

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

NO. _____

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES – KEENE DIVISION
PUBLIC UTILITIES COMMISSION CASE DG-17-068

APPEAL OF TERRY CLARK BY PETITION
PURSUANT TO R.S.A. 541:6 AND SUPREME COURT RULE 10

APPENDIX

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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DG 17-068

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES – KEENE DIVISION

Petition for Declaratory Ruling

Order Affirming and Clarifying Declaratory Ruling

O R D E R N O. 26,274

July 26, 2019

In this Order, the Commission confirms its prior declaratory ruling, clarifies the scope of that ruling, approves the initiation of Phase I of the proposed conversion of the Keene distribution system from propane-air to compressed natural gas, and directs Liberty to comply with reporting and operational requirements for Phases II through V of the system conversion.

I. PROCEDURAL HISTORY

On April 24, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division (Liberty or the Company) filed a Petition for Declaratory Ruling and two days later, the Company submitted a Revised Petition for Declaratory Ruling (Petition) pursuant to N.H. Code Admin. Rules Puc 203 and Puc 207. Specifically, Liberty requested a ruling “that it need not seek permission under RSAs 374:22 and 374:26 to distribute natural gas in the City of Keene, because Liberty’s existing franchise to distribute ‘gas’ already includes ‘natural gas.’” Petition at 1.

On October 20, 2017, the Commission issued Order No. 26,065 granting the requested ruling and imposing conditions relating to engineering and operational safety.

On November 16, 2017, Terry Clark, a resident of Keene (Mr. Clark), and the NH Pipeline Health Study Group (the Pipeline Health Group) jointly filed a motion asking the Commission to reconsider Order No. 26,065. On November 20, 2017, Mr. Clark and the Pipeline Health Group filed an amendment to their motion. Liberty filed a timely objection.

On December 18, 2017, the Commission issued Order No. 26,087 granting the motion for reconsideration in part. The Commission subsequently issued an Order of Notice on March 1, 2018, scheduling a Prehearing Conference to be followed by a technical session in early April. The Order of Notice directed the parties to discuss a procedural schedule for submitting legal briefs.

Mr. Clark filed a petition to intervene on April 4, 2018. A Prehearing Conference was held as scheduled on April 6, 2018. The Commission granted Mr. Clark's intervention at the Prehearing Conference, with no objections from any party. On April 10, 2018, Staff filed a proposed procedural schedule agreed to by all parties, and the Commission approved the schedule the following day. Mr. Clark and Liberty filed legal briefs on May 1, 2018, followed by reply briefs on May 15, 2018.

On October 5, 2018, the Commission's Safety Division (Staff) filed an adequacy assessment (Assessment) of the Company's proposed compressed natural gas (CNG) installation in Keene.¹ The Assessment identified multiple deficiencies and found Liberty's installation plans to be inadequate. On November 14, 2018, the Commission issued a secretarial letter directing Liberty to file a status report on its plans for the conversion of the Keene system. Liberty filed the requested report on December 7, 2018. On February 28, 2019, Liberty filed a letter informing the Commission that it had filed a response to Staff's Assessment, which

¹ See Safety Division Adequacy Assessment of the Proposed Compressed Natural Gas Installation by Liberty Utilities – Keene, NH Division (filed October 3, 2018).

included a cover letter to Randall S. Knepper dated February 21, 2019, and copies of the Company's amended and annotated plans for the conversion of the Keene gas system.

On April 16, 2019, Staff filed a memorandum stating that the Company's February 28 response, including its amended and annotated plans, addressed Staff's comments and recommendations in the Assessment. Staff reported that the Company's amended conversion plan complied with Commission Order No. 26,065. Staff recommended that the Commission accept the Company's filing and permit the commencement of the proposed Monadnock Marketplace system conversion from propane-air to natural gas (Phase I).

The petition for declaratory ruling and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <http://puc.nh.gov/Regulatory/Docketbk/2017/Docketbk/2017/17-068.html>.

II. ORDER NO. 26,065

In Order No. 26,065, the Commission ruled that Liberty "has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene." Order No. 26,065 at 1. The Commission required that any new CNG or liquefied natural gas (LNG) installations be accomplished safely, noting that the CNG/LNG installations contemplated by the Company included technology and piping that would require much higher operating pressures than are found in gas distribution systems in New Hampshire. *Id.* at 3-4. The Order directed Liberty to provide:

all final plans for engineering, construction, installation, testing, operations, public awareness, maintenance, emergency response, procedures, and schematics, including qualifications and training of personnel, in sufficient detail as requested by the Commission's Safety Division.

Order No. 26,065 at 4. In addition, the Commission decided that before gas flows through the proposed CNG/LNG installations, the Safety Division must submit a report assessing the

adequacy of the Company's plans and the satisfactory completion of a physical inspection of all installations. *Id.*

III. STAFF'S ADEQUACY ASSESSMENT

Staff's Assessment included over 170 recommendations for design, installation, operational, and maintenance changes, and other actions regarding the Company's engineering plans that Liberty would have to address before the Company could begin operation of Phase I. Staff further recommended that the Company refile an amended and annotated plan that demonstrated compliance actions taken in response to the Assessment. The Assessment stated that, upon receipt of the amended plan, Staff would review the Company's amendments and recommend final approval for the commencement of the initial system conversions and the supply of CNG for Phase I.²

In its April 16, 2019, memorandum, Staff found that the Company's February 28 amended plan adequately addressed the Safety Division's comments and recommendations detailed in the Assessment. Accordingly, Staff recommended that the Commission accept the information provided by Liberty in its response to the Assessment. Staff stated that the Commission's acceptance of Staff's recommendation would permit Liberty to begin Phase 1 of the proposed conversion. Staff also recommended that, given the extensive list of issues and required amendments highlighted in the Assessment of the Phase I plans, Phases II through V should be reviewed carefully when the Company's plans for each phase are fully developed and filed.

² See Cover Letter to Debra A. Howland, Executive Director, from Randall S. Knepper, Director, Safety Division, filed on October 5, 2018, with the Assessment.

IV. POSITIONS OF THE PARTIES

A. Terry Clark

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.

Mr. Clark further argued that, even if Liberty's plans were lawful, the Commission should defer to the Site Evaluation Committee's jurisdiction over Liberty's proposed energy facilities and dismiss the Petition. Mr. Clark contended that the Petition should be dismissed because it should have been filed under RSA 374:22 and RSA 374:26. In Mr. Clark's view, the Petition clearly proposed a change in the character of Liberty's service in the City of Keene. Mr. Clark asserted that the Petition would result in a substantial change in operations and the exercise of rights and privileges "not theretofore actually exercised in the town," and therefore requires statutory approval.

B. Liberty Utilities

Liberty argued that it holds the franchise right to distribute gas to its Keene customers and does not need to seek permission pursuant to RSA 374:22 and RSA 374:26 to convert the propane-air system to a CNG or LNG system. Liberty contended that its existing franchise rights have been used to distribute coal gas, butane, and propane-air through the years, and those franchise rights permit the Company to distribute natural gas, including CNG or LNG. Liberty

maintained that the Commission reached the correct decision in Order No. 26,065 when it stated that Liberty “has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene.” Liberty Objection to Motion for Rehearing at 1 (citing Order No. 26,065 at 3).

V. COMMISSION ANALYSIS

In Order No. 26,065, the Commission ruled that Liberty “has the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its current franchise.” Order No. 26,065 at 3. To ensure that any such activity would be done safely, the Commission also directed the Company to provide Staff all final plans for the proposed conversion. Order No. 26,065 further conditioned final approval for operation of the converted system on the receipt of a report from Staff “assessing the adequacy of the Company’s plans and the satisfactory completion of a physical inspection of all installations.” *Id.* at 4.

In this order, we clarify our declaratory ruling in Order No. 26,065, accept the Safety Division’s recommendation that we permit the Company to commence conversion of Phase I, and require the same reporting and assessment requirements for the conversion of Phases II through V of the Keene system.

A declaratory ruling constitutes a binding agency determination to dispose of legal controversy or to remove legal uncertainty. *See North Country Environmental Services, Inc. v. Town of Bethlehem*, 150 N.H. 606, 621, 843 A.2d 949, 961 (2004). The issuance of a declaratory ruling is a discretionary matter for the agency. *Delude v. Town of Amherst*, 137 N.H. 361, 363, 628 A.2d 251, 253 (1993). 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)

(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.

RSA 374:22 states that “[n]o person or business entity ... 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.” RSA 374:26 requires the Commission to:

grant such permission whenever it shall, after due hearing, find that such ... exercise of right, privilege or franchise would be for the public good ... 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.

In Order No. 26,065, the Commission found that, while Liberty did not need new franchise authority to serve its Keene customers with CNG rather than propane-air, the Company’s proposal to construct new system facilities or to convert existing facilities warrants regulatory oversight over financial costs as well as further approvals regarding the safe and reliable operation of the system.

Based on the filings in this proceeding, the conversion of the existing system 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.

In its Petition, Liberty cited a series of orders concerning New Hampshire gas utilities switching from natural gas to propane to serve customers without requiring commission permission. Petition at Bates Pages 9-11. Liberty argued that those orders confirm the interchangeability of natural gas and propane. In Order No. 26,065, we found the prior orders persuasive with respect to the Company's argument that CNG and LNG constitute gas service for which Liberty had a franchise. None of the cases cited by Liberty, however, involved extensive whole-system conversions such as those required in Keene. Moreover, in each case, the Commission at the time was notified of the change in gas product and the reasons why the substitution was required. As a result, we determined that Liberty had the legal authority to offer CNG and LNG service in Keene, but recognized that certain conditions and approvals related to the safety and reliability of the service of CNG or LNG were warranted before Liberty could proceed to exercise that authority.

We clarify that the decision in Order No. 26,065 was limited to a ruling that Liberty has the general right to change the type of gas that it provides to its customers under its franchise authority. In that order, we recognized that Liberty has the authority to provide "gas" service to customers within the franchise territory of the City of Keene, as approved in its acquisition of New Hampshire Gas Corp. in Docket No. DG 14-155. The ruling stated that "(1) Liberty possesses a franchise to provide gas service, which includes CNG/LNG service in Keene, and (2) that Liberty has continually exercised this franchise, as referenced in RSA 374:22, I, to the present day." Order No. 26,065 at 3.

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. When Liberty

acquired New Hampshire Gas Corporation (now Liberty Utilities – Keene Division) in November 2014, the Company agreed to continue operation of the existing system “as is.”³ The terms of the settlement agreement were to remain in effect “until the Commission approves otherwise.” Order No. 25,736 at 4. Here, Liberty proposes to convert its entire existing gas system in Keene by switching from propane-air to natural gas in the form of CNG. The conversion requires gas decompression and injection, the adjustment of customer appliance fittings, and the proposed replacement of pipes. Such a conversion raises a number of regulatory issues that warrant further oversight and approval – notably with respect to careful review of conversion plans and progress to ensure safe and reliable service to the affected customers. Accordingly, in Docket No. DG 17-048, Liberty’s most recent rate case, we required regulatory oversight over financial costs of the proposed conversion, as well as the further approvals regarding safety and reliability concerns associated with the conversion plans, consistent with Order No. 26,065.

As noted above, Order No. 26,065 conditioned the approval on the Safety Division’s assessment of the adequacy of the Company’s plans, and a complete physical inspection of all installations before Liberty would be permitted to initiate operations and serve gas through the converted installations. The Commission also directed Liberty to provide “all final plans for engineering, construction, installation, testing, operations, public awareness, maintenance, emergency response, procedures, and schematics, including qualifications and training of

³ See *Liberty Utilities (EnergyNorth Natural Gas, Corp., et al.,* Order No. 25,736 at 2 (November 21, 2014) (“The overriding theme of the Settlement Agreement is that [Liberty] will separately account for the Keene Division and will operate the Keene Division largely without change,” *citing* Tr. at 14, 21 (“[Liberty] characterized its proposal to operate the Keene Division “as is”)), at 3 (“The Settlement Agreement requires [Liberty] to operate the Keene Division largely without change from existing operations.”), and at 6 (“The Settlement Agreement requires [Liberty] to manage and operate...the Keene Division separately...without substantial changes in the Keene Division’s operation.”).

personnel, in sufficient detail as requested by the Commission's Safety Division." Order No. 26,065 at 4.

Although satisfied with the Assessment after more than a year's work, that process identified many additional complex issues not anticipated by the Commission when it issued Order No. 26,065. Given the five phases of conversion that Liberty has outlined in its filing and the extensive review and recommendations by Commission Staff for improvements to the Company's plans required for safety and reliability for the first of five phases of the conversion, we find that the same submission and review requirements should apply to each of the remaining phases.

A. Financial Costs

According to assertions made by the Company in dockets that touch upon the Keene conversion, including the general rate case in Docket No. DG 17-048 and the recent summer cost of gas (COG) rate proceedings in Docket No. DG 19-068, the conversion of the Keene system will also include the replacement of much of the existing system pipelines that currently provide propane-air gas to customers. Liberty provided only limited testimony in its general rate case as to how the proposed conversion might be economically just and reasonable.

In Order No. 26,065, we cautioned that the declaratory ruling did not include any finding of prudence. *Id.* In this order, we clarify that Order No. 26,065 should not be construed to constitute pre-approval of as yet undefined proposals for future capital projects within Liberty's Keene service territory. *See, e.g., Silver Brothers, Inc. v. Wallin*, 122 N.H. 1138 (1982). The Company stated in the acquisition proceeding that it would pursue conversion to CNG or LNG "[i]f it's economical to do so, and results in lower cost to customers." *See Liberty Utilities*

(EnergyNorth Natural Gas) Corp., et al., Docket No. DG 14-155, Hearing Transcript of October 30, 2014, at 25-26.

As Staff testified in Liberty's most recent rate case, the Company has not provided a comprehensive business plan for the Keene system conversion and has provided little to no economic analysis or justification of the costs of the proposed system to ratepayers.⁴ In the meantime, the Company is already pursuing recovery of certain costs associated with the conversion of the Keene system in its petition for recovery of 2019 summer COG expenses in Docket No. DG 19-068. *See, e.g.*, Order No. 26,241, permitting the requested inclusion of CNG supply costs in the 2019 summer COG rates.

We note that Puc 503.04(a) requires gas utilities to "provide certain services to its customers when service conditions such as change in pressure or composition of gas affect or would affect efficiency of operation or adjustment of appliances." Puc 503.04(b) further requires that if any such change occurs, the "utility shall, without undue delay and without charge, inspect the appliances of its customers and, if necessary, readjust those appliances for the new conditions." Based on the Staff Assessment, it appears that these provisions will apply to the Keene system conversion, and we direct Liberty to address these rules when it seeks to recover Keene conversion costs from ratepayers.

B. Reporting Requirements

In its Petition, Liberty stated that it did not object to filing the reports required by RSA 374:5. Indeed, the Company said it would do so through its annual E-22 report and through a more detailed supplemental report specific to this project.⁵ RSA 374:5 requires:

⁴ *See Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Docket No. DG 17-148, Hearing Exhibit 5 at Bates Page 10.

⁵ Petition at Bates Page 2.

[E]very public utility, before making any addition, extension, or capital improvement to its fixed property in this state, except under emergency conditions, shall report to the commission the probable cost of such addition, extension, or capital improvement whenever the probable cost thereof exceeds a reasonable amount to be prescribed by general or special order of the commission Reports shall be filed in writing with the commission within such reasonable time as may be prescribed by the commission before starting actual construction on any addition, extension, or improvement. The commission shall have discretion to exclude the cost of any such addition, extension, or capital improvement from the rate base of said utility where such written report thereof shall not have been filed in advance as herein provided.

The Petition notes that the Settlement Agreement in Docket No. DG 14-155, involving Liberty's acquisition of the Keene gas system, required Liberty to "notify the Staff and OCA of Keene Division capital projects other than ... [the E-22 reports] referenced in Puc 509.11(c) with projected costs greater than \$50,000 at least 60 days prior to commencement, where feasible." Revised Petition at Bates Page 2. In light of Liberty's commitment to file such reports, the E-22 reports filed to date, and Staff's testimony in Docket No. DG 17-048, we will require Liberty to file a detailed and comprehensive supplemental report specific to the Keene conversion project for each phase of system conversion and construction pursuant to RSA 374:5.

Accordingly, we direct Liberty to include a detailed report that includes all project costs to date as well as detailed projected cost estimates for all conversion projects to be included in the revenue requirement analysis that is required as part of the previously established risk sharing mechanism. *See Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a/ Liberty Utilities*, Order No. 26,122 at 39 (April 27, 2018) (item 3). A detailed report of the cost of the Company's current efforts to convert the initial portion of the system to CNG shall be provided within 90 days of the issuance of this order. Future reports with the requisite cost details shall be filed no later than 180 days in advance of each future expansion phase. Receipt of the reports shall not be deemed pre-approval of projected expenditures or a finding of prudence.

We also direct Liberty to file updated system maps and drawings pursuant to Puc 507.04 as the Company completes each phase of the conversion of the Keene system. In addition, in accordance with the directives set forth in Order No. 26,122, Liberty must provide updated discounted cash flows (DCFs) based on detailed engineering plans and customer commitments that will produce at least 50% of the revenue requirement associated with the new facilities prior to the initiation of construction of each conversion phase.

The gas supply and production facilities and the distribution system used to provide natural gas to Keene customers will be separate and distinct from the system used to provide propane-air. Once a customer begins receiving natural gas, that customer will no longer be able to receive propane-air as a fuel source. In essence, until Phases II through V of the proposed conversion are completed and in operation, Liberty will be operating two separate systems in Keene. The Company's supply planning and reporting should reflect that. Commission rules applicable to supply planning and reporting, such as on-site storage requirements, will be applicable to each of the two distinct systems while Liberty is providing both natural gas and propane-air in Keene. *See e.g.*, Puc 506.03 (On-Site Storage Requirements).

With respect to Mr. Clark's argument regarding the Site Evaluation Committee (SEC), it is apparent from review of RSA Ch. 162-H, that the SEC's jurisdiction and responsibilities have no bearing on the issues raised in this docket.

VI. CONCLUSION

As stated in the Order of Notice issued on March 1, 2018, Liberty's petition for a declaratory ruling raised issues related to the scope of Liberty's existing gas franchise and whether RSA 374:22 and RSA 374:26 required Liberty to obtain additional franchise permissions from the Commission before converting the type of gas Liberty delivers to

customers. Based on our review of the record, we clarify that Liberty has the general authority to offer gas service to its customers in Keene under the franchise authority granted to it when it acquired the New Hampshire Gas Corporation from Iberdrola USA Enterprises, Inc. in Docket No. DG 14-155. Although the Commission is requiring additional approvals pursuant to its general supervisory authority, no additional permissions are required under RSA 374:22 and RSA 374:26.

The declaratory ruling in Order No. 26,065 was not intended to grant the Company *carte blanche* to substantially change its system operations. Based on the record in this proceeding, we confirm that further regulatory oversight to ensure compliance with all applicable rules and statutory requirements is warranted. We find that the conditions related to engineering and operational safety of the proposed system conversion are necessary to ensure safe and reliable service and are therefore in the public interest. Accordingly, we grant Liberty the permission and approval to undertake the conversion of the Keene system, subject to the conditions set forth herein.

Based upon the foregoing, it is hereby

ORDERED, the declaratory ruling in Order No. 26,065 is clarified to recognize that Liberty has the right, with conditions, under its existing franchise authority to serve compressed natural gas to its customers in the Keene Division of EnergyNorth; and it is

FURTHER ORDERED, that the Commission's Safety Division's recommendation that Liberty be permitted to initiate the conversion of the Keene propane-air distribution system to compressed natural gas to customers in the Keene Division for Phase I is approved; and it is

FURTHER ORDERED, that Liberty shall not flow any gas through Phases II through V of CNG/LNG installations in Keene until the Director of the Commission's Safety Division has

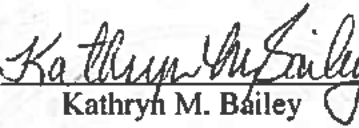
found the required plans and reports to be adequate and has completed its physical inspection of the facilities; and it is

FURTHER ORDERED, that within 90 days of this order, Liberty shall file with the Commission its business plan and its operations and maintenance plans for the conversion and operation of the proposed natural gas system.


By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 2019.



Martin P. Honigberg
Chairman

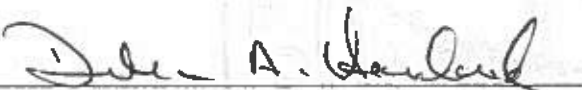


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**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-068

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES – KEENE DIVISION**

**Order Denying Motions for Rehearing
and Clarifying Certain Matters**

O R D E R N O. 26,294

September 25, 2019

In this order, the Commission denies the motions for rehearing of Order No. 26,274 filed by Terry Clark and Liberty Utilities, and clarifies certain points in that Order.

I. PROCEDURAL HISTORY

On April 24, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division (Liberty or the Company) filed a Petition for Declaratory Ruling, and it subsequently submitted a Revised Petition for Declaratory Ruling (Petition), pursuant to N.H. Code Admin. Rules Puc 203 and Puc 207. Specifically, Liberty requested a ruling “that it need not seek permission under RSA 374:22 and RSA 374:26 to distribute natural gas in the City of Keene, because Liberty’s existing franchise to distribute ‘gas’ already includes ‘natural gas.’” Petition at 1.

On October 20, 2017, the Commission issued Order No. 26,065, granting the requested ruling with certain conditions related to engineering and operational safety.

On November 16, 2017, Terry Clark (Mr. Clark) a resident of Keene, and the NH Pipeline Health Study Group jointly filed a motion asking the Commission to reconsider Order No. 26,065. On November 20, 2017, Mr. Clark and the Pipeline Health Study Group filed an amendment to their motion. Liberty filed a timely objection.

On December 18, 2017, the Commission issued Order No. 26,087, granting in part the motion for reconsideration. The Commission subsequently issued an Order of Notice on March 1, 2018, scheduling a Prehearing Conference to be followed by a technical session in early April. The Order of Notice directed the parties to discuss a procedural schedule for submitting legal briefs.

Mr. Clark filed a petition to intervene on April 4, 2018. The Prehearing Conference was held as scheduled on April 6, 2018, and the Commission granted Mr. Clark's intervention with no objections. On April 10, 2018, Staff filed a proposed procedural schedule agreed to by all parties, and the Commission approved that schedule the following day. Both Mr. Clark and Liberty filed briefs and reply briefs on May 1 and May 15, 2018.

On October 5, 2018, the Commission's Safety Division filed an adequacy assessment (Assessment) of the Company's proposed compressed natural gas (CNG) installation for the Monadnock Marketplace in Keene. The Assessment identified multiple deficiencies in Liberty's installation plans and found the plans to be inadequate. On November 14, 2018, the Commission issued a secretarial letter directing Liberty to file a status report on its plans for the conversion of the Monadnock Marketplace. Liberty filed the requested report on December 7, 2018. On February 28, 2019, Liberty filed a response to Staff's Assessment, including copies of the Company's amended and annotated plans for the conversion of the Monadnock Marketplace.

On April 16, 2019, the Safety Division filed a memorandum stating that the Company's February 28 response, including its amended and annotated plans, addressed the comments and recommendations in the Assessment. Staff concluded that the Company's amended conversion plan complied with the requirements of Order No. 26,065, and Staff recommended that the

Commission accept the Company's filing and permit commencement of the proposed Monadnock Marketplace system conversion from propane-air to natural gas (Phase I).

On July 26, 2019, the Commission issued Order No. 26,274, affirming and clarifying its declaratory ruling in Order No. 26,065. On August 26, 2019, Mr. Clark filed a motion requesting that the Commission rehear or reconsider Order No. 26,065 (October 20, 2017) and Order No. 26,274 (July 25, 2019) (collectively, the Orders) and to clarify both Orders. On August 26, 2019, Liberty filed a motion for rehearing of certain portions of Order No. 26,274 to resolve claimed ambiguities and to address issues related to the reporting requirements imposed in that Order. On September 5, 2019, Liberty filed an objection to Mr. Clark's motion for rehearing, and, on September 11, 2019, Mr. Clark filed a reply to Liberty's objection.

The Orders, motions, and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-068.html>.

II. POSITIONS OF THE PARTIES

A. Terry Clark

In his motion, Mr. Clark argued that the Orders are unlawful and unreasonable because they violate due process, ignore Commission rule requirements, are contrary to the public interest, and violate RSA 378:37, which requires each utility to file a least cost integrated resource plan (LCIRP). He further argued that the relief requested by Liberty should be considered only pursuant to a petition filed under RSA 374:22 and RSA 374:26.

Mr. Clark said that declaratory ruling petitions are governed by N.H. Code Admin. Rules Puc 207.01, and must be resolved through adjudicative proceedings in accordance with Puc 203. He noted that Puc 203.12 requires the publication of notice of a hearing to the public, and he

contended that the Commission issued Order No. 26,065 granting Liberty's Petition without notice or hearing. According to Mr. Clark, the Petition proposes a change in the character of Liberty's service within the City of Keene. He asserted that the Petition to convert the Keene system requires statutory approval, because it would result in a substantial change in operations and the exercise of rights and privileges "not theretofore actually exercised in the town."

See RSA 374:22.

Mr. Clark noted the Commission's statement in Order No. 26,065 that Liberty had indicated its intent to construct, operate, and maintain LNG facilities to serve Keene, and argued that as a result, there would be an "extensive whole-system" change comprising a "separate and distinct" natural gas system. He said that the Commission did not address his argument that the "separate and distinct" natural gas system would constitute "a change in the character of service," or otherwise require Commission approval under RSA 374:22. He further noted that Order No. 25,736 (November 21, 2014), issued in Docket No. DG 14-155, which authorized Liberty's acquisition of the Keene franchise, approved a settlement agreement (Keene Acquisition Settlement) requiring the Company to maintain the Keene franchise "as is" and to obtain prior permission from the Commission before making any changes to that franchise.

Mr. Clark contended that, based on Order No. 25,736, Liberty had no authority to undertake the proposed conversion under its existing franchise authority. According to Mr. Clark, the relief sought by Liberty in its Petition can be afforded only under RSA 374:22 and RSA 374:26. In his view, that determination can "only result from a full adjudicative proceeding, with notice, discovery, a hearing, testimony and other evidence.

Mr. Clark contended that Liberty's Petition cannot be granted because the conversion is part of its broader expansion plans to be considered in the context of its LCIRP filed under

RSA 378:37 and RSA 378:39 in Docket No. DG 17-152. He noted that, in that separate proceeding, he has challenged Liberty's LCIRP as contrary to the public interest and to the requirements of the state energy policy as codified in RSA 378:37. Mr. Clark also argued that, even if Liberty's plans are lawful, the Commission should defer to the jurisdiction of the Site Evaluation Committee (SEC) over the proposed energy facilities and therefore dismiss the Petition.

In his reply to Liberty's objection, Mr. Clark noted that the objection was filed two days late, and was untimely under Puc 203.07(f).¹ Mr. Clark raised arguments regarding Liberty's assertions of law and fact pertaining to the "single narrow issue" of rehearing, including his right to state every ground for rehearing, governing declaratory judgment law and with respect to due process requirements.

B. Liberty

Liberty requested rehearing of certain portions of Order No. 26,274 to resolve ambiguities, address issues related to reporting requirements, and clarify certain other directives. Liberty stated that it seeks clarification, in particular, of the use of the terms "conversion" and "expansion" in Order No. 26,274. Liberty argued that the conversion of its existing gas customers from propane-air to natural gas is necessary for reliability purposes, while expansion of the converted system to serve new customers would be justified on an economic basis.

Liberty also requested clarification regarding the Safety Division's future adequacy assessments and reporting requirements, and whether the Commission must approve the Safety Division's findings in order for Liberty to proceed with the conversion and expansion of the

¹ Mr. Clark stated that he would not object to Liberty's late filing provided Liberty does not object to the filing of his reply. We grant Liberty a waiver of Puc 203.07(f), pursuant to our authority under Puc 201.05, having found the waiver meets the public interest standard as contemplated by that rule. We also accept Mr. Clark's reply.

Keene gas system at each phase. Liberty stated that neither of the Orders specified the “mechanics” of the assessment ordered by the Commission.

In addition, Liberty requested clarification of the Commission’s directive that it file a detailed report that includes all project costs to date and cost estimates for the overall conversion in its entirety, including the revenue requirement analysis that is required as part of the risk-sharing mechanism established in Docket No. DG 17-048, which was Liberty’s most recent general gas rate proceeding. In particular, Liberty requested clarification of the procedural requirements of that directive, such as with whom the report must be filed, whether the reports must be filed in advance of “conversion” phases or “expansion” phases, or both, and the starting point that would initiate the 180-day advance filing calculation.

Liberty also requested clarification of the directive requiring the “filing” of updated system maps and drawings pursuant to Puc 507.04 at the completion of each phase of conversion and expansion. Liberty noted that the rule requires maps or drawings to be on file at the Company’s principal office, and asked whether the maps and drawings must also be filed with the Commission, and, if so, with whom.

Liberty requested clarification of the directive in Order No. 26,122 (April 27, 2018), issued in DG 17-048, which requires the Company to provide updated discounted cash flow (DCF) analyses prior to the initiation of construction of each Keene system conversion and expansion phase. Liberty asked whether the Commission intends that to be a new requirement or merely a restatement of the requirement set forth in Order No. 26,122.

Liberty observed that the Commission’s determination that it has the right, with conditions, under existing franchise authority to serve compressed natural gas (CNG) to its Keene Division customers did not reference liquefied natural gas (LNG). According to Liberty,

the Company's plans for permanent facilities have always included both CNG and LNG, and it therefore requested clarification regarding that issue as a fundamental component of the relief it has sought in this proceeding.

Liberty also asked for clarification whether the Commission intended that it file a business plan and operations and maintenance plans for the "conversion" of existing propane-air customers or only for system "expansion" through the addition of new gas customers.

In its objection to Mr. Clark's motion for rehearing, the Company argued that Order No. 26,274 affirmed and clarified Order No. 26,065, which declared that Liberty has the authority to offer CNG and LNG services to Keene Division customers. The Company contends that, given the affirmation and clarification provided in Order No. 26,274, Order No. 26,065 is neither unlawful nor unreasonable, as Mr. Clark argues. Liberty further asserted that Mr. Clark's arguments fall outside the scope of the narrow legal issue raised in this proceeding.

According to Liberty, the Commission has already considered Mr. Clark's arguments pertaining to: (1) the change in character of service proposed in Keene; (2) the Keene Acquisition Settlement which bound Liberty to distribute propane-air in Keene; (3) whether Liberty should have sought franchise approval for the proposed conversion; (4) the jurisdiction of the SEC; (5) arguments under the LCIRP statute, RSA 378:39; and (6) due process requirements and procedural arguments.

III. COMMISSION ANALYSIS

The standard for considering a motion for rehearing is well known, and was described earlier in this proceeding in Order No. 26,087. The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3 and RSA 541:4; Order No. 26,087 at 3 (citations omitted). A

successful motion must establish “good reason” by showing that there are matters the Commission “overlooked or mistakenly conceived in the original decision,” or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision.” *Id.* at 4. A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Id.*

We address below the motions filed by Liberty and Mr. Clark for rehearing or reconsideration of the Commission’s decision in Order No. 26,274.² We first address Mr. Clark’s motion, which seeks action on the merits of the Commission’s decision and clarification of certain directives in that Order. We then address Liberty’s motion, as it focuses on requests for clarification, or, in the alternative, rehearing, of certain findings and directives included in the Order.

Based on the process afforded to the parties in this limited proceeding and the filings made and reviewed by the parties, we deny rehearing of our decision in Order No. 26,274. We do, however, provide further clarification regarding the questions raised by Liberty in its motion.

A. Clark Motion

Mr. Clark requests rehearing or reconsideration of the Commission’s decision in Order No. 26,274, dismissal of this matter with an order that Liberty refile its Petition under RSA 374:22 and RSA 374:26, and/or clarification of the terms of the Order with respect to the involvement of Mr. Clark and the public in future approval proceedings and related Liberty filings in this matter.

² To the extent that Mr. Clark’s motion seeks rehearing or reconsideration of Order No. 26,065, the time has run for any such rehearing or reconsideration request. We therefore need not and do not separately address those arguments.

As Liberty noted in its objection to Mr. Clark's motion, many of his arguments must fail because they fall outside the scope of the narrow legal issue decided in this proceeding and/or because the Commission has already considered and rejected them. In particular, this is a declaratory ruling proceeding in which we decided that no further statutory approvals were required under RSA 374:22 and RSA 374:26 because Liberty already has the franchise authority to provide natural gas service in its Keene Division. That is a legal issue that does not require the development of an extensive evidentiary record for its resolution. The other conditions and filing requirements imposed in the Orders are based on our plenary authority to regulate the provision of safe and reliable service by public utilities, and not on the specific provisions of RSA 374:22 and RSA 374:26.

Mr. Clark's remaining arguments not previously considered and those considered and rejected fail on their merits. We are not required to vacate our decisions regarding the proposed conversion of the Keene gas system from propane-air to natural gas in the form of CNG or LNG for a violation of due process because the process afforded the parties was commensurate with the requirements of due process under the circumstances. Given that the primary issue addressed in this proceeding was purely legal in nature, and not a question of fact, it was not necessary to provide for any additional process. Mr. Clark was granted intervention and was permitted to participate as a full party. He filed an initial brief and a reply brief addressing the franchise authority issue.

Based on our resolution of that legal issue on the record presented, there was no need for discovery, testimony, or an evidentiary hearing in this matter. We note that administrative agencies are granted some flexibility in fashioning appropriate procedures for adjudications. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Nor was it necessary for Liberty to file a

petition under RSA 374:22 and RSA 374:26 as a result of our determination of the franchise authority issue. In this context, therefore, Mr. Clark's due process arguments are unavailing.

With respect to the Keene Acquisition Settlement, approved by the Commission in Order No. 25,736, the settlement by its terms "shall remain in effect until the Commission approves otherwise." In DG 17-048, we allowed Liberty to consolidate the Keene Division into the rest of the Liberty gas system. *See* Order No. 26,122 at 37-38. As a result, to the extent that the Keene Acquisition Settlement had limited Liberty's existing franchise rights to the distribution of propane-air, that order "approve[d] otherwise."

In addition, we decline to dismiss this matter on the merits as contrary to the public interest under the LCIRP statute, RSA 378:37-39, or out of deference to the jurisdiction of the SEC, as requested by Mr. Clark. Liberty's LCIRP has been filed and will be evaluated in DG 17-152; and any application submitted to the SEC with respect to the proposed Keene system conversion facilities, if required, will be addressed by that committee subject to its separate rules and procedures. We therefore deny Mr. Clark's request for rehearing or reconsideration.

We do, however, further clarify the provisions of Order No. 26,274 with respect to the involvement of Mr. Clark and members of the public in future approval proceedings and related Liberty filings regarding the Keene system conversion. As noted below, each of the required reports and filings mandated by Order No. 26,274 must be filed in this docket. As a result, upon each filing, members of the public will have the opportunity to submit comments to the Commission on the submissions made should the Keene gas system conversion from propane-air to natural gas progress. Similarly, the public may comment on the reports filed by the Safety Division.

As emphasized in Order No. 26,122 in DG 17-048 pertaining to, among other issues, Liberty's requests to convert the Keene gas system and to spread the costs of the proposed conversion among all of its New Hampshire gas customers, Liberty must justify the cost-effectiveness and ensure just and reasonable rate impacts for each phase of conversion and expansion of the Keene gas system. Those matters are relevant to each of Liberty's gas customers and must be vetted through each stage of Liberty's efforts to convert or expand its system and recoup the costs of such conversion or expansion.

B. Liberty Motion

Liberty seeks reconsideration of Order No. 26,274 and clarification of the Commission's intent with respect to a number of specific filing and reporting requirements. Liberty expresses confusion with the use of the terms "conversion" and "expansion" in Order No. 26,274, offering its preferred definitions of those fundamental terms, and it lays out nine requests for clarification of directives established in that Order. We first address the conversion/expansion question and we then clarify the requirements imposed on Liberty before the Company can proceed with any phase of the conversion/expansion.

In Order No. 26,122, there is no meaningful difference between conversion and expansion costs as it relates to Liberty's decision to supply Keene Division customers with natural gas in place of propane-air. We do not recognize the Company's distinction between the terms "expansion" and "conversion," for the following reasons. Liberty has consistently maintained that conversion of Keene system operations to natural gas would benefit all Liberty customers and lead to revenue growth and lower rates, providing economic benefits to all Liberty customers. Order No. 26,122 issued in DG 17-048 is clear on that point:

We will permit the consolidation of Keene Division distribution rates with those of EnergyNorth, subject to the following conditions designed to protect EnergyNorth's distribution customers from potential over-capitalization that could lead to cross subsidization.

...

For any of the expansionary Phases planned by Liberty within the City of Keene, prior to beginning construction of *any* Phase, Liberty must secure a customer commitment level that will produce at least 50 percent of the revenue requirement associated with the new facilities from those customers in 10 years, as calculated in present value terms.

...

We reject the Company's argument that the current cost of converting a small portion of the Keene System to CNG is necessary for reliability and safety reasons or is economically justified on its own terms. Furthermore, Liberty testified that the conversion could lead to additional growth, and it is therefore appropriate to include the cost of the initial conversion to CNG in the risk sharing mechanism.

See Order No. 26,122 at 38, 39 (*emphasis added*), 41, respectively.

Accordingly, the economic analysis needed to determine the potential benefit or harm of converting any part of the Keene system must take into account all costs related to the conversion, including those of the necessary expansion, and the incremental revenue resulting from related expansion in each phase of the conversion.

For the reasons set forth above, we reject Liberty's argument that "conversion" costs are distinct from "expansion costs," as addressed in the directives of Order No. 26,122. The interchangeability of "conversion" and "expansion" costs was a settled issue in that proceeding and the time has run for Liberty to pursue rehearing on that point. The Commission's prior Orders require Liberty to provide detailed information demonstrating its plans will provide safe and adequate service at just and reasonable rates. We understood there would be no new customer commitments if Liberty simply converted its system from propane air to natural gas. We made no finding that a conversion of the entire distribution system in Keene, without expansion, was necessary. We did, however, understand Liberty had begun construction to serve

the Monadnock Marketplace, referred to as Phase 1. We therefore reiterate and clarify that before Liberty begins to convert and expand any phase of its distribution system it must make several filings and obtain approvals, as outlined below. The requirements listed below do not follow the exact sequence of the questions raised by Liberty in its Motion, rather, they address each question in accordance with the categorization of filings required of Liberty.

1. Liberty Report of Final Plans Submitted for Review by Safety Division

We clarify that, before proceeding with any phase of the conversion/expansion of the Keene system from propane-air to natural gas, Liberty must file detailed and final plans for engineering, construction, installation, testing, operations, public awareness, maintenance, emergency response, procedures, and schematics, including qualifications and training of personnel, in sufficient detail as requested by the Safety Division.

2. Safety Division Assessment of Final Plans

We clarify that the Safety Division must file with the Commission an adequacy assessment for each phase of the proposed conversion/expansion of the Keene gas system from propane-air to natural gas (including CNG or LNG). Each filing must comprise a full report containing a finding of adequacy similar to the one filed by the Safety Division in this docket with respect to Phase I.

3. Commission Approval of Assessment

We further clarify that the Commission must affirmatively approve each adequacy assessment filed by the Safety Division, prior to the commencement of construction on each successive phase of the conversion/expansion. Phase I of the conversion/expansion received such approval in Order No. 26,274.

4. Detailed Cost Reporting and DCF Analyses

In DG 17-048 (Order No. 26,122) the Commission authorized Liberty to consolidate the Keene Division's distribution rates with those of EnergyNorth. The Commission acknowledged the unknown economic viability and cost structure of Liberty's conversion/expansion plans and imposed specific requirements to ensure that expected growth revenue from the conversion/expansion would benefit all Liberty customers. With one limited exception, prior to beginning construction of any phase of the conversion/expansion, Liberty is required to secure a customer commitment level that will produce at least 50 percent of the revenue requirement associated with the new facilities needed for that phase from those customers within 10 years, calculated on a present value basis.³

We clarify that before initiation of construction for each phase of the Keene system conversion/expansion, Order No. 26,122 requires Liberty to file a detailed report of its business plan. The business plan shall include all conversion/expansion project costs, as well as detailed projected cost estimates for all conversion/expansion projects to be included in the revenue requirement analysis required as part of the risk-sharing mechanism. The business plan must be supported by updated DCF analyses based on detailed engineering plans and customer commitments that will produce at least 50 percent of the revenue requirement associated with the new facilities. As established in DG 17-048, such DCF analyses are the first step in gaining approval for each phase of the conversion/expansion and will be used to demonstrate that Liberty's New Hampshire ratepayers are not burdened with unfair or unwarranted costs.

³ As noted below, Liberty was not required to demonstrate that it had customer commitments to satisfy 50 percent of the revenue requirement prior to the initiation of construction for the Monadnock Marketplace.

5. Risk-Sharing Mechanism

We confirm that the risk-sharing mechanism applies separately to each phase of Liberty's planned conversion/expansion of the Keene system. The requirement to obtain at least 50 percent of the revenue requirement associated with the investment before construction begins does not apply to Phase I, as that phase was already under construction to serve the Monadnock Marketplace. Although the customer commitment requirement does not apply to the start of construction for the Monadnock Marketplace, the cost of that phase is to be included as part of the risk sharing mechanism.

6. Filing of Updated System Maps and Drawings

Updated system maps and drawings must be filed with the Commission's Safety Division within 90 days of the completion of each successive phase of conversion/expansion of the Keene system. That requirement will apply to each phase of the proposed conversion/expansion, including Phase I.

7. CNG versus LNG

We clarify that the Commission's ruling in Order No. 26,065 that Liberty need not seek permission under RSA 374:22 and RSA 374:26 to distribute natural gas in Keene was intended to include natural gas in both CNG and LNG forms.

8. Timing for Liberty's Plan Filing Requirements

In Order No. 26,274, the Commission required Liberty to file a detailed and comprehensive supplemental report for each phase of the Keene system conversion/expansion. As requested by Liberty, we clarify that the Commission's intent was to require Liberty to file a comprehensive report of the costs associated with the Company's efforts to convert the initial portion of the system to CNG (at the Monadnock Marketplace) within 90 days of issuance of that

Order. The Commission also required that the detailed cost reports discussed in section 4 above, be filed 180 days before construction begins for any other phase of the conversion/expansion.

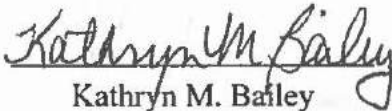
In light of the clarifications provided above, we deny Liberty's request for rehearing or reconsideration regarding those points.

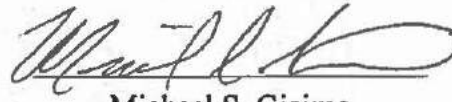
Based upon the foregoing, it is hereby

ORDERED, that the motions for rehearing or reconsideration are DENIED; and it is

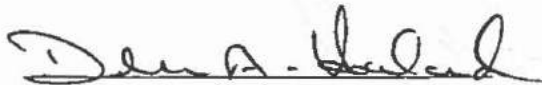
FURTHER ORDERED, that requests for clarification are GRANTED, as discussed in the body of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 2019.


Kathryn M. Bailey
Commissioner


Michael S. Giaimo
Commissioner

Attested by:


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**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-068

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division

Petition for Declaratory Ruling

Order Granting Motion for Reconsideration in Part

O R D E R N O. 26,087

December 18, 2017

The Commission hereby grants in part and denies in part the motion for reconsideration of Order No. 26,065, which granted Liberty’s request for a declaratory ruling that it has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene, with conditions based on the Commission’s existing authority regarding engineering and operational safety. The Commission will grant movant Mr. Clark’s request for an opportunity to be heard regarding the matters addressed in Order No. 26,065, while leaving in place the conditions placed on approval that are related to safety and operations matters.

I. PROCEDURAL BACKGROUND

On April 26, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division (“Liberty” or “the Company”) filed a petition for a declaratory ruling pertaining to the Company’s plans for compressed natural gas (“CNG”) and liquefied natural gas (“LNG”) installations in Keene. After due consideration of the matter, the Commission issued Order No. 26,065 (October 20, 2017), ruling that Liberty has the authority under RSA 374:22 to supply CNG and LNG service in Keene under its current franchise. The basis of the Commission’s decision was that RSA 362:2, I, includes in the definition of “public utility” the activity of the “distribution or sale of gas,” and that statute does not differentiate among types of

gas. Order No. 26,065 at 3. With respect to the system conversion, the Commission also placed a series of conditions on the Company, pursuant to RSA 374:1, RSA 374:3, and RSA 374:4, including a requirement that the Company may not flow any gas through the CNG/LNG installation in Keene until the Commission's Safety Division has found the required plans and reports adequate, and completed its physical inspection of the facilities as described in the Order. Order No. 26,065 at 4-5.

On November 16, 2017, a number of people represented by Richard Husband, an attorney from Litchfield, filed a timely Motion for Rehearing of Order No. 26,065. Those individuals included Terry Clark of Keene, and a group called the "NH Pipeline Health Study Group." The group's members were identified as Susan Durling, Beverly Edwards, Elizabeth Fletcher, Richard Husband, Marilyn Learner, Julia Steed Mawson, and Douglas and Gwen Whitbeck. The Company filed a timely objection. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-068.html>.

II. POSITIONS OF THE PARTIES

A. Motion for Rehearing

The movants allege mistakes of procedure, law, and facts in the consideration and issuance of Order No. 26,065. They argue first that the Commission erred in issuing the Order "without notice, a hearing, or any opportunity for intervention, challenge or even public input on issues raised in the proceeding" Motion at 2. They presented a series of arguments regarding alleged technical defects in the Company's Petition for Declaratory Ruling, more details regarding their arguments that notice and opportunity to participate were not properly

given by the Commission, and arguments that granting the Company's request was not in the public interest because of the movants' concerns surrounding climate change and the use of natural gas products as a contributor to climate change. Motion at 6-23.

In particular, the movants asserted that Order No. 26,065 violated the Commission's regulation governing Declaratory Rulings. They argued that N.H. Code Admin. Rules Puc 207.01, which cross-cites Puc 203, required a full evidentiary hearing, subject to the usual rules regarding notice, interventions, evidence, and other elements, before the Company's request for relief could be granted (or denied). Motion at 14-16. The movants' requested that the Commission "vacate (or reverse) the Order, and, after due notice, schedule this matter for a full evidentiary hearing on the merits." Motion at 23.

B. Liberty

In its objection, the Company argued that the movants are not "directly affected" by the matter under the terms of N.H. Code Admin. Rules Puc 203.07(a) and RSA 541:3, which govern motions for reconsideration, and therefore lack standing to challenge Order No. 26,065. The Company then made a series of arguments in opposition to the allegations of procedural or technical defects with the Liberty Petition for Declaratory Judgment, as well as arguments that approval by the Commission was correct.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4-5 (December 7, 2016), *appeal docketed*, No. 2017-0007 (N.H. Sup. Ct. February 15, 2017). A successful motion must establish

“good reason” by showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4-5 (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

As a threshold matter, there is an issue of standing. Pursuant to RSA 541:3 and RSA 541-A:30-a, the Commission has promulgated N.H. Code Admin. Rules Puc 203.07(a) to govern requests for reconsideration, which states: “A motion may be filed by any party, or, in the case of a motion for rehearing, a person directly affected by a commission action pursuant to RSA 541:3.” With the exception of Mr. Clark, the movants and their representative, Mr. Husband, do not appear to have a direct interest in the proceeding. Mr. Clark, on the other hand, has a direct interest in the matter as a resident of Keene, as he resides in the franchise territory that was the subject of the Company’s Petition for Declaratory Ruling. Accordingly, we will focus on Mr. Clark as the person for whom procedural relief may be due, because he alone has a direct interest in the matter.

Of all of Mr. Clark’s grounds for seeking reconsideration of this matter, the most important is procedural. The procedural argument raises the question of what constitutes due process for the issuance of a Declaratory Ruling by the Commission. In this docket the Company sought to clarify a matter of law; namely, whether its existing franchise provides it with the authority to offer CNG/LNG services in the City of Keene. Certainly, engaged

individuals are able to monitor proceedings like the Company's petition through the Commission's public website. The Commission considered the petition over a period of months, and a number of public comments were duly filed during that time, including one by Mr. Husband. As a matter of administrative law, that process may be sufficient. Notwithstanding the prior administrative process in this case, however, to accommodate Mr. Clark's wishes to be heard before the Commission, we will afford Mr. Clark and other interested persons the opportunity to present their legal arguments to the Commission in this matter.

Therefore, we hereby reopen the record and we will schedule a Status Conference for public participation in early 2018 through an Order of Notice to be issued shortly. The Order of Notice will provide details as to how interested parties can 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.

We will not address the various arguments presented by Mr. Clark related to purported technical defects with the Petition, matters in connection with Site Evaluation Committee jurisdiction, or the supposed violation of the public interest by our grant of the Company's initial Petition for Declaratory Ruling. In light of Mr. Clark's prayer for relief, which seeks an opportunity to be heard, and our decision to reopen the proceeding, we find that it is unnecessary to address those arguments at this time.


Having dealt with the issues identified by the movants and the Company, we still must address what Liberty may do at this time. Neither Mr. Clark nor Liberty raised any issue with the conditions placed on the Company. We believe that the public interest requires us to maintain all of the safety and operations conditions imposed on the Company in connection with

its CNG/LNG installations in Keene by Order No. 26,065; and therefore, we leave those conditions in place throughout the pendency of this reopened proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the Motion for Reconsideration by Mr. Clark is GRANTED IN PART and DENIED IN PART, subject to the terms delineated in the body of this Order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 2017.



Martin P. Honigberg
Chairman

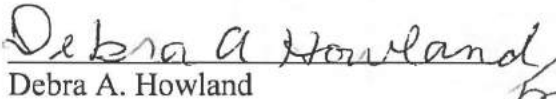


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 17-068-1 Printed: December 15, 2017

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
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**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-068

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities - Keene Division

Petition for Declaratory Ruling

Order on Declaratory Ruling

O R D E R N O. 26,065

October 20, 2017

In this Order, the Commission grants the Company's request for a declaratory ruling that it has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene, with conditions based on the Commission's existing authority regarding engineering and operational safety.

I. PETITION FOR DECLARATORY RULING

On April 26, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities - Keene Division ("Liberty" or "the Company") filed a petition for a declaratory ruling pertaining to the Company's plans for compressed natural gas ("CNG") and liquefied natural gas ("LNG") installations in Keene. For some time the Company has contemplated conversion of the system in Keene from a propane-air system to a CNG/LNG system. The conversion has been partially motivated by recent equipment failures on the propane-air system. Petition at 1-2. The Company's petition followed a discussion with Commission Staff in which, according to Liberty, Staff stated that the Company is required to file reports and "a petition under RSA 374:22 and RSA 374:26, the franchise statutes, for permission to distribute natural gas because ... the conversion from propane to natural gas constitutes a 'change in the character of service.'" Petition at 2. While Liberty did not object to reporting requirements associated with RSA 374:5,

it disagreed with the assessment that the Company needed to petition for new franchise rights. According to Liberty, it has a franchise to provide gas service in Keene which can be provided using various types of gas. Petition at 12.

Liberty presented a series of arguments to support its position. The Company first made reference to its original 1860 charter, which refers to "gas." The Company then pointed to N.H. Code Admin. Rules Puc 502.06, which defines gas as "any manufactured or natural gas or any combination thereof," in the context of CNG and LNG being produced from the compression and liquefaction of natural gas. Petition at 3. Liberty argued that the shift in supply technology from one subclass of Puc 502.06 gas (propane-air) to another (CNG/LNG) was allowed under its franchise authority, without any need for further Commission approval under RSA 374:22 and RSA 374:26. The Company cited to several instances in the 1970s and 1980s when natural gas utilities installed or acquired propane equipment, without requesting additional franchise permission from the Commission. Petition at 6-9. With regard to Liberty's own franchise for Keene, handed down through a chain of corporate successors in interest, the Company referred to a series of fuel conversions between various classes of gas (manufactured gas, butane, butane-air, propane-air) from the 1950s through the 1970s, without any Commission requirements for franchise approval. Petition at 8.

In conclusion, Liberty asked the Commission to declare that the Company did not need to seek permission under RSA 374:22 and RSA 374:26 to distribute natural gas in the form of CNG/LNG in Keene. Petition at 13. In making its request, the Company stated that it "also welcomes the [Commission's] Safety Division's review and inspection of the facility and related issues as it enforces applicable safety laws." Petition at 12.

II. COMMISSION ANALYSIS

Having reviewed the Company's petition and the arguments and information presented, we conclude that under RSA Chapter 374, Liberty has the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its current franchise. RSA 362:2, I, includes in the definition of "public utility" the activity of the "distribution or sale of gas." This statute does not differentiate among various types of gas.

We find the Company's arguments that CNG and LNG constitute gas of the same character as the propane-air mixture currently supplied to Liberty-Keene customers to be persuasive. This interpretation of gas service is consistent with prior Commission decisions allowing natural gas utilities to supplement natural gas supply with propane without requiring additional franchise approval under RSA 374:22 and RSA 374:26. *See, e.g., 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). Consistent with this interpretation of gas service, we conclude that (1) Liberty possesses a franchise to provide gas service which includes CNG/LNG service in Keene, and (2) that Liberty has continually exercised this franchise, as referenced in RSA 374:22, I, to the present day.

While we agree with Liberty that it has the legal authority to offer CNG/LNG service in Keene, it is critical that any new CNG/LNG installations be accomplished safely. We note 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. Pursuant to RSA 374:1 (utilities must provide safe and adequate service), RSA 374:3 (Commission's general supervision of utilities), RSA 374:4 (Commission's duty to keep informed), and related statutes, the Commission has the authority and responsibility to ensure

that all utility installations are safely and reliably engineered in conformance with all applicable standards, and that public utilities like Liberty meet their duty to provide safe and adequate service under RSA 374:1. To that end, pursuant to RSA 374:1, RSA 374:3, and RSA 374:4, with respect to the system conversion in Keene, we order Liberty to provide all final plans for engineering, construction, installation, testing, operations, public awareness, maintenance, emergency response, procedures, and schematics, including qualifications and training of personnel, in sufficient detail as requested by the Commission's Safety Division. Further, before gas flows through these installations, we must receive a report from the Safety Division assessing the adequacy of the Company's plans and the satisfactory completion of a physical inspection of all installations.

It has also come to the Commission's attention, within the context of the companion rate case (Docket No. DG 17-048), that the Company's affiliate, Liberty Utilities Corp. (EnergyNorth Natural Gas), seeks to consolidate the costs of the planned Keene installations into its larger customer rate base (which is much larger than that of just Liberty's Keene franchise). This Order does not address the appropriateness of such consolidation of rates under RSA Chapter 378, nor does it include any finding of prudence regarding the Keene installation. These matters should be examined in the rate case in the first instance, and potentially, as part of a separate review proceeding.


Based upon the foregoing, it is hereby

ORDERED, that Liberty's request for a declaratory ruling is GRANTED, subject to the reporting and operational requirements delineated in this Order; and it is

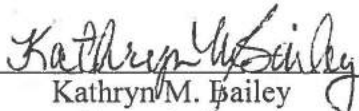
FURTHER ORDERED, that Liberty provide the final comprehensive plans and reports as described above; and it is

FURTHER ORDERED, that Liberty shall not flow any gas through the CNG/LNG installation in Keene until the Commission's Safety Division has found the required plans and reports adequate, and completed its physical inspection of the facilities as described above.


By order of the Public Utilities Commission of New Hampshire this twentieth day of October, 2017.



Martin P. Honigberg
Chairman

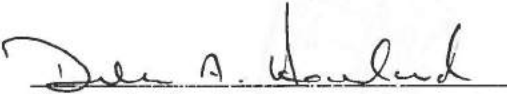


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 17-068-1 Printed: October 20, 2017

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**

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

**JOINT MOTION FOR REHEARING UNDER R.S.A. 541 OF TERRY CLARK,
ONE MOVANT, AND BEVERLY EDWARDS, ELIZABETH FLETCHER, DOUGLAS
WHITBECK, GWEN WHITBECK, SUSAN DURLING, JULIA STEED MAWSON AND
MARILYN LEARNER, AS THEY COLLECTIVELY COMPRISE THE NH PIPELINE
HEALTH STUDY GROUP, AND INDIVIDUALLY**

Pursuant to R.S.A. Chapter 541 and R.S.A. 541:3, the movants noted above and below, by and through their undersigned counsel, Richard M. Husband, Esquire, being persons directly affected by [Order No. 26,065](#) (“Order”) of the Public Utilities Commission (“Commission”) entered on October 20, 2017 in this matter, hereby respectfully jointly move for reconsideration of and a rehearing on the Order. As grounds for this motion, the movants say as follows:

1. The Order, entered without notice or a hearing, issues a declaratory ruling that the petitioner, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities - Keene Division (“Liberty Utilities”), a gas utility currently distributing propane-air in Keene, is allowed, under its 1860 Keene “gas” franchise, to convert to compressed natural gas (“CNG”) and liquid natural gas (“LNG”) and install corresponding facilities—including “technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems,” *id.* at 3—without seeking such permission under R.S.A. 374:22 and R.S.A. 374:26, because the Commission finds today’s gas to be of the “same character” as propane air and traditional “gas.” *See generally* Order and *particularly* at 3. As it is extremely broadly worded and not limited to the subject Keene franchise, or even petitioning utility, the Order allows for the gas utility services in more than 50 gas-franchised New Hampshire municipalities,

see attached Exhibit “A,” to be converted, virtually overnight, to such CNG/LNG systems with related extremely high-pressure piping, without notice, a hearing or the opportunity for intervention, public input or challenge respecting any of them. Thus, while the (revised) petition (“[Petition](#)”) underlying the Order is about increasing Liberty Utilities’ customer base in the Keene area, *see* Petition Footnote 1, the Order 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 Order 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.”

2. Movant, Terry Clark (“Clark”), is an approximately 40-year resident of Keene, New Hampshire, currently residing at 14 Barrett Avenue, Keene, New Hampshire 03431, who is in his second term as City Councilor representing Ward 3 in Keene, but who moves for a rehearing solely in his capacity as a citizen, not as City Councilor, albeit from the perspective of a City Councilor who is working to make solar and other sustainable energy sources available to the City of Keene and its residents and businesses, largely because he believes that a rapid transition to sustainable energy sources is necessary to address the climate change crisis. Being directly affected by the Order in all ways that a Keene resident and inhabitant within the Liberty Utility’s Keene gas franchise can be, Clark is particularly concerned that the Order issued without notice, a hearing, or any opportunity for intervention, challenge or even public input on issues raised by the proceeding, that many state laws and actions, including the Order, are acting

¹ DG 16-852 involves the petitioner’s request for authorization to build similar CNG/LNG facilities to serve the Town of Hanover and City of Lebanon.

as roadblocks to pursuing sustainable energy sources, and that the Order's allowance of the building of a new large, high customer volume hydraulically fractured ("fracked") gas facility in Keene will likely impede the development and availability of sustainable alternatives in Keene for at least another generation.

3. Movants, Beverly Edwards, Elizabeth Fletcher, Douglas Whitbeck, Gwen Whitbeck, Susan Durling, Julia Steed Mawson ("Mawson") and Marilyn Learner ("Learner"), move for reconsideration and a rehearing both (a) as members (hereinafter, also, collectively, "Members") of an unincorporated association of New Hampshire residents dedicated to identifying, preventing and educating the public and state government concerning the health dangers of fracked gas use in New Hampshire, known collectively as the "NH Pipeline Health Study Group," and (b) as individuals. The addresses for these movants are as follows:

Beverly Edwards
41 Twillingate Road
Temple, NH 03084

Elizabeth S. Fletcher
288 Marcel Road
Mason NH 03048

Douglas Whitbeck
756 Brookline Road
Mason, NH 03048

Gwen Whitbeck
756 Brookline Road
Mason, NH 03048

Susan Durling
212 Gould Pond Rd
Hillsboro, NH 03244

Julia Steed Mawson
17 South Shore Dr.
Pelham, NH 03076

Marilyn Learner
62 Baxter Rd
Hollis, NH 03049

Undersigned counsel notes that he was a member of the NH Pipeline Health Study Group, but has withdrawn from membership to pursue representation of the group.

4. As a group, the Order harms the Members by denying their right to provide extremely germane input and evidence on an issue that is not only of great public importance and concern, but one that goes to the very reason for the group’s existence—and work the past two years: whether today’s gas is of the same character as the gas granted under Liberty Utilities’ franchise. It is also an issue on which another state agency has already clearly decided that the Members should be heard.

5. On July 1, 2016, after extensive research, analyses and discussion, the NH Pipeline Health Study Group petitioned the governor and Department of Environmental Services (“DES”) for review and revision of [Env-1400](#), the DES Rules governing Regulated Toxic Air Pollutants (“RTAPs”). Submitted on an emergency basis as to some requests, the petition essentially sought to address the fact that fracked gas is *not* the same as the traditional “natural” gas contemplated by the rules, with studies linking 22 RTAPs—some carcinogens or suspected carcinogens—under [Env-1400](#) to fracked gas (either as additives or produced by combustion), and fracked gas emissions and leaks from gas compressor stations and other gas infrastructure to respiratory and other health problems² A copy of this petition, the sources and other contents of which are incorporated in full herein by reference, is attached as Exhibit “B.” While the DES denied the petition on an emergency basis, it agreed to undertake a “thorough review” of the

² Although fracked gas has been around for decades, it has only replaced traditional gas as the market’s “gas” of choice in recent years. See [Tiemann and Vann, Hydraulic Fracturing and Safe Drinking Water Act Regulatory Issues at 4 \(Congressional Research Service\)\(2015\)](#).

matter, as was otherwise requested by the NH Pipeline Health Study Group. *See* copies of DES correspondence dated August 4, 2016 and August 12, 2016 attached as Exhibit “C.”

6. On October 28, 2016, the NH Pipeline Health Study Group followed its rule review petition to the DES with a request for a hearing, also to the DES, on Tennessee Gas Company, LLC’s application to renew its permit to operate a gas compressor station in Pelham, New Hampshire, noting additional likely RTAPs n fracked gas. A copy of this letter, the sources and other contents of which are incorporated in full herein by reference, is attached as Exhibit “D.” The DES granted a hearing in response to the Members’ request, *see* attached Exhibit “E,” and the Members submitted further information in support of their position in advance of the hearing. *See* submission letter attached as Exhibit “F” (note: the Brigich study referenced in the letter is not part of Exhibit “F” as it is 94 pages, but is available at https://www.atsdr.cdc.gov/HAC/pha/Brigich_Compressor_Station/Brigich_Compressor_Station_EI_HC_01-29-2016_508.pdf . While the Pelham compressor station permit was granted, the DES continues to review the issues raised by the Members concerning fracked gas. In fact, to its credit, the gas industry has worked with the DES to identify the ingredients in fracked gas, even providing the DES with a sample for testing and analysis, thus indicating that the industry itself appreciates the need to address fracked gas concerns openly, publicly and with real, concrete consideration of the chemistry and health effects involved. The Members have met with the DES twice already on the matter for updates on the DES’ analyses and findings and are scheduled to meet with the DES again on November 28, 2017.

7. The DES’ analyses, findings and ultimate conclusions on the components of fracked gas and propriety of any [Env-1400](#) rule changes responsive to the same should be a part of the information and evidence weighed by the state in comparing its character to that of the gas

previously actually considered and approved for use by the state. The DES certainly believes that the NH Hampshire Pipeline Health Study Group has standing to raise and discuss fracked gas before it, and the Commission should, too—especially since, as these issues will not otherwise be raised but ignored, not only the movant group but the entire process and populace will suffer if the Members are not heard.

8. As individuals, the movants who are Members of the NH Pipeline Health Study Group also have standing to request a rehearing based on their membership and interest in the group, for the reasons discussed. However, as concerns Mawson and Learner, standing further derives from their residency in towns—Pelham and Hollis, respectively—in which Liberty Utilities currently holds a gas franchise. Under the precedent established by the Order, Liberty Utilities could immediately convert the traditional gas supply service currently used in Pelham and Hollis to the type of new CNG/LNG gas service authorized by the Order, including the installation of “technology and piping that requires much higher operating pressures that are found in [current] New Hampshire gas distribution systems” *id.* at 3 next door to Mawson and Learner’s residence, without notice, a hearing, or any opportunity for public scrutiny, input or challenge respecting the matter. As to Mawson and Learner, their standing as citizens of franchised utility towns subject to the Order can only be exercised here. In fact, the rights of all citizens of the more than 50 gas-franchised towns in New Hampshire which are subject to the Order, to have any input on whether a whole new type of gas and gas system with higher-pressure piping are coming to their neighborhoods, are lost if this motion is not granted.

9. This motion should be granted, for the following reasons.

The Petition Should be Dismissed Under Puc 207.01(b)

10. The Petition is not “verified under oath or affirmation” as required by Puc 207.01(b): the only signature on the Petition is that of its counsel which, obviously, cannot meet the verification/affirmation requirement as interpreting the rule to allow for only counsel’s signature would make its requirement superfluous and meaningless, given that counsel for parties are otherwise required to sign all petitions under Puc 202.07. Particularly as the Petition had to be revised and certainly does not commit to anything by specificity (nothing is offered of the nuts and bolts of the petitioner’s plans), the verification/affirmation requirement cannot be ignored. The Petition should have been dismissed under Puc 207.01(b) upon its filing without any other action on the matter.

The Petition Should be Dismissed Under Puc 207.01(c)(1)

11. Likewise, the Commission should have dismissed the Petition upon its filing for failing to “set forth factual allegations that are definite and concrete,” as required by Puc 207.01(c)(1)—minimally, because it does not describe the proposed changes to the Keene system at all, precluding a fair opportunity to challenge—or even understand—the Petition.

**The Petition Should be Dismissed Under Puc 207.01(c)(4)
for Lack of Jurisdiction – the Matter is for the SEC**

12. Even if the fatal flaws on its face were corrected, the Petition should still be dismissed, for lack of jurisdiction, as the approval sought under it falls squarely to the SEC. While the Petition is wholly bereft of any description of what its plans actually involve, we do know that it “has begun planning for the conversion of the Keene system from propane-air to compressed natural gas (CNG) and liquefied natural gas (LNG),” with the first step being “the construction of a temporary CNG **facility**,” *see* Petition at 1 (emphasis added), and that the final process will include the installation of “technology and piping that requires much higher

operating pressures that are found in [current] New Hampshire gas distribution systems.” Order at 3. Whether viewed as “new construction” or “sizeable changes or additions to existing facilities,” R.S.A. 162-H:5 clearly covers the petitioner’s plans:

“162-H:5 Prohibitions and Restrictions. –

I. No person shall commence to construct **any energy facility** within the state unless it has obtained a certificate pursuant to this chapter. Such facilities shall be constructed, operated and maintained in accordance with the terms of the certificate. **Such certificates are required for sizeable changes or additions to existing facilities.** Such a certificate shall not be transferred or assigned without approval of the committee.

II. Facilities certified pursuant to RSA 162-F or RSA 162-H prior to January 1, 1992, shall be subject to the provisions of those chapters; however, **sizeable changes or additions to such facilities shall be certified pursuant to this chapter ...**”

Id. (emphasis added).

13. The broad definition of “energy facility” under Section VII of R.S.A. 162-H:2—stretching so far as to include all “ancillary facilities”—buttresses this conclusion:

“VII. ‘Energy facility’ means:

(a) Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities ...”

*Id.*³

14. Liberty Utilities’ testimony in DG 16-852 concerning a similar planned facility for the Town of Hanover and City of Lebanon, described as an “off pipeline” distribution system in the testimony, certainly sounds like it involves one or more industrial structures “used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities” as are covered by R.S.A. 162-H:

“Q. How does an ‘off pipeline’ distribution system work?

³ The facility may also fall under subsection (g) of the statute: there is insufficient information in the petition to make this determination.

A. An ‘off pipeline’ distribution system has two key components. The first component is the underground gas distribution piping along with service risers and meters located at the customer’s premises. This component of the system is identical to the existing distribution network that has been operated safely, reliably, and efficiently by Company employees for decades. The second unique component of the “off pipeline” distribution system is the **fueling facility** that will be utilized to supply the distribution system with natural gas.

A conventional local distribution network has an interconnection with an interstate pipeline company. At this interconnection an LDC would **receive shipments** of natural gas from its supplier, **regulate pressure** down to LDC operating pressure (typically 60 PSI), **add mercaptan**, which is a gas odorant, and distribute the gas to customers. Because there is not an interstate pipeline within 50 miles of the Hanover/Lebanon franchises with which to interconnect, the Company plans to construct **an LNG storage and vaporization facility along with a CNG decompression facility** to supply the natural gas to the distribution system and customers.

LNG will be trucked to the facility and off-loaded into LNG storage tanks.

From the tanks the **liquid will be vaporized into gaseous form, odorized as needed, and injected into the distribution system**. This same procedure has been working reliably and safely at the Company’s current LNG plants for approximately 40 years. **CNG will also be trucked to the facility** and attached to decompression skids, which will **decompress** the gas from approximately 3600 PSI to the working LDC pressure of 60 PSI and **injected [sic]** into the system ...”

[Testimony of William J. Clark in Docket No. DG 16-852 at 8:12-9:13 \(emphasis added\)](#) .

15. The Petition’s asserted applicability of Commission rules and decisions, and legislative acts that predated the effective date of R.S.A. 162-H:5, falls flat: whatever the law may have arguably been at one time, the SEC statutes plainly govern now, and cannot be skirted. This matter does not involve a simple determination of existing franchise rights, as the petitioner would have us believe, but the right to construct, change and add facilities to allow for an entirely *new source* of energy—as the Petition acknowledges. *See id.* at Footnote 1 (“... what we will do, following acquisition, is look into the economics of converting the system from a propane/air system to some **other fuel source**, like CNG or LNG”)(emphasis added). This right can only be determined and granted through proceedings before the SEC. Consistent with its prior decisions, the Commission should find that the SEC has jurisdiction over this matter, and that the SEC’s jurisdiction is exclusive: if the SEC was not established precisely to oversee the siting and approval of such complex, new energy technology and facilities, what *is* its purpose?⁴

**The Petition Should be Dismissed Under Puc 207.01(c)(2)
and/or as Speculative and Failing to Claim a Present Justiciable Right**

16. Thus, as there can be no right under any franchise to service customers until such SEC approval, the Petition’s request for a declaration of franchise rights should be dismissed under Puc 207.01(c)(2), as it presents a purely “hypothetical situation” until there is SEC approval.

17. Similarly, under case law, the Petition should be dismissed as speculative and failing to claim a present justiciable right. The Commission looks to declaratory judgment

⁴ From Commission decisions: if the SEC has jurisdiction over the matter, it is exclusive. *See* [Commission Order No. 25,822 dated October 2, 2015 at 24 and Footnote 8](#) (refusing to consider gas pipeline siting issues, in part, because such matters “ may also come before the New Hampshire Site Evaluation Committee under RSA ch. 162-H,” thereby implying exclusive state agency jurisdiction for the SEC on matters within its jurisdiction, like certifying energy facilities under R.S.A. 162-H:5 (which would also clearly seem to involve “siting”); [Commission Order No. 25,843 dated November 20, 2015 at 5](#) (gas pipeline siting issues are “considerations for other agencies,” citing, *inter alia*, an SEC statute, thereby again indicating that it considers potentially overlapping SEC jurisdiction of the matter to be exclusive of the Commission’s jurisdiction).

decisions under R.S.A. 491:22 as providing analogous decisions for the requirements of exercising its own declaratory judgment authority. *See Public Service Company of New Hampshire, Petition of 5 Way Realty Trust for Declaratory Ruling*, Commission Docket No.DE 01-088, [Order No. 24,137 dated March 14, 2003 at 28](#). As such, the petition cannot be maintained unless it claims “a present legal or equitable right or title” at both the time of filing of the petition and the Commission’s ruling on it. *See* R.S.A. 491:22; *Conway v. Water Resources Bd.*, 89 N.H. 346 (1938)(petition dismissed when petitioner waived claim of right in open court); *Carbonneau v. Hoosiers Engineering Co.*, 96 N.H. 240 (1950)(wife’s declaratory judgment petition on damages available for her living husband’s injuries could not be maintained due to the lack of a present legal right or title against which an adverse claim could be made, as her only claim would arise on her husband’s decease for wrongful death). The petition cannot be construed to claim a present claim legal right or title in any “Keene CNG/LNG franchise rights” as the petitioner will have no right to distribute CNG or LNG to anyone in Keene until such time, if any, that the SEC approves its proposed CNG/LNG facilities. Nor may it be concluded that such a right may arise by the time of the Commission’s decision on the petition, as there has been no SEC filing. If the petition had been filed concurrently with an SEC filing for approval of the proposed CNG/LNG facilities, we might have a different story—there would at least be a colorable right in the process of determination—but, in the absence of an SEC filing, the Commission case must be dismissed or, most charitably, stayed until there is an SEC filing and

outcome.⁵

**If the Commission Could Afford Relief,
it Would Have to be Pursuant to R.S.A. 374:22 and R.S.A. 374:26**

18. Even if the Commission does not yield to the SEC’s clear jurisdiction over the matter, the Petition would still have to be dismissed. As is acknowledged in paragraph 3 of the Petition, Commission Staff informed Liberty Utilities even before it filed the Petition that that its new CNG/LNG system would constitute “a change in the character of service,” such that, any Commission remedy for the relief sought **must** come from a petition filed under R.S.A. 374:22 and R.S.A. 374:26—it cannot be granted under a petition for a declaratory ruling such as the petitioner has filed.

19. 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).

20. 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

⁵ Should the Commission decide, inconsistently with its prior decisions discussed in the preceding footnote, that the Commission 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 Commission 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 Commission).

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).

21. While admitting that it has *never* distributed CNG or LNG under its Keene franchise, *see* [Petition, ¶ 17](#), the petitioner contends that the “right” is broadly bestowed by its original 1860 franchise grant. But, even if the right were covered under the franchise, the failure to have “theretofore actually exercised” it requires permission under R.S.A. 374:22. *Id.* Moreover, the petitioner ignores the plain language of the franchise grant, which clearly limits all rights under the franchise to gas use

“**for the purpose of lighting** the streets, manufactories, machine shops, and all other buildings in the town of Keene, **and to construct** or purchase such buildings, works, furnaces, reservoirs, gas holders, gas pipes, and other things as may be requisite and proper **for such purpose**.”

[Id. at ¶ 15](#) (emphasis added).

22. Thus, unless the Petition is amended to expressly limit CNG and LNG distribution solely for lighting Victorian-era gas lamps and not for heating or other non-lighting purposes, the petitioner is clearly requesting a change in the character of its service and rights requiring a petition under R.S.A. 374:22.⁶ Indeed, given the complete switch from traditional service to CNG/LNG service, and the need for the installation of corresponding new, extensive, complex facilities, including “technology and piping that requires much higher operating

⁶ Whether the petitioner has changed the character of its service (including that of its “gas”) in the past, without objection, is irrelevant. A gas franchise is a legislative grant of authority. The petitioner cannot argue any “acquired” franchise rights exceeding the express language of the franchise grant, by the expiration of any statute of limitations, laches, or the like, as all rights are fixed by the language of the legislative grant and cannot be expanded by time and reliance-type defenses. *See State v. Hutchins*, 79 N.H. 132, 139 (1919)(rights in public waters are fixed by the legislative grant and cannot be changed except by further legislative action). This is as should be expected since, as *State v. Hutchins* notes, *see id.* at 139-140, it is not the obligation of town officials (or ordinary citizens) to continually check for compliance with legislative grants of authority. Nor should noncompliance be rewarded by the consequent acquisition of unintended, ill-gotten “rights.”

pressures than are found in New Hampshire gas distribution systems,” no straight-faced argument can be made to the contrary.

**The Order Must be Vacated as it Was Entered Without
Notice and a Hearing, Contrary to Statutory Requirements
and the Commission’s Own Rules, and in Violation of Due Process**

23. Of course, filing a petition under R.S.A. 374:22 also invokes R.S.A. 374:26 and its requirement of a “due hearing” on a requested change in franchise rights to ensure that the change would be for the “public good” and the “public interest”—a critical distinction between the standards of the proceeding before us as filed and as it is required to be maintained, since the public good/interest determination does not govern a declaratory ruling. The Commission must reach decisions under governing standards. *See Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1073 (1982)(“To turn a [Commission] financing hearing into a prudence determination that could affect future rates, without proper notice, is not in conformity with due process.”). Commission decisions reached in violation of statutory requirements are void. *See, e.g., 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) .

24. But, the Commission must also follow its own rules. *See Attitash Mt. Service Co. v. Schuck*, 135 N.H. 427, 429 (1992)(law well-settled that administrative agencies must follow their own rules and regulations); *In re Union Telephone Co.*, 160 N.H. 309, 317 (2010)(“[T]he PUC may not act contrary to the plain meaning of [its own] Rule 431.01.”).

25. Even if viewed as a “declaratory judgment” case involving a properly filed complete petition—clearly not the case—the Commission ignored its own rules in deciding this matter without notice and a hearing.

26. In relevant part, Puc 207.01, which governs declaratory rulings, provides that declaratory judgment petitions such as Liberty Utilities’ Petition 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). 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).

27. In other words, even the declaratory ruling sought in this case was required to be noticed and scheduled for a full evidentiary hearing, with a public comment session. As these requirements were not met, the Order was obtained contrary to the Commission's own rules and due process and is thus a complete nullity for all purposes, subject to challenge in perpetuity, which can only lead to more invalid orders. *See 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)); *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1077 (1982)(PUC imprudency finding, improperly made in financing hearing under wrong standard, violated due process and ordered expunged); 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.").

The Order does not even do Liberty Utilities any good, and all concerned really would be better off if it were vacated.

**The Relief Requested Herein Cannot be Granted
in Any Proceeding as it is Contrary to the Public
Good and Public Interest and Violates R.S.A. 378:37**

28. Even if the Commission had jurisdiction over this matter, not the SEC, and even if Liberty Utilities had submitted a proper, signed, sufficiently descriptive petition for the relief sought under R.S.A. 374:22 and R.S.A. 374:26—or even if the Petition could somehow be

construed to overcome all of these obstacles—the Order would be unsustainable, as the petitioner’s gas expansion plans are not for the “public good” or “public interest,” as must be shown for approval under the latter statute. But, of course, this is undoubtedly why Liberty Utilities did not file a petition under R.S.A. 374:22 and R.S.A. 374:26.

29. 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 usually 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*, Commission Docket No. DG 15-362, [Order No. 25,987 dated February 8, 2017 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*, Commission Docket No. DE 16-241, [Order of Notice, at 3-4](#). Climate change is a large environmental cost of gas use, and one that has already made its way into evidence, *without objection by Liberty Utilities*, in comparable Commission proceedings. *See, e.g., Exhibit 17 in DG 16-852*; *see also transcript of September 7, 2017 hearing in the matter at p. 159 (confirming that the Commission is considering Exhibit 17 as a full exhibit without objection).*

30. Liberty Utility’s customer expansion plans must be denied as contrary to the public good and public interest due to climate change concerns alone.

31. The news on climate change only gets worse. The situation is truly dire, with a rapidly closing window for action. At the end of June, climate change experts, including former United Nations climate chief Christiana Figueres and Hans Joachim Schellnhuber of the Intergovernmental Panel on Climate Change, published a letter in the journal *Nature* warning that an immediate, monumental acceleration in climate change efforts is needed to prevent the worst effects of global warming. See attached Exhibit “G.” Likewise, two different studies published in the journal *Nature Climate Change* on July 31, 2017 conclude that only a rapid escalation in climate action will prevent rising seas, mass extinctions, super droughts, increased wildfires, more intense hurricanes, decreased crops, fresh water and the melting of the Arctic. See attached Exhibit “H.”

32. The crisis is not debatable. As noted by NASA:

“... 97 percent or more of actively publishing climate scientists agree: Climate-warming trends over the past century are extremely likely due to human activities. In addition, most of the leading scientific organizations worldwide have issued public statements endorsing this position.”

See attached Exhibit “I.” A 13-agency study just released by the Trump Administration plainly acknowledges that climate change is real and largely caused by Man:

“This assessment concludes, based on extensive evidence, that it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th Century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence ...”

Please see attached Exhibit “J” concerning the release of the report and attached Exhibit “K” for more on it. If Man is causing climate change by his greenhouse gas producing activities, Man can likewise ameliorate it by cutting back on greenhouse gas emissions. These facts should be administratively noticed by the Commission under Puc 203.27.

33. Of course, as emissions of methane, which comprises [roughly 95% of today's "natural" gas](#), are [a major greenhouse gas](#), any sincere effort to climate change must include curtailing reliance on gas to reduce methane emissions. *Increasing*, rather than reducing, methane emissions, as New Hampshire is doing by continually approving more gas use through Commission proceedings,⁷ brings us that much closer, that much faster, to the edge. Gas is not the “bridge fuel” to get us to clean, sustainable energy that everyone hoped: [original EPA estimates drastically underestimated the impact of the use of gas on climate change](#) and it is not better than using oil or coal, despite cutting back on their greenhouse gas (CO2) emissions: “[w]hile CO2 persists in the atmosphere for centuries, or even millennia, methane warms the planet on steroids for a decade or two before decaying to CO2,” [many, many times over CO2](#). See “E & E News” online article attached as Exhibit “L.”

34. An opinion recently handed down by the Court of Appeals for the District of Columbia Circuit establishes that the Commission 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

⁷ For [Concord \(DG 16-770\)](#), [Pelham/Windham \(DG 15-362\)](#), [Keene \(DG 17-068\)](#) and possibly [Hanover/Lebanon \(DG 16-852\)](#), as noted above.

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 ...”

Id. at 24.

35. The reasoning of *Sierra Club* applies equally here. The Commission 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.

36. 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.

37. In its Order of Notice for this matter, the Commission suggests concern with R.S.A. 378:37, as it identifies one of the issues to be addressed as “whether the proposal by Liberty comports with the New Hampshire Energy Policy [under R.S.A. 378:37].” *See* Order of Notice at 2.

38. The petitioner’s plans *do not comport* with R.S.A. 378:37.

39. 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 Commission is charged with considering the impacts Liberty Utilities’ plans will have on climate change as our state policy is to meet energy needs “at the lowest reasonable cost” while protecting our environment, safety, health and

natural resources. Gas use and climate change comes at enormously high costs to the citizens and businesses of New Hampshire:

- (1) **to one of our leading industries, tourism**, by its negative impacts on winter recreation, hunting (by the decimation of the moose population), fishing and foliage—threatening hundreds of millions in annual revenues. *See* 2008 DES Fact Sheet “Global Climate Change and its Impact on New Hampshire” at <https://www.des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-23.pdf>;
- (2) **to our sugar industry**, as “[s]ugar maples are extremely susceptible to mid-winter thaws and summer droughts.” *See* 2008 DES Fact Sheet “Global Climate Change and its Impact on New Hampshire’s Fall Foliage and Maple Sugar Industry” at <https://www.des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-25.pdf>;
- (3) **to our moose and loon populations (also fueling tourism)**: in fact, climate change is the leading cause of their decline. *See* August 1, 2017 NHPR online article “Climate Change is the Leading Cause of Moose and Loon Population Decline in New Hampshire” at <http://nhpr.org/post/climate-change-leading-cause-moose-and-loon-population-decline-new-hampshire#stream/0>. Moose hunters and wildlife watchers inject over \$340 million a year into the New Hampshire economy. *See* June 1, 2015 *National Geographic* online article “What’s a Ghost Moose” at <https://news.nationalgeographic.com/2015/06/150601-ghost-moose-animals-science-new-england-environment/>;
- (4) **to our dairy industry**, by [increasing, intensifying droughts](#). *See* August 30, 2016 “Concord Monitor” online article “Dying dairies: How drought, low milk prices lead to decline in N.H. farms” at <http://www.concordmonitor.com/NH-Dairy-Farms-Struggle-Close-Because-of-Drought-Low-Prices-Yeaton-Farm-Epsom-NH-4346716>;
- (5) **to agriculture**, an annual \$330 billion U.S. industry, from [climate change induced stresses ranging from extreme weather events to increased insect pests and diseases](#);
- (6) **to our health and health costs**, for example, by the increase in the tick population and associated increase in Lyme disease, and by all of the respiratory and other problems caused by breathing the pollutants from fossil fuels. New Hampshire has experienced one of the largest state increases in Lyme diseases since 1991. *See* EPA online article “Climate Change Indicators: Lyme Disease” at <https://www.epa.gov/climate-indicators/climate-change-indicators-lyme-disease>, *see id.* New Hampshire also has an enormous number of impacted asthma sufferers. In fact, “New Hampshire’s asthma rate is among the highest in the nation. Approximately 110,000 NH adults and 25,000 NH children have asthma.” *See* page 22 of “Greater Manchester, New Hampshire Health Improvement Plan” online at <https://www.manchesternh.gov/Portals/2/Departments/health/GManCHIP.pdf>;
- (7) **to our seacoast homes and infrastructure**: one study has determined (at page 23) that it will cost just three New Hampshire towns between \$1.9 and \$2.9 billion to address the impacts of climate change. *See* page 23 of “Changing Tides How Sea-Level Rise Harms Wildlife and Recreation Economies Along the U.S. Eastern Seaboard” at <http://www.nwf.org/~media/PDFs/Global-Warming/Reports/Changing->

[Tides_FINAL_LOW-RES-081516.ashx;another](#). Another concludes that [over 7,000 New Hampshire homes could be under water by 2100 due to sea rise caused by climate change](#). See November 30, 2016 “Union Leader” online article “Study: 7,000 Seacoast properties could be under water by 2100 yet NH keep building” at <http://www.unionleader.com/apps/pbcs.dll/article?AID=/20161130/NEWS11/161139963&template=printart>;

(8) **to taxpayers and ratepayers** in cleaning up from ice and other destructive storms, and addressing all of the above other harms.

(9) **to everyone’s cost of insurance** as the price of addressing all of the negatives rise for insurance companies.

40. These costs—and the premature *deaths* due to droughts, severe storms and other climate events are not even factored in the above—are very unreasonable given the far lesser cost of non-fossil fuel alternatives.

41. By all authority, we are in a crisis 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 just at issue in this proceeding. “[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. Indeed, more than a decade ago, the vast majority of New Hampshire cities and towns (160+ out of 234) called for it. See attached Exhibits “M” and “N.”

42. Citizens need to be heard.

43. The movants assert that the aforementioned grounds establish why the Order is unlawful, unreasonable and otherwise unsustainable, and why this motion for reconsideration of and a rehearing on the Order should be granted.

WHEREFORE, the movant respectfully requests that the Commission:

- A. Vacate (or reverse) the Order and, after due notice, schedule this matter for a full evidentiary hearing on the merits conducted in complete compliance with statutory requirements and Commission rules; and
- B. Grant such other and further relief is reasonable, lawful, just and otherwise appropriate.

Respectfully submitted,

Dated: November 16, 2017

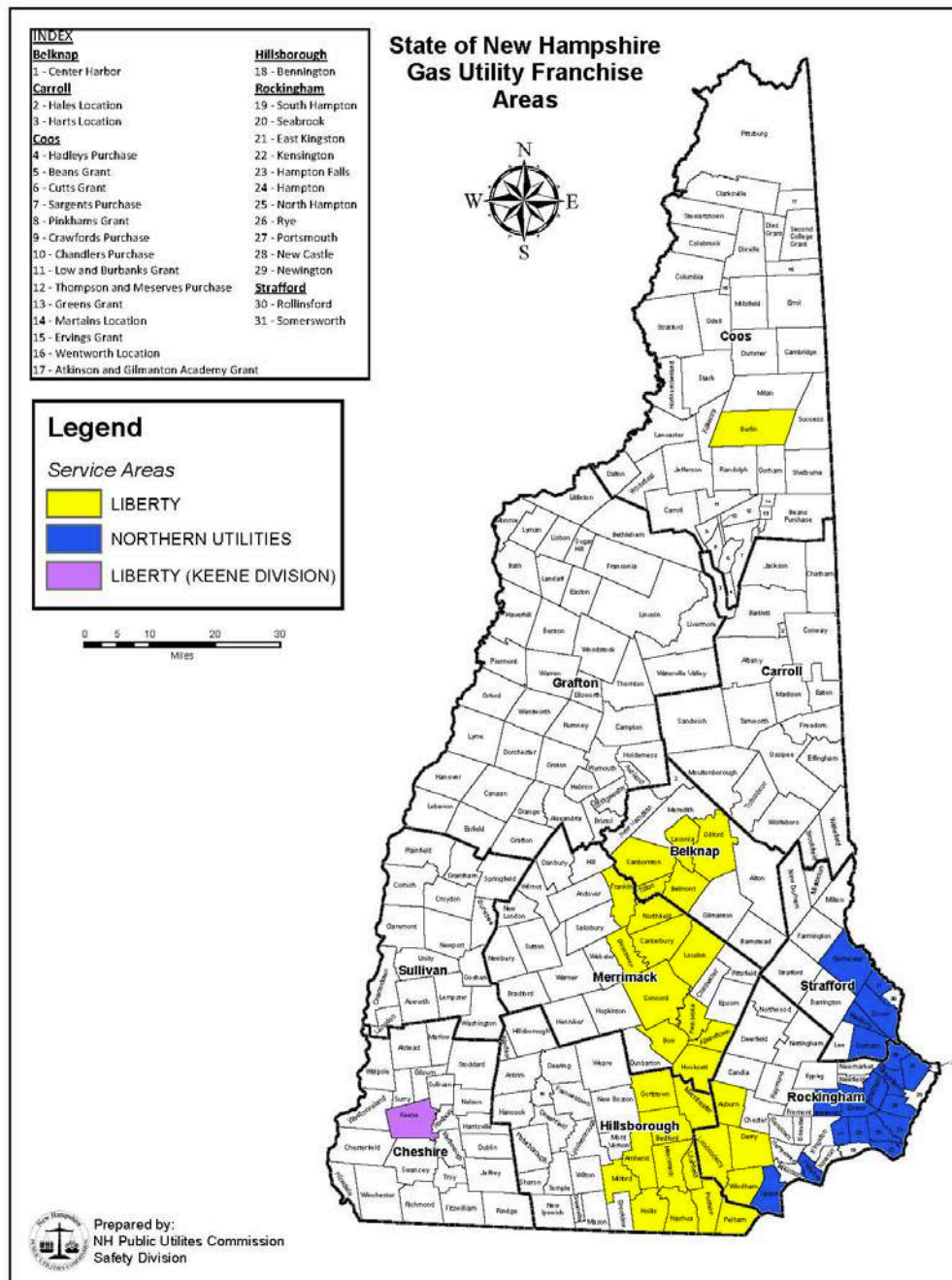
//s//Richard M. Husband, Esquire
Richard M. Husband
10 Mallard Court
Litchfield, NH 03052
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CERTIFICATE OF SERVICE

I hereby certify that I have on November 16, 2017, I 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
Richard M. Husband

EXHIBIT “A”



Communities Served

| Liberty Utilities (Natural Gas) | | | Unitil/Northern Utilities (Natural Gas) | | | NH Gas Corp. (Propane) | Concord Steam Corp. (Steam) |
|---------------------------------|-------------|------------|---|---------------|-------------|---------------------------|--------------------------------|
| Allenstown | Franklin | Merrimack | Atkinson | Hampton | Portsmouth | Keene | Concord |
| Amherst | Gilford | Milford | Dover | Hampton Beach | Rochester | | |
| Auburn | Goffstown | Nashua | Durham | Hampton Falls | Rollinsford | | |
| Bedford | Hollis | Northfield | East Kingston | Kensington | Salem | | |
| Belmont | Hooksett | Pelham | East Rochester | Madbury | Seabrook | | |
| Berlin | Hudson | Pembroke | Exeter | Newington | Somersworth | | |
| Boscawen | Laconia | Sanbornton | Gonic | North Hampton | Stratham | | |
| Bow | Litchfield | Tilton | Greenland | Plaistow | | | |
| Canterbury | Londonderry | Windham | | | | | |
| Concord | Loudon | | | | | | |
| Derry | Manchester | | | | | | |

EXHIBIT “B”

July 1, 2016

Via e-mail (governorhassan@nh.gov)

The Honorable Governor Margaret Wood Hassan
Office of the Governor
State House
107 North Main Street
Concord, NH 03301

Via e-mail (thomas.burack@des.nh.gov)

Thomas Burack, Commissioner
Department of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

RE: Rules Governing the Control of Air Pollution (Env-A 100-4800) - PETITION

Dear Governor Hassan and Commissioner Burack:

We write as a formal petition to Commissioner Burack, pursuant to [R.S.A. 541-A:4](#) to amend and/or adopt rules under [Env-A 1400](#), the Department of Environmental Services (“DES”) Rules governing Regulated Toxic Air Pollutants (“RTAPs” or, singularly, “RTAP”), in certain respects identified below. We request that some of these changes be adopted as emergency rules, under [541-A:18](#), and otherwise pursuant to Governor Hassan’s health, safety and other emergency powers. Pursuant to said powers, we also request that Governor Hassan order that the rulemaking process of [R.S.A. 541-A:3](#) be commenced as soon as possible, in less than the five month period statutorily provided for the normal commencement of the same,¹ for public hearing(s) and comment, and final approval of the proposed and perhaps additional rule changes under [Env-A 1400](#). Our requests are grounded in (1) the immediate need for rule changes to provide standards that will promote human health protection, *see* [Env-A 1412.04](#) ; and (2) the “imminent peril to the public health or safety” and/or “substantial fiscal harm to the state or its citizens,” *see* [R.S.A. 541-A:18, I](#), presented by the normal timeframe for commencing the rulemaking process.

In essence, we are writing to request your help in expediting a remedial response to a grave concern.

While the Northeast Energy Direct (“NED”) high- pressure natural gas pipeline project application has been withdrawn from the Federal Energy Regulatory Commission (“FERC”), this does not preclude NED V2.0, in some “other” configuration, at any time. Moreover, there are a number of other such pipeline projects in the works for the Northeast, *see* [Northeast gas pipeline projects](#), one or more of which may result in more pipeline infrastructure in New Hampshire, by reconfiguration or extension of the project(s). Pending Public Utilities Commission (“PUC”) [Docket No. DE 16-241](#) could open the door to a rush of new pipeline projects by allowing the electric distribution companies (“ECDs”) to become the customers pipeline project owners crave, and by further incentivizing such projects by passing their construction costs on to electric ratepayers—in fact, the PUC’s decision could bring NED V2.0 virtually as soon as it is handed down, should the PUC force the applicant to re-open bidding.(NED was a bidder before). **Under the expedited FERC certification process, pipeline project approval often takes less than a year ... But the rulemaking process ordinarily has up to five months just to get off the ground.** *See* Footnote 1, *supra*. In addition to the potential for new massive pipeline project infrastructure, projects such as the Pelham/Windham/Concord Lateral

¹ *See* R.S.A. 541-A:4, I (30 days allowed for acting upon the petition, plus 120 more days for commencing rulemaking by requesting a fiscal impact statement).

expansion/connection, the subject of pending PUC [Docket No. DG 15-362](#), continue to incrementally increase gas pipeline infrastructure in our state. All of which raise health and related cost concerns for New Hampshire, the adequacy of protection afforded citizens under current state air quality requirements, and the need to adopt emergency rules and expedite the rulemaking process to provide the health protective rules we need as soon as possible.²

In this regard, the [Env-A 1400](#) rules governing RTAPs are in need of immediate revision. For example, the exemptions under Env-A 1402.01 and Env-A 1402.02 should be immediately amended to confirm their inapplicability to emissions of RTAPs from natural gas derived, in whole or in part, from the hydraulic fracturing (“fracking”) process, whether resulting from combustion, venting, leaking or otherwise. The fracking process results in contaminants, including toxic air pollutants, not contained in the natural gas used in New Hampshire at the time the rules were adopted. **Indeed, twenty-two (22) toxic air pollutants on the Table 1450-1 RTAP List, beginning at page 15 under Env-A 1450.01, are known to be associated with hydraulically fractured (“fracked”) gas**, either as additives or produced by combustion of this gas, 15 being Toxicity Class I RTAPs, the most toxic. See discussion and cited studies and other materials below and RTAP List/Fracked Gas Comparison immediately following the signatories to this letter. Since it contains so many toxic components, including known carcinogens, fracked gas should not be exempted from New Hampshire’s toxic air pollution regulations. See *id.*; see also generally [“California’s Fracking Fluids: the Chemical Recipe,”](#) by Tasha Stoiber, et. al. (EWG; August 2015).

For all of the above and reasons to follow, please act to protect the health of New Hampshire’s citizens by adopting the following recommended amendments in bold to Env-A 1402.01 and Env-A 1402.02, on an emergency basis:

Env-A 1402.01 Statutory Exemptions for Sources and Activities. As specified in RSA 125-I:3, III(a) and (b), the following shall be exempt from regulation under RSA 125-I and these rules:

- (a) Normal agricultural operations;
- (b) The application of pesticides regulated pursuant to RSA 430:28 through RSA 430:48;
- (c) Emissions of RTAPs resulting from mobile sources; and
- (d) Emissions of RTAPs resulting from the combustion of virgin petroleum products at stationary sources. **Virgin petroleum products shall not be considered to include natural gas derived, in whole or in part, from the hydraulic fracturing process, RTAP emissions resulting from which, by combustion, venting, leaking or any other form of release, shall be subject to regulation under RSA 125-I and these rules, with emissions of such natural gas from compressor stations subject to hourly baseline**

² While the DES should obviously disagree should one be raised, there may be an argument that the DES is bound by the existing (deficient) rules should emergency rules not be adopted and/or the rulemaking process not be completed prior to commencement of proceedings for approval of a new pipeline. See *In re Goldman*, 151 N.H. 770 (2005)(Court found application of a newly enacted statute to an already commenced proceeding to be precluded by state constitutional proscription against retrospective laws affecting established substantive rights).

ambient air quality monitoring and data collection and analysis in accordance with best practices and the Precautionary Principle, at no less than four sites within at least a three-mile radius of the stationary source, with such sites to include the location of the stationary source and locations of all public schools within the designated radius, for a period of not less than one year before and after initial operation of the stationary source, and at least every three months thereafter, to ensure compliance with RSA 125-I and these rules and as a condition of the issuance of any permitting thereunder.

REASONS SUPPORTING AMENDMENTS:

- A. Neither R.S.A. 125-I nor the DES Rules governing Regulated Toxic Air Pollutants define "virgin petroleum products," leaving the term impermissibly open to the argument that it includes fracked gas, but likewise subject to rule amendment expressing precluding such interpretation;
- B. Fracked gas emissions and leaks at compressor stations and otherwise cause established adverse health effects not prevented by current standards.³ New Hampshire's air quality rules have long set the standard for health and safety, and we should maintain that standard and embrace not only best practices, but also the Precautionary Principle for monitoring fracked gas emissions at stationary sources, including compressor stations.⁴ Determining baseline ambient air concentrations for pollutants of concern and requiring emissions testing under available statutory authority will provide reasonable assurances of health and environmental protection from these potential emission sources.
- C. The Precautionary Principle is proactive, and the recent Saint-Gobain problems, in particular, underscore the wisdom of being proactive in health-related monitoring;

³ See, e.g., ["Gas Compressors and Nose Bleeds: a New Study Connects Health Issues with Rural Gas Compressor Pollution,"](#) by Jessica Owen (Fall 2015)(concerning Minisink, New York study); ["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); ["Porter Ranch Gas Leak Triggers State of Emergency in California,"](#) January 7, 2016 CNN online news article; ["Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania,"](#) by Nadia Steinzor, et. al. (October 2012); ["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; [ATSDR/CDC Health Consultation Report \(Jan. 29, 2016\), p. ii \(asthmatics, elderly and others at risk from compressor stations\);](#) [ATSDR/CDC Health Consultation Report \(Apr. 22, 2016\), pp. ii-iii \(concerning short and long term adverse health effects of particulates\);](#) ["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). Among her other qualifications and credentials, "Mrs. Subra holds degrees in Microbiology/Chemistry from the University of Southwestern Louisiana. She received the MacArthur Fellowship "Genius" Award from the MacArthur Foundation for helping ordinary citizens understand, cope with and combat environmental issues in their communities and was one of three finalists in the Environmental Category of the 2004 Volvo for Life Award." [Click "Read More" under her biography.](#)

⁴ See this link for information concerning the [Precautionary Principle](#).

- D. Precautionary, proactive, or just plain reasonable: monitoring and related analysis should be conducted on an hourly basis:
- “Delfino et al (2002) posited that maxima of hourly data, not 24-hour averages, better captured the risks to asthmatic children, stating ‘It is expected that biological responses may intensify with high peak excursions that overwhelm lung defense mechanisms.’ Additionally, they suggest that ‘[o]ne-hour peaks may be more influenced by local point sources near the monitoring station that are not representative of regional exposures ...’.”
- See [“Summary on Compressor Stations and Health Impacts,” by Southwest Pennsylvania Environmental Health Project \(Feb. 24, 2015\), pp. 6-7;](#)⁵
- E. The proposed monitoring requirements are otherwise very reasonable. At least one-year before and after baseline ambient air quality monitoring around stationary sources generating fracked gas emissions, including compressor stations, is probably the bare minimum needed to accurately gauge the impacts of such emissions, as air quality changes throughout the year, and long-term analysis of pre-emission air quality is necessary to evaluate post-emission effects.⁶ Given air and pollution gathering variables, data should be collected and analyzed at no less than four different monitoring sites, with prudence and caution dictating that one be located at every school in an impacted radius. A monitoring radius of at least three miles, but to be determined in accordance with best practices and Precautionary Principle approach, is the safest approach to establishing the radius given that adverse health impacts have already been clearly identified within a three-mile radius of compressor stations,⁷ but may be proven to extend to greater distances with further data and greater knowledge in this area. Likewise, particularly given all of the potential adverse health consequences and the still emerging field of knowledge in the area, at least quarterly, rather than bi-annual or annual monitoring and data collection and analysis, would be in accordance with the Precautionary Principle and best practices;
- F. The proposed monitoring and permitting requirements are in accordance with [R.S.A. 125-I:5, V.](#)

⁵ To be clear: such monitoring and analysis would not require onsite personnel, as current monitoring technology allows for programmed data collection on hourly, daily, monthly, yearly and other bases.

⁶ “[O]ver the course of a year emissions will vary, often greatly. As phases of construction and operation change so will emissions content and concentrations.” [“Summary on Compressor Stations and Health Impacts,” by Southwest Pennsylvania Environmental Health Project \(Feb. 24, 2015\), p.1.](#) See also [“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 \(September 30, 2014\), p. 10](#) (showing variations in ambient air measurements of five VOCs near a compressor station over just a three day period).

⁷ See [“Southwest Pennsylvania Environmental Health Project”](#). See also [“Human Health Impacts Associated with Chemicals and Pathways of Exposure from the Development of Shale Gas Plays,” by Wilma Subra Subra Company \(January 9, 2012\)](#) (identifying numerous health issues within two miles of compressor stations).

Env-A 1402.02 Additional Exemptions for Sources and Activities. Pursuant to RSA 125-I:3, III(c), the owner or operator of a device or process that meets the criteria of Env-A 1401.02 also shall be exempt from the requirements of this chapter for a particular RTAP if the emissions of such pollutant are from, or result from, any of the following sources or activities:

(a) The combustion of one or more of the following fuels:

(1) Coal;

(2) Natural gas, **but not such gas derived, in whole or in part, from the hydraulic fracturing process, RTAP emissions resulting from which, by combustion, venting, leaking or otherwise, shall be subject to the requirements of this chapter ...**

REASONS SUPPORTING AMENDMENTS:

- A. The fracking process results in contaminants, including specific regulated toxic air pollutants, not contained in the natural gas used in New Hampshire at the time the rules were adopted;
- B. Fracked gas emissions and leaks at compressor stations and otherwise cause established adverse health impacts not prevented by current standards.⁸

Additionally, the following toxic air pollutants should be immediately added, or at least reconsidered for addition to, the [RTAP List](#) under Table 1450-1, beginning at page 15 under Env-A 1450.01, for the reasons stated:

- 1. Radon. Although not on the RTAP List, radon is otherwise the subject of health protective legislation in New Hampshire. *See, e.g.*, R.S.A. 125:9, X; R.S.A. 310-A:189-a and R.S.A. 477:4-a. It carries with it radioactive and otherwise toxic ingredients:
“The gas which flows through the pipeline likely carries gaseous radon with it, and as radon decays within the pipeline, the solid daughter elements, polonium and lead, accumulate along the interior of the pipes. There is a concern that the gas transiting, and being compressed and regulated, will have radioactivity levels which will put at risk not only the workers at these stations and along the pipeline, but potentially also to the residents. Radon, a gas, has a short half-life (3.8 days) but its progeny are lead and polonium, and these are toxic and have relatively long half-lives of 22.6 years and 138 days respectively. There is no data that we can turn to in order to assess the risk of radioactive exposures in our community.”⁹

⁸ See sources cited in Footnote 3, *supra*.

⁹ From “[Summary on Compressor Stations and Health Impacts](#),” by Southwest Pennsylvania Environmental Health Project (Feb. 24, 2015), p.6 (footnotes omitted).

See also [“Radon in Natural Gas from Marcellus Shale,” by Marvin Resnikoff, Ph.D. \(Jan. 10, 2012\), p. 13 \(“The potential environmental and public health impact of radon in natural gas from the Marcellus Shale formation is enormous.”\)](#). While there may not be data to assess such risks, the Precautionary Principle weighs in favor of adding radon to the RTAP List. Again, we have seen the effects of not adhering to this principle with the Saint-Gobain issues we are facing today: it is better to prevent in the first place than attempt to retrofit safeguards and mitigate after the fact.¹⁰ As it is not currently on the RATP List, it should be added immediately, accordingly.

2. The following Volatile Organic Compounds (“VOCs”) found in fracked (shale) gas should also be reconsidered for inclusion and/or toxicity revision as RTAPs, given the magnitude of potential emissions from these sources and the associated adverse health impacts discussed in [“Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania,” by Nadia Steinzor, et. al. \(October 2012\):](#)¹¹

Table 7. VOCs in ambient air, sorted by highest percent detection; concentrations are in micrograms per cubic meter, $\mu\text{g}/\text{m}^3$ (n = total number of canister samples that were analyzed for a particular chemical; NA = VOC not included in the analysis)

| Volatile Organic Compound (VOC) | n | Number of samples detecting VOC | Percent of n detecting VOC | Min. | Max. | Mean* | Chemical reporting limits for the three labs used | | |
|---------------------------------------|----|---------------------------------|----------------------------|------|-------|-------|---|----------|-------------|
| | | | | | | | Columbia | Con-Test | Pace** |
| 2-Butanone | 17 | 16 | 94 | 0.95 | 2.9 | 1.52 | 0.85 - 1.3 | NA | NA |
| Acetone | 17 | 15 | 88 | 8.0 | 19 | 11.85 | 6.5 - 10 | NA | NA |
| Chloromethane | 34 | 27 | 79 | 1.0 | 1.66 | 1.21 | 0.59 - 0.90 | 0.1 | 1.39 1.53 |
| 1,1,2-Trichloro-1,2,2-trifluoroethane | 34 | 26 | 76 | 0.54 | 0.73 | 0.64 | 0.22 - 0.34 | 0.38 | 5.13 - 5.67 |
| Carbon tetrachloride | 34 | 26 | 76 | 0.46 | 0.76 | 0.62 | 0.091 - | 0.31 | 4.21 - 4.65 |
| Trichlorofluoromethane | 34 | 26 | 76 | 0.6 | 1.8 | 1.48 | 0.81 - 1.2 | 0.28 | 3.32 - 3.66 |
| Toluene | 34 | 22 | 65 | 0.68 | 7.9 | 1.83 | 0.53 - 0.82 | 0.19 | 2.52 - 2.79 |
| Dichlorodifluoromethane | 17 | 9 | 53 | 1.9 | 2.8 | 2.41 | NA | 0.25 | 3.32 - 3.66 |
| n-Hexane | 8 | 3 | 38 | 3.03 | 7.04 | 5.23 | NA | NA | 2.37 - 2.61 |
| Benzene | 34 | 11 | 32 | 0.31 | 1.5 | 0.85 | 0.46 - 0.67 | 0.16 | 2.14 - 2.36 |
| Methylene Chloride | 34 | 10 | 29 | 1.9 | 32.62 | 7.93 | 0.49 - 0.76 | 1.7 | 2.33 - 2.57 |
| Total Hydrocarbons (gas) *** | 8 | 2 | 25 | 49.8 | 146 | 97.9 | NA | NA | 46.9 - 52.2 |
| Tetrachloroethylene | 34 | 8 | 24 | 0.12 | 10.85 | 1.68 | 0.10 - 0.16 | 0.34 | 4.54 - 5.02 |
| 1,2,4-Trimethylbenzene | 17 | 4 | 24 | 0.38 | 0.61 | 0.48 | NA | 0.25 | 3.30 - 3.64 |
| Ethylbenzene | 34 | 6 | 18 | 0.27 | 1.5 | 0.54 | 1.4 - 1.9 | 0.22 | 2.91 - 3.21 |
| Trichloroethylene | 34 | 6 | 18 | 0.17 | 5.37 | 2.71 | 0.08 - 0.12 | 0.27 | 3.60 - 3.98 |
| Xylene (m&p) | 34 | 5 | 15 | 0.92 | 5.2 | 1.98 | 2.5 - 3.8 | 0.43 | 2.82 - 3.12 |
| Xylene (o) | 34 | 5 | 15 | 0.39 | 1.9 | 0.76 | 1.2 - 1.9 | 0.22 | 2.91 - 3.21 |
| 1,2-Dichloroethane | 34 | 1 | 3 | 0.64 | 0.64 | 0.64 | 0.59 - 0.90 | 0.2 | 2.71 - 2.99 |

* Mean of samples detecting chemical.²¹

** Pace reporting limits were in ppbv. We converted to $\mu\text{g}/\text{m}^3$.²²

*** Total hydrocarbons reported as parts per billion volume (ppbv).

¹⁰ See generally, and specifically page 3 Table 1, at [“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. \(2014; published in Reviews on Environmental Health, 2016\)](#).

¹¹ See generally, and particularly p. 21 (containing Table 7).

It appears from our comparison of the above Table 7 with the RTAP List, that the following from the above should be added to the RTAP List: 2-Butanone, Chloromethane, Trichlorofluoromethane, Dichlorodifluoromethane, Total Hydrocarbons (gas), Tetrachloroethylene, Ethylbenzene, 1, 2-Dichloroethane, and possibly Xylene (m&p).¹² However, it would be best if a professional from the Department of Environmental Services checked to confirm. To be noted: as shown in the RTAP List/Fracked Gas Comparison to follow, the Table 7 chemicals on the RTAP List are all Toxicity Class I or Toxicity Class II RTAPs, further suggesting that the VOCs identified on Table 7 but not on the current RTAP List should be added to the latter.

3. Particulate matter. Particulate matter, especially PM2.5, and particularly in conjunction with VOCs, present other health risks compelling their inclusion on the RTAP List. From [“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. 19-20:](#)

“In addition to the VOC exposure presented above, PM2.5 also poses a significant health concern and interacts with the airborne VOCs increasing their impact. In fact, at a compressor station PM2.5 may pose the greatest threat to the health of nearby residents ...

The size of particles determines the depth of inhalation into the lung; the smaller the particles are, the more readily they reach the deep lung. Particulate matter (PM10, PM2.5 and ultrafine PM), in conjunction with other emissions, are at the core of concern over potential effects of [fracked gas development sites]. High particulate concentrations are of grave concern because they absorb airborne chemicals in their midst. The more water soluble the chemical, the more likely it is to be absorbed onto a particle. Larger sized particles are trapped in the nose and moist upper respiratory tract thereby blocking or minimizing their absorption into the blood stream. The smaller PM2.5 however, is more readily brought into the deep lung with airborne chemicals and from there into the blood stream. As the particulates reach the deep lung alveoli the chemicals on their surface are released at higher concentrations than they would in the absence of particles. The combination of particles and chemicals serves, in effect, to increase in the dose of the chemical. The consequences are much greater than additivity would indicate; and the physiological response is intensified. Once in the body, the actions between particles and chemicals are synergistic, enhancing or altering the effects of chemicals in sometimes known and often unknown ways.

Reported clinical actions resulting from PM2.5 inhalation affect both the respiratory and cardiovascular systems. Inhalation of PM2.5 can cause decreased lung function, aggravate asthma symptoms, cause nonfatal heart attacks and high blood pressure. Research reviewing health effects from highway traffic, which, like [unconventional natural gas development], has especially high particulates, concludes, “[s]hort-term exposure to fine particulate pollution exacerbates existing pulmonary and cardiovascular disease and long-term repeated exposures increases the risk of cardiovascular disease and death.” PM2.5, it has been suggested, “appears to be a risk factor for cardiovascular disease via mechanisms that likely include pulmonary and systemic inflammation, accelerated atherosclerosis and

¹² As noted on the RTAP List/Fracked Gas Comparison following the signatories to this letter, Xylene (m) and Xylene (p) isomers are listed separately on the RTAP List, as RTAP CAS No. 108 – 38 – 3, Toxicity Class I, and RTAP CAS No. 106 – 42 – 3, Toxicity Class I, respectively, but it is not clear to the undersigned if Xylene (m&p) is a distinct chemical which should be added to the RTAP List based on its identification as a VOC in Table 7.

altered cardiac autonomic function. Uptake of particles or particle constituents in the blood can affect the autonomic control of the heart and circulatory system.

Ultrafine particles (<0.1) get less attention in the literature than PM_{2.5} but is found to have high toxic potency. These particles readily deposit in the airways and centriacinar region of the lung. Research suggests increases in ultrafine particles pose additional risk to asthmatic patients ...

There is an abundance of research on the health effects of short term PM_{2.5} exposure ... health effects can occur within 6 hours of elevated PM_{2.5} exposures, the strongest effects occurring between 3 and 6 hours. Such an acute effect of PM_{2.5} may contribute to acute increase in the risk of cardiac disease, or trigger the onset of acute cardiac events, such as arrhythmia and sudden cardiac death ...

In addition to short term exposures and associated effects, there is evidence of health impacts from long-term exposures. An [health impact assessment] reviewing data from a number of European cities found that nearly 17,000 premature deaths from all causes, including cardiopulmonary deaths and lung-cancer deaths, could be prevented annually if long-term exposure to PM_{2.5} levels were reduced ...”

From the [EPA website](#) (emphasis added):

“‘Particulate matter,’ also known as particle pollution or PM, is a complex mixture of extremely small particles and liquid droplets. Particle pollution is made up of a number of components, including acids (such as nitrates and sulfates), organic chemicals, metals, and soil or dust particles.

The size of particles is directly linked to their potential for causing health problems. EPA is concerned about particles that are 10 micrometers in diameter or smaller because those are the particles that generally pass through the throat and nose and enter the lungs. **Once inhaled, these particles can affect the heart and lungs and cause serious health effects.** EPA groups particle pollution into two categories:

- ‘Inhalable coarse particles,’ such as those found near roadways and dusty industries, are larger than 2.5 micrometers and smaller than 10 micrometers in diameter.
- ‘Fine particles,’ such as those found in smoke and haze, are 2.5 micrometers in diameter and smaller ...”

From [ATSDR/CDC Health Consultation Report \(Jan. 29, 2016\), p. ii](#):

“**Particulate Matter (PM_{2.5})** - The World Health Organization notes that when annual mean concentrations are in the range of 11-15 µg/m³, health effects can be expected (WHO 2006 ...”

See also [“PA expands particulate monitoring as federal study finds high level in one location,” May 5, 2016 online article](#); and [ATSDR/CDC Health Consultation Report \(Apr. 22, 2016\), pp. ii-iii](#) (short term exposures “to maximum levels of PM_{2.5} may be harmful to unusually sensitive populations, such as those with respiratory or heart disease” and chronic exposures in “concentration of 15 to 16 µg/m³ may be harmful to the general population and sensitive subpopulations, including the elderly, children, and those with respiratory or heart disease.”).

In addition to final amendment of the above rules and RTAP List inclusions, the rulemaking process for Env-A 1400 should be commenced as soon as possible to ascertain, through public hearing(s) and comments, such other amendments, including RTAP List additions, as should be made to ensure their applicability to any high-pressure gas pipeline projects and infrastructure. We would greatly appreciate your assistance in this regard.

In further support of this petition and the requests made herein, we also submit the analysis of Dr. Curtis L Nordgaard, *Potential emissions from a New Ipswich compressor station, and some associated health effects*, concerning the New Ipswich, New Hampshire compressor station proposed under the NED project, which follows the RTAP List/Fracked Gas Comparison at the end of this letter. In addition to other relevant information provided in this analysis, Dr. Nordgaard estimates that just that compressor station would have caused over two million (\$2,000,000.00) dollars in annual health care costs. Such costs plainly constitute “substantial fiscal harm to the state or its citizens” alone justifying emergency adoption under [R.S.A. 541-A:18, I](#).

We look forward to your response at your earliest convenience. Please direct the same, or any questions, concerns or other communications, to our Chairperson and contact point person, Beverly Edwards, at nadesha@msn.com.

Thank you for your time and courtesy in this matter.

Sincerely,

//s// Richard Husband
Duly Authorized, on behalf of:

NH Pipeline Health Study Group:

By its Board/Members:

//s// Beverly Edwards
Chairperson

//s// Liz Fletcher
Board Member

//s//Douglas Whitbeck
Board Member

//s//Gwen Whitbeck
Board Member

//s//Sue Durling
Board Member

//s//Julia Steed Mawson
Board Member

//s//Marilyn Learner
Board Member

//s//Richard Husband
Board Member

RTAP LIST/FRACKED GAS COMPARISON

22 toxic air pollutants on [RTAP List](#) (beginning at page 15) are associated with fracked gas, either as additives or produced by combustion of this gas (VOCs).

15 of these are Toxicity Class I (most toxic); 6 are Toxicity Class II, 1 is Toxicity Class III.

10 RTAPs - 5 Toxicity Class I, 4 Toxicity Class II, 1 Toxicity Class III - are on EPA list of frequent additives to fracked gas

Sources: [RTAP List](#) (beginning at page 15) and Table 9, at p. 36, of [“Analysis of Hydraulic Fracturing Fluid Data from the FracFocus Chemical Disclosure Registry 1.0,” by the EPA \(March 2015\)](#); *see also EPA website*

Methanol: RTAP CAS No. 67 – 56 – 1, Toxicity Class II

Ethanol: RTAP CAS No. 64 – 17 – 5, Toxicity Class II

Propargyl alcohol : RTAP CAS No. 107 – 19 – 7, Toxicity Class I

Glutaraldehyde: RTAP CAS No. 111 – 30 – 8, Toxicity Class I

Ethylene glycol (aerosol): RTAP CAS No. 107 – 21 – 1, Toxicity Class II

2-Butoxyethanol: RTAP CAS No. 111 – 76 – 2, Toxicity Class I

Napthalene: RTAP CAS No. 91 – 20 – 3, Toxicity Class I

1,2,4-Trimethylbenzene: RTAP CAS No. 95 – 63 – 6, Toxicity Class II

Dimethylformamide: RTAP CAS No. 68 – 12 – 2, Toxicity Class I

Polyethylene glycol: RTAP CAS No. 25322 – 68 – 3, Toxicity Class III

11 more RTAPs - 9 Toxicity Class I, 2 Toxicity Class II – are identified Table 7 VOCs from fracked gas

Sources: [RTAP List](#) (beginning at page 15) and Table 7, at p. 21, of [“Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania,” by Nadia Steinzor, et. al. \(October 2012\)](#)

Acetone: RTAP CAS No. 67 – 64 – 1, Toxicity Class I

1,1,2-Trichloro-1,2,2-Ttrifluoroethane: RTAP CAS No. 76–13–1 , Toxicity Class II

Carbon tetrachloride: RTAP CAS No. 56 – 23 – 5, Toxicity Class I

Toluene: RTAP CAS No. 108 – 88 – 3, Toxicity Class I

n-Hexane: RTAP CAS No. 110 – 54 – 3, Toxicity Class II

Benzene: RTAP CAS 71 – 43 – 2, Toxicity I

Methylene chloride (dichloromethane): RTAP CAS No. 75 – 09 – 2, Toxicity Class I

Trichloroethylene: RTAP CAS No. 79 – 01 – 6, Toxicity Class I

Xylene m-isomers: RTAP CAS No. 108 – 38 – 3, Toxicity Class I

Xylene p-isomers: RTAP CAS No. 106 – 42 – 3, Toxicity Class I

Xylene o-isomers: RTAP CAS No. 95 – 47 – 6, Toxicity Class I

A 22nd RTAP, the VOC Formaldehyde - Toxicity Class I – is also found in fracked gas

Sources: pp. 18-19 at [“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. 26-27 and Appendix B, pp. 2-6 and Table 12 at p. 10, of [ATSDR/CDC Health Consultation Report \(Jan. 29, 2016\)\(asthmatics, elderly and others at risk from compressor stations\);](#) p. 5 and Appendix 1 at p. 19 of [“California’s Fracking Fluids: the Chemical Recipe,” by Tasha Stoiber, et. al. \(EWG; August 2015\)](#)

NOTE: Formaldehyde does not appear in the Table 7 VOC list because sampling for that study was done with Summa canisters. Badges are generally used for formaldehyde monitoring. Formaldehyde is a carcinogen. [Union Leader, December 18, 2015 online article by Meghan Pierce](#)

Compiled by Liz Fletcher for NH Pipeline Health Study Group, May 2016

*Potential emissions from a New Ipswich compressor station,
and some associated health effects*

Prepared by Curtis L Nordgaard, MD MSc

Pediatrician at DotHouse Health, Boston MA

For those air pollutants classified as toxic, what releases do Kinder Morgan predict for the New Ipswich compressor station ¹?

Per year:

| | |
|-----------------------------|----------|
| Nitrogen dioxide: | 50 tons |
| Carbon monoxide: | 40 tons |
| Sulfur dioxide: | 5 tons |
| Particulate matter: | 9 tons |
| Volatile organic compounds: | 8.5 tons |
| Formaldehyde: | 1.3 tons |

What health outcomes have been associated with the pollutants that would be released by the New Ipswich compressor station?

A limited review of public health studies shows:

Nitrogen dioxide: Increased respiratory hospitalizations (2%) ², heart failure (1.7%) ³

Carbon monoxide: Increased premature birth rates (4%) ⁴, low birth weight (7%) ⁴

Sulfur dioxide: Increased low birth weight (3%) ⁴, heart failure (2.4%) ³

Particulate matter: Increased fatality from heart and lung disease (5.3%) ⁵, new childhood asthma diagnoses (10-12%) ⁶

What are some actually measured levels of toxic or cancer-causing pollutants near compressor stations?

Formaldehyde: Levels can exceed acute toxicity thresholds by 25% and cancer risk thresholds by more than 700-fold, up to 800 meters from compressor stations ⁷

Particulate matter: Levels of particulate matter near compressor stations may be more than double what is measured at regional monitoring stations ^{8,9}

How might pollution concentrations change near a compressor station in New Ipswich, according to Kinder Morgan ¹?

Nitrogen dioxide levels would increase by up to 13.4 micrograms per cubic meter for distances up to 10.3 km from the proposed compressor station.

What's near the proposed compressor station site?

Temple Elementary School is very close, only about 800 meters from the proposed site.

Five towns are within the 10 km area of concern mentioned above.

Based on published health studies, what effects should we expect for children at Temple Elementary School and surrounding towns?

Formaldehyde: Levels could exceed acute toxicity and cancer-causing thresholds for children at the school based on published observations ⁷.

Nitrogen dioxide: If concentrations increase as predicted (13.4mcg/m³), public health studies suggest we should expect at least a 7% increase in new childhood asthma diagnoses ⁶ and a 2% increase in hospitalizations for asthma attacks ¹⁰ in a 10 km radius. People with chronic obstructive pulmonary disease, stroke, and heart disease would also be affected, as well as increased overall fatalities from these conditions ¹⁰.

What are the potential health care costs associated with the proposed emissions, based upon scientific estimates ¹¹?

Nitrogen dioxide: \$16,000 per ton x 50 tons = \$800,000 per year

Sulfur dioxide: \$28,000 per ton x 5 tons = \$140,000 per year

Particulate matter: \$130,000 per ton x 9 = \$1,170,000 per year

Estimate of total health care costs: \$2.11 million per year, for three pollutants only

References cited:

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2. Huang G, et al. An integrated Bayesian model for estimating the long-term health effects of air pollution by fusing modelled and measured pollution data: A case study of nitrogen dioxide concentrations in Scotland. *Spat Spatiotemporal Epidemiol.* 2015 Jul-Oct;14-15:63-74.
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11. Buonocore JJ, et al. Using the Community Multiscale Air Quality (CMAQ) model to estimate public health impacts of PM_{2.5} from individual power plants. *Environ Int.* 2014 Jul;68:200-8.

EXHIBIT “C”



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



August 4, 2016

Richard M. Husband, Esquire
NH Pipeline Health Study Group
10 Mallard Court
Litchfield, NH 03052

Re: Petition for Rulemaking

Dear Mr. Husband:

As we have acknowledged by telephone, the New Hampshire Department of Environmental Services (NHDES) has received your Petition for Rulemaking (Petition) dated July 1, 2016. The Petition requests NHDES to adopt emergency rules to amend Env-A 1400, Regulated Toxic Air Pollutants (RTAPS), to address emissions of natural gas derived in whole or in part from a hydraulic fracturing ("fracking") process, whether such emissions result from combustion, venting, leaking, or otherwise. The Petition asserts that the fracking process results in gas that contains many of the RTAPs listed in Env-A 1450.01, some of which are Toxicity Class I, that are not found in natural gas that is not derived from fracking.

At this time, I deny the petition as to the immediate adoption of emergency rules. This denial is based upon the finding that the request does not satisfy the criteria in RSA 541-A:18, I, to justify the extraordinary action of adopting a rule on an emergency basis. Notwithstanding the denial of the request to adopt an emergency rule, NHDES is undertaking a thorough review of the information presented in the Petition to determine whether revisions to Env-A 1400 are appropriate and, if so, what the most appropriate time frame for those revisions would be. We anticipate that we will need at least 30-60 days to fully evaluate the science underlying the Petition, and additional time to determine the most appropriate course of action.

We appreciate your patience as we work through this process.

Sincerely,

Thomas S. Burack
Commissioner

cc: The Honorable Governor Margaret Wood Hassan
Craig Wright, NHDES Air Resources Director



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



August 12, 2016

Mr. Richard Husband
NH Pipeline Health Study Group
10 Mallard Court
Litchfield, NH 03052

Re: Petition for Rulemaking

Dear Mr. Husband:

This letter responds to your August 5 email follow-up inquiry to our response to your petition to adopt emergency rules to amend Env-A 1400, Regulated Toxic Air Pollutants (RTAPS). Specifically, you inquired whether "the rulemaking process has been initiated under R.S.A. 541-A:4(l) as of July 1, 2016, correct?"

RSA 541-A:4, I, provides as follows:

I. Any interested person may petition an agency to adopt, amend, or repeal a rule. Within 30 days of receiving the petition, the agency shall determine whether to grant or deny the petition and notify the petitioner. If the agency decides to deny the petition, the agency shall notify the petitioner of its decision in writing and shall state its reasons for denial. If the agency grants the petition, it shall notify the petitioner and commence the rulemaking proceeding by requesting a fiscal impact statement pursuant to RSA 541-A:5 within 120 days of receipt of the petition and continuing the proceeding as specified in RSA 541-A:3.

Because we denied the petition as to emergency rules by our letter dated August 4, 2016, no rulemaking process has been initiated. We also stated that we continue to review the information you provided to determine what revisions, if any, to Env-A 1400 are appropriate. We have an obligation to all stakeholders to propose adoption of new or revised rules such as you have submitted only after thoroughly considering the science behind the proposed rules. Moreover, any changes proposed would also need to be evaluated in light of the specific statutory authority for rulemaking that would provide the legal basis for such proposals. We believe the issues identified in your petition are sufficiently complex that additional time is needed to evaluate them. As we indicated in our August 4 letter, we will need at least 30-60 days to fully evaluate the science underlying the petition and additional time to determine the most appropriate course of action.

If you have further questions regarding the rulemaking process, please contact Pete Demas, Legal Coordinator, at 271-2464 or by email at Peter.Demas@des.nh.gov.

Sincerely,

Thomas S. Burack
Commissioner

cc: The Honorable Margaret Wood Hassan
Craig Wright, Director, Air Resources Division, NHDES
Peter Demas, Legal Coordinator, NHDES

EXHIBIT “D”

October 28, 2016

Via e-mail (craig.wright@des.nh.gov)

Craig Wright, Director Air Resources Division
Department of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

RE: Request for Hearing and Extension of Public Comment Period, and Public Comment Tennessee Gas Pipeline Company, LLC Application for Renewal Permit Concord Expansion Compressor Station #270B1 on Mammoth Road, Pelham, NH Application No. 15-0300

Dear Director Wright:

As this matter ties in with the Concord Steam conversion project and concerns matters of great public interest, the Concord Steam Legislative Task Force, Governor Hassan, involved government agency personnel, various concerned citizens, and the media, are being copied on this letter.

Please reference the notice attached as Exhibit “A,” concerning a renewal application permit for the 30,000 horse power stand-by compressor station in Pelham, New Hampshire, and consider this letter:

- (1) a request for a public hearing on the matter pursuant to Env-A 621.06;
- (2) a request for an extension of the comment period to a reasonable time subsequent to the hearing to allow citizens to submit public comments utilizing information obtained at the hearing, and also a submitted public comment relative to this matter; and
- (3) a submitted public comment relative to the matter

Our request for a public hearing is made on the following bases and relevant facts, which raise material issues with respect to the subject application.

As you know, we are a group of New Hampshire residents who are deeply concerned about the well-documented adverse health effects of fracked gas. For most of us, the concern arose when our communities were chosen for the path of the Northeast Energy Direct (“NED”) high-pressure gas pipeline project and its related infrastructure, including a planned 41,000 horse power compressor station in New Ipswich, New Hampshire, less than a ½ mile from the Temple Elementary School and bordering residential neighborhoods in towns where several members of our group live. Member Julia Steed Mawson is a Pelham resident.

In the course of educating ourselves about NED and all of its implications, we quickly learned that today’s “natural” gas, derived through the hydraulic fracturing process—“fracked” gas as it commonly called—is not clean or healthy, as touted., but contains a cocktail of known carcinogens, identified regulated toxic air pollutants (“RTAPs”) under Env-A 1450.01, and other health-impairing contaminants, the releases and emissions of which have been shown by studies

throughout the country to cause respiratory and other health problems, especially around compressor stations. *See, e.g.,* [“California’s Fracking Fluids: the Chemical Recipe,”](#) by Tasha Stoiber, et. al. (EWG; August 2015); [“Gas Compressors and Nose Bleeds: a New Study Connects Health Issues with Rural Gas Compressor Pollution,”](#) by Jessica Owen (Fall 2015)(concerning Minisink, New York study); [“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); [“Porter Ranch Gas Leak Triggers State of Emergency in California,”](#) January 7, 2016 CNN online news article; [“Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania,”](#) by Nadia Steinzor, et. al. (October 2012); [“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; [ATSDR/CDC Health Consultation Report \(Jan. 29, 2016\), p. ii \(asthmatics, elderly and others at risk from compressor stations\); ATSDR/CDC Health Consultation Report \(Apr. 22, 2016\), pp. ii-iii \(concerning short and long term adverse health effects of particulates\); “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).

Indeed, concerned citizens were advised by Dr. Curtis L. Nordgaard, a preeminent Massachusetts pediatrician likewise concerned with the adverse health effects of fracked gas, that remedial health care costs associated with the emissions from the New Ipswich compressor station proposed for NED—only 11,000 horse power larger than the Pelham station—would likely be in the \$2 million per year range. *See Potential emissions from a New Ipswich compressor station, and some associated health effects*, pp. 13-15 of the attached Exhibit “B” (identified in paragraph below).

Because of the health concerns relating to fracked gas emissions, we petitioned Commissioner Burack and the Department of Environmental Services (“DES”) on July 1, 2016 to immediately amend the [Env-A 1400](#) rules to address deficiencies in the regulation of these emissions. A copy of this petition, which flags **22 identified RTAPs** in fracked gas, is attached hereto as Exhibit “B” and incorporated in full herein by reference in further support of this letter, along with a copy of September 4, 2016 correspondence from Dr. Nordgaard identifying **several more likely RTAPs** in New Hampshire fracked gas,¹ which is attached as Exhibit “C.” Although our July 1, 2016 petition was denied, the DES is assessing the propriety of our petition requests on its own. Currently, the DES is attempting to obtain a sample of the fracked gas sold by the applicant to Liberty Utilities for use in New Hampshire, for complete analysis, identification of all of its components, and a determination of how best to address fracked gas and its components under [Env-A 1400](#). The applicant and/or Liberty Utilities, as good corporate citizens, should be more than willing to comply with such a request, particularly as we have amply demonstrated health concerns supporting the [Env-A 1400](#) review and amendments requests, such that the burden is on the applicant (and Liberty Utilities) to prove that our concerns and requests are nonetheless misguided. Such “proof,” of course, requires identification of all of the contents of the fracked gas used in New Hampshire, to distinguish it from the gas and contents discussed in all of the aforementioned fracked gas studies and otherwise establish that its emissions are harmless. The scales must always come down on the side of protecting health.

¹ These RTAPs are cadmium, (radioactive) lead, barium, PCBs (polychlorinated biphenyls) and maybe mercury (depending upon whether it was filtered from the subject gas by mercury guard beds).

In light of the health concerns associated with fracked gas emissions, the current unknown status of the components of the fracked gas used in New Hampshire, and the DES' ongoing consideration of this issue and the propriety of amending [Env-A 1400](#) to more appropriately address fracked gas, we urge the DES to not consider this application until these matters have been addressed first. We need to establish the true health risks that we are dealing with, foremost, and before anything else: citizens should not be used as guinea pigs.

Moreover, after addressing the matters discussed in the preceding paragraph, if the DES is still inclined to go forward with the subject application, we would urge the DES to analyze and consider the full impact of Liberty Utilities' service expansion plans on the operation of the subject compressor station, the frequency and volume of its emissions, and consequent health impact on citizens, as part of the application process.

Although the Pelham compressor station is currently just used as a stand-by facility which only operates during peak demand and likely less than 1% of the time, we understand that its operation is tied in with service “downstream,” including the Concord area, such that Concord and other “downstream” demands increase its operational time. As the DES is probably aware: although GreenCity Power submitted a proposal for converting the Concord Steam operation to a safe, non-greenhouse gas emission source of energy, *see* attached Exhibit “D,” the state rejected it out of hand and is signing on for conversion to Liberty Utilities' gas.² As the DES may not be aware: Liberty Utilities has aggressive expansion plans targeting other new customers around Concord, and likely other new customers “downstream” of the Pelham compressor station—all of whom would, presumably, add to the system demand and the compressor's operation time. Of course, any increase in the compressor's operation time increases its emissions and health concerns correspondingly. There is no justification for exposing the children and other citizens of Pelham to increasingly noxious emissions just so the state can reap some short-term savings on energy bills—the “justification” for the Concord Steam conversion to gas rather than a healthier, greener alternative. Likewise, Liberty Utilities' other expansion plans must be carefully analyzed in depth to determine if they will increase the operation time of the Pelham compressor station. **While there is currently insufficient information to consider whether a renewal permit should be issued in this matter at all, no permit should be issued (if at all) without a condition restricting further gas expansion and/or the compressor station's operational time to present less than 1% operational norms.**

For the reasons set forth above, we respectfully request and urge that a public hearing be scheduled in this matter and that the comment period be extended for a reasonable period of time (at least two weeks) after the public hearing to allow citizens the opportunity to submit public comments benefitting from the information presented at the hearing.

Thank you for your time and courtesy. Should anyone wish to contact us for any reason, we may be reached via the e-mail address RMHusband@mail.com.

² Honestly—and this is more for those copied on this letter than the DES: what makes the Concord Steam “bidding” process, resulting in an almost immediate State-run cattle drive of Concord Steam customers to Liberty Utilities with only cursory consideration of the alternatives, any different than the other one-party “bidding,” alleged collusion-wracked processes being debated and investigated in Concord right now? *See* [Article 1](#); [Article 2](#); [Article 3](#).

Sincerely,

//s// Richard Husband
Duly Authorized, on Behalf of:

NH Pipeline Health Study Group:

By its Board/Members:

//s// Beverly Edwards
Chairperson

//s// Liz Fletcher
Board Member

//s//Douglas Whitbeck
Board Member

//s//Gwen Whitbeck
Board Member

//s//Susan Durling
Board Member

//s//Julia Steed Mawson
Board Member

//s//Marilyn Learner
Board Member

//s//Richard Husband
Board Member

cc: Members of the Concord Steam Legislative Task Force (via e-mail)
Honorable Governor Margaret Hassan (via e-mail, c/o Kerry.Holmes@nh.gov)
Vicki Quiram, Commissioner, N.H. Department of Administrative Services (via e-mail,
c/o commweb@nh.gov)
Christopher G. Aslin, Esquire, Assistant Attorney General (via e-mail)
John McCutcheon (via e-mail)
Dr. Melinda Treadwell (via e-mail)
The New Hampshire Municipal Pipeline Coalition (via e-mail)
NHPLAN (via e-mail)
Other concerned citizens (via e-mail)
The Union Leader (via e-mail)
Concord Monitor (via e-mail)
Pelham-Windham News (via e-mail)

EXHIBIT “A”

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
AIR RESOURCES DIVISION
CONCORD, NEW HAMPSHIRE

NOTICE OF PERMIT REVIEW PUBLIC HEARING AND COMMENT PERIOD

Pursuant to the New Hampshire Code of Administrative Rules, Env-A 621.02, notice is hereby given that the Director of the New Hampshire Department of Environmental Services, Air Resources Division (Director), has received an application for a state permit to operate from, and based on the information received to date, intends to **issue such permit to:**

Tennessee Gas Pipeline Company, LLC
Concord Expansion Compressor Station #270B1
Mammoth Road
Pelham, New Hampshire

For the Following Devices:
One Compressor Turbine and One Emergency Generator

The application and draft permit are on file with the Director, New Hampshire Department of Environmental Services, Air Resources Division, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095, (603) 271-1370. Information may be reviewed at the office during working hours from 8 a.m. to 4 p.m., Monday through Friday. Additional information may also be obtained by contacting Patricia North at the above address and phone number. Requests for a public hearing and/or written comments filed with the Director in accordance with Env-A 621.06, and received no later than **Monday, November 14, 2016**, shall be considered by the Director in making a final decision.

Craig A. Wright, Director,
Air Resources Division

EXHIBIT “B”

**NOTE: THIS EXHIBIT
IS THE SAME AS EXHIBIT “B”
TO THIS MOTION**

EXHIBIT “C”

Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426
Sept 4, 2016

Re: Spectra Energy, Atlantic Bridge Project Environmental Assessment
Docket No. CP16-9-000

To Secretary Bose:

I am writing to comment on the Atlantic Bridge Environmental Assessment (EA). The formal comment period has ended. However, in response to requests for an extension of the public comment period, the Commission has indicated that it will continue accepting and reviewing public comments. I am therefore submitting my observations that the Atlantic Bridge EA failed to disclose and address the presence of toxic contaminants in gas delivered by the Algonquin Pipeline and therefore did not adequately assess risks to the environment and human health.

1. Several lines of evidence indicate that gas delivered by the Algonquin Pipeline contains mercury

A. Companies that analyze natural gas samples in support of pipeline operations indicate that trace metals including mercury are present in natural gas, which they are able to test for¹:

“...trace metal content in natural gas streams and LNG can reach parts per million (ppm) levels...”¹

Although it seemed unlikely to be honored, I did request a de-identified sample analysis from one such company. The request was of course denied on the grounds that the data were proprietary.

B. Mercury is one of several toxic substances produced by the operation of Metering & Regulating stations as identified in this Resource Conservation and Recovery Act (RCRA) report for a M&R station in New Bedford, MA:²

| | |
|---|--|
| EPA Waste Codes for Facility ? (Facility #1 : ALGONQUIN GAS TRANSMISSION, LL, EPA waste code: all) | |
| EPA Waste Code | (2007) |
| D001: Ignitable waste | |
| D005: Barium | |
| D007: Chromium | |
| D008: Lead | |
| D009: Mercury | |
| D018: Benzene | |
| Reporting Year: 2007 | |
| Facility #1 : ALGONQUIN GAS TRANSMISSION, LL | |
| Basic Facility Info ? | |
| Handler ID | MAR000009993 |
| Facility Name | ALGONQUIN GAS TRANSMISSION, LLC -M&R 17 |
| Street Number | 1183 |
| Address Line 1 | SHAWMUT |
| City | NEW BEDFORD |
| State | MA |
| Zip Code | 02741 |
| County | PLYMOUTH |
| 113th Congressional District | MA09: Massachusetts 9 |
| First NAICS Code | 42471: Petroleum Bulk Stations and Terminals |
| Current Owner | ALGONQUIN GAS TRANSMISSION, LLC |
| Site Land Type | Private |

1 <http://www.intertek.com/petroleum/natural-gas-trace-metals/>

2 http://www.rtknet.org/db/brs/brs.php?reptype=f&epa_id=MAR000009993&reporting_year=2007&database=brs&detail=3&datatype=T

C. The Applicant has clearly stated that mercury can be present in their gas, which necessitates the incorporation of a “mercury guard bed” as part of the proposed LNG facility in Acushnet, MA:

“Mercury may be present in very small quantities in the feed gas and will be removed via a mercury guard bed during the pretreatment process. Mercury is considered an environmentally hazardous material.”³

To the best of my knowledge, compressor stations and metering & regulating stations do not contain mercury guard beds even though they release gas directly into the environment.

Based upon these lines of evidence, I conclude that mercury is present as a toxic contaminant in the gas being delivered to Massachusetts.

2. Gas transmitted by the Algonquin Pipeline likely contains volatile radioactive lead

As discussed in Section 2.7.5 of the Atlantic Bridge EA, gas in the Algonquin pipeline does contain radon. Radon decays into radioactive lead and other progeny as acknowledged in the EA. The EA indicates that the pipeline is cleaned regularly and any hazardous materials properly disposed of.

The RCRA report (section 1B above) indicates that the pipeline liquids produced at this M&R station do include lead. It does not seem likely that lead is used in pipeline maintenance and operation processes. Rather, the more likely source of lead at the New Bedford M&R station is from the gas itself as acknowledged by the EA. Lead is an EPA criterion air pollutant and can exist in the volatile state (like radon). Therefore, it seems likely that while some radioactive lead is precipitating within the pipeline, some is being transported along the pipeline in the volatile state and is released into the environment.

3. Pipeline liquids removed from the Algonquin pipeline contain barium, cadmium, and PCBs

As noted in the RCRA report presented above, liquids removed from the Algonquin pipeline include cadmium and barium. Cadmium is toxic and carcinogenic. Barium can be toxic in certain forms, and originates from the Marcellus Shale⁴. Like radon and radium, it is naturally occurring in the Marcellus Shale along with methane and is a component of fracked gas.

Pipeline liquids recovered from the New Bedford M&R also contain PCBs at an unknown concentration, but greater than 50 ppm²:

Generated Waste Basics ?

| | |
|-----------------------------|--|
| Page Number | 1 |
| Waste Description | WASTE PIPELINE LIQUIDS WITH GREATER THAN 50 PPMS PCBS |
| Form of Waste Category | Organic Liquids |
| Form of Waste (Regularized) | Other organic liquid (specify in comments) - Organic Liquids |

These are likely present as a component of the pipeline itself, which was built prior to the institution of bans and restrictions on the production and use of PCBs.

³ Algonquin Gas Transmission, LLC. Access Northeast Project. Draft Resource Report 11, sec. 11.4.1.9.

⁴ http://energy.wilkes.edu/PDFFiles/Library/The_Science_of_Marcellus_Shale_Wastewater.pdf

4. The Atlantic Bridge EA omitted any assessment of mercury, lead, cadmium, PCBs, and barium releases into the environment, and potential human exposures

A. As detailed in Resource Report 9 for the Atlantic Bridge Project, the Weymouth compressor station would include storage tanks for pipeline liquids. Like other above-ground storage tanks, these would release hazardous air pollutants. In particular, flashing during the tank operation process can release significant quantities of hazardous air pollutants. The Resource Report includes calculations estimating the quantity of hazardous air pollutants that could be released by flashing (up to 325.5 pounds per hour⁵). However, there is no reference to cadmium, PCBs, lead, or mercury released during the operation of these tanks (including during flashing). Since some if not all of these toxic and/or carcinogenic materials can exist as a gas, they would likely be released during the operation of storage tanks at the Weymouth compressor station.

B. Lead, mercury, and cadmium (like radon) are not altered by combustion. Therefore any quantity of these toxic pollutants existing in the gas phase will be entrained into the compressor engine and released in the exhaust stream. They will also be released during venting (e.g., blowdowns) and fugitive emissions. None of these sources of heavy metal pollution (in exhaust, venting, or fugitive emissions) were addressed in the EA.

The half life of radioactive lead is on the order of 21 years. Heavy metals and PCBs are persistent environmental pollutants. Therefore, even a low rate of emission can lead to significant accumulation of these pollutants in the local environment over time.

C. Lead is an EPA criterion pollutant. Given the analysis presented here, it would seem necessary to evaluate the presence and quantity of volatile lead emissions from the pipeline. This should take the form of a quantitative analysis of releases, rather than the qualitative dismissal used to address other important topics in the EA.

D. Without being properly evaluated by an EIS, the toxic and/or carcinogenic pollutants identified here pose an unquantified and unknown degree of risk to the environment and human health.

5. Summary and conclusions

In this comment I have provided evidence that certain toxic and/or carcinogenic pollutants are present in the gas and/or liquid state in the Algonquin Pipeline. These pollutants would likely be released by facilities proposed under the the Atlantic Bridge project as air pollutants that persist and accumulate in the environment. However, their release was not evaluated during the EA process. Therefore, I make the following recommendations in accordance with instructions in the EA and under NEPA:

A. *These and many other important comments warrant the preparation of an EIS.* It was unwarranted for the Commission to require only an EA. The existing EA refers to a project which has been substantially modified and has many unanswered but important criticisms. It is still possible at this time to require that the Applicant prepare an EIS that incorporates the criticisms raised in this docket, based upon the current formulation of the Weymouth compressor station proposal.

5 Algonquin Gas Transmission, LLC. Atlantic Bridge Project. Resource Report 9, Weymouth Compressor Station Table E-1A, Flash analysis.

B. The Commission should choose the “No-Action” alternative. As detailed in previous comments including comments by Senators Markey and Warren, the EA was prepared by a consultant with a close relationship to the Applicant. The Commission should therefore have a lower threshold to disagree due to this bias; namely, the Commission should more broadly consider the need to choose the the “No-Action” alternative.

The EA discussion of the “No-Action” option⁶ omits the many concerns outlined in this and previous comments. It also does not include recent developments such as this year's Massachusetts Supreme Judicial Court ruling that the state Department of Environmental Protection is failing to meet its mandated Global Warming Solutions Act targets⁷, which I will not outline in detail here. In brief, the Atlantic Bridge and other fossil fuel infrastructure cannot be built and expanded in the state if we are to meet the Global Warming Solutions Act targets as mandated by the state legislature and confirmed by the Supreme Judicial Court. That is true whether the fossil fuel infrastructure entails the emission of carbon dioxide or the much more potent greenhouse gas, methane.

When considering the risks, costs and burdens of the Atlantic Bridge project, it is expedient for the Commission to choose the “No-Action” option as provided by section 7 of the Natural Gas Act.

Signed,

Curtis L Nordgaard MD MSc
Pediatrician
Dorchester, MA

CC:
Erin Flaherty
Town of Weymouth
Massachusetts Department of Environmental Protection, Southeast Region
Massachusetts Attorney General
EPA New England-Region 1 Office of Environmental Review

⁶ Federal Energy Commission and Natural Resources Group. Atlantic Bridge Environmental Assessment, Section 3.1. May 2016.

⁷ <https://www.bostonglobe.com/metro/2016/05/18/sjc-rules-that-state-failed-issue-proper-regulations-cut-emissions/N6rAAeeGAR4LrjqF8K71JJ/story.html>

EXHIBIT “D”

Subject: Re: More Concord Steam Information

From: Bev Edwards <nadesha@msn.com>

Date: 10/19/2016 4:35 PM

To: "Gary.Daniels@leg.state.nh.us" <Gary.Daniels@leg.state.nh.us>, "Jeb.Bradley@leg.state.nh.us" <Jeb.Bradley@leg.state.nh.us>, "Dick.Hinch@leg.state.nh.us" <Dick.Hinch@leg.state.nh.us>, "dickhinch@gmail.com" <dickhinch@gmail.com>, "Lynne.Ober@leg.state.nh.us" <Lynne.Ober@leg.state.nh.us>, "Lynne.Ober@comcast.net" <Lynne.Ober@comcast.net>, "Gene.Chandler@leg.state.nh.us" <Gene.Chandler@leg.state.nh.us>, "Steve.Shurtleff@leg.state.nh.us" <Steve.Shurtleff@leg.state.nh.us>, "SteveShurtleff@aol.com" <SteveShurtleff@aol.com>, Renata <renata.baker@leg.state.nh.us>, Kyle <Kyle.Baker@leg.state.nh.us>, Lou <l.dallesandro@comcast.net>
CC: State Senate Dan Feltes <danfeltes@gmail.com>

Dear Honorable Members of the Concord Steam Legislative Task Force,

Thank you for your attention to the email I sent you yesterday. I sincerely appreciate your mentioning statements from it at the Task Force meeting. I had intended to be there, but was held up for the afternoon.

Below is an email I am forwarding to you in the interest of further clarification. It comes from Aaron Walters, one of the managing partners of Green City Power, in response to several questions from me regarding the steam pipes and GCP's execution of a bid with the state.

Bev Edwards

Bev Edwards

603-878-3227

nadesha@msn.com

From: Aaron Walters <awalters@greencity-power.com>

Sent: Wednesday, October 19, 2016 10:47 PM

Clarifications:

1. GreenCity Power's proposal was to acquire the **STEAM DISTRIBUTION SYSTEM AND THE STEAM GENERATION PLANT**. So GreenCity Power would have acquired and maintained the steam pipes (ie: approx 8 miles of underground pipes) as well as the generation plant.
2. **GreenCity Power submitted a Formal Proposal to the State** (dated February 4, 2016)
3. GreenCity Power made multiple attempts to follow-up with the State re: our Proposal to invest \$20M+ into the entire steam plant and distribution system, contingent **ONLY** on finding a Mutually-Acceptable path forward with the State. The State refused to meet with GreenCity Power.

Proof is in the Numbers:

- A. In winter of 2015-2016 the users (State, City & Downtown Business District) were paying approx \$45/Mlbs for Steam.
- B. **Under GreenCity's Proposal:**
 - a. State Buildings would have paid: \$34/Mlbs (a 25% reduction in Steam Price)
 - b. City & Downtown Businesses would have paid: \$40/Mlbs (a 12% reduction in Steam price)
- C. **Impact of State's Decision to Convert to Gas, using current low gas prices:**
 - a. State's Cost of Steam using gas: \$52/Mlbs (a 53% PREMIUM to GreenCity's offer and 15% premium to what they paid last year!)
 - b. City [Government]'s Cost of Steam using gas: \$115/Mlbs (a 287% PREMIUM to GreenCity's Offer)
 - c. Downtown Businesses cost of steam using gas: \$68/Mlbs (a 70% PREMIUM to GreenCity's Offer).

(RECALL: **The cost of heating has 4 basic components:** (1) fuel cost, (2) operations & maintenance costs, (3) boiler efficiency, (4) capital cost. **The State has repeatedly made the error of comparing just the cost of Fuel (gas cost of \$0.95/therm) to the total delivered cost of heat/steam.)**

The KEY POINTS are:

- (a) In February 2016, GreenCity Power made an offer that would have benefited ALL customers of Concord Steam (including All State Buildings, All downtown buildings, All City buildings)
- (b) The State refused to meet or discuss GreenCity's Proposal
- (c) Since the State had NO INTEREST in discussing GreenCity Power's proposal, and Concord Steam was driven out of business, all users were forced to find an alternative source of heating. It is for this reason that the issues about abandoning the steam pipes has come up. This was all avoidable!

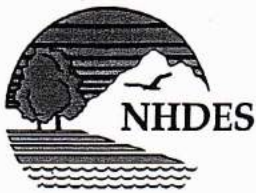
The net results are:

- (i) Higher heating costs for all former Concord Steam Customers
- (ii) Substantial capital investment required by the City/State/Downtown Businesses
- (iii) Higher CO2 and GHG emissions by converting to a fossil fuel
- (iv) added strain on New Hampshire's Timber/Forestry industry.

Best regards,

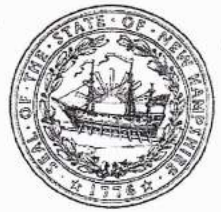
Aaron Walters, CFA
Managing Partner
GreenCity Power
(T) 630-386-3900
100 N. Riverside Plaza
Suite 1670
Chicago, IL 60606
www.greencity-power.com

EXHIBIT “E”



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



December 16, 2016

Mr. Thomas C. Dender
Tennessee Gas Pipeline LLC
1001 Louisiana Street
Houston, Texas 77002

**Re: Request for Public Hearing Regarding
Concord Expansion Compressor Station #270B1
Mammoth Rd., Pelham, New Hampshire
Facility ID #3301191266; Application #15-0300**

Dear Mr. Dender:

The New Hampshire Department of Environmental Services (DES) has received a request for a public hearing regarding the draft permit for Tennessee Gas Pipe Company, LLC, Concord Expansion Compressor Station #270B1, Mammoth Rd., Pelham, New Hampshire. As a result of the request, DES will be holding a public hearing regarding the above mentioned draft permit. The hearing will be held on **Wednesday, January 18, 2017, at 6:00 p.m. at the Pelham Town Hall located at 6 Village Green, Pelham, New Hampshire**. DES has enclosed a copy of the public notice in accordance with the New Hampshire Code of Administrative Rules Env-A 622.05(e)(2), *Requests for Public Hearing*.

If you have any questions regarding the public hearing, please contact John McCutcheon of the Air Resources Division, Permitting & Environmental Health Bureau by calling (603) 271-0886 or via e-mail at john.mccutcheon@des.nh.gov.

Sincerely,

Catherine A. Beahm
Air Permits Program Manager
Permitting and Environmental Health Bureau

cab/vhd

By certified mail #7011 1570 0003 6778 4731

Enclosures: Public hearing notice

cc: Town of Pelham
Hearing requestors
Michael Zeilstra, Kinder Morgan

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
AIR RESOURCES DIVISION
CONCORD, NEW HAMPSHIRE

NOTICE OF PERMIT REVIEW
PUBLIC HEARING AND COMMENT PERIOD

On October 14, 2016, the New Hampshire Department of Environmental Services, Air Resources Division (DES), published a public notice of its intent to issue, amend, or deny a State Permit to Operate to:

Tennessee Gas Pipeline Company, LLC
Concord Expansion Compressor Station #270B1
Mammoth Road
Pelham, New Hampshire

For the Following Device:
One Compressor Turbine and One Emergency Generator

The October 14, 2016 public notice specified the procedures for requesting a public hearing. A request for a public hearing was subsequently filed with DES in accordance with Env-A 621.06. The Director has granted the request for a public hearing and has scheduled the hearing for **Wednesday, January 18, 2017, at 6:00 PM** at the Pelham Town Hall located at 6 Village Green, Pelham, NH 03076.

Please note that, in the event of inclement weather, the hearing will instead be held at the same time and location on Wednesday, January 25, 2017. If the January 18 hearing date is postponed, notification will be made on the WMUR website (www.wmur.com) under "closings".

The application and draft permit are on file with the Director, New Hampshire Department of Environmental Services, Air Resources Division, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095, (603) 271-1370. Information may be reviewed at the office during working hours from 8 a.m. to 4 p.m., Monday through Friday. Additional information may also be obtained by contacting John McCutcheon at the above address and phone number. Written comments filed with the Director no later than January 25, 2017 shall be considered by the Director in making a final decision.

Craig A. Wright
Director
Air Resources Division

EXHIBIT “F”

January 18, 2017

Craig A. Wright, Director Air Resources Division
Director, Air Resources Division
NH Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

**RE: Tennessee Gas Pipeline Company, LLC Application for Renewal Permit
Concord Expansion Compressor Station #270B1 on Mammoth Road, Pelham, NH
Application No. 15-0300**

Dear Director Wright:

The NH Pipeline Health Study Group would like to thank the DES for holding this public hearing on the air permit renewal application for the Concord Expansion Compressor Station in Pelham, NH. The position expressed in our October 28, 2016 letter requesting this hearing has not changed: to protect citizens, the DES should first conclude its fracked gas analysis, followed by appropriate Env-A 1400 rule changes and assessment of the operational and health impacts of Liberty Utilities' gas expansion plans on the Pelham compressor station, before considering the permit application.¹ But, we would like to offer more information supporting our position, as well as comments concerning data gathering, modeling and measures to reduce emissions should the Pelham or any other New Hampshire compressor station be allowed to operate going forward.

Although the Pelham compressor station is relatively small in size (6,346 HP) and has been permitted for full-time use, it has run only a very small percentage of the time and we are concerned that there exists a serious health risk if its use is intensified as seems the clear result of gas expansion plans. Our concerns are borne out by a 2016 Health Consultation study around the smaller (5,400 HP) Brigich gas compressor in Pennsylvania.

After receiving numerous complaints of health problems such as nausea, headache, burning upper respiratory tract, nosebleeds and stinging eyes, the federal Agency for Toxic Substances and Disease Registry ("ATSDR") undertook a study on the air quality around the Brigich compressor station in Chartiers Township, PA., a copy of which accompanies. The results of this study indicate that it is vital to monitor and control air emissions from compressor stations, even compressor stations the size of the one at Pelham.

¹ Otherwise, any issued permit should be expressly conditioned on public review and reassessment of the matter upon the conclusion of these considerations.

In this study, the ATSDR detected nine chemicals that exceeded health-based comparison values (CV) -- acetaldehyde, benzene, carbon tetrachloride, chloroform, crotonaldehyde, formaldehyde, 1,2-dichloroethane, 1-methoxy-2-propanone, and 1,1,2-trichloroethane. Hydrogen sulfide was also found to be a contaminant of concern, exceeding its health-based CV. (pages 8, 11, 13) In addition, the average level of fine particulate matter (PM_{2.5}) detected during the study (12.4 ug/m³) fell within the range where health effects can be expected. (World Health Organization 11-15 ug/m³ quoted on page 33)

As bad as these findings are, the ATSDR acknowledges that this study has significant limitations which may mask even worse concerns: it lacks continuous ambient air data from all seasons of the year, limiting its ability to assess long-term chronic and short-term peak chemical exposures; and it may not have adequately captured peak emissions incidents such as blowdowns or flaring events. Because of these shortcomings in the data gathering, the health risk from compressor station emissions is likely to be greater than what this study has detected.

In this study's recommendations, the ATSDR calls for the appropriate environmental agencies to collect emission source or fence-line samples of a wide range of chemicals for long term and peak exposures. It also recommends air modeling of fugitive and combustion emissions at compressor stations to gain greater understanding of air quality near these facilities.

Beyond data gathering and modeling, the ATSDR recommends taking steps to control the release of emissions at the source, to protect sensitive populations living near compressor stations.

Accordingly, please require all New Hampshire compressor stations to have fence-line air quality monitoring that gathers data whenever the station is operating, including during blowdowns and venting, and to use the following technology to control air pollutants at the source:

- * Air-operated control valves rather than gas-operated valves which vent gas to the air each time they open or shut;
- * Sufficient on-site containment for venting events and blow-downs.
- * Equipment to capture and recover fugitive emissions should be located within the structures that house above-ground gas pipeline facilities.

Indeed, in addition to appropriate health-protective limitations on operational frequency and volume of emissions, the NH Pipeline Health Study Group strongly urges the DES to adopt all of the ATSDR's recommendations as conditions for the Pelham compressor station, and any other compressor station, that may be allowed to operate going forward.

Fugitive releases and blowdowns are a huge cause of compressor station emissions. Metropolitan Engineering Consulting and Forensics Services, an environmental consulting firm that specializes in remediation of petroleum spills, has found that U.S. compressor stations annually lose 50 billion cubic of fugitive emissions, and another seven billion cubic feet of emissions from blowdowns.² They recommend keeping compressors pressurized when off-line; connecting blowdown vent lines to the fuel gas system to recover the vented gas; installing static seals on compressor rod packing; installing ejectors on blowdown vent lines to enable leaked gas to be pumped into an operating compressor or fuel gas system.

² See <https://sites.google.com/site/metropolitanenvironmental/the-lowdown-on-gas-compressor-blowdown-the-dirty-truth-of-unreportable-emissions>.

These are all relatively low-cost measures to reduce emissions, far less than the cost of negative health effects in the surrounding community. Fracking uses many chemicals listed by the state as Regulated Toxic Air Pollutants. Shale gas contains higher levels of radon than conventional natural gas. Radon degrades into relatively long-lived radioactive lead.

Some additional thoughts and comments ...

As discussed at the group's September meeting with the DES in Concord, blowdowns require careful monitoring. Blowdowns are generally planned, of course, and, as part of the DES modeling/analysis in this matter, we would appreciate it if the DES confirmed pertinent average yearly blowdown data for the Pelham compressor station with Tennessee Gas Pipeline Company (number of times, volume each time, etc.) and factored that into its modeling and analysis—supported, of course, by the actual collection of data during planned blowdowns. Unfortunately, *unplanned* blowdowns may involve far greater releases of emissions than planned ones, as the pipeline company has the ability (with the right equipment) to pump the gas out of the pressurized area before a planned blowdown, but no such opportunity with an unplanned one.

Dr. Curtis L. Nordgaard, referenced in our prior submissions to the DES, advises that one of the problems with both mercury and lead emissions near homes is that both may accumulate in dust. As part of its methodology, we believe that the DES should identify the levels of these toxins which may be growing in nearby homes or other buildings over time, and assess the adverse health effects. Dr. Nordgaard has suggested that testing the total gamma, beta and alpha radiation might be one approach, absent a better one.

Dr. David Carpenter, another doctor concerned with the adverse health effects of fracked gas emissions who heads up the School of Public Health and an Environmental Health program at New York University in Albany, New York, and who has been involved in this field of testing, advises that the best way to monitor for formaldehyde is using a badge that is placed near the site of interest, and left open for a number of hours before it is removed and sent for analysis. If the DES is considering another method, we would greatly appreciate a discussion about this.

The NH Pipeline Health Study Group urges the DES to continue to set a high standard for protecting the health of New Hampshire's people. Thank you very much.

Sincerely,

//s// Richard Husband

Duly Authorized, on behalf of:

NH Pipeline Health Study Group:

By its Board/Members:

//s// Beverly Edwards

Chairperson

//s// Liz Fletcher
Board Member

//s//Douglas Whitbeck
Board Member

//s//Gwen Whitbeck
Board Member

//s//Susan Durling
Board Member

//s//Julia Steed Mawson
Board Member

//s//Marilyn Learner
Board Member

//s//Richard Husband
Board Member

EXHIBIT “G”



World has three years left to stop dangerous climate change, warn experts

Former UN climate chief Christiana Figueres among signatories of letter warning that the next three years will be crucial to stopping the worst effects of global warming

Fiona Harvey Environment correspondent

Wednesday 28 June 2017 13.00 EDT

Avoiding dangerous levels of climate change is still just about possible, but will require unprecedented effort and coordination from governments, businesses, citizens and scientists in the next three years, a group of prominent experts has warned.

Warnings over global warming have picked up pace in recent months, even as the political environment has grown chilly with Donald Trump's formal announcement of the US's withdrawal from the Paris agreement. This year's weather has beaten high temperature records in some regions, and 2014, 2015 and 2016 were the hottest years on record.

But while temperatures have risen, global carbon dioxide emissions have stayed broadly flat for the past three years. This gives hope that the worst effects of climate change – devastating

droughts, floods, heatwaves and irreversible sea level rises - may be avoided, according to a letter published in the journal *Nature* this week.

The authors, including former UN climate chief Christiana Figueres and Hans Joachim Schellnhuber of the Intergovernmental Panel on Climate Change, argue that the next three years will be crucial. They calculate that if emissions can be brought permanently lower by 2020 then the temperature thresholds leading to runaway irreversible climate change will not be breached.

Figueres, the executive secretary of the UN Framework Convention on Climate Change, under whom the Paris agreement was signed, said: "We stand at the doorway of being able to bend the emissions curve downwards by 2020, as science demands, in protection of the UN sustainable development goals, and in particular the eradication of extreme poverty. This monumental challenge coincides with an unprecedented openness to self-challenge on the part of sub-national governments inside the US, governments at all levels outside the US, and of the private sector in general. The opportunity given to us over the next three years is unique in history."

Schellnhuber, director of the Potsdam Institute for Climate Impact Research, added: "The maths is brutally clear: while the world can't be healed within the next few years, it may be fatally wounded by negligence [before] 2020."

Scientists have been warning that time is fast running out to stave off the worst effects of warming, and some milestones may have slipped out of reach. In the Paris agreement, governments pledged an "aspirational" goal of holding warming to no more than 1.5C, a level which it is hoped will spare most of the world's lowest-lying islands from inundation. But a growing body of research has suggested this is fast becoming impossible.

Paris's less stringent, but firmer, goal of preventing warming from exceeding 2C above pre-industrial levels is also in doubt.

The authors point to signs that the trend of upward emissions is being reversed, and to technological progress that promises lower emissions for the future. Renewable energy use has soared, creating a foundation for permanently lowering emissions. Coal use is showing clear signs of decline in key regions, including China and India. Governments, despite Trump's pronouncements, are forging ahead with plans to reduce greenhouse gases.

The authors called for political and business leaders to continue tackling emissions and meeting the Paris goals without the US. "As before Paris, we must remember that impossible is not a fact, it's an attitude," they wrote.

They set out six goals for 2020 which they said could be adopted at the G20 meeting in Hamburg on 7-8 July. These include increasing renewable energy to 30% of electricity use; plans from leading cities and states to decarbonise by 2050; 15% of new vehicles sold to be electric; and reforms to land use, agriculture, heavy industry and the finance sector, to encourage green growth.

Prof Gail Whiteman said the signs from technical innovation and economics were encouraging: "Climate science underlines the unavoidable urgency of our challenge, but equally important is the fact that the economic, technical and social analyses show that we can resoundingly rise to the challenge through collective action."

While the greenhouse gases poured into the atmosphere over the last two centuries have only gradually taken effect, future changes are likely to be faster, scientists fear. Johan Rockström of the Stockholm Resilience Centre said: “We have been blessed by a remarkably resilient planet over the past 100 years, able to absorb most of our climate abuse. Now we have reached the end of this era, and need to bend the global curve of emissions immediately, to avoid unmanageable outcomes for our modern world.”

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Topics

- Climate change
- Greenhouse gas emissions
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- Christiana Figueres

EXHIBIT “H”

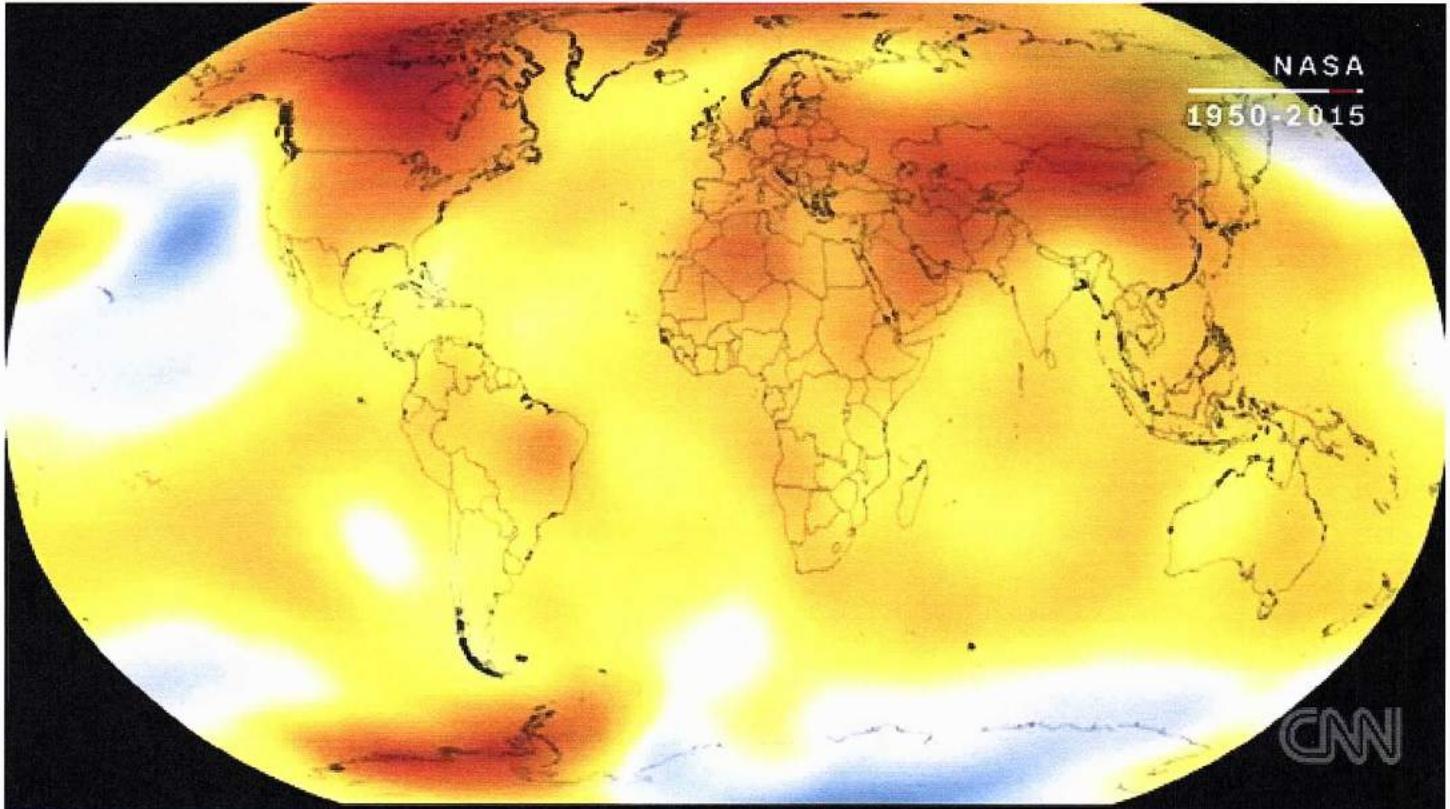
Health +

Live TV

century, studies say

By **Ashley Strickland**, CNN

⌚ Updated 9:37 PM ET, Mon July 31, 2017



Source: CNN

Undeniable climate change facts 02:24

Story highlights

The Earth's global temperature could rise close to or more than two degrees by 2100, studies say

One study suggests that a global temperature rise of 1.3 degrees may already be "baked in"

Editor's Note: "The Climate Crisis: A CNN Town Hall Event with Al Gore" will air at 9 p.m. ET on Tuesday, August 1, on CNN.

(CNN) — By the end of the century, the global temperature is likely to rise more than 2 degrees Celsius, or 3.6 degrees Fahrenheit.

This rise in temperature is the ominous conclusion reached by two different studies using entirely different methods published in the journal Nature Climate Change on Monday.

One study used statistical analysis to show that there is a 95% chance that Earth will warm more than 2 degrees at century's end, and a 1% chance that it's below 1.5 C.

"The said. By using this site, you agree to the [Privacy Policy](#) and [Terms of Service](#). X : is 3.2 C," ect of existing

emission mitigation policies. Achieving the goal of less than 1.5 C warming will require carbon intensity to decline much faster than in the recent past."



Related Article: Scientists highlight deadly health risks of climate change



Photos: The effects of climate change on the world

The [second study](#) analyzed past emissions of greenhouse gases and the burning of fossil fuels to show that even if humans suddenly stopped burning fossil fuels now, Earth will continue to heat up about two more degrees by 2100. It also concluded that if emissions continue for 15 more years, which is more likely than a sudden stop, Earth's global temperature could rise as much as 3 degrees.

"Even if we would stop burning fossil fuels today, then the Earth would continue to warm slowly," said Thorsten Mauritsen, author of the second study. "It is this committed warming that we estimate."

Taken together, the similar results present a grim reality.

"These studies are part of the emerging scientific understanding that we're in even hotter water than we'd thought," said [Bill McKibben](#), an environmentalist not affiliated with either study. "We're a long ways down the path to disastrous global warming, and the policy response -- especially in the United States -- has been pathetically underwhelming."

Because both studies were completed before the [United States left the Paris Agreement under President Trump](#) earlier this year, that has not been accounted for in either study.

"Clearly the US leaving the Paris Agreement would make the 2 C or 1.5 C targets even harder to achieve than they currently are," said Raftery.

Why two degrees?

The 2 degree mark -- that's a rise of 3.6 degrees Fahrenheit in global temperature -- was set by the 2016 Paris Agreement. It was first proposed as a threshold by Yale economist William Nordhaus in 1977. The climate has been warming since the burning of fossil fuels began in the late 1800s during the Industrial Revolution, researchers say.



If we surpass that mark, it has been estimated by scientists that life on our planet will change as we know it. Rising seas, mass extinctions, super droughts, increased wildfires, intense hurricanes, decreased crops and fresh water and the melting of the Arctic are expected.

The impact on human health would be profound. Rising temperatures and shifts in weather would lead to reduced air quality, food and water contamination, more infections carried by mosquitoes and ticks and stress on mental health, according to a recent report from the [Medical Society Consortium on Climate and Health](#).

Related Content: 2 degrees: key to clim

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Currently, the [World Health Organization estimates](#) that 12.6 million people will die between 2030

and 2050 is expected to cause 250,000 additional global deaths, according to the [WHO](#).

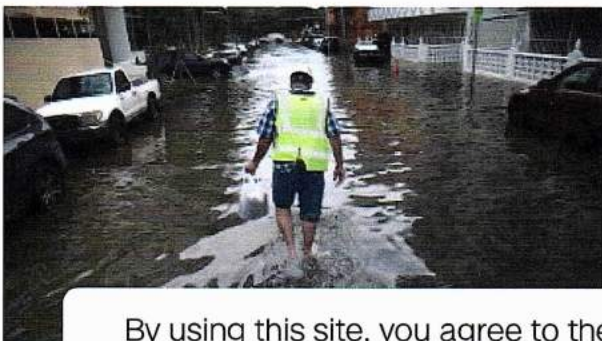
See Iceland's melting glaciers in 360° | Click and drag to look around 04:06

Our potential future

The first study used population, carbon emission and gross domestic product data from 152 countries (accounting for 98.7% of the world's population as of 2015) over the past 50 years to develop a new statistical model, said Raftery, a professor of statistics and sociology at the University of Washington.

Many studies come from the Intergovernmental Panel on Climate change and use climate model scenarios -- not forecasts -- to use as examples of what might happen, based on specific assumptions about economics, population and carbon emissions in the future.

"This leaves open the question of how likely they are, or whether they cover the range of possibilities," Raftery said. "In contrast, our results are statistically based and probabilistic, in that they aim to cover the range of likely outcomes."



What Raftery and his colleagues discovered is that population is not a factor.

"This is due to the fact that much of the expected future population growth will be in Africa, in countries whose carbon emissions are currently very low," Raftery said.

The study confirms conclusions of many other studies, said Bill Hare, director and senior scientists of nonprofit Climate

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Related Article: Where climate change is threatening the health of Americans

ambition of climate and energy policies," Hare said.

The other finding of the study suggests that achieving a goal of less than 1.5 Celsius warming would require carbon intensity to decline faster than it has in the past. "The whole purpose of climate and energy policy is to accelerate decarbonisation and this will necessarily be faster than what we have seen globally," Hare said.

Mauritsen, author of the second study and climate researcher at Max Planck Institute for Meteorology, also shared thoughts on Raftery's findings.

"It seems interesting in that it uses an economic statistical model that accounts for an increasing energy efficiency as societies develop," Mauritsen said. "It shows that the 1.5 to 2 degrees targets will not be met without additional mitigation, and suggests that a focus on energy efficiency is the best way forward."

The impact of our past

By combining observations of past global warming and how much heat and carbon is being captured and taken in by the ocean, Mauritsen and his co-author, Robert Pincus, found that even though CO₂ has an incredibly long lifetime in the atmosphere, the ocean's absorption capacity may reduce estimates of global warming by 0.2 degrees Celsius.

They arrived at the "committed" warming of 1.3 Celsius by 2100, and the estimate including the ocean factor is 1.1 degrees Celsius. But that is still nearly 2 degrees Fahrenheit: 1.8, to be precise.



Related Article: Hail of a forecast: Climate change means fewer hailstorms but bigger hail

"What the study is not concerned with is how future emissions might develop," Mauritsen said. "This is a societal problem where we as physical scientists have fairly little to add. These future emissions will, however, add warming on top of the already committed warming and so our study can act as a baseline for estimating how far we are from reaching various temperature targets."

Hare also found this study to be consistent with previous papers on global temperatures on the rise.

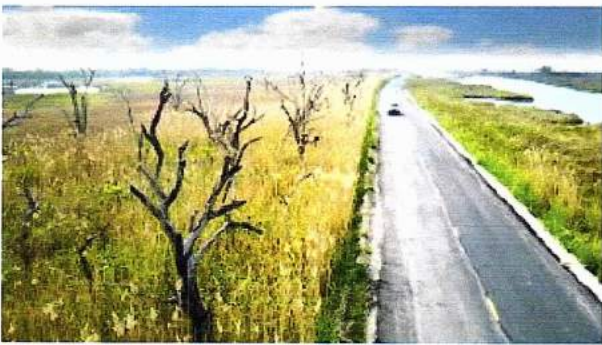
"It shows, in effect, that unless we start reducing emissions quickly -- soon there is a risk that we will overshoot temperature limits like 1.5 or 2 degrees C," Hare said. "It is just another confirmation of how dangerous the present situation is unless CO₂ emissions, which have flatlined in the last few years, really start dropping."

"This addresses a somewhat different question, namely how much warming should we expect if fossil fuel emissions were to suddenly cease," Raftery said. "In contrast, our study tries to assess how much warming we should expect given realistic future trajectories of emissions. Thus the other study provides a lower bound on expected emissions and warming, and this we would

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Related Article: Depression, anxiety, PTSD: The mental impact of climate change



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What can be done?

Researchers know that if there is any hope of preventing the outcomes they include in their findings, changing public policy is key.

"The next few years are going to be key in the fight against global warming," said Dargan Frierson, co-author of the first study. "Are we going to get to work installing clean energy, or stick to old polluting sources? If we don't act quickly, we better get to work preparing for many severe consequences of a much hotter world."

"There are only two realistic paths toward avoiding long-run disaster: increased financial incentives to avoid greenhouse gas emissions and greatly increased funding for research that will lead to at least partial technological fixes," said Dick Startz, economist and co-author of the second study. "Neither is free. Both are better than the catastrophe at the end of the current path."

Silver linings and hope are hard to find in climate change studies, but they also don't account for every factor.

"The only bright point is that, as the study authors say, they haven't factored in the plummeting cost of solar power," McKibben said. "That's the one way out we still might take -- but only if our governments take full advantage of the breakthroughs our engineers have produced."

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How 'cocktail museum' became world's best bar



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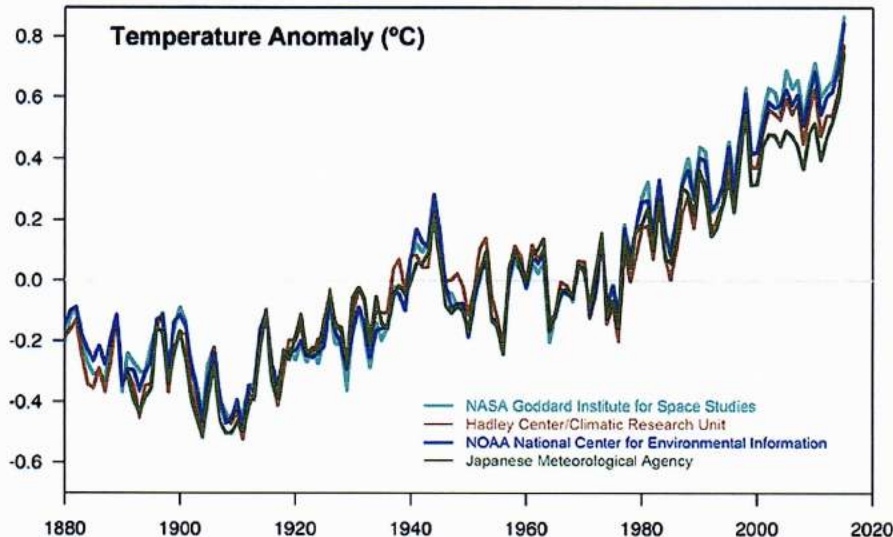
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EXHIBIT “I”



Scientific consensus: Earth's climate is warming



Temperature data from four international science institutions. All show rapid warming in the past few decades and that the last decade has been the warmest on record. Data sources: NASA's Goddard Institute for Space Studies, NOAA National Climatic Data Center, Met Office Hadley Centre/Climatic Research Unit and the Japanese Meteorological Agency.

Multiple studies published in peer-reviewed scientific journals¹ show that 97 percent or more of actively publishing climate scientists agree*: Climate-warming trends over the past century are extremely likely due to human activities. In addition, most of the leading scientific organizations worldwide have issued public statements endorsing this position. The following is a partial list of these organizations, along with links to their published statements and a selection of related resources.

AMERICAN SCIENTIFIC SOCIETIES

Statement on climate change from 18 scientific associations

"Observations throughout the world make it clear that climate change is occurring, and rigorous scientific research demonstrates that the greenhouse gases emitted by human activities are the primary driver." (2009)²

American Association for the Advancement of Science

Latest resources

Video: Greenland's thinning ice



Video: Ocean circulation plays an important role in absorbing carbon from the atmosphere



Video: Annual Arctic sea ice minimum 1979-2016 with area graph

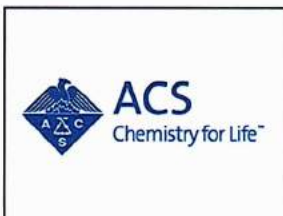


"The scientific evidence is clear: global climate change caused by human activities is occurring now, and it is a growing threat to society." (2006)³



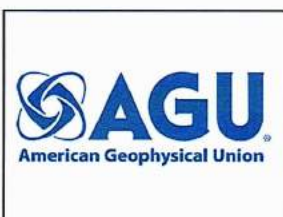
American Chemical Society

"Comprehensive scientific assessments of our current and potential future climates clearly indicate that climate change is real, largely attributable to emissions from human activities, and potentially a very serious problem." (2004)⁴



American Geophysical Union

"Human-induced climate change requires urgent action. Humanity is the major influence on the global climate change observed over the past 50 years. Rapid societal responses can significantly lessen negative outcomes." (Adopted 2003, revised and reaffirmed 2007, 2012, 2013)⁵



American Medical Association

"Our AMA ... supports the findings of the Intergovernmental Panel on Climate Change's fourth assessment report and concurs with the scientific consensus that the Earth is undergoing adverse global climate change and that anthropogenic contributions are significant." (2013)⁶



American Meteorological Society

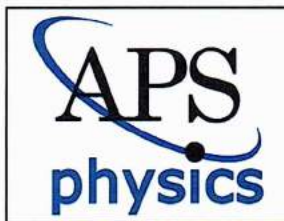
"It is clear from extensive scientific evidence that the dominant cause of the rapid change in climate of the past half century is human-induced increases in the amount of atmospheric greenhouse gases, including carbon dioxide (CO₂), chlorofluorocarbons, methane, and nitrous oxide." (2012)⁷



American Physical Society

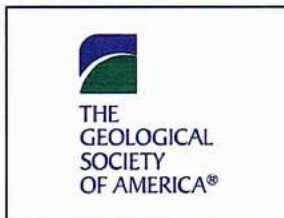
"The evidence is incontrovertible: Global warming is occurring. If no mitigating actions are taken, significant disruptions in the

Earth's physical and ecological systems, social systems, security and human health are likely to occur. We must reduce emissions of greenhouse gases beginning now." (2007)⁸



The Geological Society of America

"The Geological Society of America (GSA) concurs with assessments by the National Academies of Science (2005), the National Research Council (2006), and the Intergovernmental Panel on Climate Change (IPCC, 2007) that global climate has warmed and that human activities (mainly greenhouse-gas emissions) account for most of the warming since the middle 1900s." (2006; revised 2010)⁹



SCIENCE ACADEMIES

International academies: Joint statement

"Climate change is real. There will always be uncertainty in understanding a system as complex as the world's climate. However there is now strong evidence that significant global warming is occurring. The evidence comes from direct measurements of rising surface air temperatures and subsurface ocean temperatures and from phenomena such as increases in average global sea levels, retreating glaciers, and changes to many physical and biological systems. It is likely that most of the warming in recent decades can be attributed to human activities (IPCC 2001)." (2005, 11 international science academies)¹⁰

U.S. National Academy of Sciences

"The scientific understanding of climate change is now sufficiently clear to justify taking steps to reduce the amount of greenhouse gases in the atmosphere." (2005)¹¹



U.S. GOVERNMENT AGENCIES

U.S. Global Change Research Program

"The global warming of the past 50 years is due primarily to human-induced increases in heat-trapping gases. Human 'fingerprints' also have been identified in many other aspects of the climate system, including changes in ocean heat content, precipitation, atmospheric moisture, and Arctic sea ice." (2009, 13 U.S. government departments and agencies)¹²



INTERGOVERNMENTAL BODIES

Intergovernmental Panel on Climate Change

"Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen."¹³



"Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems."¹⁴

OTHER RESOURCES

List of worldwide scientific organizations

The following page lists the nearly 200 worldwide scientific organizations that hold the position that climate change has been caused by human action.

http://opr.ca.gov/s_listoforganizations.php

U.S. agencies

The following page contains information on what federal agencies are doing to adapt to climate change.

<http://www.c2es.org/docUploads/federal-agencies-adaptation.pdf>

**Technically, a “consensus” is a general agreement of opinion, but the scientific method steers us away from this to an objective framework. In science, facts or observations are explained by a hypothesis (a statement of a possible explanation for some natural phenomenon), which can then be tested and retested until it is refuted (or disproved).*

As scientists gather more observations, they will build off one explanation and add details to complete the picture. Eventually, a group of hypotheses might be integrated and generalized into a scientific theory, a scientifically acceptable general principle or body of principles offered to explain phenomena.

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1. J. Cook, et al, "Consensus on consensus: a synthesis of consensus estimates on human-caused global warming," *Environmental Research Letters* Vol. 11 No. 4, (13 April 2016); DOI:10.1088/1748-9326/11/4/048002

Quotation from page 6: "The number of papers rejecting AGW [Anthropogenic, or human-caused, Global Warming] is a miniscule proportion of the published research, with the percentage slightly decreasing over time. Among papers expressing a position on AGW, an overwhelming percentage (97.2% based on self-ratings, 97.1% based on abstract ratings) endorses the scientific consensus on AGW."

J. Cook, et al, "Quantifying the consensus on anthropogenic global warming in the scientific literature," *Environmental Research Letters* Vol. 8 No. 2, (15 May 2013); DOI:10.1088/1748-9326/8/2/024024

Quotation from page 3: "Among abstracts that expressed a position on AGW, 97.1% endorsed the scientific consensus. Among scientists who expressed a position on AGW in their abstract, 98.4% endorsed the consensus."

W. R. L. Anderegg, "Expert Credibility in Climate Change," *Proceedings of the National Academy of Sciences* Vol. 107 No. 27, 12107-12109 (21 June 2010); DOI: 10.1073/pnas.1003187107.

P. T. Doran & M. K. Zimmerman, "Examining the Scientific Consensus on Climate Change," *Eos Transactions American Geophysical Union* Vol. 90 Issue 3 (2009), 22; DOI: 10.1029/2009EO030002.

N. Oreskes, "Beyond the Ivory Tower: The Scientific Consensus on Climate Change," *Science* Vol. 306 no. 5702, p. 1686 (3 December 2004); DOI: 10.1126/science.1103618.

2. Statement on climate change from 18 scientific associations (2009)
3. AAAS Board Statement on Climate Change (2006)
4. ACS Public Policy Statement: Climate Change (2010-2013)
5. Human-Induced Climate Change Requires Urgent Action (2013)
6. Global Climate Change and Human Health (2013)
7. Climate Change: An Information Statement of the American Meteorological Society (2012)
8. APS National Policy 07.1 Climate Change (2007)
9. GSA Position Statement on Climate Change (2010)
10. Joint science academies' statement: Global response to climate change (2005)
11. Understanding and Responding to Climate Change (2005)
12. Global Climate Change Impacts in the United States (2009)
13. IPCC Fifth Assessment Report, Summary for Policymakers (2014)
14. IPCC Fifth Assessment Report, Summary for Policymakers (2014)

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Site last updated: November 14, 2017

EXHIBIT “J”

Trump administration report attributes climate change to 'human activities'

By [Gregory Wallace](#)

Updated 9:30 PM ET, Fri November 3, 2017



Jennifer Gray
CNN | @JenniferGrayCNN

Source: CNN

Undeniable climate change facts 02:24

(CNN) — A significant federal government study released Friday finds "no convincing alternative explanation" for the changing climate other than "human activities, especially emissions of greenhouse gases."

When drafts of the report were circulated earlier this year, some participants voiced concern that President Donald Trump's administration would seek to somehow interfere with the report, due to skepticism from Trump and others in his administration about climate science. Trump has nominated climate skeptics to top [Environmental Protection Agency posts](#), and his administration has actively worked to dismantle climate protections, along with pulling out of the Paris climate accord.

But the study released Friday spoke specifically to the effects and costs of climate change.

"This assessment concludes, based on extensive evidence, that it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of

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alternative explanation supported by the extent of the observational evidence," the report said.

Warming temperatures globally, rising sea levels, more frequent heat waves and increased numbers of forest fires are evidence of the changing climate, the report stated.

The Climate Science Special Report is required by federal law and includes contributions from multiple government agencies and non-government academic experts. The report is a component of the Fourth National Climate Assessment.

"The magnitude of climate change beyond the next few decades will depend primarily on the amount of greenhouse gases (especially carbon dioxide) emitted globally," the report said.

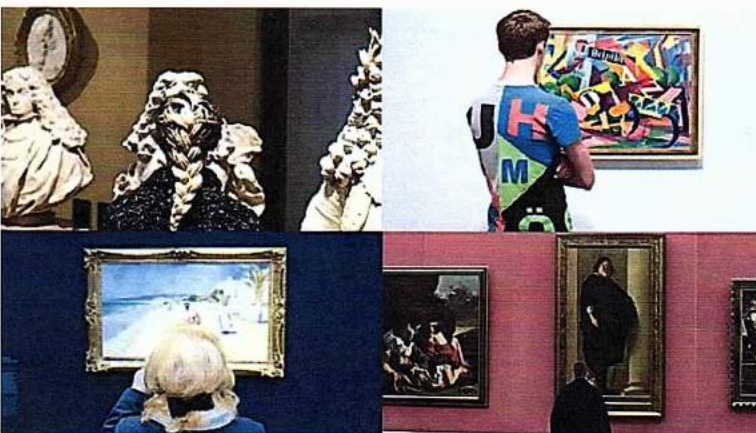
The Trump administration has indicated multiple times that climate change is not one of its priorities. Trump has previously labeled climate change a "hoax."

In addition to the administration's withdrawal from the Paris agreement, the EPA did not include climate change in its [recent strategic plan](#), has moved to overturn the landmark Clean Power Plan, and has [dropped experts from advisory panels](#).

EPA Administrator Scott Pruitt has proposed organizing teams to debate climate science.

But the White House said Friday it "supports rigorous scientific analysis and debate."

"The climate has changed and is always changing," spokesman Raj Shah said in a statement. "In the United States, energy related carbon dioxide emissions have been declining, are expected to remain flat through 2040, and will also continue to decline as a share of world emissions."



Photographer captures people

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EXHIBIT “K”

The New York Times <https://nyti.ms/2vdswoz>

CLIMATE

Scientists Fear Trump Will Dismiss Blunt Climate Report

By LISA FRIEDMAN AUG. 7, 2017

WASHINGTON — The average temperature in the United States has risen rapidly and drastically since 1980, and recent decades have been the warmest of the past 1,500 years, according to a sweeping federal climate change report awaiting approval by the Trump administration.

The draft report by scientists from 13 federal agencies concludes that Americans are feeling the effects of climate change right now. It directly contradicts claims by President Trump and members of his cabinet who say that the human contribution to climate change is uncertain, and that the ability to predict the effects is limited.

“Evidence for a changing climate abounds, from the top of the atmosphere to the depths of the oceans,” a draft of the report states. It was uploaded to a nonprofit internet digital library in January but received little attention until it was published by The New York Times.

The authors note that thousands of studies, conducted by tens of thousands of scientists, have documented climate changes on land and in the air. “Many lines of evidence demonstrate that human activities, especially emissions of greenhouse

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The report was completed this year and is a special science section of the National Climate Assessment, which is congressionally mandated every four years. The National Academy of Sciences has signed off on the draft report, and the authors are awaiting permission from the Trump administration to release it.

One scientist who worked on the report, Katharine Hayhoe, a professor of political science at Texas Tech University, called the conclusions among “the most comprehensive climate science reports” to be published. Another scientist involved in the process, who spoke to The New York Times on the condition of anonymity, said he and others were concerned that it would be suppressed.

The White House and the Environmental Protection Agency did not immediately return calls or respond to emails requesting comment on Monday night.

The report concludes that even if humans immediately stopped emitting greenhouse gases into the atmosphere, the world would still feel at least an additional 0.50 degrees Fahrenheit (0.30 degrees Celsius) of warming over this century compared with today. The projected actual rise, scientists say, will be as much as 2 degrees Celsius.

A small difference in global temperatures can make a big difference in the climate: The difference between a rise in global temperatures of 1.5 degrees Celsius and one of 2 degrees Celsius, for example, could mean longer heat waves, more intense rainstorms and the faster disintegration of coral reefs.

Among the more significant of the study’s findings is that it is possible to attribute some extreme weather to climate change. The field known as “attribution science” has advanced rapidly in response to increasing risks from climate change.

The E.P.A. is one of 13 agencies that must approve the report by Aug. 18. The agency’s administrator, Scott Pruitt, has said he does not believe that carbon dioxide is a primary contributor to global warming.

“It’s a fraught situation,” said Michael Oppenheimer, a professor of geoscience and international affairs at Princeton University who was not involved in the study. “This is the first case in which an analysis of climate change of this scope has come

up in the Trump administration, and scientists will be watching very carefully to see how they handle it.”

Scientists say they fear that the Trump administration could change or suppress the report. But those who challenge scientific data on human-caused climate change say they are equally worried that the draft report, as well as the larger National Climate Assessment, will be publicly released.

The National Climate Assessment “seems to be on autopilot” because of a lack of political direction, said Myron Ebell, a senior fellow at the Competitive Enterprise Institute.

The report says significant advances have been made linking human influence to individual extreme weather events since the last National Climate Assessment was produced in 2014. Still, it notes, crucial uncertainties remain.

It cites the European heat wave of 2003 and the record heat in Australia in 2013 as specific episodes where “relatively strong evidence” showed that a man-made factor contributed to the extreme weather.

In the United States, the authors write, the heat wave that broiled Texas in 2011 was more complicated. That year was Texas’ driest on record, and one study cited in the report said local weather variability and La Niña were the primary causes, with a “relatively small” warming contribution. Another study had concluded that climate change made extreme events 20 times more likely in Texas.

Based on those and other conflicting studies, the federal draft concludes that there was a medium likelihood that climate change played a role in the Texas heat wave. But it avoids assessing other individual weather events for their link to climate change. Generally, the report described linking recent major droughts in the United States to human activity as “complicated,” saying that while many droughts have been long and severe, they have not been unprecedented in the earth’s hydrologic natural variation.

Worldwide, the draft report finds it “extremely likely” that more than half of the global mean temperature increase since 1951 can be linked to human influence.

In the United States, the report concludes with “very high” confidence that the number and severity of cool nights have decreased since the 1960s, while the frequency and severity of warm days have increased. Extreme cold waves, it says, are less common since the 1980s, while extreme heat waves are more common.

The study examines every corner of the United States and finds that all of it was touched by climate change. The average annual temperature in the United States will continue to rise, the authors write, making recent record-setting years “relatively common” in the near future. It projects increases of 5.0 to 7.5 degrees Fahrenheit (2.8 to 4.8 degrees Celsius) by the late century, depending on the level of future emissions.

It says the average annual rainfall across the country has increased by about 4 percent since the beginning of the 20th century. Parts of the West, Southwest and Southeast are drying up, while the Southern Plains and the Midwest are getting wetter.

With a medium degree of confidence, the authors linked the contribution of human-caused warming to rising temperatures over the Western and Northern United States. It found no direct link in the Southeast.

Additionally, the government scientists wrote that surface, air and ground temperatures in Alaska and the Arctic are rising at a frighteningly fast rate — twice as fast as the global average.

“It is very likely that the accelerated rate of Arctic warming will have a significant consequence for the United States due to accelerating land and sea ice melting that is driving changes in the ocean including sea level rise threatening our coastal communities,” the report says.

Human activity, the report goes on to say, is a primary culprit.

The study does not make policy recommendations, but it notes that stabilizing the global mean temperature increase to 2 degrees Celsius — what scientists have referred to as the guardrail beyond which changes become catastrophic — will require significant reductions in global levels of carbon dioxide.

Nearly 200 nations agreed as part of the Paris accords to limit or cut fossil fuel emissions. If countries make good on those promises, the federal report says, that will be a key step toward keeping global warming at manageable levels.

Mr. Trump announced this year that the United States would withdraw from the Paris agreement, saying the deal was bad for America.

Correction: August 9, 2017

An article on Tuesday about a sweeping federal climate change report referred incorrectly to the availability of the report. While it was not widely publicized, the report was uploaded by the nonprofit Internet Archive in January; it was not first made public by The New York Times.

Correction: August 15, 2017

An article last Tuesday about a sweeping federal climate change report misstated the professional credentials of Katharine Hayhoe, who contributed to the report. She is a professor at Texas Tech University, not a government scientist.

Follow @NYTClimate on Twitter

A version of this article appears in print on August 8, 2017, on Page A1 of the New York edition with the headline: Climate Report Full of Warnings Awaits President.

EXHIBIT “L”

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SUSTAINABILITY

How Bad of a Greenhouse Gas Is Methane?

The global warming potential of the gaseous fossil fuel may be consistently underestimated

By Gayathri Vaidyanathan, ClimateWire on December 22, 2015





At present, nations report methane emissions in terms of CO₂ equivalents, using GWP100 as the conversion factor. This allows nations, such as the United States, that use natural gas to generate electricity to present a cleaner façade to the world than they have in reality. *Credit: ©iStock*

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SAN FRANCISCO—Environmental advocates are trying to change how policymakers consider the climate impacts of methane, a potent greenhouse gas.

The change, if implemented, could make natural gas a less attractive option for generating electricity in power plants.

At issue is the global warming potential (GWP), a number that allows experts to compare methane with its better-known cousin, carbon dioxide. While CO₂ persists in the atmosphere for centuries, or even millennia, methane warms the planet on steroids for a decade or two before decaying to CO₂.



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In those short decades, methane warms the planet by 86 times as much as CO₂, according to the Intergovernmental Panel on Climate Change.

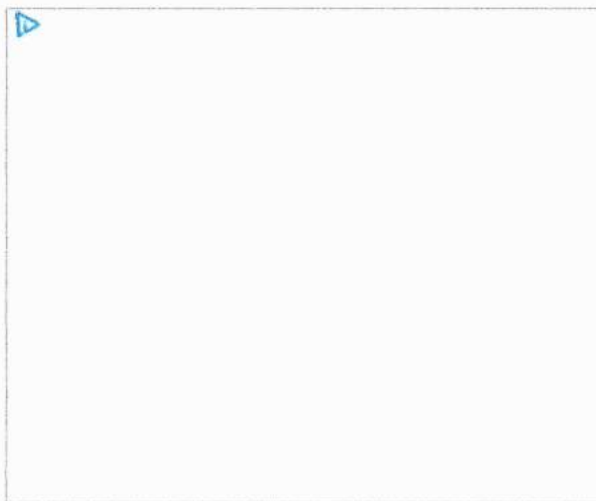
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But policymakers typically ignore methane's warming potential over 20 years (GWP₂₀) when assembling a nation's emissions inventory. Instead, they stretch out methane's warming impacts over a century, which makes the gas appear more benign than it is, experts said. The 100-year warming potential (GWP₁₀₀) of methane is 34, according to the IPCC.

There is no scientific reason to prefer a 100-year time horizon over a 20-year time horizon; the choice of GWP₁₀₀ is simply a matter of convention.

The 100-year GWP value underestimates the gas's negative impacts by almost five times, said Ilissa Ocko, a climate scientist at the nonprofit Environmental Defense Fund. The quick warming in the short run catalyzed by methane can affect environmental processes, such as the flowering of plants, she said at the American Geophysical Union meeting last week.

"The short-lived climate pollutants [like methane] that we emit from human activities are basically controlling how fast the warming occurs," she said. "This is because they are very powerful at absorbing radiation."



EDF and some scientists are calling on the United Nations and policymakers to stop relying on GWP100. They would instead like experts to use GWP20 and GWP100 as a slashed pair.

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A push for quicker reductions

"Just like if you were looking at blood pressure and there is only one number, and you'd be like, 'Where is the other one?'" Ocko said.

Ocko and her colleagues will soon publish a peer-reviewed study with this message to get the scientific community on board. Their hope is this convention would be more widely accepted among policymakers.

The effort has gained urgency since the United States has become a large natural-gas-producing nation. Its emissions of methane between 1990 and 2013 have fallen by 15 percent, according to U.S. EPA, though some studies have suggested that methane inventories may be faulty.

If the proposed nomenclature change is adopted by the United Nations, which collects greenhouse gas inventories from nations every year, it could change the optics of the climate change reductions nations are implementing, said Bryce Payne, director of science and technology at Gas Safety Inc., a company that measures methane emissions.



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At present, nations report methane emissions in terms of CO₂ equivalents, using GWP₁₀₀ as the conversion factor. This allows nations, such as the United States, that use natural gas to generate electricity to present a cleaner façade to the world than they have in reality, he said.

Payne and two other scientists wrote a letter to the U.S. delegation at the United Nations' climate change summit this month suggesting that the United Nations Framework Convention on Climate Change require nations to use a 10-year global warming potential, or GWP₁₀, in their emissions inventory. This would allow quicker curbs on methane, they wrote.

"Efforts to control methane emissions should be part of a broad effort to reduce, preferably end, anthropogenic [greenhouse gas] emissions at the earliest possible date," he wrote.

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ABOUT THE AUTHOR(S)

Gayathri Vaidyanathan

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EXHIBIT “M”

Plymouth Record Enterprise ►

Plymouth leads the way to new energy future

by Marcia Morris

write the author

April 15, 2010

PLYMOUTH — When the Carbon Coalition's Climate Change Resolution passed voters approval at Town Meetings across New Hampshire in 2007, one of the things it did was encourage town officials to set up local advisory Energy Committees to look at ways that communities could save energy in municipal buildings. Over 160 New Hampshire towns and cities passed the resolution that spring, but it is fair to say that thus far, none has been more effective at producing results than Plymouth.

The Plymouth Energy Committee Chairman Paul Phillips this week announced that the town has received notification that it has been awarded \$230,000 of Energy Efficiency and Conservation Block Grant (IEECBG) program funding by the Office of Energy Planning through the U.S. Department of Energy. The funding will enable Plymouth to conduct energy audits of seven town buildings, energy efficiency upgrades on four town buildings, including an ambitious model "retrofit" of the Water and Sewer Department Administration building, and the installation of photo voltaic systems on 3 buildings, the Plymouth Elementary School, the Pease Public Library and the Water and Sewer District building.

The Office of Energy Planning received 270 grant applications totaling \$21 million of requests for the \$6.6 million of available EECBG funding.

Phillips said that the Plymouth projects were well suited to fulfill some of the objectives of the grant because they are expected to provide ample opportunity for public education on high profile public buildings. The Water and Sewer Department building in particular, a double modular structure similar to many area residences, can serve as a model for the energy and money saving potential of energy retrofits on homes in the local area. He also noted that the timing of the Pease Public Library expansion project and the Plymouth Elementary School renovations, approved by voters at Town and District Meetings in March, provided an excellent window of opportunity to integrate the renewable energy upgrades into the design.

Plymouth Select Board has scheduled a public hearing that is required by statute to accept the "unanticipated" funds at the next regular meeting, April 26 at 6:30 p.m. in the Town Hall, after which a contract will be signed. The work will then go out to bid and is expected to begin this summer.

Plymouth has been unusually blessed with an extraordinary group of exceptionally qualified individuals volunteering to serve on the Energy Committee. The town is also well positioned to take the leadership role in modeling the potential for sustainable energy solutions for New Hampshire because of an array of factors, including the resources of Plymouth State University, with its track record for completing ambitious cutting edge (Leadership in Energy Efficient Design (LEED) projects, the presence of an innovative and dynamic grassroots movement to promote energy efficiency in the Plymouth Area Renewable Energy Initiative (PAREI), the community outreach efforts of the New Hampshire Electric Co-op, headquartered in Plymouth, and supportive town and local elected officials.

In addition to Phillips, Plymouth Energy Committee members include Ray Gosney, Steve Whitman, Steve Kahl, Bob Reals, John Mauchly, Tyler Durham, David Colburn, Brandon Miller and Madeline McElaney.

Voters at Town Meeting in Plymouth once again this year reiterated their commitment to alternative energy by approving warrant articles establishing a more formalized Town Energy Commission to supersede the ad hoc local energy committee and approving a warrant article to establish a tax exemption on the installation of renewable energy systems in Town.

With the action at Town meeting this year, Plymouth became the first town to receive approval from voters for the establishment of a more formalized Energy Commission under new state enabling legislation that came into effect this past September. The Commission will oversee moneys from a newly established municipal energy fund and will assist in administering grant funding for projects in the Town of Plymouth but will have not policy-making authority.

At the regular Select Board meeting this Monday night, Paul Phillips presented the energy committee's

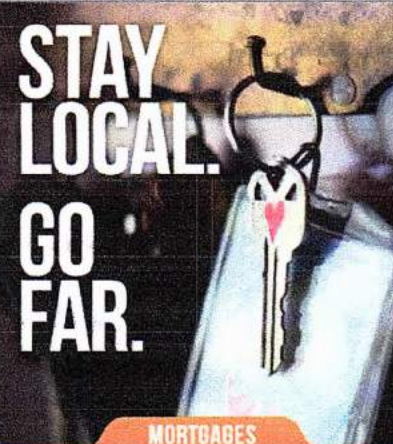


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recommendation for how to proceed on the establishment of the Plymouth Energy Commission. He reported that the current members of the committee are in unanimous agreement in recommending a six member commission, with 3 alternates, to be appointed by the board in staggered terms of from 1 to 3 years so that revolving membership will be achieved. The Select Board will take up their recommendation at a meeting in the near future.

Plymouth is also waiting to hear about another substantial grant to be awarded under the nationwide Beacon Communities Grant program. Plymouth was chosen by state officials as a "model" community, along with Nashua and Berlin, to compete with other states for New Hampshire's application for the award. Phillips indicated that in keeping with the community wide spirit of the Beacon project, one of the first tasks of the newly established Plymouth Energy Commission would likely be to ask the board to authorize participation in a Plymouth Energy Reduction Council, a public/private partnership bringing together businesses, civic organizations and other stakeholders in a community wide effort to study ways to reduce energy consumption throughout the Town and surrounding area.

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EXHIBIT “N”

U.S.

In New Hampshire, Towns Put Climate on the Agenda

By KATIE ZEZIMA MARCH 19, 2007

BARTLETT, N.H., March 18 — As they do every March at the town meeting here, residents debated and voted Thursday on items most local: whether to outfit the town fire truck with a new hose, buy a police cruiser and put a new drainpipe in the town garage.

But here and in schools and town halls throughout New Hampshire, between discussions about school boards and budgets, residents are also considering a state referendum on a global issue: climate change.

Of the 234 incorporated cities and towns in New Hampshire, 180 are voting on whether to support a resolution asking the federal government to address climate change and to develop research initiatives to create “innovative energy technologies.” The measure also calls for state residents to approve local solutions for combating climate change and for town selectmen to consider forming energy committees.

“This is an important issue to people in New Hampshire; it’s an environmentally friendly state,” said Kurt Ehrenberg, a spokesman from the Sierra Club’s New Hampshire office. “One of the driving factors here is the lack of federal leadership on this issue, and it’s forced people to find a solution on the local level.”

While the resolution is nonbinding, organizers hope to use it to force presidential candidates to address climate change during the New Hampshire presidential primary.

“We’re trying to bring to the attention of presidential candidates that we are concerned about this in little purple New Hampshire,” said Don Martin, 61, a real estate agent in Bristol who helped collect signatures to put the initiative on the agenda in his town, where it passed by a wide margin. “New Hampshire is fairly middle-of-the-road to conservative, and if we’re concerned about this, then maybe you guys should pay attention to it.”

As of Sunday, 134 towns had passed the initiative; some had yet to hold their meetings.

The New Hampshire Carbon Coalition, a bipartisan citizens group led by a former Republican state senator and the former chairman of the state Democratic Party, spearheaded the initiative to have climate change considered at town meetings. The last time voters in New Hampshire focused on a global issue at such meetings was in 1983, when more than 100 towns asked that the federal government do something about acid rain, which was polluting the state’s waterways.

A handful of towns often take up national issues at their meetings, said Steve Norton, executive director of the New Hampshire Center for Public Policy Studies, an independent state policy group, but “this is definitely a little more rare.”

“It might be somewhat normal for a town to take on a national initiative,” Mr. Norton said, “but not half the towns in the state.”

Here in Bartlett, a town of about 2,200 people in the White Mountains, the measure passed almost unanimously at the Thursday meeting. Bartlett’s interest is both economical and environmental: best known for its ski areas, the town suffered from a lack of snow last year and in the first half of this winter.

“We have a vested interest in climate change here. We like to get snow,” said Doug Garland, a town selectman who owns a snowshoeing and cross-country skiing area.

David P. Brown, a professor of climatology and geography at the University of New Hampshire, said that the state's average winter temperatures had risen over the past 30 years and that snowfall had decreased. "Every reputable climate model projects a continued warming for New England," Professor Brown said, "and I expect that trend to be mirrored in New Hampshire."

While the resolution has been supported widely, not all voters have approved of it. Gene Chandler, a selectman in Bartlett, said he did not think national issues should be brought before town meetings.

Tom Naegeli, 74, of Mont Vernon, voted against the measure in his town meeting. It passed overwhelmingly. "I just don't think it should be in the town meeting at all," Mr. Naegeli said. "I don't see any evidence of global warming."

Barry Rabe, a professor of public policy at the University of Michigan who tracks local climate change initiatives, said that Colorado and Washington had passed renewable energy standards by ballot initiative and that Texas had held hearings on the issue.

"To me New Hampshire is breaking a little different ground, using the town meeting approach," Professor Rabe said, "which isn't a widely available operation."

Mr. Ehrenberg, of the Sierra Club, said he and others hoped the votes would send a message that change could come from the bottom up.

"Those bumper stickers you see," he said, "'Think globally, act locally' — this is really the embodiment of that."

A version of this article appears in print on , on Page A8 of the New York edition with the headline: In New Hampshire, Towns Put Climate on the Agenda.

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

NOTICE OF
REQUEST TO AMEND PRAYERS FOR RELIEF IN
JOINT MOTION FOR REHEARING UNDER R.S.A. 541

Pursuant to Puc 203.10, joint movants, (a) Terry Clark, and (b) Beverly Edwards, Elizabeth Fletcher, Douglas Whitbeck, Gwen Whitbeck, Susan Durling, Julia Steed Mawson and Marilyn Learner, as they collectively comprise the NH Pipeline Health Study Group, and Individually (“Movants”), hereby give notice of their request to be granted permission to amend the prayers for relief at the end of their motion for rehearing filed on November 16, 2017 to say as follows:

“WHEREFORE, the movants respectfully request that the Commission:

- A. Grant this motion for reconsideration of and a rehearing on the Order; and
- B. Vacate (or reverse) the Order; and
- C. Dismiss this proceeding; and
- D. Grant such other and further relief as is reasonable, lawful, just and otherwise appropriate.”

As grounds for this request, the Movants first state that the amendment will “encourage the just resolution of the proceeding” as the amended prayers better comport with the relief sought by the movants in the motion for relief, which is appropriate to the just resolution of the proceeding for the reasons asserted in the motion. Second, the Movants state that the amendment “will not cause undue delay” as the Commission can either determine that it relates back to the original motion filing date and therefore does not extend deadlines triggered by the

filing of the motion or can extend such deadlines without causing undue delay: the Movants agree to any such extension the Commission deems appropriate.

Respectfully submitted,

Dated: November 20, 2017

//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 November 20, 2017, served an e-mail copy of this pleading 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
Richard M. Husband

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

Liberty Utilities (EnergyNorth Natural Gas Corp.) d/b/a Liberty Utilities

Petition for Declaratory Ruling

Objection to Motion for Rehearing

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the “Company” or “Liberty”), through counsel, respectfully objects to the *Joint Motion for Rehearing* filed by a number of individuals and the NH Pipeline Health Study Group because the movants do not have standing and, alternatively, because the motion lacks merit.

In support of this objection, Liberty states as follows:

1. In Order No. 26,065 (Oct. 20, 2017) (the “Order”), “the Commission grant[ed] the Company’s request for a declaratory ruling that it has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene.” The Order merely confirmed the status quo:

We find the Company’s arguments that CNG and LNG constitute gas of the same character as the propane-air mixture currently supplied to Liberty-Keene customers to be persuasive. This interpretation of gas service is consistent with prior Commission decisions allowing natural gas utilities to supplement natural gas supply with propane without requiring additional franchise approval under RSA 374:22 and RSA 374:26. Consistent with this interpretation of gas service, we conclude that (1) Liberty possesses a franchise to provide gas service which includes CNG/LNG service in Keene, and (2) that Liberty has continually exercised this franchise, as referenced in RSA 374:22, I, to the present day.

Order at 3 (citations omitted). Contrary to the Movants' assertions, the Order did not expand any rights to provide gas distribution service, did not increase the territory in which Liberty may provide those services, and did not approve any particular project at any particular location. The Order simply granted the Petition's sole request "that the Commission ... declare that Liberty need not seek permission under [the franchise statutes] to distribute natural gas in Keene." Petition at 13.

2. A number of individuals and an "unincorporated association of New Hampshire residents" operating under the name "NH Pipeline Health Study Group" (together, the "Movants") filed a Joint Motion for Rehearing which asked the Commission to vacate the Order based on several arguments.
3. For the reasons discussed below, the Movants do not have standing to seek rehearing of the Order and, if addressed on the merits, their reasons for rehearing should be rejected.

The Movants Do Not Have Standing.

4. Puc 203.07(a) provides: "A motion may be filed [1] by any party or, [2] in the case of a motion for rehearing, a person directly affected by a commission action pursuant to RSA 541:3." First, the Movants are not parties to this docket. Had the Movants tried to gain party status pursuant to RSA 541-A:32, the Commission would likely have denied the request because none of the Movants are Liberty customers. The Commission denied a similar motion for intervention by non-customer members of an organization similar to NH Pipeline Health Study Group.

[W]e grant PLAN's intervention on behalf of its members who are also EnergyNorth customers and deny its intervention on behalf of

landowners along the proposed TGP route who are not EnergyNorth customers. Only EnergyNorth-customer members possess “rights, duties, privileges, immunities or other substantial interests [that] may be affected by the proceeding.” RSA 541-A:32, I (b). It will be EnergyNorth customers who will bear the costs of the Precedent Agreement if the Commission approves it. PLAN’s landowner members possess no such direct interest or cost responsibility; their interests, while important, are not pertinent to the Commission’s determinations in this proceeding. Consequently, it is likely that the participation of PLAN landowner members would “impair the orderly and prompt conduct of [these expedited] proceedings.” RSA 541-A:32, II.

Order No. 25,767 at 4 (Mar. 6, 2015). The Movants are analogous to the landowner members of PLAN – “their [environmental] interests, while important, are not pertinent to the Commission’s determination” that Liberty has the right to serve natural gas in Keene.

5. Thus, the Movants are not now parties and would not qualify as parties under RSA 541-A:32 and Order No. 25,767 if they so requested.
6. Second, for similar reasons the Movants do not have standing to invoke the second clause of Puc 203.07(a) and seek reconsideration of the Order (“a motion for rehearing [may be filed by] a person directly affected by a commission action”).
7. The “directly affected” language of Puc 203.07(a) is the well-accepted legal test for standing: “To have standing to appeal an administrative agency decision to this court, a party must demonstrate that his rights ‘may be directly affected by the decision, or in other words, that he has suffered or will suffer an injury in fact.’” *In re Stonyfield Farm*, 159 N.H. 227, 231 (2009) (citation omitted); *see Appeal of Campaign for Ratepayer Rights*, 142 N.H. 629, 632 (1998) (“Any injury suffered by ratepayers ... is neither immediate nor direct because any potential injury would arise only through increased rates imposed during a subsequent ratesetting proceeding”).

8. The Movants based their standing argument on their places of residence and on their environmental concerns. One movant lives in Keene, two live in other towns served by Liberty, and the rest live in towns not served by Liberty. Motion at 2-4. The Movants' environmental concerns can be summarized, for purposes of this objection, as opposition to the expansion of natural gas. Motion at 3.
9. The Movants' places of residence do not provide standing. The Order simply confirmed what was already the case -- that Liberty can offer natural gas in Keene. That declaration, by itself, did not cause "injury in fact" to non-customers, regardless of where they live (and arguably did not "directly affect" any customers because it did not change rates or terms of service).
10. The Movants' environmental concerns were also "not pertinent to the Commission's determination." The Commission's conclusion that Liberty can offer natural gas in Keene did not take environmental arguments into account, and had no reason to do so. Liberty posed a legal issue: whether PUC-related statutes, rules, and Commission-approved tariffs allow Liberty to offer natural gas in Keene. Liberty did not ask any environmental questions, and the Commission did not address any because they would have been irrelevant to the docket.
11. Therefore, the motion for rehearing should be denied for lack of standing because the Movants do not meet the requirements of Puc 203.07.
12. In the event that the Commission finds one or more of the Movants have standing, Liberty will address their arguments in the motion for rehearing.

Liberty Did Not Need to Verify Petition.

13. Movants first argued that the petition should have been dismissed because it was not “verified.” Puc 207.01(b) states that a petition for declaratory ruling “shall be verified under oath or affirmation by an authorized representative of the petitioner with knowledge of the relevant facts.”
14. It is reasonable to interpret this rule to require verification when the petition alleges facts that are subject to challenge. The material “facts” in Liberty’s petition are from the public record, are not subject to challenge, and would likely qualify for official notice. *See* Puc 203.27. Thus, there was nothing to verify.
15. The facts supporting the petition fall into three categories and all come from public and commission approved documents. The first category contains the various definitions of “gas”: the 1860 legislation that granted Liberty’s predecessor the franchise to serve “gas” in Keene; the Commission rule that defines “gas” to include “natural gas,” Puc 502.06; and the Commission-approved tariffs that define gas to include propane and natural gas. *See* Petition at 3.
16. The second category includes sources that defined the phrase a “change in the character of service” (a franchise filing may be necessary if serving natural gas in Keene is a “change in the character of service”). The facts supporting Liberty’s argument that serving natural gas was not such a change again consisted of Commission rules and Commission-approved tariffs. *See* Petition at 4 - 6.
17. The third category consists of Commission orders and testimony filed in other Commission dockets which supported Liberty’s argument that the Commission has never required franchise filings when gas utilities changed fuels. Petition at 6 - 12.

18. Since the material facts in this case are drawn from rules, Commission orders, Commission-approved tariffs, and testimony by other witnesses in other dockets, there is nothing in the petition that required verification by a Liberty witness. It was thus reasonable for the Commission not to require verification to find the facts on which to support its decision.

Liberty Did Not Violate Puc 207.01(c)(1).

19. Movants next faulted Liberty for failing to “describe the proposed changes to the Keene system at all, precluding a fair opportunity to challenge – or even understand – the Petition.” Motion at 7. Movants claimed this violates Puc 207.01(c)(1), which requires petitions for declaratory rulings to “set forth factual allegations that are definite and concrete.”
20. The Company did not include a description of the Keene facility because that was not relevant to Liberty’s request. Liberty asked the Commission to confirm that the Company possessed the right to serve natural gas in Keene, nothing more. The particulars of the Keene facility had no bearing on answering that question.
21. Thus, the Petition’s “failure” to include a description of the Keene facility did not violate Puc 207.01(c)(1) because such a description was not relevant to the question posed.

The SEC Does Not Have Jurisdiction Over the Keene Facility.

22. Movants argued that the Commission lacked jurisdiction over the petition because “the approval sought ... falls squarely to the SEC.” Motion at 7. Movants argued that

the Keene facility is an “energy facility” under RSA 162-H:2 that is subject to the exclusive jurisdiction of the Site Evaluation Committee. Movants are wrong because they failed to read the balance of that statute.

23. The SEC does not have jurisdiction over every energy facility constructed in the state, only energy facilities above a certain size. RSA 162-H:2 provides clear guidance on which energy facilities are large enough to fall under its review.

24. The definition of “energy facility” that is applicable to a CNG/LNG project like Liberty’s Keene facility follows:

Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities

RSA 162-H:2, VII(a) (emphasis added). The quantity of CNG/LNG that Liberty will store at the Keene facility is far less than the 30 megawatt standard above.

25. The SEC has no jurisdiction over the Keene facility. Rather, the facility is subject to the jurisdiction of the usual mix of state and local agencies. The Commission should thus reject the Movants’ argument that the Commission must defer to SEC jurisdiction.

The Petition Does Not Raise Hypothetical Questions in Violation of Puc 207.01(c)(2).

26. Puc 207.01(c)(2) states that “the commission shall dismiss a petition for declaratory ruling that ... (2) Involves a hypothetical situation.” The Movants argued

that the Keene facility is a “hypothetical” situation because the SEC has not yet approved its construction. The SEC does not have jurisdiction, as discussed above, and the Petition did not seek approval of the Keene facility, only confirmation of the right to distribute natural gas. Thus, there is nothing hypothetical about the relief sought in the Petition.

Liberty Need Not Satisfy the Franchise Standard in this Docket.

27. The Movants argued that Liberty’s petition had to satisfy the “public good” standard that applies in franchise proceedings governed by RSA 374:22 and 374:26. Motion at 12. Liberty objects because the petition did not seek franchise approval, but sought confirmation that Liberty need not travel that road. Had the Commission decided the petition differently and ruled that Liberty did not already have the right to serve natural gas, then Liberty then would have filed a franchise petition and presented sufficient evidence to meet the public good standard.

The Order Properly Granted Liberty the Relief Sought.

28. The Movants’ last argument is that the Order is “un[sus]tainable, as the petitioner’s gas expansion plans are not for the ‘public good’ or ‘public interest’ as must be shown for approval under” RSA 374:26.
29. As discussed above, the petition did not seek approval of its “gas expansion plans,” but only a declaration of its existing right to serve natural gas. Thus, the “public good” standard of the franchise statute did not apply.

WHEREFORE, Liberty Utilities respectfully asks that the Commission to:

- A. Deny the Motion for Rehearing; and
- B. Grant such other relief as is just and reasonable.

Respectfully submitted,

Liberty Utilities (EnergyNorth Natural Gas) Corp.
d/b/a Liberty Utilities



Date: November 27, 2017

By: _____
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Certificate of Service

I hereby certify that on November 27, 2017, a copy of this objection has been electronically provided to the service list and to Richard Husband, Esq.



By: _____
Michael J. Sheehan

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



**STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR**

CHRISTOPHER T. SUNUNU
Governor

June 27, 2019

Richard Husband
10 Mallard Court
Litchfield, NH 03052

Dear Richard,

Thank you for reaching out to my office regarding offshore wind energy.

My administration has taken the first steps and we are working with the Bureau of Ocean Energy Management (BOEM) to establish a task force that will facilitate the coordination and consultation among federal, state, and local governments on renewable energy options in federal waters in the Gulf of Maine. The task force will undertake a public process over the next 1-2 years, which will include multiple public hearings.

The Gulf of Maine is one of the strongest opportunities for offshore wind production in the world. Offshore turbine energy is extremely efficient and emission free, and nineteen towns in New Hampshire have sent letters of support for the project. There are also numerous potential economic benefits, including establishing supply chain infrastructure in New Hampshire for our state and the entire region. The New Hampshire Department of Business and Economic Affairs is leading the charge to make the seacoast a hub for economic development of offshore wind.

As an environmental engineer, I am dedicated to New Hampshire's long and proud tradition of responsible environmental stewardship. Please know that the wind turbines would all be located in federal waters, at least 3 miles offshore. Throughout this process, New Hampshire will be listening to other states that have moved first on offshore wind energy, and learn from their experiences in balancing clean energy and protecting the ecosystem on New Hampshire's coastline. Every part of this project will go through permitting and BOEM approval for effects on the environment.

I will continue to work towards improving renewable energy options and lowering electric rates for Granite Staters. Again, thank you for contacting my office and please do not hesitate to get in touch with my office about other issues of concern to you.

Sincerely,

A handwritten signature in blue ink that reads "Chris".

Christopher T. Sununu
Governor

107 North Main Street, State House - Rm 208, Concord, New Hampshire 03301
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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

Liberty Utilities (EnergyNorth Natural Gas Corp.) d/b/a Liberty Utilities

Petition for Declaratory Ruling

Objection to Terry Clark's Motion for Rehearing

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the "Company" or "Liberty"), through counsel, respectfully objects to *Terry Clark's Motion for Rehearing or Reconsideration Pursuant to RSA 541, and Clarification*.

In support of this objection, Liberty states as follows:

1. In Order No. 26,274 (July 26, 2019) (the "Order"), the Commission "confirm[ed]" Order No. 26,065 (Oct. 20, 2017), which declared that Liberty "has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene." Order at 3.
2. Mr. Clark's motion for rehearing argues that the above declaration is "unlawful and unreasonable" for a number of reasons. Most of Mr. Clark's arguments must fail because they fall outside the scope of the narrow legal issue decided in this docket and/or because the Commission already considered and rejected them. The few relevant arguments that were not previously raised and rejected fail on their merits.
3. It is crucial to recall the single, narrow issue Liberty raised in this docket. The Petition's sole request for relief was for the Commission to "declare that Liberty need not

seek permission under RSA 374:22 and 374:26 to distribute natural gas in Keene.”

Petition at 13.

4. The Commission granted this request, finding that Liberty’s original legislatively-granted franchise to serve “gas” in Keene included the right to serve “natural gas” today.

Having reviewed the Company’s petition and the arguments and information presented, we conclude that under RSA Chapter 374, Liberty has the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its current franchise. RSA 362:2, I, includes in the definition of “public utility” the activity of the “distribution or sale of gas.” This statute does not differentiate among various types of gas.

We find the Company’s arguments that CNG and LNG constitute gas of the same character as the propane-air mixture currently supplied to Liberty-Keene customers to be persuasive. This interpretation of gas service is consistent with prior Commission decisions allowing natural gas utilities to supplement natural gas supply with propane without requiring additional franchise approval under RSA 374:22 and RSA 374:26. Consistent with this interpretation of gas service, we conclude that (1) Liberty possesses a franchise to provide gas service which includes CNG/LNG service in Keene, and (2) that Liberty has continually exercised this franchise, as referenced in RSA 374:22, I, to the present day.

Order No. 26,065 at 3 (citations omitted).

5. Given this narrow ruling, the scope of possible issues for rehearing is similarly narrow.
6. The standard for review a motion for rehearing is well-known:

RSA 541:3 authorizes the Commission to grant rehearing when the movant shows good reason for such relief. This may be shown by new evidence that was unavailable at the original hearing, or by identifying specific matters that were either “overlooked or mistakenly conceived.” *A successful motion does not merely reassert prior arguments and request a different outcome.*

Verizon New Hampshire, Order No. 24,629 at 7 (June 1, 2006) (citations omitted; emphasis added).

7. Nearly every argument in Mr. Clark's motion for rehearing are issues that he previously argued and for which he now seeks a different outcome, and/or are issues simply outside the narrow scope of this docket and thus not relevant.

Change in the Character of Service in Keene.

- a. Mr. Clark argues in his motion that Liberty's petition should be denied on its merits because a change from propane-air to natural gas involves the use of higher pressures, a "separate and distinct" system, and an "extensive whole system change," and thus natural gas could not be part of the existing franchise rights. Motion at 3-4, 12, 25. Mr. Clark made all these arguments in prior filings. *See* Clark Brief at 41-49; Reply Brief at 3, 6-10. And the Commission rejected these arguments, finding Liberty has the right to serve natural gas. Order at 7-9.

The Commission acknowledged that distributing natural gas is different than the propane air currently provided to Keene customers, and requires different facilities, but the Commission clearly found this difference not to cause natural gas to fall outside Liberty's existing franchise. Rather, the Commission addressed these differences by exercising its regulatory authority to impose certain conditions and reporting requirements on Liberty's conversion to natural gas.

This previously-raised argument does not warrant reconsideration.

- b. Mr. Clark also argued that the Settlement Agreement and Order in the Keene acquisition docket forever bound Liberty to only distributing propane-air in Keene. This new argument, one Mr. Clark had not asserted before, is based on the terms in the settlement agreement and order in Docket No. DG 14-155 that

Liberty would operate and keep the Keene Division books “separate” from those of the Liberty system. Clark Motion at 27-28, 29-30.

However, the settlement agreement, which PUC approved in Order No. 25,736 (Nov. 21, 2014), says its terms “shall remain in effect until the Commission approves otherwise.” In Docket DG 17-048, the Commission “approve[d] otherwise” and allowed Liberty to consolidate the Keene Division into the rest of the Liberty system. Order No. 26,122 at 37-38 (Apr. 27, 2018). Similarly, to the extent the settlement agreement in DG 14-155 limited the Company’s existing franchise rights to propane,¹ the Order has now “approve[d] otherwise” and modified the DG 14-155 settlement agreement to allow for the distribution of natural gas.

Mr. Clark’s motion does not warrant rehearing of the Order’s fundamental conclusion that Liberty may serve natural gas in Keene.

Franchise Approval.

- c. Mr. Clark argues that Liberty should have sought franchise approval to serve natural gas under the standards of RSA 374:22 and RSA 374:26. Clark Motion at 13, 25. Clark raised this issue in his Brief at 4, 41-19, and in his Reply Brief at 2, 7, and the Commission specifically rejected the argument in both Order No. 26,065 and in the Order: “In Order No. 26,065, the Commission ruled that

¹ This is not the case. Liberty clearly stated its intention in DG 14-155 to convert Keene to natural gas. Direct Testimony of Stephen Hall, Hearing Exhibit 1, at Bates 168-170, which the Commission acknowledged: “[W]e recognized that Liberty has the authority to provide ‘gas’ service to customers within the franchise territory of the City of Keene, as approved in its acquisition of New Hampshire Gas Corp. in Docket No. DG 14-155.” Order at 8.

Liberty ‘has the authority, pursuant to RSA 374:22, to supply CNG and LNG service in Keene under its current franchise.’ Order No. 26,065 at 3.” Order at 6. More directly, the Order states: “Although the Commission is requiring additional approvals pursuant to its general supervisory authority, no additional permissions are required under RSA 374:22 and RSA 374:26.” Order at 14.

Mr. Clark’s re-hashing of this argument does not support rehearing.

Mr. Clark also complains, apparently for the first time, that the Order infringed towns’ and cities’ “right to choose if it wants LNG and/or CNG services.” Clark Motion at 29. The Order did not grant a franchise, but merely confirmed that the franchise already exists. And towns and cities do not choose franchises; that is the realm of the Commission (and previously the legislature).

SEC Jurisdiction.

- d. Mr. Clark argued that the Commission should defer to the Site Evaluation Committee because the proposed Keene facility, combined with Liberty’s proposed LNG facilities in Lebanon and Epping, would satisfy the definition of an “energy facility” under RSA 162-H. Clark Motion at 11; Clark Brief at 34-41; Clark Reply Brief at 3. Although apparently both withdrawing and reserving his SEC argument, *see* Clark Motion at 13, n. 24, the Order directly decided this argument against Mr. Clark: “With respect to Mr. Clark’s argument regarding the Site Evaluation Committee (SEC), it is apparent from review of RSA Ch. 162-H, that the SEC’s jurisdiction and responsibilities have no bearing on the issues raised in this docket.” Order at 13.

Mr. Clark presents no viable reason for rehearing.

Arguments under the LCIRP Statute, RSA 378:39.

e. As the Commission acknowledged in the Order:

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.

Order at 5; *see* Clark Motion at 11, 16, 20-23; Clark Brief at 3-4, 6-13, 34, 50; Clark Reply Brief at 3-6. Although the Order does not contain a specific analysis of these arguments, by granting the Company's request after explicitly acknowledging Mr. Clark's arguments related to the LCIRP statute, environmental and climate issues, and Liberty's "expansion plans", the Commission clearly intended to reject those arguments.

Again, Mr. Clark presents nothing new that would support rehearing.

Due Process Arguments.

f. Mr. Clark argues that, after prevailing on his due process arguments to have the Commission reconsider Order No. 26,065 and issue an Order of Notice in March 2018, *see* Order No. 26,087 (Dec. 18, 2017), the balance of this docket also required the elements of due process -- notice, discovery, testimony, hearing,

etc. Clark Motion at 12, 13-14. Again, these arguments were raised in his initial Brief at 49, n. 59. Other than conclusory statements, however, Mr. Clark does not explain how the process afforded to him was deficient. He received notice through March 1, 2018, Order of Notice. He was granted intervention. He participated in the prehearing conference, and provided comments and arguments in counsel's various filings. To the extent the process of this docket did not involve fact finding (testimony, discovery, and cross-examination), that is because the Commission agreed the only issue raised (whether Liberty had the right to distribute natural gas) was a question of law that did not require the resolution of any factual disputes. *See* Transcript of the April 6, 2018, prehearing conference at 24-26.

Mr. Clark did not point to any factual disputes that affected the Order's central conclusion, thus he was afforded sufficient due process. And Mr. Clark did not request formal discovery from Liberty and did not take up the Chairman's suggestion to file a motion with regard to the Commission's decision to resolve this case via briefings, *id.* at 25.

Thus, there was no deficiency in the "process" afforded Mr. Clark in this matter.

8. Mr. Clark raises three "new" matters that "should have been considered *sua sponte* or otherwise on the Commission's own initiative": (1) the September 2018 natural gas incident in Andover, Massachusetts; (2) the November 2018 release of "the Fourth National Climate Assessment, Vol. 2," and (3) the October 2018 issuance of a

special report by the Intergovernmental Panel on Climate Change. Clark Motion at 17. None of these matters, however, have any bearing on whether Liberty had the franchise right to serve natural gas in Keene, and thus do not support a motion for rehearing. The Order did not expand any rights to provide gas distribution service and did not increase the territory in which Liberty may provide those services. The Order simply granted the Petition's sole request that Liberty always had the right to serve natural gas in Keene, nothing more.

WHEREFORE, Liberty Utilities respectfully asks that the Commission to:

- A. deny Mr. Clark's Motion for Rehearing; and
- B. grant such other relief as is just and reasonable and consistent with the public interest.

Respectfully submitted,
Liberty Utilities (EnergyNorth Natural Gas) Corp.
d/b/a Liberty Utilities



Date: September 5, 2019

By: _____

Michael J. Sheehan #6590
116 North Main Street
Concord NH 03301
Telephone (603) 724-2135
michael.sheehan@libertyutilities.com

Certificate of Service

I hereby certify that on September 5, 2019, a copy of this objection has been electronically provided to the service.



By: _____
Michael J. Sheehan

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 REPLY TO LIBERTY'S
OBJECTION TO TERRY CLARK'S MOTION FOR REHEARING**

Intervenor, Terry Clark, replies to Liberty's Objection to Terry Clark's Motion for Rehearing ("Liberty's Objection"), to address material misstatements of law and fact made therein, as follows:

1. Liberty's Objection is untimely. The objection was filed in response to Terry Clark's Motion for Rehearing or Reconsideration Pursuant to R.S.A 541, and Clarification ("Motion for Rehearing, etc."), which was filed on August 26, 2019. Pursuant to Puc 203.07(f):

"Objections to a motion for rehearing pursuant to RSA 541:3 **shall** be filed within 5 days of the date on which the motion for rehearing is filed."

Id. (emphasis added). Pursuant to Puc 202.03(c), which requires the exclusion of Saturdays, Sundays and holidays from the computation for prescribed times of less than six days, the objection deadline was therefore September 3, 2019. The objection, filed on September 5, 2019, was thus two days late. However, Clark does not object to the late filing, so long as Liberty does not contest the filing of this reply, which is necessary to prevent the Commission's analysis of Clark's Motion for Rehearing, *etc.* from being led astray by assertions in Liberty's Objection. Conversely, if Liberty does contest this reply, Clark objects to the untimeliness of Liberty's Objection, as it should not be read without the

information provided herein.

2. Liberty's Objection begins with the amazing argument that "the scope of possible issues for rehearing" is limited to the "single narrow issue Liberty raised in this proceeding." *See* Liberty's Objection at ¶¶ 3, 5. This argument, of course, is not the law and only furthers the flawed reasoning that led us to this point. Liberty does not get to "limit" the scope of challenges to relief afforded it by pursuing that relief in the most procedurally-limited way in violation of the law. When the law and the Commission's own rules clearly require one procedural avenue for relief, in this case the procedure followed under R.S.A. 374:22 and R.S.A. 374:26, with a full adjudicative proceeding (including notice, discovery, public comment, witnesses, a hearing, *etc.*) under Puc 203,¹ a utility cannot circumvent that legal requirement and issues that can be raised in not following it by presenting and pursuing a "single narrow issue" under the wrong standards and procedures—as clearly happened in this case, with all of the resulting harms and appealable issues Clark detailed in his motion for rehearing. Liberty's argument essentially means that a utility can pursue every form of relief it seeks through an expedited petition without notice and other procedural requirements mandated under our statutes and the Commission's own rules, and then contend that the resulting order cannot be challenged because any challenge goes beyond the "single narrow issue"—*i.e.*, request for approval without following statutorily mandated procedures and due process—presented by the utility's petition. An aggrieved party may challenge a

¹ Again, even as a declaratory judgment proceeding, all rights afforded the parties and public under Puc 203 should have been provided from the outset in this case pursuant to Puc 207.01(d) ("Except for a petition dismissed pursuant to subsection (c), the commission shall conduct an adjudicative proceeding on a petition for declaratory ruling in accordance with Puc 203.").

ruling or rulings, as Clark does the Decisions in this case, for any and all reasons that cause the Decisions to be unlawful, unreasonable or otherwise unsustainable, and is not limited to another party's limited and incorrect framing of the issues.

3. Similarly, Liberty's Objection mischaracterizes the law and facts in suggesting that the arguments in Clark's Motion for Rehearing, *etc.* should be ignored or dismissed because:

“Nearly every argument in Mr. Clark's motion for rehearing are issues that he previously argued and for which he now seeks a different outcome, and/or are issues simply outside the narrow scope of this docket and thus not relevant.”

Liberty's Objection at ¶ 7.

4. First of all, again, Liberty is not “the decider” of challenges that can be raised to the Commission's Decisions: the law and facts decide the challenges that may be raised, and the Motion for Rehearing, *etc.* thoroughly explains the propriety of its challenges.
5. Second, just because “[a] successful motion does not *merely* reassert prior arguments and request a different outcome,” *Verizon New Hampshire*, Order No. 24,629 at 7 (June 1, 2006)(emphasis added), *see* Liberty's Objection at ¶ 6, does not mean that a successful motion for rehearing should not include all prior arguments and request a different outcome—indeed, again, this is a mandatory statutory requirement. R.S.A. 541:4 expressly provides that a motion for rehearing:

“... shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth

therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.”

Id. (emphasis added). Obviously, a “successful” motion for rehearing will not just rehash the same arguments already made by the movant that have already been rejected by the decisionmaker, but the arguments must be made to be appealed, and cannot properly be ignored or dismissed if well-grounded, as the whole purpose of the motion for rehearing is to afford an agency the opportunity to correct its mistakes. *See Appeal of Conservation Law Foundation*, 127 N.H. 606, 632 (1986)(“This requirement is grounded in the sound policy that ‘[a]dministrative agencies ... have a chance to correct their own alleged mistakes before time is spent appealing from them.’”)(citation omitted). The Motion for Rehearing, *etc.* properly presents the Commission with that opportunity now, in the manner required by R.S.A. 541:4.

6. Clark will not go through all of the additional misstatements of law and fact in Liberty’s Objection, as most are disposed of on their face by Clark’s prior arguments, but Clark will note several such issues that should be considered by the Commission.
7. On page 4, Liberty’s Objection contends that the declaratory ruling entered here was not precluded by the Settlement Agreement approved in Docket No. DG 14-155, under Order No. 25,736 (Nov. 21, 2014):

“However, the settlement agreement, which PUC approved in Order No. 25,736 (Nov. 21, 2014), says its terms ‘shall remain in effect until the Commission approves otherwise.’ In Docket DG 17-048, the Commission ‘approve[d] otherwise’ and allowed Liberty to consolidate the Keene Division into the rest of the Liberty system. Order No. 26,122 at 37-38 (Apr. 27, 2018). Similarly, to the extent the settlement agreement in

DG 14-155 limited the Company's existing franchise rights to propane, the Order has now 'approve[d] otherwise' and modified the DG 14-155 settlement agreement to allow for the distribution of natural gas."

Id. at. 4 (footnote omitted). Obviously, the Commission did not "approve" the service changes and additional business at issue in this proceeding under Order No. 26,122 (Apr. 27, 2018) in Docket No. DG 17-048, most plainly because Order No. 26,274 (Jul. 26, 2019) would not have entered in this matter, and we would not still be debating the issue over a year later, if the Commission intended and considered that to be the case. Moreover, if Order No. 26,274 (Jul. 26, 2019) "approved" Liberty's proposed service changes and additional business, the entire foundation on which the order rests, *i.e.*, Liberty's declaratory petition requesting that the Commission find that it has supposedly *always* had the right under its original 1860 franchise grant, collapses.²

8. Liberty ignores declaratory judgment law. In paragraph 41 of his Motion for Rehearing, Clark notes that the discussion in paragraphs 16-17 of his previously-filed [joint motion for rehearing and reconsideration](#) "should have been instructive, requiring dismissal of this proceeding under [Puc 207.01](#) as speculative and failing to claim a present justiciable right." Of particular import, Clark's referenced discussion provides:

"The Commission looks to declaratory judgment decisions under R.S.A. 491:22 as providing analogous decisions for the requirements of exercising its own declaratory judgment authority. *See Public Service Company of New Hampshire, Petition of 5 Way Realty Trust for*

² In its petition, Liberty requests "a declaratory ruling that it need not seek permission under RSA 374:22 and 374:26 to distribute natural gas in the City of Keene, New Hampshire, because Liberty's existing franchise to distribute 'gas' **already includes** 'natural gas.'" *Id.* at [preamble](#) (emphasis added). *See also Liberty's Reply Memorandum* at 2 ("... Liberty's petition for declaratory ruling ... merely asks the Commission to confirm that Liberty **has always had the franchise right** to distribute natural gas.")(emphasis added).

Declaratory Ruling, Commission Docket No. DE 01-088, Order No. 24,137 dated March 14, 2003 at 28. As such, **the petition cannot be maintained unless it claims ‘a present legal or equitable right or title’ at both the time of filing of the petition and the Commission’s ruling on it.** See R.S.A. 491:22; *Conway v. Water Resources Bd.*, 89 N.H. 346 (1938)(petition dismissed when petitioner waived claim of right in open court); *Carbonneau v. Hoosiers Engineering Co.*, 96 N.H. 240 (1950)(wife’s declaratory judgment petition on damages available for her living husband’s injuries could not be maintained due to the lack of a present legal right or title against which an adverse claim could be made, as her only claim would arise on her husband’s decease for wrongful death).”

Id. (emphasis added). Given the Settlement Agreement, the highlighted legal principle above is inconsonant with the declaratory judgment rendered here both in terms of the position Liberty takes under its petition (authority arises from the original franchise grant), and the position it now takes under Liberty’s Objection (authority arises from a subsequent order). As the Settlement Agreement approved under Order No. 25,736 (Nov. 21, 2014) plainly limits Liberty’s authority to the propane-air service of the Keene operations at the time the agreement was approved (Liberty assumed the business “as is”), which limitation was to “remain in effect until the Commission approves otherwise,” it cannot be found that the original franchise grant, or any subsequent Commission decision to date, supports the requested declaratory ruling. Under both Liberty positions as to where the authority it claims arises, the right was not “‘a present legal or equitable right or title’ at both the time of filing of the petition and the Commission’s ruling on it.”” See R.S.A. 491:22; *Conway v. Water Resources Bd.*, *supra*, 89 N.H. 346.

9. On page 5, Liberty’s Objection states:

“Mr. Clark also complains, apparently for the first time, that the Order infringed towns’ and cities’ ‘right to choose if it wants LNG and/or CNG services.’ Clark Motion at 29.”

Id. at 5. However, this was not an argument put forth by Clark “for the first time.” In the initial motion for rehearing filed in this matter (responding to the Commission’s declaratory ruling), Clark and the other movants expressly argued:

“In fact, the rights of all citizens of the more than 50 gas-franchised towns in New Hampshire which are subject to the Order, to have any input on whether a whole new type of gas and gas system with higher pressure piping are coming to their neighborhoods, are lost if this motion is not granted.”

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](#) at ¶ 8. In his initial brief filed after the declaratory ruling, Clark similarly argued that:

“... 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 ...”

See [Initial Brief of Intervenor, Terry Clark](#) at 2-3. To the extent that this argument is a separate issue from the issues otherwise raised by Clark, it was clearly properly presented and preserved.

10. On page 7, with respect to Clark’s due process arguments, Liberty’s Objection states:

“Other than conclusory statements, however, Mr. Clark does not explain how the process afforded to him was deficient.”

Id. The Motion for Rehearing, *etc.* (as well as Clark’s prior briefing) notes several times what was required of due process in these proceedings: that process afforded proceedings under R.S.A. 374:22 and R.S.A. 374:26 and full adjudicative proceedings under the Commission’s own rules, *i.e.*, proper notice and a hearing, with the opportunity to present evidence and cross-examine witnesses, discovery (to allow such opportunity) and a public comment period. See [Terry Clark’s Motion for Rehearing or Reconsideration Under R.S.A. 541, and Clarification](#) at ¶¶ 3, 4, 8, 18, 20-22. Additionally, Clark provided ample case law confirming that the Commission must process cases as required by statutes, its own rules and applicable standards, or resulting decisions will be void for violation of due process. See *id.* at ¶¶ 3, 23. It is hard, frankly, hard to understand what Liberty claims not to understand: it is clear on the record that there was never an evidentiary hearing in this matter of any kind, let alone as the Commission’s own rules define one; *i.e.*, there was never a “properly noticed session ... which provides for the opportunity ... to present evidence and cross-examination.” Puc 102.07. These were *minimal* due process requirements. See *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)). Clark was never afforded any discovery in this proceeding; rather, the Commission adopted the incorrect position at the prehearing conference that Clark was not entitled to discovery because the proceeding was brought as a declaratory judgment case, such that, once Liberty’s petition was signed (which it has not been to this day), the Commission should “rely on the facts as alleged.”

See [Transcript of April 6, 2018 prehearing conference](#) at 24-25. Again, this is not in conformity with the Commission’s own rules, requiring full adjudicative proceedings for declaratory judgment cases, including discovery as a “right.” See Puc 207.01(d)(“Except for a petition dismissed pursuant to subsection (c), the commission shall conduct an adjudicative proceeding on a petition for declaratory ruling in accordance with Puc 203.”) and Puc 203.09.

11. Although the Commission noted that Clark might file a motion on the discovery issue, see [Transcript of April 6, 2018 prehearing conference](#) at 24, there was not time, as Liberty’s Objection argues, for Clark “to file a motion with regard to the Commission’s decision to resolve this case via briefings” Liberty’s Objection at 7, given that the deadline for the parties’ initial briefs was set for May 1, 2019 at the April 6, 2019 technical session following the prehearing conference. As the April 6th prehearing conference/technical session was on a Friday, Clark would not have been able to file a motion until the following Monday, April 9th, at the earliest, meaning, with the 10 days that Liberty would have to object to the motion under Puc 203.07(e), Clark could not count on the Commission even ruling on the motion before April 19th—just 12 days before the initial brief filing deadline. As it is unreasonable to expect a Commission decision on motions so quickly,³ the Commission had already indicated that it was opposed to discovery, and Clark had a lot of material to cover in his brief, see generally [Initial Brief of Intervenor, Terry Clark](#), such a motion would not have helped Clark, and was thus, understandably, not pursued.

³ And the experience of undersigned counsel had been that the Commission, understandably, does not act so quickly absent an emergency or more compelling circumstances.

12. At the suggestion of Staff and/or OCA at the April 6, 2019 technical conference, Clark did serve one quick round of discovery on Liberty in another case (DG 17-152), before the May 1, 2018 briefing deadline in this matter, which resulted in some information relevant to Clark's case, but discovery was never allowed in this proceeding—the only “case” the parties were allowed to pursue and present was “briefing.” Again, this was not in conformity with due process. *Appeal of Morin, supra*, 140 N.H. at 518 (due process requires “the opportunity to present one's case.”). Especially in light of the bare bones, completely uninformative [petition](#) filed by Liberty in this proceeding, the Commission should have afforded at least some limited discovery: two rounds, at a minimum, which does seem to be the usual Commission allotment for adjudicative proceedings. *See, e.g.,* [procedural schedule for Docket No. DG 16-852](#) and [procedural schedule for Docket No. DW 18-099](#).
13. While Clark appreciated the Commission's attempt to afford fairness according to the Commission's view of its requirements under the circumstances, and necessarily had to work with what the Commission was willing to grant him for adjudicative rights, Clark made plain at the prehearing conference in this matter that the Commission was not affording due process in this proceeding. *See* [Transcript of April 6, 2018 prehearing conference](#) at 15:10-17. So, Clark is not bound by whatever “due process” may be found to have been afforded him in this proceeding.

14. Besides, again, Liberty’s argument that Clark received sufficient due process ignores the unlawfulness of the proceedings—conducted in violation of statutory and Commission rule requirements, and governing standards—as to all members of the public, which renders them void, period. *See* cases cited in [Terry Clark’s Motion for Rehearing or Reconsideration Under R.S.A. 541, and Clarification](#) at ¶¶
23. Beyond the lack of notice, hearing, discovery, the opportunity for witnesses, *etc.* afforded in this proceeding, just the case cited by Clark on the need to adhere to the appropriate standards, *Appeal of Public Service Co. of New Hampshire, supra*, 122 N.H. at 1077 (Commission imprudency finding, improperly made in financing hearing under wrong standard, violated due process and ordered expunged),⁴ is enough to establish Clark’s due process claim here, as the Commission never applied the appropriate “public interest”/“public good” standard to Liberty’s petition—but that is precisely why, of course, Liberty chose the declaratory avenue to begin with.
15. Moreover, again, the Decisions are unlawful and/or unreasonable for the numerous other reasons cited in Clark’s Motion for Rehearing, *etc.* that Liberty’s Objection does not begin to address.
16. Again, Clark files this pleading to address Liberty’s misstatements and ensure that they will not lead the Commission astray and thereby prevent it from correcting its own errors in its Decisions. *See Appeal of Conservation Law Foundation, supra*, 127 N.H. at 632 (1986)(“This requirement is grounded in the sound policy

⁴ Cited in paragraph 5 of the Motion for Rehearing, *etc.*

that “[a]dministrative agencies ... have a chance to correct their own alleged mistakes before time is spent appealing from them.”)(citation omitted).

Respectfully submitted,

Dated: September 11, 2019

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

I hereby certify that I have, on this 11th day of September, 2019, submitted an original and six copies of this pleading 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 11th day of September, 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

**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

INITIAL BRIEF OF INTERVENOR, TERRY CLARK

Intervenor, Terry Clark (“Clark”), by and through undersigned counsel, Richard M. Husband, Esquire, hereby respectfully submits his initial brief to the Public Utilities Commission (“Commission”) pursuant to the [Order of Notice](#) and [approved schedule](#) for this proceeding.

I. INTRODUCTION

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities -- Keene Division (“Liberty”) commenced this case by a petition for declaratory ruling pursuant to N.H. Code of Admin. Rules [Puc 203](#) and [Puc 207](#) filed on April 26, 2017. The gas utility is currently supplying propane-air gas to the City of Keene through a system that stores the gas in above-ground tanks and distributes it via approximately 30 miles of existing underground pipe. It requests a declaration that its franchise authorizes it to convert to compressed natural gas (CNG) and liquefied natural gas (LNG) distribution without seeking permission under [R.S.A. 374:22](#) and [R.S.A. 374:26](#). Although not discussed in the petition, this would also allow for the construction of the necessary associated facilities (including a 100,000 gallon LNG storage tank and gas compression equipment), and replacement of the existing piping with piping needed for the new, much higher operating pressures associated with such CNG/LNG installations. While Commission Staff advised Liberty that its plans would constitute a change in the character of Liberty’s service requiring the submission of a petition under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) for approval, it is the company’s position that the proposed new service (including gas)

will be of the same character previously provided , that the broad definition of “gas” under [Puc 502.06](#) supports their petition, and that the distribution of coal gas, propane-air and other forms of gas under the franchise over the years without further approval obviates the need.

On October 20, 2017, the Commission granted Liberty’s petition under [Commission Order No. 26,065](#) (“Approval Order”) which determined that Liberty has authority under the existing franchise to offer CNG and LNG service to Keene (albeit with conditions pertaining to engineering and operational safety). Entered without notice or a hearing, the Approval Order found Liberty’s “arguments that CNG and LNG constitute gas of the same character as the propane-air mixture currently supplied to Liberty-Keene customers to be persuasive.” [Id. at 3](#). Citing three unchallenged 1973 Commission decisions allowing gas utilities to temporarily supplement natural gas supplies with propane without seeking additional approval under [R.S.A. 374:22](#) and [R.S.A. 374:26](#), the order determined that “consistent with this interpretation of gas service,” Liberty’s gas franchise has always included the right to distribute CNG/LNG and granted Liberty’s request for a declaratory ruling. [Id. at 3-4](#). Nonetheless, it noted with concern 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,” in placing a number of safety conditions on Liberty’s plans. [Id.](#)

As it is extremely broadly worded and not limited to the subject Keene franchise, or even petitioning utility, the Approval Order 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 Approval Order 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 Approval Order 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.”

On November 16, 2017, Clark and members of the NH Pipeline Health Study Group (as a group and individually) filed a joint motion for rehearing of the Approval Order. Over Liberty’s objection, the Commission granted the motion, in part, under [Commission Order No. 26,087](#), finding that only Clark had standing to file the motion, but that Clark and “any other person with a direct interest in the outcome of the proceeding” should be afforded the opportunity to brief the propriety of Liberty’s petition. This brief is submitted, accordingly.

As is discussed below, it is Clark’s position that:

- Liberty’s petition in this proceeding cannot be granted as it is part of Liberty’s expansion plans being considered under [Commission Docket No. DG 17-152](#) (the “LCIRP case”), which Clark is [challenging](#) as inconsistent with New Hampshire law (primarily because they are contrary to the public interest and the requirements of the official state energy policy codified under [R.S.A. 378:37](#)).

If the Commission does not agree that this proceeding should be dismissed for the reasons to follow, to ensure that there is consistency in its decision-making,

¹ [Commission Docket No. DG 17-152](#) involves the petitioner’s request for authorization to build similar CNG/LNG facilities to serve the Town of Hanover and City of Lebanon.

uniformity in results, and that it acts in accord with the law, the Commission should stay its decision in this matter until such time as the LCIRP case has been decided, and then rule in this matter consonant with the LCIRP determination.

- Even if Liberty’s plans were lawful, the Commission should defer to the SEC’s jurisdiction over Liberty’s proposed energy facility, and dismiss its petition;
- Even if the Commission does not defer to the SEC’s jurisdiction, Liberty’s petition should be dismissed because it should have been filed under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) as Liberty’s petition clearly does propose a change in the character of Liberty’s service in the City of Keene, *i.e.*, a substantial change in operations and the exercise of rights and privileges “[not theretofore actually exercised in the town](#),” requiring statutory approval.

II. LIBERTY’S PETITION CANNOT BE GRANTED BECAUSE IT IS INCONSISTENT WITH NEW HAMPSHIRE LAW

This proceeding is a part of Liberty’s aggressive plans to expand its natural 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 \(February 8, 2017\)](#), and is seeking for Lebanon/Hanover, *see* [Commission Docket No. DG 16-852](#) (the “Lebanon/Hanover 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 the [LCIRP case](#), in which Liberty seeks approval of its 2017 LCIRP for the forecast period 2017/2018 - 2021/2022 and Clark has filed a [petition to intervene](#), which should be allowed at any time.² On information and belief, much, if

² 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](#).

not the vast majority, of the natural gas that Liberty is currently distributing and will distribute under its expansion plans is, and will be, respectively, hydraulically fractured (“fracked”) natural gas.

In the Granite Bridge Project case, Liberty avers that a moratorium on all of its expansion plans will be necessary if the project is not approved. See [Granite Bridge Project case petition, ¶ 4](#). Clark opposes Liberty’s expansion plans and asserts that, under the circumstances, a moratorium on growth—not increasing and extending our fracked gas fuel commitment for decades, as is called for under Liberty’s plans—is, indeed, the proper course under New Hampshire law. As soon as he is allowed to intervene in the LCIRP case, Clark intends to file a motion to dismiss the matter making the same argument, and on the same grounds set forth in this second part of Clark’s initial brief.

As is noted in his [joint motion for rehearing](#), Clark is an approximately 40-year resident of Keene, in his third term as a city councilor representing Ward 3. While he has intervened in this matter solely in his individual capacity and not as a city councilor, Clark believes that a rapid transition to sustainable energy sources is necessary to address the climate change crisis, is working with many citizens from within and outside of his ward who are concerned with climate change and/or the health and safety concerns related to fracked gas use to make solar and other sustainable energy sources available to the city, and is concerned that the approvals sought by Liberty herein and under the LCIR case, to expand its fracked gas services in Keene, will likely impede the development and availability of sustainable alternatives in the city for at least another generation. Clark opposes Liberty’s expansion plans as largely creating, not addressing, demand, as being contrary to the public interest, and as not presenting the lowest reasonable cost option for addressing any real demand.

For the same reason the Commission dismissed the petition in [Commission Docket No. DE 16-241](#), it should deny Liberty's petition and dismiss this proceeding: Liberty's plans are inconsistent with New Hampshire law. See [Commission Order No. 25,950 \(October 6, 2016\)](#).

The Commission must act consistent with the public interest and has broad discretion in carrying out this obligation. See, e.g., *Waste Control Systems, Inc. v. State*, 114 N.H. 21, 24 (1974); *Boston & Maine R.R. v. State*, 102 N.H. 9, 10 (1959); *Harry K. Shepard, Inc. v. State*, 115 N.H. 184, 185 (1975); *Browning-Ferris Industries of New Hampshire, Inc. v. State*, 115 N.H. 190, 191 (1975).³ This requires consideration of not only the needs of the persons and utility directly involved, but also "the needs of the public at large." See *Waste Control Systems, Inc. v. State*, *supra*, 114 N.H. at 24 (citing *Boston & Maine R.R. v. State*, *supra*, 102 N.H. at 10). To meet its charge, the Commission must weigh asserted public benefits against actual costs, including environmental costs. See *Public Service Company of New Hampshire d/b/a Eversource Energy*, [Commission Docket No. DE 16-241, Order of Notice, at 3-4](#).

The "needs of the public at large" are obvious: the public demands climate action, particularly energy decision-making that results in fewer greenhouse gas emissions, and has for years, as is shown by:

- the 2001 issuance of ["The New Hampshire Clean Power Strategy"](#) to address, in part, state greenhouse gas emissions and climate change;
- a 2007 state referendum whereby [more than a two-thirds majority of New Hampshire cities and towns \(160+ out of 234\) voted for strong federal](#)

³ Of course the Commission must act in the public interest: it would be irrational for the legislature to create a state agency that did not carry such a charge.

[climate initiatives](#);⁴

- the state’s 2008 enactment of the Regional Greenhouse Gas Initiative program under [R.S.A. 125-O:20-29](#) to lower greenhouse gas emissions from large power plants to address climate change;
- the 2009 ["New Hampshire Climate Action Plan"](#), which reflects the input of public comment sessions, *see id.* at iv, calling for state reductions in greenhouse gas emissions. *See id.* at 1-2;
- the 2014 [“New Hampshire 10-Year State Energy Strategy”](#), which also reflects the public will through public comments, *see id.* at “Acknowledgments,” and emphasizes efficiency, promoting sustainable energy and otherwise diversifying our (gas and other fossil fuel heavy) fuel portfolio, and emissions mitigation, going forward;
- the 2016 entry of the United States into the [Paris Climate Accord](#), with emission pledges that including cutting U.S. emissions by 26-28% compared to 2005 levels by 2025;⁵
- a June 2017 *Washington Post*-ABC News poll, conducted just after President Trump announced his intention to withdraw from the [Paris Climate Accord](#), indicating that an overwhelming majority of registered voters opposed the decision—nearly 60% against to less than half that in

⁴ For readers of a non-pdf version of this brief not having blue URL links to sources, please see: http://www.newhampshirelakesandmountains.com/Articles-c-2010-04-15-151000.113119_Plymouth_leads_the_way_to_new_energy_future.html; and http://www.nytimes.com/2007/03/19/us/19climate.html?_r=1.

⁵ *See* September 6, 2016 online article “U.S. and China Formally Commit to Paris Climate Accord,” by Jean Chemnick (ClimateWire), available in the online edition of the *Scientific American* at <https://www.scientificamerican.com/article/u-s-and-china-formally-commit-to-paris-climate-accord/>.

favor.⁶ Grounded in steady emissions mitigating goals, the terms of the [Paris Climate Accord](#) have been accepted by every nation among the nearly 200 in the world, including the United States—the United States is a current signatory and therefore committed to its terms until such time as it may actually withdraw from the agreement, with the earliest possible time for withdrawal not until November, 2020.⁷ Even then, *should* the nation formally withdraw from the [Paris Climate Accord](#), most Americans, including New Hampshire residents, want to abide by the commitments of the agreement, as just noted, New Hampshire millennials, in particular, are clamoring for it (see below), and our state cities are taking the initiative on their own (see below);⁸

- a 2017 nationally representative survey conducted by the Yale Program on Climate Change Communication and the George Mason University Center for Climate Change Communication, which shows that [a majority of registered voters believe that government, industry and society as a whole](#)

⁶ This poll is discussed in the June 6, 2017 online article “Washington Post/ABC poll: Nearly 60% of registered US voters oppose Trump’s decision to leave the Paris agreement,” by Madeleine Sheehan Perkins, in the online edition of the *Washington Post* at <http://www.businessinsider.com/trump-paris-climate-accord-opposition-support-poll-2017-6>. The poll itself is at https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2017/06/05/National-Politics/Polling/question_18757.xml?uuid=4yijsEohEeeYfEKrV0XbLg.

⁷ See https://en.wikipedia.org/wiki/Paris_Agreement.

⁸ Whether the United States ultimately withdraws from the [Paris Climate Accord](#) or not, its standard cannot be ignored here, both because we are “in” until we are actually “out” of the agreement and because so many New Hampshire and other American citizens have committed, or want to commit, to its goals, either way, and because the agreement establishes an objective standard for determining reasonableness, as is discussed below. Dereliction of a world standard of propriety does not create its own lesser standard. As Justice Oliver Wendell Holmes noted:

“What usually is done may be evidence of what ought to be done, but what ought to be done is fixed by a standard of reasonable prudence, whether it usually is complied with or not.”

Texas & Pacific Railway v. Behymer, 189 U.S. 468, 470 (1903).

should be doing more to address global warming, and two-thirds of registered voters say the U.S. should reduce its greenhouse gas emissions, regardless of what other countries do;⁹

- a March 1-5, 2017 Gallop poll finding that a clear majority of Americans prioritize environmental protection over measures designed to grow our energy supplies or economy;¹⁰
- the 2017 Annual Report from the Governor's Millennial Advisory Council, which concludes, in relevant part, that:

“It is overwhelmingly clear through polls and studies that a progressive and proactive stance on Climate Change and Climate Policy is important to members of the Millennial Generation. Regardless of background, political affiliation, or other personally-held beliefs, a large majority of Millennials believe that climate change is happening and that the earth's warming is due to human activity.

Millennials are particularly in favor of sustainable energy generation. Approximately 71% of Millennials believe we should prioritize alternative energy generation over oil, gas, and coal exploration, and 82% favor increased funding for wind, solar, and hydrogen technologies ...

The State of New Hampshire should demonstrate its leadership and dedication to a healthy and viable climate by ... committing to meeting the emissions targets agreed upon in the Paris Climate Accord ...”;¹¹

⁹ See Leiserowitz, A., Maibach, E., Roser-Renouf, C. Rosenthal, S. & Cutler, M. (2017) *Politics & Global Warming, May 2017*. Yale University and George Mason University, New Haven, CT: Yale Program on Climate Change Communication, “Key Findings,” at 4, available at <http://climatecommunication.yale.edu/wp-content/uploads/2017/07/Global-Warming-Policy-Politics-May-2017.pdf>.

¹⁰ See <http://news.gallup.com/opinion/polling-matters/207608/public-opinion-context-trump-environmental-actions.aspx>.

¹¹ See p. 14 (emphasis added) at http://mediad.publicbroadcasting.net/p/nhpr/files/201712/governor_s_millennial_advisory_council_2017_annual_report_0.pdf.

- the fact that over 40% of Americans, through their states or otherwise—including the citizens of Nashua, Portsmouth, Keene, Lebanon and Concord, New Hampshire—have now adopted the emissions reduction goals of the [Paris Climate Accord](#). *See* https://en.wikipedia.org/wiki/United_States_Climate_Alliance; <http://hippopress.com/read-article/mayors-vs-climate-change>;
- the [strong public support in New Hampshire for environmental protection in general](#);¹²
- the state’s commitment to reduce greenhouse gas emissions to near net-zero by 2050 as a member of the [Under2Coalition](#);
- the public comments in recent Commission proceedings;
- the public comments submitted in response to the state’s recent request for public comments on revisions to the [“New Hampshire 10-Year State Energy Strategy”](#). *See generally* comments posted on the New Hampshire Office of Strategic Initiatives website at <https://www.nh.gov/osi/energy/programs/energy-strategy-revision.htm>.

The public demands climate action because it is one of the all-time greatest “needs of the public at large.” *Waste Control Systems, Inc.*, 114 N.H. at 24. The situation is truly dire, with a rapidly closing window for action. In 2013, the Intergovernmental Panel on Climate Change (“IPCC”), the world’s leading international body for the assessment of climate change,¹³ issued

¹² *See* February 17, 2017 online NHPR article “UNH Poll: There’s Strong Support for Environmental Protections in New Hampshire,” by Jason Moon, at <http://nhpr.org/post/unh-poll-theres-strong-public-support-environmental-protections-new-hampshire#stream/0>.

¹³ *See* IPCC website at <http://ipcc.ch/organization/organization.shtml>.

its Fifth and most recent assessment report,¹⁴ which found that the world’s “carbon budget,” *i.e.*, the total amount of greenhouse gases that can be burned before we risk increasing, dangerous climate impacts associated with post-industrial global warming exceeding two degrees, will run out about 2040.¹⁵ However, last June, 2017, climate change experts, including former United Nations climate chief Christiana Figueres and Hans Joachim Schellnhuber of the IPCC, published a [letter](#) in the journal *Nature* warning that an immediate, monumental acceleration in climate change efforts is needed between now and 2020 to ensure that we do not exhaust the budget much sooner.¹⁶ Similarly, two different studies published in the journal *Nature Climate Change* on July 31, 2017, [one using a statistical analysis](#), the [other relying on an analysis of past greenhouse gas emissions](#), conclude that only a rapid escalation in climate action may keep us within the two degree warming goal and prevent rising seas, mass extinctions, super droughts, increased wildfires, more intense hurricanes, decreased crops and freshwater, and the melting of

¹⁴ IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 1535 pp, doi:10.1017/CBO9781107415324, available at http://www.climatechange2013.org/images/report/WG1AR5_ALL_FINAL.pdf.

¹⁵ See October 23, 2013 online article “Carbon Briefing: Making Sense of the IPCC’s New Carbon Budget” at <https://www.carbonbrief.org/carbon-briefing-making-sense-of-the-ipccs-new-carbon-budget> and September 27, 2013 (updated November 18, 2013) World Resources Institute online article “World’s Carbon Budget to Be Spent in Three Decades” at <http://www.wri.org/blog/2013/09/world%E2%80%99s-carbon-budget-be-spent-three-decades#fn:2>.

¹⁶ See June 28, 2017 online article “Three Years to Safeguard Our Climate,” by Christiana Figueres, Hans Joachim Schellnhuber, et. al., in the online edition of *Nature* at <https://www.nature.com/news/three-years-to-safeguard-our-climate-1.22201>. See also June 28, 2017 online article “World has three years left to stop dangerous climate change, warn experts,” by Fiona Harvey in the online U.S. edition of *The Guardian* at <https://www.theguardian.com/environment/2017/jun/28/world-has-three-years-left-to-stop-dangerous-climate-change-warn-experts>.

the Artic.¹⁷ Consistently, “The Emissions Gap Report 2017,” published by the United Nations only five months ago, urges the implementation of more ambitious national emissions cutting targets by 2020, *spurred by local action*, finding it [“clear that if the emissions gap is not closed by 2030, it is extremely unlikely that the goal of holding global warming to well below 2°C can still be reached ... \[as\] the carbon budget for limiting global warming to below 2°C will be about 80 percent depleted by 2030.”](#) “The Emissions Gap Report 2017” (UNEP, Nov. 2017), p. xiv, available at https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR_2017.pdf.

We are running out of time to cut emissions; the United States is, in fact, already falling short of its goals under the [Paris Climate Accord](#), and a major reason is that we use too much methane.¹⁸

The crisis is not debatable. We cannot continue to ignore all of the warning signs: record-breaking global temperatures year after year,¹⁹ New Hampshire’s own prolonged recent drought, the Santa Rosa wildfires—[the U.S. was hit by three Category 4 hurricanes last year](#)!²⁰

¹⁷ These studies are discussed in the July 31, 2017 CNN/cnn.com online article “Earth to warm two Degrees by the end of this century, studies say,” by Ashley Strickland at <https://www.cnn.com/2017/07/31/health/climate-change-two-degrees-studies/index.html>.

¹⁸ Please see September 26, 2016 online article “The U.S. is on course to miss its emission goals, and one reason is methane,” by Chris Mooney, in the online edition of the *Washington Post* at https://www.washingtonpost.com/news/energy-environment/wp/2016/09/26/the-u-s-is-on-course-to-miss-its-emissions-goals-and-one-reason-is-methane/?utm_term=.779077ebc886.

¹⁹ 17 of the 18 warmest years on record have occurred since 2001. See January 18, 2018 online article “2017 Was One of the Hottest Years on Record. And That Was Without El Niño.,” by Henry Fountain, Jugal K. Patel and Nadja Povovich, in the online edition of *The New York Times* at <https://www.nytimes.com/interactive/2018/01/18/climate/hottest-year-2017.html>.

²⁰ For readers of a non-pdf version of this brief, please see: <https://weather.com/storms/hurricane/news/hurricane-maria-irma-harvey-three-united-states-category-4-landfalls#>.

In records going back to 1851, [the contiguous U.S. states had never been struck by two Category 4 hurricanes in one year before](#).²¹ Understandably, as noted by NASA:

"... 97 percent or more of actively publishing climate scientists agree: Climate-warming trends over the past century are extremely likely due to human activities. In addition, most of the leading scientific organizations worldwide have issued public statements endorsing this position."

See NASA website at <https://climate.nasa.gov/scientific-consensus/>. [A 13-agency U.S. government report](#)²² recently released by the Trump Administration plainly acknowledges that climate change is real and largely caused by Man:

"This assessment concludes, based on extensive evidence, that it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th Century. For the warming over the last century, there is no convincing alternative explanation ..."²³

If Man is causing climate change by his greenhouse gas producing activities, Man can likewise ameliorate it by cutting back on greenhouse gas emissions. Again, the report acknowledges this:

"The magnitude of climate change beyond the next few decades will depend primarily on the amount of greenhouse gases (especially carbon dioxide) emitted globally."²⁴

These facts should be administratively noticed by the Commission under [Puc 203.17](#).

²¹ For readers of a non-pdf version of this brief, please see: <https://twitter.com/bhensonweather/status/904868150298021888>.

²² USGCRP, 2017: *Climate Science Special Report: Fourth National Climate Assessment, Volume I* [Wuebbles, D.J., D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 470 pp., doi: 10.7930/J0J964J6. For readers of a non-pdf version of this brief unable to access the full report by the provided blue URL link, please see https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf.

²³ *Id.* at 10 at https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf. For further discussion of the report and its release, please see the November 3, 2017 CNN/cnn.com online article "Trump Administration report attributes climate change to 'human activities,'" by Gregory Wallace at <https://www.cnn.com/2017/11/03/politics/trump-climate-change-report/index.html> and August 7, 2017 online article "Scientists Fear Trump Will Dismiss Blunt Climate Report," by Lisa Friedman, in the online edition of *The New York Times* at <https://www.nytimes.com/2017/08/07/climate/climate-change-drastic-warming-trump.html>.

²⁴ *Id.* at 11.

Of course, as emissions of methane, which typically comprises 87-97% of natural gas,²⁵ are a potent greenhouse gas²⁶ causing about 25% of the global warming we are experiencing,²⁷ any sincere effort to climate change must include curtailing reliance on gas to reduce methane emissions. Indeed, as stated on page 10 of former President Obama's Climate Action Plan from *five years ago*: ["curbing emissions of methane is critical to our overall effort to address global climate change."](#)²⁸ *Increasing*, rather than reducing, methane emissions, as New Hampshire is doing by continually approving more gas use through Commission proceedings, brings us that much closer, that much faster, to the edge. Gas is not the "bridge fuel" to carry us to clean, sustainable energy that everyone had hoped. [Original EPA estimates drastically underestimated the impact of the use of gas on climate change](#)²⁹ and it is not better than using oil or coal, despite cutting back on their greenhouse gas (CO2) emissions: [methane warms the planet 86 times as much as carbon dioxide for the first couple of decades after its use, and 34 times as much for a](#)

²⁵ See <https://www.uniongas.com/about-us/about-natural-gas/Chemical-Composition-of-Natural-Gas>.

²⁶ See ["Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking \(Unconventional Gas and Oil Extraction\)" by Physicians for Social Responsibility \(Fifth Edition, March 2018\), p. 21 \(and sources cited therein\).](#)

²⁷ See discussion on Environmental Defense Fund website at <https://www.edf.org/methane-other-important-greenhouse-gas>.

²⁸ For readers of a non-pdf version of this brief, please see <https://www.scribd.com/document/149809454/President-Obama-s-Climate-Action-Plan>.

²⁹ For readers of a non-pdf version of this brief, please see: <http://www.theenergycollective.com/david-lewis/48209/epa-confirms-high-natural-gas-leakage-rates>.

[century](#).³⁰

Yet, despite the clear public clamor and need for climate action emphasizing greenhouse gas emissions mitigation, from now through 2038, just 12 years before New Hampshire has pledged to achieve near net-zero greenhouse gas emissions as a member of the [Under2Coalition](#) and while the nations of the world (hopefully still including the United States) are [ratcheting up their efforts](#)³¹ to meet a similar mid-century zero emissions goal under the [Paris Climate Accord](#), Liberty's LCIRP and overall expansion plans call for it to *increase* its use of methane gas use—a potent greenhouse gas, as discussed below—by nearly 50%, from a current Design Day demand of 156,822 to a Design Day demand of 229,590 for 2037/2038. This increase is shown by the following table presented by Liberty in the Granite Bridge Project case:³²

³⁰ For readers of a non-pdf version of this brief, please see ["Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking \(Unconventional Gas and Oil Extraction\)" by Physicians for Social Responsibility \(Fifth Edition, March 2018\), p. 21](#) (citing, per its footnote 780, the Intergovernmental Panel on Climate Change. (2013). *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T. F., D. Qin, G.-K. Plattner, M. Tignor, S. K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex & P. M. Midgley (eds.)]. Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press. doi: 10.1017/CBO9781107415324). See also EPA discussion "Understanding Global Warming Potentials" at <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials> (methane has 20-year GWP of 84-87 and 100-year GWP of 28-36).

³¹ For readers of a non-pdf version of this brief, please see the online article "Timeline: the Paris Agreement's 'ratchet mechanism,'" by Sophia Yeo (Jan. 19, 2016) at <https://www.carbonbrief.org/timeline-the-paris-agreements-ratchet-mechanism>.

³² The table is found at [page 59 of 104 of the Pre-filed Direct Testimony of William R. Killeen and James M. Stephens, submitted in DG 17-198](#).

Table 7: EnergyNorth Design Day Resource Shortfall (Dth)⁶³

| Split-Year (Nov-Oct) | Design Day Demand | Design Day Resources, including Propane | Reserve / (Deficiency) including Propane | Reserve / (Deficiency) excluding Propane |
|-------------------------|----------------------|--|---|---|
| 2017/18 | 156,822 | 162,033 | 5,211 | (29,389) |
| 2018/19 | 160,989 | 155,033 | (5,956) | (40,556) |
| 2019/20 | 164,640 | 155,033 | (9,607) | (44,207) |
| 2020/21 | 168,934 | 155,033 | (13,901) | (48,501) |
| 2021/22 | 173,917 | 155,033 | (18,884) | (53,484) |
| 2022/23 | 179,382 | 155,033 | (24,349) | (58,949) |
| 2023/24 | 184,432 | 155,033 | (29,399) | (63,999) |
| 2024/25 | 188,856 | 155,033 | (33,823) | (68,423) |
| 2025/26 | 192,933 | 155,033 | (37,900) | (72,500) |
| 2026/27 | 196,785 | 155,033 | (41,752) | (76,352) |
| 2027/28 | 199,954 | 155,033 | (44,921) | (79,521) |
| 2028/29 | 203,491 | 155,033 | (48,458) | (83,058) |
| 2029/30 | 206,790 | 155,033 | (51,757) | (86,357) |
| 2030/31 | 210,016 | 155,033 | (54,983) | (89,583) |
| 2031/32 | 212,972 | 155,033 | (57,939) | (92,539) |
| 2032/33 | 215,843 | 155,033 | (60,810) | (95,410) |
| 2033/34 | 218,828 | 155,033 | (63,795) | (98,395) |
| 2034/35 | 221,631 | 155,033 | (66,598) | (101,198) |
| 2035/36 | 224,148 | 155,033 | (69,115) | (103,715) |
| 2036/37 | 226,863 | 155,033 | (71,830) | (106,430) |
| 2037/38 | 229,590 | 155,033 | (74,557) | (109,157) |

The Granite Bridge Project alone renders Liberty's LCRIP and expansion plans, including those which are the subject of this proceeding, unapprovable.

The Granite Bridge Project calls for the outrageously expensive³³ huge *future* development of, and commitment to, fracked gas infrastructure and supplies—including approximately 27 miles of 16-inch diameter pipeline, a 2 billion cubic feet LNG facility and a 22 year gas supply contract—at a time when the climate crisis and our own energy policies and greenhouse gas reduction commitments compel a freeze on expansion and a reduction in emissions.³⁴ Liberty’s cost analysis for the project proposes a 55-year life span for the pipeline and 40-year life span for the LNG facility. See [Pre-filed Directory Testimony of Timothy S. Lyons submitted in the Granite Bridge Project case, Commission Docket No. DG 17-198, at pp. 15 and 19 of 22](#). Consequently, if approved, the pipeline will have to be used until at least 2076 and the facility will have to be used until at least 2062 for ratepayers to avoid stranded

³³ Over \$310 million to be passed on to ratepayers. See pp. 15 and 18 of the [Pre-filed Directory Testimony of Timothy S. Lyons, submitted in the Granite Bridge Project case, Commission Docket No. DG 17-198](#). Some estimates, including one by Liberty, place the total cost of the project at \$340 million or more. See, e.g., Slide 4 of Liberty’s presentation at http://www.biaofnh.com/uploads/5/9/9/2/59921097/final_infrastructure_updates_120617.pdf; the online WMUR article and newscast at <http://www.wmur.com/article/liberty-utilities-proposes-dollar340-million-underground-natural-gas-pipeline-project/14109140>; the online seacoast.com article at <http://www.seacoastonline.com/news/20180208/340m-gas-pipeline-planned-along-route-101>; and the online article at <https://manchesterinklink.com/a-look-at-liberty-utilities-proposed-underground-gas-pipeline/>.

³⁴ Climate concerns aside, the project is still a huge overbuild: Epping’s 2 Bcf LNG facility would have roughly half of the LNG storage capacity of all of New Jersey, see http://www.northeastgas.org/about_lng.php, which serves a far greater population (approximately 9 million) than New Hampshire (approximately 1.4 million). Contemplated similar facilities in Keene and Lebanon would have only a fraction of the storage capability of the Epping facility: whereas the Keene facility would only be capable of fueling a 30 MW electric generating facility for approximately 2.2 days, and the Lebanon facility would only be capable of fueling a 30 MW electric generating facility for roughly 5.2 days, the Epping facility will be able to fuel a 30 MW electric generating facility for approximately **77 weeks**! See Liberty’s responses to discovery in attached **Exhibit “C.”** Yet, Liberty claims that the Epping facility will be largely for just potential customers along the Granite Bridge Pipeline. See *id.*

costs,³⁵ while at least one government projection, admitted in evidence just over six months ago in [Commission Docket No. DG 16-852](#), shows the price of gas starting to spike about the time the project first becomes operational and continuing to rise into the distant future (as sustainable energy prices almost certainly decrease). [See Exhibit 14 admitted in Commission Docket No. DG 16-852](#). If New Hampshire intends to abide by its commitments as a member of the [Under2Coalition](#) and (through the United States) [Paris Climate Accord](#) to reduce greenhouse gas emissions to near net-zero by 2050 and otherwise act responsibly in the face of climate change, and adhere to the requirements of [R.S.A. 378:37](#) to make the “lowest reasonable cost” energy choices, protect the environment and health and safety of citizens in the state’s energy choices and diversify our energy portfolio, *see* discussion, *infra*, the Granite Bridge Project pipeline and LNG facility should never be built to begin with—but, if they are, they will have to be abandoned long before the end of their projected lifetimes.

A recent opinion from the Court of Appeals for the District of Columbia Circuit establishes that the Commission not only has the authority to consider climate change in its public interest analysis, but the obligation. In *Sierra Club v. Federal Energy Commission*, 867 F.3d 1357 (Cir. 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 ...”

³⁵ The pipeline is not projected to be operational until late 2021, while the facility will not be running before 2022, at the earliest (both likely subject to the usual project specific and general construction delays). *See Pre-filed Direct Testimony of William R. Killeen and James M. Stephens submitted in the Granite Bridge Project Case, Commission Docket No. DG 17-198, at p. 11 of 104.*

Id. at 1374.

The reasoning of *Sierra Club* applies equally here. The Commission has the legal authority—and obligation—under its required public interest analysis to consider the impacts that Liberty’s expansion plans will have on greenhouse gas emissions and the state’s commitments and obligations to address climate change, largely through emissions mitigation, and conclude that a moratorium on Liberty’s expansion plans is called for, accordingly.

Even assuming *arguendo* that the public demand and need for climate action, emphasizing emissions mitigation, were not sufficient to invoke the Commission’s obligation to consider the climate crisis, and thus compel a determination that Liberty’s expansion plans are contrary to the public interest, Section VI of [R.S.A. 378:38](#) leads to the same result under its requirement that the LCIRP include:

“An assessment of the plan’s long- and short-term **environmental**, economic, and energy price and supply impact on the state.”

[*Id.*](#) (emphasis added). The climate crisis plainly falls within an “environmental ... impact” required to be considered under the statute. While the LCIRP states that the requirement is inapplicable, [see id. at 57](#), it expressly applies to “each ... natural gas utility,” without exception, there is no rational support for such an exception, and the LCIRP fails to cite any persuasive authority for its position. The statutory requirement cannot be ignored, and does not require a complicated analysis: increasing methane use for decades contrary to emission mitigation goals will come with an enormously negative environmental impact, the exacerbation of climate change, which is not in the public interest. The Commission cannot stand idly by, holding the button on the breaks to a runaway train, blaming the job description or lack of clarity in orders for not doing the obviously **only** right thing—not when it *must* act in the public interest and the button is in its hand. *See, e.g., Waste Control Systems, Inc.* at 24; *Boston & Maine R.R.*,

supra, 102 N.H. at 10; *Harry K. Shepard, Inc. v. State*, *supra*, 115 N.H. at 185; *Browning-Ferris Industries of New Hampshire, Inc. v. State*, *supra*, 115 N.H. at 191. Besides, again, to meet its charge, the Commission *must* weigh asserted public benefits against actual costs, including environmental costs, *see Public Service Company of New Hampshire d/b/a Eversource Energy, Commission Docket No. DE 16-241, Order of Notice, at 3-4*, and climate change is a well-established environmental cost of methane use.

Nor is the expansion of fracked gas use and extension of our reliance on it for decades, as called for under Liberty's LCRIP and associated future plans, in the public interest from health and safety standpoints.

Study after study warns us that fracked gas releases, from gas drilling, production, compressor station, pipeline and other infrastructure leaks and emissions, cause respiratory, heart and other health problems. *See, e.g.*, the following online sources: ["Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking \(Unconventional Gas and Oil Extraction\)" by Physicians for Social Responsibility \(Fifth Edition, March 2018\), pp. 17-20, 198-210](#); ["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 \(January 9, 2012\).](#)

Nor should it be surprising if health problems are linked to fracked gas releases as fracked natural gas is, unfortunately, *not* the same as conventional, relatively “clean” natural gas:³⁶ at least, not in all stages of the manufacturing and distribution process. Rather, fracked gas samples have been found to contain hundreds of chemicals, many of which the industry refuses to disclose. See <https://insideclimatenews.org/news/31032015/fracking-companies-keep-10-chemicals-secret-epa-says>; see also [“Analysis of Hydraulic Fracturing Fluid Data from the FracFocus Chemical Disclosure Registry 1.0,” by the EPA \(March 2015\)](#); [“California’s Fracking Fluids: the Chemical Recipe,” by Tasha Stoiber, et. al. \(EWG; August 2015\).](#)

In fact, in addition to harmful particulates, studies and data have associated as many as two dozen or more of the New Hampshire regulated toxic air pollutants (“RTAPs”) identified in [Env-A 1450.01](#) with fracked gas tested at one or more stages of the manufacturing and distribution process, either as additives or a product of its combustion. See attached **Exhibit “A”** identifying 22 such ingredients. From its recent response to Clark’s discovery, see attached as **Exhibit “B,”** the various forms of gas Liberty distributes in New Hampshire “come from a variety of different geographic locations and extraction methods,”³⁷ Liberty cannot or will not articulate the approximate percentages of the gas that is derived from fracking versus conventional methods,³⁸ and Liberty would not be able to tell you the chemical composition of

³⁶ Although fracked gas has been around for decades, it has only replaced conventional gas as the market’s “gas” of choice in recent years. See [Tiemann and Vann, "Hydraulic Fracturing and Safe Drinking Water Act Regulatory Issues," Introduction \(Congressional Research Service\)\(2015\).](#)

³⁷ See Response to Clark Data Request 1-1 in attached **Exhibit “B.”**

³⁸ See Response to Clark Data Request 1-2 and Response to Clark Data Request 1-1, respectively, in attached **Exhibit “B.”**

the gas it distributes until it had purchased it and had it in its possession.³⁹ This is not comforting, especially given the long list of chemicals that apparently may be found in just the sulfur Liberty uses to odorize its gas, some of which, *i.e.*, Hydrogen sulfide, Carbon disulfide, Dimethyl disulfide, are themselves [RTAPs](#), and all of which may have a combined cumulative health impact that transcends the individual low limits of these chemicals.⁴⁰

Moreover, it is not clear that Liberty's gas analyses (**Exhibit "B"**) identify all of the chemicals in its gas, as it is undersigned counsel's understanding from communications with the New Hampshire Department of Environmental Services that analyses will only cover those chemicals a laboratory is specifically requested to test for, and that a complete identification of all fracked gas components would likely require more than was undertaken for Liberty's analyses given that, as is discussed in the attached **Exhibit "D"**:

- "No single laboratory has the capability of analyzing natural gas for all of the constituents of interest. This means each class of analyte may require collection of multiple containers to be sent to multiple laboratories. In addition, the gas volumes needed for some analyses may require multiple containers per sample." It does not appear that Liberty's analyses derive from multiple samples sent to multiple laboratories.
- "Samples of natural gas cannot be analyzed directly for metals or for Formaldehyde, Acetaldehyde, Gluteraldehyde, and Propionaldehyde (aldehydes) but must be collected in a sampling media." It does not appear that this testing method was employed for Liberty's analyses.
- Chemicals could be included in a "vague" component found in fracked

³⁹ See Response to Clark Data Request 1-3 in attached **Exhibit "B."**

⁴⁰ See Attachment Clark 1-4, Attachment Clark 1-6 and Attachment Clark 1-8 in attached **Exhibit "B."**

gas called “C6+,” which is not identified as a component of the gas covered by Liberty’s analyses.

The climate issue aside, a moratorium should be placed on gas expansion until the contents of the gas that Liberty distributes in New Hampshire are completely, unequivocally disclosed, the potential health impacts of its use are analyzed and better understood, and clear standards are established for the content of the gas Liberty may distribute in New Hampshire.

Then, there are the safety issues. Perhaps all concerns can be explained away, but it should not be overlooked that the Granite Bridge Project proposal calls for its pipeline to be largely constructed within the NHDOT’s right-of-way along one of the busiest conduits of traffic (Route 101) in our state, which itself serves as an emergency evacuation route in the event of an incident at Seabrook, and that some residences and businesses along the pipeline’s route will undoubtedly be in its danger zone, as well. Pipelines do explode.⁴¹ Nor may the risk associated with the proposed 2 billion cubic feet LNG storage facility in Epping be underestimated: an explosion at a far smaller LNG facility near the town of Plymouth, Washington in 2014 is reported to have propelled 250-pound pieces of steel up to 300 yards through the air, injuring five, and resulting in an initial two-mile evacuation radius.⁴²

⁴¹ Like the one in New Mexico discussed at <http://abcnews.go.com/US/story?id=96090&page=1>; the one in Illinois discussed at <http://www.chicagotribune.com/news/nationworld/midwest/ct-nachusa-gas-pipeline-explosion-20171206-story.html>; or, the one in California discussed at <http://www.kcra.com/article/pg-e-no-leaks-found-in-fresno-county-gas-line-that-exploded/6421851>—and their “incineration zones” may extend for hundreds of feet. See page 14 chart of explosions at <http://www.pipelinesafetytrust.com/docs/C-FerCircle.pdf>. Since 1987, the PHMSA has identified more than 3,200 gas pipeline accidents deemed serious or significant, with many involving fatalities. See generally https://en.wikipedia.org/wiki/List_of_pipeline_accidents_in_the_United_States_in_the_21st_century.

⁴² See April 2, 2014 online article “‘Miracle’ nobody died in blast at Eastern Washington LNG plant” by Jeff Barnard (Associated Press) in the online edition of the *The Seattle Times* at <https://www.seattletimes.com/seattle-news/lsquomiraclesquo-nobody-died-in-blast-at-eastern-washington-lng-plant/> and March 31, 2014 (updated August 24, 2015) online article “UPDATE: Evacuation radius near Plymouth plant to be reduced” in the online edition of *The Tri-City Herald* at <http://www.tri-cityherald.com/news/local/article32173386.html>.

[Gas utilities, including Liberty, do not always follow safety regulations.](#)⁴³ [Accidents happen,](#)⁴⁴ as do just plain [leaks.](#)⁴⁵

If the climate crisis, health and safety issues, and the potential for enormous stranded costs are properly considered, Liberty's expansion plans cannot be approved, as they are not in the public interest, but, on their face, irresponsibly responsive to "the needs of the public at large." *See, e.g., Waste Control Systems, Inc.* at 24. *See also Boston & Maine R.R., supra*, 102 N.H. at 10; *Harry K. Shepard, Inc. v. State, supra*, 115 N.H. at 185; *Browning-Ferris Industries of New Hampshire, Inc. v. State, supra*, 115 N.H. at 191. Indeed, [millions will die from climate change in just the next few decades.](#)⁴⁶ Plainly, the asserted public benefits are outweighed by the actual costs. *See Public Service Company of New Hampshire d/b/a Eversource Energy, Commission Docket No. DE 16-241, Order of Notice, at 3-4.*

[R.S.A. 378:37](#), which sets forth New Hampshire's official energy policy, mandates the rejection of Liberty's plans, as well. Besides meeting the public interest requirement, Liberty must also satisfy this statute—as is acknowledged in the LCIRP. *See LCIRP at p. 55* ("The

⁴³ For readers of a non-pdf version of this brief, please see: <https://www.puc.nh.gov/Safety/Pipeline%20Safety%20Enforcement/CY%202017/PS1706LU.pdf>.

⁴⁴ For readers of a non-pdf version of this brief, please see the March 30, 2018 online *Nashua Telegraph* article "'Significant' Hudson gas leak caused by surveyor's equipment," by Dean Shalhoup at <http://www.nashuatelegraph.com/news/2018/03/30/significant-hudson-gas-leak-caused-by-surveyors-equipment/>.

⁴⁵ For readers of a non-pdf version of this brief, please see the April 24, 2018 online *Keene Sentinel* article "Gas leak on Keene's West Street repaired," by Sierra Hubbard at http://www.sentinelsource.com/news/local/gas-leak-on-keene-s-west-street-repaired/article_30b6a32e-5e2b-535b-9400-a891b7233eb3.html?utm_source=Weekday+Newsletter&utm_campaign=373fe20f1b-EMAIL_CAMPAIGN_2018_04_24&utm_medium=email&utm_term=0_be271ac818-373fe20f1b-136251925.

⁴⁶ *See* September 23, 2014 online article "Premature Deaths Multiply as Climate Changes," by Daniel Cusick, available in the online edition of the *Scientific American* at <https://www.scientificamerican.com/article/premature-deaths-multiply-as-climate-changes/>.

Commission’s charge in this docket, therefore, is to evaluate whether EnergyNorth’s LCIRP is consistent with the state’s energy policy as articulated in RSA 378:37.”).

However, Liberty’s expansion plans *do not comport* with [R.S.A. 378:37](#).

[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 Commission is charged with considering the climate, health and safety concerns of fracked gas use as our state policy is to meet energy needs “at the lowest **reasonable** cost” while protecting our environment, safety, health and natural resources. As with other fossil fuels, fracked gas use comes at anything but “the lowest **reasonable** cost” to the citizens and businesses of New Hampshire. Rather, it comes at enormous, largely hidden, costs not associated with sustainable energy:

- **to ratepayers in subsidizing huge infrastructure costs**, for example, the nearly one-third of a billion dollar price tag for the Granite Bridge Project. A study from the University of New Hampshire released last year, generally known as the “[Carsey report](#),” concludes that pipeline expansion projects bring an annual average bill of about \$66 million to ratepayers. See page 6 of Carsey report at <https://scholars.unh.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1296&context=carsey>;

- **to one of our leading industries, tourism**, by the negative impacts of climate change on winter recreation, hunting (by the decimation of the moose population), fishing and foliage—threatening hundreds of millions in annual revenues. *See* 2008 DES Fact Sheet “Global Climate Change and its Impact on New Hampshire” at <https://www.des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-23.pdf>;
- **to our sugar industry**, again, due to climate change, as “[s]ugar maples are extremely susceptible to mid-winter thaws and summer droughts.” *See* 2008 DES Fact Sheet “Global Climate Change and its Impact on New Hampshire’s Fall Foliage and Maple Sugar Industry” at <https://www.des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-25.pdf>;
- **to our moose and loon populations (also fueling tourism)**: Moose and loons are climate change “canaries in a coal mine.” *See* February 22, 2018 online NHPR article at <http://nhpr.org/post/moose-loons-are-climate-change-canaries-coal-mine-say-nh-conservationists#stream/0>. In fact, climate change is the leading cause of their decline. *See* August 1, 2017 online NHPR article “Climate Change is the Leading Cause of Moose and Loon Population Decline in New Hampshire” by The Exchange, at <http://nhpr.org/post/climate-change-leading-cause-moose-and-loon-population-decline-new-hampshire#stream/0>. Moose hunters and wildlife watchers inject over \$340 million a year into the New Hampshire

economy. See June 1, 2015 *National Geographic* online article “What’s a Ghost Moose: How Ticks Are Killing an Iconic Animal,” by Christine Dell’Amore, at <https://news.nationalgeographic.com/2015/06/150601-ghost-moose-animals-science-new-england-environment/>;

- **to our dairy industry**, by [increasing, intensifying droughts](#) (associated with climate change). See August 30, 2016 “Concord Monitor” online article “Dying dairies: How drought, low milk prices lead to decline in N.H. farms” by Elodie Reed, at <http://www.concordmonitor.com/NH-Dairy-Farms-Struggle-Close-Because-of-Drought-Low-Prices-Yeaton-Farm-Epsom-NH-4346716>;
- **to agriculture**, an annual \$330 billion U.S. industry, from [climate change induced stresses ranging from extreme weather events to increased insect pests and diseases](#). See National Climate Assessment Report, summarized and available at <https://nca2014.globalchange.gov/report/sectors/agriculture#intro-section-2>;
- **to our health and health costs**, for example, by the increase in the tick population caused by climate change and associated increase in lyme disease, and by all of the respiratory and other health problems caused by breathing the pollutants from fossil fuels. New Hampshire has experienced one of the largest state increases in Lyme diseases since 1991. See EPA online article “Climate Change Indicators: Lyme Disease” at <https://www.epa.gov/climate-indicators/climate-change-indicators-lyme->

disease, *see id.* New Hampshire also has an enormous number of impacted asthma sufferers. In fact, "New Hampshire's asthma rate is among the highest in the nation. Approximately 110,000 NH adults and 25,000 NH children have asthma." *See* page 22 of "Greater Manchester, New Hampshire Health Improvement Plan" online at <https://www.manchesternh.gov/Portals/2/Departments/health/GManCHIP.pdf>;

- **to seacoast towns and homes**: one study has determined that it will cost just three New Hampshire coastal towns between \$1.9 and \$2.9 billion to address the impacts of climate change. *See* p. 23 of "Changing Tides How Sea-Level Rise Harms Wildlife and Recreation Economies Along the U.S. Eastern Seaboard" 2016 National Wildlife Federation, available at http://www.nwf.org/~media/PDFs/Global-Warming/Reports/Changing-Tides_FINAL_LOW-RES-081516.ashx;another. Another concludes that over 7,000 New Hampshire homes could be under water by 2100 due to sea rise caused by climate change. *See* Nov. 30, 2016 *Union Leader* online article "Study: 7,000 Seacoast properties could be under water by 2100," by Dave Solomon, at <http://www.unionleader.com/apps/pbcs.dll/article?AID=/20161130/NEWS11/161139963&template=printart>;
- **to taxpayers and ratepayers** in cleaning up from ice and other destructive storms caused by climate change, and addressing all of the above other harms.

- to everyone's cost of insurance as the price of addressing all of the negatives rise for insurance companies.

Add to all of the above whatever price can be placed on all of the premature deaths caused by climate change, and the still-too-many premature deaths caused by gas safety “incidents,” and you approach the total *actual* environmental and other costs of using fracked gas. See *Public Service Company of New Hampshire d/b/a Eversource Energy*, [Commission Docket No. DE 16-241, Order of Notice, at 3-4](#).

The costs associated with fracked gas use are plainly not the “lowest reasonable cost” to meet the state’s energy needs, particularly given the availability of sustainable alternatives, which come without such costs—and they are especially not the “lowest reasonable cost” to meet the energy needs of those targeted by the Granite Bridge Project, who currently clearly have no “need” for Liberty’s proposed new fracked gas infrastructure and supply sources, as they are not among its current customers.⁴⁷

Then, of course, there are the astronomical stranded costs of gas projects, like those associated with the Granite Bridge Project—which should be considered *per se* unreasonable under [R.S.A. 378:37](#), as the only way to avoid them, *i.e.*, by committing to exacerbating the climate problem for decades with methane use when we should and could be working to

⁴⁷ Whether the gas contracts under consideration in the Granite Bridge Project case might provide *some* gas for current customers, and whether that gas could be provided without the project, is unclear from Liberty’s filings. But, it is clear from Liberty’s filings that the project is all about meeting Liberty’s expansion goals, not serving current customers. See, e.g., [Granite Bridge Project petition, ¶¶ 2-4](#). Liberty’s spokesman, John Shore, further confirmed this in a 2017 interview with WMUR, in which he noted that the utility would have to decline *future* customers without the project:

“They’re looking at things like access to natural gas, and if we can’t get more capacity to our service area, **we would have to turn down customers who make requestsm [sic], probably just within a couple years ...**”

See December 5, 2017 online WMUR article “Liberty Utilities proposes \$340 million underground natural gas pipeline project,” by Mike Cronin, at <http://www.wmur.com/article/liberty-utilities-proposes-dollar340-million-underground-natural-gas-pipeline-project/14109140> (emphasis added).

ameliorate it right now, is morally repugnant: indeed, the entire cost of the project should be deemed *per se* unreasonable for compelling ratepayers to make that choice. Again, the Granite Bridge Project, alone, would come with an almost one-third of a billion dollar (or more) price tag, and the average *annual* gas infrastructure bill for ratepayers is roughly \$66 million, much of which will have to be stranded costs going forward, if we are to responsibly address climate change. As is shown by the table reproduced in paragraph 10 above, Liberty's expansion plans will create continuing supply shortages over at least the next two decades which will, in turn, continue to create a demand for gas pipelines and other infrastructure.

Again, the touchstone of the "cost" analysis of [R.S.A. 378:37](#) is reasonableness: costs cannot just be the "lowest cost," they must be the "lowest **reasonable** cost." *Id.* (emphasis added). While the statute does not provide a "reasonable cost" standard, such a standard plainly must be objective, not subjective, and can be drawn from jurisprudence. New Hampshire follows the Restatement (Second) of Torts, § 283 (1965). *See Shimkus v. Caesar*, 95 N.H. 286, 288 (1948); *Filip v. Gagne*, 104 N.H. 14 (1962). Section 283 provides the objective standard of the famous, hypothetical "reasonable *man*," and its Comment b is often quoted as the definition of what makes the man reasonable:

"those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interest and the interests of others."

Id. *See also, e.g.,* "Law Dictionary, Second Edition," by Steven H. Gifis (Barron's Educational Series, Inc.; 1984), p. 388 (defining "reasonable man [person]" by quoting Comment b); *Berberian v. Lynn*, 179 N.J. 290, 297, 845 A.2d 122, 126 (N.J. 2004)(quoting Comment b in identifying the qualities of a "reasonable man").

The Restatement (Second) of Torts, § 283 standard is instructive in two ways. First, by analogy: as a “reasonable *man*” is one who protects the interests of others, not just themselves, at the level society expects of its members, a “reasonable *cost*” must similarly be one that protects the interests of others in the manner society expects. As virtually the entire world has unequivocally rejected the hidden costs of fracked gas use as violative of that standard and is demanding less, not more, of it, the fracked gas fuel option cannot be deemed the “lowest” *reasonable* cost at this point because society clearly does not consider it a “reasonable” price to pay at all. Second, straight application of the standard leads to the same conclusion: again, the standard is not what Liberty or Clark or the Commissioners in the proceeding personally believe is reasonable—the standard must be objective, *i.e.*, what a “reasonable man” would consider a “reasonable” cost for fuel. As a reasonable member of society attentively, knowledgably and intelligently protects “the interests of others” and not just themselves under the Restatement standard, a reasonable man would reject the climate change and other hidden costs of fracked gas use as an unreasonable cost to pay for the fuel since such costs are horrific to the point of potentially apocalyptic, well-established by mountains of studies, nearly all world scientists, leaders and countries condemn them, and everyone on the planet is being injured by them. Whether or not the United States as a nation ultimately remains in or withdraws from the [Paris Climate Accord](#)—and, again, until we actually withdraw, we are still a signatory—a world standard of reasonable prudence has been adopted under that agreement which cannot be ignored, and which establishes the price of Liberty’s future methane commitments as being patently unreasonable.

Moreover, our current overdependence on gas is already inconsistent with the energy source diversification requirement of [R.S.A. 378:37](#). [Our gas reliance is usually more than half](#)

[of the total share of all of the available energy alternatives](#). See current use percentage at <https://www.iso-ne.com/>. Are we trying for 80% reliance? 100%? How “cheap” will gas be when all of the gas contracts term-out, and we have no alternative but to renew them, as everything depends on gas? Those arguing a gas “need” usually point to the gas shortages and price spikes of the winter of 2013-2014 as proof positive. However, the New Hampshire Office of Energy and Planning (“OEP”)⁴⁸ concluded that “increasing reliance on one fuel, namely natural gas, is what caused the wholesale price spikes in the winter of 2013-2014 in the first place ...” See [October 15, 2015 OEP letter to Commission, p. 2, filed in Commission Docket No. IR 15-124](#). Studies have shown that more large gas projects are not needed to lower energy rates and, indeed, provide no real benefit to ratepayers. See http://www.masslive.com/news/index.ssf/2015/11/ag_healy_grid_reliability_fine.html; <https://www.clf.org/blog/iso-forward-capacity-auction-results-show-in-energy-plant-not-needed/>; <https://www.unh.edu/unhtoday/news/release/2017/03/07/unh-research-finds-increased-energy-use-not-needed-grow-economy>; <http://www.nhbr.com/February-20-2015/Will-NH-really-benefit-from-major-energy-projects/>.

The just released 2018 [“New Hampshire 10-Year State Energy Strategy”](#) provides no clear guidance on our expansion of gas use and gas infrastructure in general, beginning and ending the discussion by deeming it an open question subject to our “sensibilities and needs” and state determinations as to what energy options “best protect its citizens, economy, and natural resources”:

“New Hampshire’s energy policy must be realistic about the necessity of natural gas into the foreseeable future while ensuring that infrastructure projects or expansions are in keeping with natural resource protection ...

⁴⁸ Now known as the New Hampshire Office of Strategic Initiatives.

It is essential that any infrastructure improvements or expansions fit with New Hampshire sensibilities and needs. New Hampshire must answer the questions of what resources and infrastructure will best protect its citizens, economy, and natural resources ...”

[*Id.* at 7-8.](#)

“There is tension between the increasing demand for low-cost natural gas, the countervailing risk of dependence on the fuel, and production alternatives should natural gas supply infrastructure remain a chokepoint ...

New Hampshire energy policy must be realistic about the necessity of natural gas into the foreseeable future while ensuring that infrastructure projects or expansions are in keeping with natural resource protection ...

It is essential that any infrastructure improvements or expansions fit with New Hampshire sensibilities and needs ...

New Hampshire must answer the questions of what resources and infrastructure will best protect its citizens, economy, and natural resources ...”

[*Id.* at 31-32](#) (emphasis is original). However, being realistic about the necessity for gas now to meet **current customer demands** into the foreseeable future does not mean that we have to commit current non-gas customers and **future generations** to dependency on the fuel—and we cannot as, for all of the reasons cited above, such a commitment is not in accord with our “sensibilities and needs” and does not “best protect [New Hampshire’s] citizens, economy, and natural resources ...”

Moreover, as specifically concerns the Granite Bridge Project, the 2018 [“New Hampshire 10-Year State Energy Strategy”](#) is wholly unsupportive, as the project does not comport with the energy policy goals set forth in pages 12-20 of the strategy, particularly the following:

“New Hampshire stakeholders should seek policies that limit economic waste, maximize the useful competitive lifespan of energy infrastructure, and avoid policy preferences that select for technologies or resources without regard to cost.”

[*Id.* at 20](#) (emphasis in original). If the State adheres to its climate change commitments and otherwise responsibly addresses the crisis, the Granite Bridge Project will result in decades of economic waste attributable to lost infrastructure use; if the project is approved to begin with, it is only because of an ill-informed holdover policy preference for gas which fails to take into account its true cost.

The burden is on Liberty to show that its expansion plans committing the state to increasingly more methane use for decades responsibly address the state’s climate action commitments and obligations, including greenhouse gas emissions mitigation targets, and that our commitments and obligations will still be met notwithstanding its plans. See [Commission Order No. 26,039 \(July 10, 2017\), at 6](#). Liberty has failed to show this, and cannot show this. This proceeding should be dismissed, accordingly.

III. EVEN IF LIBERTY’S PLANS WERE LAWFUL, THE COMMISSION SHOULD DEFER TO THE SEC’S JURISDICTION AND DISMISS THIS MATTER

Should the Commission not agree with the preceding grounds for dismissal, it should dismiss it on jurisdictional grounds, as the approval sought under it falls squarely within the purview of the SEC. As noted in its petition, the first step in Liberty’s conversion plans involves “the construction of a temporary CNG **facility**.” [*See id.* at ¶ 1](#) (emphasis added). The ultimate goal is the construction of a “[permanent facility](#).” In relevant part, [R.S.A. 162-H:5](#) provides:

“162-H:5 Prohibitions and Restrictions. –

I. No person shall commence to construct **any energy facility** within the state unless it has obtained a certificate pursuant to this chapter ...”

Id. (emphasis added).

The broad definition of “energy facility” under Section VII of [R.S.A. 162-H:2](#) clearly encompasses Liberty’s proposed Keene gas facility:

“VII. ‘Energy facility’ means:

(a) Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, **including ancillary facilities** as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. **This shall include but not be limited to** industrial structures such as oil refineries, **gas plants, equipment and associated facilities** designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network. ”

*Id.*⁴⁹

Liberty contends that it is exempt from the statute because it does not meet a “minimum” fuel storage requirement: “The quantity of CNG/LNG that Liberty will store at the Keene facility is far less than the 30 megawatt standard above.” [Objection to Motion for Rehearing, at ¶ 24.](#)

Liberty’s interpretation of the statute should be rejected, for several reasons.

First, Liberty isolates the following specific language of the statute for its argument:

“...which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station ...”

See [Objection to Motion for Rehearing, at ¶ 24.](#)

However, in isolating this language, Liberty ignores important modifying terminology, and corresponding rules of construction.

The sentence providing the language Liberty relies on begins with the phrase “This shall include but not be limited to ...” and follows with a list of specified items, including “gas plants, equipment and associated facilities” ...which store on site a quantity to provide 7 days of

⁴⁹ The facility may also fall under subsection (g) of the statute: there is insufficient information in the petition to make this determination.

continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities ... [R.S.A. 162-H:2, VII](#). The language Liberty isolates, read in context, does not limit the statute’s coverage to the exact items then enumerated, but indicates that the list is *not exhaustive* and coverage also extends to “those *types* of [items] therein particularized.” *Conservation Law Foundation v. New Hampshire Wetlands Council*, 150 N.H. 1, 6-7 (2003)(quoting *Roberts v. General Motors Corp.*, 138 N.H. 532, 538 (1994)). This construction is “is well-settled and long-standing.” *State v. Njogu*, 156 N.H. 551, 553-554 (2007). Thus, “the 30 megawatt standard” of the statute, as Liberty labels it, is not an exact standard, if it is a “standard” at all. More properly termed, it provides just one example of a gas plant that would fall within its coverage.

Liberty’s interpretation reads much into the statute that is not there, and leads to prohibited results. Again, Liberty deems the “7 days ... 30 megawatt” language a “standard” which sets a *minimum* applicability requirement. [Objection to Motion for Rehearing, at ¶ 24](#). But, the subject language is exact—precisely 30 megawatts, no more or less, for precisely seven days, no more or less—it does not provide a *minimum*, but a specific, storage requirement, which facially does not apply to greater storage capabilities. Yet, as the statute otherwise uses similar language clearly establishing minimum and maximum standards, the enacting legislature plainly could have expressed the subject language as only a threshold, if it wanted to:

- (1) Subsection (b) of [R.S.A. 162-H:2, VII](#) identifies “Electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts **or more** ...” *Id.* (emphasis added);

(2) Subsection XII of [R.S.A. 162-H:2](#) distinguishes between renewable energy facilities with name plate capacity “of **greater than** 30 megawatts” and such facilities with “30 megawatts **or less** nameplate capacity ...” *Id* (emphasis added).

Liberty cobbles a *minimum* standard out of the statute as it would not be credible to argue that the statute only applies to facilities with exactly “7 days ... 30 megawatt” fuel storage capacity. But, Liberty is inappropriately pulling language out of the air to reach this construction. “We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language it did not see fit to include.” *State v. Addison*, 160 N.H. 732, 754 (2010). The terminology Liberty relies on is so limiting, and leads to absurd, illogical results when read as *the* “standard” for statutory applicability that Liberty urges: for example, facilities with sufficient fuel storage capacity to operate for 6 days at 50 megawatts, or 12 days at 29 megawatts, or 100 weeks at 50 megawatts would not be covered. The statute cannot be read to have intended such results, especially as they would substantially nullify the purpose of the statute, *i.e.*, to provide comprehensive oversight of energy facility construction and operation. *See State v. Kay*, 115 N.H. 696, 698-699 (1975).

Liberty’s position should be rejected as leading only to a dead end: the language just does not get us there.

Until and unless the legislature amends [R.S.A. 162-H:2, VII](#) to allow the interpretation Liberty proffers, the Commission is left with language and well-settled rules of statutory construction which preclude it, and provide for coverage of the subject facility.

The “associated facilities” language of the statute compels this conclusion, as well. Under the statute, the fuel storage capacity to be considered is not just that of the gas plant being reviewed, but also that of “associated facilities”:

“This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities ... which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities ...”

[R.S.A. 162-H:2, VII.](#)

While the proposed Keene gas plant would only store, *on its Keene site*, enough fuel to operate a 30 megawatt electric generating facility for approximately 2.2 days, the gas plant Liberty proposes for the Lebanon/Hanover case would be capable of fueling the same facility for approximately 5.2 days, and the Epping plant proposed in the Granite Bridge Project case could fuel it for approximately **77 weeks**. See Liberty’s responses to discovery in attached **Exhibit “C.”** Maybe Liberty can sell bridges in Manhattan, but New Hampshire should not buy that the three proposed Liberty gas plants will not be “associated facilities,” *i.e.*, that they will not actively interact to service Liberty’s customers, including, minimally, sharing the fuel stored at all three plants—and especially the huge quantity of fuel stored in Epping that clearly exceeds the needs of any project customers. In fact, Liberty openly touts this as a reason to approve the Granite Bridge Project. In its [petition](#) for that case, Liberty argues that:

“the Granite Bridge LNG Facility would have the ability to liquefy and store the gas delivered from either the PNGTS or TGP pipelines in the low-cost summer period, and vaporize that same gas to serve **EnergyNorth’s customers** in the winter when other supplies are more expensive ...”

Id. at ¶ 10 (emphasis added). Note that Liberty does not limit those customers to only ones acquired through the project—they could be any customers in the state, including in the City of Keene—and Liberty’s response to Clark’s discovery (Clark 1-14; **Exhibit “C”**) confirms this:

“REQUEST:

Please identify all planned and potential interaction between the facilities being considered for Keene under Docket DG 17-068, Lebanon under Docket DG 16-852 and Epping under Docket DG 17-198, including, but not limited to, the potential sharing of gas stored at any of the facilities.

RESPONSE:

As stated in the Company's response to Clark 1-13, the proposed Granite Bridge LNG facility has been designed to serve the needs of EnergyNorth's current and future customers **within the Company's existing service territories** and the potential franchise areas along the Granite Bridge pipeline.

LNG required at the smaller LNG facilities proposed in Keene and Lebanon would be received by truck from several potential LNG suppliers in the region. While LNG supplies could also be physically received from the Granite Bridge LNG facility, it has not been designed for that purpose. No other physical interaction is anticipated besides personnel used to maintain and operate each of these facilities, as required for safe operation and to cover for employees on vacation and sick leave."

Liberty claims that:

"The proposed LNG facility at Epping has not been designed to supply the needs of Keene or Hanover-Lebanon. The supply needs for Keene and Hanover-Lebanon are yet to be finalized. **The Company will identify a range of supply alternatives, including a competitive solicitation of supply from third parties, and determine which is the best-cost supply alternative to meet the needs of the Company's customers in these locations ...**"

Liberty Response to Request No. Clark 1-13 (**Exhibit "C"**) (emphasis added). But is there any doubt that, after all of the analysis has been completed, Liberty will determine that the "best-cost-supply alternative to meet the needs of the Company's customers in" Keene is the fuel in Epping? If not, then Liberty's entire promotion of the project, as a way to secure gas at its best rates for **all of its customers**,⁵⁰ is a sham: if the Epping facility has the cheapest gas, why would Liberty look elsewhere for gas for Keene customers?

Consequently, when the almost 1 ½ years of fuel located on site at the associated Epping facility is properly factored into the analysis, the proposed Keene gas plant clearly exceeds any "7 days ... 30 megawatt" "minimum standard" for [R.S.A. 162-H](#) applicability. From delivery to

⁵⁰ See, e.g., Slide 4 ("Granite Bridge is a \$340 million natural gas pipeline and storage project **designed to serve the residents and businesses of New Hampshire**")(emphasis added) and Slide 5 ("**By New Hampshire. For New Hampshire.**")(emphasis in original) at http://www.biaofnh.com/uploads/5/9/9/2/59921097/final_infrastructure_updates_120617.pdf.

distribution and all of the processing and traffic in-between, there are more [health, safety, environmental and other concerns](#) involving gas plants than just the size of their storage tanks. Gas plants are composites of potential mishaps and “other concerns,” and, when those concerns are present, it should make no difference to the triggering of the SEC’s reviewing authority whether the fuel used by the plant is all stored on site or, in part, at a nearby associated facility—especially when *many, many times* that amount of fuel is readily available from the facility for delivery, processing, distribution, *etc.*, at the gas plant.

Should it not dismiss this proceeding as being inconsistent with New Hampshire law for the reasons previously stated, the Commission should find that the SEC has jurisdiction over this matter and, consistent with its prior decisions, defer to it, *see, e.g.*, [Commission Order No. 25,822 dated October 2, 2015 at 24 and Footnote 8](#) (refusing to consider gas pipeline siting issues, in part, because such matters “may also come before the New Hampshire Site Evaluation Committee under RSA ch. 162-H”); [Commission Order No. 25,843 dated November 20, 2015 at 5](#) (gas pipeline siting issues are “considerations for other agencies,” citing, *inter alia*, [R.S.A. 162-H:10-b](#)), and dismiss this proceeding, accordingly.

Keene has a pollution/health problem. Specifically: [pollution, including particulates, can be trapped in the Keene valley by air inversions, sometimes rising to a level which may cause respiratory and other health problems.](#)⁵¹

⁵¹ For readers of a non-pdf version of this brief, please see the January 22, 2018 online *Keene Sentinel* article “Efforts to raise awareness about fine particle pollution continue in Keene,” by Meghan Foley, at http://www.sentinelsource.com/news/environment/efforts-to-raise-awareness-about-fine-particle-pollution-continue-in/article_f4631c0f-06db-507c-9b10-509168924ced.html. This problem is further discussed in a 2014 Keene State College environmental studies report titled “Characterizing the Spatial and Temporal Variability of Particulate Matter in Keene- Results and Findings,” overseen by Dr. Nora Traviss (Rachel Guerin, Alex Olson, William Lorenzen, Austin Conran, William Heitsmith, (Environmental Studies Senior Seminar: Spring 2014), as supplemented by a 2017 data update, which, unfortunately, is not available online and too voluminous to attach as an exhibit. It should be online soon, though, on the www.nhscienceforcitizens.org website.

Keene does not need more gas and potentially more of a pollution/particulate problem, which Liberty's expansion plans may bring.

Again, someone has to assess and consider and factor the health implications of Liberty's plans into the equation, and that will not be done under this declaratory judgment proceeding. While Clark, again, avers that this proceeding should be dismissed on the grounds of unlawfulness, and that a moratorium should be placed on all of Liberty's gas expansion plans, including those in Keene, until the contents of the gas that it distributes in New Hampshire are completely, unequivocally disclosed, the potential health impacts of its use are analyzed and better understood, and clear standards are established for the content of the gas Liberty may distribute in New Hampshire, the SEC would at least provide scrutiny not afforded under this matter, should the Commission not agree with Clark's first position.⁵²

IV. IF THE COMMISSION COULD AFFORD THE RELIEF LIBERTY SEEKS, IT WOULD HAVE TO BE PURSUANT TO R.S.A. 374:22 AND R.S.A. 374:26

Even if it is not dismissed due to unlawfulness or deference to the SEC's jurisdiction, Liberty's petition should still be dismissed because it was required to be filed under [R.S.A. 374:22](#) and [R.S.A. 374:26](#) as Liberty's petition clearly does propose a change in the character of Liberty's service in the City of Keene, *i.e.*, a substantial change in operations and the exercise of rights and privileges "[not theretofore actually exercised in the town](#)," requiring statutory approval.

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

⁵² In fact, under the same scenario and for the same reasons, the SEC should review the gas plant proposed under the Hanover/Lebanon case, as well.

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).

While admitting that it has *never* distributed CNG or LNG under its Keene franchise, *see* [petition, ¶ 17](#), Liberty contends that the “right” is broadly bestowed by its original 1860 franchise grant. [See generally petition and particularly ¶¶ 6 and 14-24](#). It would have to be, as Liberty acknowledges that the original grant has never been modified to allow for any specific gas use in Keene. *Id.* at ¶ 18 (“No Commission orders could be found approving any of these changes in fuels.”). But, if the right *were* covered under the franchise, the failure to have “theretofore actually exercised” it still requires permission under [R.S.A. 374:22](#). *Id.*

Liberty’s Keene gas franchise, granted by the legislature under Laws 1860, Chapter 2451, [see petition, ¶ 6 and Exhibit “1,”](#) gives it the right:

“to carry on the manufacture, distribution and sale of gas, for the purpose of lighting the streets, manufactories, machine shops, and all other buildings in the town of Keene, and to construct or purchase such buildings, works, furnaces, reservoirs, gas holders, gas pipes, and other things as may be requisite and proper for such purpose.”

[Id. at ¶ 15](#) (emphasis added).

Liberty's franchise rights are fixed by the four corners of the grant and cannot be changed except by further legislative permission granted under [R.S.A. 374:22](#) and [R.S.A. 374:26](#). See *State v. Hutchins*, 79 N.H. 132, 139 (1919)(rights in public waters are fixed by the legislative grant and cannot be changed except by further legislative action). As the franchise grant bestowed rights not known under the common law, "strict compliance with its terms is required." *Buatti v. Prentice*, 162 N.H. 228, 230 (2011). Obviously, the meaning given to words used in the grant must comport with the meanings used and understood at the time it was enacted. See *Attorney General ex rel. Abbot v. Town of Dublin*, 38 N.H. 459, (1859)("This is but the application to a particular subject of a well settled general rule, applicable to all trades, professions and customs, that the meaning of the word is to be ascertained by the usage of the time when employed ..."). Subsequently enacted Commission rules do not broaden or otherwise alter the original grant. See *Milette v. New Hampshire Retirement System*, 141 N.H. 342 (1996)(legislature's grant of rulemaking authority to agency is not grant of power to agency to modify statutory law by regulation). See also *In re Campaign for Ratepayers' Rights*, 162 N.H. 245 (2011)(rules adopted by state boards and agencies may not add to, detract from, or in any way modify statutory law). See also *In re Appeal of Morrill*, 145 N.H. 692 (2001)(generally, substantive changes to statutes or rules are applied prospectively).

Properly construed, then, Liberty's gas franchise gives it the right to distribute and sell in Keene whatever "gas" was being used to light street lights at the time the 1860 franchise was granted, and to construct facilities and infrastructure to effectuate that purpose—and no more. As Liberty contends that the 1860 legislature intended that this right include the right to distribute and sell CNG and LNG, and to construct associated necessary facilities, the burden is on Liberty to prove these facts. [Puc 203.25](#) provides:

“Puc 203.25 Burden and Standard of Proof. Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence.”

Id.

Clearly, CNG and LNG are not the same “gas” that was authorized under the Keene gas franchise: CNG and LNG were still unknown as of 1860; even natural gas was not used by a utility until 1865.⁵³ Thus, as the Commission’s Approval Order found, Liberty must establish that CNG and LNG have the “same character” as the gas authorized under its franchise to prevail on its petition. [Approval Order at 3.](#)

However, the issue is not what gas has been distributed and sold in Keene *since* 1860. Whatever that gas may have been, is irrelevant. As the Keene gas franchise is a legislative grant of authority which cannot exceed the actual grant, it cannot be expanded by time and reliance-type defenses, such as those grounded in the expiration of any statute of limitations, laches, or the like. *See State v. Hutchins, supra*, 79 N.H. at 139.⁵⁴ Normal principles of estoppel should likewise preclude such arguments, as those breaking the law (exceeding their statutory authority) should not be rewarded with ill-gotten rights. Moreover, as noted, the legislative grant could not be expanded by subsequently enacted Commission rules, either—especially those promulgated more than 100 years after the statute. *See Milette v. New Hampshire Retirement System, supra*, 141 N.H. at 347; *In re Campaign for Ratepayers’ Rights, supra*, 162 N.H. at 252; *In re Appeal of Morrill, supra*, 145 N.H. at 699. This includes the [Puc 502.06](#) definition of “gas” that Liberty relies on.

⁵³ See <http://www.madehow.com/Volume-6/Natural-Gas.html>.

⁵⁴ This is as should be expected since, as *State v. Hutchins* notes, *see id.* at 139-140, it is not the obligation of town officials (or ordinary citizens) to continually check for compliance with legislative grants of authority.

The issue is: what gas was first distributed and sold under the franchise?

While Liberty claims that CNG and LNG have the same character as *all* the gas that has been distributed and sold under the franchise since its inception, it does not come close to meeting its burden of proof on this issue. **Liberty acknowledges that it does not even know what “gas” was used in Keene at the inception of the franchise.** From Liberty’s response to Clark Data Request No. 1-7 (**Exhibit “B”**):

“REQUEST:

Please identify the complete chemical composition of the gas that was first distributed under the Keene gas franchise at issue in Docket DG 17-068 when the franchise was first awarded in or circa 1860. Should the composition be unclear at this time, please identify the likely composition to the best of Liberty’s ability, identifying the supporting source(s).

RESPONSE:

The Company’s records do not contain the requested information.”

While Clark does not agree that such extrapolation is appropriate, “best guesses” from the [petition](#) as to the gas first used in Keene would be either an unidentified “manufactured gas,”⁵⁵ water gas, coal gas,⁵⁶ or a mixture of water gas and coal gas. Even then, not enough facts are pled about the character of the first possible gas to conclude that CNG and LNG would be

⁵⁵ Paragraph 17 of the petition states that “The Company’s earliest predecessor distributed manufactured gas.”

⁵⁶ Paragraph 16 of the [petition](#) states:

“In its first iteration of the *Rules Prescribing Standards of Purity, Pressure and Heating Value of Gas, and Providing for the Periodic Testing thereof, and for the Testing of Meters, and Otherwise Regulating the Service of Gas Utilities*, the then-named Public Service Commission defined ‘gas’ within its definition of ‘utility’ as follows: ‘the word ‘utility’ shall be taken to mean any public utility engaged in supplying to the public water gas, coal gas or a mixture of the two.’ 2 NH PUC 115, 116 (1913).”

[Petition Exhibit “2B”](#) provides:

“A study of Keene Gas Company's past reveals an intriguing history of fuel technology over the years. Like many other gas utilities in the first part of this century, Keene Gas manufactured gas from coal. In 1954, Keene Gas changed to reformed butane ...”

comparable, and Liberty acknowledges that it also has no idea what was even in the water gas and coal gas. From Liberty's response to Clark Data Request No. 1-8:

“REQUEST:

Reference Liberty's Amended Petition in Docket DG 17-068, ¶ 16. Please identify the likely complete chemical composition of any coal gas that was sold to Keene customers under the Keene gas franchise, as of 1913 and otherwise.

RESPONSE:

The Company does not have this information.”

From Liberty's response to Clark Data Request No. 1-9:

“REQUEST:

Reference Liberty's Amended Petition in Docket DG 17-068, ¶ 16. Please identify the likely complete chemical composition of any coal gas that was sold to Keene customers under the Keene gas franchise, as of 1913 and otherwise.

RESPONSE:

The Company does not have this information.”

While Clark does not agree that the composition of propane-air is relevant to Liberty's rights under its 1860 franchise, it appears from [Exhibits “2B” and “3”](#) to its petition that Liberty's propane-air is roughly 71% air—which hardly seems the same character as the gas in CNG and LNG.⁵⁷ **Indeed, Liberty acknowledges that it is switching to a new fuel.** See [petition at Footnote 1](#) (“... what we will do, following acquisition, is look into the economics of converting the system from a propane/air system to some **other fuel** source, like CNG or LNG”)(emphasis added).

⁵⁷ From the vitally important climate and health perspectives, propane-air would seem likely to have far less harmful impacts.

Moreover, as discussed above, there are questions surrounding the content and other characteristics of the CNG and LNG that Liberty will distribute and sell, as well. Given the health questions, the “gas is gas” stamp should be applied with extreme caution and absolutely only on proper proof: again, we should be discussing a moratorium here, not expanded use. With the health questions, and the legislature’s obligation to act for the public good, it is hard to believe that the legislature granting the Keene gas franchise would have intended it to include fracked gas.

So, Liberty plainly has not met its burden of establishing that the new CNG and LNG gas will be of the “same character” as the gas authorized under Liberty’s gas franchise.

Nor has Liberty shown that its proposed conversion will not otherwise result in a substantial change in the character of Liberty’s gas service in Keene, requiring [R.S.A. 374:22](#) and [R.S.A. 374:26](#). It will. Again, Liberty proposes to completely switch from propane-air and a conventional distribution system to CNG/LNG service, with corresponding new, extensive, complex facilities (including a 100,000 gallon LNG storage tank and gas compression equipment) and “technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems.” [Approval Order at 3](#). Liberty’s testimony in the Lebanon/Hanover case concerning a similar planned “off pipeline” distribution system, certainly sounds like a substantial change from a conventional distribution system:

“Q. How does an ‘off pipeline’ distribution system work?

A. An ‘off pipeline’ distribution system has two key components. The first component is the underground gas distribution piping along with service risers and meters located at the customer’s premises. This component of the system is identical to the existing distribution network that has been operated safely, reliably, and efficiently by Company employees for decades. The second unique component of the “off pipeline” distribution system is the fueling facility that will be utilized to supply the distribution system with natural gas.

A conventional local distribution network has an interconnection with an interstate pipeline company. At this interconnection an LDC would receive shipments of natural gas from its supplier, regulate pressure down to LDC operating pressure (typically 60 PSI), add mercaptan, which is a gas odorant, and distribute the gas to customers. Because there is not an interstate pipeline within 50 miles of the Hanover/Lebanon franchises with which to interconnect, the Company plans to construct an LNG storage and vaporization facility along with a CNG decompression facility to supply the natural gas to the distribution system and customers.

LNG will be trucked to the facility and off-loaded into LNG storage tanks. From the tanks the liquid will be vaporized into gaseous form, odorized as needed, and injected into the distribution system. This same procedure has been working reliably and safely at the Company's current LNG plants for approximately 40 years. CNG will also be trucked to the facility and attached to decompression skids, which will decompress the gas from approximately 3600 PSI to the working LDC pressure of 60 PSI and injected [sic] into the system ..."

[Testimony of William J. Clark in Docket No. DG 16-852 at 8:12-9:13.](#)

Liberty's proposal is plainly a huge change in service. But, again, the change is not to be measured against Liberty's current service, but that which it is actually authorized to provide under its franchise grant, and going from an authorization to sell what was likely water gas or coal gas "for the purpose of lighting" to fracked (or even conventional) CNG/LNG for heating, is a quantum leap that should be met with a lasso and a tethering back to the original grant.

The three 1973 cases cited in support of the Approval Order, [see id. at 3](#), are inapposite. This is not a case where a utility is requesting permission to *temporarily* supplement natural gas supplies on essentially an emergency basis and, unlike the requests in those proceedings, this one is contested. [See id. at 3-4 \(and cases cited therein\)](#).

Liberty has failed to prove that its proposed new service does not need new permission. The use of CNG and LNG and the infrastructural and operational changes accompanying the new service clearly constitute a change in the service authorized under Liberty's Keene gas franchise, requiring permission under [R.S.A. 374:22](#) and [R.S.A. 374:26](#), and, even if the Commission does not agree and believes that the new service is authorized under Liberty's

original franchise grant, the failure to have “theretofore actually exercised” it requires permission. [R.S.A. 374:22](#). Liberty’s [petition](#) should be dismissed, accordingly.

V. CONCLUSION

Liberty is close to a dream that is part of the next generation’s nightmare. With the approval it seeks in this proceeding—the approval it once had under the [Approval Order](#)—Liberty would have the ability to set up a network of CNG and/or LNG plants in every one of its 30+ New Hampshire franchises, avoid Commission, SEC and public scrutiny for any of them,⁵⁸ expand a fracked gas empire throughout the state and start using an even more harmful “gas” without notice or scrutiny, should it so choose. This would, obviously, not be a good result. Ironically, it would not be a good result for Liberty, either, as an approval improperly granted under the wrong standard would always be subject to challenge.⁵⁹ The Commission should save Liberty from itself (along with the rest of us) and dismiss its petition, accordingly.

⁵⁸ As long as Liberty kept their sizes below its proffered “7 days ... 30 megawatt” minimum standard.

⁵⁹ See *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); *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.”).

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

- A. Dismiss this case or stay the proceeding until such time as the LCIRP case
has been decided, and then rule in this matter consonant with the LCIRP
determination; or
- B. Schedule a hearing on this matter

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: May 1, 2018

//s//Richard M. Husband, Esquire
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10 Mallard Court
Litchfield, NH 03052
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E-mail: RMHusband@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 1st day of May, 2018, submitted seven copies of this brief 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 1st day of May, 2018, served an electronic copy of this brief 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, Esquire
Richard M. Husband, Esquire

EXHIBIT “A”

RTAP LIST/FRACKED GAS COMPARISON

22 toxic air pollutants on [RTAP List](#) (beginning at page 15) are associated with fracked gas, either as additives or produced by combustion of this gas (VOCs).

15 of these are Toxicity Class I (most toxic); 6 are Toxicity Class II, 1 is Toxicity Class III.

10 RTAPs - 5 Toxicity Class I, 4 Toxicity Class II, 1 Toxicity Class III - are on EPA list of frequent additives to fracked gas

Sources: [RTAP List](#) (beginning at page 15) and Table 9, at p. 36, of [“Analysis of Hydraulic Fracturing Fluid Data from the FracFocus Chemical Disclosure Registry 1.0,” by the EPA \(March 2015\)](#); *see also* [EPA website](#)

Methanol: RTAP CAS No. 67 – 56 – 1, Toxicity Class II

Ethanol: RTAP CAS No. 64 – 17 – 5, Toxicity Class II

Propargyl alcohol : RTAP CAS No. 107 – 19 – 7, Toxicity Class I

Glutaraldehyde: RTAP CAS No. 111 – 30 – 8, Toxicity Class I

Ethylene glycol (aerosol): RTAP CAS No. 107 – 21 – 1, Toxicity Class II

2-Butoxyethanol: RTAP CAS No. 111 – 76 – 2, Toxicity Class I

Napthalene: RTAP CAS No. 91 – 20 – 3, Toxicity Class I

1,2,4-Trimethylbenzene: RTAP CAS No. 95 – 63 – 6, Toxicity Class II

Dimethylformamide: RTAP CAS No. 68 – 12 – 2, Toxicity Class I

Polyethylene glycol: RTAP CAS No. 25322 – 68 – 3, Toxicity Class III

11 more RTAPs - 9 Toxicity Class I, 2 Toxicity Class II – are identified Table 7 VOCs from fracked gas

Sources: [RTAP List](#) (beginning at page 15) and Table 7, at p. 21, of [“Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania,” by Nadia Steinzor, et. al. \(October 2012\)](#)

Acetone: RTAP CAS No. 67 – 64 – 1, Toxicity Class I

1,1,2-Trichloro-1,2,2-Trifluoroethane: RTAP CAS No. 76–13–1 , Toxicity Class II

Carbon tetrachloride: RTAP CAS No. 56 – 23 – 5, Toxicity Class I

Toluene: RTAP CAS No. 108 – 88 – 3, Toxicity Class I

n-Hexane: RTAP CAS No. 110 – 54 – 3, Toxicity Class II

Benzene: RTAP CAS 71 – 43 – 2, Toxicity I

Methylene chloride (dichloromethane): RTAP CAS No. 75 – 09 – 2, Toxicity Class I

Trichloroethylene: RTAP CAS No. 79 – 01 – 6, Toxicity Class I

Xylene m-isomers: RTAP CAS No. 108 – 38 – 3, Toxicity Class I

Xylene p-isomers: RTAP CAS No. 106 – 42 – 3, Toxicity Class I

Xylene o-isomers: RTAP CAS No. 95 – 47 – 6, Toxicity Class I

A 22nd RTAP, the VOC Formaldehyde - Toxicity Class I – is also found in fracked gas

Sources: pp. 18-19 at [“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. 26-27 and Appendix B, pp. 2-6 and Table 12 at p. 10, of [ATSDR/CDC Health Consultation Report \(Jan. 29, 2016\)\(asthmatics, elderly and others at risk from compressor stations\);](#) p. 5 and Appendix 1 at p. 19 of [“California’s Fracking Fluids: the Chemical Recipe,” by Tasha Stoiber, et. al. \(EWG; August 2015\)](#)

NOTE: Formaldehyde does not appear in the Table 7 VOC list because sampling for that study was done with Summa canisters. Badges are generally used for formaldehyde monitoring. Formaldehyde is a carcinogen. [Union Leader, December 18, 2015 online article by Meghan Pierce](#)

Compiled by Liz Fletcher for NH Pipeline Health Study Group, May 2016

EXHIBIT “B”

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-1

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Please identify the sources of all forms of gas to be distributed at the proposed Keene facility being considered under Docket DG 17-068, *i.e.*, the Marcellus shale fields and otherwise.

RESPONSE:

The Company is proposing to serve customers in Keene with natural gas supplies in the form of compressed natural gas (CNG) or liquefied natural gas (LNG). Over time, these supplies would replace existing propane supplies used to serve Keene customers. As with the propane supplied to customers today, the Company solicits supplies through requests for proposals aimed at providing the needed supply at the lowest cost. Both the propane and natural gas supplies to serve end users would come from a variety of different geographic locations and extraction methods. The Company is not aware of the initial source of the molecules that would comprise the future propane, CNG or LNG supply sources.

The Company is not proposing to serve Keene customers via capacity on an interstate pipeline.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152
Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-2

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Please identify the approximate percentage of gas used at the proposed Keene facility being considered under Docket DG 17-068 which will be conventional natural gas versus hydraulically fractured ("fracked") natural gas.

RESPONSE:

Please see the response to Clark 1-1.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-3

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Please identify the complete chemical composition of the conventional natural gas that will be distributed from the proposed Keene facility being considered under Docket DG 17-068, or, alternatively, attach a representative sample complete chemical analysis of the gas, or the last three such analyses of the gas whether Liberty considers them to be representative analyses or not.

RESPONSE:

Please refer to the Company's response to Clark 1-1. The Company solicits natural gas supplies through requests for proposals aimed at providing the needed supply at the lowest cost. The natural gas supply to serve customers in Keene could come from a variety of different geographic locations and extraction methods. Until such time as the Company begins to provide natural gas service to its Keene customers, it has not purchased said natural gas and is therefore not in possession of the specific natural gas and cannot provide its chemical composition.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152
Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-4

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Please identify the complete chemical composition of the fracked natural gas that will be distributed from the proposed Keene facility being considered under Docket DG 17-068, or, alternatively, attach a representative sample complete chemical analysis of the gas, or the last three such analyses of the gas whether Liberty considers them to be representative analyses or not.

RESPONSE:

The Company disagrees with the premise of the question that the natural gas that will be distributed from Keene will be "fracked." Please see the Company's responses to Clark 1-1 and 1-3.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-5

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

If Liberty's prior response did not disclose the complete chemical composition of the fracked natural gas that will be distributed from the proposed Keene facility being considered under Docket DG 17-068, please identify the approximate percentage of chemicals in the gas that were not identified.

RESPONSE:

Please see the Company's responses to Clark 1-1 and 1-3.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-6

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Please identify the complete chemical composition of the propane-air gas that has been distributed to customers under Liberty's Keene franchise, or, alternatively, attach a representative sample complete chemical analysis of the gas, or the last three such analyses of the gas whether Liberty considers them to be representative analyses or not.

RESPONSE:

See Attachment Clark 1-6 for a representative analysis of the typical chemical composition of natural gas distributed by the Company.



Microbac Laboratories, Inc. - Erie

CERTIFICATE OF ANALYSIS

17K0766

Powell Controls

John Rafferty
3 Baldwin Green Common, #201
Woburn, MA 01801

Project Name: LIB001 (Londonderry AES)

Project / PO Number: LIB001-103117GC

Received: 11/07/2017

Reported: 11/29/2017

Analytical Testing Parameters

Client Sample ID:

Sample Matrix:

Lab Sample ID:

Collection Date:

| | Result | RL | Units | Note | Prepared | Analyzed | |
|--|--------|-----|-------|-------|----------|----------|----------|
| | Result | UNC | MDA | Units | Note | Prepared | Analyzed |

Surrogate:

% Rec

% Rec

Definitions

Report Comments

Samples were received in proper condition and the reported results conform to applicable accreditation standard unless otherwise noted.

The data and information on this, and other accompanying documents, represents only the sample(s) analyzed. This report is incomplete unless all pages indicated in the footnote are present and an authorized signature is included.

Reviewed and Approved By:

Yesenia Rosa
Project Manager

Reported: 11/29/2017 17:00

Microbac Laboratories, Inc.

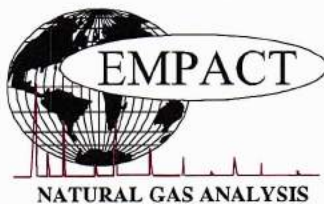
QC473 V1

PA DEP# 25-00067, NY DOH# 10121, 1962 Wager Road | Erie, PA 16509 | 814.825.8533 p | microbac.co

Page 1 of 8

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62



PRIMARY NAME/DESCRIP : ENV-AIR
DB KEY: 17K0766-01
LIB001-1
PROJECT NO. : 201711052 ANALYSIS NO.: 01
COMPANY NAME : MICROBAC LABORATORIES ANALYSIS DATE: NOVEMBER 13, 2017 11:29
OFFICE / BRANCH: ERIE, PA SAMPLE START: NOVEMBER 2, 2017 14:14
CUSTOMER REF: 17K0766 TO:

FIELD DATA

SAMPLE CYCLE: SAMPLE TYPE:
SAMPLE PRES. : "WC CYLINDER NO. : 1L TEDLAR
SAMPLE TEMP. : °f SAMPLED BY :
AMBIENT TEMP.: °f SAMPLING COMPANY:
LAB PRESSURE: - psig H2S BY STAIN TUBE: - ppm

FIELD COMMENTS

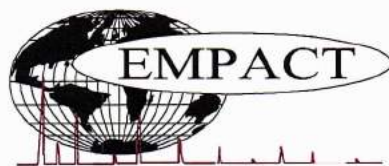
LAB COMMENTS:

| COMPONENTS | NORM. MOLE% | GPM @ 14.73 | GPM @ 14.696 |
|------------------------|----------------|----------------|-----------------|
| HELIUM | 0.00 | - | - |
| HYDROGEN | 0.00 | - | - |
| OXYGEN/ARGON | 0.57 | - | - |
| NITROGEN | 1.58 | - | - |
| CO2 | 0.10 | - | - |
| METHANE | 95.54 | - | - |
| ETHANE | 2.14 | 0.572 | 0.571 |
| PROPANE | 0.07 | 0.019 | 0.019 |
| ISOBUTANE | 0.00 | 0.000 | 0.000 |
| N-BUTANE | 0.00 | 0.000 | 0.000 |
| ISOPENTANE | 0.00 | 0.000 | 0.000 |
| N-PENTANE | 0.00 | 0.000 | 0.000 |
| HEXANES+ | 0.00 | 0.000 | 0.000 |
| TOTAL | 100.00 | 0.591 | 0.590 |
| BTU @ 60 DEG F | | 14.73 | 14.696 |
| LOW NET DRY REAL= | | 909.0 | 906.9 |
| NET SATURATED REAL= | | 893.2 | 891.1 |
| HIGH GROSS DRY REAL = | | 1009.0 | 1006.6 |
| GROSS SATURATED REAL = | | 991.5 | 989.1 |

RELATIVE DENSITY (AIR=1 @14.696 PSIA 60F) : 0.5765
COMPRESSIBILITY FACTOR : 0.99797

NOTE: REFERENCE GPA 2261(ASM D1945 & ASME-PTC), 2145, & 2172 CURRENT PUBLICATIONS

The data presented herein has been acquired by means of current analytical techniques and represents the judicious conclusion EMPACT Analytical Systems, Inc. Results of the analysis can be affected by the sampling conditions, therefore, are only warranted through proper lab protocol. EMPACT assumes no responsibility for interpretation or any consequences from application of the reported information and is the sole liability of the user. The reproduction in any media of this reported information may not be made, in portion or as a whole, without the written permission of EMPACT Analytical Systems, Inc.



SULFUR IN NATURAL GAS ANALYSIS

LEASE #: NAME/DESCRIP : ENV-AIR
17K0766-01
PROJECT NO. : 201711052 ANALYSIS NO. : 01
COMPANY NAME : MICROBAC LABORATORIES ANALYSIS DATE: NOVEMBER 13, 2017 12:24
OFFICE / BRANCH: ERIE, PA SAMPLE DATE : NOVEMBER 2, 2017 14:14
CUSTOMER REF: 17K0766 TO:

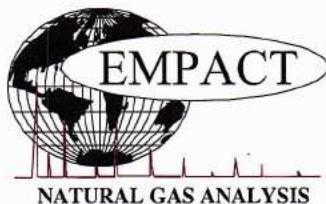
*****FIELD DATA*****

SAMPLE CYCLE: SAMPLE TYPE:
SAMPLE PRES. : - psig CYLINDER NO. : 1L TEDLAR
SAMPLE TEMP. : - °f SAMPLED BY :
AMBIENT TEMP.: - °f SAMPLING COMPANY:
LAB PRES: - psig H2S BY STAIN TUBE: - ppm
FIELD COMMENTS:
LAB COMMENTS:

| COMPONENT | SULFUR | |
|---|----------------|---------------|
| | ppm mol (ul/L) | ppm wt (ug/g) |
| Hydrogen Sulfide (H2S) | 0.2 | 0.4 |
| Carbonyl Sulfide (COS)/Sulfur Dioxide (SO2) | BDL | |
| Methanethiol (MeSH) | BDL | |
| Ethanethiol (EtSH) | BDL | |
| Dimethylsulfide (DMS) | BDL | |
| Carbon Disulfide (CS2) | BDL | |
| i-Propanethiol (i-PrSH) | 0.2 | 0.4 |
| t-Butanethiol (t-BuSH) | 1.0 | 2.7 |
| n-Propanethiol (n-PrSH) | BDL | |
| Methylethylsulfide (MES) | BDL | |
| s-Butanethiol (s-BuSH) | BDL | |
| i-Butanethiol (i-BuSH) | BDL | |
| Thiophene (TP) | BDL | |
| Diethylsulfide (DES) | BDL | |
| n-Butanethiol (n-BuSH) | BDL | |
| Dimethyldisulfide (DMDS) | BDL | |
| Unidentified Sulfurs - Light Ends | BDL | |
| Methylthiophenes (MTP) | BDL | |
| 2-Ethylthiophene (2-ETP) | BDL | |
| Methylethylsulfide (MEDS) | BDL | |
| Dimethylthiophenes (DMTP) | BDL | |
| Diethyldisulfide (DEDS) | BDL | |
| Benzothiophene (BzTP) | BDL | |
| Unidentified Sulfurs - Mid Range | BDL | |
| Methylbenzothiophenes (MBzTP) | BDL | |
| Dimethylbenzothiophenes (DMBzTP) | BDL | |
| Trimethylbenzothiophenes (TMBzTP) | BDL | |
| Dibenzothiophenes (DBzTP) | BDL | |
| Methyldibenzothiophenes (MDBzTP) | BDL | |
| <u>Unidentified Sulfurs - Heavy Ends</u> | <u>BDL</u> | |
| TOTAL SULFUR | 1.4 | 3.5 |

| | | | |
|---------------|--------------------|------------------------|--------------------|
| GRAINS OF H2S | 0.0123 / 100 scf | TOTAL GRAINS OF SULFUR | 0.1078 / 100 scf |
| POUNDS OF H2S | 0.0000 / 1000 scf | TOTAL POUNDS OF SULFUR | 0.0002 / 1000 scf |
| WT% OF H2S | 0.00004 / 1000 scf | TOTAL WT% OF SULFUR | 0.00035 / 1000 scf |

* ASTM D5504 ** DETECTION LIMIT DETERMINED TO BE 0.1 ppm (ul/L) Sulfur - BDL (BELOW DETECTION LIMIT)
The data presented herein has been acquired by means of current analytical techniques and represents the judicious conclusion EMPACT Analytical Systems, Inc.
Results of the analysis can be affected by the sampling conditions, therefore, are only warranted through proper lab protocol. EMPACT assumes no responsibility
for interpretation or any consequences from application of the reported information and is the sole liability of the user. The reproduction in any media of this
reported information may not be made, in portion or as a whole, without the written permission of EMPACT Analytical Systems, Inc.



PRIMARY NAME/DESCRIP : ENV-AIR
DB KEY: 17K0766-02
LIB001-2
PROJECT NO. : 201711052 ANALYSIS NO.: 02
COMPANY NAME : MICROBAC LABORATORIES ANALYSIS DATE: NOVEMBER 13, 2017 11:52
OFFICE / BRANCH: ERIE, PA SAMPLE START: NOVEMBER 2, 2017 14:15
CUSTOMER REF: 17K0766 TO:

FIELD DATA

SAMPLE CYCLE: SAMPLE TYPE:
SAMPLE PRES. : "WC CYLINDER NO. : 1L TEDLAR
SAMPLE TEMP. : %f SAMPLED BY :
AMBIENT TEMP.: %f SAMPLING COMPANY:
LAB PRESSURE: - psig H2S BY STAIN TUBE: - ppm

FIELD COMMENTS

LAB COMMENTS:

| COMPONENTS | NORM. MOLE% | GPM @ 14.73 | GPM @ 14.696 |
|------------------------|----------------|----------------|-----------------|
| HELIUM | 0.00 | - | - |
| HYDROGEN | 0.00 | - | - |
| OXYGEN/ARGON | 4.84 | - | - |
| NITROGEN | 16.83 | - | - |
| CO2 | 0.10 | - | - |
| METHANE | 76.33 | - | - |
| ETHANE | 1.84 | 0.492 | 0.491 |
| PROPANE | 0.06 | 0.017 | 0.016 |
| ISOBUTANE | 0.00 | 0.000 | 0.000 |
| N-BUTANE | 0.00 | 0.000 | 0.000 |
| ISOPENTANE | 0.00 | 0.000 | 0.000 |
| N-PENTANE | 0.00 | 0.000 | 0.000 |
| HEXANES+ | 0.00 | 0.000 | 0.000 |
| TOTAL | 100.00 | 0.509 | 0.507 |
| BTU @ 60 DEG F | | 14.73 | 14.696 |
| LOW NET DRY REAL= | | 728.2 | 726.5 |
| NET SATURATED REAL= | | 715.5 | 713.8 |
| HIGH GROSS DRY REAL = | | 808.2 | 806.3 |
| GROSS SATURATED REAL = | | 794.1 | 792.2 |

RELATIVE DENSITY (AIR=1 @14.696 PSIA 60F) : 0.6614
COMPRESSIBILITY FACTOR : 0.99840

NOTE: REFERENCE GPA 2261(ASTM D1945 & ASME-PTC), 2145, & 2172 CURRENT PUBLICATIONS

The data presented herein has been acquired by means of current analytical techniques and represents the judicious conclusion EMPACT Analytical Systems, Inc. Results of the analysis can be affected by the sampling conditions, therefore, are only warranted through proper lab protocol. EMPACT assumes no responsibility for interpretation or any consequences from application of the reported information and is the sole liability of the user. The reproduction in any media of this reported information may not be made, in portion or as a whole, without the written permission of EMPACT Analytical Systems, Inc.



SULFUR IN NATURAL GAS ANALYSIS

LEASE #: NAME/DESCRIP : ENV-AIR
17K0766-02
PROJECT NO. : 201711052 ANALYSIS NO. : 02
COMPANY NAME : MICROBAC LABORATORIES ANALYSIS DATE: NOVEMBER 13, 2017 12:42
OFFICE / BRANCH: ERIE, PA SAMPLE DATE : NOVEMBER 2, 2017 14:15
CUSTOMER REF: 17K0766 TO:

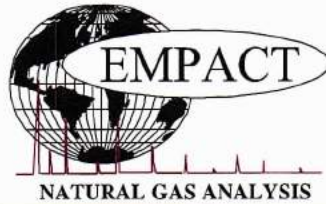
*****FIELD DATA*****

SAMPLE CYCLE: SAMPLE TYPE:
SAMPLE PRES. : - psig CYLINDER NO. : 1L TEDLAR
SAMPLE TEMP. : - °f SAMPLED BY :
AMBIENT TEMP.: - °f SAMPLING COMPANY:
LAB PRES: - psig H2S BY STAIN TUBE: - ppm
FIELD COMMENTS:
LAB COMMENTS:

| COMPONENT | SULFUR | |
|---|----------------|---------------|
| | ppm mol (ul/L) | ppm wt (ug/g) |
| Hydrogen Sulfide (H2S) | 0.2 | 0.4 |
| Carbonyl Sulfide (COS)/Sulfur Dioxide (SO2) | BDL | |
| Methanethiol (MeSH) | BDL | |
| Ethanethiol (EtSH) | BDL | |
| Dimethylsulfide (DMS) | BDL | |
| Carbon Disulfide (CS2) | BDL | |
| i-Propanethiol (i-PrSH) | 0.2 | 0.3 |
| t-Butanethiol (t-BuSH) | 1.0 | 2.3 |
| n-Propanethiol (n-PrSH) | BDL | |
| Methylethylsulfide (MES) | BDL | |
| s-Butanethiol (s-BuSH) | BDL | |
| i-Butanethiol (i-BuSH) | BDL | |
| Thiophene (TP) | BDL | |
| Diethylsulfide (DES) | BDL | |
| n-Butanethiol (n-BuSH) | BDL | |
| Dimethyldisulfide (DMDS) | BDL | |
| Unidentified Sulfurs - Light Ends | BDL | |
| Methylthiophenes (MTP) | BDL | |
| 2-Ethylthiophene (2-ETP) | BDL | |
| Methylethylthiophene (MEDS) | BDL | |
| Dimethylthiophenes (DMTP) | BDL | |
| Diethylthiophene (DEDS) | BDL | |
| Benzothiophene (BzTP) | BDL | |
| Unidentified Sulfurs - Mid Range | BDL | |
| Methylbenzothiophenes (MBzTP) | BDL | |
| Dimethylbenzothiophenes (DMBzTP) | BDL | |
| Trimethylbenzothiophenes (TMBzTP) | BDL | |
| Dibenzothiophenes (DBzTP) | BDL | |
| Methyldibenzothiophenes (MDBzTP) | BDL | |
| Unidentified Sulfurs - Heavy Ends | BDL | |
| TOTAL SULFUR | 1.4 | 3.0 |

| | | | |
|---------------|--------------------|------------------------|--------------------|
| GRAINS OF H2S | 0.0141 / 100 scf | TOTAL GRAINS OF SULFUR | 0.1060 / 100 scf |
| POUNDS OF H2S | 0.0000 / 1000 scf | TOTAL POUNDS OF SULFUR | 0.0002 / 1000 scf |
| WT% OF H2S | 0.00004 / 1000 scf | TOTAL WT% OF SULFUR | 0.00030 / 1000 scf |

* ASTM D5504 ** DETECTION LIMIT DETERMINED TO BE 0.1 ppm (ul/L) Sulfur - BDL (BELOW DETECTION LIMIT)
The data presented herein has been acquired by means of current analytical techniques and represents the judicious conclusion EMPACT Analytical Systems, Inc. Results of the analysis can be affected by the sampling conditions, therefore, are only warranted through proper lab protocol. EMPACT assumes no responsibility for interpretation or any consequences from application of the reported information and is the sole liability of the user. The reproduction in any media of this reported information may not be made, in portion or as a whole, without the written permission of EMPACT Analytical Systems, Inc.



PRIMARY NAME/DESCRIP : ENV-AIR
DB KEY: 17K0766-03
LIB001-3
PROJECT NO. : 201711052 ANALYSIS NO.: 03
COMPANY NAME : MICROBAC LABORATORIES ANALYSIS DATE: NOVEMBER 13, 2017 12:15
OFFICE / BRANCH: ERIE, PA SAMPLE START: NOVEMBER 2, 2017 14:18
CUSTOMER REF: 17K0766 TO:

FIELD DATA

SAMPLE CYCLE: SAMPLE TYPE:
SAMPLE PRES. : "WC CYLINDER NO. : 1L TEDLAR
SAMPLE TEMP. : °f SAMPLED BY :
AMBIENT TEMP.: °f SAMPLING COMPANY:
LAB PRESSURE: - psig H2S BY STAIN TUBE: - ppm

FIELD COMMENTS

LAB COMMENTS:

| COMPONENTS | NORM. MOLE% | GPM @ 14.73 | GPM @ 14.696 |
|--------------|----------------|----------------|-----------------|
| HELIUM | 0.01 | - | - |
| HYDROGEN | 0.00 | - | - |
| OXYGEN/ARGON | 0.74 | - | - |
| NITROGEN | 1.95 | - | - |
| CO2 | 0.13 | - | - |
| METHANE | 94.97 | - | - |
| ETHANE | 2.13 | 0.569 | 0.568 |
| PROPANE | 0.07 | 0.019 | 0.019 |
| ISOBUTANE | 0.00 | 0.000 | 0.000 |
| N-BUTANE | 0.00 | 0.000 | 0.000 |
| ISOPENTANE | 0.00 | 0.000 | 0.000 |
| N-PENTANE | 0.00 | 0.000 | 0.000 |
| HEXANES+ | 0.00 | 0.000 | 0.000 |
| TOTAL | 100.00 | 0.588 | 0.587 |

| | | |
|------------------------|--------|--------|
| BTU @ 60 DEG F | 14.73 | 14.696 |
| LOW NET DRY REAL= | 903.7 | 901.6 |
| NET SATURATED REAL= | 888.0 | 885.9 |
| HIGH GROSS DRY REAL = | 1003.0 | 1000.7 |
| GROSS SATURATED REAL = | 985.6 | 983.3 |

RELATIVE DENSITY (AIR=1 @14.696 PSIA 60F) : 0.5792
COMPRESSIBILITY FACTOR : 0.99798

NOTE: REFERENCE GPA 2261(ASTM D1945 & ASME-PTC), 2145, & 2172 CURRENT PUBLICATIONS
The data presented herein has been acquired by means of current analytical techniques and represents the judicious conclusion EMPACT Analytical Systems, Inc. Results of the analysis can be affected by the sampling conditions, therefore, are only warranted through proper lab protocol. EMPACT assumes no responsibility for interpretation or any consequences from application of the reported information and is the sole liability of the user. The reproduction in any media of this reported information may not be made, in portion or as a whole, without the written permission of EMPACT Analytical Systems, Inc.



SULFUR IN NATURAL GAS ANALYSIS

LEASE #: NAME/DESCRIP : ENV-AIR
17K0766-03
PROJECT NO. : 201711052 ANALYSIS NO. : 03
COMPANY NAME : MICROBAC LABORATORIES ANALYSIS DATE: NOVEMBER 13, 2017 12:59
OFFICE / BRANCH: ERIE, PA SAMPLE DATE : NOVEMBER 2, 2017 14:18
CUSTOMER REF: 17K0766 TO:

*****FIELD DATA*****

SAMPLE CYCLE: SAMPLE TYPE:
SAMPLE PRES. : - psig CYLINDER NO. : 1L TEDLAR
SAMPLE TEMP. : - °f SAMPLED BY :
AMBIENT TEMP.: - °f SAMPLING COMPANY:
LAB PRES: - psig H2S BY STAIN TUBE: - ppm
FIELD COMMENTS:
LAB COMMENTS:

| COMPONENT | SULFUR | |
|---|----------------|---------------|
| | ppm mol (ul/L) | ppm wt (ug/g) |
| Hydrogen Sulfide (H2S) | 0.2 | 0.4 |
| Carbonyl Sulfide (COS)/Sulfur Dioxide (SO2) | BDL | |
| Methanethiol (MeSH) | BDL | |
| Ethanethiol (EtSH) | BDL | |
| Dimethylsulfide (DMS) | BDL | |
| Carbon Disulfide (CS2) | BDL | |
| i-Propanethiol (i-PrSH) | 0.2 | 0.4 |
| t-Butanethiol (t-BuSH) | 1.0 | 2.7 |
| n-Propanethiol (n-PrSH) | BDL | |
| Methylethylsulfide (MES) | BDL | |
| s-Butanethiol (s-BuSH) | BDL | |
| i-Butanethiol (i-BuSH) | BDL | |
| Thiophene (TP) | BDL | |
| Diethylsulfide (DES) | BDL | |
| n-Butanethiol (n-BuSH) | BDL | |
| Dimethyldisulfide (DMDS) | BDL | |
| Unidentified Sulfurs - Light Ends | BDL | |
| Methylthiophenes (MTP) | BDL | |
| 2-Ethylthiophene (2-ETP) | BDL | |
| Methylethyldisulfide (MEDS) | BDL | |
| Dimethylthiophenes (DMTP) | BDL | |
| Diethyldisulfide (DEDS) | BDL | |
| Benzothiophene (BzTP) | BDL | |
| Unidentified Sulfurs - Mid Range | BDL | |
| Methylbenzothiophenes (MBzTP) | BDL | |
| Dimethylbenzothiophenes (DMBzTP) | BDL | |
| Trimethylbenzothiophenes (TMBzTP) | BDL | |
| Dibenzothiophenes (DBzTP) | BDL | |
| Methyldibenzothiophenes (MDBzTP) | BDL | |
| <u>Unidentified Sulfurs - Heavy Ends</u> | <u>BDL</u> | |
| TOTAL SULFUR | 1.4 | 3.5 |

| | | | |
|---------------|--------------------|------------------------|--------------------|
| GRAINS OF H2S | 0.0124 / 100 scf | TOTAL GRAINS OF SULFUR | 0.1083 / 100 scf |
| POUNDS OF H2S | 0.0000 / 1000 scf | TOTAL POUNDS OF SULFUR | 0.0002 / 1000 scf |
| WT% OF H2S | 0.00004 / 1000 scf | TOTAL WT% OF SULFUR | 0.00035 / 1000 scf |

* ASTM D5504 ** DETECTION LIMIT DETERMINED TO BE 0.1 ppm (ul/L) Sulfur - BDL (BELOW DETECTION LIMIT)
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Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18

Request No. Clark 1-7

Date of Response: 4/23/18

Respondent: William R. Killeen

REQUEST:

Please identify the complete chemical composition of the gas that was first distributed under the Keene gas franchise at issue in Docket DG 17-068 when the franchise was first awarded in or circa 1860. Should the composition be unclear at this time, please identify the likely composition to the best of Liberty's ability, identifying the supporting source(s).

RESPONSE:

The Company's records do not contain the requested information.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152
Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-8

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Reference Liberty's Amended Petition in Docket DG 17-068, ¶ 16. Please identify the likely complete chemical composition of any water gas that was sold to Keene customers under the Keene gas franchise, as of 1913 and otherwise.

RESPONSE:

The Company does not have this information.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152
Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-9

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Reference Liberty's Amended Petition in Docket DG 17-068, ¶ 16. Please identify the likely complete chemical composition of any coal gas that was sold to Keene customers under the Keene gas franchise, as of 1913 and otherwise.

RESPONSE:

The Company does not have this information.

EXHIBIT “C”

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152
Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-10

Date of Response: 4/23/18
Respondent: William R. Killeen
William J. Clark

REQUEST:

Reference RSA 162-H:2, VII(a). Please state the total onsite gas storage capacity of the proposed Keene facility being considered under Docket DG 17-068 and identify how many days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station the facility will be able to operate with a full complement of gas stored at the site.

RESPONSE:

A new, high-efficiency 30 megawatt electric generating station would consume an equivalent of approximately 325,000 gallons of LNG over seven days, or approximately 46,400 gallons of LNG per day, operating continuously at full capacity, assuming a heat rate of 7,100 Btu/kWh.

The proposed facilities at Keene, assuming full build out, would include storage facilities for an equivalent of 100,000 gallons of LNG. Thus, the proposed Keene storage would be capable of fueling a 30 MW electric generating facility for approximately 2.2 days.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152
Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-11

Date of Response: 4/23/18
Respondent: William R. Killeen
William J. Clark

REQUEST:

Reference RSA 162-H:2, VII(a). Please state how many days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station the proposed Lebanon facility being considered under Docket DG 16-852 will be able to operate with a full complement of gas stored at the site.

RESPONSE:

A new, high-efficiency 30 megawatt electric generating station would consume an equivalent of approximately 325,000 gallons of LNG over seven days, or approximately 46,400 gallons of LNG per day, operating continuously at full capacity, assuming a heat rate of 7,100 Btu/kWh.

The proposed facilities at Lebanon, assuming full build out, would include storage facilities for an equivalent of 240,000 gallons of LNG. Thus, the proposed Lebanon storage would be capable of fueling a 30 MW electric generating facility for approximately 5.2 days.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-12

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Reference RSA 162-H:2, VII(a). Please state how many days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station the proposed Epping facility being considered under Docket DG 17-198 will be able to operate with a full complement of gas stored at the site.

RESPONSE:

A new, high-efficiency 30 megawatt electric generating station would consume an equivalent of approximately 325,000 gallons of LNG over seven days, or approximately 46,400 gallons of LNG per day, operating continuously at full capacity, assuming a heat rate of 7,100 Btu/kWh.

The proposed storage facility at Epping is a 2 Bcf LNG tank, which is equivalent to approximately 25 million gallons of LNG. Thus, the proposed Granite Bridge LNG tank would be capable of fueling a 30 MW electric generating facility for approximately 77 weeks or 1.5 years.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18

Request No. Clark 1-13

Date of Response: 4/23/18

Respondent: William R. Killeen

REQUEST:

Will the proposed Keene facility being considered under Docket DG 17-068 ever receive or otherwise have access to any of the gas being processed and/or stored at the proposed Epping facility being considered under Docket DG 17-198 or the proposed Lebanon facility being considered under Docket DG 16-852? If so, please identify all such quantities of gas that the proposed Keene facility may receive or will have access to, and under what circumstances.

RESPONSE:

The proposed LNG facility at Epping has not been designed to supply the needs of Keene or Hanover-Lebanon. The supply needs for Keene and Hanover-Lebanon are yet to be finalized. The Company will identify a range of supply alternatives, including a competitive solicitation of supply from third parties, and determine which is the best-cost supply alternative to meet the needs of the Company's customers in these locations.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-14

Date of Response: 4/23/18
Respondent: William R. Killeen

REQUEST:

Please identify all planned and potential interaction between the facilities being considered for Keene under Docket DG 17-068, Lebanon under Docket DG 16-852 and Epping under Docket DG 17-198, including, but not limited to, the potential sharing of gas stored at any of the facilities.

RESPONSE:

As stated in the Company's response to Clark 1-13, the proposed Granite Bridge LNG facility has been designed to serve the needs of EnergyNorth's current and future customers within the Company's existing service territories and the potential franchise areas along the Granite Bridge pipeline.

LNG required at the smaller LNG facilities proposed in Keene and Lebanon would be received by truck from several potential LNG suppliers in the region. While LNG supplies could also be physically received from the Granite Bridge LNG facility, it has not been designed for that purpose. No other physical interaction is anticipated besides personnel used to maintain and operate each of these facilities, as required for safe operation and to cover for employees on vacation and sick leave.

EXHIBIT “D”

Subject: RE: DES Toxic Air Regulations

From: "Milbury, Gary" <Gary.MilburyJr@des.nh.gov>

Date: 8/25/2017 4:06 PM

To: 'Richard Husband' <rmhusband@gmail.com>

CC: Liz Fletcher <lizfletcher@jacqcad.com>, Bev Edwards <nadesha@msn.com>,

"dwhitbeck@hotmail.com" <dwhitbeck@hotmail.com>, MLearner <mzlearner@gmail.com>, Sue Durling <sueldu@gmail.com>, Julia Steed Mawson <islandview999@gmail.com>, Gwen Whitbeck <gwenwhitbeck@gmail.com>, "North, Pat" <Patricia.North@des.nh.gov>

Good Afternoon,

Thank you for your patience on the update; it's just been very busy here over the past few weeks.

Just to back up a bit - as you may recall, after we received your comments on the list of compounds proposed for sampling/analysis, Pat North prepared a request for information (RFI) that was sent out to a number of labs around the country. The RFI was intended to receive feedback from labs on their qualifications/certifications, the compounds they can (or cannot) analyze, how low a level these compounds can be detected at, and other information along these lines. This was intended to help us get an idea on sampling methods, equipment, etc. so we can prepare a more comprehensive Request for Bids (RFB). The goal was to solicit bids by around mid-April, with subsequent sampling likely around early to mid-summer, with the intent of sampling when we expect close to 100% of the gas to be coming from the PA area.

Due to the uniqueness of this sampling effort, we reached out to as many laboratories as possible; we ultimately sent the RFI to 27 labs around the U.S. Not all of the labs initially responded, so Pat North reached out to encourage them to reply. We found that nine of the labs ultimately do not perform natural gas analyses. Of the remaining labs, we made multiple attempts to contact them for a response but did not ultimately hear back; not sure if this was due to their lack of lab capability.

We are currently trying to figure out a number of challenges based on our research and discussions with labs to date:

- No single laboratory has the capability of analyzing natural gas for all of the constituents of interest. This means each class of analyte may require collection of multiple containers to be sent to multiple laboratories. In addition, the gas volumes needed for some analyses may require multiple containers per sample.
- Special shipping and handling requirements:
 - Gaseous samples normally have a 24 to 48 hour holding time before analysis must commence or the sample results become suspect. Natural gas cannot be shipped by air due to regulations enacted after 9/11, therefore these samples must be shipped by truck (i.e. ground). The short sample holding time requirements make shipping by ground to laboratories located out west inexpedient.
 - The person packaging and filling out the sample shipping paperwork requires a hazardous material shipper certification. No one here at DES possesses this certification and the shipping company (such as FedEx or UPS) will not take the responsibility of packaging and completing the shipping papers. While we obviously need to coordinate with the gas utility for sampling purposes, we may need them to be more involved in the sample shipping process.
- Samples of natural gas cannot be analyzed directly for metals or for Formaldehyde, Acetaldehyde, Gluteraldehyde, and Propionaldehyde (aldehydes) but must be collected in a sampling media.

- For metals, the natural gas must first be passed through a filter followed by aqueous acidic solutions to trap the metal components. These filters and solutions would then be sent for analysis of the metals of interest. The volume of natural gas that would be required to collect a viable metals sample would be in excess of 850 cubic feet (this would equate to over one hour of sampling).
- For the aldehydes, sampling would require passing the natural gas through solid sorbent tubes coated with a special chemical, or through a special chemical solution. The tubes/solution would then be sent for analysis.
- Natural gas is flammable and explosive and given the amount of gas needed to collect samples for metals and aldehydes, this is of significant concern for staff. We need to have further conversations with the gas utility on how this can be addressed appropriately/safely. The sampling pumps used will have to be intrinsically safe (i.e. suitable for sampling explosive and flammable gases).
- The sample collection methods for metals and aldehydes are for emission stack and ambient air sampling, and there is a multitude of information on the effects of the gas matrix on the sampling media (i.e. possible analytical interferences). Given that these sample collection methods have not been validated for pipeline natural gas samples, there is no information on possible adverse effects on the sampling media which may hinder the gathering of quality analytical data.
- Due to the concentration of methane in pipeline natural gas (typically greater than 95% methane), samples that will be analyzed for VOCs must be diluted by the laboratory so that the analytical detector is not overwhelmed and possibly damaged. The more the sample is diluted, the higher the detection limit for the target VOCs become. For example, if the normal detection limit for 1,3-Butadiene by gas chromatography/mass spectrometry is 0.005 part per million (ppm), and the concentration of methane in natural gas is 98,000,000 ppm (i.e., 98%); to protect the analytical equipment from damage, the natural gas sample would require a dilution of 5,000,000 times with clean dry air prior to analysis. If 1,3-Butadiene were not detected in the diluted sample (i.e. less than 0.005 ppm), the detection limit would be 25,000 ppm ($0.005 \text{ ppm} \times 5,000,000$; or $<1\%$) which would yield no useful information.
- We received one comment from a lab that regularly does natural gas analyses. They stated that "We routinely analyze natural gas, but as far as we know, we account for all compound in the gas, including the hydrocarbons and the fixed gases such as N₂, CO₂, Ar, H₂, and He. The one "vague" component we detect is "C₆+", which is the total of all combustible compounds larger than nC₅. So, fracking compounds could be included in that, but we don't know." This is helpful in that it tells us that we could perhaps look at the list of compounds (that we originally indicated we would sample for) and focus the list down to those that fall into the C₆+ group. That may help ameliorate some of the issues/concerns above with regard to sampling volumes and shipping restrictions.

Given all of the logistical and safety issues noted above, we have been spending some our time digging more into recent studies, data collection and sampling efforts, etc. to see if existing/new information can help us further focus our sampling effort. We hope to have a little more to say in the next few weeks.

Feel free to call me if you want to discuss any particulars.

Best,

Gary
Gary Milbury
Permitting and Environmental Health Bureau Administrator
NH Department of Environmental Services

Air Resources Division
phone: (603) 271-2630
fax: (603) 271-1381
email: gary.milbury@des.nh.gov

From: Richard Husband [mailto:rmhusband@gmail.com]
Sent: Wednesday, August 9, 2017 9:21 AM
To: Milbury, Gary
Cc: Liz Fletcher; Bev Edwards; dwhitbeck@hotmail.com; M Learner; Sue Durling; Julia Steed Mawson; Gwen Whitbeck; North, Pat
Subject: Re: DES Toxic Air Regulations

We know that you haven't forgotten us.

Thanks, Gary.

Richard

On Wed, Aug 9, 2017 at 9:01 AM, Milbury, Gary <Gary.MilburyJr@des.nh.gov> wrote:
Just a note that I haven't forgotten about you, I plan to get you an update ASAP.

Gary

-----Original Message-----

From: Milbury, Gary
Sent: Wednesday, August 2, 2017 9:28 AM
To: 'Richard Husband'
Cc: Liz Fletcher; Bev Edwards; dwhitbeck@hotmail.com; M Learner; Sue Durling; Julia Steed Mawson; Gwen Whitbeck; North, Pat
Subject: RE: DES Toxic Air Regulations

Hi Richard,

Thanks for reaching out; it has been some time since the last update. I have a few things going on at the moment, but will get back to you with an update ASAP.

Thanks

Gary

-----Original Message-----

From: Richard Husband [mailto:rmhusband@gmail.com]

Sent: Tuesday, August 1, 2017 8:17 AM

To: Milbury, Gary

Cc: Liz Fletcher; Bev Edwards; dwhitbeck@hotmail.com; M Learner; Sue Durling; Julia Steed Mawson; Gwen Whitbeck

Subject: Re: DES Toxic Air Regulations

Hi, Gary:

I thought that I would check in and see where you are at on your end in the gas analysis. When you have time, we would greatly appreciate an update.

Thank you,

Richard Husband

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

Liberty Utilities (EnergyNorth Natural Gas Corp.) d/b/a Liberty Utilities

Petition for Declaratory Ruling

Liberty's Memorandum of Law

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the "Company" or "Liberty"), through counsel, respectfully submits the following memorandum of law on the sole question before the Commission in this docket: whether Liberty currently holds the right to distribute natural gas to its Keene customers, and thus need not seek such permission pursuant to RSA 374:22 and RSA 374:26.

Background

By petition dated April 24, 2017, the Company asked the Commission to declare that Liberty need not seek franchise approval to serve natural gas in its Keene franchise area. By Order No. 26,065 at 3 (Oct. 20 2017), the Commission granted Liberty's request, finding that the Company already "has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene."

Mr. Clark filed a motion to intervene and a motion for rehearing. By Order No. 26,087 (Dec. 18, 2017), the Commission granted both motions. The order described the process to be afforded to Mr. Clark and stated the sole issue to be addressed: "[W]e will afford Mr. Clark and other interested persons the opportunity to present their legal arguments to the Commission in

this matter” by “submit[ing] 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.” Order at 5.

The Commission later issued an order of notice which repeated that the issue to be decided in this docket is “whether RSA 374:22 and RSA 374:26 require Liberty to obtain additional franchise permissions from the Commission before converting the type of gas Liberty delivers from propane ... to CNG and LNG, decompressed to a suitable pressure for local distribution.” The order of notice also scheduled a prehearing conference and technical session to develop a schedule for filing legal briefs. By secretarial letter dated April 11, 2018, the Commission ordered that briefs are due May 1, 2018, and reply briefs may be filed through May 15, 2018.

Argument

It is Liberty’s position that the Commission already reached the correct decision in this matter in Order No. 26,065 when it stated that Liberty already “has the authority to offer compressed natural gas and liquefied natural gas service to customers in Keene.” *Id.* at 3. The Commission supported this conclusion with language from the franchise statute itself, which “includes in the definition of ‘public utility’ the activity of the ‘distribution or sale of gas.’ This statute does not differentiate among various types of gas.” *Id.* (citing RSA 374:22). The Commission’s reasoning is straightforward:

We find the Company’s arguments that CNG and LNG constitute gas of the same character as the propane-air mixture currently supplied to Liberty-Keene customers to be persuasive. This interpretation of gas service is consistent with prior Commission decisions allowing natural gas utilities to supplement natural gas supply with propane without requiring additional franchise approval under RSA 374:22 and RSA 374:26. See, e.g., *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). Consistent with this

interpretation of gas service, we conclude that (1) Liberty possesses a franchise to provide gas service which includes CNG/LNG service in Keene, and (2) that Liberty has continually exercised this franchise, as referenced in RSA 374:22, I, to the present day.

Id.

The Commission's analysis and conclusion in Order No. 26,065 are correct, and there is no basis to change that conclusion on reconsideration.

The rest of this memorandum restates in summary fashion the contents of the Company's original petition, which underscores the folly of requiring Liberty to seek franchise approval for changing fuel when neither Liberty's predecessor in Keene nor any other gas utilities in New Hampshire have been required to seek franchise permission as they changed fuels over the past 150 years.

Summary of Liberty's Petition

"Gas" includes "natural gas"

The current Commission rule defines "gas" as "any manufactured or natural gas or any combination thereof," Puc 502.06 , and the Commission has approved the Keene Division tariff that allows for natural gas: "Manufactured gas or equivalent will be supplied at a heat content value greater than or equal to the heat content value specified on Original Page 17." Keene Tariff NHPUC No. 1 at Original Pages 13 and 15.¹ Therefore, the Company already has

¹ Note that the tariff of EnergyNorth, known as a natural gas utility, conversely allow the use of propane. "Gas" is defined as "Natural Gas that is received by the Company from a Transporting Pipeline" and "the term shall include amounts of vaporized liquefied natural Gas and/or propane-air vapor that are introduced by the Company into its system and made available to the Customer as the equivalent of natural Gas that the Customer is otherwise entitled to have delivered by the Company." Original Page 86. The tariff of Northern Utilities contains the same definition, at Original Page 102.

permission through definition of gas in Puc 502.06 and through the Commission-approved tariff to serve natural gas in Keene.

Switching to Natural Gas is not a Change in the Character of Service

The argument that moving from propane to natural gas is a “change in the character of service” that warrants a new franchise petition is without merit. The only references to that phrase do not support the argument.

Puc 503.04, titled “Change in Character of Service,” requires utilities to “readjust [customer] appliances” if a “change in pressure or composition of the gas” affects their operation, but the rule does not require a franchise filing. Rather, Puc 503.04 supports this petition. If there is a “change in ... composition of the gas,” (e.g., if the gas changes from propane-air to natural gas), then the Company must “readjust those appliances for the new conditions,” again without the need to make a franchise filing.

There are three sections of the Keene tariff titled “character of service.” Two of these sections are identical. They appear on the residential and commercial rate schedules, and they consist of the following sentence already quoted above: “CHARACTER OF SERVICE: Manufactured gas or equivalent will be supplied at a heat content value greater than or equal to the heat content value specified on Original Page 17.” Original Pages 13 and 15. Since natural gas and propane are both “equivalent” to “manufactured gas,” the conversion from propane to natural gas does not constitute a change in the “character of service.”

The third section in the Keene tariff titled “Character of Service” provides as follows:

2. (a) Gas Supply. This tariff applies only to the supply of gas at the company’s standard heat content value, adjusted for temperature and pressure, in the locality in which the premises to be served are situated.

Original Page 4. Although conversion to natural gas would constitute a change in the provisions of this section because propane air and natural gas have different heat content values, the Company has filed a request to add the heat content value of natural gas to the Keene Tariff. See Docket No. DG 17-069. Such a ministerial tariff filing does not implicate the franchise statutes.

Even assuming the reference to “character of service” intended a broader interpretation outside the Puc 500 rules and the specifics of the Keene tariff, providing natural gas is not a change in the character of service because every material aspect of the Company’s service will remain the same. The Company will continue to use the same underground pipeline system to distribute gas from a central facility to its customers, the nature of the gas delivered will be the same, customers will use the same appliances with only minor modifications at the Company’s expense, the Company will bill the customers at the same per-therm rate approved by the Commission in the cost of gas proceedings, and the Company will provide the same customer service. Thus, there will be no change in the character of service.

Otherwise, the Company could find no reference to the phrase “change in the character of service” that is the purported grounds for requiring a new franchise filing. Specifically, the Company found no franchise order based on a utility’s change in the character of its service.

Gas Utilities Have Historically Changed Fuels Without Commission Filings

Liberty’s history in Keene is consistent with the interpretation that its existing franchise is for gas, not propane air, and that the Company and its predecessors were free to change fuels without having to obtain franchise permission from the Commission.

The Legislature established the original gas utility in Keene and granted it the franchise to distribute “gas” 50 years before the Commission’s 1911 birth.

Section 1. That Thomas H. Loverett, Josiah H. Carter [and others], their associates and successors, are hereby constituted a body politic and corporate, by

the name of the Keene Gas Light Company, and vested with all the powers and privileges, and subject to all the restrictions and liabilities by law incident to corporations of a similar nature.

Sec. 2. That said corporation is authorized to purchase and hold all such real and personal property as may be necessary and proper to enable them to carry on the manufacture, distribution and sale of gas, for the purpose of lighting the streets, manufactories, machine shops, and all other buildings in the town of Keene, and to construct or purchase such buildings, works, furnaces, reservoirs, gas holders, gas pipes, and other things as may be requisite and proper for such purpose.

Laws of 1860, Chapter 2451. The Company has continuously possessed the franchise for delivering “gas” since 1860.

In its first iteration of the *Rules Prescribing Standards of Purity, Pressure and Heating Value of Gas, and Providing for the Periodic Testing thereof, and for the Testing of Meters, and Otherwise Regulating the Service of Gas Utilities*, the then-named Public Service Commission defined “gas” within its definition of “utility” as follows: “the word ‘utility’ shall be taken to mean any public utility engaged in supplying to the public water gas, coal gas or a mixture of the two.” 2 NH PUC 115, 116 (1913). The definition broadened in a subsequent version of the rules: “The word ‘gas’ shall be taken to mean any gas as manufactured by any process in which the gas is delivered from generating or producing equipment into utility transmission or distribution systems.” 24 NH PUC 401, 402 (1942). The definition took its final form in 1962: “‘Gas’ – any manufactured or natural gas or any combination thereof.” *Rules and Regulations Prescribing Standards for Gas Utilities*, 44 NH PUC 5, 6 (1962).

Consistent with its right to distribute “gas” and with these broad definitions of gas, the Company changed the fuel distributed over the last 150 years without franchise approval or other permission from the Commission. Liberty’s earliest predecessor distributed manufactured gas. The Company switched from manufactured gas to butane in 1954, then to butane-air in 1968,

then to propane-air in 1974. Note that the two changes from butane to butane-air, then from butane-air to propane-air occurred under the current definition of “gas.” There is no record of Commission involvement in these fuel switches in Keene. Liberty’s proposed change from propane-air to natural gas is simply another such change.

Nor were any orders found that authorized similar changes in fuels by the other New Hampshire gas distribution utilities. Rather, there are references in Commission orders to the fact that gas utilities distributed different fuels, changed from one fuel to another, and of a utility being able to distribute “natural gas” under the franchise acquired from a “propane distribution utility” without mention of the need for Commission approval of franchise changes.

In a series of 1973 orders arising from Tennessee Gas Pipeline Company’s inability to provide sufficient capacity, in which the Commission granted requests for a moratorium, the orders noted without any comment on the issues related to this petition that the companies relied heavily on propane to provide baseload service due to the shortage of natural gas:

Gas Service, Inc. has been notified by its supplier of natural gas (Tennessee Gas Pipeline Company) that it will be unable to increase its supply. In addition, Gas Service, Inc. has been unable to obtain firm commitments for the necessary quantities of propane to supplement the natural gas supply.

The testimony of the Petitioner’s witness indicated that Gas Service, Inc. had made every reasonable effort to obtain commitments, including the leasing of 40 tank cars, the installation of a railroad sidetrack, and the installation of eight storage tanks, to provide storage facilities for propane gas. Accordingly, it appears to be consistent with the public interest to permit the restrictions as outlined in Supplement No. 5 to its Tariff to become effective with the date of this Order. Our order will issue accordingly.

Gas Service, Inc., 58 NH PUC 48 (July 24, 1973); *see Manchester Gas Company*, 58 NH PUC 71, (Oct. 2, 1973); *Concord Natural Gas Corp.*, 58 NH PUC 78 (Oct. 16, 1973).

Similarly, Liberty’s EnergyNorth system stores large amounts of propane at its Amherst facility, and mixes in propane as needed from other facilities located in Manchester, Nashua, and

Tilton, which it distributes through its pipeline system for pressure support, peaking supply, and as otherwise needed. There is no record of EnergyNorth obtaining the franchise to distribute propane.

In *Petrolane-Southern New Hampshire Gas Co.*, 74 NH PUC 43 (Jan. 17, 1989), the Commission approved the asset transfer of a propane distribution company to Northern Utilities. The Commission found that the transfer, which included Petrolane-Southern's franchise under which it only distributed propane, was for the public good because Northern intended to provide natural gas:

Notwithstanding the history of gas supply to the Salem-Pelham area the commission finds that Northern has demonstrated that it has the necessary supplies and expertise to make good its intention to deliver natural gas. Such an outcome will benefit not only existing customers of Southern but also new customers and in the process benefit the local economy. The commission, therefore, finds that the settlement agreement between the parties is in the public good.

74 NH PUC at 44. The Commission did not require Northern to obtain a separate natural gas franchise, but accepted that Northern would (and could) provide natural gas service under a franchise that Petrolane-Southern exercised to provide only propane service. Also note that the ordering clause provided "that Northern Utilities, Inc. be, and hereby is, authorized to engage in the business of a gas utility in the Towns of Salem and Pelham." *Id.* (emphasis added). The Commission was agnostic as to which fuel Northern would supply.

Liberty similarly intends to provide natural gas under a tariff that authorizes distribution of "gas" and under which the franchisee currently provides for propane service. *See also Southern New Hampshire Gas Company*, 65 NH PUC 101, 105 (Feb. 28, 1980) (Commission approved the sale of a propane distribution utility to Petrolane-Southern including the authority

“to engage in business as a gas public utility,” and requiring Petrolane-Southern to “pursue all reasonable steps to provide natural gas service to [its] customers”).

The above all lead to the conclusion that Liberty need not seek permission under the franchise statutes to distribute natural gas in Keene, because it already has such authority.

Respectfully submitted,

Liberty Utilities (EnergyNorth Natural Gas) Corp.
d/b/a Liberty Utilities



Date: May 1, 2018

By: _____
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Londonderry, NH 03053
Telephone (603) 216-3635
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Certificate of Service

I hereby certify that on May 1, 2018, a copy of this memorandum has been provided to the service list.



By: _____
Michael J. Sheehan

**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

REPLY BRIEF OF INTERVENOR, TERRY CLARK

Intervenor, Terry Clark (“Clark”), by and through undersigned counsel, Richard M. Husband, Esquire, hereby respectfully submits his reply brief to the Public Utilities Commission (“Commission”) pursuant to the [Order of Notice](#) and [approved schedule](#) for this proceeding.

I. INTRODUCTION

On May 1, 2018, Clark and the petitioner, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities -- Keene Division (“Liberty”), submitted their initial briefs pursuant to the [Order of Notice](#) and [approved schedule](#) for this proceeding. The [Order of Notice](#) followed [Commission Order No. 26,087 \(Dec. 18, 2017\)](#), which indicated that the briefs would address “the question of whether [Liberty] has the legal authority to offer CNG/LNG service in its existing City of Keene franchise area,” in light of arguments already raised in [Clark’s motion for rehearing](#), or as might be raised by Clark or other interested persons in a reopened proceeding. [Id. at 5](#). In relevant part, the order provides:

“... [W]e will afford Mr. Clark and other interested persons the opportunity to present their legal arguments to the Commission in this matter.

Therefore, we hereby reopen the record and we will schedule a Status Conference for public participation in early 2018 through an Order of Notice to be issued shortly. The Order of Notice will provide details as to how interested parties can 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.**

We will not address the various arguments presented by Mr. Clark related to purported technical defects with the Petition, matters in connection with Site Evaluation Committee jurisdiction, or the supposed violation of the public interest by our grant of the Company’s initial Petition for Declaratory Ruling. In

light of Mr. Clark’s prayer for relief, which seeks an opportunity to be heard, and our decision to reopen the proceeding, we find that it is unnecessary to address those arguments **at this time.**”

Id. emphasis added).

Consistently, the [Order of Notice](#) affords such briefing, with an opportunity for the parties to state their positions with respect to the same:

“The Commission determined to afford Mr. Clark and any other person with a direct interest in the outcome of the proceeding the opportunity to present legal arguments in the form of legal briefs ...

ORDERED, that a Prehearing Conference, pursuant to N.H. Code Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on April 6, 2018 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition ...”

Id. at 2(emphasis added).

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”), but it was also discussed at length, including his contentions that Liberty’s petition is inconsistent with New Hampshire law (primarily because it is part of expansion plans that are contrary to the public interest and the requirements of the official state energy policy codified under [R.S.A. 378:37](#)) , involves matters for the Site Evaluation Committee (“SEC”), and cannot be approved as the relief it seeks must be sought by a petition filed under [R.S.A. 374:22](#) and [R.S.A. 374:26](#). See [Transcript of April 6, 2018 prehearing conference at 9:6 – 26:11](#). Initial briefing followed, with Clark’s brief arguing for dismissal and a moratorium on Liberty’s gas expansion plans for these, and other reasons discussed therein.

Clark details the scope of briefing as his first reply to Liberty's initial brief, as Liberty's brief suggests that the scope of briefing may have been more limited than the positions of the parties. See [Liberty's brief at 1-2](#). That is not the case.

In further reply, Clark states as follows, in supplementation of the arguments set forth in his initial brief.

II. REPLY

Contrary to the arguments in Liberty's brief, Liberty **does not** have "the legal authority to offer CNG/LNG service in its existing City of Keene franchise area."

Again, the service Liberty proposes is part of its expansion plans contested in the LCIRP case, which are inconsistent with New Hampshire law, and therefore incapable of legal authorization. The legal authorization sought must be considered to go to expansion because nothing in Liberty's petition restricts it to conversion, and it is otherwise clear from Liberty's filings that the Keene project is all about expansion: the petition does not request a limited authorization to *replace* the existing system with one it claims to be of the same character, but a broad authorization that Liberty may carry on a LNG/CNG business, which allow such service *in addition to* its current gas service, and, consequently, Liberty will be *adding* a gas plant with a 100,000 gallon fuel storage tank¹ on site and 77 weeks more worth of fuel at its immediate disposal in Epping,² to "expand and grow the system" in the Keene area. See [Liberty's petition at Footnote 1](#).

Moreover, because the legal authorization Liberty seeks involves the construction of a gas plant and related facilities falling under the SEC's jurisdiction, the Commission should defer to the SEC for any consideration of such authority. Again, if Liberty obtains the decision it is

¹ See Liberty's response to Clark Data Request No. 1-10 in [Exhibit "C"](#) to Clark's initial brief.

² See Liberty's response to Clark Data Request No. 1-12 in [Exhibit "C"](#) to Clark's initial brief.

seeking in this case and previously received, it will be set up for expansion for decades: with its huge hub in Epping, Liberty will not have to build a gas plant in every town to pursue unbridled expansion—but it could. The order would provide Liberty with tremendous flexibility, completely releasing it from the pipeline constraints to expansion that the utility has been complaining about for years. If we love our children and are serious about addressing climate change, we cannot allow this: whatever good natural gas may have done in reducing CO2 emissions to date, we are far too low on our carbon budget to be swapping one greenhouse gas for another and must eliminate all methane use as well as all CO2 fossil fuel use as soon as possible. See [Clark's initial brief at 10-12](#).

Besides, again, there are also the health concerns.

As discussed in Clark's initial brief, [id. at 40-41](#), Keene, has a pollution/particulate problem and particulates, including PM2.5, are a well-established component of fracked gas emissions.³ See, e.g., ["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. 19-20](#); see also generally ["Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking \(Unconventional Gas and Oil Extraction\)" by Physicians for Social Responsibility \(Fifth Edition, March 2018\)](#). PM2.5 causes serious health problems. From ["Madison County, New York](#)

³ If Liberty denies using and intending to use fracked gas in New Hampshire, it should stop equivocating, as it has in its discovery responses, see Clark's initial brief at 21-22, flat out deny that it uses it and agree that it will never use it as a condition on all of its various franchise rights going forward—although this would, of course, strain credulity, given how fracked gas dominates the market, see "Summary" of [Tiemann and Vann, "Hydraulic Fracturing and Safe Drinking Water Act Regulatory Issues," Introduction \(Congressional Research Service\)\(2015\)](#), and seemingly would have to be the "cheap" gas that Liberty proposes to purchase for its customers (the small amount of non-fracked gas left out there would, presumably, go for a premium, given its desirability over fracked gas). Indeed, if Liberty is not concerned that fracked gas is a problem, why is it not touting its use, rather than apparently attempting to conceal it?

“In addition to the VOC exposure presented above, PM2.5 also poses a significant health concern and interacts with the airborne VOCs increasing their impact. In fact, at a compressor station PM2.5 may pose the greatest threat to the health of nearby residents ...

The size of particles determines the depth of inhalation into the lung; the smaller the particles are, the more readily they reach the deep lung. Particulate matter (PM10, PM2.5 and ultrafine PM), in conjunction with other emissions, are at the core of concern over potential effects of [fracked gas development sites].

High particulate concentrations are of grave concern because they absorb airborne chemicals in their midst. The more water soluble the chemical, the more likely it is to be absorbed onto a particle. Larger sized particles are trapped in the nose and moist upper respiratory tract thereby blocking or minimizing their absorption into the blood stream. The smaller PM2.5 however, is more readily brought into the deep lung with airborne chemicals and from there into the blood stream. As the particulates reach the deep lung alveoli the chemicals on their surface are released at higher concentrations than they would in the absence of particles. The combination of particles and chemicals serves, in effect, to increase in the dose of the chemical. The consequences are much greater than additivity would indicate; and the physiological response is intensified. Once in the body, the actions between particles and chemicals are synergistic, enhancing or altering the effects of chemicals in sometimes known and often unknown ways.

Reported clinical actions resulting from PM2.5 inhalation affect both the respiratory and cardiovascular systems. Inhalation of PM2.5 can cause decreased lung function, aggravate asthma symptoms, cause nonfatal heart attacks and high blood pressure. Research reviewing health effects from highway traffic, which, like [unconventional natural gas development], has especially high particulates, concludes, “[s]hort-term exposure to fine particulate pollution exacerbates existing pulmonary and cardiovascular disease and long-term repeated exposures increases the risk of cardiovascular disease and death.” PM2.5, it has been suggested, “appears to be a risk factor for cardiovascular disease via mechanisms that likely include pulmonary and systemic inflammation, accelerated atherosclerosis and altered cardiac autonomic function. Uptake of particles or particle constituents in the blood can affect the autonomic control of the heart and circulatory system.

Ultrafine particles (<0.1) get less attention in the literature than PM2.5 but is found to have high toxic potency. These particles readily deposit in the airways and centriacinar region of the lung. Research suggests increases in ultrafine particles pose additional risk to asthmatic patients ...

There is an abundance of research on the health effects of short term PM2.5 exposure ... health effects can occur within 6 hours of elevated PM2.5

exposures, the strongest effects occurring between 3 and 6 hours. Such an acute effect of PM_{2.5} may contribute to acute increase in the risk of cardiac disease, or trigger the onset of acute cardiac events, such as arrhythmia and sudden cardiac death ...

In addition to short term exposures and associated effects, there is evidence of health impacts from long-term exposures. An [health impact assessment] reviewing data from a number of European cities found that nearly 17,000 premature deaths from all causes, including cardiopulmonary deaths and lung-cancer deaths, could be prevented annually if long-term exposure to PM_{2.5} levels were reduced ...”

From the [EPA website](#):

“Particulate matter (PM), also known as particle pollution, is a complex mixture of extremely small particles and liquid droplets that get into the air. Once inhaled, these particles can affect the heart and lungs and cause serious health effects.”

From [ATSDR/CDC Health Consultation Report \(Jan. 29, 2016\), p. ii](#):

“Particulate Matter (PM_{2.5}) - The World Health Organization notes that when annual mean concentrations are in the range of 11-15 µg/m³, health effects can be expected (WHO 2006 ...”

See also [“PA expands particulate monitoring as federal study finds high level in one location,”](#)

[May 5, 2016 online article](#); and [ATSDR/CDC Health Consultation Report \(Apr. 22, 2016\), pp.](#)

[ii-iii](#) (short term exposures “to maximum levels of PM_{2.5} may be harmful to unusually sensitive populations, such as those with respiratory or heart disease” and chronic exposures in “concentration of 15 to 16 µg/m³ may be harmful to the general population and sensitive subpopulations, including the elderly, children, and those with respiratory or heart disease.”).

A substantial increase in fracked gas particulate emissions could only exacerbate Keene’s pollution/particulate problem: Keene does not need more particulate emissions, it needs a utility which relies on clean energy sources.

In any event, Liberty plainly **does not** have “the legal authority to offer CNG/LNG service in its existing City of Keene franchise area” under its existing franchise grant and cannot obtain the same through the petition for declaratory judgment filing in this proceeding, but must

obtain the proper authorization under a petition filed pursuant to [R.S.A. 374:22](#) and [R.S.A. 374:26](#).

Again, the 1860 legislative gas franchise grant under consideration must be strictly construed as it bestows rights not known under common law, *Buatti v. Prentice*, 162 N.H. 228, 230 (2011), with “[t]he limits of the right ... fixed by the grant,” and “[n]o act, or failure to act, on the part of state officials could enlarge it”—only an act of the legislature. *See State v. Hutchins*, 79 N.H. 132, 139 (1919). The type of gas and service authorized by the grant must be interpreted to comport with the meanings used and understood at the time it was enacted, *see Attorney General ex rel. Abbot v. Town of Dublin*, 38 N.H. 459, (1859)(“This is but the application to a particular subject of a well settled general rule, applicable to all trades, professions and customs, that the meaning of the word is to be ascertained by the usage of the time when employed ...”), and with the rights customarily granted under such charters at the time. *See State v. Hutchins, supra*, 79 N.H. at 137 (“The evidence seems conclusive that it was the legislative custom, at and before the time of the grant to Davis, to treat the term boats as including all craft that navigate the inland waters of the state. It follows that his grant is subject to the right of passage for all craft having reasonable occasion to navigate the strait.”). Even if the language of the grant is broad enough to allow for certain utility activities, a legislative intent to include those activities within the authority of the grant should not found where the Commission has not previously regulated them, *see Allied New Hampshire Gas Co. v. Tri-State Gas & Supply Co.*, 107 N.H. 306 (1966), and such activities cannot be found to have been *acquired* by unchecked expansion of a utility’s business as “It would be an anomalous situation if [an] unauthorized act... before legislative sanction therefor was obtained should be the means of ... thereafter acquiring a grant of extraordinary rights.” *State v. Hutchins*, 79 N.H. at 137. In

Allied New Hampshire Gas Co., supra, the New Hampshire Supreme Court rejected the argument that a distributor of liquid petroleum gas would be a “public utility” under the version of [R.S.A. 362:2](#) in effect at the time, finding:

“... In pertinent part RSA 362:2 reads as follows: 'The term public utility shall include every corporation * * * owning, operating or managing * * * any plant or equipment or any part of the same * * * for the manufacture or furnishing of light, heat, power or water for the public * * * or owning or operating any pipe line, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations thereof * * *.' This statute delegates broad regulatory powers to the Public Utilities Commission (Opinion of the Justices, 84 N.H. 559, 149 A. 321; *State v. New Hampshire Gas & Electric Co.*, 86 N.H. 16, 163 A. 724) but its powers are necessarily circumscribed by the purposes which the statute seeks to accomplish. *Claremont Gas Light Co. v. Monadnock Mills*, 92 N.H. 468, 32 A.2d 823; *Blair v. Manchester Water Works*, 103 N.H. 505, 175 A.2d 525.

The plaintiff points to the literal words of the statute which include the 'furnishing of light, heat, power' as indicating the defendant is a public utility. **This language, in isolation, is broad enough to include those who distribute coal, wood, gasoline, oil or liquefied petroleum gas in bottles, cylinders, drums or tanks. However, the Public Utilities Commission has never regulated such activities under the statute and have confined their regularity control to pipeline companies and gas companies using a system of underground mains for the distribution of gas to an entire community or area. The statute has been amended on two occasions and no attempt has been made by the Legislature to include these unregulated activities as public utilities under the statute. We agree with the administrative interpretation placed on the quoted words of the statute by the Public Utilities Commission as reflecting the legislative intent not to include in the category of a public utility the sale and distribution of liquefied petroleum gas in the manner disclosed by the evidence in this case.**

Id. at 308 (emphasis added).

As the New Hampshire Supreme Court found that public utilities did not include gas service involving “bottles, cylinders, drums or tanks” of gas as of 1966 per the above case, the Commission cannot find that Liberty is so authorized to conduct business under its 1860 franchise grant now: again, the grant was never expanded but holds to its original language and intent, which cannot possibly be construed to include the proposed LNG/CNG business as of that

time as such a business was far beyond legislative contemplation.⁴

Liberty's initial brief is completely void of any discussion of the above controlling legal principles.

Again, Liberty has not met its burden of proving, by a preponderance of the evidence, as required under [Puc 203.25](#), that the gas and service it proposes to provide are of the same character as the gas and service authorized under its franchise grant. Merely alleging that *some kind* of "manufactured gas" was used, *see Liberty's initial brief at 6* ("Liberty's earliest predecessor distributed manufactured gas"), while admitting that it has no idea what that gas was, *see Clark's initial brief at 45* and Liberty's response to Clark Data Request No. 1-7 discussed therein, and providing no information in its [petition](#) concerning the current and proposed services which would allow for a determination that they are the same,⁵ clearly does not come close to the requisite proof. **DISMISSAL is merited and appropriate for that reason alone.** The 1860 franchise does not grant the right to operate a LNG/CNG business and, even if it does, the right has never been exercised, precluding such a business now without permission under [R.S.A. 374:22](#). There is a huge difference between the standards for approving a declaratory judgment petition and a petition brought under [R.S.A. 374:22](#) (the latter requires a public interest determination after a complete adjudicative proceeding involving discovery,

⁴ Whether the current version of [R.S.A. 362:2](#) is broad enough to include Liberty's proposed business within the definition of a "public utility" has no bearing on whether Liberty is authorized to conduct the business under the 1860 grant: the legislature could extend the scope of covered utilities under the statute to include such a business, but the only business rights granted each utility under its franchise are specific to, and limited by, the four corners of its particular grant.

⁵ Which they are plainly not. Again, besides the difference in gas, Liberty's proposed new service would add extensive, complex facilities (including a 100,000 gallon LNG storage tank and gas compression equipment) and "technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems." [Commission Order No. 26,065 at 3](#).

witnesses, testimony, a hearing, *etc.*), which really must be recognized and enforced respecting a determination which potentially impacts so many.

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: May 15, 2018

//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 15st day of May, 2018, submitted seven copies of this reply brief 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 15st day of May, 2018, served an electronic copy of this reply brief 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, Esquire
Richard M. Husband, Esquire

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

Liberty Utilities (EnergyNorth Natural Gas Corp.) d/b/a Liberty Utilities

Petition for Declaratory Ruling

Liberty's Reply Memorandum of Law

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the “Company” or “Liberty”), through counsel, respectfully submits the following reply memorandum in response to the *Initial Brief of Intervenor Terry Clark*.

Mr. Clark’s 50-page brief makes three broad arguments. First, Mr. Clark argues that this docket “is part of Liberty’s expansion plans being considered under” Liberty’s integrated resource plan filing, Docket No. DG 17-152, that Mr. Clark is arguing in the IRP docket that such expansion plans violate the state’s energy policy, and that, at a minimum, the Commission should stay its decision here until it resolves the IRP docket. Second, Mr. Clark argues the Site Evaluation Committee (“SEC”), not the Commission, has jurisdiction over “Liberty’s proposed energy Facility.” And third, Mr. Clark argues Liberty is required to satisfy the franchise statutes, RSA 374:22 and :26 because the addition of natural gas in Keene is a “substantial change in operations” triggering franchise review. *See Clark Brief at 3-4*. None of Mr. Clark’s arguments have merit for the reasons discussed below, and which were raised in Liberty’s Objection to Motion for Rehearing (which Liberty incorporates here by reference).

First, Liberty's petition for declaratory ruling does not seek approval of any "expansion plans." It merely asks the Commission to confirm that Liberty has always had the franchise right to distribute natural gas. Nothing more. The Commission should reject Mr. Clark's attempt to convert this case into one about "expansion plans."

Second, Mr. Clark argues that the SEC has jurisdiction over this docket. Mr. Clark is wrong. The SEC has authority to "Evaluate and issue any certificate under this chapter for an energy facility." RSA 162-H:4, I(a). In the context of Mr. Clark's argument, the statute defines an "energy facility" as follows:

Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network.

RSA 162-H:2, VII(a) (emphasis added).

In response to Mr. Clark's discovery requests in the IRP docket, Liberty informed Mr. Clark that, if the Company were to fully build out its distribution system to serve potential customer demand, the planned facility in Keene (which, again, is *not* the subject of this docket) would store LNG or CNG in an amount equivalent to only 2.2 days of continuous operation at a rate equal to the energy requirements of a 30 MW electric generating facility. *See* Liberty's response to Clark 1-10 in Docket No. DG 17-152, attached as Exhibit 1. Mr. Clark does not challenge this information.

Thus, Mr. Clark's argument that the SEC has jurisdiction over this docket is not relevant because this docket does not seek approval of an energy facility and, even if it were, the facility is not large enough to fall under the SEC statute.

Finally, the Commission should reject Mr. Clark's argument that Liberty is required to satisfy the franchise statutes, RSA 374:22 and :26 because the addition of natural gas in Keene is a "substantial change in operations" triggering franchise review. This *is* the issue raised in this docket which the Commission resolved correctly in Order No. 26,065 (Oct. 20, 2017). Since Mr. Clark failed "to direct attention to matters that have been overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309, 311 (1978), his motion for rehearing should be denied.

Respectfully submitted,
Liberty Utilities (EnergyNorth Natural Gas) Corp.
d/b/a Liberty Utilities



Date: May 15, 2018

By: _____
Michael J. Sheehan, Senior Counsel #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
michael.sheehan@libertyutilities.com

Certificate of Service

I hereby certify that on May 15, 2018, a copy of this memorandum has been electronically provided to the service list.



By: _____
Michael J. Sheehan

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

DG 17-152

Least Cost Integrated Resource Plan

Clark Data Requests - Set 1

Date Request Received: 4/9/18
Request No. Clark 1-10

Date of Response: 4/23/18
Respondent: William R. Killeen
William J. Clark

REQUEST:

Reference RSA 162-H:2, VII(a). Please state the total onsite gas storage capacity of the proposed Keene facility being considered under Docket DG 17-068 and identify how many days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station the facility will be able to operate with a full complement of gas stored at the site.

RESPONSE:

A new, high-efficiency 30 megawatt electric generating station would consume an equivalent of approximately 325,000 gallons of LNG over seven days, or approximately 46,400 gallons of LNG per day, operating continuously at full capacity, assuming a heat rate of 7,100 Btu/kWh.

The proposed facilities at Keene, assuming full build out, would include storage facilities for an equivalent of 100,000 gallons of LNG. Thus, the proposed Keene storage would be capable of fueling a 30 MW electric generating facility for approximately 2.2 days.

DG 17-068
NHPUC Safety Division
Adequacy Assessment of the
Proposed Compressed Natural Gas Installation by
Liberty Utilities - Keene, NH Division
October 3, 2018



The Safety Division's review consisted of:

- Physical inspections of the new CNG installation located at Production Avenue in Keene;
- Phone conferences with Liberty personnel;
- Safety Division comments on Liberty's submittals prior to the Company's submission of final plans;
- Multiple email exchanges with Liberty project team members;
- Review of Liberty responses to questions from the Safety Division;
- Completion of state inspection reports; and
- Research of applicable codes and safety regulations including gas piping classifications.

Keene Propane/Air System Background Description

Liberty currently has two propane/air distribution pressure systems within the City of Keene. One distribution system consists of 26.8 miles of main with 818 service lines operating at a maximum allowable operating pressure (MAOP) of 13.5 inches water column (w.c.)³ supplying approximately 1,122 customers. The other distribution system consists of 3.3 miles of main with 56 service lines operating at approximately 3.5 psig (5 psig MAOP). This second system feeds the Monadnock Marketplace area, an additional 74 commercial, and 25 residential customers. Currently a propane/air mixture is supplied to both distribution systems from the existing propane/air plant located at 207 Emerald Street in Keene, which consists of a 60,000 gallon and a 30,000 gallon propane storage container, vaporizers, air blowers, and mixing equipment. The figure in Appendix 1-A depicts an overview of both existing Liberty propane/air distribution systems. The figure in Appendix 1-B depicts the Production Avenue location, Monadnock Marketplace, and the initial phase of the proposed natural gas distribution for Keene. Appendix 1-C shows all 5 natural gas conversion phases that Liberty's latest proposal envisions, as understood by the Safety Division.⁴

Liberty's Proposed Plan for Modification to the Existing Propane/Air Distribution System

The Safety Division's review of Liberty's proposed alterations to the existing distribution system centered on five elements:

- I. Addition of a new natural gas supply source;
- II. Sectionalization of portions of the existing system and gas quality measuring;
- III. Alteration of pressure configurations;
- IV. Conversion of existing customers from propane/air to natural gas; and
- V. Expansion plans.

Liberty's plan to add a new natural gas supply source for Keene has been evolving over the past four years through many different variations derived from conceptual outlines, eventually translating into tangible physical equipment installed at a fixed location. Various proposals have been discussed during the five years since Liberty Utilities purchased New Hampshire Gas in 2013. In Staff's experience, Liberty often presents the plans as "temporary" solutions rather than engaging in detailed planning from the onset that encompasses study of all the ramifications of integrating a new supply source into an existing propane/air system.

³ 13.5 inches w.c. is approximately equivalent to 0.5 pounds per square inch gauge (psig).

⁴ Liberty prepared supplemental response to Staff (suppt. response to Staff 2-41) dated 10/31/2017 to Staff inquiry in the DG 17-048 rate case. A copy of the response is attached to this report in Appendix 3.

The accidental injection of higher than normal Btu⁵ gas into the propane/air system in December of 2015 triggered an emergency response and subsequently prompted Liberty to assess and repair the air injection system redundancy. Liberty decided to man the propane/air plant 24 hours per day, seven days per week in December 2015, which was an expensive proposition because of the associated man hours and the low probability of a reoccurring sequence of events. In the months following, Liberty focused on strategies aimed at reducing quantities of propane/air production from the existing plant and introducing a second source of supply. For the 2016/2017 winter season, Liberty proposed sectionalizing the distribution system with a “temporary” CNG installation to be located behind a commercial building at the Monadnock Marketplace. The proposed depressurization skid location in the Monadnock Marketplace would have been in close proximity to existing buildings. The location and contents of the skid had physical limitations and lacked detailed planning. Eventually the proposed skid facility was abandoned as a possible location. Liberty’s rushed preparation to install a temporary CNG supply source behind the Price Chopper at the Monadnock Marketplace focused more upon seeking arrangements for permission with the building owner and completing installation before the 2016/2017 winter season rather than providing a comprehensive, thoughtful, and detailed plan. This proposed installation did not come to fruition and was fraught with many siting difficulties. An alternate location was considered for the winter season (2017/2018).

In March 2017, Liberty finalized a proposal for locating the proposed CNG depressurization skid at the south end of Production Avenue, which is classified as an industrial zone with limited public access. Liberty assigned an internal project manager to the CNG installation effort and continued communications with the City of Keene, recognizing that approvals of local boards would be required. Liberty relied on vendors and outside engineering firms to assist in developing site plans that are typically required by local planning and zoning boards. Such plans in turn were reviewed by various local government departments, including fire departments, for compliance with local standards and ordinances. Liberty often refers to this installation location as “temporary” although no final details on “final” installation locations have been presented. The Safety Division considers a temporary installation to be one that typically is in place for 30 days or less and almost never exceeds the duration of a construction season. Liberty’s connotations of “temporary” and “permanent” are unusual for the industry. The Safety Division reviews all installations as if they will be designed and constructed on a permanent basis. A summary of the engineering review and associated review of impacts of the proposed CNG decompression unit and distribution system piping is provided in *Section I. Adding a new natural gas supply source Engineering Review*.

In the recent Liberty distribution service rate case docket, DG 17-048, Staff requested in June 2017 an overall comprehensive business plan for the Keene Division with a detailed description of plans and costs to convert Keene customers from propane/air service to natural gas service. In October 2017, Liberty responded again by describing briefly, with minimal detail, the conversion process for Phase 1 only, including customers along Production Avenue and the Monadnock Mall taking service from a temporary CNG facility during the summer of 2017. Liberty described Phase 2 merely as an extension of a high pressure main from the existing “high line” to serve businesses along Key Road and an extension on Winchester Street south of Route 101 during the Spring of 2019. Phase 3 was described only as continuing across Main Street and down Marlboro Street as well as Optical Avenue beginning in spring of 2020. Phase 4 would begin an extension north along Route 9 during the spring of 2020. Phase 5 would extend service further north and is expected to begin in spring of 2021. The Phases are illustrated on the plan attached in Appendix 1-C. No details have been provided with respect to how existing low pressure propane/air system customers would be converted in Phases 2, 3, 4 or 5.

⁵ Btu is short for British Thermal Unit, 1 Btu is equivalent to the amount of heat required to raise the temperature of 1 pound of water by 1 degree Fahrenheit.

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

13 APR '18 PM 12:01

April 6, 2018 - 10:06 a.m.
Concord, New Hampshire

RE: DG 17-068
LIBERTY UTILITIES (ENERGYNORTH
NATURAL GAS) CORP. d/b/a
LIBERTY UTILITIES:
Petition for Declaratory Ruling.
(Prehearing conference following
Order on Motion for Rehearing)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth
Natural Gas) Corp. d/b/a Liberty
Utilities:
Michael J. Sheehan, Esq.

Reptg. Terry Clark:
Richard M. Husband, Esq.

Reptg. Residential Ratepayers:
D. Maurice Kreis, Esq., Consumer Adv.
Office of Consumer Advocate

Reptg. PUC Staff:
Lynn Fabrizio, Esq.
Alexander F. Speidel, Esq.
Randall Knepper, Dir./Safety & Sec.
Stephen Frink, Dir./Gas & Water Div.

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

**CERTIFIED
ORIGINAL TRANSCRIPT**

1 residential customers of this utility.

2 MS. FABRIZIO: Good morning,
3 Commissioners. Lynn Fabrizio, on behalf of
4 Staff. And with me at table today are
5 co-counsel Alex Speidel; Director of the Safety
6 & Security Division, Randy Knepper; and
7 Director of the Water & Gas Division, Steve
8 Frink.

9 Thank you.

10 CHAIRMAN HONIGBERG: The brief
11 procedural history is that, after the
12 committee [Company?] filed its Petition for a
13 Declaratory Ruling, we issued an order
14 essentially granting the Petition, putting some
15 conditions on the exercise of its franchise
16 related to safety. There was a timely Motion
17 for Rehearing filed. We granted in part and
18 denied in part the Motion for Rehearing. We've
19 issued the Order of Notice for us to be here
20 today, and there are some specific things
21 stated in the Order of Notice about what we
22 expect to happen today.

23 I think that brings us to where we
24 are. We have one intervention petition that

{DG 17-068} [Prehearing conference] {04-06-18}

1 Mr. Husband filed.

2 Do we have any positions?

3 Mr. Sheehan.

4 MR. SHEEHAN: I actually read the
5 order of December as granting Mr. Husband's
6 intervention. And we accept that finding,
7 because this docket addresses the scope of
8 Liberty's existing franchise, and thus arguably
9 affects the interests of non-customer
10 residents, which limitation the Commission
11 implicitly recognize is necessary to be
12 consistent with prior Commission orders that
13 limit standing in most matters to Liberty
14 customers.

15 CHAIRMAN HONIGBERG: Anyone else want
16 to comment on that? I mean, I think
17 Mr. Sheehan essentially has the ruling correct.
18 That Mr. Clark is in. It looks like Mr.
19 Husband is representing him. Everyone agrees?

20 MS. FABRIZIO: Yes.

21 CHAIRMAN HONIGBERG: All right.

22 MR. HUSBAND: Well, I --

23 CHAIRMAN HONIGBERG: Mr. Husband,
24 make sure your microphone is on please.

{DG 17-068} [Prehearing conference] {04-06-18}

1 further process would simply be a filing of
2 papers that make an argument one way or another
3 on that legal issue, and that there's no need
4 for any more process, if you will.

5 CHAIRMAN HONIGBERG: Mr. Husband.

6 MR. HUSBAND: Thank you, Mr.
7 Chairman. Essentially, it's Mr. Clark's
8 position, and I would direct the Commission to
9 his filings for more fleshing out of the
10 issues, he's filed petitions to intervene not
11 only in this case, but also in the LCIRP case,
12 DG 17-152, which really set forth a number of
13 issues and concerns he has in this matter.

14 But quickly, in terms of where we are
15 right now, it's Mr. Clark's position that the
16 Petition can't go forward, first of all,
17 because it's unlawful on its face. Liberty's
18 plans do not conform with New Hampshire law.
19 They're both -- they're inconsistent with the
20 public interest, they conflict with RSA 378:37,
21 the official state energy statute, for reasons
22 that are enumerated in, again, the petitions to
23 intervene.

24 And I'm going to try and slow down

{DG 17-068} [Prehearing conference] {04-06-18}

1 services here, I think, let's see -- I forget
2 the exact language, but there is a change in
3 the services that are being provided by
4 Liberty. This is something that's never been
5 done before. They have never had this kind of
6 a facility in Keene. They've never distributed
7 fracked natural gas. They have never had the
8 kind of high pressure technology and pipeline
9 that is proposed for this project in Keene.

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

18 Thank you.

19 CHAIRMAN HONIGBERG: Mr. Kreis.

20 MR. KREIS: Thank you, Mr. Chairman.
21 I just have a few things to say.

22 One, I would like to thank the
23 Commission for granting the rehearing motion
24 filed by Mr. Clark. I think that was a correct

{DG 17-068} [Prehearing conference] {04-06-18}

1 to evaluate and discover on our plans, the IRP
2 docket is the place to do that.

3 CHAIRMAN HONIGBERG: Mr. Kreis.

4 MR. KREIS: Just briefly, Mr.
5 Chairman.

6 I just want to remind everybody,
7 particularly the Commission, that the way the
8 declaratory judgment process is supposed to
9 work is, the party requesting a declaratory
10 judgment is supposed to present a verified
11 petition for such a judgment. And so,
12 therefore, the Commission, to the extent it
13 needs facts, should find them in the facts
14 alleged in the Petition.

15 So, the only potential defect I think
16 there might be here is the Petition wasn't
17 verified. So, the Commission probably ought to
18 ask the Company to verify its Petition. And
19 once it does that, then I think that it can
20 just rely on the facts as alleged in the
21 Petition, and should do so.

22 CHAIRMAN HONIGBERG: I think
23 Mr. Kreis has the correct answer here, Mr.
24 Husband. I understand there's discovery you

{DG 17-068} [Prehearing conference] {04-06-18}

1 want. I guess I would encourage you, during
2 the technical session, to ask the questions of
3 the Company that you feel you would want to get
4 answers to. It may be that some of it can be
5 provided informally with respect to its plans
6 elsewhere in the state.

7 Without -- you know, it may be that
8 you're going to file a motion on something, and
9 we'll deal with it as it comes in. But, I
10 think, as a procedural matter, Mr. Kreis
11 probably has the right answer here.

12 Mr. Husband.

13 MR. HUSBAND: Thank you. Well, I
14 guess my response to that would be, I would
15 agree that Mr. Kreis would have the right
16 answer here, if I received a petition that was
17 in conformity with the rules. But, again, one
18 of the issues that was raised in the Motion for
19 Rehearing is that this Petition does not comply
20 with Puc 207. It doesn't state with enough
21 specificity what is being planned here, for me
22 to take a look at it, and decide whether the
23 facts I'm looking for through discovery are
24 there.

{DG 17-068} [Prehearing conference] {04-06-18}



Michael J. Sheehan, Esq.
Senior Counsel
Phone: 603-724-2135
Email: Michael.Sheehan@libertyutilities.com

July 24, 2019

NHPUC 24JUL'19PM4:13

Via Hand-Delivery and Electronic Mail

Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: Docket No. DG 17-068; Liberty Utilities (EnergyNorth Natural Gas) Corp. -- Keene Division
Petition for Declaratory Ruling**

Dear Ms. Howland:

On behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities, I write to respectfully ask the Commission to promptly resolve the *Motion for Rehearing* filed by Mr. Clark in November 2017 and briefed by the parties in May 2018, because -- should the Commission deny Mr. Clark's motion -- the window of time is closing for Liberty to convert the Monadnock Marketplace customers prior to the 2019-2020 winter season.

In Order No. 26,065 (Oct. 20, 2017), the Commission granted Liberty's request to declare that it had the franchise to distribute natural gas in Keene. The Commission also stated that "Liberty shall not flow any gas through the CNG/LNG installation in Keene until the Commission's Safety Division has found the required plans and reports adequate, and completed its physical inspection of the facilities as described above." Order at 5.

Mr. Clark filed his motion for rehearing on the franchise issue in November 2017 and, after issuing an order of notice and conducting a prehearing conference, the Commission had the parties brief the issue of Liberty's right to serve natural gas in Keene in May 2018. Mr. Clark's motion remains pending.

Liberty satisfied the Order's only condition, quoted above, when the Safety Division stated in its April 16, 2019, Recommendation that Liberty's "2019 amended plan complies with Commission Order 26,065," which thus "allows the commencement of the proposed Monadnock Marketplace system conversion from propane-air to natural gas and begins the flow of natural gas." Recommendation at 2.

Resolving Mr. Clark's 2017 motion is the last unresolved issue in this docket and the only obstacle to Liberty beginning the conversion process for the Marketplace customers.

Converting the customers is a process that takes 60 days. We must line up contractors (whose availability lessens as the winter season approaches because they are busy with other pre-winter work), coordinate schedules with Company employees, contractors, and the customers, and then perform the work when the customers' businesses are closed. Converting customers during the heating season poses unnecessary risks; a small issue that would be of no consequence if the conversion occurred during warm weather becomes a larger issue if the weather has turned cold and their heating system must be shut down for a time. Therefore, we must begin the conversion process now in order to finish by the end of September, in advance of cooler weather.

The Company has informally alerted the Commission and Staff to this situation several times over the recent months, including during the most recent Keene cost of gas hearing on April 23 (an excerpt of that transcript is attached). Given the timing issues described above, the Company feels compelled to make this formal filing to emphasize the importance of an order resolving Mr. Clark's motion.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Sheehan", written in a cursive style.

Michael J. Sheehan

Enclosure
cc: Service List

1 So, the customers are on notice that there may
2 be some flexibility. And that's the routine
3 for all of these proposed rate changes that we
4 file.

5 The update for CNG, as the Commission
6 is aware, the regulatory delay on CNG most
7 recently was working with -- the Company
8 working with the Safety Division to get the
9 Safety Division's report finding the Company's
10 plans to be "adequate". And that's from the
11 order in 17-068. That recommendation from the
12 Safety Division came out a couple weeks ago.
13 And there are two lingering issues there.

14 The first is, it's the Company's
15 position that the Commission need not act. My
16 reading of the order is that, once the Safety
17 Division says "okay", we are free to go.
18 However, for very understandable reasons,
19 Staff, and I did speak with Ms. Fabrizio on
20 this, wasn't sure about that, and effectively
21 said "Sit tight till we clarify that".

22 The Company's preference, frankly,
23 would be a secretarial letter from the
24 Commission saying "We received the report."

{DG 19-068} [CONFIDENTIAL & PROPRIETARY] {04-23-19}

1 Everything is good." Just to make sure there's
2 no misunderstanding. The worst-case scenario
3 would be for us to charge forward and have
4 someone say "you acted prematurely".

5 The other loose end from that docket
6 is, if you recall, an intervenor, Mr. Clark,
7 represented by Mr. Husband, was challenging the
8 initial finding in the order that Liberty has
9 the right to serve natural gas in Keene. He
10 was let in late. Filed a Motion for
11 Reconsideration of that finding. It was
12 briefed a year ago, and it has never been
13 ordered. So, in fact, that issue is still
14 lingering. And again, would be a reason for us
15 not to charge ahead, if for some reason the
16 Commission were to grant Mr. Clark's Motion for
17 Rehearing.

18 So, from the Company's perspective,
19 we are waiting. We'd appreciate confirmation
20 or a ruling on the Motion for Rehearing, and
21 confirmation that the Commission received the
22 Safety Division's report, and it satisfied the
23 Commission and the order.

24 Assuming all that happens, as I heard

{DG 19-068} [CONFIDENTIAL & PROPRIETARY] {04-23-19}

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-068

Liberty Utilities (EnergyNorth Natural Gas Corp.) d/b/a Liberty Utilities

Revised Petition for Declaratory Ruling

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (the “Company” or “Liberty”), through counsel, respectfully petitions the New Hampshire Public Utilities Commission pursuant to Puc 203 and Puc 207 for a declaratory ruling that it need not seek permission under RSA 374:22 and 374:26 to distribute natural gas in the City of Keene, New Hampshire, because Liberty’s existing franchise to distribute “gas” already includes “natural gas.”

In support of this petition, the Company states as follows:

1. As promised in late 2014 when Liberty was in the process of acquiring New Hampshire Gas Corporation, the Company has begun planning for the conversion of the Keene system from propane-air to compressed natural gas (CNG) and liquefied natural gas (LNG). *See* Transcript of October 30, 2014, hearing in Docket No. 14-155, at 25-26.¹ The first step in the conversion process is the construction of a temporary CNG facility to be ready for the 2017-2018 winter season. This temporary CNG facility carries the added

¹ “And, what we will do, following acquisition, is look into the economics of converting the system from a propane/air system to some other fuel source, like CNG or LNG. If it’s economical to do so, and results in lower cost to customers, we would go forward and do it. And, if we’re able to do that, we think there’s a lot of potential in the Keene area to expand and grow the system. Obviously, the more you grow the system, the more volume there is over which to spread fixed costs, and it thereby benefits all customers.”

benefit of allowing the Company to permanently retire the blower system that gave rise to the December 19, 2015, incident.

2. The Company has communicated and met with Staff on several occasions to describe its plans for the temporary CNG facility. *See* Settlement Agreement in DG 14-155, at 4 (“EnergyNorth shall also notify the Staff and OCA of Keene Division capital projects other than those referenced in Puc 509.11(c) with projected costs greater than \$50,000 at least 60 days prior to commencement, where feasible”).
3. During the most recent of those discussions, a March 27, 2017, meeting with Staff, Staff advised that the Company is required to: (1) file reports required by RSA 374:5,² and (2) file a petition under RSA 374:22 and RSA 374:26, the franchise statutes, for permission to distribute natural gas because, according to Staff, the conversion from propane to natural gas constitutes a “change in the character of service” provided to Liberty’s Keene customers.
4. The Company does not object to filing the reports required by RSA 374:5. Indeed, the Company will do so through its annual E-22 report and through a more detailed supplemental report specific to this project.
5. The Company does object, however, to the suggestion that it must obtain new franchise rights to provide customers with natural gas in Keene. The existing franchise allows the Company to distribute “gas,” and it has exercised that right and provided several forms of “gas” over the past 150 years without any change in its franchise. This

² “374:5 Additions and Improvements. – For the purpose of enabling the commission to perform its duty to keep informed as provided in RSA 374:4, every public utility, before making any addition, extension, or capital improvement to its fixed property in this state, except under emergency conditions, shall report to the commission the probable cost of such addition, extension, or capital improvement whenever the probable cost thereof exceeds a reasonable amount to be prescribed by general or special order of the commission.”

is entirely consistent with the law, Commission rules, and Commission precedent. Staff's suggestion, on the other hand, has no legal basis. Liberty thus files this petition for a declaratory ruling that it does not need permission under RSA 374:22 and RSA 374:26 to distribute natural gas in Keene.

Liberty Has the Franchise Right to Serve Keene with Natural Gas.

6. First and foremost, the Company has a legislatively granted franchise “to carry on the manufacture, distribution and sale of gas” in Keene, Laws 1860, Chapter 2451, attached as Exhibit 1, and “gas” includes “natural gas.” Commission rules define “gas” as “any manufactured or natural gas or any combination thereof,” Puc 502.06 (emphasis added), and the Commission has approved the Keene-Division tariff that allows for natural gas: “Manufactured gas or equivalent will be supplied at a heat content value greater than or equal to the heat content value specified on Original Page 17.” Keene Tariff NHPUC No. 1 at Original Pages 13 and 15 (emphasis added); *see id.*, at Original Page 4 (“This tariff applies only to the supply of gas at the company’s standard heat content value, adjusted for temperature and pressure, in the locality in which the premises to be served are situated”).³ Therefore, the Company already has permission to serve natural gas in Keene.

³ Note that the tariff of EnergyNorth, known as a natural gas utility, conversely allow the use of propane. “Gas” is defined as “Natural Gas that is received by the Company from a Transporting Pipeline” and “the term shall include amounts of vaporized liquefied natural Gas and/or propane-air vapor that are introduced by the Company into its system and made available to the Customer as the equivalent of natural Gas that the Customer is otherwise entitled to have delivered by the Company.” Original Page 86. The tariff of Northern Utilities contains the same definition, at Original Page 102.

A “Change in the Character of Service” Does Not Require a Franchise Filing.

7. Staff based its requirement that the Company make a tariff filing on its argument that the conversion from propane to natural gas constitutes a “change in the character of service.” The only references to that phrase that the Company could find are at Puc 503.04 and in the Keene tariff itself, and neither supports Staff’s position.
8. Puc 503.04, titled “Change in Character of Service,” requires utilities to “readjust [customer] appliances” if a “change in pressure or composition of the gas” affects their operation, but the rule does not require a franchise (or any other) filing. Rather, Puc 503.04 supports this petition. If there is a “change in ... composition of the gas,” e.g., if the gas changes from propane-air to natural gas, then the Company must “readjust those appliances for the new conditions,” again without the need to make a franchise filing.
9. There are three sections of the Keene tariff titled “character of service.” Two of these sections are identical, they appear on the residential and commercial rate schedules, and they consist of the following sentence already quoted above: “CHARACTER OF SERVICE: Manufactured gas or equivalent will be supplied at a heat content value greater than or equal to the heat content value specified on Original Page 17.” Original Pages 13 and 15. Since natural gas and propane are both “equivalent” to “manufactured gas,” the conversion from propane to natural gas does not constitute a change in the “character of service.”
10. The third tariff section titled “Character of Service” provides as follows:
 2. CHARACTER OF SERVICE
 2. (a) Gas Supply. This tariff applies only to the supply of gas at the company’s standard heat content value, adjusted for temperature and pressure, in the locality in which the premises to be served are situated.

2. (b) Delivery of Gas Supply. The rates specified in this tariff are based upon the supply of service to a single customer through one delivery and metering point.

2. (c) Combined Service on Same Property. A single customer may be permitted to take service at two or more locations on the same premises or property provided that the customer shall pay the cost of all additional service connections required. Service so used will be combined for billing purposes.

2. (d) Use of Service at Separate Properties. The use of service at two or more separate properties will not be combined for billing purposes.

Original Page 4. A conversion to natural gas does not constitute a change in the provisions of this section except for section 2(a), and the Company has this date filed a request to add the heat content value of natural gas to the Tariff. Such a filing does not implicate the franchise statutes.

11. The “Standard Heat Content Value” section of the Keene tariff states, “Propane-air gas will be used to meet the needs of the Keene customers,” and then describes how the Company will convert the quantity of propane-air delivered into therms: “The standard heat content value for the propane-air gas sold will be 0.74 therms per hundred cubic feet and will apply to all bills rendered for the same meter reading month.”

Original Page 17. A “therm” is a generic unit of heat energy that is equivalent to 100,000 Btu. Although it takes different volumes of each fuel to comprise a therm (just like it takes a different volume of potato chips than peanut butter to comprise a pound), the Keene tariff -- like the tariffs of most gas utilities -- converts the volume of delivered gas into therms and bills customers by the therm. The Company’s “heat content” filing simply discloses that the standard heat content value for the natural gas sold will be one therm per hundred cubic feet, as compared to the heat content of propane-air which is 0.74 therms per hundred cubic feet. The Company will convert the cubic feet delivered

to the customer into therms, and bill the customer the same per-therm price, whether the customer received natural gas or propane-air.

12. Even assuming Staff's reference to "character of service" intended a broader interpretation outside the specifics of the tariff, providing natural gas is not a change in the character of service because every material aspect of the Company's service will remain the same. The Company will continue to use the same underground pipeline system to distribute gas from a central facility to its customers, the nature of the gas delivered will be the same, customers use the same appliances with only minor modifications at the Company's expense, the Company will bill the customers at the same per-therm rate approved by the Commission in the cost of gas proceedings, and the Company will provide the same customer service. There will be no change in the character of service.

13. Otherwise, the Company could find no reference to the phrase "change in the character of service" that is the purported grounds for requiring a new franchise filing. Specifically, the Company found no franchise order based on a utility's change in the character of its service.

Historically, Gas Utilities Have Changed Fuels Without Commission Filings.

14. The Company's history in Keene is consistent with this interpretation that the existing franchise is for gas, not propane air, and that the Company and its predecessors were free to change the fuel distributed to its customers without having to obtain permission from the Commission.
15. The Legislature established the original gas utility in Keene and granted it the franchise to distribute "gas" 50 years before the Commission's 1911 birth.

Section 1. That Thomas H. Loverett, Josiah H. Carter [and others], their associates and successors, are hereby constituted a body politic and corporate, by the name of the Keene Gas Light Company, and vested with all the powers and privileges, and subject to all the restrictions and liabilities by law incident to corporations of a similar nature.

Sec. 2. That said corporation is authorized to purchase and hold all such real and personal property as may be necessary and proper to enable them to carry on the manufacture, distribution and sale of gas, for the purpose of lighting the streets, manufactories, machine shops, and all other buildings in the town of Keene, and to construct or purchase such buildings, works, furnaces, reservoirs, gas holders, gas pipes, and other things as may be requisite and proper for such purpose.

Laws of 1860, Chapter 2451, Exhibit 1 (emphasis added); *see* Laws 1850, Chapter 1046, for a similar franchise grant to the Concord Gas Light Company. The Company has continuously possessed the franchise for delivering “gas” since 1860.

16. In its first iteration of the *Rules Prescribing Standards of Purity, Pressure and Heating Value of Gas, and Providing for the Periodic Testing thereof, and for the Testing of Meters, and Otherwise Regulating the Service of Gas Utilities*, the then-named Public Service Commission defined “gas” within its definition of “utility” as follows: “the word ‘utility’ shall be taken to mean any public utility engaged in supplying to the public water gas, coal gas or a mixture of the two.” 2 NH PUC 115, 116 (1913). The definition broadened in a subsequent version of the rules, which carried a shorter title *Rules and Regulations Prescribing Standards for Gas Utilities*, as follows: “The word ‘gas’ shall be taken to mean any gas as manufactured by any process in which the gas is delivered from generating or producing equipment into utility transmission or distribution systems.” 24 NH PUC 401, 402 (1942). The definition took its final form in 1962: “‘Gas’ – any manufactured or natural gas or any combination thereof.” *Rules and*

Regulations Prescribing Standards for Gas Utilities, 44 NH PUC 5, 6 (1962); *see* Puc 502.06 (“‘Gas’ means any manufactured or natural gas or any combination thereof”).

17. Consistent with its franchise right to distribute “gas” and with these broad definitions of gas, the Company changed the fuel distributed over the last 150 years without franchise approval or other permission from the Commission. The Company’s earliest predecessor distributed manufactured gas. According to two similar news articles from about 1991, Exhibit 2, the Company switched from manufactured gas to butane in 1954, then to butane-air in 1968, then to propane air in 1974 (although the articles suggest some overlap of butane and propane in the 1960s). An internal Gas Service, Inc., memorandum dated July 25, 1974, fixes August 1, 1974, as the date of conversion to propane. Exhibit 3.
18. No Commission orders could be found approving any of these changes in fuels. Nor were any orders found that authorized similar changes in fuels by the other New Hampshire gas distribution utilities as they moved from manufactured gas to natural gas over the decades, most using propane and other fuels along the way, which strongly supports the notion that no Commission permission was necessary
19. Rather, there are many references in Commission orders to the fact that gas utilities distributed different fuels, or changed from one fuel to another, and of a utility being able to distribute “natural gas” under the franchise acquired from a “propane distribution utility” without mention of the need for Commission approval of franchise changes.
20. In Liberty’s recent request for the franchise to serve Pelham and Windham, an issue arose over whether Northern’s possession of the franchise for a now-closed propane

distribution system in Pelham conflicted with Liberty's request to provide natural gas in Pelham. In an explicit acknowledgement that Northern's Pelham franchise was to serve "gas," not just propane, Staff highlighted that the Northern franchise may conflict with Liberty's request to serve natural gas Pelham:

Also, there's one small minor technical element that hasn't been examined in the Order of Notice, and that would be the fact that there are a number of official and semi-official materials that indicate that the Town of Pelham is part of the Northern gas franchise territory. And, to our knowledge, that reference is made within Northern's official filings in annual reports. However, there are no customers served by Northern, to Staff's knowledge. And, so, that's an area of factual inquiry that we'll be making regarding whether, number one, Northern maintains some level of franchise exclusivity within the Town of Pelham; whether that so-called "franchise exclusivity" has lapsed; and the exact nature of the franchise that Liberty is seeking, insofar as they may be seeking a border-to-border franchise for both towns, wherein, after approval by the Commission, they would have the inclusive right to offer natural gas service within the entire borders of each town.

Transcript of October 28, 2015, prehearing conference in Docket No. DG 15-362, at 9.

21. In a series of 1973 orders arising from Tennessee Gas Pipeline Company's inability to provide sufficient capacity in which the Commission granted requests for a moratorium, the orders noted, without any comment on the issues related to this petition, that the companies relied heavily on propane to provide baseload service due to the shortage of natural gas:

Gas Service, Inc. has been notified by its supplier of natural gas (Tennessee Gas Pipeline Company) that it will be unable to increase its supply. In addition, Gas Service, Inc. has been unable to obtain firm commitments for the necessary quantities of propane to supplement the natural gas supply.

The testimony of the Petitioner's witness indicated that Gas Service, Inc. had made every reasonable effort to obtain commitments, including the leasing of 40 tank cars, the installation of a railroad sidetrack, and the

installation of eight storage tanks, to provide storage facilities for propane gas. Accordingly, it appears to be consistent with the public interest to permit the restrictions as outlined in Supplement No. 5 to its Tariff to become effective with the date of this Order. Our order will issue accordingly.

Gas Service, Inc., 58 NH PUC 48 (July 24, 1973); *see Manchester Gas Company*, 58 NH PUC 71, (Oct. 2, 1973); *Concord Natural Gas Corp.*, 58 NH PUC 78 (Oct. 16, 1973).

Similarly, Liberty's EnergyNorth system stores large amounts of propane at its Amherst facility, which it distributes through its pipeline system for pressure support, peaking supply, and as otherwise needed. There is no record of EnergyNorth obtaining the franchise to distribute propane.

22. In *Petrolane-Southern New Hampshire Gas Co.*, 74 NH PUC 43 (Jan. 17, 1989), the Commission approved the asset transfer of a propane distribution company to Northern Utilities (the same propane facility referenced in the Pelham docket mentioned above). The Commission found that the transfer, which included Petrolane-Southern's franchise under which it only distributed propane, was for the public good because Northern intended to provide natural gas:

Notwithstanding the history of gas supply to the Salem-Pelham area the commission finds that Northern has demonstrated that it has the necessary supplies and expertise to make good its intention to deliver natural gas. Such an outcome will benefit not only existing customers of Southern but also new customers and in the process benefit the local economy. The commission, therefore, finds that the settlement agreement between the parties is in the public good.

74 NH PUC at 44. The Commission did not require Northern to obtain a separate natural gas franchise, but accepted that Northern would provide natural gas service under a franchise that Petrolane-Southern exercised to provide only propane service. Also note that the ordering clause provided "that Northern Utilities, Inc. be, and hereby is,

authorized to engage in the business of a gas utility in the Towns of Salem and Pelham.”

Id. (emphasis added). The Commission was agnostic as to which fuel Northern would supply. Liberty similarly intends to provide natural gas service under a tariff that authorizes distribution of “gas” and under which the franchisee currently provides propane service. *See also Southern New Hampshire Gas Company*, 65 NH PUC 101, 105 (Feb. 28, 1980) (Commission approved the sale of a propane distribution utility to Petrolane-Southern including the authority “to engage in business as a gas public utility,” and requiring Petrolane-Southern to “pursue all reasonable steps to provide natural gas service to [its] customers”).

23. Finally, in offering testimony partially supportive of Liberty’s purchase of the Keene system, Staff did not suggest that conversion to natural gas would require a separate filing to obtain franchise rights that were not already part of the Keene acquisition:

Q. Liberty has suggested that NHGC customers could see substantial savings if the Keene system were converted to natural gas, would you please comment on that?

A. A number of entities, including the current owners, have considered building an LNG plant to serve Keene but to date none have brought a viable plan forward to do so. Liberty’s plans to bring natural gas to Keene as provided in testimony and explored further through the discovery process are highly speculative and lack specifics. The supply savings would have to be substantial to offset the capital costs associated with building an LNG plant, and the existing customer base is insufficient to support such an investment. Staff does appreciate Liberty’s willingness to pursue other supply sources for Keene in an effort to produce customer savings and growth.

Q. What are some of the benefits you expect if Liberty acquires NHGC.

A. Four benefits I see are: i) NHGC customers will not have to pay the costs incurred to settle the KGC law suit; ii) supply cost to serve NHGC should be lower and more stable under Liberty, as Liberty has propane

storage capacity available to serve NHGC; iii) affiliate charges from the current owner of approximately \$200,000 per year will now be provided by Liberty or its affiliate companies; and, iv) Liberty has shown a willingness to pursue various energy projects intended to bring natural gas to Keene, a potentially less costly and cleaner alternative to propane.

Staff's September 25, 2014, pre-filed testimony in DG 14-155, at 13, 14 (emphasis added). If Liberty did not already hold the franchise for natural gas, as Staff now suggests, surely Staff would not have presumed in the Keene acquisition docket that the Company would automatically acquire the franchise when Staff considered the conversion to natural gas to be "speculative."

Liberty Does Not Need Franchise Permission to Serve Natural Gas.

24. The above all lead to the conclusion that Liberty need not seek permission under the franchise statutes to distribute natural gas in Keene, because it already has such authority.
25. The Company understands the Commission will review the prudence of the decision to convert to natural gas and the prudence of the costs incurred to implement the transition when the Company seeks to recover the costs through its cost of gas rates. The Company also welcomes the Safety Division's review and inspection of the facility and related issues as it enforces applicable safety laws.
26. However, the Company disputes that it must seek permission under the franchise statutes to convert to natural gas, which also suggests that the natural gas franchise is currently available in Keene and others could compete for it. And carrying Staff's logic further means that Liberty (and Northern) has (or should have) separate natural gas and propane franchises for each of the communities it serves. That is not the case. Liberty

has the franchise to provide gas service to its customers, which gas may be propane, natural gas, or another appropriate fuel that meets applicable tariff requirements.

WHEREFORE, Liberty Utilities respectfully asks that the Commission to:

- A. declare that Liberty need not seek permission under RSA 374:22 and 374:26 to distribute natural gas in Keene; and
- B. grant such other relief as is just and reasonable and consistent with the public interest.

Respectfully submitted,

Liberty Utilities (EnergyNorth Natural Gas) Corp.
d/b/a Liberty Utilities



Date: April 25, 2017

By: _____
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Certificate of Service

I hereby certify that on April 25, 2017, a copy of this *revised* petition has been forwarded to the Office of Consumer Advocate.



By: _____
Michael J. Sheehan

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PRIVATE ACTS.

[Chap. 2451.]

CHAPTER 2450.

AN ACT to amend an act approved June 27, 1857, and entitled
"An act to incorporate the Langdon Manufacturing Com-
pany."

*Be it enacted by the Senate and House of Representatives, in General
Court convened:*

SECTION 1. That the capital stock of said corporation may consist of any sum not exceeding five hundred thousand dollars, and that the limitation in the charter of said corporation of the power to purchase and hold personal and real estate not exceeding in value the sum of two hundred thousand dollars, be, and the same is hereby repealed.

SEC. 2. This act shall take effect from and after its passage.

SEC. 3. The Legislature may at any time alter, amend or repeal this act, whenever, in their opinion, the public good shall require it.

Approved June 27, 1860.

CHAPTER 2451.

AN ACT to incorporate the Keene Gas Light Company.

*Be it enacted by the Senate and House of Representatives, in General
Court convened:*

SECTION 1. That Thomas H. Leverett, Josiah H. Carter, Levi Chamberlain, Samuel Dinsmoor, Edward Gustine, William P. Wheeler, Henry Pond, John H. Elliot, Robert Wilson, Caleb T. Buffum and William P. Abbott, their associates and successors, are hereby constituted a body politic and corporate, by the name of the Keene Gas Light Company, and vested with all the powers and privileges, and subject to all the restrictions and liabilities by law incident to corporations of a similar nature.

SEC. 2. The said corporation is authorized to purchase and hold all such real and personal property as may be necessary and proper to enable them to carry on the manufacture, distribution and sale of gas, for the purpose of lighting the streets, manufactories, machine shops, and all other buildings in the town of Keene, and to construct or purchase such buildings,

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works, furnaces, reservoirs, gas holders, gas pipes, and other things as may be requisite and proper for such purpose.

SEC. 3. Said corporation shall have the right to lay and maintain gas pipes in any of the public highways in said town of Keene—the consent of the selectmen of said town having first been obtained therefor—and to re-lay and repair the same, subject to such regulations regarding the health and safety of the citizens and the security of the public travel as may be prescribed by said selectmen.

SEC. 4. The whole amount of the capital stock of said corporation shall not exceed the sum of sixty thousand dollars, and said stock shall be divided into shares of not more than one hundred dollars each.

SEC. 5. The manufacture of gas shall not be carried on by said corporation in the compact part of said town, unless the selectmen of said town shall first approve of the place selected by said corporation for such manufacture.

SEC. 6. Any three of the persons named in this act may call the first meeting of said corporation, by notice in any newspaper published in said Keene, not less than ten days before the day of such meeting, at which meeting, or at any subsequent meeting, duly called, by-laws may be adopted, and all necessary officers chosen for managing the affairs of said corporation.

SEC. 7. The Legislature may at any time alter, amend or repeal this act, whenever, in their opinion, the public good shall require the same; and this act shall take effect from its passage.

Approved June 27, 1860.

CHAPTER 2452.

AN ACT in amendment of an act entitled "An act to incorporate the Ashuelot Manufacturing Company."

*Be it enacted by the Senate and House of Representatives, in General
Court convened:*

SECTION 1. The said corporation is hereby authorized to commence, carry on and continue any or all of the various branches of business contemplated in their original act of incorporation in the town of Gilsum, as well as in the town of Winchester, in said county of Cheshire; and, for that purpose, and the purposes specified in said act of incorporation, may erect all necessary build-

OLD YANKEE WAYS

Enduring Use of "City Gas" Keeps N.H. Utility Reminiscent of a Simpler Age

With roots going back more than a century, Keene Gas Corp. still produces and pipes a special propane/air mix through 34 miles of municipal lines. Customer storage tanks are not needed.

At a time when environmental regulators and LP-gas industry spokesmen are emphasizing the importance of alternative fuels now and into the 21st century, the irony of piping an old-fashioned "manufactured" gas into 60-year-old cast iron city mains is creating a striking anachronism in a picturesque New England town. The place is Keene, N.H., a well-developed Yankee "settlement" of approximately 22,000 people nestled in the southwest corner of the state. The fuel supplier is Keene Gas Corp., an unusual hybrid operation that serves both as an unregulated (straight) LP-gas marketer (Retail Division) and a state-regulated utility (City Division) that produces a 740-Btu, 29% propane/71% air mix called "city gas."

In much the same way that the city of Keene preserves examples of Early American tradition and lifestyles, a study of the gas company reveals an intriguing history of fuel technology over the years. What is especially noteworthy is the fact that the bulk of the utility's early 20th century distribution lines are still being used today.

Keene Gas' origins go back to the Keene Gas Light Co., which was incorporated on June 27, 1860 for "the manufacture, distribution, and sale of gas for the purpose of lighting the streets, manufactories, machine shops, and all other buildings in the town of Keene." In 1901, the company became known as Keene Gas and Electric Co., and was purchased in 1929 by Public Service Co. of New Hampshire, an electric utility. In 1946, the Gas Division was sold to Gas Service, Inc. of Nashua, N.H. The current owner, Harry B. Sheldon of Concord, Mass., acquired the firm in 1979.

The company produced gas from coal until 1954, when a change to reformed butane using the Koppers-Hasche Process took place. The reformed butane was replaced around 1957 by a butane/air mixture. Keene Gas entered the propane market in 1958, when it began deliveries of 100-lb cylinders. Ten

years later, a 300,000-cu ft water-seal holder was removed and a quadruple jet system featuring Eclipse Fuel Engineering injectors was installed. Still in use, the system provides the city with a low pressure, 740-Btu propane/air mixture through 34 miles of municipal mains. All lines are situated within city limits. State utility franchise law dictates that the gas company maintain an average of 740-Btu output around the clock.

It's difficult to say how many, or if any other LP-gas suppliers or utilities still produce the propane/air mix today, but the principals at Keene Gas believe that their firm may be among the last. "The only thing I know for certain is that Claremont, N.H. (a town of about 15,000 people a few miles north) uses it, but there it's rated to about 900 Btu," said John DiBernardo, Keene Gas' assistant general manager and plant operations manager. "There were a number of [city gas suppliers] in Vermont at one time. I think I heard something about it still being used in Ocean City, Md. but we're not sure."

Comparing Notes

General manager Robert Egan added, "We're always looking for people out there who have the same setup we have, so we can 'compare notes.' If anybody knows of anyone who still uses city gas, we'd sure like to know. The parts we use at 'the point of mixture'—including the jets, venturis, and automatic switching system to turn on the jets—are about 22 years old." Egan and DiBernardo believe that Keene Gas could conceivably run into difficulties if any of these parts needed replacement.

The concept of producing a manufactured propane/air mix has been around since the late 1920s. According to H. Emerson Thomas, a veteran industry consultant who worked directly with the fuel, Phillips Petroleum installed the first systems in the East in 1928. Propane/air reached the height of popularity in the 30s, yet most plants were converted over to natural gas after World War II. In the case of Keene Gas, the

fuel is mixed and produced according to demand at the plant on Emerald Street—the site of the original gas plant 130 years ago.

Propane is brought in via transport and stored on the premises. The tank farm here consists of one 30,000-gal. and one 61,400-gal. aboveground tank plus two 30,000-gal. mounded tanks, which were built and installed by Gas Service, Inc. (Covered with earth and stone, mounded tanks offer a superior degree of flame resistance. For additional details on this unusual method of storage, see "Worldwide Development of Mounded LP-Gas Storage: Alternative Storage System Gains Favor," BPN, April 1989, p. 28.)

The way DiBernardo described the gas production process, propane is fed as a vapor through a regulator and venturi-type injectors where the air is entrained. "We don't use compressors," he said. "We depend on the energy that is 'stored' in the liquid propane. It enters the venturi at a pressure of 30 psi; the mixed gas leaves the plant at a low pressure of 1 psi. Additional jets come on automatically to meet the demand. During cold months, we have to use steam-fired vaporizers, but in summer we can take the vapor directly from the tank."

Propane/air gas offers at least two notable advantages over pure propane. First, there is less likelihood of reliquefaction in cold temperatures. Second, appliances that operate on propane/air or other manufactured gas such as coal, coke, or carburetted water gas can be easily converted over to natural gas if it should become available. By far the most practical advantage of Keene Gas' system is that users do not require storage tanks on their property. "We have many customers—concentrated mostly in the downtown district—who would have difficulty siting a fuel oil tank or LPG tank," Egan pointed out. "We can offer an energy source that eliminates the consideration of having to install a tank on-site."

The only drawback posed by the pro-

OLD YANKEE WAYS

pane/air mixture is that conventional LP-gas appliances must be adjusted or modified accordingly. The orifice in every unit must be sized for the different Btu output, and generally the air shutter must be sized for the different Btu output, and generally the air shutter must be adjusted for primary air. No appliance is believed to be manufactured at this time to run on the propane/air mixture when it leaves the factory.

For a good idea of what city gas distribution systems looked like decades ago, one need look no further than Keene Gas' pipeline network almost anywhere within the town. According to DiBernardo, the original mains were laid in the 1860s but most of the system was replaced with cast iron piping in the late 1920s and 30s. It is still in use today. Thirty miles of iron pipe are fed at a pressure of 11 in. WC. The only portion of the infrastructure that consists of modern material is a four-mile segment of welded coated steel that was laid in 1968 to service a growing area of the city.

It is important to note that, because a specially-produced fuel is being utilized, modifications must be made in pipe sizing over the normal requirements for straight propane. According to DiBernardo, "The pipeline has to be calculated based on our own 'peculiar' amount of heat output. We wouldn't get as much Btu output if we used conventional size pipe. We have to use piping that is approximately 30% larger in order to make up for the lower Btu. We use computer-generated tables to determine the proper pipe and orifice sizes."

Keene Gas Corp. performs virtually all new pipe installations and maintenance. (The work is seldom contracted out.) When a replacement segment is needed, plastic is usually selected; the favored type is Phillips' "Driscopipe," a polyethylene product that is installed with heat fusion equipment.

In Good Shape

For the last decade or so, considerable media attention has been focused on the nation's deteriorating urban bridges, roads, and pipelines. In the city of Keene, however, the old gas piping is apparently not in any danger of giving way. DiBernardo reports that Keene Gas maintains a continuous program of inspection, replacement, and

upgrading, with specific areas targeted because of age and ambient soil conditions. He stated that there is no known problem with acidic soil; however, low resistivity exists in certain areas. That condition is best handled with cathodic protection.

Keene Gas' propane/air pipeline system falls under CFR 49 Part 192, which



Robert Egan

is part of the Natural Gas Pipeline Safety Act of 1968. The pertinent rules apply to LP-gas suppliers who serve 10 or more customers from a single source.

While examining the involvement of



John DiBernardo

the federal government in regulating Keene Gas' operations, it becomes clear that a convenient arrangement exists in which the gas company can earn its necessary state approvals at the same time. As DiBernardo explained it, "The state of New Hampshire has an agreement with the federal government, in that there is a state inspector (Richard Marini, gas safety engineer) who works for the New Hampshire Public Utility

Commission (PUC) and who is also granted powers under the Federal granted powers under the federal government's Office of Pipeline Safety makes sure all natural gas or propane utilities that fall under the state PUC also follow regulations under the Natural Gas Pipeline Safety Act."

This "two-hatted" individual is responsible for overseeing all operations, including physical inspections, and for making sure that the gas company follows appropriate plans. "The inspector must ensure that we're adhering to the letter of the law," DiBernardo said, citing, for example, leak surveys and the need to keep meticulous records of them.

As a hybrid company that markets two types of fuel, Keene Gas enjoys a somewhat complex relationship with state regulators. The City Division, which handles the manufacture and distribution of city gas (propane/air), is listed as a state public utility. In a typical exchange for having been granted exclusive franchise rights, the division has agreed to operate under jurisdiction of the PUC for the setting of customer rates. Egan estimates that the City Division's customer base of 1100 comprises 80% residential, 15% commercial (mostly restaurants), and 5% industrial accounts. The Retail Division markets only straight propane to approximately 3600 customers.

Although the establishment of natural gas in the area would not hurt Keene Gas (since the company would hold the franchise), it is interesting to note that a changeover to natural gas appeared to be a fair possibility until recently. As Egan explained, the proposed Champlain Pipeline Project would have brought a natural gas main within three miles of Keene's plant, and the firm would have laid its own pipeline to connect with it. According to the principals, there was definite talk about changing the entire system over to natural gas. However, the Champlain Project is reportedly stalled as a result of environmental considerations, and no changeover is contemplated at this time.

Nevertheless, Keene Gas Corp. stands apart as a supplier of a fuel that was once quite popular. The way Egan and DiBernardo perceive it, manufactured gas systems serve as a "bridge" between the old gas hookups of yesterday and the natural gas systems of today and tomorrow.

UTILITY FOCUS:

KEENE GAS COMPANY



With a franchise to provide gas service to Keene, Keene Gas Corporation may very well be the only remaining utility in the country producing and supplying manufactured propane/air mixture gas to its utility customers. Certainly the pending abandonment of the Claremont Gas franchise leaves Keene Gas as the sole remaining utility of its kind in New Hampshire. An unusual hybrid operation serving both as an unregulated, straight propane gas marketer through its retail division and as a state regulated utility that produces a 740 Btu, 29% propane/71% air mix called "city gas" through its city division, Keene Gas is nothing if not unique.

Keene Gas' origins go back to Keene Gas Light Co., which was incorporated on June 27, 1860 for the manufacture, distribution, and sale of gas for the purpose of lighting the streets and the factories, machine shops, and all other buildings in the town of Keene. In 1901, the company became known as Keene Gas and Electric Co. and was purchased by Public Service Co. of New Hampshire in 1929. In 1946, the Gas Division was sold to Gas Service Inc. of Nashua, a forerunner of EnergyNorth Natural Gas. The current owner, Harry B. Sheldon, acquired the company in 1979.

A study of Keene Gas Company's past reveals an intriguing history of fuel technology over the years. Like many other gas utilities in the first part of this century, Keene Gas manufactured gas from coal. In 1954, Keene Gas changed to reformed butane using the Koppers-Hasche Process. However in 1968, the reformed butane was replaced by a butane/air mixture.

Keene Gas entered the propane market in 1958, when it began deliveries of 100 pound cylinders. Ten years later, a 300,000 cubic foot water seal holder was removed and a quadruple jet system featuring Eclipse Fuel Engineering injectors was installed. Still in use now, the system provides the city with a low pressure, 740 Btu propane/air mixture through 29 miles of municipal mains. All lines are situated within the city limits of Keene.

The concept of producing a manufactured propane/air mixture has been around since the late 1920s. Phillips Petroleum installed the first systems in the East in 1928. Propane/air mixtures reached the height of their popularity in the 1930s; however, most plants were converted over to natural gas after World War II. In the case of Keene Gas, the fuel is mixed and produced according to demand at its plant on Emerald Street, the site of the original gas plant 130 years ago. Propane is brought in via transport and stored on the premises. The tank farm here consists of two above ground tanks, one 30,000 gallon and one 61,400 gallon, plus two 30,000 gallon mounded tanks which were built and installed by Gas Service, Inc. Mounded tanks, which are covered with earth and stone, offer a superior degree of flame resistance.

Propane-air mixtures offer at least two notable advantages over pure propane. First, there is less likelihood of reliquefaction in cold temperatures. Second, appliances that operate on propane/air or other carburetted water gas can be easily converted to natural gas should it become available. By far the most practical advantage of the

Keene Gas system is that users do not require storage tanks on their property. Many of the company's customers are concentrated in the downtown area and would have difficulty siting an oil tank or a propane tank on their property. Keene Gas can offer an energy source that eliminates the consideration of having to install a tank on-site. The only drawback posed by the propane/air mixture is that conventional propane gas appliances must be adjusted or modified accordingly. No appliance is believed to be manufactured at this time to run on the propane/air mixture when it leaves the factory. The orifice in every unit must be sized for the different Btu output, and, generally, the air shutter must be sized for primary air.

While the original mains were laid in the 1860s, most of the system was replaced with cast iron piping in the late 1920s and early 1930s. It is still in use today and consists of twenty one miles of cast iron pipe fed at a pressure of 11 inches of water column. The only portions of the infrastructure that consist of modern material are a four mile segment of welded coated steel that was laid in 1968 to service a growing area of the city and an approximately two mile segment of polyethylene main installed in recent years. Despite its age, Keene Gas' old gas piping is not in any danger of giving way. Keene Gas maintains a continuous program of inspection, replacement and upgrading targeting specific areas because of age and ambient soil conditions.

◀▶

GAS SERVICE, INC.

July 25, 1974

TO: F. Derrickson C.R. Prichard
F. Hokenstrom R. Robichaud
M. Mancini L. Stagney
R. Nichols

FROM: C.A. Drexel

SUBJECT: SWITCH FROM BUTANE TO PROPANE
KEENE PLANT OPERATIONS

This is to notify you that on August 1, 1974, it is planned to change from Butane to Propane for the Keene Plant operation.

If you are involved in the changing of any records, etc., in regards to this switch, would you please make the necessary arrangements to take care of this change as the BTU value will go from 760 to 740.


C.A. Drexel

CAD/me

GAS SERVICE, INC.

DATE Aug. 12, 1974

TO Ray Robichaud

FROM Ron Nichols

SUBJECT Correction Factors for Propane and Butane Air

ASSUME:

Therm = 100,000 BTU ✓

Propane = 91,300 BTU = .913 therms ✓ sp. gr. 1.522

Butane = 103,000 BTU = 1.03 therms ✓ sp. gr. 2.006

760 BTU Butane Air Specific gravity 1.22

$$\frac{1000 \text{ cf} \times 760 \text{ BTU}}{103000 \text{ BTU}} = 7.378 \text{ gallons per mcf}$$
MCF = $\frac{\text{gallons}}{7.378}$ ✓

THERM = MCF x .76 ✓

740 BTU Propane Air Specific gravity 1.15

$$\frac{1000 \text{ cf} \times 740 \text{ BTU}}{91300 \text{ BTU}} = 8.105 \text{ gallons per mcf}$$
MCF = $\frac{\text{gallons}}{8.105}$ ✓

THERM = MCF x .74 ✓

RAN/eg

C/c CAD
LTS ✓

Ron
This looks
OK to me
Larry
8/27/74

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

DG 17-068

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES – KEENE DIVISION**

Petition for Declaratory Ruling

ORDER OF NOTICE

On April 26, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities -- Keene Division (Liberty) filed a petition for declaratory ruling pursuant to N.H. Code of Admin. Rules Puc 203 and Puc 207. In its petition, Liberty requests a ruling that it need not seek permission under RSA 374:22 and 374:26 to distribute gas by means of compressed natural gas (CNG) and liquefied natural gas (LNG) within the City of Keene. Liberty contends that its existing franchise to distribute “gas,” pursuant to which it has distributed coal gas, butane, and propane-air, permits it to distribute natural gas without further franchise approval.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission’s website at <http://www.puc.state.nh.us/Regulatory/Docketbk/2017/17-068.html>

On October 20, 2017, the Commission issued Order No. 26,065, in which it granted Liberty’s petition. In that order, the Commission ruled that Liberty has the existing authority to offer CNG and LNG service to customers in Keene, albeit with conditions imposed pursuant to the Commission’s general authority regarding engineering and operational safety. On November 16, 2017, members of the NH Pipeline Health Study Group (as a group and individually) and Terry Clark, individually, filed a joint motion for rehearing of Order No. 26,065. Liberty

objected to the motion. On December 18, 2017 the Commission issued Order No. 26,087, in which it granted the joint motion for rehearing, in part. In that order, the Commission found that of all the movants, only Mr. Clark has a direct interest in the outcome of this proceeding. The Commission determined to afford Mr. Clark and any other person with a direct interest in the outcome of the proceeding the opportunity to present legal arguments in the form of legal briefs. The Commission further ruled that the conditions related to safety and operations imposed on Liberty in Order No. 26,065 will remain in place, noting that neither Mr. Clark nor Liberty have raised any issue with these conditions.

Liberty's petition for declaratory ruling raises, inter alia, issues related to the scope of Liberty's existing gas franchise and whether RSA 374:22 and RSA 374:26 require Liberty to obtain additional franchise permissions from the Commission before converting the type of gas Liberty delivers from propane, mixed with air to a strength and pressure suitable for distribution, to CNG and LNG, decompressed to a suitable pressure for local distribution. Liberty is not seeking new franchise permissions under RSA 374:22 and RSA 364:26 at this time.

Each party has the right to have an attorney represent the party at the party's own expense.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Code Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on April 6, 2018 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Code Admin. Rules Puc 203.15. Parties should be prepared to present argument regarding interventions and regarding the status and conduct of the docket; and it is

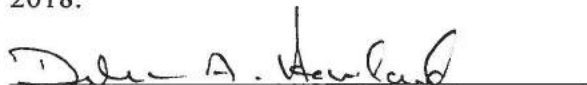
FURTHER ORDERED, that, immediately following the Prehearing Conference, Liberty, the Staff of the Commission, and any Intervenors hold a Technical Session to discuss the rules for submitting legal briefs and public comments and to establish a schedule for the submission of legal briefs for Commission's consideration; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.12, Liberty shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than March 15, 2018, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before April 4, 2018; and it is

FURTHER ORDERED, that consistent with N.H. Code Admin. Rules Puc 203.17 and Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to Liberty and the Office of the Consumer Advocate on or before April 4, 2018, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, consistent with N.H. Code Admin. Rule Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before April 6, 2018.

By order of the Public Utilities Commission of New Hampshire this first day of March, 2018.


Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov
al-azad.iqbal@puc.nh.gov
alexander.speidel@puc.nh.gov
amanda.noonan@puc.nh.gov
donald.kreis@oca.nh.gov
karen.sinville@libertyutilities.com
lynn.fabrizio@puc.nh.gov
michael.sheehan@libertyutilities.com
ocalitigation@oca.nh.gov
rmhusband@gmail.com
steve.frink@puc.nh.gov

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Docket #: 17-068-1 Printed: March 01, 2018

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Martin P. Honigberg

COMMISSIONERS
Kathryn M. Bailey
Michael S. Giaimo

EXECUTIVE DIRECTOR
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX (603) 271-3878

Website:
www.puc.nh.gov

April 11, 2018

Re: DG 17-068, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities
Petition for Declaratory Ruling
Procedural Schedule

To the Parties:

On April 6, 2018, the Commission held a duly noticed prehearing conference in the above-referenced matter. Appearances were entered by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, Richard Husband on behalf of Terry Clark, the Office of Consumer Advocate, and Commission Staff.

Following the prehearing conference, parties and Staff met in a technical session and agreed upon the following schedule, which Staff submitted to the Commission by letter dated April 10, 2018:

| | |
|--|----------------|
| Non-Petitioner Discovery Requests to Liberty | April 9, 2018 |
| Responses to Discovery (due within 10 days) | April 19, 2018 |
| Initial Briefs | May 1, 2018 |
| Reply Briefs | May 15, 2018 |

The Commission has determined that the proposed schedule is in the public interest and therefore has approved it.

Sincerely,

A handwritten signature in dark ink, appearing to read "Debra A. Howland".

Debra A. Howland
Executive Director

cc: Service List (Electronically)

SERVICE LIST - EMAIL ADDRESSES- DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11(a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov
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alexander.speidel@puc.nh.gov
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tmclark@ci.keene.nh.us
william.clark@libertyutilities.com

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Docket #: 17-068-1 Printed: April 11, 2018

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
- DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.

TEXT OF RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Statutes

New Hampshire Statutes

365:21 Rehearings and Appeals. – The procedure for rehearings and appeals shall be that prescribed by RSA 541, except as herein otherwise provided. Notwithstanding RSA 541:5, upon the filing of a motion for rehearing, the commission shall within 30 days either grant or deny the motion, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.

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.

II. No permission or approval under this section shall be required to be obtained by a foreign electric utility as defined in RSA 374-A:1 in connection with its participation in an electric power facility as defined in said section where the electric utility having the largest financial interest therein and the utility or utilities having primary responsibility for the construction or operation of the facility are domestic electric utilities as defined in said section or have obtained such permission.

III. No water company shall obtain the permission or approval of the commission to operate as a public utility without first satisfying any requirements of the department of environmental services concerning the suitability and availability of water for the applicant's proposed water utility.

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.

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.

378:38 Submission of Plans to the Commission. –

Pursuant to the policy established under RSA 378:37, each electric and natural gas utility, under RSA 362:2, shall file a least cost integrated resource plan with the commission within 2 years of the commission's final order regarding the utility's prior plan, and in all cases within 5 years of the filing date of the prior plan. Each such plan shall include, but not be limited to, the following, as applicable:

- I. A forecast of future demand for the utility's service area.
- II. An assessment of demand-side energy management programs, including conservation, efficiency, and load management programs.
- III. An assessment of supply options including owned capacity, market procurements, renewable energy, and distributed energy resources.
- IV. An assessment of distribution and transmission requirements, including an assessment of the benefits and costs of "smart grid" technologies, and the institution or extension of electric utility programs designed to ensure a more reliable and resilient grid to prevent or minimize power outages, including but not limited to, infrastructure automation and technologies.
- V. An assessment of plan integration and impact on state compliance with the Clean Air Act of 1990, as amended, and other environmental laws that may impact a utility's assets or customers.
- VI. An assessment of the plan's long- and short-term environmental, economic, and energy price and supply impact on the state.
- VII. An assessment of plan integration and consistency with the state energy strategy under RSA 4-E:1.

491:22 Declaratory Judgments. –

I. Any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive. The taxpayers of a taxing district in this state shall be deemed to have an equitable right and interest in the preservation of an orderly and lawful government within such district; therefore any taxpayer in the jurisdiction of the taxing district shall have standing to petition for relief under this section when it is alleged that the taxing district or any agency or authority thereof has engaged, or proposes to engage, in conduct that is unlawful or unauthorized, and in such a case the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced. The preceding sentence shall not be deemed to convey standing to any person (a) to challenge a decision of any state court if the person was not a party to the action in which the decision was rendered, or (b) to challenge the decision of any board, commission, agency, or other authority of the state or any municipality, school district, village district, or county if there exists a right to appeal the decision under RSA 541 or any other statute and the person seeking to challenge the decision is not entitled to appeal under the applicable statute. The existence of an adequate remedy at law or in equity shall not preclude any person from obtaining such declaratory relief. However, the provisions of this paragraph shall not affect the burden of proof under RSA 491:22-a or permit awards of costs and attorney's fees under RSA 491:22-b in declaratory judgment actions that are not for the purpose of determining insurance coverage.

II. The district court shall have concurrent jurisdiction over such claims arising under its subject matter jurisdiction authority in RSA 502-A except that the defendant shall have the right to remove said declaratory judgment action to the superior court, subject to conditions established by rule of court, if the claim exceeds \$1,500. The court of probate shall have exclusive jurisdiction over such claims arising under its subject matter jurisdiction authority in RSA 547 and RSA 552:7.

III. No petition shall be maintained under this section to determine coverage of an insurance policy unless it is filed within 6 months after the filing of the writ, complaint, or other pleading initiating the action which gives rise to the question; provided, however, that the foregoing prohibition shall not apply where the facts giving rise to such coverage dispute are not known to, or reasonably discoverable by, the insurer until after expiration of such 6-month period; and provided, further, that the superior court may permit the filing of such a petition after such period upon a finding that the failure to file such petition was the result of accident, mistake or misfortune and not due to neglect. A petition for declaratory judgment to determine coverage of an insurance policy may be instituted as long as the court has personal jurisdiction over the parties to the matter, even though the action giving rise to the coverage question is brought in a federal court or another state court.

541:3 Motion for Rehearing. – Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

R.S.A. 541:6 Appeal. – Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

Rules

Puc 102.07 “Hearing” means a properly noticed session held in a contested case before the commission or its designee which provides for opportunity for any party, intervenor or commission staff to present evidence and conduct cross-examination. “Hearing” also includes any pre-hearing conferences conducted pursuant to Puc 203.14.

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, namely:

- (1) A statement of the date, time, place and nature of the hearing;
- (2) A statement of the legal authority under which the hearing is to be held;
- (3) A reference to the particular statutes and rules involved, including this chapter;
- (4) A short and plain statement of the issues presented; and
- (5) A statement that each party has the right to have an attorney represent them at the party’s own expense.

(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.

Puc 203.15 Prehearing Conference.

(a) In order to facilitate proceedings and encourage informal disposition, the presiding officer shall, upon motion of any party, or upon the presiding officer's own motion, schedule one or more prehearing conferences.

(b) The commission shall provide notice to all parties prior to holding any prehearing conference.

(c) Prehearing conferences shall include consideration of any one or more of the following:

- (1) Offers of settlement;
- (2) Simplification of the issues;
- (3) Stipulations or admissions as to issues of fact or proof, by consent of the parties;
- (4) Limitations on the number of witnesses;
- (5) Consolidation of examination of witnesses by the parties; and
- (6) Any other matters which aid in the disposition of the proceeding.

(d) Initial prehearing conferences convened at the commencement of proceedings shall also include consideration of any one or more of the following:

- (1) Statement of preliminary, non-binding positions and other issues of concern of the parties identified after initial review of the filing;
- (2) Consideration of any petitions for intervention and any objection filed thereto;
- (3) Changes to standard procedures desired for discovery or during the hearing, if requested by a party;
- (4) Establishment of a procedural schedule to govern the remainder of the proceeding; and
- (5) Motions for confidential treatment of matters raised in the proceeding and otherwise to facilitate discovery.

(e) The commission shall issue and serve upon all parties a prehearing order addressing the matters raised at any prehearing conference.

Puc 203.18 Public Comment. Persons who do not have intervenor status in a proceeding but having interest in the subject matter shall be provided with an opportunity at a hearing or prehearing conference to state their position.

Puc 203.23 Evidence.

...

(c) Pursuant to RSA 365:9 and RSA 541-A:33, II, the rules of evidence shall not apply in proceedings before the commission.

(d) The commission shall exclude irrelevant, immaterial or unduly repetitious evidence...

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.

(b) Such a petition shall be verified under oath or affirmation by an authorized representative of the petitioner with knowledge of the relevant facts.

(c) The commission shall dismiss a petition for declaratory ruling that:

(1) Fails to set forth factual allegations that are definite and concrete;

(2) Involves a hypothetical situation or otherwise seeks advice as to how the commission would decide a future case; or

(3) Does not implicate the legal rights or responsibilities of the petitioner; or

(4) Is not within the commission's jurisdiction.

(d) Except for a petition dismissed pursuant to subsection (c), the commission shall conduct an adjudicative proceeding on a petition for declaratory ruling in accordance with Puc 203.