

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

NO. \_\_\_\_\_

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
d/b/a LIBERTY UTILITIES  
PUBLIC UTILITIES COMMISSION CASE DG-14-380

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APPENDIX TO  
APPEAL OF RICHARD M. HUSBAND BY PETITION  
PURSUANT TO R.S.A. 541:6 AND SUPREME COURT RULE 10

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STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DG 14-380

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
D/B/A LIBERTY UTILITIES

Petition for Approval of a Firm Transportation  
Agreement with the Tennessee Gas Pipeline Company, LLC

Order Approving Stipulation and Settlement Agreement and Precedent Agreement

ORDER NO. 25,822

October 2, 2015

**APPEARANCES:** Sarah B. Knowlton, Esq., of Rath, Young and Pignatelli, for Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; Richard A. Kanoff, Esq., and Zachary R. Gates, Esq., of Burns & Levinson, LLP, for Pipe Line Awareness Network for the Northeast, Inc.; Susan W. Chamberlin, Esq., of the Office of Consumer Advocate, on behalf of residential ratepayers; and Rorie E. Patterson, Esq., for the Staff of the Public Utilities Commission.

In this order, we approve the Stipulation and Settlement Agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities and the Commission Staff, and approve a 20-year contract for long-term, firm natural gas pipeline capacity on the proposed Northeast Energy Direct pipeline. We find that the Stipulation and Settlement Agreement is just, reasonable and consistent with the public interest, and that the capacity contract is prudent and reasonable.

**I. PROCEDURAL HISTORY**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth”) is a public utility pursuant to RSA 362:2, that provides natural gas service to approximately 88,000 customers in southern and central New Hampshire and in Berlin. On December 31, 2014, EnergyNorth filed a Petition for Approval of a Firm Transportation

Agreement (“Precedent Agreement”) with Tennessee Gas Pipeline Company, LLC (“TGP”), along with the confidential and redacted direct testimony of Francisco C. DaFonte, Vice President, Energy Procurement, Liberty Energy Utilities (New Hampshire) Corp. The Precedent Agreement, as described further below, requires TGP to construct and operate a pipeline to provide firm, natural gas transportation service (“capacity”) and EnergyNorth to pay for such capacity. EnergyNorth also filed a motion for protective order and confidential treatment regarding the Precedent Agreement. EnergyNorth seeks Commission approval of the Precedent Agreement as well as a determination that its decision to enter into the Precedent Agreement is prudent and consistent with the public interest. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, may be found on the Commission’s website at:

<http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>.

The Office of the Consumer Advocate (OCA) notified the Commission of its participation on behalf of residential ratepayers pursuant to RSA 363:28. The Commission received requests to intervene from Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”), and from the Town of Dracut, Massachusetts. PLAN is a Massachusetts nonprofit corporation concerned with the environmental and economic impacts associated with fossil-fuel infrastructure, including gas pipelines. EnergyNorth objected to both requests for intervention.

A prehearing conference was held on February 13, 2015, during which Commission Staff (“Staff”) objected to the Town of Dracut’s motion to intervene and asked the Commission to require additional information from PLAN. The Hearings Examiner denied the Town’s motion on the grounds that it failed to meet the standards for intervention. *See* RSA 541-A:32. The Hearings Examiner reserved a record request for PLAN to provide more information to support

its intervention and a record request for Staff and parties to respond to PLAN's record request. The Hearings Examiner also granted EnergyNorth's motion for confidential treatment filed with its petition. PLAN, Staff, and the Company filed timely responses to the record requests.

On March 6, 2015, the Commission issued Order No. 25,767, granting the intervention of PLAN for its members who are EnergyNorth customers, denying the intervention of PLAN for its members who are not EnergyNorth customers, and limiting PLAN's participation to issues related to the interests of customers in the "prudence, justness, and reasonableness of the [Precedent Agreement]."

The parties and Staff engaged in discovery, and the procedural schedule was revised at points to give PLAN and Staff additional time. On April 1, 2015, EnergyNorth filed a fully executed Amendment to the Precedent Agreement, which extended the deadline for obtaining regulatory approval from July 1 to September 1, 2015.

On May 8, 2015, Staff filed the direct testimony of Melissa Whitten of La Capra Associates, Inc. The OCA filed the direct testimony of Pradip Chattopadhyay, Ph.D., Assistant Consumer Advocate. PLAN filed the direct testimony of John A. Rosenkranz, a principal with North Side Energy, LLC. Following a period of discovery, on June 4, 2015, EnergyNorth filed the rebuttal testimony of Mr. DaFonte and William J. Clark.

On June 26, 2015, Staff filed a motion to accept a late-filed settlement agreement or to reschedule the hearing, together with a Stipulation and Settlement Agreement ("Settlement") between EnergyNorth and Staff. PLAN and the OCA opposed the Settlement, but supported rescheduling the hearing. EnergyNorth favored proceeding with the hearing as scheduled so as not to interfere with the Precedent Agreement's "regulatory-out" deadline. The Commission, by

Secretarial Letter dated June 29, 2015, accepted the late-filed Settlement for consideration and rescheduled the hearing to July 21 and July 22, 2015.

The hearing took place as scheduled and continued for an additional day, on August 6, 2015. Staff and parties filed briefs on August 7, 2015.

## **II. PRECEDENT AGREEMENT AND ENERGYNORTH'S POSITION**

### **A. Terms of the Precedent Agreement**

The Precedent Agreement is a 20-year contract between EnergyNorth and TGP. The terms include up to 115,000 dekatherms ("Dth") per day of firm capacity, at a fixed rate on the proposed Northeast Energy Direct Market Path pipeline project ("NED Pipeline").<sup>1</sup> Service is expected to commence on November 1, 2018, unless certain delays occur or certain preconditions are not met.

Of the total 115,000 Dth per day of capacity contracted for in the Precedent Agreement, 50,000 Dth per day is replacement of existing TGP capacity and 65,000 Dth per day is new or incremental capacity. The existing 50,000 Dth per day has a receipt point at Dracut, Massachusetts, and delivery points on the Concord Lateral. The Concord Lateral is TGP's northernmost branch pipeline originating in Dracut, which carries natural gas to primary delivery points at city gate<sup>2</sup> meters in Nashua, Manchester, and Concord (the city gate meter in Concord is referred to as the Laconia meter), for delivery to EnergyNorth's customers in New Hampshire.

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<sup>1</sup> NED plans to develop two separate projects, described as the "Supply Path" and the "Market Path." The NED Supply Path will transport gas from the Marcellus Shale production area in northeastern Pennsylvania to a natural gas market center location, or price point, in Wright, New York, which is the receipt point for the NED Market Path. The NED Pipeline, which is the subject of the Precedent Agreement, and is sometimes referred to by NED as the Market Path project, will transport natural gas from Wright, New York, to the market center location serving New England Markets, in Dracut, Massachusetts.

<sup>2</sup> A city gate is a transition point between the interstate natural gas pipeline and the distribution company system.

The Precedent Agreement provides firm capacity from the primary receipt point at Wright, New York, to EnergyNorth's existing delivery points in New Hampshire, as well as a new delivery point in West Nashua. The NED Pipeline route traverses approximately 70 miles in Southern New Hampshire. Portions of the route are new "greenfield" rights-of-way, and portions run through existing electric transmission rights-of-way.

The rate in the Precedent Agreement is capped to limit customer exposure to cost overruns; TGP may not charge EnergyNorth more than that maximum rate. The Precedent Agreement secures other benefits, including those associated with EnergyNorth's "anchor shipper" status. EnergyNorth may extend the term of the Precedent Agreement following the initial 20-year term with the approval of the Commission. To take effect, the Federal Energy Regulatory Commission (FERC) must approve the NED Pipeline. FERC's review is ongoing.

EnergyNorth avers that it needs the Precedent Agreement's capacity to reliably satisfy existing and future customer load requirements in its service area. EnergyNorth identified its need for additional, firm capacity in its last approved Least Cost Integrated Resource Plan (IRP) (DG 13-313), and EnergyNorth's capacity needs have increased since then. The Precedent Agreement will provide EnergyNorth with opportunities to expand the reach of its distribution service and to increase distribution system reliability via West Nashua, which will be a new delivery point on the west end of EnergyNorth's distribution system. The Precedent Agreement does not dictate the route of the NED Pipeline; it is a point-to-point contract for capacity from Wright to EnergyNorth's New Hampshire city gates. EnergyNorth contends that the capacity contracted for in the Precedent Agreement is the least cost reliable resource to provide the capacity needed to serve customer demand.

EnergyNorth provided an updated design day demand forecast, which it described as consistent with the approved IRP forecast methodology. EnergyNorth used a 24-year demand forecast. The short-term encompasses the 4-year period commencing with the 2014-2015 winter period and runs through the 2017-2018 winter period. The long-term period encompasses the 20-year period commencing with the 2018-2019 winter period, when the NED Pipeline is scheduled to go into service, and runs through the 2037-2038 winter period. The forecast included projected demand for iNATGAS, a new, long-term special contract customer; and for increases in reverse migration to sales service of EnergyNorth's capacity-exempt transportation customers.<sup>3</sup> EnergyNorth's demand forecast did not include potential distribution system expansion along the NED Pipeline in New Hampshire.

EnergyNorth negotiated the Precedent Agreement as part of a consortium of anchor shippers comprised of New England local natural gas distribution companies (LDCs). Each consortium member, however, requested an amount of capacity suited for its needs. The capacity provided to EnergyNorth through the Precedent Agreement is solely for the benefit of its New Hampshire customers. EnergyNorth contends that negotiating as part of a consortium allowed it and the other participating LDCs to leverage their aggregate capacity needs to negotiate a better discounted anchor shipper rate and other favorable terms that would not have been possible if EnergyNorth had negotiated on its own.

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<sup>3</sup> A capacity-exempt customer is a customer for whom EnergyNorth does not procure capacity; typically, the capacity-exempt customer procures and pays for its capacity in the market. Once a capacity-exempt customer returns to sales service, however, it pays its *pro rata* share of EnergyNorth's capacity costs so long as it remains a customer of EnergyNorth.

## **B. EnergyNorth's Consideration of Alternatives**

EnergyNorth analyzed the NED Pipeline against two alternative pipeline projects, TransCanada/PNGTS's C2C project and Spectra's Atlantic Bridge project. EnergyNorth assumed 115,000 Dth of capacity at the projected maximum rate for each pipeline project for 20 years. EnergyNorth used SENDOUT® (an analytical software tool used for portfolio design) to calculate the total portfolio cost for each project, from November 1, 2018, through October 31, 2038. The SENDOUT® runs showed that the cost of the alternative projects exceeded the NED Pipeline cost. Those results led to EnergyNorth's conclusion that the capacity contracted for in the Precedent Agreement is an appropriate part of a best-cost resource portfolio to meet its present and future capacity needs. EnergyNorth defined a "best-cost resource portfolio" as one that appropriately balances lower costs with other important non-cost criteria such as reliability and flexibility. DaFonte Prefiled Testimony (Dec. 31, 2014) p. 28 ln. 7-8.

The C2C and Atlantic Bridge projects, if constructed, will bring additional supply to Dracut. EnergyNorth's access to the capacity of either of those projects, however, would require upgrades to the TGP Concord Lateral. The costs of the Concord Lateral upgrades are not required for the NED Pipeline and would be an addition to the costs associated with the C2C and Atlantic Bridge projects.

EnergyNorth used estimates provided by TGP for the Concord Lateral upgrade costs that would be required for the C2C and Atlantic Bridge projects. The original estimate assumed one delivery point, at EnergyNorth's existing Nashua city gate. Subsequently, TGP provided EnergyNorth an updated estimate for the Concord Lateral upgrade, with assumptions for multiple delivery points. The updated estimate doubled the cost of the upgrade and further widened the spread between the already-higher costs of the alternative projects' capacity and the

lower cost of the capacity contracted for in the Precedent Agreement. The updated estimate produced capacity costs for the Concord lateral upgrade that, alone, exceeded the combined total cost of the NED Pipeline and the supply project back to Marcellus.<sup>4</sup> Transcript (“Tr.”) Day 2 p. 84 ln. 9-13.

EnergyNorth did not consider expansion of its Liquid Natural Gas (LNG) facilities as an alternative to the capacity contracted for in the Precedent Agreement. EnergyNorth contends that federal law would prevent expansion of existing facilities, because the plants are located in or near densely populated areas. Federal law requires set-backs for vapor dispersion and thermal radiation zones that would make such expansion impractical. Tr. Day 2 p. 62 ln. 16-20. Also, EnergyNorth is not aware of any new sites within its franchise that would work for a new LNG facility with capacity comparable to 115,000 Dth per day. EnergyNorth’s affiliate is participating in a joint venture with Northstar Industries, LLC, and Sampson Energy Company, LLC, to develop LNG liquefaction and storage in Massachusetts. The purpose of that project, however, is to back up EnergyNorth’s existing LNG resources.

EnergyNorth believes that the high energy prices experienced in New England in the last three winters prompted the development of new projects, including the NED Pipeline. EnergyNorth views this project as a rare opportunity to secure capacity needed for the coming years and believes the Precedent Agreement secures such capacity on terms consistent with EnergyNorth’s “best-cost” portfolio philosophy.

### **C. The Role of EnergyNorth’s Affiliates**

EnergyNorth denied that its relationship with a pipeline affiliate, Liberty Utilities (Pipeline and Transmission) Corp. (“Liberty Pipeline”) influenced its decisions to contract for

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<sup>4</sup> See footnote 1 for a description of the NED Pipeline and the NED Supply Path project.

capacity with TGP or to contract for a volume of 115,000 Dth per day. *See* Tr. Day 2 p. 29, ln. 18-23. Algonquin Power & Utilities Corp. (“APUC”) owns both Liberty Pipeline and EnergyNorth. Liberty Pipeline and Kinder Morgan, Inc. (Kinder Morgan), jointly own Northeast Expansion LLC which in turn owns the proposed NED Pipeline. Liberty Pipeline’s interest in Northeast Expansion is 2.5 percent but could increase to 10 percent. The value of Liberty Pipeline’s investment is up to \$400 million. Liberty Pipeline, through Northeast Expansion, has leased its rights to capacity on the NED Pipeline to TGP, which is wholly owned by Kinder Morgan. Hearing Exh. 36. TGP will operate the NED Pipeline. On July 16, 2015, TGP announced that it would proceed with the NED Pipeline if the contracts with the LDCs, including the Precedent Agreement, are approved by the utilities’ regulators.

The Precedent Agreement secures EnergyNorth’s long-term use of some of the capacity available on the proposed NED Pipeline from TGP, not from an affiliate of EnergyNorth. EnergyNorth denied receiving any direction from its Board of Directors about the terms of the Precedent Agreement. *See* Transcript Day 2 page 29, lines 18-23 (Board did not discuss with management how much capacity EnergyNorth should contract for on the NED Pipeline); and Exhibit 37 (no documents exist memorializing obligations of EnergyNorth concerning the terms and conditions of the Precedent Agreement to entities involved with establishing or funding the NED Pipeline); *see also* Transcript Day 1 p. 208 ln. 8-22 (Board of Directors was not yet involved when EnergyNorth responded to the NED Pipeline open season, seeking 115,000 Dth per day).

#### **D. Limitations on EnergyNorth’s Ability to Renegotiate Terms**

EnergyNorth responded to suggestions that it could renegotiate the amount of capacity in the Precedent Agreement, by stating that given the terms of the Precedent Agreement, TGP has

no obligation to contract with EnergyNorth for any amount less than 100,000 Dth per day. EnergyNorth contended that any renegotiation of the capacity amount would require the renegotiation of all the Precedent Agreement's terms and conditions. EnergyNorth asserted that renegotiation would put customers at risk, particularly now that the C2C and Atlantic Bridge projects are fully subscribed. Risks to customers could include paying more than the fixed rate already secured by the Precedent Agreement or losing other benefits contained therein.

### **III. INITIAL POSITIONS**

#### **A. Staff**

Staff, through its expert, opposed the Precedent Agreement as originally proposed. Staff agreed that EnergyNorth demonstrated the need for incremental capacity and that the NED Pipeline was the least-cost alternative among those considered by EnergyNorth. Staff, however, took the position that EnergyNorth had not supported, (1) the proposed amount of 115,000 Dth per day, (2) certain of its growth assumptions, and (3) retention of its propane peaking capacity, leading to Staff's initial conclusion that the Precedent Agreement may contain excess capacity to the detriment of ratepayers. Staff recommended that the Commission deny approval of the Precedent Agreement or, in the alternative, require EnergyNorth to file additional data, and exclude recovery through rates of EnergyNorth's propane peaking costs.

Staff's position has changed. Staff is now a party to the Settlement and its position on the Settlement is set forth in detail later in this Order.

#### **B. OCA**

The OCA asks the Commission to reject the Precedent Agreement, arguing it is not in the public interest, it fails to protect residential ratepayers from unreasonably high financial risks of

excess capacity, and it does not balance the needs of the customers with those of EnergyNorth's owner. OCA's position is set forth in greater detail below.

### **C. PLAN**

PLAN urges the Commission to deny EnergyNorth's petition. PLAN asserts that EnergyNorth did not reasonably investigate its long-term capacity requirements or the reasonable alternatives available to meet that demand. PLAN contends that the proposal is speculative, not least cost, and not supported. PLAN's position is set forth in greater detail below.

## **IV. SETTLEMENT BETWEEN ENERGINORTH AND STAFF**

The Settlement requires a second amendment to the Precedent Agreement and imposes other regulatory requirements on EnergyNorth. EnergyNorth and Staff ask the Commission to approve the Settlement as filed, arguing that it resolves all of the outstanding issues in this proceeding, produces a just and reasonable result, and is consistent with the public interest.

EnergyNorth's and Staff's witnesses ("Settlement Panel") explained the terms of the Settlement and the ways in which the Settlement shifts risk from customers to EnergyNorth's owner. The Settlement Panel also described the Settlement's benefits to customers and how the Settlement addressed the concerns raised by other parties and Staff.

### **A. Excess Capacity**

The Settlement initially sets the contracted amount of capacity under the Precedent Agreement at 115,000 Dth per day. Generally, the capacity-reduction requirement in the Settlement requires growth in design day capacity related to certain Commercial and Industrial (C&I) customers: iNATGAS, a new compressed natural gas distributor; capacity-exempt transportation customers switching to capacity-assigned service; and Concord Steam customers converting to natural gas. If growth in design day demand for those customers does not meet or

exceed 10,000 Dth during the period of July 1, 2015, through April 1, 2017, EnergyNorth will reduce the amount of capacity under the Precedent Agreement from 115,000 Dth per day to 100,000 Dth per day. To effectuate this provision of the Settlement, EnergyNorth agreed to file a further amended Precedent Agreement and to report increases in design day capacity for the C&I customers identified above in Cost of Gas (“COG”) filings.

As a baseline for EnergyNorth’s projected capacity needs, the Settlement Panel discussed EnergyNorth’s 2013 IRP, approved by the Commission in DG 13-313. In the 2013 IRP, EnergyNorth used a “resource mix optimization” model and projected a need for 90,000 Dth per day of long-term pipeline capacity, on the precursor pipeline project. The 90,000 Dth per day planned to be provided using the precursor project capacity assumed replacement of the same 50,000 Dth per day that will be replaced by some of the capacity contracted for in the Precedent Agreement. The remaining 40,000 Dth per day represented replacement of propane capacity and growth. Tr. Day 1, p 127-129.

Since then, EnergyNorth experienced significant growth and reverse migration of large capacity-exempt customers. In this docket, EnergyNorth provided updated data on capacity-exempt reverse migration in rebuttal testimony. The demand resulting from the additional reverse migration offset a portion of the capacity that Staff originally considered excess.

The required 10,000 Dth per day increase in design-day demand is more than EnergyNorth’s forecasted demand from iNATGAS, reverse-migrating capacity-exempt customers, and Concord Steam customers, through April 2017. In that respect, the capacity-reduction requirement in the Settlement calls for EnergyNorth to exceed its projections of demand needed to serve these customers. Such an increase in design-day demand, if realized, will reduce excess capacity. The panel explained that TGP has agreed to amend the Precedent

Agreement to permit EnergyNorth to comply with the capacity-reduction requirement. According to the Settlement Panel, the capacity reduction requirement protects customers by reducing the likelihood that customers would pay for excess capacity. The Settlement Panel discussed EnergyNorth's obligation to mitigate excess capacity costs. Historic and projected mitigation data provided by EnergyNorth show that it successfully mitigates unused capacity costs through asset management arrangements, capacity release through the spot market, and off-system sales directly to third parties. All of those strategies seek to maximize cost recovery to offset fixed capacity costs. EnergyNorth estimated recovery of close to 100 percent of the maximum negotiated rate for the capacity contracted for in the Precedent Agreement during the winter period and a lesser percent during the summer. All of the mitigation revenue recovered will be credited to customers in gas rates.

#### **B. Growth Incentive**

The Settlement includes a growth incentive to offset the potential impact of excess capacity on current customers. EnergyNorth must meet one of two annual growth targets, either a Customer Target or a Sales Target. The Customer Target requires an addition of 2,000 customers a year, while the Sales Target requires a 650,000 Dth increase in annual sales. If EnergyNorth fails to meet both targets, it will be required to forgo recovery of up to \$300,000 in winter gas costs. The amount of cost recovery depends on how closely EnergyNorth comes to achieving either of the two targets. The recovery amount is deducted from EnergyNorth's winter gas costs collected from ratepayers. Any deduction reduces shareholder return and benefits customers. The growth rates will be determined beginning with calendar year 2017.

The growth incentive applies so long as certain of EnergyNorth's propane plants remain in service or until the average growth rate exceeds a specified amount over a consecutive three-

year period. With respect to propane plants, by the time the growth incentive applies beginning in 2017, EnergyNorth will have begun an analysis for its next IRP of any remaining propane plants' revenue requirement, as discussed below. The growth incentive will cease to apply if EnergyNorth retires all non-pressure-support propane facilities.<sup>5</sup> To the extent that fewer than all of those plants are retired, the Settlement provides for proportionate reductions to the financial penalties.

With respect to customer growth, the growth incentive will cease to apply if EnergyNorth adds 7,200 customers or increases sales by 2,340,000 Dth over a three-year period. EnergyNorth will report information related to the growth incentive mechanism in its summer COG filings.

The growth targets in the Settlement Agreement are consistent with EnergyNorth's internal growth targets, Clark Prefiled Testimony (June 4, 2015) p. 12 ln. 2-7, and are two to three times higher than the growth included in EnergyNorth's projections in its filing of 600 to 800 customers per year. EnergyNorth Brief page 8 (citing Tr. Day 2 p. 166 ln. 9-13). The incentive growth target also exceeds EnergyNorth's forecasted demand from C&I customers made in support of the Precedent Agreement. In addition, both growth targets are higher than EnergyNorth's highest growth year levels, by 65 percent for customer growth and by 15 to 20 percent for demand growth. Like the capacity-reduction requirement, the growth targets incent EnergyNorth to put its capacity to use and reduce excess capacity sooner than originally projected.

The Settlement Panel discussed EnergyNorth's recent growth successes and potential. For instance, an expansion project under construction in Bedford will bring natural gas service to 11 new commercial customers and has the potential of reaching more than 40 new residential

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<sup>5</sup>Propane plants in Nashua, Manchester, and Tilton, and propane storage in Amherst, to the extent the storage is not used to serve Keene, or used for pressure support.

customers. Tr. Day 1 p. 74 ln. 4 through p. 75 ln. 18. EnergyNorth attributed its increased growth to the addition of local sales personnel and recent changes to its line-extension tariff; an indication of its commitment to growth. EnergyNorth's growth focus includes projects within EnergyNorth's existing franchise territory and outside of it, and customers along and "off" the existing distribution system.

Potential areas of growth should Liberty have access to more capacity if the Precedent Agreement is approved include Keene, Bedford, Laconia, and the eleven communities along the route of the NED Pipeline. EnergyNorth estimated that the demand in Keene and along the NED Pipeline in New Hampshire could increase demand by up to 2.3 million Dth per year, depending on saturation rates. Other growth could occur in conjunction with reliability and redundancy investments such as a lateral off the new West Nashua city gate, running north to connect to the distribution system in Manchester. EnergyNorth referred to the new lateral as a "parallel backbone" for its system. EnergyNorth's projections in this proceeding did not include any growth in those potential areas. Consequently, if this and other growth occurs, any excess capacity resulting from approval of the Precedent Agreement may be reduced much sooner than originally projected by EnergyNorth and the costs of this new capacity will be shared among a greater number of customers.

### **C. Additional Settlement Requirements**

The Settlement requires EnergyNorth to provide certain data and analysis in its next IRP filing. Specifically, the Settlement requires a cost/benefit analysis of a lateral to serve the Keene Division off of the NED Pipeline; a forecast of load on a customer-class basis; an analysis of the impact of energy efficiency in the demand forecast; and an analysis of the potential retirement,

and the revenue requirements, of each of its propane facilities. EnergyNorth's next IRP is due in February 2017.

The Settlement Panel reviewed the Settlement's IRP requirements. EnergyNorth will use the additional IRP data to analyze the cost-effectiveness of all of its capacity resources including specifically the propane peaking facilities. The capacity analysis will include the capacity contracted for in the Precedent Agreement if the Commission approves the Settlement. At that point in time, however, the costs of such capacity will not be included in EnergyNorth's rates. By February 2017, EnergyNorth will also have additional market and growth experience and data to consider in its analysis. Ultimately, if any of EnergyNorth's existing capacity is not cost-effective, EnergyNorth will plan to reduce that capacity, and the associated cost.

Pre-existing capacity includes the Company's propane plants that are more than 40 years old and are at or beyond their useful accounting life. EnergyNorth acknowledged that they are not long-term viable supply alternatives and retiring the propane capacity will offset capacity costs contracted for in the Precedent Agreement. EnergyNorth estimated that propane plant retirements, along with the increased demand and growth required by the Settlement, will eliminate excess capacity in less than 10 years.

#### **D. Benefits of the Precedent Agreement as Amended by the Settlement**

The Settlement Panel discussed the benefit of switching the receipt point for the Dracut 50,000 Dth/day to Wright. While the rate for Dracut capacity is less than the capacity rate from Wright, the Dracut supply market has experienced significant gas price and capacity instability in recent years, and EnergyNorth's gas rates from Dracut have included premiums due to demand exceeding supply. Forces contributing to the Dracut market instability have included reduced production of and high global demand for LNG, as well as high demand for capacity within New

England. In recent years, Dracut gas supply has been the highest-priced gas in the United States. Avoiding the continued exposure to Dracut's price volatility and the insecurity associated with Dracut supply are goals of the Precedent Agreement and the Settlement.

The Settlement Panel referred to Wright as a developing supply market. The Constitution, Dominion, and NED Supply Path<sup>6</sup> pipeline projects are proposed to bring supply in the next few years from the Marcellus natural gas production area to Wright. Marcellus supply is abundant and the lowest priced gas in the United States. Consequently, EnergyNorth expects the Wright supply market to be sufficiently liquid by the time the NED Pipeline comes online. EnergyNorth also expects the total cost for supply and capacity at Wright to be lower than the total cost of the existing supply and capacity from Dracut. EnergyNorth estimated capacity costs from Marcellus to Wright based on the Constitution project, which has been approved by the FERC.

To protect customers from the consequences of insufficient supply at Wright, the Precedent Agreement is not effective unless a certain volume of supply is available when the NED Pipeline project goes into service. The initial capacity projected for the Constitution pipeline could satisfy that liquidity need. In addition, EnergyNorth may entertain the purchase of supply transported to Wright on the Constitution pipeline. Contracting for long-term capacity on the NED Supply Path is another possible way to get supply from Marcellus to Wright, and into the Precedent Agreement's proposed NED Pipeline capacity. EnergyNorth expects the NED Supply Path to bring approximately the equivalent of a million Dths a day of supply to Wright.

EnergyNorth, as part of the LDC Consortium, is negotiating with TGP for long-term capacity on the NED Supply Path. EnergyNorth states that the Supply Path capacity would

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<sup>6</sup> See earlier footnote 4 for a description of the NED Supply Path project.

secure lowest-cost supply at Marcellus and would provide opportunities for EnergyNorth to optimize its use of storage capacity in that market area to the benefit of customers. Direct access to Marcellus supply would give EnergyNorth the ability to purchase lower-priced gas and the ability to forecast prices more accurately, due to reduced volatility of prices. Also, as an anchor shipper on the NED Supply Path, EnergyNorth and its customers would enjoy other benefits similar to those in the Precedent Agreement.<sup>7</sup>

The Settlement Panel discussed the value to customers of the new West Nashua delivery point in terms of reliability. EnergyNorth expects the new delivery point to add redundancy and improve distribution system reliability as well as to aid in growth. A new lateral from West Nashua would relieve EnergyNorth's sole reliance on the Concord Lateral, and opportunities for growth along the route may exist. The Settlement Panel discussed the value to customers of the high pressure flow capacity contracted for in the Precedent Agreement. EnergyNorth will be able to deliver higher pressure gas to customers, also supporting system expansion and customer growth. In addition, the higher pressure capacity may reduce the need for the propane plants' peaking services.

## **V. POSITIONS OF NON-SETTLING PARTIES**

### **A. OCA**

The OCA argues the Settlement Agreement is not in the public interest and should not be approved. The OCA agrees that EnergyNorth needs some incremental, long-term pipeline capacity, but disagrees with the amount of capacity secured by the Precedent Agreement. The OCA contends that EnergyNorth should have evaluated retaining its existing Dracut 50,000 Dth

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<sup>7</sup> EnergyNorth expects to seek Commission approval of another precedent agreement with TGP, for NED Supply Path capacity soon.

per day instead of replacing it entirely with new capacity and recommends that the Commission hold its decision on the Precedent Agreement until EnergyNorth provides additional analysis of customer demand and the alternatives available to meet it. The essence of the OCA's position is that EnergyNorth did not estimate demand appropriately and assumed unreasonably high growth for iNATGAS sales, capacity-exempt returning customers, and new franchise territories.

The OCA believes that instead of 24 years, EnergyNorth should have used a five- to ten-year planning horizon. The OCA claims that planning beyond ten years results in excess capacity procurements by EnergyNorth. The OCA suggests that a range of 75,000 to 90,000 Dth per day of capacity would be more appropriate, assuming EnergyNorth retains its propane capacity.

The OCA's witness, Dr. Chattopadhyay, acknowledged that the 2013 IRP analysis, which EnergyNorth used as a starting point for its Precedent Agreement analysis, employed a resource mix optimization methodology and included 90,000 Dth per day of pipeline capacity. On cross-examination, Dr. Chattopadhyay agreed that, assuming retirement of EnergyNorth's propane capacity and using EnergyNorth's projected numbers for the demand associated with iNATGAS and reverse-migrating capacity exempt customers, the capacity amount needed for 10 years is above 100,000 to 115,000 Dth per day. Transcript Day 3 page 64 line 22 to page 65 line 13; page 66 lines 3 to 16; and page 66 line 19 to page 67 line 1.

The OCA argues EnergyNorth's analysis overstated the price of supply at Dracut and used overly-optimistic projections for excess capacity mitigation. That is a problem, according to the OCA, because the Settlement does not require EnergyNorth to realize any particular level of capacity mitigation revenue and, in that way, leaves customers at risk for excess capacity costs.

The OCA agrees that, apart from the amount of capacity, the NED Pipeline has benefits for EnergyNorth and its customers, including the flexibility to retire the propane plants if doing so is cost effective, and the increased reliability from a second delivery point on EnergyNorth's system. The OCA also views the growth incentive in the Settlement as helpful, but argues that the related financial penalty is not meaningful. APUC is a \$4.5 billion company with diversified assets all over North America; a loss of \$300,000, the maximum possible penalty if the growth incentives are not met, will have no noticeable impact on shareholder revenues.

#### **B. PLAN**

PLAN argues that the Settlement does not resolve the deficiencies in the Precedent Agreement. PLAN also challenges EnergyNorth's ability to mitigate excess capacity costs, meet the Settlement's growth requirements, and realize the value of the new West Nashua interconnect.

Like the OCA, PLAN agrees that EnergyNorth needs some amount of incremental capacity, but disagrees with the amount of capacity secured by the Precedent Agreement. PLAN contends that the additional 65,000 Dth per day of new capacity results in significant excess capacity and that EnergyNorth should have undertaken additional analyses of the different projects, using lower amounts of new capacity, such as an additional 25,000 to 30,000 Dth per day.

Also similar to the OCA, PLAN contends that procuring capacity using a 10-year planning horizon is more appropriate than the longer periods used by EnergyNorth, because PLAN is confident that there will be opportunities to contract for additional capacity after ten years. PLAN also suggests that additional capacity could become available on the NED Pipeline if compression is added in the future.

PLAN is very critical of EnergyNorth's decision to replace 50,000 Dth per day of existing Dracut capacity, arguing that it will increase ratepayers' costs. PLAN contends that EnergyNorth based its decision to replace the existing Dracut capacity on exaggerated concerns and incorrect assumptions with respect to the availability and price of gas at Dracut. PLAN acknowledges that there has been a great deal of price volatility in New England during the last several winters, but disagrees with EnergyNorth that Dracut is illiquid or at risk of lacking sufficient supply and suppliers. According to PLAN, new pipeline capacity into New England from the west will produce competitive pricing and opportunities to arbitrage the Wright and Dracut markets during the winter. In addition, PLAN asserts that LNG supply will also continue to be reliably available at Dracut. PLAN contends that the additional capacity at Dracut will keep prices from rising as high as EnergyNorth has assumed in its analysis.

Regarding alternatives, PLAN asserts that EnergyNorth should have evaluated capacity options other than the C2C and Atlantic Bridge projects. PLAN suggests specifically that EnergyNorth should have evaluated expansion of its LNG facilities as an alternative to meet its long-term capacity needs.

On the analyses of alternatives performed by EnergyNorth, PLAN questions the Concord Lateral estimates and volumes used by EnergyNorth to compare the C2C and Atlantic Bridge projects to the NED Pipeline project. PLAN also questions the "breakeven" price that EnergyNorth assumed for supply purchases at Wright, arguing that the Consortium's price projections for Wright do not reflect the possibility of limits on pipeline capacity between Marcellus and Wright and any associated price increases.

PLAN contends specifically that the Waddington point on the Iroquois pipeline, which is north of Wright, is a liquid market and a reasonable proxy for prices at Wright. According to

PLAN, during the months of January and February, the daily Waddington supply price exceeded EnergyNorth's breakeven price before including the costs for transportation from Waddington to Wright.

Although it is PLAN's position that the several hundred thousand Dth per day of additional capacity planned for Dracut will keep prices down, PLAN acknowledges that there is approximately 650,000 to 1.6 million Dth per day of new capacity planned for Wright. PLAN concedes that if concerns about the dwindling supply of off-shore production come to fruition, the prices at Dracut will increase unless and until additional pipeline capacity is developed.

PLAN criticizes EnergyNorth for not including in its estimate of the NED Pipeline costs, any of the impact of the project on communities along its route. PLAN contends that EnergyNorth should have analyzed the environmental impacts of the NED Pipeline and the associated costs and risks of those impacts, because environmental cost overruns will raise the Precedent Agreement's rate.

PLAN contends that EnergyNorth's ultimate parent, APUC, influenced EnergyNorth's decisions to enter into, and agree to the terms of, the Precedent Agreement. PLAN notes that the same individuals serve as members of the Boards of Directors and Officers for both entities, as well as Liberty Pipeline. PLAN also notes that the same individuals who decided to invest in the NED Pipeline authorized EnergyNorth to enter into the Precedent Agreement. In PLAN's view, essentially one board made both decisions, and those decisions resulted in EnergyNorth's oversubscription of capacity, for the benefit of APUC.

PLAN argues the terms of the Settlement are ambiguous. PLAN notes that the demand thresholds associated with the reduction of capacity from 115,000 to 100,000 Dth per day do not specify in which year they apply. PLAN also observes that the iNATGAS threshold refers to

design day capacity for firm sales, and that EnergyNorth's contract only requires iNATGAS to be a firm sales customer for one year. By the time EnergyNorth needs to calculate its demand, iNATGAS could be a transportation customer.

Regarding its own motivations, PLAN acknowledges that none of its officers or directors is a customer of EnergyNorth, and that its members oppose construction of the NED Pipeline. PLAN, however, denies that its opposition to the NED Pipeline factored into its economic analysis of the Precedent Agreement and the Settlement.

## **VI. PUBLIC COMMENTS**

Before the hearing, the Commission received many written comments from the public, with the overwhelming majority advocating against the approval, construction, and siting of the NED Pipeline. Many if not all of the opposing comments were tendered by residents or representatives of the communities along the route of the NED Pipeline. Many of the opposing comments cited Staff's prefiled testimony as a basis for rejecting the Precedent Agreement and the Settlement. Some of the comments questioned the Precedent Agreement on the basis that EnergyNorth's affiliate has invested in the NED Pipeline.

Two large C&I customers of the Company filed written comments supporting the Commission's approval of the Precedent Agreement. BAE Systems and Velcro USA, Inc., are among the largest employers and energy users in the state and have recently experienced volatile and high prices when using EnergyNorth's existing capacity resources. Adding the proposed capacity to the company's portfolio is expected to alleviate price volatility. Capacity-exempt customers migrating back to firm sales service are also looking for price stability and supply security. The inquiries of Concord Steam customers also indicate that they are seeking price stability and lower cost.

The Commission opened the hearing by receiving additional comments from the public. Those comments were consistent with the focus, content, and tenor of the written comments. Comments at hearing were primarily directed at the advisability of the NED Pipeline and not the terms of the Precedent Agreement or the interests of EnergyNorth's customers.

After the hearing, the Commission continued to receive written comments opposing approval of the Precedent Agreement for reasons related to the impact of the NED Pipeline on the communities and citizens along the proposed pipeline route. Some of the post-hearing comments requested that the Commission reopen the hearing to receive additional evidence on the impact of the NED Pipeline on individuals who are not EnergyNorth's customers, or on interests that are not EnergyNorth customer interests.

## **VII. COMMISSION ANALYSIS**

### **A. Scope and Standard of Review**

Our statutory review of the Precedent Agreement is limited to consideration of EnergyNorth's prudence in entering into the Precedent Agreement, and the reasonableness of the terms of the agreement. We do not undertake any review of the merits or the siting of the NED Pipeline. The Precedent Agreement is not effective unless the NED Pipeline is approved, constructed, and providing service.

At this time, the NED Pipeline is still under review by the FERC. The important issues raised in the public comments, including the impact of the NED Pipeline on the communities through which the pipeline will run, are solely within the province of FERC.<sup>8</sup> Consequently, we do not consider those siting issues in our review of the Precedent Agreement.

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<sup>8</sup> The siting of the NED Pipeline may also come before the New Hampshire Site Evaluation Committee under RSA ch. 162-H.

We must consider whether the Precedent Agreement is prudent and reasonable.

RSA 374:1 and 374:2 (public utilities shall provide reasonably safe and adequate service at “just and reasonable” rates), and 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable). Because EnergyNorth and Staff reached a Settlement that varies the terms of the Precedent Agreement, we must review both agreements in this docket.

Our review of the Settlement concerns whether the Settlement is just and reasonable and serves the public interest. N.H. Code Admin. Rules Puc 203.20(b) (“The commission shall approve a disposition of any contested case by stipulation [or] settlement ... if it determines that the result is just and reasonable and serves the public interest”). We construe the public interest within the context of our overall authority including, in this case, the interests of EnergyNorth’s existing and future customers.

For the reasons set forth below, we find that the Precedent Agreement as modified by the Settlement satisfies these standards, and we therefore approve the Settlement. Typically, we determine prudence and reasonableness within the context of a full rate proceeding, after EnergyNorth has incurred the costs. Due to the magnitude of the costs and the long-term commitment associated with the Precedent Agreement, EnergyNorth requested preapproval of prudence and reasonableness. We last pre-approved a long-term capacity contract for EnergyNorth in DG 07-101. *EnergyNorth Natural Gas, Inc. d/b/a Keyspan Energy Delivery*, Order No. 24,825 (February 29, 2008).

#### **B. Capacity Requirements**

In the Settlement, Staff secured commitments from EnergyNorth to reduce excess capacity arising from the Precedent Agreement and to expand service to unserved or underserved areas of New Hampshire. Pipeline capacity is not always available in increments that match

precisely with an LDC's load growth. Consequently, it is prudent and reasonable for an LDC, when entering into a capacity agreement, to acquire the capacity necessary to serve not only current load but also potential future load.

The amount of capacity provided by the Precedent Agreement, as modified by the Settlement, is consistent with EnergyNorth's last approved IRP. EnergyNorth used appropriate methodology in the 2013 IRP to project 90,000 Dth of pipeline capacity, and EnergyNorth's analysis supporting the Precedent Agreement built upon the IRP result to reflect growth in demand since the IRP. EnergyNorth appropriately included as post-IRP demand growth the demand associated with large capacity-exempt customers who have migrated from transportation-only service to sales service. No party disputed EnergyNorth's obligation to procure capacity for those customers, or the possibility that EnergyNorth's remaining capacity-exempt load could also migrate back to firm sales. Accelerated reverse migration has occurred for several years now and is likely to continue based on volatile natural gas pricing arising from constrained pipeline capacity in New England. Exhibit 8, bates 26, lines 2-6, and fn. 33.

PLAN criticized EnergyNorth for including capacity for iNATGAS in its projections because iNATGAS is only obligated to take firm sales service for one year. According to PLAN, iNATGAS could be a transportation customer by the time the capacity contracted for in the Precedent Agreement is available to EnergyNorth. PLAN's argument, however, fails to recognize that EnergyNorth is obligated to continue to supply capacity to iNATGAS if it becomes a transportation customer. The amount of such capacity would be based on iNATGAS's design day for the twelve months preceding its departure from firm sales service.

EnergyNorth's revised analysis in rebuttal shows that excess capacity will likely be depleted within the 10-year planning horizon advocated by PLAN and the OCA. EnergyNorth's

analysis was conservative in that it did not include possible growth along the NED Pipeline route in New Hampshire or in Keene. The demand associated with that possible growth was not necessary to support the capacity commitment, but, together with other projected demand growth, could well exceed the total capacity procured by the Precedent Agreement. Although EnergyNorth did not propose immediate retirement of most of its propane capacity outside of Keene, the Settlement and EnergyNorth's testimony reflect that this is a potential outcome of the next IRP. Retirement of the propane plants would require up to 34,600 Dth per day of additional capacity. This amount of capacity was included in the 90,000 Dth per day forecasted by the 2013 IRP. The Settlement addresses the possibility of excess capacity if EnergyNorth does not meet growth requirements, which if not satisfied will require a reduction in capacity purchased under the Precedent Agreement or a financial penalty to benefit customers.

### **C. Dracut vs. Wright**

The capacity cost associated with replacing the existing 50,000 Dth per day at Dracut is outweighed by the benefits associated with the capacity contracted for in the Precedent Agreement. Of the three firm capacity options analyzed, only the NED project avoids supply purchases at Dracut, which has proven to be one of the highest priced purchase points in the country over the past few years due to a lack of supply. Only the capacity contracted for in the Precedent Agreement increases the reliability of EnergyNorth's distribution system by adding increased guaranteed delivery pressure at existing delivery points and at a new point of delivery in West Nashua. Reliability benefits of the capacity contracted for in the Precedent Agreement also include new nomination flexibility<sup>9</sup> for EnergyNorth's existing capacity contracts with TGP

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<sup>9</sup> *Nomination* is a term used in the natural gas pipeline industry where a pipeline capacity holder (shipper) initiates a scheduling transaction with the pipeline operator to deliver gas supply from point A to Point B. In this example, on most days throughout the year, EnergyNorth will have the *flexibility* to be able to *nominate* what is expected to be its

and the opportunity to develop, off of the West Nashua delivery point, an alternative lateral to the Concord Lateral to deliver gas to its distribution system.

The capacity contracted for in the Precedent Agreement, compared with the alternative projects, avoids immediate and costly upgrades to the Concord Lateral. The NED Pipeline will provide opportunities for significant economic expansion of EnergyNorth's distribution system and service both in and outside EnergyNorth's existing franchise territory.

We appreciate the Wright market's uncertainty, but we are reassured by the Precedent Agreement's requirement that a certain level of liquidity must exist at Wright before EnergyNorth's customers are required to purchase the capacity contracted for in the Precedent Agreement. We also find promising the development of multiple pipeline projects to bring Marcellus gas to Wright; the new capacity back to Marcellus would provide EnergyNorth with direct access to the lowest-priced gas supply in the United States in place of access to the highest priced gas in the United States, at Dracut.

EnergyNorth appropriately considered alternatives to the capacity it contracted for in the Precedent Agreement, based on price and non-price factors. The projected capacity costs associated with the C2C and Atlantic Bridge projects exceed the Precedent Agreement's capacity costs, without needed upgrades to the Concord Lateral, and the capacity contracted for in the Precedent Agreement will provide greater benefits. Although the NED Pipeline is in the development stage and has yet to be approved by FERC, neither of the alternative projects is any further along in that process.

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least cost (Marcellus gas supply) alternative from Wright, NY, using its contracted NED pipeline capacity, effectively displacing higher average cost underground storage gas from its inventory or other purchased supply alternatives sourced at higher price points.

#### **D. Use of LNG**

We disagree with PLAN that EnergyNorth should have considered expansion of its LNG capacity to meet projected growth. The LNG global market is unstable and may compromise the reliability of EnergyNorth's service to customers at the least cost, particularly on a design day or during a design-season.<sup>10</sup> In addition, expansion of EnergyNorth's existing LNG facilities is not possible due to setback requirements in federal law.

#### **E. Demand and Customer Growth Requirements**

The Settlement's requirements for demand and customer growth further incent EnergyNorth to reduce excess capacity following the project's in-service date. The Settlement requires a reduction to cost recovery by EnergyNorth if certain levels of growth are not achieved. While the maximum disallowance of \$300,000 is small in comparison to annual gas costs, earnings are determined on delivery costs and revenues, and the potential disallowance could have a significant impact on EnergyNorth's earnings: \$300,000 represents 5.6 percent of EnergyNorth's 2014 net income.<sup>11</sup> Hence, the Company's commitment to an earnings reduction is a serious and, as testified by the experts, unusual undertaking for a Precedent Agreement. The cost recovery reduction only applies while the "Company's propane facilities that are not used for pressure support remain in service (excluding facilities serving the Keene Division)."<sup>12</sup>

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<sup>10</sup> Utility resource portfolios maintain sufficient supply deliverability to meet customer requirements on the coldest planning day (design day) and maintains sufficient supplies under contract and in storage to meet customer requirements over the coldest planning season (design season).

<sup>11</sup> Net Income of \$5,361,232, per Liberty Annual Report to the NHPUC for year ended December 31, 2014, p. 12, line 76.

<sup>12</sup> For clarity, the referenced propane facilities are EnergyNorth's plants in Nashua, Manchester, and Tilton, and propane storage in Amherst, to the extent the storage is not used to serve Keene, or any other propane plants used for pressure support. The percentage reduction will be determined by dividing the rate base of the retired propane facilities, excluding Keene and the portion of the Amherst storage facility used to serve Keene or propane plants necessary for pressure support, by the total rate base of the three propane plants and adjusted rate base of the Amherst facility.

Settlement at 5. Potential retirement of the propane plants further justifies the contracted capacity is reasonable over a 10-year planning horizon.

EnergyNorth continues to be obligated in the regular course of business to mitigate excess capacity through asset management arrangements, capacity release through the spot market, and off-system sales directly to third parties. EnergyNorth's satisfaction of those requirements will further reduce customers' exposure to excess capacity costs and align EnergyNorth's demand and supply requirements within the 10-year period for which PLAN and the OCA advocated. Increased growth will also reduce the per-customer cost of the capacity contracted for in the Precedent Agreement, along with all other fixed costs, and will result in lower overall rates.

#### **F. EnergyNorth Affiliate Relationships**

We do not take a position on whether EnergyNorth's relationship with affiliates biased EnergyNorth to act contrary to the best interests of customers by oversubscribing to capacity contracted for in the Precedent Agreement or whether PLAN's opposition to the Precedent Agreement is motivated by its opposition to the NED Pipeline. Our decision is based on facts in the record that demonstrate that the Precedent Agreement and Settlement satisfy the standard of review as set forth above.

#### **G. Environmental Cost Risks**

We also disagree with PLAN that the Precedent Agreement unreasonably or imprudently exposes EnergyNorth to environmental cost over-runs associated with the NED Pipeline. Although the Precedent Agreement contains terms related to environmental cost overruns and

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underruns, we are satisfied that it protects customers from cost over-runs with a rate cap. TGP may not charge EnergyNorth more than that maximum rate.

### VIII. CONCLUSION

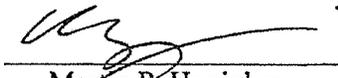
In conclusion, we find that EnergyNorth's proposed acquisition of the capacity contracted for in the Precedent Agreement is prudent and reasonable. EnergyNorth has established that, based on both price and non-price factors, the contracted capacity represents the most viable, reasonably available alternative for EnergyNorth to meet its current and forecasted customer requirements in a least-cost, and reliable manner. We note that the decision of whether to approve the proposed arrangement between EnergyNorth and TGP is an important one involving a long-term commitment of substantial ratepayer dollars. Therefore, we believe it is reasonable to review the prudence of the Company's proposal in advance of the final decision to enter into the proposed arrangement. Our finding that the contracted capacity is prudent, however, assumes that EnergyNorth manages its business and operates in a manner consistent with good utility practice and its plans outlined in this filing.

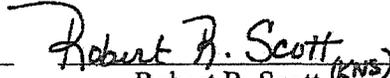
We also find that the Settlement is just and reasonable, and consistent with the public interest of its existing and future customers. The Settlement secures commitments for growth, which will benefit existing customers as well as potential customers. The Precedent Agreement, as modified by the Settlement, will enable EnergyNorth to meet existing and future demand in a safe and reliable manner at a just and reasonable cost. For all of the foregoing reasons, we approve the Settlement and the Precedent Agreement as modified by the Settlement.

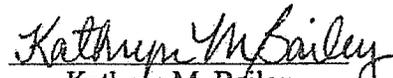
**Based upon the foregoing, it is hereby**

**ORDERED**, the Settlement and the Precedent Agreement as modified by the Settlement are approved.

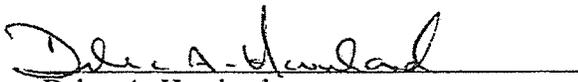
By order of the Public Utilities Commission of New Hampshire this second day of  
October 2015.

  
\_\_\_\_\_  
Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Robert R. Scott (KNS)  
Commissioner

  
\_\_\_\_\_  
Kathryn M. Bailey  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DG 14-380

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

Petition for Approval of Long-term Firm Transportation Agreement

Order Denying Richard M. Husband's Motion for Rehearing

ORDER NO. 25,843

November 20, 2015

In this order, the Commission denies Richard M. Husband's motion for rehearing of Order No. 25,822 because Mr. Husband lacks standing to petition for rehearing.

**I. PROCEDURAL HISTORY**

On December 31, 2014, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Energy North") filed a Petition for Approval of a Firm Transportation Agreement ("Precedent Agreement") with Tennessee Gas Pipeline Company, LLC ("TGP"). The Precedent Agreement is a 20-year contract between EnergyNorth and TGP for firm capacity on the proposed Northeast Energy Direct Market Path pipeline project ("NED Pipeline"). On June 26, 2015, Commission Staff ("Staff") filed a Stipulation and Settlement Agreement ("Settlement") between EnergyNorth and Staff. Following hearings, the Commission issued Order No. 25,822, in which the Commission approved the Settlement and the Precedent Agreement as modified by the Settlement. *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,822 at 31 (October 2, 2015) (the "Order"). In addition, the Commission found that EnergyNorth's acquisition of capacity from TGP was prudent and reasonable. *Id.* On November 2, 2015,

Richard M. Husband moved the Commission for rehearing of the Order, and on November 5, 2015, Energy North objected.

## II. STANDING

Mr. Husband asserts that he is directly affected by the Order because the NED Pipeline is planned to run through his town, near his property, and under the pond on which his property is located. According to Mr. Husband, the pipeline and its construction will affect wetlands, the town's drinking water aquifer, wildlife, environmentally sensitive areas, the water level of the pond, and the value of his property. He also asserts that he is directly affected by the Order, because he has participated in this docket by submitting and withdrawing a petition to intervene, submitting comments, and attending hearings.

EnergyNorth argues that Mr. Husband lacks standing to move for rehearing because he is not a party, is currently not a customer of the company, and cannot be a customer given that EnergyNorth does not provide service to the area where Mr. Husband resides.

We find that Mr. Husband is not directly affected by the Order and therefore lacks standing to move for rehearing. A person has standing to move for rehearing of a Commission order when he or she is a "party" or is "directly affected" by the Commission's action. RSA 541:3; N.H. Code of Admin Rules Puc 203.07. We have previously considered and rejected the notion that landowners along the proposed route of the NED Pipeline are directly affected by our decision in this docket. Because our decision relates to EnergyNorth's financial prudence in contracting with TGP for capacity, and in no way relates to siting of the NED Pipeline, we held that:

Only [PLAN's] 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 .... To ensure an orderly and focused proceeding, we limit PLAN's participation to the interest of its EnergyNorth-customer members in the prudence, justness and reasonableness of the Precedent Agreement and its associated costs, to EnergyNorth and its customers.

*Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order 25,767 (March 6, 2015) at 4. These same principles apply to Mr. Husband. While we recognize that his interests in the siting of the NED Pipeline are important, they are not directly affected by our approval of EnergyNorth's contract for capacity with TGP. Accordingly, we deny Mr. Husband's motion for rehearing for lack of standing.

### **III. PUBLIC COMMENT AND THE PUBLIC INTEREST**

While the standing issue disposes of Mr. Husband's motion, were we to consider his substantive arguments, we would still deny the motion. Mr. Husband disagrees with the Commission's determination that the Settlement is in the public interest. He argues that the Commission applied an incorrect and unduly narrow standard in making this public interest determination. The crux of Mr. Husband's motion for rehearing is his assertion that the Commission ignored public comments and ignored or excluded other evidence relating to negative effects of siting the NED Pipeline. He reiterates a number of comments that were previously submitted to the Commission by other members of the public. He then argues that the Commission was required to consider these negative comments and that the Commission was not preempted from doing so.

Mr. Husband also alleges that the Commission violated the equal protection guarantees of the state and federal constitutions and abused its discretion by considering the purported benefits of the NED Pipeline, while at the same time ignoring public comments concerning the negative

effects of siting that pipeline. This he claims benefited EnergyNorth customers over the vast majority of the State's population without a compelling state reason.

EnergyNorth argues that Mr. Husband has not demonstrated good reason for rehearing as required by RSA 541:3. According to EnergyNorth, Mr. Husband did not identify new evidence that could not have been presented previously and did not demonstrate that the Commission overlooked or mistakenly conceived evidence before it. EnergyNorth believes that the Commission did not ignore public comment regarding the effects of siting, but instead explicitly acknowledged that the comments were outside the scope of this proceeding. EnergyNorth further argues that consideration of siting issues associated with the NED Pipeline is outside the Commission's statutory authority and within the authority of the Federal Energy Regulatory Commission and possibly the New Hampshire Site Evaluation Committee.

The standard for rehearing is well known. We will grant rehearing 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 "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); *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25,088 (Apr. 2, 2010) at 14.

*Freedom Logistics, LLC, d/b/a Freedom Energy Logistics*, Order No. 25,788 (DE 14-305, June 5, 2015) at 3-4.

The Commission did not overlook or mistakenly conceive the public comments referred to by Mr. Husband. We accepted the comments for filing in the docket, considered them, and understood them to identify numerous potential negative impacts of siting the NED Pipeline in southern New Hampshire. The comments alleged negative effects on, among other things, water

wells and aquifers, wildlife, environmentally sensitive land areas, property values, the general economy, public health and safety, and the rural character of the region.

The types of concerns raised by Mr. Husband, and stated in the public comments that he cites, are not within our purview in this case. This is not, as Mr. Husband alleges, a matter of federal preemption or a matter of discretion, but a matter of our statutory role and the roles of other agencies. We reiterate that our statutory review in this instance is limited to consideration of EnergyNorth's financial prudence in securing gas transportation capacity for its customers. See RSA 374:1 and 374:2 (public utilities to provide reasonably safe and adequate service at "just and reasonable" rates); RSA 378:7 and RSA 378:28 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable); RSA 363:17-a (Commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities). We are approving a contract for pipeline capacity to supply EnergyNorth's natural gas customers, not the construction and siting of the NED pipeline.

We are not charged with determining whether it is in the public interest to locate the NED Pipeline in southern New Hampshire. Nor are we charged with balancing the interests of the NED Pipeline developers and the interests of the communities through which the NED Pipeline will run. Those considerations are for other agencies. See *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order 25,767 (March 6, 2015) at 3, and Order 25,822 (October 2, 2015) at 24; 15 U.S.C. § 717f(c)(1)(A) (requiring certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission before constructing gas pipelines); and RSA 162-H:10-b (requiring New Hampshire Site Evaluation Committee to "establish criteria or standards governing the siting of high pressure gas pipelines in order to ensure that the potential

benefits of such systems are appropriately considered and unreasonable adverse effects avoided”).

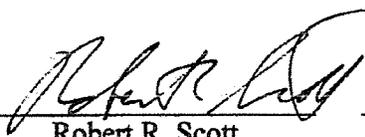
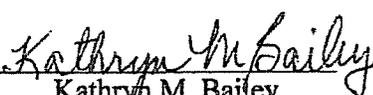
Mr. Husband further argues that a new piece of information justifies rehearing. That information is an article published by the New Hampshire Union Leader, titled “PUC Backs Liberty-Kinder Morgan Pipeline Deal.” Motion Exh. D. Although the article was published after the Order was issued, the article refers to pre-existing facts and analysis and does not contain any information that was not or could not have been produced at hearing.

Accordingly, even if Mr. Husband had standing to seek rehearing or reconsideration, we would deny rehearing on the merits of his motion.

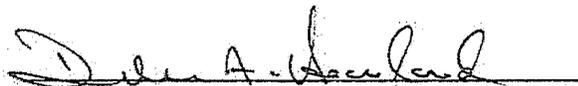
Based upon the foregoing, it is hereby

**ORDERED**, that the motion for rehearing is **DENIED**.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 2015.

		
Martin P. Honigberg Chairman	Robert R. Scott Commissioner	Kathryn M. Bailey Commissioner

Attested by:

  
Debra A. Howland  
Executive Director

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

**DG 14-380**

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

**Petition for Approval of Long-term Firm Transportation Agreement**

**Order Granting Petition to Intervene**

**ORDER NO. 25,767**

**March 6, 2015**

In this order we grant the intervention of PLAN for its members who are EnergyNorth customers, deny the intervention of PLAN for its members who are not EnergyNorth customers, and limit PLAN's participation in this docket to issues related to the interests of EnergyNorth customers in the prudence, justness, and reasonableness of the agreement EnergyNorth has brought to us for approval.

**I. PROCEDURAL HISTORY**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (EnergyNorth) is a public utility pursuant to RSA 362:2, that provides natural gas service to approximately 86,000 customers in southern and central New Hampshire and in Berlin. On December 31, 2014, EnergyNorth filed a Petition for Approval of a Firm Transportation Agreement (Precedent Agreement) with Tennessee Gas Pipeline Company, LLC (TGP), and supporting testimony. EnergyNorth seeks pre-approval – by July 1, 2015 – of a twenty-year Precedent Agreement with TGP on the proposed Northeast Energy Delivery (NED) pipeline project. Certain terms of the Precedent Agreement are protected from disclosure to the public under RSA 91-A:5, IV. *See* Secretarial Letter (February 19, 2015) (granting EnergyNorth's motion for confidential treatment).

On February 13, 2015, the Commission convened a prehearing conference presided over by a Hearing Examiner. In addition to EnergyNorth's motion for confidential treatment, the Hearing Examiner ruled on one of two petitions to intervene. The other petition to intervene, filed by Pipeline Awareness Network of the Northeast, Inc. (PLAN), remained undecided at the close of the prehearing conference, pending the filing of responses to two record requests. Hearing Examiner's Report (February 13, 2015) at 2.

The Commission affirmed the Hearing Examiner's rulings and approved a proposed procedural schedule on February 19, 2015. Responses to the Hearing Examiner's record requests were filed on February 19 (PLAN response to Record Request #1), February 20 (Commission Staff's response to Record Request #2), and February 25 (EnergyNorth's response to Record Request #2). In addition, on March 2, 2015, PLAN filed an unanticipated reply to EnergyNorth's response to Record Request #2.

## **II. COMMISSION ANALYSIS**

This proceeding concerns a proposed long-term contract for natural gas pipeline capacity between EnergyNorth and TGP. The Commission will determine whether the terms of the Precedent Agreement are prudent, just, and reasonable, from the perspective of an arbiter of Liberty's shareholders' and customers' interests. RSA 374:1 and 374:2 (public utilities to provide reasonably safe and adequate service at "just and reasonable" rates); RSA 378:7 and RSA 378:28 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable); and RSA 363:17-a (Commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities).

This proceeding does not concern and will not result in any approval of, or permissions for, siting or construction of TGP's NED project. Those matters are pending determination by other regulatory agencies, including the Federal Energy and Regulatory Commission (FERC).

In support of its request for mandatory or discretionary intervention, PLAN asserted in its petition, and later attested in an affidavit, *see* Response to Record Request 1 (February 18, 2015), that its membership includes customers of EnergyNorth as well as owners of property along the TGP pipeline route, and that these members' rights, duties, privileges and interests will be substantially affected by the outcome of this proceeding. PLAN has asked to participate in the proceeding without limitation.

EnergyNorth objects to PLAN's intervention, taking the position that PLAN has not adequately supported its assertions that its members include customers of EnergyNorth. In the alternative, EnergyNorth has asked the Commission to require PLAN to coordinate its participation with the Office of the Consumer Advocate (OCA), which is participating in the proceeding on behalf of EnergyNorth's residential customers. *See* RSA 363:28, II.

The Commission's Staff does not object to PLAN's intervention on behalf of any members who are also EnergyNorth customers. Only these member customers – who will ultimately pay the costs of the Precedent Agreement if the Commission approves it – have an interest in the Commission's determinations in this proceeding. Staff agrees with EnergyNorth's request that PLAN's participation be coordinated with the OCA.

The OCA does not object to PLAN's intervention. The OCA, however, objects to Staff's (and, presumably, EnergyNorth's) request to require PLAN's mandatory coordination with the OCA. The OCA views mandatory coordination as a limitation on its statutory right to participate in the proceeding.

Having considered PLAN's, the OCA's and Staff's positions, we 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.

To ensure an orderly and focused proceeding, we limit PLAN's participation to the interests of its EnergyNorth-customer members in the prudence, justness and reasonableness of the Precedent Agreement and its associated costs, to EnergyNorth and its customers.

While we recognize that PLAN and the OCA may have overlapping interests related to EnergyNorth's residential customers, we deny EnergyNorth's and Staff's requests to require PLAN to consolidate its participation with the OCA, because we also recognize that PLAN may seek to represent interests of commercial EnergyNorth customers. Nevertheless, to the extent possible and when interests are aligned, we encourage PLAN and the OCA to work together in the interests of the orderly and prompt conduct of the proceedings.

We also deny EnergyNorth's request for additional information about PLAN's membership. While PLAN's affidavit did not specifically identify its EnergyNorth-customer

members, we disagree that such specificity – particularly in the context of a sworn statement – is required for our ruling granting limited intervention.

Absent a confidentiality agreement between EnergyNorth and PLAN, PLAN shall not have access to confidential information produced during discovery, discussed during technical sessions, or presented at the hearing. N.H. Code Admin. Rules Puc 203.08. Upon our granting of PLAN’s petition to intervene, we authorize Staff to furnish all existing, non-confidential discovery requests and responses to PLAN. Due to the timing of this order, we modify the approved procedural schedule, and extend the deadline for first round data requests from PLAN until 4:30 pm, Wednesday, March 11. EnergyNorth shall make every effort to respond prior to the March 17 technical session.

**Based upon the foregoing, it is hereby**

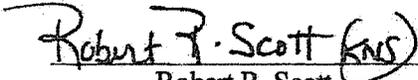
**ORDERED**, that PLAN’s petition to intervene is GRANTED pursuant to RSA 541-A:32. I, on behalf of its members who are also customers of EnergyNorth; and it is

**FURTHER ORDERED**, that PLAN’s petition to intervene is DENIED pursuant to RSA 541-A:32, I and II, on behalf of its members who are not EnergyNorth customers and own land along the proposed TGP pipeline route; and it is

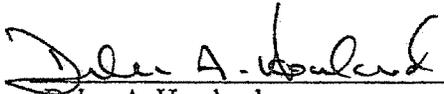
**FURTHER ORDERED**, that PLAN shall abide by the scope of their participation as set forth in this order.

By order of the Public Utilities Commission of New Hampshire this sixth day of March,  
2015.

  
\_\_\_\_\_  
Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Robert R. Scott  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director

## **Information on Liberty's Agreement with Tennessee Gas Pipeline for Firm Transportation**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) is a public utility that provides natural gas service to approximately 86,000 customers in southern and central New Hampshire and in Berlin, New Hampshire, as well as providing propane air service to approximately 1,200 customers in Keene. Like all New Hampshire utilities, Liberty is required to provide safe and reliable service to its customers.

On December 31, 2014, Liberty filed a Petition for Approval of a Firm Transportation Agreement (Precedent Agreement) with Tennessee Gas Pipeline Company, LLC (TGP). The Precedent Agreement is a long-term contract for additional natural gas pipeline capacity. Under the agreement, TGP will deliver natural gas to Liberty's distribution system over TGP's Northeast Direct project should the project be built. In support of its request, Liberty states that there is a need for more gas supply resources as soon as next year and a significant resource deficiency by the end of a 24-year planning period.

The Precedent Agreement will take effect only if TGP's Northeast Direct project is built. Approval of the Precedent Agreement is separate from any approval of, or permissions for, siting or construction of the Northeast Direct project. Approvals and permissions for the Northeast Direct project are not matters over which the Commission has any say. Those approvals and permissions are currently pending determination by other regulatory agencies, including the Federal Energy and Regulatory Commission (FERC). While the issues related to siting and construction are important, they are not relevant to the Commission's determinations in Docket DG 14-380, the docket opened by the Commission to consider Liberty's request, and are not issues over which the Commission has jurisdiction. Should the FERC approve the TGP's proposed Northeast Direct project, New Hampshire's Site Evaluation Committee expects to be asked to approve the siting of the portion of the project in New Hampshire.

The purpose of the Commission's review in Docket DG 14-380 is to determine whether the terms of the Precedent Agreement are prudent, just, and reasonable, from the perspective of balancing Liberty's shareholders' interests with its customers' interests. The determination will depend on analysis of Liberty's projected service requirements and an economic review. DG 14-380 is not a review of the Northeast Direct project proposed by TGP. If the Commission approves the contract and the pipeline is built, Liberty will be allowed to recover the capacity costs associated with the Precedent Agreement from customers on a dollar-for-dollar basis. Liberty is not permitted to generate a profit on capacity costs.

Only those comments related to the terms of the Precedent Agreement or its impact on Liberty rates and service will be considered in this proceeding. Because the Commission has no jurisdiction to decide issues relating to the approval of the Northeast Direct project, members of the public who wish to comment generally on the Northeast Direct project are asked to direct their comments to the other appropriate regulatory agencies.

More information about Liberty's request for approval of Precedent Agreement can be found at <http://puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>.

BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Re: Liberty Utilities (EnergyNorth Natural Gas) Corp.

Docket DG 14-380

MOTION FOR REHEARING UNDER R.S.A. 541

Pursuant to R.S.A. Chapter 541 and R.S.A. 541:3, the undersigned movant, Richard M. Husband, a resident of Litchfield, New Hampshire, respectfully applies for rehearing with respect to Order No. 25,822 (the "Order") entered October 2, 2015 by the Public Utilities Commission ("PUC") in this proceeding, and the matters discussed herein. The movant specifically contests, without limiting his complaints to, the unjust, unreasonable and unlawful (a) finding and determination of the Order that approval of the subject settlement and precedent agreements is in the public interest (b) standard applied to that determination, (c) exclusion of evidence and public comments which were legally required to be considered with respect to the issue; and (d) preferential treatment afforded some citizens over others by this proceeding and the Order, without a rational basis, in violation of federal and state constitution equal protection guarantees. As grounds for this motion, the movant states as follows:

1. Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Liberty Utilities") commenced this proceeding on December 31, 2014 by petition (the "Petition") for approval of a firm transportation agreement ("Agreement") with Tennessee Gas Pipeline Company, LLC ("Tennessee Gas"), "including a determination that the Company's decision to enter into the agreement is prudent and consistent with the public interest." *Id.*, p. 1. A true and accurate copy of the Petition is attached to this motion as Exhibit "A" (emphasis added).

2. The Order of Notice for this proceeding recites the Petition's request for "a determination that the Company's decision to enter into the Agreement is prudent and consistent with the public interest," and specifically made this determination a condition of approval. *See* true and accurate copy of the Order of Notice attached to this motion as Exhibit "B," pp. 2-3 (emphasis added).
3. The Order makes a determination that approval of the subject settlement and precedent agreements is in the "public interest." *See* Order at 1, 31 (emphasis added).
4. This was a requisite finding for approval of the settlement. *See* Puc 203.20(b) ("The commission shall approve a disposition of any contested case by stipulation, settlement, consent order or default, if it determines that the result is just and reasonable and serves the public interest."); *Concord Steam Corp.*, 94 N.H. P.U.C. 233 (May 22, 2009)(affirming standard of Puc 203.20(b) for settlements).
5. However, this proceeding was not conducted and decided in a manner which properly considered the public interest, but under an unduly narrow view which improperly rejected relevant evidence and public comments on the issue, and unlawfully favored certain classes of citizens over others.
6. As described in the Petition, the subject precedent agreement ("Agreement") is a "contract on the proposed Northeast Energy Delivery ('NED') pipeline project." Exhibit "A," p. 2.
7. The NED pipeline project, one of alternative pipelines in the works, is planned to run through roughly 70 miles of Southern New Hampshire. *See* Order, pp. 2, 7.

“Portions of the route are new ‘greenfield’ rights-of-way, and portions run through existing electric transmission rights-of-way.” *Id.* “‘Greenfield’ rights-of-way” refer to undeveloped, agricultural areas, including working farms, state forests, historic areas, wetlands, aquifers and other environmentally sensitive areas. *See generally* the public comments submitted in this this proceeding. New Hampshire will largely serve as a conduit for this transmission line from New York to Massachusetts. *See* Order, p. 4 Footnote 1 (“it will transport natural gas from Wright, New York, to the market center location serving New England Markets, in Dracut, Massachusetts.”). New Hampshire will receive up to 115,000 dekatherms per day of firm capacity under the Agreement, Order, p. 4, which is only about 10% of the pipeline’s capacity.<sup>1</sup> Of that small amount, only about 57%—roughly just 6% of the pipeline’s capacity—is not gas otherwise already available.<sup>2</sup>

8. The NED project is in the pre-filing stage of approval with the Federal Energy Regulatory Commission (“FERC”), with Tennessee Gas initiating the process on September 15, 2014, *see* Exhibit “C,” p. 1, only three months before the commencement of this case. *See also* Order, p. 2 (“To take effect, the Federal Energy Regulatory Commission (FERC) must approve the NED Pipeline. FERC’s

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<sup>1</sup> It is not believed that this small percentage is substantively disputed by the PUC or any of the parties to this proceeding. In any event, it is discussed in the submitted public comments, is a matter of public record and common knowledge to interested persons, and, but for the PUC’s conduct and rulings complained of herein, could have been further established to any degree reasonably required in this proceeding by records of a kind deemed acceptable for consideration by the PUC.

<sup>2</sup> “Of the total 115,000 Dth per day of capacity contracted for in the Precedent Agreement, 50,000 Dth per day is replacement of existing TGP capacity and 65,000 Dth per day is new or incremental capacity.” Order, p. 4.

review is ongoing.”). Just as this proceeding was pushed through at an incredible rate for such an impactful project—from its commencement on the last day of 2014 to its last hearing day in early August, this matter received barely seven months of process—the FERC proceedings are expected to move rapidly, with Tennessee Gas planning to file its official application for approval of the project with FERC by the end of this year, and FERC expected to act on the application in a matter of months.

9. On July 22, 2015, day two of the hearing on the merits for this proceeding, the PUC noted that it had already received probably between 80-100 public comments, of which the PUC acknowledged “all but a handful are negative.” July 22, 2015 Transcript, 94:10-12. From July 23, 2015 on, 56 more public comments are posted on the PUC online docket for this proceeding, available at the URL <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>. All of these additional comments are negative.
10. Almost all of the negative comments include substantial reasons why the NED pipeline project is not in the public interest.

By letter dated July 21, 2015, the NH Municipal Pipeline Coalition—comprised of the towns of Amherst, Brookline, Fitzwilliam, Greenville, Litchfield, Mason, Merrimack, Milford, New Ipswich, Pelham, Richmond, Rindge, Temple and Troy—submitted the following to be considered as public comments with respect to this matter:

“We represent 14 New Hampshire towns affected by the proposed Northeast Energy Direct (“NED”) high-pressure gas pipeline project. Given the projects potential impact on our communities, we have been closely following developments

regarding Liberty's request for approval of its Precedent Agreement with Tennessee Gas Pipeline Company ("Tennessee"), including the New Hampshire PUC Staff's recent Settlement recommendation.

This letter urges the Commission to reject the Settlement as ill-advised and undertake a full review of the facts and merits of the case.

We believe:

- The capacity of the NED pipeline far exceeds the utility needs of New England (such that taking of private and public land for NED is more for the benefit of its owners than the benefit of New England gas consumers);
- The 'need' for this project is better addressed by competing projects that would require less taking of private and public land; and
- The proposed pipeline route will dramatically impact protected conservation land, watersheds, and aquifers.

...

In addition, the NED project will more deeply and directly impact communities, wetlands and aquifers on the route than other project proposals. Trees will be cut and rivers tunneled under. Required blasting may damage wells, aquifers and buildings. Proposed compressor stations will be located near schools and businesses. Sensitive wetlands will be impacted by construction and excavation and the long-term persistent and harmful application of herbicides, among other methods, to control vegetative growth. Public policy should discourage projects that heavily impact conservation lands, water resources, and environmentally sensitive areas—especially when viable alternatives exist.

...

**In short, we believe that the proposed NED pipeline does not benefit New Hampshire or Liberty's customers. We urge you to reject the Staff's Settlement offer. The 'need' NED is attempting to address can be accomplished in a much less disruptive way, in a timely fashion, through other projects that use existing pipeline rights of way."**

*Id.* (emphasis added). From the letter, it is obvious that the municipal coalition perceives a clear connection between the approval sought in this proceeding and

the negatives of the NED pipeline, and does not believe either to be in the public interest. This letter represents the “public interest” input of over 100,000 total New Hampshire citizens in these 14 towns.<sup>3</sup> The movant, a resident of Litchfield, is one of these citizens.

By letter dated August 4, 2015, Representative Jack Flanagan (Hillsboro District 26), serving Brookline and Mason, commented that he agreed with the above municipal coalition letter, beginning his reasoning with the clear connection between the Agreement and the negatives of the NED pipeline:

“... The approving of the Liberty Utilities settlement would directly impact 17 towns and their citizens in a highly negative way. Indirectly, the charge of the PUC is to minimize the impact of potential Utilities operations and make sure that, if possible, cause no harm to the citizens of New Hampshire. One can not ignore the moral responsibility we all has [sic] as public servants to the state we serve.

In light of the two projects that are also pending, I strongly encourage you to deny the Liberty Utilities proposal and require any natural gas being utilized be from the existing enlarged pipelines.

It is time for the State of New Hampshire to do the right thing for its citizens ...”

*Id.* (emphasis added).

By letter dated August 4, 2015, a state senator also concurred:

“Dear Chairman Honigberg and Ms. Howland:

I represent Senate District 12 which includes the towns of Brookline, Greenville, I-louis, Mason, New Ipswich, Rindge and the city of Nashua which are affected by the proposed pipeline. I

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<sup>3</sup> According to the New Hampshire Office of Energy and Planning website, at the URL <http://www.nh.gov/oep/data-center/population-estimates.htm>, the 14 towns had 2014 populations as follows: Amherst (11,269), Brookline (5,111), Fitzwilliam (2,389), Greenville (2,074), Litchfield (8,363), Mason (1,391), Merrimack (25,408), Milford (15, 209), New Ipswich (5,115), Pelham (13,069), Richmond (1,161), Rindge (5,980), Temple (1,380) and Troy (2,141).

have heard the concerns from several of my constituents and completely agree with the attached [NH Municipal Pipeline Coalition] letter and also urge you to reject the Staff's Settlement offer.

**The people have spoken loud and clear and I ask you to seriously consider their request .**

Sincerely,

Senator Kevin Avar, Dist 12 ...”

*Id.* (emphasis added).

By letter dated July 16, 2015, New Hampshire State Representative James W. McConnell (Cheshire 12) also opined that the approval sought in this proceeding should be denied because of the negatives of the NED pipeline, including the threat it poses to “sensitive wetlands and aquifers.” He concluded:

“... This project is wrong for New Hampshire and, based on its lack of merit and the risks to New Hampshire residents and Liberty ratepayers, the proposed settlement agreement should be rejected.”

*Id.* (emphasis added).

Similar comments poured in from citizens: some urging against the approval sought in this proceeding because of its connection to the negatives of the pipeline; many just focusing on the negatives of the pipeline.

From Gloria Barefoot's July 12, 2015 letter:

“The approval of the contract between Liberty Utilities and Kinder Morgan for space on a proposed natural gas pipeline through 70 miles of Southern New Hampshire will have a negative impact on the environment and economics of the area. This would be the largest pipeline in diameter in New Hampshire, and would provide substantial excess capacity that could not be used in the state. The size of the project poses safety risks and passes along costs to customers that are not in line with customer needs. The project will disturb and redirect numerous aquifers, ponds,

watersheds, and lakes. Noise and exhaust from blow down valves and compressor stations will disturb wildlife and will impact hunting, fishing, snowmobiling, and boating in some of the most beautiful country in New England. Is it really the time to invest in excessive infrastructure, constructing the largest gas pipeline and most powerful compressor stations to date in New Hampshire? ...”

From Margaret Viglion’s July 18, 2015 letter:

“... Negative impacts would be severe on the safety, health and welfare of consumers and non-consumers, the ecosystem as well as the economy of the region ...”

From Christine Neill’s July 24, 2015 letter:

“I live in New Ipswich, NH and I am submitting this letter opposing the Tennessee Gas Pipeline proposal for a natural gas pipeline to be built through Massachusetts and New Hampshire.

It will endanger our environment, our historical and cultural resources, our way of life and lower property values ...”

From Laura Baker’s July 28, 2015 letter:

“... Outdoor recreation is one of the area’s most valuable assets to residents and visitors alike and it makes not [sic] sense to jeopardize this resource ...”

From Kerry P. Gagne’s July 29, 2015 letter:

“Dear Executive Director Howland:

Please oppose the Northeast Energy District (NED) Project and the extension of Kinder Morgan’s Tennessee Gas Pipeline.

New Hampshire cannot expect monetary benefits to outweigh the monetary and environmental burdens on residents and towns ...”

From Richard J. Fressilli’s July 26, 2015 letter:

“... The industrial nature of this project is entirely out of keeping with the rural and ecologically sensitive character of this area. The facility as proposed places the compressor and pipeline within a drinking water protection area and poses a threat to wetlands, a reservoir, sensitive wildlife, farms and the children at our elementary school ...”

From Sebastien Barthelmess' August 7, 2015 letter:

"As taxpayers of New Ipswich NH, we feel strongly that our PUBLIC voice is not being heard. Is it not the duty of the PUBLIC Utilities Commission have a duty to protect all residents, the public, in New Hampshire?"

I believe the welfare of ALL the citizens of NH should be included in your decision regarding this matter, not just customers of Liberty Utilities. NED affects many many other NH citizens, probably more than it affects the Liberty Utility customers ..."

From Tim Winship's August 5, 2015 letter:

"... The taking of property, not to mention the destruction of a living landscape, is a profound action that can only be justified by an equally profound need of great public benefit. It would take a lot of imagination and a by-passing of conscience to be able to state that this proposal rises to such a high level of need. I sincerely hope that you deny Liberty Utilities request ..."

From Karen Miller's August 10, 2015 letter:

"... The NED/Tennessee gas pipeline will adversely effect many more NH citizens, than it will benefit the 'potential', that is to say, NOT currently contracted, Liberty Utilities customers ..."

From Lisa Derby Oden's August 10, 2015 letter (emphasis in original):

"... The impacts of this project are huge and irreversible. Environmentally, our aquifers and water supply are at stake ..."

The time to have the Public Utilities Commission of the State of New Hampshire do the right thing for its citizens is now! Please scrutinize the information you have received and make a determination based on "what is good and just for ALL NH citizens."

From Susan Wessels' August 15, 2015 letter:

"Dear PUC Commissioners

My husband and I are being told the home we built 20 years ago in Rindge is in the 'study zone' of the planned Kinder Morgan pipeline. Almost our entire wooded 3-acre lot will be permanently

cleared of all the natural and planned vegetation we have so lovingly planted and maintained to provide a peaceful, natural and private setting. ...”

From Michael Maki’s July 30, 2015 letter:

“I am a landowner whose farm, which has been in our family since 1906, lies in the direct path of the Northeast Energy Direct Project (NED) as currently proposed by Tennessee Gas Pipeline Company, L.L.C. Division of Kinder Morgan.

Even though it is generally accepted that New England needs more energy, the NED pipeline would deliver far more natural gas than the region needs or could use. Other projects already approved can meet New England’s current and projected shortfall and are much less disruptive than NED. One can only conclude that the natural gas supplied by NED will be sold for export with little or no gas supplied to or needed in New England. Certainly there would be no benefit to New Hampshire. If this project is allowed to proceed the result will be the taking of more private property by eminent domain for corporate profit. The landowners are left with unusable land that they still own and pay taxes on, receiving a onetime token payment to host the pipeline and live with the consequences while Kinder Morgan generates a cash stream for themselves year after year.

Please stand with me and oppose the NED project.”

Overwhelmingly negative, the comments about the pipeline go on and on

...

11. But the PUC unjustly, unreasonably and unlawfully ignored the public comments and refused consideration of similar evidence by applying the incorrect standard to its “public interest” determination.
12. The PUC must act in the public interest. *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).

13. The term “public interest” is analogous to the term “public good” and should be broadly construed “not only to include the needs of particular persons directly affected . . . but also . . . the needs of the public at large . . .” *Waste Control Systems, Inc. v. State, supra*, 114 N.H. at 21)(citing *Boston & Maine R.R. v. State, supra*, 102 N.H. at 10); see also *Black’s Law Dictionary* (6<sup>th</sup> Ed., West Publishing Co., St. Paul, MN)(1990), p. 1229 (“Public interest” defined as “Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights are affected. . .”). The “public at large” means the public “as a whole; in general” or “the whole of a state, district or body rather than one division or part of it . . .” *Webster’s New Universal Unabridged Dictionary*, p. 808 (defining “at large”).
14. It is well-established that the PUC has broad discretion when it comes to making “public interest” determinations. See, e.g., *Waste Control Systems, Inc., supra*, 102 N.H. at 24. But, with this broad discretion comes a corresponding obligation to cast its net as widely as possible to properly consider the matter. Moreover, the PUC does not have the authority to ignore mandated legislative procedures and rights pertaining to the determination, and it cannot abuse its discretion and corresponding obligation by applying a more limited standard for determining the “public interest” than is required under the law:

“The good of the public and not the benefit to the contending parties being the issue (*Grafton &c. Co. v. State*, 77 N.H. 539, 542), the desire or consent of the latter is not the test. The public, as well as the parties, is entitled to a finding of the public good on a hearing without error of law . . .”

*The Parker Young Company and Fox & Putnam v. State*, 83 N.H. 551, 560

(1929); see also *In re Pinetree Power, Inc.*, 152 N.H. 92, 97 (2005) (“the ‘public interest’ of PSNH’s customers encompasses more than simply rates ...”); *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606 (N.H. 1986) (“...the express statutory concern for the public good comprises more than the terms and conditions of the financing ...”).

15. On the home page of its website, at the URL [www.puc.nh.gov](http://www.puc.nh.gov), the PUC has provided a link relative to this proceeding titled DE 14-380, Information on Liberty’s Agreement with Tennessee Gas Pipeline for Firm Transportation for months. The link leads to the document attached as Exhibit “C” to this motion, which provides the PUC’s position, and, in effect, a procedural/evidentiary ruling on the relevance of the NED pipeline project and other matters to this proceeding:

“ The Precedent Agreement will take effect only if TGP’s Northeast Direct project is built. Approval of the Precedent Agreement is separate from any approval of, or permissions for, siting or construction of the Northeast Direct project. Approvals and permissions for the Northeast Direct project are not matters over which the Commission has any say. Those approvals and permissions are currently pending determination by other regulatory agencies, including the Federal Energy and Regulatory Commission (FERC). While the issues related to siting and construction are important, they are not relevant to the Commission’s determinations in Docket DG 14-380, the docket opened by the Commission to consider Liberty’s request, and are not issues over which the Commission has jurisdiction.”

Exhibit “C. It then goes on to suggest that the broader public interest is not relevant to the determination in this proceeding—only the interests of Liberty Utilities and its customers:

“The purpose of the Commission’s review in Docket DG 14-380 is to determine whether the terms of the Precedent Agreement are prudent, just, and reasonable, from the perspective of balancing Liberty’s shareholders’ interests with its customers’ interests.”

*Id.* Indeed, if this proceeding still required a “determination that the Company’s decision to enter into the [A]greement is ... consistent with the public interest” for the approval sought, as requested in the Petition, Exhibit “A,” p. 2, and adopted in the Order of Notice, Exhibit “B,” pp. 2-3, the public would not know it from reviewing Exhibit “C.” The term “public interest” does not even appear in Exhibit “C” and the only interests mentioned are those of Liberty Utilities and its customers. *See id.* As opposed to “public interest” considerations, Exhibit “C” leads to a pin-hole focus: “The determination will depend on analysis of Liberty’s projected service requirements and an economic review.” *Id.*

16. To the extent the following or other language in the PUC’s March 6, 2015 Order No. 25,767 in this proceeding provides the same or similar procedural/evidentiary ruling as complained of in the previous paragraph, the same is also challenged under this motion:

“This proceeding does not concern and will not result in any approval of, or permissions for, siting or construction of TGP’s NED project ...

Having considered PLAN’s, the OCA’s and Staff’s positions, we 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.”

*Id.*, pp. 3-4.

17. The rulings complained of are unsustainable. This is not even about the merits; it is about just being *heard*.
18. The PUC has minimum threshold requirements for the consideration of matters. It does not follow technical rules of evidence: only that which is “irrelevant, immaterial or unduly repetitious” is barred. R.S.A. 541-A:33, II; Puc 203.23. Proof need only be by a “preponderance “of the evidence, *see* Puc 203.25—not a high obstacle. *See In re Shelby R.*, 148 N.H. 237, 241 (2002)(“relatively low” standard).
19. There is no legal or rational basis for the PUC to hold public comments to a higher standard of consideration than evidence.
20. Thus, if public comments offered on a “public interest” determination are relevant and material, the PUC may not lawfully ignore them.<sup>4</sup> Public comments are legislatively mandated for PUC rulemaking hearings under R.S.A. 541-A:11, with the statute making it clear that all interested persons should be afforded every opportunity for input, including by public comment:

“ I. (a) Each agency shall hold at least one public hearing on all proposed rules filed pursuant to RSA 541-A:3 and shall afford all interested persons reasonable opportunity to testify and to submit data, views, or arguments

...

III. To provide reasonable opportunity for public comment, the agency may continue a public hearing past the scheduled time or to another date, or may extend the deadline for submission of written comment. ”

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<sup>4</sup> If relevant and material, such comments are clearly not within the first two categories of the only three categories of inadmissible PUC evidence: that which is “irrelevant, immaterial or unduly repetitious.” R.S.A. 541-A:33, II; Puc 203.23. The third category, that which is “unduly repetitious,” should plainly not apply to public comments—particularly in a proceeding of such great public interest as this matter, wherein repetition is a virtual certainty given the number of likely comments, but all are entitled to an equal voice. Indeed, if anything, repetitive “public interest” comments in such a case should be given added consideration, as establishing a clear “public at large” sentiment on the issue.

*Id.* While “Rule” is not specifically defined under R.S.A. Chapter 541-A to include rulings such as the Order, *see* R.S.A. 541-A:1, IV, it is not defined to exclude rulings, either, and rules promulgated under the statute have the same force of law as rulings. *See* R.S.A. 541-A:22, II (“Rules shall be valid and binding on persons they affect, and shall have the force of law unless they have expired or have been amended or revised or unless a court of competent jurisdiction determines otherwise.”). Thus, especially as the Order will be no less impactful—likely far more—to New Hampshire citizens than most rules promulgated by the PUC under the statute, and no one is more qualified to comment on matters affecting the general “public interest” than the general public, the voice assured public comments under the statute should apply to this proceeding.<sup>5</sup>

21. Additionally, the PUC’s own rules guarantee consideration of public comments, by expressly providing that interested persons shall have the opportunity to “state their position”:

“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.”

The PUC has to follow its own rules. *Attitash Mt. Service Co. v. Schuck*, 135 N.H. 427, 429 (1992)(law well-settled that administrative agencies must follow their

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<sup>5</sup> To be noted: the “public interest” determination here does not involve matters within the PUC’s areas of expertise. Indeed, many of those submitting public comments in this proceeding, by virtue of their positions and experience as state and town officials, have fare more knowledge and expertise than the PUC in the matters discussed in the comments—particularly as concerns matters affecting their own districts and towns.

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.”).

22. An opportunity for input, or to “state [one’s] position,”—the right to be heard—is meaningless if the input or position (comment) is just ignored. Having invited public comments in this public proceeding, particularly in view of the strong policies involved, the PUC was obligated to consider them—again, at least those relevant and material.
23. There is no question that the negatives of the NED pipeline are relevant and material to the determination in this case.
24. Something is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *State v. Hayward*, 166 N.H. 575, 580 (2014)(quoting New Hampshire Rules of Evidence Rule 401).
25. Thus, the negatives of the NED pipeline are relevant to this proceeding if they are “of any consequence to the ‘public interest’ determination” and the approval sought herein has “any tendency to make the existence of [the negatives] more probable or less probable.” *See State v. Hayward, supra*, 166 N.H. at 580.
26. Clearly, the negatives of the NED pipeline complained of in the public comments—loss of or injury to drinking water aquifers, wetlands, farmlands, historic areas, conservation and other environmentally sensitive areas; safety concerns, damage to the state’s tourism and related economies, personal hardships, etc.—are of “consequence” to the public interest determination in this

case. Surely, the approval of the settlement and Agreement sought herein will have a “tendency to make the existence of the [the negatives] more probable” than not.

27. Likewise, such substantial negatives are indisputably “material” to the “public interest” determination.
28. While the movant believes the nexus between the approval sought herein and the negatives of the NED pipeline is a matter of common sense and public knowledge, new evidence makes the connection irrefutable.
29. A *Union Leader* article following the Order began with this observation:

“The energy company that wants to build a new natural gas pipeline through southern New Hampshire just got a big boost from the N.H. Public Utilities Commission ...”

*See* true and accurate copy of October 6, 2015 *Union Leader* online news article attached to this motion as Exhibit “D.”
30. Indeed, as established by the article, a NED pipeline representative *admits* the nexus, hailing the Order, together with similar Massachusetts decisions, as a “‘significant step’ in bringing the project to fruition ...” *See* Exhibit “D.”<sup>6</sup>
31. New evidence provides grounds for a rehearing. *Consumers New Hampshire Water Co., Inc.*, 80 NH PUC 666 (1995), cited in *Verizon New Hampshire Petition to Approve Carrier to Carrier Performance Guidelines*, Order No. 23, 976 (May 24, 2002).

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<sup>6</sup> The attached Exhibit “D” should be acceptable to the PUC. Exhibit “56” admitted as evidence in this case, a copy of which is attached to this motion as Exhibit “E,” is an online news article, “Water woes imperil Deep Panuke output” from the February 25, 2015 edition of *The Chronicle Herald*. Exhibit “57” admitted as evidence in this case, a copy of which is attached to this motion as Exhibit “F,” is a printout of page 1 of the NHPipelineAwareness.org website.

32. In making its “public interest” determination, the PUC presumed that there was no nexus between the approval sought herein and FERC approval of the NED pipeline project—that it was not “more probable” than not that FERC approval would come with this proceeding’s approval—but that presumption has been rebutted, and the process resulting in the Order proved tainted, accordingly. *Cf. Heffenger v. Heffenger*, 89 N.H. 530, 532 (1938) and cases cited therein (a presumption “vanishes” when rebutted, and thus may not be relied on for any purpose).
33. While its rationale is unclear, the PUC’s position also seems grounded in preemption concerns. According to the PUC:
- “... While the issues related to siting and construction are important, they are not relevant to the Commission’s determinations in Docket DG 14-380, the docket opened by the Commission to consider Liberty’s request, and are not issues over which the Commission has jurisdiction ...”
- Exhibit “C.”
34. Because it is unclear, the PUC’s preemption rationale fails. *See State v. Exxon Mobil Corp.*, 2013-0591, 2013-0668 (N.H., October 2, 2015)(obstacle preemption bears a heavy burden).
35. In any event, there is no rational basis to conclude that state interest in protecting watersheds and conservation areas—or most of the other public comment concerns—is superseded by federal law.
36. Moreover, any preemption would only occur after FERC certification (approval) of the NED project. *See Lng v. Loqa*, 79 F.Supp.2d 49 (D.R.I. 2000). As the

project is only in the pre-filing stage of approval –far from any certification—  
there is no preemption concern. *Id.*<sup>7</sup>

37. The PUC’s rationale is especially perplexing given that it had no problem in considering the purported “benefits” of the NED pipeline. *See, e.g.*, August 6, 2015 Transcript, 36:17-37:24.
38. State disparate treatment of persons similarly situated, without a legitimate state interest, violates the equal protection guarantee of our state and federal constitutions. *Verizon New England, Inc. v. City of Rochester*, 151 N.H. 263, 270-271, 855 A.2d 497 (2004). Why was Liberty Utilities allowed to support its “public interest” argument or approval by consideration of the positives the NED pipeline will supposedly bring, but opponents of approval not allowed to cite the negatives? Are we all not New Hampshire energy users, with some getting gas through Liberty Utilities and the remainder elsewhere? Indeed, non-Liberty Utilities gas customers comprise the vast majority of New Hampshire’s population: with over 1.3 million New Hampshire citizens as of the 2010 census, and under 90,000 Liberty Utilities gas customers, *see* Exhibit “C,” the latter amounts to less than 7% of New Hampshire’s energy users. Absent a

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<sup>7</sup> Perhaps the PUC is concerned that that the federal eminent domain complaints of some of the public comments come too close to federal territory. However, as long as there is no preemption, a fair argument may be made that the PUC, an agency of this state, owes a good faith duty to its citizens to do its best to prevent federal eminent domain from ever becoming an issue—especially as our state constitution guarantees New Hampshire citizens protection from such takings. *See id.*, Article 12-a (“No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.”). As the PUC’s rationale is unclear, the movant reserves the right to challenge other reasoning.

compelling state reason not shown here, why should 93% of a total population of similarly situated citizens (energy users) be burdened to benefit less than 7%?

39. The Order essentially decided that the interests of less than 90,000 Liberty Utilities customers completely muted the voices of all other New Hampshire citizens—including over 100,000 citizens represented by the NH Municipal Pipeline Coalition alone—with valid reasons why approval of the settlement and Agreement was not in the public interest. Somehow, those voices should have counted.
40. The PUC abused its discretion and committed legal error.

“The [PUC], like a trial judge, has broad discretion over the conduct of its proceedings, including its hearings ... But that discretion is not unlimited. The board may not abuse its discretion ... abuse of discretion by the board constitutes legal error ... “

*Appeal of Morin*, 140 N.H. 515, 517-518 (1995)(citations omitted). It should have followed its own rule (Puc 203.18), the will of the legislature and basic principles of fairness and allowed *both* sides to fully “state their position.” *See id.* (“An agency, like a trial court, must follow fair procedures and provide due process ... Its discretion must be exercised ‘in a manner to subserve and not to impede or defeat the ends of substantial justice.’ ... One element of this requirement is the opportunity to present one's case—to attempt to meet one's burden of proof—in a fair manner before an impartial fact-finder ... Further, in exercising its discretion, an administrative agency must follow its own rules ...”). The PUC holds the obligations of a trial judge and may not unfairly pick and choose among evidence equally materially and relevant to the ultimate issue to

guide the result it wants. *See Appeal of Public Service*, 122 N.H. 1062, 1074 (1982)(“[to] be paid as a judge, one must act like a judge”).

41. The wrongs complained of herein were made known to the PUC in public comments submitted by the movant and others prior to issuance of the Order.
42. There is a reasonable probability that the PUC will engage in the complained-of conduct again, and with respect to others who might be unable to avail themselves of relief.
43. The movant brings this motion under R.S.A. 541:3, being directly affected by this proceeding : as an impacted citizen of the town of Litchfield, a community on the NED pipeline route, wherein the pipeline is planned to run near the movant’s property, through wetlands, the town’s drinking water aquifer, numerous wildlife and other environmentally sensitive areas, and the property of approximately 67 landowners—and will negatively affect all others, including the movant, by the general diminution of property values associated with the “fear factor” and other concerns associated with a nearby pipeline (with many Litchfield citizens, including the movant, suffering further harm if the blasting associated with running the pipeline through the aquifer wherein the pond on which the movant lives negatively impacts the water table of the pond—more than a reasonable possibility with such blasting); as an impacted nature lover and resident of the State of New Hampshire, numerous times more negatively affected by the pipeline; as one who submitted public comments in this proceeding, which were improperly ignored, and is claiming standing and a legally protected interest and rights under R.S.A. Chapter 541-A and Puc 203.18, and a violation of those

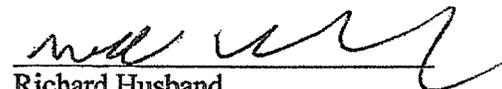
rights, accordingly; as an interested person who has followed this proceeding for months, once petitioned to intervene (withdrawn), and attended all or substantial parts of all three days of the final hearing on the merit in this matter.

WHEREFORE, the movant respectfully requests that the PUC:

- A. Vacate or reverse the Order and schedule this matter for a new hearing on the merits after further proceedings which allow consideration of the negatives of the NED pipeline and the submission of public comments and evidence on the matter and the “public interest” determination, and apply the proper “public interest” standard;
- B. In the order resulting from the new hearing on the merits, sufficiently discuss the rationale of its ultimate findings and conclusions concerning (i) the nexus between the approval sought herein and FERC approval of the NED pipeline, and (ii) matters submitted and considered or not considered respecting the NED pipeline and the “public interest” determination, such that the general public has “an adequate basis upon which to review its decision.” *Petition of Support Enforcement Officers*, 147 N.H. 1, 9 (2002); R.S.A. 541-A:35; and
- C. Grant such other and further relief is just, reasonable, lawful and otherwise appropriate.

Dated: November 2, 2015

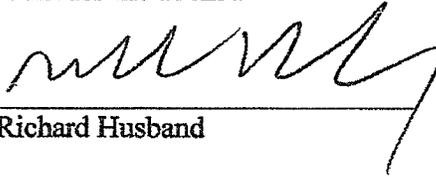
Respectfully submitted,



Richard Husband  
10 Mallard Court  
Litchfield, NH 03052  
Telephone No. (603)883-1218  
E-mail: [RMHusband@gmail.com](mailto:RMHusband@gmail.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have on November 2, 2015, 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.

  
Richard Husband

**EXHIBIT "A"**

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

RE: LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A LIBERTY  
UTILITIES

DOCKET NO. DG 14-\_\_\_

Petition for Approval of a Firm Transportation Agreement With Tennessee Gas Pipeline  
Company, LLC

NOW COMES Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”) and petitions the New Hampshire Public Utilities Commission (the “Commission”) for approval of a firm transportation agreement with Tennessee Gas Pipeline Company, LLC (“Tennessee”), including a determination that the Company’s decision to enter into the agreement is prudent and consistent with the public interest. In support hereof, the Company states as follows:

Introduction

1. By this Petition and the accompanying Pre-Filed Direct Testimony of Francisco C. DaFonte, the Company seeks approval to enter into a 20 year contract with Tennessee pursuant to which the Company would purchase on a firm basis up to 115,000 Dth per day of capacity. The Company is seeking the Commission’s advance approval of this transaction given the substantial financial commitment that is required for this long-term agreement.

2. As explained in Mr. DaFonte’s testimony, the proposed firm transportation contract with Tennessee is prudent and in the public interest because the Company needs this long-term firm transportation capacity resource to reliably satisfy existing and future customer load requirements in its service area, and it is the best cost resource to meet the capacity needs of

the Company's customers. In addition, the proposed firm transportation contract on the proposed Northeast Energy Delivery ("NED") pipeline project will likely provide opportunities to expand natural gas distribution service to other parts of the state, and within the Company's existing franchise territory. Further, the NED project will provide increased distribution system reliability via a secondary point of delivery on the west end of the Company's distribution system. The Company is seeking final Commission approval of its decision to enter into this contract by July 1, 2015, a regulatory approval deadline established in the Company's Precedent Agreement with Tennessee.

#### Background

3. On February 13, 2014, Tennessee announced an open season to offer firm transportation service on its proposed NED project from a primary receipt point at Wright, NY and primary delivery points off of the Concord Lateral at the Nashua, Manchester and Laconia city gates and a primary delivery point at a new interconnect off of the NED mainline at or near West Nashua commencing on or about November 1, 2018. Currently, the entire EnergyNorth system in southern New Hampshire is served exclusively off of the Concord Lateral. This new interconnect will provide a secondary feed on the west side of the distribution system which will enhance reliability and allow for more economic future system expansion.

4. Before Tennessee announced the NED project, EnergyNorth had already established that it would need additional firm capacity to meet the needs of its customers. Specifically, in its current Least Cost Integrated Resource Plan (the "IRP"), which is pending before the Commission as Docket DG 13-313, the Company determined that for the period November 1, 2013 to October 31, 2018, it would require additional resources to meet its

forecasted customer demand. *See* Docket DG 13-313, Exhibit 1, pp. 66-67; Transcript from December 1, 2014 Hearing at 10-11. Since then, the Company has conducted a further long-term demand forecast, and determined that it will have a significant resource deficiency over a 24 year horizon. *See* Pre-filed Direct Testimony of Francisco C. DaFonte at 16-17. As a result, the Company identified the need for incremental pipeline capacity to effectuate additional deliveries of natural gas to its city gates in order to reliably serve its customers into the future, and as explained by Mr. DaFonte, evaluated potential resources to meet this need. *Id.* Applying its Commission-approved resource planning process, which includes cost and non-cost factors, the Company determined that the “best cost” capacity option for its customers was the purchase of additional capacity from Tennessee through its NED project. *Id.* at 36-39.

5. Accordingly, on October 24, 2014, EnergyNorth entered into a Precedent Agreement with Tennessee, a copy of which is included with Mr. DaFonte’s testimony as Attachment FCD-2. Pursuant to the Precedent Agreement, if EnergyNorth received the Commission’s approval for this transaction, EnergyNorth would enter into a Market Path Firm Agreement pursuant to which EnergyNorth would purchase from Tennessee on a firm basis up to 115,000 Dth per day of capacity for a twenty year term. Service would be provided at a negotiated fixed rate for the 20 year term. To provide the transportation service, Tennessee would construct a gas pipeline along the route depicted on Attachment FCD-1. Mr. DaFonte’s testimony identifies the critical milestones that must be achieved for the NED project to be completed. *See* DaFonte Testimony at 26-27. EnergyNorth would not be obligated to make any purchases from Tennessee if the Commission did not approve this transaction by July 1, 2015.

6. As explained in Mr. DaFonte’s testimony, EnergyNorth participated in the negotiation of this Precedent Agreement as part of a consortium of nine local distribution

companies ("LDCs"), each of which entered into a precedent agreement with Tennessee on similar terms and conditions. This consortium approach allowed the LDCs to leverage their aggregate capacity commitment in the Northeast Energy Direct project to negotiate a deeply discounted anchor shipper rate as well as other key beneficial terms and conditions. Because of this approach, the terms and conditions for each individual LDC precedent agreement are nearly identical for each utility with some minor exceptions such as the delivery points, which are unique to each company, and individual company administrative information.

7. For the reasons set forth in this Petition, as well as Mr. DaFonte's testimony, the Company submits that the Company's entry into the Tennessee firm transportation agreement is prudent and consistent with the public interest.

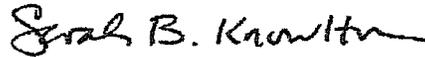
WHEREFORE, EnergyNorth respectfully requests that the Commission:

- A. Open a proceeding to conduct a review of this matter and determine that EnergyNorth's decision to enter into the proposed arrangement with Tennessee is prudent and consistent with the public interest;
- B. Complete the review and issue a final order no later than July 1, 2015, and;
- C. 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

By its Attorney,



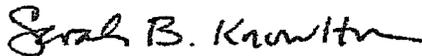
Date: December 31, 2014

By: \_\_\_\_\_

Sarah B. Knowlton  
Assistant General Counsel  
15 Buttrick Road  
Londonderry, NH 03053  
Telephone (603) 216-3631  
sarah.knowlton@libertyutilities.com

Certificate of Service

I hereby certify that on December 31, 2014, a copy of this Petition has been forwarded to Susan Chamberlin, Consumer Advocate.



\_\_\_\_\_  
Sarah B. Knowlton

**EXHIBIT "B"**

01/21/15

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

**DG 14-380**

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

**Petition for Approval of Long-term Firm Transportation Agreement**

**ORDER OF NOTICE**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (EnergyNorth) is a public utility pursuant to RSA 362:2, that provides natural gas service to approximately 86,000 customers in southern and central New Hampshire and in Berlin. On December 31, 2014, EnergyNorth filed a Petition for Approval of a Firm Transportation Agreement (Precedent Agreement) with Tennessee Gas Pipeline Company, LLC (TGP) along with the confidential and redacted direct testimony of Francisco C. DaFonte, Vice President, Energy Procurement, Liberty Energy Utilities (New Hampshire) Corp. EnergyNorth also filed a motion for protective order and confidential treatment regarding the Precedent Agreement. EnergyNorth requests final Commission approval by July 1, 2015, which is the regulatory approval deadline established in the Precedent Agreement.

EnergyNorth seeks pre-approval of a twenty-year Precedent Agreement with TGP on the proposed Northeast Energy Delivery (NED) pipeline project. Although not mentioned in the filing, EnergyNorth's affiliate, Algonquin Power & Utilities Corp. ("APUC") announced on November 24, 2014, that it plans to invest in the development of the NED pipeline project through Liberty Utilities (Pipeline & Transmission) Corp., a wholly owned subsidiary of APUC and Kinder Morgan Operating L.P.

<http://investors.algonquinpower.com/file.aspx?IID=4142273&FID=26297428>

The terms of the Precedent Agreement would require EnergyNorth to purchase on a firm basis up to 115,000 Dth per day of capacity at a negotiated fixed rate for the twenty-year term. To provide the transportation service, TGP plans to construct a gas pipeline along the route depicted on Attachment FCD-1 to Mr. DaFonte's testimony. As part of the Commission's approval, EnergyNorth seeks a determination "that the Company's decision to enter into the agreement is prudent and consistent with the public interest." Petition at 1.

EnergyNorth avers that it needs the long-term firm transportation capacity from TGP "to reliably satisfy existing and future customer load requirements in its service area[,] and the TGP contract is the "best cost resource" to meet those capacity needs. Petition at 1-2. EnergyNorth posits that the TGP contract will also "provide opportunities to expand natural gas distribution service to other parts of the state, and within the Company's existing franchise territory" and "will provide increased distribution system reliability via a secondary point of delivery on the west end of the Company's distribution system." Petition at 2.

EnergyNorth recently identified its need for additional firm capacity in its pending Least Cost Integrated Resource Plan (IRP) filing in DG 13-313. Petition at 2-3, citing *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, DG 13-313, Exhibit 1, pp. 66-67; Transcript of December 1, 2014 at 10-11. Since preparing that IRP filing, EnergyNorth has determined that it needs additional pipeline capacity "to effectuate additional deliveries of natural gas to its city gates in order to reliably serve its customers into the future." Petition at 3.

EnergyNorth negotiated the Precedent Agreement as part of a consortium of nine local natural gas distribution companies (LDCs). Petition at 3-4. Each of the nine LDCs entered Precedent Agreements with TGP, which are "nearly identical ... with some minor exceptions

such as the delivery points, which are unique to each [LDC], and individual [LDC] administrative information.” Petition at 4.

EnergyNorth’s filing raises, inter alia, issues related to RSA 374:1 and 374:2 (public utilities to provide reasonably safe and adequate service at “just and reasonable” rates); RSA 374:4 (Commission’s duty to keep informed of the manner in which all public utilities in the state provide for safe and adequate service); RSA 374:7 (Commission’s authority to investigate and ascertain the methods employed by public utilities to “order all reasonable and just improvements and extensions in service or methods” to supply gas); and 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable). These issues include whether EnergyNorth reasonably investigated and analyzed its long term supply requirements and the alternatives for satisfying those requirements, and whether EnergyNorth’s entry into the Precedent Agreement with TGP for additional pipeline capacity is prudent, reasonable and otherwise consistent with the public interest. In addition, in the event the Commission’s investigation is not completed before July 1, 2015 and EnergyNorth elects not to terminate the agreement before that date, the filing raises the issue of who bears the risk of an imprudence finding.

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.nh.gov/Regulatory/Docketbk/2014/14-380.html>.

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 203.12, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on February 13, 2015, at 9:00 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; and it is

**FURTHER ORDERED**, that, immediately following the Prehearing Conference, EnergyNorth, the Staff of the Commission and any intervenors shall hold a technical session to review the petition and allow EnergyNorth to provide any amendments or updates to their filing, after which the Staff and parties shall file a proposal for the remainder of the procedural schedule; and it is

**FURTHER ORDERED**, that a hearing on the merits of the petition be held before the Commission on May 20, 2015, at 9:00 a.m.; and it is

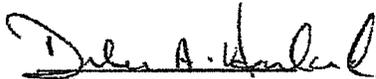
**FURTHER ORDERED**, pursuant to N.H. Code Admin. Rules Puc 203.12, EnergyNorth shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than January 26, 2015, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before February 11, 2015; 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 EnergyNorth and the Office of the Consumer Advocate on or before February 11, 2015, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be

affected by the proceeding, as required by N.H. Code Admin. Rules Puc 203.17 and RSA 541-A:32, 1(b); and it is

**FURTHER ORDERED**, that any party objecting to a Petition to Intervene make said Objection on or before February 13, 2015.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of January, 2015.



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.

**EXHIBIT "C"**

## **Information on Liberty's Agreement with Tennessee Gas Pipeline for Firm Transportation**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) is a public utility that provides natural gas service to approximately 86,000 customers in southern and central New Hampshire and in Berlin, New Hampshire, as well as providing propane air service to approximately 1,200 customers in Keene. Like all New Hampshire utilities, Liberty is required to provide safe and reliable service to its customers.

On December 31, 2014, Liberty filed a Petition for Approval of a Firm Transportation Agreement (Precedent Agreement) with Tennessee Gas Pipeline Company, LLC (TGP). The Precedent Agreement is a long-term contract for additional natural gas pipeline capacity. Under the agreement, TGP will deliver natural gas to Liberty's distribution system over TGP's Northeast Direct project should the project be built. In support of its request, Liberty states that there is a need for more gas supply resources as soon as next year and a significant resource deficiency by the end of a 24-year planning period.

The Precedent Agreement will take effect only if TGP's Northeast Direct project is built. Approval of the Precedent Agreement is separate from any approval of, or permissions for, siting or construction of the Northeast Direct project. Approvals and permissions for the Northeast Direct project are not matters over which the Commission has any say. Those approvals and permissions are currently pending determination by other regulatory agencies, including the Federal Energy and Regulatory Commission (FERC). While the issues related to siting and construction are important, they are not relevant to the Commission's determinations in Docket DG 14-380, the docket opened by the Commission to consider Liberty's request, and are not issues over which the Commission has jurisdiction. Should the FERC approve the TGP's proposed Northeast Direct project, New Hampshire's Site Evaluation Committee expects to be asked to approve the siting of the portion of the project in New Hampshire.

The purpose of the Commission's review in Docket DG 14-380 is to determine whether the terms of the Precedent Agreement are prudent, just, and reasonable, from the perspective of balancing Liberty's shareholders' interests with its customers' interests. The determination will depend on analysis of Liberty's projected service requirements and an economic review. DG 14-380 is not a review of the Northeast Direct project proposed by TGP. If the Commission approves the contract and the pipeline is built, Liberty will be allowed to recover the capacity costs associated with the Precedent Agreement from customers on a dollar-for-dollar basis. Liberty is not permitted to generate a profit on capacity costs.

Only those comments related to the terms of the Precedent Agreement or its impact on Liberty rates and service will be considered in this proceeding. Because the Commission has no jurisdiction to decide issues relating to the approval of the Northeast Direct project, members of the public who wish to comment generally on the Northeast Direct project are asked to direct their comments to the other appropriate regulatory agencies.

More information about Liberty's request for approval of Precedent Agreement can be found at <http://puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>.

**EXHIBIT "D"**

## PUC backs Liberty-Kinder Morgan pipeline deal

New Hampshire Union Leader/New Hampshire Sunday News (Manchester, NH) (Published as New Hampshire Union Leader (Manchester, NH)) - October 6, 2015

- Author/Byline: DAVE SOLOMON; New Hampshire Union Leader
- Section: Business
- Page: 2

CONCORD – The energy company that wants to build a new natural gas pipeline through southern New Hampshire just got a big boost from the N.H. Public Utilities Commission.

State regulators have approved a deal between the state's largest natural gas utility and Kinder Morgan to buy space on the controversial Northeast Energy Direct pipeline.

Long-term contracts like the one approved for Liberty Utilities are necessary to demonstrate the need for the pipeline in proceedings before the Federal Energy Regulatory Commission. Approval of the contract doesn't necessarily guarantee success with FERC, but failure to approve the contract would have been a major blow to the project.

The decision by the three commissioners conflicts with the PUC's own expert witness and the agency's consumer advocate, both of whom strongly opposed the deal. The professional staff on the commission, however, signed off on the shipping arrangement in late June, setting the stage for approval by the full commission on Friday, Oct. 2.

Liberty serves nearly 90,000 customers with natural gas connections from Nashua to the Lakes Region. In its filing with the PUC, the company maintains the additional space on the proposed Kinder Morgan pipeline is needed to meet existing demand and anticipated growth in natural gas customers.

Liberty first filed its request with the PUC on Dec. 31, asking for approval to enter into a 20-year contract with Kinder Morgan subsidiary Tennessee Gas Pipeline to purchase up to 115,000 dekatherms per day of capacity on the proposed pipeline.

The state's other natural gas utility, Unitil, with 29,000 customers mostly on the Seacoast, has declined to contract for any space on the NED project.

### Conflicting testimony

Melissa Whitten, a utility consultant hired by the PUC staff, testified in May that the pipeline deal would leave Liberty with "substantial excess capacity that it would not completely absorb or grow into over the life of the contract."

Consumer Advocate Susan Chamberlin called the deal "a Mercedes when a Honda would be fine," while Pradip K. Chattopadhyay, assistant consumer advocate, testified that the deal is not in the interests of Liberty customers and should not be approved.

The group representing pipeline opponents, the Pipeline Awareness Network (PLAN), had unsuccessfully intervened in the PUC hearings, hoping to block the shipping arrangement. PLAN representatives have repeatedly pointed out that Liberty is the wholly owned subsidiary of a Canadian company that is a partner with Kinder Morgan in the pipeline project.

The commissioners, appointed by the governor subject to Executive Council approval, ruled that the deal is in the public interest, and will enable Liberty to expand service to unserved or underserved parts of the state, particularly in the Keene area.

"It is prudent and reasonable to acquire the capacity necessary to serve not only current load but also potential future load," they wrote.

If it turns out Liberty does not need all that capacity, the PUC order requires the utility to reduce cost-recovery from ratepayers by up to \$300,000, a provision that helped win over the staff support.

"The company's commitment to an earnings reduction is a serious and unusual undertaking for a precedent agreement," according to the PUC order.

### Bay State approvals

The decision in New Hampshire comes a month after Massachusetts regulators approved similar contracts between Kinder Morgan and three Bay State utilities – Berkshire Gas, National Grid and Springfield-based Columbia Gas.

The Massachusetts Department of Public Utilities approved the agreements on Sept. 1 despite intense opposition from pipeline critics, the state attorney general's office and several state lawmakers.

Kinder Morgan's director of business development, Curtis Cole, called the decisions by state regulators "a significant step" in bringing the project to fruition, as he addressed the New Hampshire Energy Summit on Monday morning at the Holiday Inn in Concord.

"The (gas distribution) companies have spoken," he said. "The LDCs (local distribution companies) in New England have said, 'We absolutely need this capacity,' and have gone in front of the regulators to say, 'This is the best way to serve our customers.'?"

dsolomon@unionleader.com

- *Index terms: Business*
- *Record: 949968*
- *Copyright: Copyright, 2015, Union Leader Corp.*

**EXHIBIT "E"**

# Water woes imperil Deep Panuke output

THE CHRONICLE HERALD  
Published February 25, 2015 - 8:53pm  
Last Updated February 27, 2015 - 11:46am



<b>ORIGINAL</b>
N.H.P.U.C. Case No. <u>DE 14-380</u>
Exhibit No. <u># 56</u>
Witness <u>John Rosenkranz</u>
<b>DO NOT REMOVE FROM FILE</b>

The Deep Panuke project in Nova Scotia's offshore is now expected to produce roughly 50 per cent less natural gas than forecast because of its water problems.

Encana Corp., the gas field's Calgary-based owner, said Wednesday it has slashed the field's reserve estimate by about 200 billion cubic feet. Deep Panuke, which has been operating for 1 1/2 years, is now expected to flow another 80 billion cubic feet of natural gas.

The project has produced about 69 billion cubic feet of gas as of Dec. 31, the company said. Deep Panuke has been in production since August 2013.

The field, which has four subsea wells, is about 250 kilometres southeast of Halifax.

An Encana spokesman said the company recently re-evaluated Deep Panuke because of higher than expected water production at this stage of the project.

"While the reserves attributed to Deep Panuke represent only about one per cent of Encana's overall proved reserves, this is disappointing news for our staff and stakeholders," Jay Averill said via email.

Averill said the company can't predict how long Deep Panuke will operate because the timeline depends on such factors as well and reservoir performance and how production is managed.

For instance, Encana announced in November that Deep Panuke would become a seasonal operation that produces during the heating season.

"Through seasonal operation, we expect to extend the life of the project while helping to meet the demand for natural gas in the winter months," Averill said Wednesday.

Deep Panuke's water troubles, which came to light last fall, seem to have intensified last month.

Doug Suttles, Encana's president and CEO, told analysts earlier in the day that officials are still working on the water problem.

"The platform was designed to handle large amounts of water production," Suttles said during a conference call to discuss financial results.

"We've been doing a lot of work between late last year and this year, just seeing, various production techniques, do they allow us to produce, ultimately more gas from the field. And we continue to test that."

Despite the water issue, Deep Panuke is producing at its target level of 180 to 200 million cubic feet per day so far this year, he said. Deep Panuke was originally expected to flow 300 million cubic feet per day.

Meanwhile, word that Deep Panuke likely won't operate for as long as expected was a surprise to the province and energy industry.

An Energy Department spokeswoman said government officials learned of the change via Wednesday's call and need time to study its potential impact on gas users or royalties paid to the province.

"We're pleased that Encana remains committed to the Deep Panuke project," Kyla Friel said. "The (department) is currently evaluating the impact a reduction in reserve projections will have."

A Halifax natural gas consultant and broker said it sounds like the field could run out some time in 2016 after about three years of production.

"Industry-wise, that's a pretty big move," Todd McDonald, CEO of Atlantica Energy, said of the change in Deep Panuke's expected output. "To have the big of a reduction that quick is a pretty big surprise."

Encana has previously said the project would operate for six to 13 years, although the company has since talked about selling Deep Panuke. However the project sells into a premium-priced gas market in New England and the Maritimes.

Deep Panuke is one of two producing gas fields off the province's coast. The other is Sable, where output has been dwindling for years. An industry think-tank, the Atlantica Centre for Energy in Saint John has predicted that Sable will run out of gas by 2017.

McDonald said gas users in the region will pay roughly 40 per cent more for the fuel once supply has to be imported from other regions due to shipping charges.

A spokeswoman for the Maritimes Energy Association, which represents supply and service companies in the sector, said Wednesday in an email that the downward revision of the Deep Panuke reserves was disappointing.

However, Julie Hebert added "many opportunities still exist for our member companies. They will continue to provide support to this project while demonstrating their exceptional skills and abilities. Successful execution of this project, however long that may be, is the top priority of our member companies."

**EXHIBIT "F"**

State of New Hampshire

Filed  
Date Filed: 02/13/2015  
Business ID: 721370  
William M. Gardner  
Secretary of State

Filing fee: \$25.00  
Use black print or type.  
Leave 1" margins both sides.

N.H.P.U.C. Case No. DE 14-380  
Exhibit No. # 57  
Witness John Rosenkranz

Form FNP-1  
RSA 292:5-b  
& 293-A:15.03

APPLICATION FOR REGISTRATION OF A FOREIGN NON-PROFIT CORPORATION

PURSUANT TO THE provisions of voluntary corporations and associations and the New Hampshire Business Corporations Act, the undersigned corporation hereby applies for a certificate of registration in New Hampshire, and for that purpose submits the following statement:

FIRST: The name of the corporation is Pipe Line Awareness Network for the Northeast, Inc.

SECOND: It is incorporated under the laws of Massachusetts

THIRD: The date of its incorporation is February 8, 2015 and the period of its duration is ongoing

FOURTH: The complete address (including zip code) of its principal office is c/o Kathryn Eseman, 17 Packard Road, Cummington, MA 01026

FIFTH: The name of its registered agent in New Hampshire is David Moloney and the complete address (including zip code) of its proposed registered office in New Hampshire is (agent's business address) 56 Pierce Lane, Hollis, NH 03049 (Note 1)

SIXTH: The principal purpose or purposes which it proposes to pursue in the transaction of business in New Hampshire are: To educate the public about fossil fuel infrastructure and the alternatives; to protect the environment, the climate, health, safety and consumer interests from proposed and existing fossil fuel infrastructure; to study and promote efficiency measures, expansion of programs that manage "peak use" and other, lower impact energy solutions; to engage in legal and regulatory advocacy in connection with fossil fuel infrastructure and alternatives; to assist the activities of groups with similar purposes (Note 2)

State of New Hampshire  
Form FNP 5 - Application for Certificate of Withdrawal 3 Page(s)



APPLICATION FOR REGISTRATION OF  
A FOREIGN NONPROFIT CORPORATION

Form FNP-1  
(cont.)

SEVENTH: The names and usual business addresses of its current officers and directors are: (If there are additional officers or directors, attach additional sheet.)

<u>Name</u>	<u>Office</u>	<u>Address</u>
<b><u>OFFICERS</u></b>		
<u>Kathryn R. Eiseman</u>	<u>President</u>	<u>17 Packard Road</u> <u>Cumington, MA 01026</u>
<u>Ken Hartage</u>	<u>Vice President</u>	<u>53 Prescott Street</u> <u>Pepperell, MA 01463</u>
<u>Ken Hartage</u>	<u>Treasurer</u>	<u>53 Prescott Street</u> <u>Pepperell, MA 01463</u>
<u>Cathy Kristofferson</u>	<u>Clerk</u>	<u>244 Allen Road</u> <u>Ashby, MA 01431</u>
<b><u>DIRECTORS</u></b>		
<u>Rosemary Wessel</u>	<u>Director</u>	<u>90 Trow Road</u> <u>Cumington, MA 01026</u>
<u>Ivan Uesach</u>	<u>Director</u>	<u>MRWC, 100 Main Street</u> <u>Athol, MA 01331</u>
<u>Jim Cutler</u>	<u>Director</u>	<u>421 Bekingville Road</u> <u>Shelburne Falls, MA 01370</u>
<u>David McIney</u>	<u>Director</u>	<u>56 Pierce Lane</u> <u>Hollis, NH 03049</u>
<u>(All officers are also directors.)</u>		

APPLICATION FOR REGISTRATION OF  
A FOREIGN NONPROFIT CORPORATION

Form FNP-1  
(cont.)

Pipe Line Awareness Network for the (Note 3)  
Northeast, Inc.

 (Note 4)  
(Signature)

Kathryn R. Eiseman  
(Print or type name)

President (Note 4)  
(Title)

Date signed: 2/11/2015

- Notes: 1. New Hampshire law requires out-of-state nonprofit corporations to have a registered agent/ registered office.  
RSA 293-A:15.07 Registered Office and Registered Agent of Foreign Corporation.  
Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:
- (1) a registered office that may be the same as any of its places of business; and
  - (2) a registered agent, who may be:
    - (i) an individual who resides in this state and whose business office is identical with the registered office;
    - (ii) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
    - (iii) a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.
2. This statement is not required by statute but may be helpful in determining the availability of the corporate name.
3. Exact corporate name of corporation making the application.
4. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

**DISCLAIMER:** All documents filed with the Corporation Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fee and **DATED AND SIGNED ORIGINAL** to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989. Physical location: 25 Capitol Street, 3<sup>rd</sup> Floor, Concord, NH 03301.

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

RE: LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A LIBERTY  
UTILITIES

DOCKET NO. DG 14-380

**OBJECTION TO RICHARD M. HUSBAND'S MOTION FOR REHEARING**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth" or the "Company"), in accordance with Puc 203.07(a) and (f) and RSA 541:3, hereby objects to the motion for rehearing filed by Richard M. Husband ("Mr. Husband"). In support of this objection, the Company states as follows:

1. On November 2, 2015, Mr. Husband filed a Motion for Rehearing in which he requests that the Commission vacate or reverse Order No. 25,822 (the "Order") approving the Settlement Agreement filed in this case and schedule another hearing to "allow consideration of the negatives of the NED pipeline and the submission of public comments and evidence on the matter and the 'public interest' determination, and apply the proper 'public interest' standard." Husband Motion at 22. The Commission should deny the Husband Motion because: (1) Mr. Husband is not directly affected by the Order, and thus has no standing to move for rehearing; (2) Mr. Husband has not identified any new evidence that could not have been presented at the hearing, and; (3) the Order is neither unlawful nor unreasonable, and thus should not be vacated or reversed.

2. On July 16, 2015, Mr. Husband petitioned to intervene in this docket to object to the rescheduling of the hearing because he had obtained a permit to protest in opposition to the

Northeast Energy Direct Pipeline outside the Commission offices for the originally scheduled hearing date. Mr. Husband's concern was that he would be unable to obtain a permit to protest for the newly scheduled hearing date. Husband Petition to Intervene at 3. Mr. Husband subsequently withdrew his petition to intervene as a result of efforts by the Commission to assist him in obtaining a protest permit for the new hearing date. Withdrawal of Petition to Intervene of Richard Husband at 1. Mr. Husband was present at the July 21 hearing, and provided comments. Transcript of July 21 hearing at 17-20.

3. RSA 541:3 provides, in part, that "...any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing..." Mr. Husband does not meet either of these criteria, as he was not a party to the action and is not directly affected by the Order. The Husband Motion provides no explanation for how he meets the "directly affected" standard in RSA 541:3. The only information Mr. Husband provides is that he is a resident of Litchfield, New Hampshire. Husband Motion at 1. While the Company serves limited portions of Litchfield, the Company does not serve Mallard Court where Mr. Husband resides. See Affidavit of William J. Clark, attached to this Objection. Thus, Mr. Husband cannot be "directly affected" by the Order, because he is not, and cannot be a customer of the Company given that the Company does not provide natural gas service to his street.

4. Further, the Commission has made clear that only the interests of customers of the Company would be considered in this proceeding, as they will be the ones to "bear the costs of the Precedent Agreement." In Order 25,767, in which it granted PLAN's petition to intervene, the Commission held that:

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... To ensure an orderly and focused proceeding, we limit PLAN's participation to the interests of its EnergyNorth-customer members in the prudence, justness and reasonableness of the Precedent Agreement and its associated costs, to EnergyNorth and its customers.

Order 25,767 at 4. Because Mr. Husband does not meet the criteria of RSA 541:3, he has no standing to move for rehearing, and on this basis alone his motion should be denied. *See Appeal of Richards*, 134 N.H. 148, 154 (1991) (to be directly affected by a decision of an administrative agency means that the individual has suffered or will suffer an injury in fact as a result of the decision); *see also Appeal of New Hampshire Right to Life*, 166 N.H. 308, 314 (2014) (generalized claims about what is perceived as a public problem does not constitute an "injury in fact").

5. Even if the Commission were to find that Mr. Husband has been directly affected by the Order, Mr. Husband has not demonstrated "good reason for rehearing," as is required by RSA 541:3. He has not identified new evidence that could not have been presented previously in this docket, *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977), and instead restates many of the public comments filed with the Commission. His motion does not demonstrate that the Commission "overlooked or mistakenly conceived" evidence before it. *Dumais v. State*, 118 N.H. 309, 311 (1978). Rather, his complaint is that the Commission "unjustly, unreasonably and unlawfully ignored the public comments." Husband Motion at 10-16. None of this constitutes "good reason" for rehearing.

6. While the Commission is obligated to provide the public with an opportunity at a hearing or prehearing conference to state their position in the matter, *see* Puc 203.18, the Commission, in taking those comments into consideration is not obligated to adopt the views of the commenters. The Commission took public statements at the July 21 hearing in satisfaction of

Puc 203.18. The comments that Mr. Husband now complains the Commission ignored– “loss of injury to drinking water aquifers, wetlands, farmlands, historic areas, conservation and other environmentally sensitive areas; safety concerns, damage to the state’s tourism and related economies, personal hardships, etc.,” Husband Motion at 16 – were not at all ignored by the Commission, but rather were explicitly acknowledged by the Commission to be outside the scope of this proceeding. On March 6, 2015, the Commission ruled that “[t]his proceeding does not concern and will not result in any approval of, or permissions for, siting or construction of TGP’s NED project. Those matters are pending determination by other regulatory agencies, including the Federal Energy and Regulatory Commission (FERC).” Order No. 25,767 at 3. The Commission reaffirmed this position in Order 25,822 when it held that:

Our statutory review of the Precedent Agreement is limited to consideration of EnergyNorth’s prudence in entering into the Precedent Agreement, and the reasonableness of the terms of the agreement. We do not undertake any review of the merits of the siting of the NED Pipeline. The Precedent Agreement is not effective unless the NED Pipeline is approved, constructed, and providing service. At this time, the NED Pipeline is still under review by FERC. The important issues raised in the public comments, including the impact of the NED Pipeline on the communities through which the pipeline will run, are solely within the province of FERC. Consequently, we do not consider those siting issues in our review of the Precedent Agreement.

Order 25,822 at 24. No Motion for Rehearing was filed for either of these orders.

7. There is nothing unlawful or unreasonable about the Commission’s determination that it should not consider siting issues associated with the NED pipeline. In fact, that decision is consistent with well-established law that administrative agencies only have those powers directly conferred to them by statute. *Petition of Chase Home for Children*, 155 N.H. 528 (2007). As the Commission itself acknowledges, it is the FERC, and possibly the New Hampshire Site Evaluation Committee, that would have authority to address any such issues, not the Commission. Order 25,822 at 24. Thus, Mr. Husband’s claim that the Commission’s failure to

consider issues associated with the alleged environmental impact of the proposed NED pipeline as part of its public interest determination does not constitute a valid basis for rehearing.

8. For these reasons, the Company requests that the Commission deny Mr. Husband's motion for rehearing.

WHEREFORE, EnergyNorth respectfully requests that the Commission:

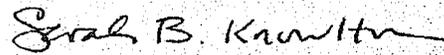
- A. Deny Mr. Husband's Motion for Rehearing, and;
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

LIBERTY UTILITIES (ENERGYNORTH  
NATURAL GAS) CORP. D/B/A LIBERTY  
UTILITIES

By Its Attorneys,

RATH, YOUNG AND PIGNATELLI,  
*Professional Association*  
One Capital Plaza  
Post Office Box 1500  
Concord, New Hampshire 03302-1500  
(603) 226-2600



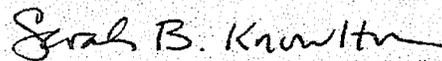
November 5, 2015

By:

\_\_\_\_\_  
Sarah B. Knowlton, Esquire

Certificate of Service

I hereby certify that on November 5, 2015, a copy of this Objection to Motion for Rehearing has been forwarded to Mr. Husband and the service list in this docket.



\_\_\_\_\_  
Sarah B. Knowlton

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

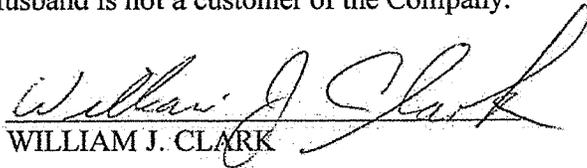
RE: LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A  
LIBERTY UTILITIES  
DOCKET NO. DG 14-380

Affidavit of William J. Clark

I, William J. Clark, being duly sworn, do hereby depose and say:

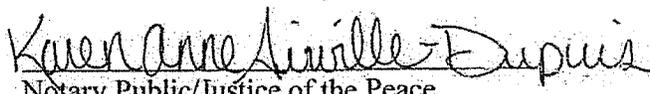
1. I am employed by Liberty Utilities Service Corp. as a Business Development Professional. In that capacity, I am familiar with the franchise areas served by Liberty Utilities (EnergyNorth Natural Gas) Corp. ("EnergyNorth").
2. EnergyNorth does not provide utility service to Mallard Court in Litchfield, New Hampshire.
3. I have reviewed the customer service records of EnergyNorth, and determined that Mr. Husband is not a customer of the Company.

Dated: 11/4/15

  
WILLIAM J. CLARK

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

Personally appeared, before me, the above-named William J. Clark, who acknowledged the foregoing statements to be true to his best knowledge and belief.

  
Notary Public/Justice of the Peace  
My Commission Expires:

**KAREN ANNE SINVILLE**  
Justice of the Peace, State of New Hampshire  
My Commission Expires July 2, 2019

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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

July 21, 2015 - 9:05 a.m. DAY 1  
Concord, New Hampshire

*[REDACTED - for public use]*

RE: DG 14-380  
LIBERTY UTILITIES (ENERGYNORTH NATURAL  
GAS) CORP. d/b/a LIBERTY UTILITIES:  
*Petition for Approval of a Firm  
Transportation Agreement with the  
Tennessee Gas Pipeline Company, LLC.*

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott

Sandy Deno, Clerk

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth  
Natural Gas) Corp. d/b/a Liberty Utilities:  
Sarah B. Knowlton, Esq. (Rath, Young...)

Reptg. the Pipe Line Awareness Network  
for the Northeast, Inc. (PLAN):  
Richard A. Kanoff, Esq. (Burns & Levinson)  
Zachary R. Gates, Esq. (Burns & Levinson)

Reptg. Residential Ratepayers:  
Susan Chamberlin, Esq., Consumer Advocate  
Dr. Pradip Chattopadhyay, Asst. Cons. Adv.  
Office of Consumer Advocate

Reptg. PUC Staff:  
Rorie E. Patterson, Esq.  
Stephen P. Frink, Asst. Dir./Gas & Water Div.  
Melissa Whitten (LaCapra Associates)

Court Reporter: Steven E. Patnaude, LCR No. 52

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\* \* \*

**WITNESS PANEL:**            **FRANCISCO C. DaFONTE**  
                                   **WILLIAM J. CLARK**  
                                   **MELISSA WHITTEN**

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1 Marcellus shale somewhere in ten to twenty years. So,  
2 this is a short-term solution, building all these  
3 pipelines up through the Northeast.

4 And, knowing what we know now, I would  
5 question if that's somewhere we really want to go, given  
6 the predictions of impending climate change.

7 So, this is talked about as being a  
8 "bridge fuel" and a "bridge technology". People, both  
9 individuals and municipalities, are making the change to  
10 renewables on their own. It is something, I would say, we  
11 should be encouraging, rather than investing in massive  
12 obsolete fossil fuel technology. We should be encouraging  
13 solar. We should be encouraging smart grids. We should  
14 be investing in our future and not our demise.

15 And, I request that you deny the  
16 pipeline permit. Thank you.

17 CHAIRMAN HONIGBERG: Thank you,  
18 Mr. Whitbeck. Mr. Husband.

19 MR. HUSBAND: Thank you very much. My  
20 name is Richard Husband. I'm a citizen of Litchfield.  
21 I'm here today with a group of protestors out front. Some  
22 of you may have seen them as you drove in, some of may --  
23 some of you may have avoided seeing them as you drove in.  
24 Whether you did see us or avoided seeing us, please don't

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 forget us when you make your decision.

2 We are representative of a number of not  
3 only individuals, but towns, who have voted unanimously  
4 against the Kinder Morgan Pipeline project, the NED  
5 project. And, the Commission should not be fooled into  
6 thinking this proceeding today is just about approval of a  
7 specific piece of the gas going through that pipeline to  
8 Liberty Utilities. But for that pipeline, there would not  
9 be a hearing today. This proceeding is really all about  
10 validation of the NED Pipeline.

11 We are respectful out front. We're  
12 intentionally small, as not to be disruptive. We're being  
13 polite. But please do not leave this hearing today  
14 thinking that we are not angry. A lot of citizens in this  
15 state are angry, as has been said. A lot of citizens are  
16 being affected by this. I have seen estimates of 200,000  
17 or more New Hampshire citizens who are being negatively  
18 affected by this pipeline.

19 The corporations involved in this  
20 proceeding have money. So, they have a voice. The  
21 politicians and government involved in this proceeding  
22 have power. So, they have a voice. The individual  
23 citizens that are affected by this proceeding most have a  
24 little voice, if any. In fact, all we really have for a

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1 voice in this proceeding, other than the protestors out  
2 front and the letters we send in that are probably  
3 ignored, is the Consumer Advocate's Office, that is  
4 involved in this proceeding. And, I would urge the  
5 Commission to please follow the recommendations of the  
6 expert of the Consumer Advocacy Office, who has pointed  
7 out numerous reasons why this Petition for approval of the  
8 Liberty Utilities Agreement with Tennessee Gas and Kinder  
9 Morgan should be rejected.

10 We can go over all the reasons, they  
11 have been enumerated, but, basically, it's unnecessary.  
12 Three experts have laid it out in this case. You've seen  
13 it all in the newspapers. All we're talking about is  
14 something that's going to devastate our landscape, it's  
15 going to carve up our towns, it poses safety risks, it  
16 takes private property from individuals, and  
17 correspondingly ruins their lives.

18 A lot of people involved in this have  
19 nothing left but their homes. And, they're going to be  
20 taken from them, essentially, if you know what it would be  
21 like to have a pipeline run through your yard.

22 There is really no benefit to New  
23 Hampshire. As I understand it, somewhere between only  
24 five and ten percent, I believe Kinder Morgan says

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 ten percent, of what is going to run through that  
2 monstrous pipeline is actually going to go to New  
3 Hampshire residents. There is no benefit to our  
4 residents. There's no -- there's no projected expansion  
5 of Liberty Utilities' customer lines. This is a  
6 transmission line, it's not a servicing line. And,  
7 they're not promising anything, they just say "it presents  
8 the opportunity for expansion", but we need definite  
9 commitments before we commit to allowing the pipeline.

10 In terms of businesses, given the small  
11 percentage that's going through the pipeline, I don't see  
12 how they benefited. And, they can get the same gas from  
13 the Spectra Pipeline that is farther -- further advanced  
14 into the approval process and will be up and running in  
15 November 2018, than they can get through this Kinder  
16 Morgan Pipeline.

17 There are better alternatives. Please  
18 take a look at everything that has been submitted to you  
19 for comments, and the expert testimony in this matter, and  
20 reject the Petition before you. Thank you.

21 CHAIRMAN HONIGBERG: Thank you,  
22 Mr. Husband. Ms. Fletcher.

23 MS. FLETCHER: Good morning. I'm Liz  
24 Fletcher. I live in Mason, New Hampshire. And, I'm a

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

Richard Husband  
10 Mallard Court  
Litchfield, NH 03052

July 20, 2015

Debra Howland Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord New Hampshire 03301

**RE: DG14-380**  
**Petition for Approval of Long-Term Firm Transportation Agreement**

Dear Ms. Howland:

This Public Utilities Commission (“PUC”) proceeding concerns a petition for approval of a firm transportation agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty Utilities”) and the Tennessee Gas Pipeline Company, LLC (“TGPC”). The agreement relates to the so-called “NED” (short for “Northeast Energy Direct”) high-pressure gas pipeline project proposed by the Kinder Morgan Company (“KM”) and TGPC (collectively, “KM/TGPC”). This project is being rammed through the federal approval process with an application for certification by the Federal Energy Regulatory Commission (“FERC”) expected in just two to three months, despite the fact that a UNH poll at the end of May found that only 16% of New Hampshire citizens polled believed that they were “very familiar” with it. This is the number most favorable to advocates of the NED pipeline—not any of the numbers pertaining to the advertised “benefits” of the project actually committed to New Hampshire (those numbers would all be zeroes)—the 84% of New Hampshire citizens who are not yet up to speed on what is going on. With adequate time to assess the NED project, New Hampshire residents would likely reject it by a vast majority.

If certified by FERC, KM/TGPC will have the ability to begin taking land by federal eminent domain for clear-cutting a generally 110-135 feet-wide path, for a three-foot in diameter *transmission* pipe, through more than 70 miles of southern New Hampshire, impacting at least 18 towns, hundreds of residences, tens of thousands of lives, sensitive conservation areas and water resources—without hooking up to a single home or business: contrary to a common misconception, the NED pipeline will *not* be a local delivery line. Before exiting New Hampshire with the vast bulk of gas for use outside of the state, it will substantially deprive homeowners of the use, enjoyment and value of their properties, lower town tax bases, create town response costs and problems, disturb and damage the environment (including, potentially, the water aquifers for at least five towns)—but leave no energy benefits for the state we could not obtain far less painfully elsewhere. Contrary to the pro- NED project argument that the pipeline will result in “cheaper” energy for New Hampshire citizens, the project is proposed to be funded by increased electric rates, and those with knowledge in the field contend that approval of the pipeline will actually increase the price of natural gas.

We are only watching this approaching train wreck because Massachusetts wisely and loudly said: “We don’t want it!”

The PUC itself really should be taking a longer, closer look at the impact of the underlying KM/TGPC NED project on New Hampshire, and correspondingly allow concerned citizens time to raise issues that should be considered in this proceeding, before making a final determination on approval of the petition before it. The less than eight months this proceeding has been pending is not nearly enough to assess a matter of such magnitude to New Hampshire and so many of its citizens—particularly where there is clearly no “urgent need” to reach a final decision in the matter, especially as heating oil is projected to remain inexpensive, or potentially drop in price this winter, and become more available with the anticipated lifting of the Iran sanctions.

The PUC Staff has recommended approval of a settlement agreement essentially approving the petition in this proceeding. If the NED pipeline were the best alternative to meet actual New Hampshire energy needs, this would be understandable. But this is clearly not the case. The proposed settlement agreement the PUC Staff supports would only provide New Hampshire with 100,000 dth/d from the 2.2 billion cubic feet of transmission capacity of the pipeline. Three experts in this proceeding—including the PUC Staff’s own expert, Melissa Whitten—have cited numerous flaws in the arguments behind the NED pipeline, with one or more finding that the pipeline’s capacity is excessive for the actual need and/or not cost-effective. See, e.g., pages 10, 11 and 17 of Whitten testimony under Tab 32 of the documents filed in this proceeding (noting a number of flaws, including excessive capacity) and page 5 of the testimony of Office of Consumer Advocate expert Dr. Pradip Chattopadhyay, under Tab 33 of the documents filed in this proceeding (“... I find that the Company has not adequately demonstrated that the contract in question is reasonably cost-effective.”); see generally testimony of John A. Rosenkranz, expert for Pipe Line Awareness Network for the Northeast, Inc., under Tabs 34 and 36 of the documents filed in this proceeding. (excessive, alternatives not properly considered, costs of pipeline understated and savings overstated, etc.). Liberty Utilities’ own expert, Francisco C. DaFonte, confirms that the company is completely noncommittal about expanding service to the vast unserved areas of New Hampshire to ensure that our citizens receive any real benefit from the pipeline. See p. 7 of DaFonte testimony under Tab 1 of the documents filed in this proceeding (noting only that pipeline presents “potential” for expansion).

In short, the expert testimony submitted in this proceeding is not at all supportive of the petition before the PUC.

Nor are FERC comments on the NED pipeline.

In a May 15, 2015 letter responding to draft reports provided in support of the pipeline, located at the URL <http://www.nofrackedgasinmass.org/notgp/wp-content/uploads/2015/05/FERCtoKMcritique.pdf>, FERC itself suggested, on page 37, that the project is excessive. Noting that the pipeline will provide 2.2 billion cubic feet of constant transmission capacity, whereas it has been projected that New England needs only 1.1 to 1.6 billion cubic feet of additional capacity to meet its needs—and then only on about 40 cold winter days a year—FERC went on to note that two pipelines by the Spectra group already in the works will transport a total of about .56 billion cubic feet of gas per day toward New England’s needs, and another 1 billion cubic feet per day can be “funneled” from another source, Access NorthEast. Between AccessNorthEast and Spectra, then, over 1.5 billion cubic feet of additional capacity is available without resort to the NED pipeline—and there are other proposed pipelines in the works.

Spectra and AccessNortheast are partnering to meet New Hampshire and New England's energy needs, and are already ahead of the NED project in key areas. Spectra is not proposing a 70-mile pipeline through New Hampshire, will rely on established pipeline routes and will have far less impact on property owners and sensitive conservation and environmental areas than the NED pipeline. The only thing the excess NED pipeline capacity will supply is a disincentive to invest in the renewable sources of energy that New Hampshire and the rest of New England need to focus on.

While it is true that the PUC is only considering a transmission agreement and not the NED pipeline itself, the PUC's decision will go a long way in determining whether the pipeline goes forward. Without the requested PUC approval, the pipeline project will likely stall; with approval, the PUC may pave the way for the laying of the line. The PUC should not ignore this reality in reaching its decision.

I am involved in this proceeding not because I am in the path of the NED pipeline, but because my Town of Litchfield is, and when we held our initial meeting to discuss the pipeline's impact on residents, one noted:

"You work your whole lifetime for retirement, then this."

That stuck with me.

The PUC's decision in this proceeding is not just about energy and money and businesses—it concerns the future of a great many individuals as well. The PUC should not ignore this reality, either.

Thank you for your time and courtesy, Director Howland. Please forward this letter on to the appropriate PUC individuals for consideration with respect to the pending petition.

Sincerely,

  
Richard Husband

Richard Husband  
10 Mallard Court  
Litchfield, NH 03052

July 28, 2015

Debra Howland Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord New Hampshire 03301

HPUC 28 JUL 15 10:17

**RE: DG14-380  
Liberty Utilities (EnergyNorth Natural Gas) Petition for Approval of  
Long-Term Firm Transportation Agreement**

Dear Ms. Howland:

This updates my public comments previously submitted in the above-referenced proceeding.

Since submitting my comments, I have been apprised by a concerned citizen of the following, posted by the Public Utilities Commission ("PUC") on its website at the URL <http://www.puc.nh.gov/Gas-Steam/Public%20Comments%20on%20PA.pdf>:

*"...The purpose of the Commission's review in Docket DG 14-380 is to determine whether the terms of the Precedent Agreement are prudent, just, and reasonable, from the perspective of balancing Liberty's shareholders' interests with its customers' interests. The determination will depend on analysis of Liberty's projected service requirements and an economic review. DG 14-380 is not a review of the Northeast [Energy] Direct project proposed by TGP ...*

*Only those comments related to the terms of the Precedent Agreement or its impact on Liberty rates and service will be considered in this proceeding ..."*

(emphasis added)

At the last hearing in this matter, held on July 22, 2015, the PUC Chairman noted that roughly 80 public comments had been received concerning this proceeding, with all but "a handful" of these comments negative. Good, hard-working, tax paying, utility rate paying New Hampshire citizens with a clear interest in this proceeding submitted these comments, which may be found at the URL <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>. Most of these public comments, including my own previously submitted comments, concern, at least in part, the significant detrimental impacts that the Northeast Energy Direct ("NED") project will have on New Hampshire: to its environment, sensitive conservation areas, drinking water aquifers and other public waters, tourism industry, ratepayers' bills, municipal and private properties (through federal eminent domain takings), the lowering of municipal tax bases and creation of municipal response costs, etc.

As I noted during the oral public comments portion of this proceeding, on the morning of July 21, 2015: the PUC should not fool itself into thinking that this matter does not concern the NED project; but for the NED project, there would not be this proceeding. The agreement at issue in this proceeding is, in fact, directly tied to the NED project, meaning the PUC's decision is tied to NED and must take it into account when considering what is "prudent, just and reasonable" in this case. Indeed, this proceeding has been grounded in the broad claim made by Liberty Utilities in its underlying petition that approval of the agreement at issue is "prudent and consistent with the public interest." This petition may be found at the following URL, with the quoted language found in the very first sentence of the petition:

<http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380/INITIAL%20FILING%20-%20PETITION/14-380%202014-12-31%20ENGI%20DBA%20LIBERTY%20PETITION%20FOR%20APPROVAL%20OF%20FIRM%20TRANSPORTATION%20AGREEMENT.PDF>

How can the PUC possibly consider whether approval of the agreement at issue is "prudent" and in the best interests of New Hampshire without considering the numerous negative impacts of the NED pipeline that will provide the gas for the agreement?

The PUC is considering this matter too narrowly. The New Hampshire Supreme Court long ago made it clear that "the [PUC] has broad discretion to act in the public interest." *Harry K. Shepard, Inc. v. State*, 115 N.H. 184, 185, 339 A.2d 2 (1975); *Browning-Ferris Industries of New Hampshire, Inc. v. State*, 115 N.H. 190, 339 A.2d 1 (1975). *Waste Control Systems, Inc. v. State*, 114 N.H. 21, 24, 314 A.2d 649 (1974)(the phrase "public good," analogous to "public interest," has been broadly defined by the New Hampshire Supreme Court to include "the needs of the public at large")(citing *Boston & Maine R.R. v. State*, 102 N.H. 9, 10, 148 A.2d 652 (1959)). This matter is not just about "the terms of the Precedent Agreement or its impact on Liberty rates and service."—if it is, then it not about what is in New Hampshire's best interests. This proceeding is really about all that may result if the PUC grants the requested approval, and the PUC should and cannot ignore those consequences in its decision-making. If the NED pipeline were planned to run through Winnepesaukee Lake, with even the slightest potential for injury to that body of water and the properties surrounding it, is there any question that these matters would be front and center of this proceeding as to whether the pipeline were in the "public interest," i.e., the best interests of New Hampshire? Why does the rest of New Hampshire merit any less consideration? As I stated in my last written public comments submitted in this matter, I am involved in this proceeding because, at my hometown's initial meeting to discuss the NED pipeline's impact on residents, one noted:

"You work your whole lifetime for retirement, then this."

Why should such concerns not be considered when deciding what is "best" for New Hampshire?

The public comments portion of this proceeding is supposed to allow average citizens a voice in the outcome; do not reject that voice, PUC: read and carefully consider the words of the unrepresented but impacted citizens opposing the NED project and petition before you, as attentively as you will those of the represented parties.

Those being copied on this letter: *if you believe that citizens should have any voice in the matter*, please do your best to see that all New Hampshire interests are considered in this proceeding—and in similar PUC proceedings going forward. Elected representatives at every level should, on their own or at the urging of recipients of this letter, demand that the public comments submitted by citizens in this proceeding be factored into the final decision and, by appropriate legislation, mandate that PUC proceedings from now on consider all factors concerning the best interests of New Hampshire: including matters pertaining to environmental and conservation concerns, drinking water aquifers and other public waters, property interests, tourism, etc. The laws and rules under which the PUC operates are antiquated and do not fairly and properly meet the needs of a far more dense population in ever-increasing competition over water, conservation, environmental and property interests.

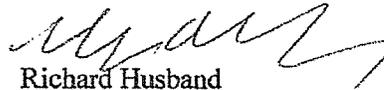
But, just focusing on the Liberty Utilities agreement, it should not be approved, for obvious reasons:

- There is no “need” for the gas at issue. While the NED pipeline is being pushed through federal and state approval processes with less time afforded the opposition than is typically given a defendant in a dog-bite case—as though a 30-year “Winter is Coming” and New Hampshire does not have a stick of kindling—this is not the case. Where are the compelling shortages—past or immediately projected? As has been pointed out by many, New Hampshire is a net exporter of electricity. Liberty Utilities’ expert in this proceeding acknowledged that it does have liquefied natural gas available elsewhere. Moreover, with the anticipated lifting of the Iran sanctions, there will soon be an even greater glut of oil, at even cheaper prices.
- The NED pipeline will not result in cheaper energy for New Hampshire residents and businesses as most such energy users in New Hampshire rely on electricity and the project is proposed to be at least partially funded by increased electric rates—and those who have looked into the matter contend that approval of the NED pipeline will actually increase the price of natural gas. See, e.g., July 16, 2015 letter submitted by New Hampshire State Representative James W. McConnell in the comments section at URL <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>.
- There are better alternatives. The “real” concern here seems to be addressing the needs of the “Concord Lateral.” The Spectra Energy and/or Portland Natural Gas Transmission System pipelines, both in the approval process, could both do this, with significantly fewer negative impacts. The expert for Liberty Utilities testified that both could be connected to the Dracut terminus. Why could a pipeline not be run the roughly eight miles from there to Interstate 93 and follow that road up to an existing delivery point on the “Concord Lateral” (or the Londonderry power plant)? Such a pipeline—primarily truly “co-located” within the boundaries of the highway, not within the homes of our citizens, environmental, conservation and aquifer areas, as is the real 70 mile “co-location” path of the NED pipeline—would be far less damaging to a lot less people and the State of New Hampshire. I realize that we are talking different pipeline projects, but I would think that the corporations behind them could work out any fair sharing arrangements concerning costs and profits (corporations partner in business ventures—including pipelines, including the NED project—all of the time), if they are truly interested in the best interests of citizens.

Are there not already 20" and 12" pipelines running to the "Concord Lateral"? If so, could not the "12" pipeline just be increased to 20" or some other appropriate size? I am told that this is technically possible, although it would still have negative impacts, including to a school complex in Pelham. Could the larger pipe not be redirected for the relatively small distance (as compared to 70 miles) necessary to safely avoid the Pelham school—or Pelham be given a new, safely located school (certainly cheaper than all of the remedial costs associated with the NED pipeline). Maybe the best alternative would take longer to work out—but what, really, is the compelling "need" for any pipeline right now? Right now, we should not be pushing anything through the PUC (or Federal Energy Regulatory Commission, i.e., "FERC"), but having this dialogue. Perhaps in the upcoming two FERC scoping meetings, in Nashua on July 29<sup>th</sup> and in Milford on July 30<sup>th</sup>, generously allotted New Hampshire citizens to make their entire case against the NED pipeline, one or more of our elected representatives can stand up and start this dialogue (being mindful, of course, to not go beyond the 2-3 minutes speaking time allowed each citizen).

- New Hampshire is not getting a "good," "fair" or even "reasonable" price under the agreement before the PUC: it is getting the old cable company "introductory price." What is being committed to New Hampshire under the proposed agreement (Liberty Utilities is the only New Hampshire customer signed on to the NED pipeline), is only roughly 10% of the NED pipeline's capacity. Kinder Morgan ("KM"), a partner in the NED project, has made it clear that the market will dictate what is paid beyond that. In response to the question posed by Brookline, New Hampshire citizens whether at least some of the gas will be exported, KM was blunt: "Kinder Morgan cannot discriminate among customers based on the ultimate destination or use of the gas, such as the Northeast versus Canada or another foreign country ... The ultimate destination of the gas and volumes associated are within the sole control of the project customers." See the question and response beginning at the bottom of (unnumbered) page 5 at the URL <http://static1.squarespace.com/static/50e99f7be4b08880418b9d42/t/54d273fbc4b0e31ab6c33bfa/1423078395112/Brookline+qa.pdf>. In other words: the gas will follow the money, whatever kind, wherever from. As has been established in this proceeding, Liberty Utilities is owned, through one or more entities, by Algonquin Power & Utilities Corp. ("APUC"), a Canadian corporation; and it is commonly known that, from Dracut, the NED pipeline is earmarked for Maine and beyond.

Sincerely,



Richard Husband

Also transmitted to:

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Concerned Citizens

Richard Husband  
10 Mallard Court  
Litchfield, NH 03052

August 5, 2015

Attorney General Joseph Foster  
c/o [attorneygeneral@doj.nh.gov](mailto:attorneygeneral@doj.nh.gov)

**RE: DG14-380  
Liberty Utilities (EnergyNorth Natural Gas) Petition for Approval of  
Long-Term Firm Transportation Agreement**

Dear Attorney General Foster:

This serves as a follow-up to my July 28, 2015 letter to the Public Utilities Commission ("PUC"). Although you were copied on this letter, I have attached it to this e-mail for your convenient reference.

As I have not received any response from the PUC or your office in response to my previous letter, I thought that it might help to try and rearticulate my position and concerns. Please understand that, although the following discussion will be largely legal, I am writing this as a concerned citizen only, entirely on my own behalf, and not in any representative capacity. Essentially, I am hoping that, if the following legal discussion is incorrect, you (or someone at the PUC) will point out the flaws; but if it is correct, either on its own or at your urging, the PUC will remedy the situation.

The concerns I have with respect to the PUC's narrow focus on the proposed Liberty Utilities' gas agreement, and refusal to consider the greater issue of the NED pipeline's negatives, may be summarized as follows:

- The due process clauses of our federal and state constitutions apply to administrative agency proceedings, including PUC proceedings. *See Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062 (1982); *Appeal of Morin*, 140 N.H. 516 (1995); *In re Union Telephone Co.*, 160 N.H. 309 (2010).
- The requirements of due process are triggered, *inter alia*, when there is a property interest at stake. *See In re Union Telephone Co.*, *supra*, 160 N.H. at 321-322. Thousands of property interests are at stake in the proceedings before the PUC. The gas agreement at issue necessarily brings with it the pipeline and all of the negative property impacts of federal eminent domain: forced easements, loss of use and enjoyment, diminished property values, etc.
- Among other requirements, due process demands an "opportunity to be heard," see *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884). Or, as the New

Hampshire Supreme Court has put it: “the opportunity to present one's case ...”  
*See Appeal of Morin*, supra, 140 N.H. at 518.

- From where I stand, the PUC’s refusal to consider affected property owners’ arguments against the pipeline in its decisional analysis, takes away their due process right to be heard and present their case.
- Although the PUC cites no case law or any other legal source to support its refusal to consider the pipeline in its decision, see <http://www.puc.nh.gov/Gas-Steam/Public%20Comments%20on%20PA.pdf>, my understanding is that it may be claiming that it cannot consider the pipeline due to “preemption” or lack of “jurisdiction,” given that the federal government and the Federal Energy and Regulatory Commission (“FERC”) have decisional authority over whether the pipeline is approved. But the pipeline has not been approved as of yet, may never be approved—there has not even been a submitted application for certification—and it is clear that the PUC cannot, and has no intention of even trying, to substitute its decision-making for FERC’s: all that is being asked is that the PUC, as a state agency, follows state law and standards in a matter before it, which is entirely within its jurisdiction.
- My reading of applicable state law and standards is that the PUC not only has the ability, but the obligation, to consider the negative impacts of the NED pipeline and related concerns of the public at large, in its decision. This conclusion is grounded in two New Hampshire Supreme Court cases referenced in my July 28, 2015 letter: *Waste Control Systems, Inc. v. State*, 114 N.H. 21 (1974) and *Boston & Maine R.R. v. State*, 102 N.H. (1959). As I read these cases, the PUC’s analysis of what is in the “public interest,” i.e., “best interests of New Hampshire” (as the PUC has repeatedly stated the standard in the current proceedings) and “the public good,” not only may, but should, go beyond limited consideration of the claimed “need” for the proposed agreement before it and its impact on just Liberty Utilities customers. Per the *Boston & Maine R.R.* case, the New Hampshire Supreme Court states that any analysis of the “public good” should involve “not only the needs of particular persons directly affected by ... services” (as is the PUC’s intended analysis) but “the needs of the **public at large**.” By specifically referencing the “public” or “public at large,” the New Hampshire Supreme Court is referring to needs “relating to or affecting **the whole people** of [the] state ... **not limited to any particular class of the community**.” See <http://legal-dictionary.thefreedictionary.com/Public>. Per the *Waste Control Systems* case, the New Hampshire Supreme Court states that “public interest” has a meaning analogous to the “public good,” and also means consideration of the needs of the “**public at large**”—in addition to the “general welfare of the utility involved.” The PUC is essentially just considering the utility involved in the current proceedings, not the needs of (negative impacts on) the state as a whole.
- Consideration of the impact of the PUC’s decision on the public at large obviously includes consideration of all of the impacts that will result from that decision: on private and town property rights, our farming and tourism economies, sensitive conservation and environmental areas, historic areas and

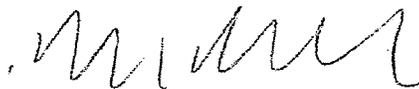
artifacts, safety concerns, diminished town tax bases and increased town response costs, potential harm to numerous town drinking water aquifers and other public waters, etc., It is ridiculous that a decision having such magnitude should rest solely on what a company standing to profit off it *claims* is a need,\* and an impact on a relative handful of customers, rather than the state as a whole.

- If the PUC's stated decisional analysis stands, Over 100 public comments establishing that the NED pipeline is not in "the best interests of New Hampshire" may be swept under the rug with perhaps a footnote in the PUC's decision. This is not right, it is not fair, it is not comprehensive reasoning, and it is completely contrary to the purpose of the public comments portion of the PUC proceedings.
- If there are one or more absolutely controlling cases in the 1<sup>st</sup> Circuit standing for the direct proposition that the PUC absolutely does not have the jurisdiction, or otherwise the ability, to consider the NED pipeline and public concerns relating to the pipeline in its decision, the PUC should—on its own or at your urging-- identify them in its reasoning *not* to consider the pipeline, so concerned citizens such as myself may understand the reasoning and know that the PUC's decision to deny the public a voice on important public matters is without choice. Again, "the [PUC] has broad discretion to act in the public interest" here.  
*Harry K. Shepard, Inc. v. State*, 115 N.H. 184, 185, 339 A.2d 2 (1975);  
*Browning-Ferris Industries of New Hampshire, Inc. v. State*, 115 N.H. 190, 339 A.2d 1 (1975). If the PUC has any debatable room to exercise that discretion in the "best interests of New Hampshire"," it should consider the pipeline, as that is its state law obligation in carrying out a state agency function; otherwise, without clearly binding authority precluding such consideration, an awful lot of citizens will just see a cop-out.

I would greatly appreciate it if Executive Director and Secretary Debra Howland would add this letter to the public comments of this proceeding, in supplementation of my prior comments.

Thank you for your time and courtesy.

Sincerely,



Richard Husband

cc: Debra Howland, Executive Director and Secretary (via e-mail)

\*Particularly when that company (Liberty Utilities) is ultimately owned by another company (APUC) having a huge investment in the pipeline project, at least one identical member on its Board of Directors, and therefore an incentive, if not influence, to inflate the claimed "need." See transcript of July 22, 2015 hearing.

Richard Husband  
10 Mallard Court  
Litchfield, NH 03052

August 7, 2015

Debra Howland Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord New Hampshire 03301

**RE: DG14-380**  
**Liberty Utilities (EnergyNorth Natural Gas) Petition for Approval of**  
**Long-Term Firm Transportation Agreement**

Dear Ms. Howland:

Please file this in the public comments section of this proceeding. As the parties and attorneys in the proceeding have been given until today to submit their final comments (by way of briefing), I trust that the public will be allowed to submit comments such as this at least through today, as well. This letter supplements my prior comments, and particularly those made in my previously filed July 28, 2015 and August 5, 2015 public comment letters. Of note, this letter concerns new information not available to me at the time of my prior submissions.

I attended yesterday's final day of proceedings in this matter. The Public Utilities Commission ("PUC") may have noticed: I was the citizen in the audience wearing the "PUC: Count the Public Comments" button. This, of course, pertained to my continuing concern, discussed in my July 28, 2015 and August 5, 2015 comment letters, available at the URL <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>, that the PUC has deemed only public comments relating to the gas agreement under consideration in the proceeding, and its impact on customers of the petitioner (Liberty Utilities), as "relevant" and worthy of consideration in the PUC's decision. See PUC discussion at the URL <http://www.puc.nh.gov/Gas-Steam/Public%20Comments%20on%20PA.pdf>. After attending yesterday's hearing, I am more concerned than ever about this position, and the PUC's corresponding refusal to consider public comments concerning the numerous s enormous negative impacts the NED pipeline—the undisputed *source* of gas for the agreement at issue—will have on the State of New Hampshire. Again, this consideration should clearly be a part of the PUC's analysis as to whether approval of the gas agreement is truly in the "public interest," i.e., "best interests of New Hampshire," for all of the reasons thoroughly discussed in my prior comments letters.

Add another reason.

Yesterday, the PUC plainly "opened the door" to consideration of evidence and comments on all of the negative public impacts of the NED pipeline, by the ready acceptance of comments and evidence offered on supposed public "*benefits*" of the pipeline, including the purported energy "flexibility" and lower market-price impacts it will provide. The PUC even

further commented on these matters. One cannot fairly and properly consider the alleged public "benefits" of the pipeline without considering its negatives as well. It is too late to close the door here: it was thrown wide open.

The proceedings in this matter should be started anew, for proper consideration of the negatives of the NED pipeline, and evidence, including testimony of citizens, on the issue. Otherwise, I again urge the New Hampshire Attorney General, copied on this letter, to look into this matter—including the transcript of the August 6, 2015 proceedings—to consider whether he agrees with me. If so, I hope that he pursues the matter on behalf of our citizens.

Additionally, I am including with this submission the remarks of State Executive Councilor David Wheeler, made at the July 30, 2015 Federal Energy Regulatory Commission scoping meeting held at Milford with regard to the NED pipeline, as remarks that should be included as public comments in this proceedings. I am copying Executive Councilor Wheeler on this letter, with the hope that he agrees with me, and affirms the same to you.

Thank you for your time and courtesy in this matter.

Sincerely,



Richard Husband

Also transmitted to:

NH Attorney General Joseph Foster  
(attorneygeneral@doj.nh.gov)

Executive Councilor David Wheeler  
(David.Wheeler@nh.gov)

Concerned Citizens

[Executive Councilor David Wheeler] Are you done elected officials??

[FERC Project Manager Eric Tomasi] Yes.

[Executive Councilor David Wheeler] You didn't call my name.

[FERC Project Manager Eric Tomasi] Who are you?

[Executive Councilor David Wheeler] I'm Executive Councilor Dave Wheeler. I spoke to you and signed up to speak on Monday. I sent my assistant up here to speak to you tonight.

[FERC Project Manager Eric Tomasi] I couldn't indicate, I couldn't tell you were an elected official or not. It was hard to tell exactly what your qualifications were.

[Executive Councilor David Wheeler] Right. I called you on Monday to give you the elected official's courtesy that I would be here tonight. I sent my staffer up here to tell you I was here tonight and your comment was, "What's an Executive Councilor?"

[FERC Project Manager Eric Tomasi] Well, I wasn't sure what that was. I mean...

[Audience reaction -- booing]

[FERC Project Manager Eric Tomasi] Again, look, I apologize, you can go ahead and go as soon as my court reporter goes ahead and makes sure it's ok. Go ahead.

[Executive Councilor David Wheeler comments start]

We're good to go, tape's all changed? OK. I apologize for stepping away from decorum for a moment but I, you know, I felt I needed to do that. Um, it is very disturbing to me, to digress just for a minute, that you come here from Washington and you don't even know what our form of government is here.

[Audience reaction -- clapping]

Just so you know what the Executive Council does, we are the second highest elected state official, uh, in New Hampshire government. We hire the Public Utilities Commissioners or fire the Public Utilities Commissioners. We hire the Site Selection Committee members or fire the Site Selection Committee members. And we have a significant role in the state, in developing the state's energy policy. Also, if you think this

pipeline's going through Rhododendron Park, it ain't gonna get my signature to sell the land, have an easement on the land, or right-of-way.

[Audience reaction – clapping & cheering]

Now I'll go to my prepared remarks.

[Audience reaction – light laughter]

Every town save one affected by this proposed pipeline project is in my district, and I'd like to summarize real quick 'cause I know a lot of other people want to speak. The comments that I've heard through emails and constituent reporting and from the people in this room tonight and other people across the district, I'm asking you, please hear them and listen to what they say when they detail their testimony tonight. Granite Staters are not pipeline push-overs.

[Audience reaction – clapping & cheering]

Every public works project has an environmental impact including this one. Every eminent domain project also has had a substantial New Hampshire benefit. This export pipeline does not benefit Granite Staters.

[Audience reaction – clapping]

Especially those who live in export pipeline affected towns. Now this project will steal over 1500 acres of land from New Hampshire homeowners. They will be required to give up their land, their forest, their crops, their privacy, their property values, clean pristine water, and the list goes on and on and on

[Audience reaction – clapping]

Air quality and water quality will be affected far beyond the 1500 acres of this proposed taking. 10, 20-fold or more will be affected. Part of my duties as an Executive Councilor is to appoint and serve on highway layout commissions. If this 71-mile-taking was for a highway, it would never pass environmental protection muster.

[Audience reaction – clapping]

You know, in fact the proposed circumferential highway project that would be in Hudson and Litchfield was turned down. We were told by the EPA and the federal highway administration, "Don't even bother applying for the permits. You're not gonna get 'em. You're not disturbing that much land. You're not taking that much from the people. Just forget it." But now comes a 71-mile comparable project and that wants to sail right through.

[Audience reaction – clapping]

Also, in New Hampshire a highway would never, and I mean never, be built with the kind of citizen opposition that was in Nashua last night and that's here tonight.

[Audience reaction – clapping]

So that begs the real question here: Will you listen to these people or will you recommend that this project be forced upon us? The only responsible environmental finding or recommendation for this project should be: NO BUILD. Thank you.

[Audience reaction – clapping & cheering, standing ovation]

# NH Municipal Pipeline Coalition

- |             |
|-------------|
| Amherst     |
| Brookline   |
| Fitzwilliam |
| Greenville  |
| Litchfield  |
| Mason       |
| Merrimack   |
| Milford     |
| New Ipswich |
| Pelham      |
| Richmond    |
| Rindge      |
| Temple      |
| Troy        |

July 21, 2015

Chairman Martin P. Honigberg  
 Debra Howland, Executive Director and Secretary  
 NH Public Utilities Commission  
 21 S. Fruit Street – Suite 10  
 Concord, NH 03301

**Re: DG 14-380 Liberty Precedent Agreement**

Dear Chairman Honigberg and Ms. Howland:

We represent 14 New Hampshire towns affected by the proposed Northeast Energy Direct (“NED”) high-pressure gas pipeline project. Given the project’s potential impact on our communities, we have been closely following developments regarding Liberty’s request for approval of its Precedent Agreement with Tennessee Gas Pipeline Company (“Tennessee”), including the New Hampshire PUC Staff’s recent Settlement recommendation.

This letter urges the Commission to reject the Settlement as ill-advised and undertake a full review of the facts and merits of the case.

We believe:

- The capacity of the NED pipeline far exceeds the utility needs of New England (such that taking of private and public land for NED is more for the benefit of its owners than the benefit of New England gas consumers);
- The “need” for this project is better addressed by competing projects that would require less taking of private and public land; and
- The proposed pipeline route will dramatically impact protected conservation land, watersheds, and aquifers.

Any New England need for additional energy sources to meet peak demand may be met by other proposed resources. Several companies have proposed projects to bring more natural gas to New England. These include Spectra’s Access Northeast project to increase gas supplies to power plants by .9 Bcf/day, and Portland Natural Gas Transmission System’s project to increase gas supplies by up to 500,000 Dth/day in the region. Taken together, the capacity of these proposed pipelines far exceeds New England’s projected energy needs. These viable alternatives have a similar “in service” dates to NED.

Moreover, the Spectra and Portland Natural Gas projects actually use existing gas pipeline rights of way. Kinder Morgan inaccurately describes the NED pipeline as mostly “co-located” with an existing power line easement owned by Eversource. The term co-location falsely implies the pipeline will be entirely within the power line right of way, and thus have little impact on adjacent land. This is not the

Chairman Martin P. Honigberg  
Debra Howland, Executive Director and Secretary  
July 21, 2015  
Page 2

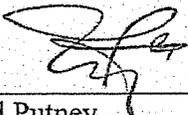
case. For technical reasons, the pipeline must be adjacent to, not under, the 350,000 volt powerline. Kinder Morgan must acquire approximately 100 feet of land *parallel* to the existing powerline easement. Therefore, the "co-location" of the pipeline has the same impact on private and public lands as it would if not co-located.

In addition, the NED project will more deeply and directly impact communities, wetlands and aquifers on the route than other project proposals. Trees will be cut and rivers tunneled under. Required blasting may damage wells, aquifers and buildings. Proposed compressor stations will be located near schools and businesses. Sensitive wetlands will be impacted by construction and excavation and the long-term persistent and harmful application of herbicides, among other methods, to control vegetative growth. Public policy should discourage projects that heavily impact conservation lands, water resources, and environmentally sensitive areas – especially when viable alternatives exist.

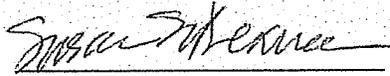
Significantly as well, expert testimony in this case has been highly critical of Liberty's proposal. For example, Staff sponsored the testimony of Ms. Whitten who unequivocally recommended that the Commission deny Liberty's Petition. Ms. Whitten characterized Liberty's proposal as not "least cost", "speculative", "not supported", and based not upon "industry standards", but instead upon an "aggressive single-scenario demand forecast that would leave the Company with substantial excess capacity that it would not completely absorb or grow into over the life of the contract." Whitten Testimony at 54-56. Other experts in the case have similarly submitted testimony indicating that Liberty's proposal was not least cost and that other alternatives were better solutions for New Hampshire ratepayers. All experts recommended that the Commission reject Liberty's proposal as filed.

**In short, we believe that the proposed NED pipeline does not benefit New Hampshire or Liberty's customers. We urge you to reject the Staff's Settlement offer. The "need" NED is attempting to address can be accomplished in a much less disruptive way, in as timely a fashion, through other projects that use existing pipeline rights of way.**

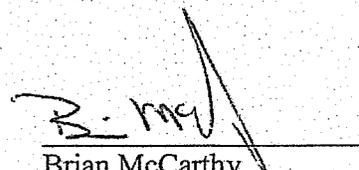
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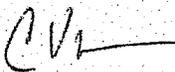
Tad Putney  
Town Administrator  
Brookline



Susan Silverman  
Member, Board of Selectmen  
Fitzwilliam



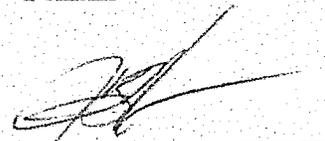
Brian McCarthy  
Town Administrator  
Pelham



Charlie Moser  
Member, Board of Selectmen  
Mason

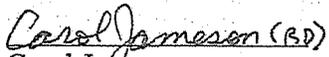


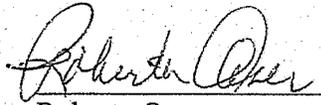
Kelley Collins  
Town Administrator  
Greenville

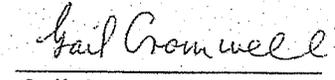


Jason Hoch  
Town Administrator  
Litchfield

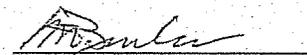
Chairman Martin P. Honigberg  
Debra Howland, Executive Director and Secretary  
July 21, 2015  
Page 3

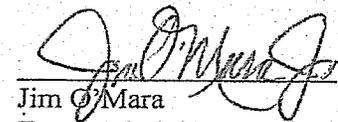
  
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Richmond

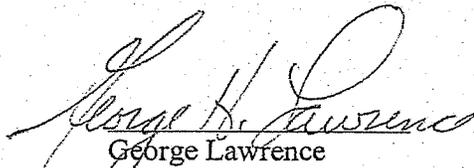
  
Roberta Oeser  
Member, Board of Selectmen  
Rindge

  
Gail Cromwell  
Chair, Select Board  
Temple

  
Warren Davis  
Conservation Commission  
Troy

  
Mark Bender  
Town Administrator  
Milford

  
Jim O'Mara  
Town Administrator  
Amherst

  
George Lawrence  
Chair, Board of Selectmen  
New Ipswich

  
Eileen Cabanel  
Town Manager  
Merrimack

**From:** Flanagan, Jack <Jack.Flanagan@leg.state.nh.us>  
**Sent:** Tuesday, August 04, 2015 2:31 PM  
**To:** PUC - Executive.Director  
**Cc:** tputney@brookline.nh.us  
**Subject:** DG-14-380 Letterfrom NH Municipal Pipeline Coalition

Dear Chairman Honigberg

I have recently received the July 21st letter from the Coalition to you for the referenced matter.

In light of the fact that I represent two of the affected towns, Brookline and Mason, I am sending you this correspondence as a Representative from District 26 from Hillsboro County and not the NH House Majority Leader.

I agree in totality with the recommendations in the aforementioned letter. The approving of the Liberty Utilities settlement would directly impact 17 towns and their citizens in a highly negative way. Indirectly, the charge of the PUC is to minimize the impact of potential Utilities operations and make sure that, if possible, cause no harm to the citizens of New Hampshire. One can not ignore the moral responsibility we all has as public servants to the state we serve.

In light of the two projects that are also pending, I strongly encourage you to deny the Liberty Utilities proposal and require any natural gas being utilized be from the existing enlarged pipelines.

It is time for the State of New Hampshire to do the right thing for its citizens.

Sincerely,

Rep Jack Flanagan  
Hillsboro District 26  
Serving Brookline and Mason, NH



## The Senate of the State of New Hampshire

107 North Main Street, Concord, N.H. 03301-4951

August 4, 2015

Chairman Martin P. Honigberg  
Debra Howland, Executive Director and Secretary  
NH Public Utilities Commission  
21 S. Fruit Street – Suite 10  
Concord, NH 03301

Re: DG 14-380 Liberty Precedent Agreement

Dear Chairman Honigberg and Ms. Howland:

I represent Senate District 12 which includes the towns of Brookline, Greenville, Hollis, Mason, New Ipswich, Rindge and the city of Nashua which are affected by the proposed pipeline. I have heard the concerns from several of my constituents and completely agree with the attached letter and also urge you to reject the Staff's Settlement offer.

The people have spoken loud and clear and I ask you to seriously consider their request.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Avar", written over a large, stylized circular flourish.

Senator Kevin Avar, Dist 12  
State House Room 105-A  
107 North Main Street  
Concord, NH 03301  
(603) 271-8718

Enc.

## NH Municipal Pipeline Coalition

July 21, 2015

Chairman Martin P. Honigberg  
Debra Howland, Executive Director and Secretary  
NH Public Utilities Commission  
21 S. Fruit Street – Suite 10  
Concord, NH 03301

Anh�erst
Brookline
Fitzwilliam
Greenville
Litchfield
Mason
Merrimack
Milford
New Ipswich
Pelham
Richmond
Rindge
Temple
Troy

Re: DG 14-380 Liberty Precedent Agreement

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We represent 14 New Hampshire towns affected by the proposed Northeast Energy Direct ("NED") high-pressure gas pipeline project. Given the project's potential impact on our communities, we have been closely following developments regarding Liberty's request for approval of its Precedent Agreement with Tennessee Gas Pipeline Company ("Tennessee"), including the New Hampshire PUC Staff's recent Settlement recommendation.

This letter urges the Commission to reject the Settlement as ill-advised and undertake a full review of the facts and merits of the case.

We believe:

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Any New England need for additional energy sources to meet peak demand may be met by other proposed resources. Several companies have proposed projects to bring more natural gas to New England. These include Spectra's Access Northeast project to increase gas supplies to power plants by .9 Bcf/day, and Portland Natural Gas Transmission System's project to increase gas supplies by up to 500,000 Dth/day in the region. Taken together, the capacity of these proposed pipelines far exceeds New England's projected energy needs. These viable alternatives have a similar "in service" dates to NED.

Moreover, the Spectra and Portland Natural Gas projects actually use existing gas pipeline rights of way. Kinder Morgan inaccurately describes the NED pipeline as mostly "co-located" with an existing power line easement owned by Eversource. The term co-location falsely implies the pipeline will be entirely within the power line right of way, and thus have little impact on adjacent land. This is not the

Chairman Martin P. Honigberg  
Debra Howland, Executive Director and Secretary  
July 21, 2015  
Page 2

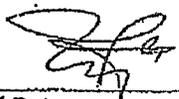
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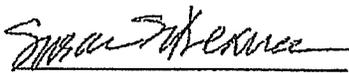
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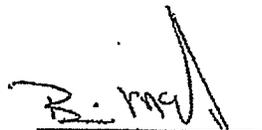
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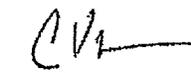
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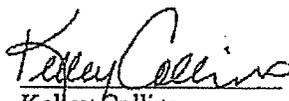
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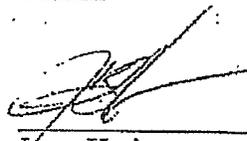
  
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Member, Board of Selectmen  
Fitzwilliam

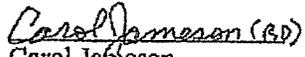
  
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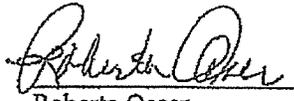
  
Charlie Moser  
Member, Board of Selectmen  
Mason

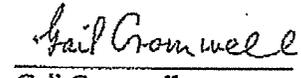
  
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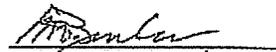
Chairman Martin P. Honigberg  
Debra Howland, Executive Director and Secretary  
July 21, 2015  
Page 3

  
Carol Jameson (R)  
Chair, Board of Selectmen  
Richmond

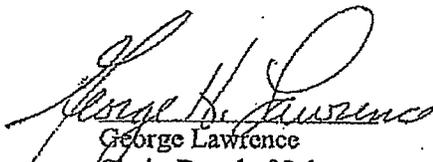
  
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Chair, Select Board  
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Conservation Commission  
Troy

  
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Milford

  
Jim O'Mara  
Town Administrator  
Amherst

  
George Lawrence  
Chair, Board of Selectmen  
New Ipswich

  
Eileen Cabanel  
Town Manager  
Merrimack

July 16, 2015

Debra Howland, Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street - Suite 10  
Concord, NH 03301

Re: DG-14-380 Liberty Precedent Agreement

Dear Ms. Howland:

As a New Hampshire State Representative I have been closely following Kinder Morgan's efforts to gain approval of its Northeast Energy Direct Pipeline.

Throughout the process, I have been amazed at the willingness in some quarters to overlook the fact that New Hampshire not only wouldn't benefit from this project, but that the scale of natural gas that could ultimately be transported for export threatens to increase the cost of the natural gas the region has come to rely on for electricity production.

Fearing just such a result, the Industrial Energy Consumers of America has sought at the Department of Energy to prevent export permits from being issued.

The original application between Kinder Morgan's Tennessee Gas Pipeline Company and Liberty Utilities called for 115,000 dth/d, which has since been reduced to 100,000 dth/d in a proposed settlement. The new proposed Liberty Utilities contract remains the only contract that Kinder Morgan has available to try to justify approval to New Hampshire regulators.

The proposed reduction seems sufficiently modest to presume the Office of Consumer Advocate and outside consultants would, as they did at the May hearings, continue to oppose the project as not cost-effective and well in excess of realistic demand. The Federal Energy Regulatory Commission raised the same issue in its May 15th comments on Tennessee Gas Transmission's Draft Resource Reports.

It appears that approval of this project will increase the price of natural gas, threaten sensitive wetlands and aquifers and do nothing to alleviate the energy shortfall in Southern New England.

This project is wrong for New Hampshire and, based on its lack of merit and the risks to New Hampshire residents and Liberty ratepayers, the proposed settlement agreement should be rejected.

Sincerely,  
James W McConnell  
New Hampshire State Representative – Cheshire 12

Gloria Barefoot

PO Box 484

Fitzwilliam, NH 03447

July 12, 2015

Ms. Debra Howland

Executive Director and Secretary

New Hampshire Public Utilities Commission

21 S. Fruit St, Suite 10

Concord, New Hampshire 03301

NHPLC JUL 15 15 4:10:25

RE: DG 14-3 80 Liberty Utilities (Energy North Natural Gas) Corp. d/b/a Liberty Utilities

The approval of the contract between Liberty Utilities and Kinder Morgan for space on a proposed natural gas pipeline through 70 miles of Southern New Hampshire will have a negative impact on the environment and economics of the area. This would be the largest pipeline in diameter in New Hampshire, and would provide substantial excess capacity that could not be used in the state. The size of the project poses safety risks and passes along costs to customers that are not in line with customer needs. The project will disturb and redirect numerous aquifers, ponds, watersheds, and lakes. Noise and exhaust from blow down valves and compressor stations will disturb wildlife and will impact hunting, fishing, snowmobiling, and boating in some of the most beautiful country in New England. Is it really the time to invest in excessive infrastructure, constructing the largest gas pipeline and most powerful compressor stations to date in New Hampshire?

There are alternatives! The distance from the wellhead to the customer may be several hundred miles, and because natural gas is relatively low in energy content per unit volume, it is expensive to transport.

- One alternative is gas to power (GTP) or gas to wire (GTW). Large scale electric power generation from natural gas, perhaps via gas turbines, closer to the wellheads can then be transmitted by wire. Wire can be strung in many topographies where trenching is problematic, such as across wetlands and aquifers, granite ledge, and ravines. GTW has no incineration zone and less risk of explosion. There is no risk of gas leaks caused by earth movement or violent weather, which is safer since it takes up to 2 hours to shut down natural gas flow in a pipeline emergency. With GTW there is no risk of gas line accidents caused by stray voltage in a mixed-use utility corridor as would be the case with NED.
- Liquefied natural gas transportation has now become more economic due to improvements in technology and thermodynamic efficiencies of LNG facilities. The cost of transport per mile is less than for pipeline.
- The plan by Spectra Energy to expand the capacity for delivery of natural gas into New Hampshire along existing Spectra pipelines is another alternative to NED. This plan builds on existing infrastructure and does not disturb undeveloped and sensitive environments. The increase in capacity from this project will more than meet the needs of New Hampshire. The

Spectra Energy plan addresses how the cost of the project will be handled, while NED plans do not.

- Other methods for transporting gas include Compressed Natural Gas (CNG), Gas to Solid (GtS), and Gas to Liquid (GtL).

Please heed the testimony of Melissa Whitten, the utility consultant hired by the PUC staff, and do not approve this contract.

Respectfully,

*Mrs. Gloria L. Barefoot*

Gloria L. Barefoot

Margaret Viglione  
14 Hubbard Hill Road  
Greenville, NH 03048  
July 18, 2015

Debra Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301

Re: Docket DG14 - 380

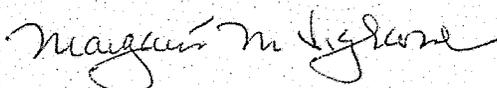
Dear Ms. Howland,

I am writing to urgently request that the PUC deny the application by Liberty Utilities with Tennessee Gas Pipeline, LLC for several reasons:

- Your own consultant, Melissa Whitten, strongly stated that Kinder Morgan could not demonstrate the required need for this project. The only substantial contract in NH is with Liberty Utilities, a Kinder Morgan subsidiary. NH is currently a net exporter of electricity so the claimed need for extra natural gas to increase electricity production is spurious. No NEED.
- New Hampshire would not be the recipient of any significant portion of the gas, and in fact, only 4% of New Hampshire residents use natural gas. No BENEFIT.
- Most of the gas is intended for export overseas or to Canada where gas prices are higher providing huge financial benefit only to Kinder Morgan. To accomplish this they will use eminent domain to usurp NH homes and land. Then those affected will be asked to pay for this pipeline through higher utility rates.
- Negative impacts would be *severe* on the safety, health and welfare of consumers and non-consumers, the ecosystem as well as the economy of the region.
- Existing pipelines owned by Portland Gas or Spectra could easily handle any projected needs for natural gas in the state without additional damage to property and ecosystems.
- Kinder Morgan cannot guarantee the safety of their pipelines or compression stations and has a long history of safety "incidents."
- Investment in non-renewable energy strategies which will be outdated within 20-25 years shows poor vision for future energy solutions for New Hampshire as well as globally.

I respectfully ask you to review this application within the context of your mission statement which speaks so eloquently of "ensuring that customers of regulated utilities receive safe, adequate and reliable service at just and reasonable rates, to provide necessary customer protection, to provide a thorough but efficient regulatory process that is fair, open and innovative, and to perform your responsibilities ethically and professionally..."

Respectfully,



Margaret Viglione

July 24, 2015

TO THE PUC:

I live in New Ipswich, NH and I am submitting this letter **opposing** the Tennessee Gas Pipeline proposal for a natural gas pipeline to be built through Massachusetts and New Hampshire.

It will endanger our environment, our historical and cultural resources, our way of life and lower property values. Testimonies by PUC's own experts contradict the facts presented by EnergyNorth in their proposal. The fracking gas that will be pumped through the pipeline is not needed in New Hampshire and it isn't a commercially viable venture. Less than half of the proposed minimum has been contracted out and because much of New Hampshire is rural, customers rely on propane rather than natural gas.

I request that you **do not approve** EnergyNorth's agreement with TGP. The potential additions to ratepayer costs alone should be reason enough for you to turn down this proposal, aside from the fact that it seems not to be in the best interests of New Hampshire citizens.

Sincerely,

Christine Neill

New Ipswich, New Hampshire

Christine Neill

[christine.neill01@gmail.com](mailto:christine.neill01@gmail.com)  
[www.ChristineNeill.com](http://www.ChristineNeill.com)

July 28, 2015

Laura Baker  
3 Concord Street  
Peterborough, NH 03458

Debra Howland, Executive Director  
New Hampshire Public Utilities Commission  
21 south Fruit Street, Suite 10  
Concord, NH 03301

Dear Ms. Howland,

I am a current resident of Peterborough, NH and former resident of Ashburnham, MA. I am submitting this letter as a resident of the area and as an avid outdoor enthusiast who makes almost daily recreational use of trails in and around the Wapack range as a hiker and horseback rider.

I am deeply concerned about the potential recreational and environmental impact of the proposed Kinder-Morgan pipeline. I moved to Peterborough because of the opportunities it offers for outdoor recreation. I board my horse in Temple for the same reason. Outdoor recreation is one of the area's most valuable assets to residents and visitors alike and it makes not sense to jeopardize this resource.

Moreover, I am troubled that my new home state, New Hampshire, considers fracking a worthwhile energy infrastructure in which to invest. Fracking is prohibited in several states in New England for good reason. Wouldn't our money be better spent on renewable energy technologies?

I respectfully urge you not to approve the construction of this pipeline.

Sincerely,

Laura

Kerry P. Gagne  
64 Holman Rd.  
Fitzwilliam, NH 03447  
July 29, 2015

Debra Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord New Hampshire 03301

Dear Executive Director Howland:

Please oppose the Northeast Energy District (NED) Project and the extension of Kinder Morgan's Tennessee Gas Pipeline.

New Hampshire cannot expect monetary benefits to outweigh the monetary and environmental burdens on residents and towns and in looking at the proposed figures, I am not convinced gas and electricity prices will be lower. I understand we will incur a surcharge for this project.

There are more environmentally and economically responsible ways for bringing natural gas to New England such as imports to the Distrigas LNG facility located in Everett, MA which has significant excess capacity to accommodate the storage.

The shale oil and gas industries are not sustainable and may be causing seismic and toxic problems that will last far into the future.

The claims of NED Project employment for New Hampshire residents is all but nil. This project will rely on out-of-state experts.

Locally our town of Fitzwilliam can expect a negative impact on our aquifer system, local schools and roads, wildlife and wildlife habitat and lower property values. Health and safety in light of this project is frightening. What kind of economic impact can Fitzwilliam expect? Our population almost doubles in the summer months due to the lake and Rhododendron State Park. Have you seen the route of the proposed pipeline? And what of people's right to their land? Some citizens will be losing their homes.

Please support expanding current coastal pipeline infrastructure instead of the current NED Project plan.

Respectfully yours,



Kerry P. Gagne

July 26, 2015

Debra Howland Executive Director  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301

HPUC 20 JUL 15 AM 10:33

RE: Tennessee Gas pipeline proposal FERC Docket # PF14-22-000

Dear Director Howland,

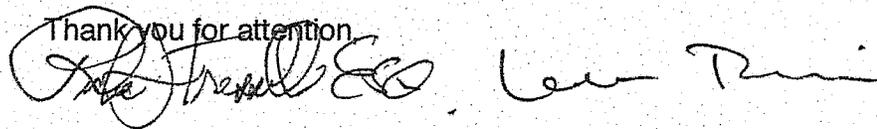
We are writing to you to register our vehement objection to the gas pipeline and compressor station project being proposed by Tennessee Gas Pipeline, L.L.C. in our region. We own a home on sixty acres in Temple abutting the New Ipswich boundary. As property owners near the proposed compressor station cite we have been contacted by both TNC and FERC.

The industrial nature of this project is entirely out of keeping with the rural and ecologically sensitive character of this area. The facility as proposed places the compressor and pipeline within a drinking water protection area and poses a threat to wetlands, a reservoir, sensitive wildlife, farms and the children at our elementary school.

This proposal violates the tenets of our town master plan and major zoning ordinance provisions. We feel that this project presents a danger to the health and safety of our community. This project is certain to severely impact the value of our home and land resulting in a graphic loss of property as well as peace of mind.

We hope that all our elected representatives will unite to speak out aggressively against this proposal and act to halt its continued progression.

Thank you for attention.



Richard J. Fressilli  
Leah R. Fressilli

404 Fish Road (PO Box 10)  
Temple, NH 03084

**From:** latestlinux@gmail.com on behalf of Sebastian Barthelmess <seb@latestlinux.com>  
**Sent:** Friday, August 07, 2015 5:40 PM  
**To:** Deno, Sandy; Governor Hassan; kevin.avard@leg.state.nh.us  
**Subject:** Re: Reopen PUC Hearings

Dear NH Public Utilities Commission:

As residents located directly across the street of the proposed compressor station in New Ipswich, NH - we have been attempting to follow the proceedings regarding the Liberty Utilities agreement with KM/TGP.

As taxpayers of New Ipswich NH, we feel strongly that our PUBLIC voice is not being heard. Is it not the duty of the PUBLIC Utilities Commission have a duty to protect all residents, the public, in New Hampshire?

I believe the welfare of ALL the citizens of NH should be included in your decision regarding this matter, not just customers of Liberty Utilities. NED affects many many other NH citizens, probably more than it affects the Liberty Utility customers and from our research, there is no market basis for Liberty or any other utility company to invest in natural gas service to rural consumers in the majority of the NED affected towns.

In addition, we are learning of the steep investment from NH citizens to establish natural gas service to the last mile in our homes. Why would I chose natural gas, if I could invest the same money into renewable energy such as solar and a small geothermal system?

I am glad to see as of yesterday 8/6 the door has been opened for that consideration. People of 17 plus towns, thousands of homeowners and taxpayers of NH will be adversely affected, and forced to live with the physical, socio-economic, security, and emotional ramifications of this hugely unnecessary and overbuilt project.

There is NO need for this gas in New England as most of it is now openly intended for export.

From reading the current public records, there are no electric grid customers for this project and based on data available to the public (the assumed basis of the hearing), there is no reduction in electric rates! Reducing rates of electricity and gas is a myth! A fantasy not based in fact! The project appears to be simple subsidy to an entity that on their public balance sheet needs no subsidy, and so Kinder Morgan can export gas overseas and make us compete for gas in a global market? On the backs of the resources of the Monadnock

Have any members of the PUC attended the FERC scoping meetings to hear environmental, safety, and socio-economic voices of concern from the NH public, your fellow citizens? When have you or your staffers read the transcripts of same? Our entire family has and it is nothing short of unconstitutional what is being done here.

Please protect ALL your citizens, and REOPEN THESE HEARINGS, CONSIDERING THE NEED, AND IMPACTS OF THIS PROJECT ON ALL NH CITIZENS!

Sincerely,  
Sebastian Barthelmess  
424 Temple Road  
New Ipswich, NH 03071

From: **Tim Winship** tim@newfieldfarm.com  
Subject: Docket No. DG14-380  
Date: August 5, 2015 at 5:47 PM  
To: executive.director@puc.nh.gov

Chairman Martin P. Honigberg  
Debra Howland, Executive Director and Secretary  
NH Public Utilities Commission  
21 S. Fruit St.-Suite 10  
Concord, NH 03301

Re: DG 14380 Liberty Precedent Agreement

Dear Chairman Honigberg and Ms. Howland,

You have heard the many arguments against the Kinder Morgan/Tennessee Gas Pipeline proposal. I hope you find that they provide compelling evidence that the costs of this project to our communities, individuals, families, property rights, forests, wildlife, wetlands, waterways and air are in no way balanced or outweighed by the meager to non-existent benefits to the people of New Hampshire. The taking of property, not to mention the destruction of a living landscape, is a profound action that can only be justified by an equally profound need of great public benefit. It would take a lot of imagination and a by-passing of conscience to be able to state that this proposal rises to such a high level of need. I sincerely hope that you deny Liberty Utilities request.

Thank you,  
Tim Winship

Tim Winship  
New Field Farm  
PO Box 143,  
(258 Cutter Rd.)  
Temple, NH 03084  
603-878-2063  
[newfield.locallygrown.net](http://newfield.locallygrown.net)

-----Original Message-----

From: Karen Miller [mailto:kmm@evenequine.com]

Sent: Monday, August 10, 2015 7:41 PM

To: Deno, Sandy; Governor Hassan; [kevin.avard@leg.state.nh.us](mailto:kevin.avard@leg.state.nh.us)

Cc: Drew, Tim

Subject: Reopen PUC hearings, PLEASE!

To the PUC,  
regarding NH PUC Docket DG14-380

If the mission of the PUC is to minimize the impacts of potential utilities operations, and make sure they cause NO HARM to the citizens of New Hampshire, the solution seems quite simple... STOP THE UNNECESSARY, PROPOSED NED PIPELINE PROJECT!!!

The NED/Tennessee gas pipeline will adversely effect many more NH citizens, than it will benefit the "potential", that is to say, NOT currently contracted, Liberty Utilities customers.

We are the citizens of the live free or die state. If this project is approved, it will be time to remove our states core "identity" from our licence plates, might as well stop the conservation plates as well, and recall it as our state "moto".

Respectfully,

Karen Miller  
161 Ashburnham rd  
New Ipswich, NH  
03071

**From:** [lisaderbyoden1@comcast.net](mailto:lisaderbyoden1@comcast.net) [mailto:[lisaderbyoden1@comcast.net](mailto:lisaderbyoden1@comcast.net)]  
**Sent:** Monday, August 10, 2015 10:44 AM  
**To:** PUC  
**Subject:** NH PUC Docket DG14-380

NH PUC Docket DG14-380

I live in New Ipswich, NH, and have been following the proceedings regarding the Liberty Utilities agreement with Kinder Morgan/Tennessee Gas Pipeline.

First, this project appears to have no electric grid customers, and the gas will only be used for heating. We are being told via media and KM/TPG propaganda that there is an "energy crisis" in New Hampshire. Yet, New Hampshire is a net exporter! These are overblown claims in an attempt to cover the fact that KM/TPG wants to get their product to Dracut, MA. Once that connections is made, and gas is then sold on the export market, prices for gas will go UP in New Hampshire, not down. How does this benefit NH?

It is unlikely that the rural areas that this pipeline goes through would ever see any benefit from this gas, even for heating purposes. Building the infrastructure to deliver it to the homes would cost more than would benefit the utility. Heck, it can be hard for us to get internet for the very same reason!

The impacts of this project are huge and irreversible. Environmentally, our aquifers and water supply are at stake. All our water comes from wells – there is no public water supply. KM/TPG has said that it "trucks water in" for the areas where it has destroyed the water. The air that we breathe will carry deadly toxins that are causing rashes, headaches, nose bleeds and neurologic symptoms in other communities where compressor stations are located. These air borne toxins will fall to the earth and further contaminate our soil and water, and will poison our wildlife.

From a financial standpoint, who will want to buy my property if I decide to move, so that I'm not poisoned, and will it be at what was fair market value BEFORE the pipeline and compressor station? If not, my first option will be to ask for tax abatement, thus putting greater tax burden on the town, since others here will do the same. I have been a responsible, contributing citizen all my life – I ask you why is it that this company can fabricate NEED where it does not exist (and where other solutions are available for increasing gas supply into NH), and destroy my future?

The time to have the Public Utilities Commission of the State of New Hampshire do the right thing for its citizens is now! Please scrutinize the information you have received and make a determination based on "**what is good and just for ALL NH citizens.**"

Sincerely,

Lisa Derby Oden  
6 Upper Pratt Pond Road  
New Ipswich, NH 03017

**From:** Susan Wessels [mailto:slwessels2010@gmail.com]  
**Sent:** Saturday, August 15, 2015 7:27 AM  
**To:** PUC  
**Subject:** Docket 14-380

Dear PUC Commissioners

My husband and I are being told the home we built 20 years ago in Rindge is in the "study zone" of the planned Kinder Morgan pipeline. Almost our entire wooded 3-acre lot will be permanently cleared of all the natural and planned vegetation we have so lovingly planted and maintained to provide a peaceful, natural and private setting. The water well will be destroyed, likely by blasting harmful chemicals into our ground and ground water. The house, itself, would remain, tho in an uninhabitable form, since it will be surrounded by denuded land which itself will be sprayed regularly with toxic chemicals to prevent vegetation from growing. We would be subjected to pipeline leaks, un-potable water, formaldehyde blow-back from nearby release valves, etc.

Our house represents our most important financial asset. That will be destroyed. Despite poor health, I will be required to live in this house after it is essentially destroyed. The exposure to chemicals of various sorts will, no doubt, influence the health and life expectancy of both of us. Yet Kinder Morgan will not buy the house, just the easement they need to build the pipeline just feet away, in our back yard.

I would think that when the stakes are this high for people, our State public officials would ensure this was truly for the greater good and would protect those of us with the most to lose, from catastrophe. The fragile state of the fracked gas industry is described below as is the trend toward reversing pipeline directions favoring transporting westerly over eastern export paths. Both these issues bear directly on the wisdom of New Hampshire investing so much in building this NED pipeline. The article by Tara Lohan relies on sources who have been industry experts for decades and who, by no means, represent "outliers." The information on the recent trend to reverse pipeline directions, too, is well-sourced.

Please understand how much will be destroyed along the pipeline route. Creating a wide scar across Southern New Hampshire will bring destruction to human, vegetative and animal habitats; water, air and quality of life in general. Please take these tremendous costs into consideration as you wrestle with your decision to approve or not approve this pipeline. Real people stand to lose everything if this pipeline is built. You have the power to stop this disastrous investment, the costs of which we will all be living with far beyond any conceivable benefit.

Some pertinent information follows:

### **Excerpted From *The Nation*, August 5, 2015**

By Tara Lohan

"The US boom in the production of oil and gas in the past seven years has been largely driven by horizontal drilling and hydraulic fracturing (or fracking) of rock formations known as shale plays. But the growth may not be as long-lived as advertised. For starters, there's good evidence to suggest that

the amount of economically recoverable reserves of both shale oil and gas are not as much as previously hyped.

J. David Hughes, a geoscientist and fellow at the Post Carbon Institute, who spent 32 years with the Geological Survey of Canada, found that while short-term production of shale oil and gas is undoubtedly significant, the long-term view shows that the growth is not sustainable. His research reveals production peaking in both shale oil and gas in most of the significant plays in the United States by 2020. "For the past five years we've been told we're going to be energy independent...it's just not going to happen."

The next problem facing the industry is the price tag of its operations. The costs to drill and complete a shale well can range from \$6 million to \$8 million or more a well—depending on the play and the number of drilling stages.

Production on shale wells also declines very quickly. For shale oil, the three-year average well decline rate in most major US plays falls between 60 and 91 percent. Around half of all the oil that will be produced from these wells will come in the first three years. For shale gas, the three-year average well decline rate is between 74 and 82 percent.

This means that in order to maintain or increase production, you have to keep a frenetic pace of new drilling—what Lawrence Berkeley National Laboratory scientist David Fridley likened to being on an "accelerating treadmill." The drilling frenzy that has characterized the shale boom caused a spike in production, contributing to a global glut, which has resulted in falling prices. It's a vicious circle, and one that was hard to make economical even when crude was selling for \$100 a barrel.

When prices dropped earlier this year to around \$50 a barrel, things became more dire for the shale industry, and they haven't greatly improved in the last six months. Despite briefly reaching around \$63 a barrel in late spring, prices have fallen again. "For the past five years we've been told we're going to be energy independent and we will have all this oil and we're going to export gas to Europe and we're going to export gas to Asia, and it's just not going to happen," said Fridley.

In the past seven years, wind and solar capacity in the United States has tripled.

Overproduction, combined with declining consumption, has resulted in plummeting crude prices in the past year. It's the same script that occurred just a few years earlier, when shale gas prices bottomed out in the United States. So what's the industry to do?

Investor Jeremy Grantham, the founder of GMO, a Boston-based money manager, wrote in the financial publication *Barron's*, "*Almost no new drilling programs will be initiated at current prices except by the financially desperate and the irrationally impatient, and in three years over 80 percent of all production from current wells will be gone!*"

Given the costs of drilling and completing wells, and the number needed to keep production growing, companies must have lots of cash to stay on the treadmill. And that may become harder and harder for many to do.

The Energy Policy Forum's Lawrence has been comparing the financials of some of the industry's top companies for years; she found that they lack free cash flow. "*They were spending a lot in capital expenditures—the money needed to drill and complete the wells,*" she said. "*And that was growing every year while the money they were actually making, the cash that was left over at the end of the day, was deteriorating. It was never positive.*"

Lawrence crunched the numbers on more than 20 US shale operators and found that the companies had been cash-flow-negative since 2009. As *Alberta Oil Magazine* reported, "In 2013, U.S. onshore oil producers outspent their operating cash flow by a ratio of two-to-one." The record-high production boom we've witnessed has been sustained by companies taking on high levels of debt, including \$120 billion in high-risk, high-yield bonds. JPMorgan's estimate of the default rate for these junk bonds is nearly 4 percent this year and will be a whopping 20 percent next year, if crude prices remain around \$65 a barrel.

This may mean lights out for a number of debt-laden companies. Some will go out of business, while others may be gobbled up by larger corporations. Expect lots of consolidation and cherry-picking of assets by the big players. Giants like Chevron and Exxon Mobil will likely make out well, but they aren't the only ones. "It will be fantastic for the investment banks, because they will make a fortune off of fees," says Lawrence. Those who won't make out well, however, include more than just the debt-heavy industry players. It could be you. "A lot of pension funds invest in energy stocks, and the energy stocks have just gotten creamed," says Lawrence. "They haven't had good share returns. You're going to see that reflected in your portfolio." Despite the bad news on shales, Lawrence sees a lot of good economic news when it comes to renewable energy.

*"I have this feeling that we are on the cusp of a new energy paradigm and things are changing so rapidly," says Lawrence. "I think you're going to see a lot of disruption in the next five to 10 years, and I don't think the oil and gas industry really thinks it's coming."*

From Fortune magazine, August 13, 2015

"Unlike conventional projects, shale wells enjoy an extremely short life. In the Bakken region straddling Montana and North Dakota, a well that starts out pumping 1,000 barrels a day will decline to just 280 barrels by the start of year two, a shrinkage of 72%. By the beginning of year three, more than half the reserves of that well will be depleted, and annual production will fall to a trickle. To generate constant or increasing revenue, producers need to constantly drill new wells, since their existing wells span a mere half-life by industry standards.

In fact, fracking is a lot more like mining than conventional oil production. Mining companies need to dig new holes, year after year, to extract reserves of copper or iron ore. In fracking, there is intense pressure to keep replacing the production you lost last year.

On average, the "all-in," breakeven cost for U.S. hydraulic shale is \$65 per barrel, according to a study by Rystad Energy and Morgan Stanley Commodity Research. So, with the current price at \$48, the industry is under siege. To be sure, the frackers will continue to operate older wells so long as they generate revenues in excess of their variable costs. But the older wells—unlike those in the Middle East or the North Sea—produce only tiny quantities. To keep the boom going, the shale gang must keep doing what they've been doing to thrive; they need to drill many, many new wells.

Right now, all signs are pointing to retreat. The count of rotary rigs in use—a proxy for new drilling—has fallen from 1,930 to 1,881 since October, after soaring during most of 2014. Continental Resources, a major force in shale, has announced that it will lower its drilling budget by 40% in 2015. Because of the constant need to drill, frackers are always raising more and more money by selling equity, securing bank loans, and selling junk bonds. Many are already heavily indebted. It's unclear if banks and investors will keep the capital flowing at these prices.

Still, the future of fracking is extremely hard to predict. Continental, for example, pledges to raise production in 2015 despite the fall in its drilling budget. It would be a mistake to underestimate the ingenuity of the entrepreneurs who led the shale revolution. They will exploit new technologies that combine vertical and horizontal drilling to lower their costs. In the boom times, equipment rental,

trucking, and labor were all priced at huge premiums; at \$100 a barrel oil, producers put sinking the next well far ahead of fretting over their fat payrolls. Now, those costs are falling.

So it's difficult to know where all-in costs will settle. If oil stays at around \$50, a group of super-efficient producers may still be able to make money. Bruce Everett, who teaches petroleum economics at the Fletcher School at Tufts University, is optimistic. "There will undoubtedly be some tailing off in U.S. drilling activity," he says, "but I expect continued development drilling in major new areas, particularly the Bakken, even at \$50."

If demand rebounds—and it may—prices may very well rise above \$60 once again, and fracking will once again become extremely profitable. But it's not clear if the famous foe of fracking, Saudi Arabia, will let that happen. The Saudis have invested heavily to gain extra capacity of 2 million barrels a day. The Saudis may use that cushion to hold prices around \$50, just out of range—at least today—for most shale oil producers.

Then again, the shale industry's ability to hike production quickly could put a cap of \$50 or \$60 on oil prices. If prices rise much higher, either the Saudis will intervene, or more shale supplies will flood the market, stabilizing the price. "Because shale wells have short lives, allowing production to come on and off more quickly, fracking could moderate price fluctuations so they're less volatile than in the past," says David Kreutzer, an economist at the Heritage Foundation.

But the numbers are still daunting. It's easy to get financing when your costs are \$65 and you're selling at \$100. But when the price is \$50, where will the producers find the funds to keep sinking those new wells? It will take a lot of new drilling just to keep production where it is now. A steady but no-growth shale industry is not what America has been counting on. The spread of rigs and jobs that seemed such a certainty, and such a staple of our recovery, may be a fading vision."

**Impact on NED - These cost trends will lead to what is described below:  
reversal of pipeline flow from West-to-East (for overseas shipments) to  
East-to-Western U.S. thus negating a primary justification for NED:**

As more western drilling operations are sidelined, the price of natural gas in the western 2/3 of the country is expected to go up due to the laws of supply and demand. The new western demand for Marcellus gas was NOT PREDICTED when NED was on the drawing board. Between Texas and the West there is about a trillion cubic feet of underground GAS STORAGE. Next year a lot of that storage will be filled up with cheap Marcellus Gas.

It makes sense that expansion of pipelines from the east to the west will reduce the incentive for industry to pursue projects like NED -- THAT WERE ORIGINALLY DESIGNED TO SEND GAS OVERSEAS.

Here are some citations from EIA and the Trade publications to support this claim.

1. Just one year after the larger-than-NED REX (rockies express) east to west pipeline went into service to send gas from east coast to west coast:

[citation: <http://www.eia.gov/todayinenergy/detail.cfm?id=16751>, dated June 18, 2014 ]...

2. the EIA is reporting in its weekly Natural Gas report that the east to west flows, which were in excess of 1BCF in the past, are getting reversed

[citation: [http://www.eia.gov/naturalgas/weekly/archive/2015/08\\_06/index.cfm](http://www.eia.gov/naturalgas/weekly/archive/2015/08_06/index.cfm) dated August 6, 2015]

"REX reversal complete. The Rockies Express Pipeline completed its east-to-west reversal early this month, officially placing into service an additional 1.2 Bcf/d of incremental east-to-west capacity, bringing the total capacity to 1.8 Bcf/d. However, ongoing construction at downstream interconnections may be hampering westward flows, according to Bentek Energy analysis. Outflows on REX have been below the 1.8 Bcf/d capacity since the reversal was officially completed."

3. and apparently the east to west capacity is still expanding... FERC approved additional east to west flows in March

<http://webcache.googleusercontent.com/search?q=cache:U73EYUCNKW0J:www.naturalgasintel.com/articles/101529-rockies-express-gets-ferc-approval-for-east-to-west-capacity-expansion+&cd=4&hl=en&ct=clnk&gl=us>

"REX has received approval from the Federal Energy Regulatory Commission (FERC) to modify "certain facilities" along the REX pipeline from Monroe County, OH all the way to Moultrie County, IL-something they call the Zone 3 East-to-West Project. When complete, it means REX will flow an additional 1.2 billion cubic feet of natural gas per day from the Utica and Marcellus to Midwest markets"

Citation: marcellus Drilling News, March 3, 2015, "Rockies Express Gets FERC Approval For East-to-West Capacity Expansion"

4. It appears that just a few days ago this pipeline reversal went into service...

"The Rockies Express Pipeline (REX), originally built from Colorado and Wyoming to Monroe County, OH to bring natural gas from west to east, will reverse the flow for a large and important section of the pipeline. On August 1, the section of REX from Monroe County, OH to Mexico, MO will reverse the flow and carry 1.8 billion cubic feet per day (Bcf/d) of Utica and Marcellus Shale gas to the Midwest, including to the greater Chicago area. This flow reversal has the power to a) increase prices northeast drillers receive for their natural gas, and b) lower the cost of natural gas for consumers (and industrial companies, and electric generating plants, etc.) in places like Chicago. [NGI, July 30, 2015, *emphasis mine*]

[http://webcache.googleusercontent.com/search?q=cache:9vQs34x\\_qRkJ:marcellusdrilling.com/2015/07/1-8-bcfd-of-marcellusutica-gas-heads-west-on-rex-starting-aug-1/+&cd=1&hl=en&ct=clnk&gl=us](http://webcache.googleusercontent.com/search?q=cache:9vQs34x_qRkJ:marcellusdrilling.com/2015/07/1-8-bcfd-of-marcellusutica-gas-heads-west-on-rex-starting-aug-1/+&cd=1&hl=en&ct=clnk&gl=us)

So if more gas flows west to Chicago and eventually to Colorado, Oregon (on existing pipelines originally designed to flow the other way) it keeps prices low in the west but raises the well head price in the east.

If the wellhead price goes up from \$2 to \$4 in Pennsylvania it will undercut the argument used by Anthony Buxton and Kinder Morgan in their presentations about saving money for Northeast consumers, particularly electricity consumers. Their argument is that New England electricity consumers paid \$7 billion extra on energy costs because we didn't have the access to the \$2 gas available a few hundred miles to the west. Well now thanks to REX, and other pipelines like it to send gas to other parts of North America on existing pipelines, the predicted \$2 gas they are telling us we can get by building *NED is unlikely to be available to us at ANY time after 2016 or 2017. As a result the industry appears to be backing off from their original concept which was complete reversal of the Maritimes and Northeast pipeline from Dracut to Nova Scotia. The change in primary project scope and purpose may warrant a restart of the entire FERC pre-file and/or scoping process.*

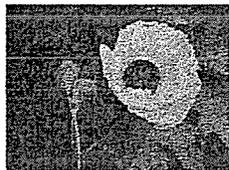
Given the precarious viability of shale produced products, is it prudent for New Hampshire to bet so heavily on future shale production? Is it wise for our state to carve up land and put so many lives, ecosystems, property, water quality and quality of life at risk for this uncertain gamble? We are being told we have to give up our home of 20 years, give up the equity in our home that we have struggled to pay for, give up our peace of mind and our peace. We are told our home will stay even as all the gardens and land surrounding it will be denuded of nature, and periodically treated with toxic herbicides to prevent future growth. Our home will stay but we will no longer have a supply of potable water because of blasting at our well site. We are being told we are in the "incineration zone" should a pipe rupture and explode. We are being told we can stay in a worthless property and still pay taxes on it even tho it is, in all ways, uninhabitable. This is madness! In what rational scheme does this make sense? Please stop NED!

Thank-you

Susan Wessels

182 Sunridge Road

Rindge NH 03461



Susan Levin Wessels *Photographer, Interior Blooms*  
6038995530 | 9784130164 | 182 Sunridge Rd. Rindge,  
NH 03461 | [slwessels2010@gmail.com](mailto:slwessels2010@gmail.com) |  
<http://www.interiorblooms/zenfolio.com>

DG 14-380

NH Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429  
August 20, 2015

REC-24 AUG 19 12:18

Dear Sirs:

Please find enclosed copies of letters sent to FERC and Governor Hassan concerning Kinder Morgan's proposed Northeast Energy Direct gas pipeline for your consideration.

Sincerely,



Michael Maki  
71 Maki Road  
New Ipswich, NH 03071

Office of the Governor  
State House  
107 North Main Street  
Concord, NH 03301  
July 30, 2015

Dear Governor Hassan,

I am a landowner whose farm, which has been in our family since 1906, lies in the direct path of the Northeast Energy Direct Project (NED) as currently proposed by Tennessee Gas Pipeline Company, L.L.C. Division of Kinder Morgan.

Even though it is generally accepted that New England needs more energy, the NED pipeline would deliver far more natural gas than the region needs or could use. Other projects already approved can meet New England's current and projected shortfall and are much less disruptive than NED. One can only conclude that the natural gas supplied by NED will be sold for export with little or no gas supplied to or needed in New England. Certainly there would be no benefit to New Hampshire. If this project is allowed to proceed the result will be the taking of more private property by eminent domain for corporate profit. The landowners are left with unusable land that they still own and pay taxes on, receiving a onetime token payment to host the pipeline and live with the consequences while Kinder Morgan generates a cash stream for themselves year after year.

Please stand with me and oppose the NED project.

Thank you for your consideration.

Sincerely,



Michael Maki  
71 Maki Road  
New Ipswich, NH 03071

August 20, 2015

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Room 1A  
Washington, DC 20426

Re: Northeast Energy Direct Project Docket #PF14-22

Dear Ms. Bose,

Furnace Brook in New Ipswich, NH is a tributary of the Souhegan River. It in turn is fed by several small streams all of which are seasonal except one. There is a spring on my property (Map6 Lot21) on Kidder Mountain adjacent to the power line that never dries insuring that Furnace Brook always has water. Should construction of the pipeline disturb that flow it is inevitable that Furnace Brook would be dry at certain times changing the current ecology of that waterway.

Sincerely,



Michael Maki  
71 Maki Road  
New Ipswich, NH 03071

July 30, 2015

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Room 1A  
Washington, DC 20426

Re: Northeast Energy Direct Project Docket #PF14-22

Dear Ms. Bose,

I am writing to register my opposition to the Northeast Energy Direct Project (NED) as currently proposed by Tennessee Gas Pipeline Company, L.L.C. Division of Kinder Morgan, and to urge the Federal Regulatory Energy Commission to deny permits for the project to proceed.

Even though it is generally accepted that New England needs more energy, the NED pipeline would deliver far more natural gas than the region needs or could use. Other projects already approved can meet New England's current and projected shortfall and are much less disruptive than NED. One can only conclude that the natural gas supplied by NED will be sold for export with little or no gas supplied to or needed in New England. If this project is allowed to proceed the result will be the taking of more private property by eminent domain for corporate profit. The landowners are left with unusable land that they still own and pay taxes on, receiving a onetime token payment to host the pipeline and live with the consequences while Kinder Morgan generates a cash stream for themselves year after year.

Please reject the NED project.

Thank you for your consideration.

Sincerely,



Michael Maki  
71 Maki Road  
New Ipswich, NH 03071

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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

July 22, 2015 - 2:31 p.m.  
Concord, New Hampshire

DAY 2

*{REDACTED - for public use}*

MPUC JUL 20 15 PM 1:07

RE: DG 14-380  
LIBERTY UTILITIES (ENERGYNORTH NATURAL  
GAS) CORP. d/b/a LIBERTY UTILITIES:  
*Petition for Approval of a Firm  
Transportation Agreement with the  
Tennessee Gas Pipeline Company, LLC.*

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott

Sandy Deno, Clerk (until 4:03 p.m.)  
Clare Howard-Pike, Clerk (after 4:03 p.m.)

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth  
Natural Gas) Corp. d/b/a Liberty Utilities:  
Sarah B. Knowlton, Esq. (Rath, Young...)

Reptg. the Pipe Line Awareness Network  
for the Northeast, Inc. (PLAN):  
Richard A. Kanoff, Esq. (Burns & Levinson)  
Zachary R. Gates, Esq. (Burns & Levinson)

Reptg. Residential Ratepayers:  
Susan Chamberlin, Esq., Consumer Advocate  
Dr. Pradip Chattopadhyay, Asst. Cons. Adv.  
Office of Consumer Advocate

Reptg. PUC Staff:  
Rorie E. Patterson, Esq.  
Stephen P. Frink, Asst. Dir./Gas & Water Div.  
Al-Azad Iqbal, Gas & Water Division  
Melissa Whitten (LaCapra Associates)

Court Reporter: Steven E. Patnaude, LCR No. 52

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I N D E X

PAGE NO.

WITNESS PANEL: FRANCISCO C. DaFONTE  
WILLIAM J. CLARK  
MELISSA WHITTEN

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 that "this couldn't be a good deal", but that "the  
2 Company hadn't demonstrated that it was a good deal"?

3 A. (Whitten) Essentially, yes. Yes. I mean, as filed,  
4 with no changes, you have to have a position on that,  
5 assuming they refused to make any changes. But, in  
6 fact, they did come forth with responses through  
7 rebuttal and through other venues, technical sessions  
8 and discovery, with additional information.

9 Q. You probably don't know this, but this pile of public  
10 comments that we've had printed out, I'm guessing  
11 there's somewhere between 80 and 100 public comments,  
12 all but a handful are negative. And, all but a handful  
13 of those negative ones quote you. They quote your  
14 testimony.

15 A. (Whitten) They do, yes.

16 Q. They quoted -- many of them quote the same passages.  
17 But I think that, well, I guess I would say, what would  
18 you say to the people who looked at your original  
19 testimony and said "she thinks this a bad idea." How  
20 would you respond to them today?

21 A. (Whitten) I would say that the recommendations that I  
22 made were conditional on the opportunity for the  
23 Company to improve their filing. That they were tied  
24 specifically to the assumptions for growth. I've had

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

August 6, 2015 - 9:06 a.m.  
Concord, New Hampshire

DAY 3

*(REDACTED - for public use)* AUG 19 15 09:06

RE: DG 14-380  
LIBERTY UTILITIES (ENERGYNORTH NATURAL  
GAS) CORP. d/b/a LIBERTY UTILITIES:  
*Petition for Approval of a Firm  
Transportation Agreement with the  
Tennessee Gas Pipeline Company, LLC.*

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott  
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth  
Natural Gas) Corp. d/b/a Liberty Utilities:  
Sarah B. Knowlton, Esq. (Rath, Young...)

Reptg. the Pipe Line Awareness Network  
for the Northeast, Inc. (PLAN):  
Richard A. Kanoff, Esq. (Burns & Levinson)  
Zachary R. Gates, Esq. (Burns & Levinson)

Reptg. Residential Ratepayers:  
Susan Chamberlin, Esq., Consumer Advocate  
Dr. Pradip Chattopadhyay, Asst. Cons. Adv.  
Office of Consumer Advocate

Reptg. PUC Staff:  
Rorie E. Patterson, Esq.  
Stephen P. Frink, Asst. Dir./Gas & Water Div.  
Al-Azad Iqbal, Gas & Water Division

Court Reporter: Steven E. Patnaude, LCR No. 52

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**I N D E X**

**PAGE NO.**

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[WITNESS: Chattopadhyay]

- 1 A. I need to understand, when you say "more capacity than  
2 needed", what is "needed"? I mean, what -- you can  
3 point out is what design day was it targeting? And, at  
4 this point, I don't know what that -- what design day  
5 you were talking, which years. So, I can't really  
6 respond to that.
- 7 Q. Do you know when the last project was constructed that  
8 reflected new capacity that was built to interconnect  
9 with the Company's distribution system?
- 10 A. I don't know precisely. But, subject to check, I  
11 remember there was discussions about it somewhere, in  
12 the data responses I think. So, it could be fifteen,  
13 fifteen years or twenty years ago.
- 14 Q. All right. Setting aside the amount of capacity that  
15 the Company purchases, --
- 16 A. Say that again. Sorry.
- 17 Q. Setting aside the amount of capacity that the Company  
18 purchases, would you agree that the NED Pipeline has  
19 some benefits that have nothing to do with price or,  
20 for that matter, you know, the amount of capacity that  
21 is procured? And "benefits" I mean to the Company and  
22 its customers.
- 23 A. Yes, I do.
- 24 Q. What are those benefits?

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay]

- 1 A. I've sort of already mentioned, whenever you  
2 overprocure, there is greater flexibility. So, I'm not  
3 discounting that. And, I've already indicated that.  
4 But this isn't about just looking at what the Company  
5 wants. It's also about what the ratepayers are going  
6 to be subject to. And, one cannot ignore the realities  
7 that this, even in terms of planning for projects that  
8 take a while to be in the ground, there's a reasonable  
9 planning horizon. I mean, to me, that's the crux here.
- 10 Q. But can you explain, when you were referred to one of  
11 the benefits that you see of this project to the  
12 Company, when you said "greater flexibility", can you  
13 explain what you mean by that?
- 14 A. Leaving aside the issue of cost, for example, we have  
15 already discussed it. So, to the extent that you are  
16 able to figure out that such and such propane  
17 facilities can be cost-effectively retired, the reality  
18 that you have excess capacity from other sources, it  
19 helps you to implement that sooner.
- 20 Q. Do you see any benefit to the Company of having a  
21 second delivery point into its system?
- 22 A. Yes, I do.
- 23 Q. That would be another benefit of this project?
- 24 A. Yes.

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

TEXT OF RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

**Constitutional Provisions**

*United States Constitution*

**United States Constitution, Amend. V:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**United States Constitution, Amend. XIV:**

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws ...

*New Hampshire State Constitution*

**New Hampshire State Constitution, Pt. I, Art. 2:**

**2. [Natural Rights.]** All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.

**New Hampshire State Constitution, Pt. I, Art. 12:**

**12. [Protection and Taxation Reciprocal.]** Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

**New Hampshire State Constitution, Pt. I, Art. 12-a:**

**12-a. [Power to Take Property Limited.]** No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.

**New Hampshire State Constitution, Pt. I, Art. 15:**

**15. [Right of Accused.]** No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

**New Hampshire State Constitution, Pt. I, Art. 23:**

**23. [Retrospective Laws Prohibited.]** Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.

**New Hampshire State Constitution, Pt. I, Art. 35:**

**35. [The Judiciary; Tenure of Office, etc.]** It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices so long as they behave well; subject, however, to such limitations, on account of age, as may be provided by the constitution of the state; and that they should have honorable salaries, ascertained and established by standing laws.

**New Hampshire State Constitution, Pt. II, Art. 5:**

**5. [Power to Make Laws, Elect Officers, Define Their Powers and Duties, Impose Fines and Assess Taxes; Prohibited from Authorizing Towns to Aid Certain Corporations.]** And farther, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same, for the necessary support and defense of the government thereof, and to name and settle biennially, or provide by fixed laws for the naming and settling, all civil officers within this state, such officers excepted, the election and appointment of whom are hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this state, and the forms of such oaths or affirmations as shall be respectively administered unto them, for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and also to impose fines, mulcts, imprisonments, and other punishments, and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the governor of this state for the time being, with the advice and consent of the council, for the public service, in the necessary defense and support of the government of this state, and the protection and preservation of the subjects thereof, according to such acts as are, or shall be, in force within the same; provided that the general court shall not authorize any town to loan or give its money or credit directly or indirectly for the benefit of any corporation having for its object a dividend of profits or in any way aid the same by taking its stocks or bonds. For the purpose of encouraging conservation of the forest resources of the state, the general court may provide for special assessments, rates and taxes on growing wood and timber.

**Statutes**

*Federal Statutes*

**15 U.S.C. §717f. Construction, extension, or abandonment of facilities**

**(a) Extension or improvement of facilities on order of court; notice and hearing**

Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

**(b) Abandonment of facilities or services; approval of Commission**

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

**(c) Certificate of public convenience and necessity**

(1)(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of-

- (A) natural gas sold by the producer to such person; and
- (B) natural gas produced by such person.

**(d) Application for certificate of public convenience and necessity**

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

**(e) Granting of certificate of public convenience and necessity**

Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a

certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

**(f) Determination of service area; jurisdiction of transportation to ultimate consumers**

(1) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

**(g) Certificate of public convenience and necessity for service of area already being served**

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

**(h) Right of eminent domain for construction of pipelines, etc.**

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000.

**R.S.A. 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.

**R.S.A. 541-A:1 Definitions.** – In this chapter:

...  
XV. "Rule" means each regulation, standard, form as defined in paragraph VII-a, or other statement of general applicability adopted by an agency to (a) implement, interpret, or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies. The term does not include (a) internal memoranda which set policy applicable only to its own employees and which do not affect private rights or change the substance of rules binding upon the public, (b) informational pamphlets, letters, or other explanatory material which refer to a statute or rule without affecting its substance or interpretation, (c) personnel records relating to the hiring, dismissal, promotion, or compensation of any public employee, or the disciplining of such employee, or the investigating of any charges against such employee, or (d) declaratory rulings. The term "rule" shall include rules adopted by the director of personnel, department of administrative services, relative to the state employee personnel system. Notwithstanding the requirements of RSA 21-I:14, the term "rule" shall not include the manual described in RSA 21-I:14, I or the standards for the format, content, and style of agency annual and biennial reports described in RSA 21-I:14, IX, which together comprise the manual commonly known as the administrative services manual of procedures. The manual shall be subject to the approval of governor and council.

**R.S.A. 541-A:11 Public Hearing and Comment.** –

I. (a) Each agency shall hold at least one public hearing on all proposed rules filed pursuant to RSA 541-A:3 and shall afford all interested persons reasonable opportunity to testify and to submit data, views, or arguments in writing or, if practicable for the agency, in electronic format, in accordance with the terms of the notice filed pursuant to RSA 541-A:3, I and the provisions of this section. The office of legislative services shall provide oral or written comments on potential bases for committee objection under RSA 541-A:13, IV in a form and manner determined by the director of the office of legislative services. Each agency shall require all materials submitted in writing to be signed by the person who submits them, and the agency shall transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic mail, or other electronic format. Copies of the proposed rule shall be available to the public under RSA 91-A and at least 5 days prior to the date of the hearing.

(b) For rules proposed by a board or commission, a period of at least 5 business days after the hearing shall be provided for the submission of materials in writing or in electronic format, unless a

shorter period is specified in the notice. If a shorter period is specified in the notice, the deadline for the submission of such materials shall not be earlier than the scheduled conclusion of the public hearing. For rules proposed by an agency official, a period of at least 5 business days after the hearing shall be provided in all instances. If a hearing is continued or postponed as provided in paragraph III or IV of this section, the period for the submission of materials in writing or in electronic format shall be extended unless the previously-established deadline meets the applicable requirement specified above.

(c) An agency may hold a public hearing or otherwise solicit public comment on a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3, V. Notice of such hearing or comment period shall be provided by such means as are deemed appropriate to reach interested persons, which may include publishing a notice in the rulemaking register.

II. For rules proposed by a board or commission, each hearing shall be attended by a quorum of its members. For rules proposed by an agency official, each hearing shall be held by the official having the rulemaking authority, or designee, who shall be knowledgeable in the particular subject area of the proposed rules.

III. To provide reasonable opportunity for public comment, the agency may continue a public hearing past the scheduled time or to another date, or may extend the deadline for submission of written comment. If the agency continues the hearing or extends the deadline, it shall notify the public by any means it deems appropriate, including notice in the rulemaking register whenever practicable.

IV. A public comment hearing may be postponed in the event of any of the following:

(a) Inclement weather.

(b) Illness or unavoidable absence of the official with rulemaking authority.

(c) Lack of a quorum due to illness or unavoidable absence.

(d) Determination by the agency that postponement of the public comment hearing shall facilitate greater participation by the public. If a public comment hearing is postponed, the agency shall provide notice in the rulemaking register at least 5 days before such postponed public comment hearing, and may also provide notice by any other means it deems appropriate.

V. A public comment hearing may be moved to another location if the agency determines for any reason that the original location is not able to accommodate the public. If changing the location does not also necessitate a change in the date of the public comment hearing, the agency shall post notice of the new location at the originally scheduled facility. If changing the location necessitates a change in the date of the public comment hearing, the agency shall provide notice as required by paragraph IV.

VI. On request, the agency shall promptly provide a copy of any rule as filed with the director at any stage in the rulemaking process. If the copy is mailed, it shall be sent not later than the end of the third working day after the request is received. The agency may, pursuant to RSA 91-A:4, IV, charge the actual cost of providing such copy.

VII. If requested by an interested person at any time before 30 days after final adoption of a rule, the adopting authority shall issue an explanation of the rule. The explanation shall include:

(a) A concise statement of the principal reasons for and against the adoption of the rule in its final form.

(b) An explanation of why the adopting authority overruled the arguments and considerations against the rule.

VIII. In addition to seeking information by other methods, an agency, before publication of a notice of proposed rulemaking under RSA 541-A:6, may solicit comments from the public on a subject matter of possible rulemaking under active consideration within the agency by causing notice to be published in the rulemaking register of the subject matter and indicating where, when, and how persons may provide comment on the rules under consideration.

**R.S.A. 541-A:12 Filing Final Proposal. –**

I. After fully considering public comment and any committee comments or comments by the office of the legislative services received pursuant to RSA 541-A:11, and any other relevant information, a quorum of the members of the agency or the agency official having rulemaking authority shall establish the text of the final proposed rule. After the text of the final proposed rule has been established, the agency shall file the final proposal no earlier than 21 days and no later than 150 days after the date of publication of the notice in the rulemaking register. If an agency is required to rewrite a rule in accordance with RSA 541-A:8, the agency shall have up to 180 days after the date of publication of the notice in the rulemaking register to file the final proposal. The agency shall file the final proposal with the director of legislative services. Final proposals filed no later than 14 days before a regularly scheduled committee meeting shall be placed on the agenda for that meeting. Final proposals filed fewer than 14 days before a regularly scheduled committee meeting shall be placed on the agenda of the following regularly scheduled committee meeting ...

**R.S.A. 541-A:22 Validity of Rules. –**

...

[Paragraph II effective until September 11, 2015; see also paragraph II set out below.]

II. Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as provided by RSA 541-A:13, VI, rules shall be prima facie evidence of the proper interpretation of the matter that they refer to.

[Paragraph II effective September 11, 2015; see also paragraph II set out above.]

II. Rules shall be valid and binding on persons they affect, and shall have the force of law unless they have expired or have been amended or revised or unless a court of competent jurisdiction determines otherwise. Except as provided by RSA 541-A:13, VI, rules shall be prima facie evidence of the proper interpretation of the matter that they refer to.

**541-A:33 Evidence; Official Notice in Contested Cases. –**

I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.

II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

V. Official notice may be taken of any one or more of the following:

- (a) Any fact which could be judicially noticed in the courts of this state.
- (b) The record of other proceedings before the agency.
- (c) Generally recognized technical or scientific facts within the agency's specialized knowledge.

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

VI. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

**R.S.A. 541-A:35 Decisions and Orders.** – A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed promptly to each party and to a party's recognized representative.

**R.S.A. 162-H:1 Declaration of Purpose.** – The legislature recognizes that the selection of sites for energy facilities may have significant impacts on and benefits to the following: the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety. Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire; that undue delay in the construction of new energy facilities be avoided; that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion. In furtherance of these objectives, the legislature hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

**R.S.A. 162-H:10-b Siting of High Pressure Gas Pipelines; Rulemaking; Intervention.** –

I. To meet the objectives of this chapter, and with due regard to meeting the energy needs of the residents and businesses of New Hampshire, the general court finds that appropriately sited high pressure gas pipelines subject to committee approval have the potential to assist the state in accomplishing these goals. Accordingly, the general court finds that it is in the public interest for the site evaluation committee to establish criteria or standards governing the siting of high pressure gas pipelines in order to ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process. When establishing any criteria, standard, or rule for a high pressure gas pipeline or when specifying the type of information that a high pressure gas pipeline applicant shall provide to the committee for its decision-making, the committee shall rely upon the best available evidence.

II. For the adoption of rules, pursuant to RSA 541-A, relative to the siting of high pressure gas pipelines, the committee shall address the following:

(a) Impacts to natural, scenic, recreational, visual, and cultural resources.

(b) Health and safety impacts, including but not limited to, proximity to high pressure gas pipelines that could be mitigated by appropriate setbacks from any high pressure gas pipeline.

(c) Project-related sound and vibration impact assessment prepared in accordance with professional standards by an expert in the field.

(d) Impacts to the environment, air and water quality, plants, animals, and natural communities.

(e) Site fire protection plan requirements.

(f) Best practical measures to ensure quality construction that minimizes safety issues.

(g) Best practical measures to avoid, minimize, or mitigate adverse effects.

(h) Criteria to maintain property owners' ability to use and enjoy their property.

III. As soon as practicable, but no later than one year from the effective date of this section, the committee shall adopt rules, pursuant to RSA 541-A, consistent with paragraphs I and II of this section.

IV. The committee shall consider intervention in Federal Energy Regulatory Commission proceedings involving the siting of high pressure gas pipelines in order to protect the interest of the state of New Hampshire.

## Rules

**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 203.20 Settlement and Stipulation of Facts.**

...

(b) The commission shall approve a disposition of any contested case by stipulation, settlement, consent order or default, if it determines that the result is just and reasonable and serves the public interest...

### **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 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.

### **Puc 205.01 How Adopted.**

(a) A rule of the commission or any amendment or repeal thereof shall be adopted by the commission after notice and opportunity for hearing in accordance with this part.

(b) Rules may be proposed by any person or by the agency.

### **Puc 205.02 Manner for Adoption.**

(a) The commission shall commence a rulemaking proceeding by drafting a proposed rule or by accepting as a proposed rule the draft of a rule proposed by any person.

(b) With respect to any proposed rule, the commission shall conduct rulemaking and adoption proceedings pursuant to RSA 541-A.