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January 22, 2016

VIA HAND DELIVERY

Ms. Eileen Fox, Clerk
 New Hampshire Supreme Court
 One Charles Doe Drive
 Concord, NH 03301

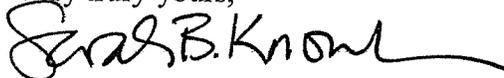
Re: Case No. 2016-0002, Appeal of Pipe Line Awareness Network for the
 Northeast, Inc.

Dear Clerk Fox:

On behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, I enclose for filing with the Court in the above-captioned matter an original and seven copies of a Motion for Summary Disposition and Supplemental Appendix regarding Pipe Line Awareness Network for the Northeast, Inc.'s Appeal Petition.

Thank you for your assistance with this matter. Please contact me should there be any questions about this filing.

Very truly yours,



Sarah B. Knowlton

Enclosures

cc: Parties of Record
 Attorney General Joseph Foster
 ✓ New Hampshire Public Utilities Commission
 Zachary R. Gates, Esq.
 Saqib Hossain, Esq.
 Richard Kanoff, Esq.

National Impact. Uniquely New Hampshire.

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THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2016 TERM

No. 2016-0002

APPEAL OF PIPE LINE AWARENESS NETWORK FOR THE NORTHEAST, INC.

MOTION FOR SUMMARY DISPOSITION

NOW COMES Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty Utilities” or the “Company”), by its attorneys, Rath, Young and Pignatelli, P.C., and respectfully moves this Honorable Court to dismiss the Appeal Petition (the “Petition”) filed by Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”) regarding the New Hampshire Public Utilities Commission’s (the “Commission”) Order 25,845 denying PLAN’s motion for rehearing (the “Rehearing Order”). The Court should summarily dispose of the Petition for two reasons: (1) PLAN did not move for rehearing on one of the issues it raises and thus the issue has not been properly preserved for appellate review, and; (2) the Rehearing Order is supported by ample evidence in the record and reflects the Commission’s policy judgments on long-term gas procurement, all of which require deference by the Court. As a result, there is no substantial question of law presented and the Commission’s decision is neither unjust nor unreasonable. In support of this Motion, Liberty Utilities states as follows:

1. This case arises out of the Commission’s approval of a contract (the “Precedent Agreement”) between Liberty Utilities and Tennessee Gas Pipeline Company, LLC (“Tennessee”) in which Liberty Utilities will purchase capacity (the right to transport natural

gas) on Tennessee's gas pipeline from Wright, New York to Liberty Utilities' gas distribution system near Nashua, New Hampshire (the "NED Pipeline"). The costs under the Precedent Agreement will be borne by Liberty Utilities' customers, but not until the construction of the NED Pipeline is approved by the Federal Energy Regulatory Commission, Liberty Utilities begins taking service from the NED Pipeline and the Commission approves a request by Liberty Utilities to include those costs in its rates. Appendix to Petition (the "Appendix") at 166 and 173. The Company sought a determination from the Commission that its decision to enter into the Precedent Agreement was prudent and consistent with the public interest.

Appendix at 2.

2. Shortly after Liberty Utilities filed the Precedent Agreement with the Commission, the Commission issued an Order of Notice providing public notice of the following issues to be considered in the docket:

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 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.

Id. at 3.

3. PLAN petitioned to intervene in the proceeding, *see* Supplemental Appendix at 1-10, and in its intervention petition, stated that:

Liberty's financial analysis will be determinative in any assessment of 'best cost' and ultimately will be a significant factor in the development of rates charged to PLAN

members as customers of Liberty; therefore, the Commission's determination as to the reasonableness and prudence of the Precedent Agreement will have a *de facto* impact on the rights and interests of PLAN's members. Accordingly PLAN and its ratepayer members are directly and substantially affected by this proceeding and should be permitted to intervene in the Commission's review of Liberty's assertion that the Precedent Agreement presents the 'best cost' capacity option and is consistent with the public interest.

Supplemental Appendix at 6 (emphasis in the original). The Commission granted PLAN's petition to intervene stating that it was "...limit[ing] 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. " *Id.* at 14.

PLAN did not Preserve for Appeal Question 1 in the Petition Which Claims the Commission did not Have the Authority to Conduct a Prudence Review of the Precedent Agreement "at this time."

4. PLAN now seeks to appeal the Commission's decision approving the Precedent Agreement arguing that the "case presents questions regarding whether the PUC has statutory authority *at this time* to approve the prudence and other ratemaking implications of the Precedent Agreement." Petition at 8 (emphasis added). However, PLAN never raised on rehearing whether the Commission had the authority to determine prudence even though it was well aware that the very nature of the Commission's review was to determine the prudence of the contract. *Supra.*

5. When the Commission approved the Precedent Agreement in Order 25,822 (October 2, 2015), *the very first sentence* of the legal analysis in the order stated that this was a prudence 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." Appendix at 166. If PLAN thought the Commission had no legal authority to conduct a prudence review of the Precedent Agreement, it should have moved to

dismiss the case at its onset, instead of waiting to raise the issue for the first time when it appealed the Rehearing Order to the Court.

6. This is all the more confounding when one considers that PLAN's motion for rehearing did argue that the prudence review that the Commission conducted was not adequate. For example, PLAN argued that the Commission's review was not thorough enough based on alleged "fundamental deficiencies" in the Company's filing:

Given the fundamental deficiencies in the filing, the Commission erred in approving the Precedent Agreement and Settlement Agreement as a matter of law and in pre-approving the prudence and reasonableness of the contract... This case wholly failed to comply with the level of review required as part of any prudence determination. In contrast to the comprehensive review undertaken in DG 07-101, referenced in the Order as a precedent for the Commission's pre-approval of the long-term contract in this case), this case was woefully inadequate as set forth in Section II.a above. It failed to reasonably evaluate multiple alternatives, including LNG as a resource, and instead relied upon, among other things, undocumented assurances of future growth and future activities, e.g., expansion into Keene and the Southwest New Hampshire communities, future activities assumed to reduce excess gas capacity, and the closure of the propane facilities. The Commission's determination of prudence (an intentionally high legal standard), should be based upon known facts and a complete record, but as it stands it is not supported in this case as a matter of law given the inadequacies of the Company's filing and reliance upon future activities.

Appendix at 178-79. Yet PLAN's rehearing motion never raised the issue of whether the Commission could lawfully undertake the analysis in the first instance.

7. The purpose of the requirement for rehearing is to give the administrative agency a chance to correct any mistake it may have made. *Appeal of Hardy*, 154 N.H. 805, 811 (2007) ("administrative agencies should have a chance to correct their own alleged mistakes before time is spent appealing from them."). PLAN never gave the Commission that opportunity, and as a result, the Court should refuse to accept PLAN's first question presented for review.

8. Apparently concerned about this deficiency when making its preservation statement required by Supreme Court Rule 10(1)(i), PLAN argues that “[t]o the extent the Court finds that any issue was not explicitly raised, PLAN submits that either: (1) any remaining issues raised in this petition were implicitly raised in the motion for rehearing...(omitting citations); or (2) good cause exists to allow PLAN to specify additional grounds for appeal, *see* RSA 541:4.” Petition at 19-20.

9. There is nothing in PLAN’s motion for rehearing that implies that PLAN questioned the Commission’s underlying authority to conduct a prudence review. The Commission was clear from the day it opened the case in January 2015 and throughout the proceeding that it was reviewing the prudence of the Precedent Agreement. Any effort by PLAN to argue that it implicitly questioned this authority should not be convincing. PLAN also claims there is “good cause” for the Court to hear any issue not specifically raised, but offers no explanation for the basis of this good cause argument. The Court should reject PLAN’s after-the-fact attempt to broaden the case, particularly where there was explicit notice at the beginning of the case of the Commission’s intention to conduct a prudence review of the Precedent Agreement, and PLAN’s explicit acknowledgment of the nature of the review in its petition to intervene.

The Court Should Summarily Affirm the Case on the Remaining Issues Because They Do not Raise a Substantial Question of Law and the Commission’s Decision is Neither Unjust nor Unreasonable.

10. Pursuant to Supreme Court Rule 25, the Court should summarily affirm the Order because the Petition presents no substantial question of law, and because the case includes an opinion from the Commission that identifies and discusses the issues, and reaches the correct result. *See* Sup. Ct. R. 25(1). Further, PLAN’s Petition does not raise an issue in

which there is a substantial basis for a difference in opinion, a circumstance in which there would be irreparable injury, or a case which presents the opportunity to decide, modify or clarify an issue of general importance in the administration of justice. *See* Sup. Ct. R. 10(1)(h).

11. The issues raised by PLAN - that the Commission was persuaded by the testimony of some witnesses and not others, that it concluded that LNG was not a viable alternative long term supply to serve the Company's customers, and that the Precedent Agreement was the best option to meet customer needs - do not present substantial questions of law but rather seek to have the Court supplant its judgment for the Commission's in making important decisions about long term gas supply. In addition, each of the Commission's rulings challenged by PLAN is based on ample evidence in the record, and thus there is nothing unreasonable or unjust about the Commission's decision.

12. In reviewing an order from the Commission, the Court presumes that the Commission's findings of fact are prima facie lawful and reasonable. *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. 267, 270 (2013). PLAN acknowledges that "[t]he presumption of reasonableness afforded agency decisions by RSA 541:13 'will be overcome by a showing that *no* evidence was presented in the record to sustain the order.'" Petition at 14 (emphasis added). This Court has held that where the Commission is balancing competing economic interests, the Court will not supplant the Commission's balance of interests "with one more nearly to our liking," particularly given that the legislature "has entrusted such policy to the informed judgment of the PUC and not to the preference of reviewing courts." *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. at 270-71. Accordingly, this Court "give[s] the PUC's policy choices considerable deference." *Id.* at 271.

13. PLAN argues in question 2(a) in the Petition that the Commission's reliance on testimony by the Company as opposed to other witnesses was unreasonable and warrants reversal of the Rehearing Order. In support of this argument, PLAN relies heavily on the fact that a witness for the Commission Staff filed testimony early in the case in which she was critical of certain aspects of the Precedent Agreement. PLAN neglects to mention that the Staff witness, upon review of additional information provided by the Company during the pendency of the docket and as a result of modifications to the Precedent Agreement through a Stipulation and Settlement Agreement between the Staff and the Company, testified at length at the final hearing on the merits in favor of the Precedent Agreement. The Staff witness explained the basis for her position at the hearing, and why she concluded that the Precedent Agreement (as modified by the Stipulation and Settlement Agreement) was in the public interest, in the best interest of customers, and prudent for the Company to undertake. *See* Appendix at 28-32. The Commission was legally entitled to weigh that testimony, along with the Company's, against that of other witnesses, find it credible, and reach the conclusion that the Precedent Agreement was prudent and reasonable.

14. PLAN's arguments do not overcome the presumption of reasonableness accorded to the Rehearing Order, particularly given the extensive evidence relied on by the Commission in reaching its determination that the Precedent Agreement was prudent and reasonable. The Commission pointed out in its Rehearing Order the basis for its decision that the amount of capacity being procured was appropriate:

We disagree with PLAN that the record does not support our finding that EnergyNorth should procure pipeline capacity to support future demand growth....Planning for future load growth is always a central component of utility planning and a demand forecast is the foundation for a utility least cost integrated resource plan. Order at 25-26. We found EnergyNorth's estimates of increased demand credible and consistent with the last filed

2013 LCIRP. Order at 25-27. There is ample support in the record for our findings on future demand growth. *See, e.g.*, Exhibit 8 at 26, lines 2-6 and fn. 33 (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); Tr. Day 1 at 52, lines 18-22 (since the filing of the Company's rebuttal, two or three additional capacity customers have returned to firm sales service and assigned capacity, with approximately at 200 Dth requirement on design day; the Company still has 14,000 Dth of design day capacity-exempt load that could migrate back to sales service and capacity assignment); *id.* at 54, lines 2-9 (the Company is in discussion with Concord Steam customers who may become sales and capacity-assigned customers.)(omitting footnote). We acknowledge that EnergyNorth's growth projections may not end up being perfect, but they are far from speculative.

Appendix at 219-20. The Commission also explained the basis for its conclusion that the alternatives to the NED Pipeline were more expensive:

PLAN's objection to the Concord Lateral estimates is not a new argument. Tr. Day 3 at 83, line 9 to 84, line 18. We found those estimates to be sufficiently reliable as a cost comparison to other supply alternatives. Order at 28. The cost estimates for upgrades to the Concord Lateral were prepared by TGP, the owner and operator of the Concord Lateral. Tr. Day 1 at 210, line 8 to 211, line 13, and at 212, lines 18-22 (Company witness testifies about initial and updated cost estimates for the Concord Lateral upgrade); Tr. Day 2 at 83, line 23 to 84, line 16 (Company witness testifies that the updated cost estimate for Concord Lateral upgrade exceeds the costs of the NED project 'all the way back to Marcellus'). The fact that PLAN disagrees with our conclusion does not render the evidence on the issue insufficient.

Id. at 218.

15. While PLAN still may not like the fact that the Commission found this evidence credible, that does not make the Commission's decision unjust or unreasonable. Effectively, PLAN asks the Court to replace its judgment for the Commission's on this very evidence, which the Court should decline to do. *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. at 270-71.

16. PLAN similarly argues that the Commission was wrong in its judgment that LNG was not a viable long term solution to the Company's need for capacity and thus did not need to be evaluated by the Company. PLAN claims, for example, that the Commission

committed legal error by concluding “without record support” that “the LNG global market is unstable and may compromise the reliability of EnergyNorth’s service to customers at least cost, particularly on design day or during a design season...” Petition at 15.

17. PLAN’s contention that there was no support in the record for this finding is incorrect. When PLAN raised this issue in its rehearing motion, the Commission pointed PLAN to the record on this issue that supported its decision:

Although PLAN disputes our findings that LNG supply is unstable, both as to supply and pricing due to global demand, we found the evidence presented on the issue credible. Order at 29; *see also* Tr. Day 1 at 62, lines 16-21 (LNG is a global commodity that sells to the highest bidder); *id.* at 61, line 16 to 63, line 1, and at 88, lines 7-17 (offshore LNG supplies available at Dracut are declining, lack of LNG ‘liquidity’ causes price spikes).

In addition, the Commission was not obliged to consider LNG as an alternative to pipeline capacity, and we disagree with PLAN and the OCA that our analysis was deficient or incorrect. Even if we had required consideration of LNG, the Company provided a sufficient explanation to support a finding that expansion of its existing LNG peaking capacity or the development of new LNG peaking capacity within its franchise is not an available option to meet its long-term design day needs. *See, e.g.*, Tr. Day 2 at 62, line 1, to 63, line 9 (EnergyNorth did not consider expansion of its existing LNG peaking capacity because of federal requirements for ‘vapor dispersion of LNG facilities and thermal radiation zones’ and the densely populated locations of the facilities); *id.* at 64, line 6; to 66, line 12 (EnergyNorth unaware of locations within its franchise to site a new LNG facility to meet long-term design day demand comparable to the Precedent Agreement capacity); *see also* Order at 8 and 29.

Appendix at 216-17. The Rehearing Order could not be more explicit about the record evidence supporting the claim and how the Commission weighed this evidence in making its determination as to why LNG is not a viable option for long term supply. As a result, PLAN’s claim that the Commission’s ruling was unsupported is not convincing, and does not meet the legal standard for acceptance of an appeal. Rather, it highlights why this case is so appropriate for summary affirmance.

18. In its last effort to attempt to convince the Court to replace its judgment for the Commission's, PLAN asserts that the "Commission mistakenly determined that 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.'" Petition at 17. In essence, PLAN argues that the Commission weighed the evidence incorrectly. Based on *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. at 270, the Court should not accept this issue for review.

19. Both Commission Order 25,822 and the Rehearing Order clearly articulate the basis for the Commission's determination that purchase of capacity via the Precedent Agreement was a better option for customers than the existing capacity contract that required purchase of capacity at Dracut, Massachusetts. The Commission explained not only the basis in the record for its decision, but which evidence it found persuasive in reaching its conclusion:

...we found the testimony supporting the price volatility at Dracut credible. Order at 27-28; *see, e.g.*, Tr. Day 1 at 66, lines 4-10 (NED avoids Dracut, described as 'one of the highest price points in North America' for purchasing gas); Tr. Day 3 at 79, line 4 to 80, line 5 (PLAN witness agreed with EnergyNorth's witness's concerns about price spikes at Dracut, stating 'his point is certainly well taken that there's been a great deal of price volatility in New England the last several winters'); *id.* at 82, lines 10-13 (PLAN's witness testified the 'issue with supply at Dracut, in particular, and New England more generally, is largely an issue of price').

As PLAN noted in its motion, we also based our conclusions on other benefits of replacing the Dracut supply: (1) avoidance of supply constraints at Dracut, (2) increased reliability, (3) opportunity for a new lateral off West Nashua delivery point, and (4) avoidance of costly upgrades to the Concord Lateral. (omitting citations). Based on the evidence presented, the alternate supply provided by the Precedent Agreement appears to be a less expensive source of supply when compared to alternatives. Hearing Tr. Day 1 at 57, lines 2-7, and 177, lines 10-14 (115,000 on NED, ensures long-term reliability of supply at least cost); Tr. Day 2 at 83, line 23, to 84, line 16 (NED project less expensive than alternatives even without costs of Concord Lateral expansion.) Therefore, we reject PLAN's argument that we erred in our findings about the replacement of the existing Dracut capacity.

Appendix at 214. As the Commission explained, it approved the Precedent Agreement instead of continued purchases of capacity at Dracut based on a many reasons, such as price and the need for reliable gas supply. This is exactly the type of policy determination that the legislature has delegated to the Commission. *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. at 271. The fact that PLAN disagrees with the Commission’s findings does not make the Commission orders unjust or unreasonable, and does not create any substantial issue of law that warrants the Court’s consideration.

20. Finally, PLAN argues that the Court should accept its Petition because it “is the first one to test aspects of the manner in which the NED pipeline – and its attendant impact on the public interest – are addressed by the PUC.” Petition at 18. Simply put, PLAN argues that this case warrants review by this Court because of the nature of the underlying project (the NED Pipeline), not because of any substantial legal issue that is important to resolve. As explained *supra*, all of the issues raised by PLAN in its Petition have already been well established by this Court: that issues not raised on rehearing cannot be the subject matter of an appeal, *Appeal of Hardy*, 154 N.H. 805, 811 (2007); *see also, Appeal of Walsh*, 156 N.H. 347, 352 (2007); that decisions of administrative agencies will not be reversed where there is record support for the agency’s decision, *Appeal of Regenesis*, 156 N.H. 445, 451-54 (2007), citing *Appeal of Basani*, 149 N.H. 259, 261-62 (2003), and that the Court will not replace the agency’s judgment, when weighing the evidence of record, with its own. *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. at 270, citing *Appeal of Pennichuck Water Works*, 160 N.H. 18, 26 (2010). For the reasons stated above, Liberty Utilities requests that the Court summarily affirm the Rehearing Order.

WHEREFORE, Liberty Utilities respectfully requests that this Honorable Court:

- A. Summarily affirm Commission Order 25,845, and;
- B. Grant such other relief as it deems appropriate.

Respectfully submitted,

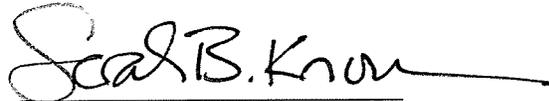
LIBERTY UTILITIES (ENERGYNORTH
NATURAL GAS) CORP. D/B/A LIBERTY
UTILITIES

By Its Attorneys,

RATH, YOUNG AND PIGNATELLI, P.C.

January 22, 2016

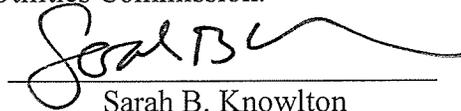
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Certification of Compliance

I hereby certify that on this 22nd day of January, 2016, I have forwarded a copy of the foregoing Motion for Summary Disposition by first class mail, postage prepaid, to the parties of record, Attorneys Gates, Kanoff and Hossain, the Attorney General of the State of New Hampshire and the New Hampshire Public Utilities Commission.



Sarah B. Knowlton

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

2016 TERM

DOCKET NO. 2016-0002

APPEAL OF PIPE LINE AWARENESS NETWORK FOR THE NORTHEAST, INC.

SUPPLEMENTAL APPENDIX TO MOTION FOR SUMMARY DISPOSITION

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

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January 22, 2016

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

Docket No.: DG 14-380

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

Petition for Approval of Long-Term Firm Transportation Agreement

**PETITION TO INTERVENE
OF PIPE LINE AWARENESS NETWORK FOR THE NORTHEAST, INC.**

Pursuant to the New Hampshire Public Utilities Commission's (the "Commission") Order of Notice dated January 21, 2015, N.H. Code Admin. Rules Puc 203.17, and RSA 541-A:32, Pipe Line Awareness Network for the Northeast, Inc. ("PLAN") hereby respectfully petitions for leave to intervene in the above-captioned proceeding. In support of its petition, PLAN states the following:

BACKGROUND

1. On December 31, 2014, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Liberty") filed with the Commission a petition for approval (the "Petition") of a firm transportation agreement (the "Precedent Agreement") with Tennessee Gas Pipeline Company, LLC ("Tennessee") and a determination that Liberty's decision to enter into the Precedent Agreement is "prudent and consistent with the public interest." Liberty is seeking final approval from the Commission of its decision to enter into the Precedent Agreement by July 1, 2015.
2. As set forth in the Petition, the Precedent Agreement consists of a 20-year contract between Liberty and Tennessee pursuant to which Liberty would purchase from Tennessee on a firm basis up to 115,000 Dth per day of capacity. Liberty is seeking the Commission's advance approval of the Precedent Agreement given the alleged

“substantial financial commitment” Liberty claims is required in connection with this transaction.

3. As set forth in the Order of Notice, this proceeding will require the Commission to address 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). As the Commission further noted, each of these issues include a determination as to whether Liberty reasonably investigated and analyzed its long term supply requirements and the available alternatives for satisfying those requirements, and whether Liberty’s entry into the Precedent Agreement is prudent, reasonable and otherwise consistent with the public interest.

LEGAL STANDARD TO INTERVENE

4. New Hampshire Code of Administrative Rules, Puc 203.17 states that the Commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32.
5. Pursuant to RSA 541-A:32 I(b) and (c), a petition *must* be granted if the petitioner states facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding (or the petition qualifies under

any provision of the law) and the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing intervention.

6. Alternatively, RSA 541-A:32 II states that the Commission *may* grant a petition to intervene “at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly conduct of the proceedings.”

**PLAN MEETS THE
STANDARDS FOR INTERVENTION IN THIS PROCEEDING**

I. Summary of PLAN

7. PLAN is a non-profit corporation organized exclusively for charitable, scientific, and educational purposes incorporated in Massachusetts.
8. A primary purpose of PLAN – as set forth in its organizational documents – is to engage in legal and regulatory advocacy on behalf of its community members in connection with fossil fuel infrastructure and its alternatives.
9. PLAN is also dedicated to educating the public about fossil fuel infrastructure and the alternatives; protecting consumers, the environment, climate, and public health from proposed and existing fossil fuel infrastructure; promoting efficiency measures, expansion of programs that manage “peak use”, and other lower impact energy solutions; and promoting, coordinating and assisting the activities of other organizations and groups whose purposes are similar.
10. The members of PLAN include customers and ratepayers of Liberty in New Hampshire. Moreover, members of PLAN are private landowners whose property will be adversely impacted (affecting their community, environment and safety) and taken by Tennessee to construct the natural gas pipeline that will provide the capacity Liberty seeks to purchase by way of the Precedent Agreement.

11. As part of its mission, PLAN is dedicated to representing the economic and property rights, privileges and interests of its members before the Commission, and ensuring that local distribution companies such as Liberty have reasonably and diligently investigated all feasible solutions for satisfying existing and future supply needs.

II. PLAN Meets the Standards for Intervention

12. The firm transportation services contemplated by the Precedent Agreement would derive from Tennessee's proposed Northeast Energy Direct ("NED") pipeline project, which is currently under review by the Federal Energy Regulatory Commission, Docket No. PF14-22-000. NED is a high-pressure natural gas pipeline proposed by Tennessee to run from Pennsylvania through the states of New York, New Hampshire, and Massachusetts, ending in Dracut, Massachusetts where it could join with existing pipelines that connect to the Massachusetts and Canadian coasts. In addition to the main transmission line, NED includes several lateral lines, as well as the construction of nine new compressor stations along the route and a large compressor station in southern New Hampshire. Tennessee's current preferred route for the NED pipeline traverses over 70 miles (not including laterals) through the state of New Hampshire.

13. PLAN members are customers of Liberty and will therefore be subject to the prices negotiated in the Precedent Agreement, if approved by the Commission.

14. PLAN members are private landowners whose property will be adversely impacted and taken by Tennessee for the construction of the NED pipeline.

15. PLAN members are the supposed beneficiaries of capacity that will be purchased by Liberty pursuant to the Precedent Agreement.

16. Based on the above, it is clear that the rights, privileges and interests of PLAN and its members will be directly and substantially impacted by this proceeding in their capacity as (i) ratepayers of Liberty; (ii) landowners of private property on which the NED pipeline will be constructed; and (iii) recipients of capacity transported across lands taken by Tennessee to facilitate the NED pipeline.

Financial Impact on PLAN Members as Ratepayers

17. Liberty's Petition states that approval of the Precedent Agreement is necessary "to reliably satisfy existing and future customer load requirements in [Liberty's] service area, and it is the best cost resource to meet the capacity needs of [Liberty's] customers." See Petition at ¶ 2. The members of PLAN represent the "existing and future customers" to which Liberty refers; therefore, PLAN and its members will be subject to any rates set forth in the Precedent Agreement.
18. As the end users who will be financially impacted by the outcome of this proceeding, the individual members of PLAN would have a *per se* right to intervene in this action and accordingly, intervention by PLAN on its members' behalf is therefore proper in this case. See Reconciliation of Energy Service and Stranded Costs for Calendar Year 2012, Docket No. 13-108, 2013 N.H. Puc. LEXIS 105, *4 (July 9, 2013) ("We find that the substantial interests of [the Conservation Law Foundation] may be affected by this proceeding, through its members that are [] ratepayers."); Petition for Approval of Power Purchase Agreement with Laidlaw Berlin Biopower, LLC, Docket No. 10-195, 2010 N.H. Puc. LEXIS 97, *14-15 (October 15, 2010) (ratepayers affected by the costs incurred from power agreements granted intervention); Petition for General Rate Increase Order Approving Procedural Schedule, Docket No. 99-057,

1999 N.H. Puc LEXIS 62, *5 (August 12, 1999) (representative of constituents affected by rate changes granted full intervener status).

19. Further, in considering alternatives to meet the future demand of its customers, Liberty claims it has “determined that the ‘best cost’ capacity option for its customers was the purchase of additional capacity from Tennessee through its NED project.” See Petition at ¶ 4. Liberty’s financial analysis will be determinative in any assessment of “best cost” and ultimately will be a significant factor in the development of rates charged to PLAN members as customers of Liberty; therefore, the Commission’s determination as to the reasonableness and prudence of the Precedent Agreement will have a *de facto* impact on the rights and interests of PLAN’s members. Accordingly PLAN and its ratepayer members are directly and substantially affected by this proceeding and should be permitted to intervene in the Commission’s review of Liberty’s assertion that the Precedent Agreement presents the “best cost” capacity option and is consistent with the public interest.

**Impact on PLAN Members as Owners of Property
on which the Pipeline will be Constructed**

20. The Petition states that “the NED project will likely provide opportunities to expand natural gas distribution service to other parts of the state, and within [Liberty’s] existing franchise territory” and will include “primary delivery points off 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. . .” See Petition at ¶¶ 2-3. “To provide this transportation service, Tennessee would construct a gas pipeline along the route depicted on Attachment FCD-1 [of the Petition].” *Id.* at ¶ 5.

21. As the owners of private land that will be impacted and taken – either by sale or by eminent domain – to facilitate construction of the NED project, the members of PLAN will be subject to the legal, physical and environmental impacts of pipeline construction on their property. Because their land rights are specifically affected by the pipeline and the Commission’s approval of the Precedent Agreement, PLAN and its members have a direct and substantial interest in the outcome of this proceeding. See Request for Arbitration Regarding Failure to Provide Access to Utility Poles by Public Service of New Hampshire, Docket No. 08-146, 2010 N.H. Puc LEXIS 27, *4 (April 7, 2010).¹
22. Moreover, Liberty asserts in its Petition that customers within its territory will benefit directly from access to capacity provided through the NED pipeline. This purported benefit, however, is contingent upon the construction of the pipeline and the taking of neighboring landowners’ property to facilitate such construction. As its members are alleged beneficiaries of the Precedent Agreement, PLAN and its members have substantial interests that may be affected by this proceeding. See Petition Requesting Easement Rights Across Property of Philip J. Ferneau, Docket No. 03-187, 2004 N.H. Puc LEXIS 13 (February 20, 2004) (beneficiary of electric services permitted to intervene where access to such services was contingent upon the taking of an abutter’s property).

¹ “Additionally, the Commission determined that landowners whose property might be involved have rights, duties, privileges, immunities or other substantial interests that may be affected by this proceeding, and that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing their intervention. The Commission determined that any landowner receiving direct notice of this docket will automatically be deemed a party upon receipt by the Commission of written notice from such landowner, or from his or her representative, that the landowner wished to participate. Participating landowners would be permitted to submit briefs and/or reply briefs regarding the legal issues identified within the secretarial letter.”

23. Intervention will allow PLAN to protect its members' interests in the financial, physical, and environmental impacts resulting from Liberty's Precedent Agreement with Tennessee and the ramifications of constructing a gas pipeline across private lands owned by PLAN members and their fellow New Hampshire citizens. Moreover, intervention will serve the interests of justice and will not impair the orderly and prompt conduct of the proceedings. In short, PLAN and its members (ratepayer and landowner) are directly and substantially affected by this proceeding and seek to intervene pursuant to RSA 541-A:32 I.

III. PLAN Meets the Discretionary Standards for Intervention

24. Alternatively, the facts and circumstances surrounding Liberty's Petition establish that PLAN's intervention should be granted pursuant to the Commission's discretionary authority under RSA 541-A:32 II. PLAN has timely requested intervention in this proceeding, and PLAN has identified the specific interests of its members that will be affected by the Commission's ultimate determination – which members each would have standing to intervene individually had they so petitioned. PLAN speaks as a single, cohesive, and unified voice on behalf of its members concerning these issues. PLAN's interests in the outcome of this proceeding will not be adequately represented by any other party hereto, nor will PLAN's participation delay this proceeding as PLAN does not request any changes to the Schedule as set forth in this Docket.

25. Under these circumstances, the Commission has routinely permitted intervention of such organizations through its discretionary authority to speak on behalf of itself and its affected members. See Determination Regarding PSNH's Generation Assets,

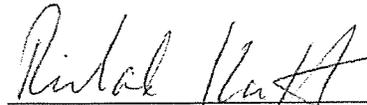
Docket No. 14-238, Order No. 25,733 (November 6, 2014) (Commission permitted discretionary intervention to business organization that “represents the interests of commercial ratepayers” where the organization’s “stated economic interests in this docket are consistent with the interests its members would likely raise.” Moreover, the Commission found it prudent to “hear from a single voice speaking on behalf of that constituency.”); Petition to Establish 2014 Energy Service Rate, Docket No. 13-275, 2013 N.H. Puc LEXIS 161, *7-8 (November 15, 2013), (even where an organization’s rights are not immediately implicated by the proceeding, intervention is permitted on a discretionary basis for organization representing the interests of its ratepayer members).

26. For these reasons, and in the alternative, PLAN requests that it be allowed to intervene pursuant to the Commission’s discretionary authority.

WHEREFORE, PLAN respectfully requests that the New Hampshire Public Utilities Commission grant its timely Petition to Intervene and permit PLAN to participate in this proceeding with full rights as a party.

Respectfully Submitted,

**Pipe Line Awareness Network for the
Northeast, Inc.**



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Boston, MA 02110
(617) 345-3000
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2015, a true and correct copy of the foregoing **PETITION TO INTERVENE OF PIPE LINE AWARENESS NETWORK OF THE NORTHEAST, INC.** was electronically served upon each individual or organization with the electronic mail address as indicated below:

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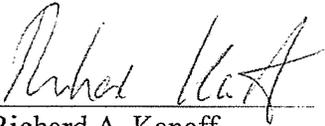
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Richard A. Kanoff

**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.

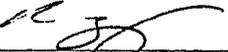
Based upon the foregoing, it is hereby

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

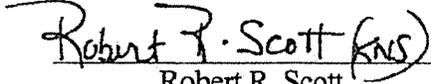
FURTHER ORDERED, that PLAN's petition to intervene is DENIED pursuant to RSA 541-A:32, I and II, on behalf of its members who are not EnergyNorth customers and own land along the proposed TGP pipeline route; and it is

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.

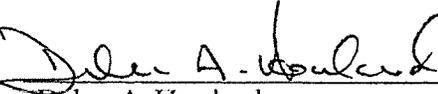


Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

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

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