion plans for Phase I, a detailed report of all costs incurred and estimated for Phase I, as well as operating and maintenance procedures. A true and accurate copy of the October 24, 2019 filings is attached hereto as Exhibit F.

20. The detailed report of costs included with the October 24, 2019 letter did not include a DCF analysis. In order to perform a DCF analysis, Liberty would have needed customer commitment data, from which Liberty can estimate revenues, which we were exempted from providing in Order No. 26,294. DCF analyses cannot be performed based on engineering plans alone.

21. If Liberty were required to reconvert those 18 Monadnock Marketplace customers back to propane-air, the process would be an arduous one, and include the following steps:



a. Any reconversion would have to occur one customer at time overnight to minimize the impact of lost service to each customer, although it is not necessarily possible to completely eliminate that impact.

b. One by one, the natural gas would be purged out of each service. As things stand now, all of the purge points from the initial conversion to natural gas have been retired and pavement restored. A reconversion would require that Liberty excavate again to reinstall purge points and then remove once again when finished.

c. The orifices on each appliance would need to be replaced with new orifices that are compatible with propane use. Currently, all of the customers' equipment has essentially been returned to original standards to operate on natural gas, with some equipment having even been replaced. While this equipment is covered under warranties now, those warranties are for the use of natural gas only. If customers were placed back on propane-air, the equipment would no longer be covered under these warranties due to the modifications to make it operate on the propane-air.

d. Once each customer's service was fully purged and all their appliances ready for conversion, the "blowers" at the Emerald Street distribution facility would have to be brought back online and propane would be reintroduced into the service. This process would continue for each customer currently connected onto the natural gas system. Then, after all 18 customers were converted back to propane, the CNG skid would need to be completely separated from the propane-air system and decommissioned. Liberty would also have to reconnect the main at Key Road. All meter sets would need to get rebuilt to support the propane-air system again, such as different regulators and larger meters.

Mark/St 2/3/2020  
Mark Stevens

Grafton, SS

STATE OF NEW HAMPSHIRE

Before me at Lebanon, New Hampshire, on 3rd February, 2020, Mark Stevens personally appeared and has sworn and signed before me that the above is true and accurate to the best of his knowledge.

Karen Anne Sinville  
Karen Anne Sinville, Justice of the Peace

My Commission Expires: 8/14/2024



**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of February 2020, the foregoing pleading has been served via the New Hampshire Supreme Court's electronic filing system on all parties who have registered through the system.

*/s/ Terri L. Pastori*\_\_\_\_\_

Terri L. Pastori