STATE OF NEW HAMPSHIRE

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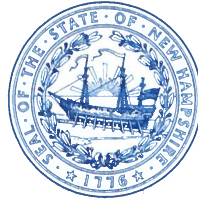

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May 29, 2018

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DG 17-198
Energy North Natural Gas Corp. d/b/a Liberty Utilities
Petition for Approval of Granite Bridge Project and Supply Contracts
Pending Confidentiality Requests

Dear Ms. Howland:

As you know, Energy North Natural Gas Corp. d/b/a Liberty Utilities (Liberty) accompanied its petition in the above-referenced docket with a motion for confidential treatment of certain material in the petition. The Office of the Consumer Advocate filed a pleading in opposition to the confidentiality motion on February 9, 2018. At the prehearing conference of March 9, 2018, Chairman Honigberg urged Liberty to reduce the scope of the materials for which it seeks confidential treatment. On March 14, 2018, two intervenors – Repsol Energy North America (Repsol) and Engie Gas & LNG, LLC – each filed a pleading in support of Liberty's confidentiality request. On April 10, 2018, Liberty filed new public versions of certain prefiled testimony and exhibits, significantly reducing the scope of the redactions requested in the confidentiality motion. Finally, on May 17, 2018, Repsol filed an amended version of its pleading.

In light of the foregoing developments, I am taking this opportunity to advise the Commission on the extent to which the OCA continues to oppose the pending confidentiality requests.

The OCA commends Liberty for shrinking the universe of putatively confidential materials significantly in light of the degree to which this proceeding is a matter of public interest and controversy. However, we would like to remind the Commission – and Liberty – that its request for approval of the Granite Bridge project is really a matter of convenience for the utility's shareholders, inasmuch as pre-construction approval of the Public Utilities Commission is not required. Since the purpose of the request for Commission approval of Granite Bridge is to insulate the Company from post-construction prudence disallowances, and to use Commission

approval to bolster the case for construction approval from the Site Evaluation Committee, it is inconsistent with the purposes of the Right-to-Know Law (RSA 91-A) for Liberty to invoke the administrative processes of the Commission on the one hand while seeking to limit on a self-serving basis the extent to which those processes are subject to public scrutiny on the other. We do not go so far as to suggest that when a utility volunteers to subject a project like Granite Bridge to pre-construction review it must waive all claims of confidentiality. But we do contend strongly that in this situation the applicable balancing process (privacy interest vs. public disclosure interest) shifts palpably toward disclosure.

The OCA remains particularly concerned about redacted material appearing in the prefiled testimony of Messrs. Killeen and Stephens at pages 176 and 177 as resubmitted on April 10. At issue is the cost estimate for expansion of the so-called Concord Lateral pipeline owned by the Tennessee Gas Pipeline Company. Liberty relies on this estimate to claim that Granite Bridge is more cost effective than expending the Concord Lateral – a claim that is so central to its case for approval that this information is simply too important to be shielded from public disclosure under any reasonable application of the balancing test. The cost estimate is no longer fresh (thus attenuating any competitive harms arising out of disclosure), the claimed competitive harms are described in too conclusory a fashion, and the importance of this information to the Commission's review (as well as that of Staff and the OCA) is too great to warrant confidential treatment.

Additionally, the OCA must respectfully disagree with certain contentions in the Repsol pleading of May 17.

The OCA acknowledges the potential competitive sensitivity of contract and pricing terms furnished by Repsol and Engie to Liberty. However, the Commission should not rule now on the confidentiality of this information as it appears in in the unredacted version of the petition. Rather, the Commission should defer such rulings to the merits hearing, when the Commission will be in a better position to apply requisite RSA 91-A balancing test in light of the factual record now under development.

Thus, where we part company with Repsol is with respect to the suggestion that the Commission should rule now that intervenors should have no access to information about contract and pricing terms furnished by Repsol and Engie to Liberty. We learned at the May 25 technical session that the Conservation Law Foundation, the Pipeline Awareness Network for the Northeast, and Repsol have all entered into nondisclosure agreements with Liberty whose purpose is to facilitate the receipt of potentially confidential material in discovery. In these circumstances, the Commission should (a) defer all ultimate confidentiality determinations other than the aforementioned Concord Lateral expansion estimate to the merits hearing, (b) allow all intervenors that are not actual or potential competitors of Repsol and Engie to receive all discovery -- and an unredacted version of the petition – upon executing a suitable nondisclosure agreement, and (c) issue a protective order limiting access to competitively sensitive materials for any actual or potential competitors of Repsol and Engie among the intervenors.

The Commission should explicitly reject the contention in the latest Repsol pleading that "disclosure of [Repsol] Confidential Information to community action groups who oppose

natural gas infrastructure development such as PLAN and CLF, increase the likelihood that this information will be made available to the public through inadvertent disclosure." Repsol Pleading of May 17, 2018 at 12. Particularly because each of these intervenors is represented by competent and ethical counsel, the Commission should disavow any notion that such intervenors should not receive potentially confidential information because they cannot be trusted to comply with nondisclosure agreements.

Thank you for the opportunity to clarify our position on the pending confidentiality requests. In the interest of allowing this important proceeding to move forward as expeditiously and efficiently as possible, the OCA urges the Commission to enter an order at its earliest convenience (a) making public the information currently redacted at pages 176R to 177R of the Killeen and Stephens Testimony, (b) deferring all other confidentiality determinations to the merits hearing, and (c) granting protective treatment on an interim basis to materials that may or may not ultimately be deemed confidential if introduced at hearing.

Please feel free to contact me if there are any questions or concerns about the foregoing.

Sincerely,

D. Maurice Kreis
Consumer Advocate

cc: Service List