

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

**National Grid USA, National Grid NE Holdings 2 LLC,
Granite State Electric Company d/b/a National Grid,
EnergyNorth Natural Gas, Inc. d/b/a National Grid NH,**

- and -

Liberty Energy Utilities Co. and Liberty Energy Utilities (New Hampshire) Corp.

Docket No. _____

**JOINT PETITION FOR AUTHORITY TO TRANSFER OWNERSHIP
OF GRANITE STATE ELECTRIC COMPANY
AND ENERGYNORTH NATURAL GAS, INC.
TO LIBERTY ENERGY UTILITIES (NEW HAMPSHIRE) CORP.
AND FOR RELATED APPROVALS**

March 4, 2011

Introduction

National Grid USA, National Grid NE Holdings 2 LLC, Granite State Electric Company d/b/a National Grid (“Granite State”), EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (“EnergyNorth”), Liberty Energy Utilities Co. (“Liberty Energy”), and Liberty Energy Utilities (New Hampshire) Corp. (“Liberty Energy NH”) (all of the foregoing are collectively referred to as the “Joint Petitioners”), hereby apply to the New Hampshire Public Utilities Commission (the “Commission”) for authority to transfer the ownership of all of the issued and outstanding stock of Granite State and EnergyNorth to Liberty Energy NH (the “Stock Transfers”) and grant such other approvals as may be necessary to complete the Stock Transfers and the other transactions set forth below.

Overview of Transactions

The Stock Transfers are structured as a purchase by Liberty Energy NH for cash of all of the issued and outstanding common stock of both Granite State and EnergyNorth from National Grid USA or its subsidiaries. Following the consummation of the Stock Transfers, Granite State and EnergyNorth will each become wholly-owned subsidiaries of Liberty Energy NH and will continue to provide electric and natural gas service, respectively, to New Hampshire customers.

In order to finance the purchase of stock, Liberty Energy NH will receive an equity infusion of approximately \$135 million from its parent company, Algonquin Power & Utilities Corp. (“Algonquin”), and will issue debt instruments to institutional lenders to obtain approximately \$135 million in additional capital. Liberty Energy NH, in turn, intends to capitalize Granite State and EnergyNorth with a debt to equity ratio of approximately 45/55, with a portion of the debt being in the form of loans by Liberty

Energy NH to each of the utilities on substantially the same terms as the third party debt it plans to issue.

Liberty Energy NH plans to operate Granite State and EnergyNorth, to the greatest extent reasonably possible and beneficial to the companies' customers, as a single, stand-alone New Hampshire business, thereby maintaining a cost effective structure while returning dozens of well-paying, skilled jobs to New Hampshire. Liberty Energy NH plans to employ a New Hampshire-based individual to act as President of the two utilities with full operational authority to oversee the operational, regulatory and financial activities of the companies. Such an ownership and operational structure will enable Granite State and EnergyNorth to continue to provide safe, reliable service to their respective customers and ensure that they are responsive to the needs and expectations of both their customers and regulators alike.

For the reasons set forth in this Joint Petition and as is described in more detail in the written testimonies accompanying it, the Stock Transfers and the other transactions described below are consistent with the public interest.

The Joint Petitioners and Related Parties

1. National Grid USA is a public utility holding company incorporated in the state of Delaware. It is an indirect, wholly-owned subsidiary of National Grid plc, the parent holding company incorporated in England and Wales. National Grid plc's United States business is conducted through National Grid USA. National Grid USA, in turn, provides electric and natural gas service to customers in New England and New York through a number of indirectly owned subsidiaries, including Granite State and EnergyNorth in New Hampshire.

2. Granite State is a New Hampshire corporation and a public utility as defined in RSA 362:2. It provides retail electric service to approximately 43,000 customers in 21 communities in Southern and Western New Hampshire.

3. EnergyNorth is a New Hampshire corporation and a public utility as defined in RSA 362:2. It provides retail gas service to approximately 86,000 customers in 30 communities throughout Southern and Central New Hampshire and in Berlin, New Hampshire. EnergyNorth is wholly owned by National Grid NE Holdings 2 LLC, which itself is indirectly owned by National Grid USA.

4. Granite State is directly and wholly owned by National Grid USA, which acquired Granite State as the result of National Grid USA's merger with New England Electric System in 2000. National Grid USA acquired EnergyNorth as the result of its merger with KeySpan Corporation in 2007.

5. Liberty Utilities Co. ("Liberty Utilities") is a Delaware corporation and conducts the regulated utility business of Algonquin. Liberty Utilities owns and operates Liberty Energy, which currently provides electrical utility service to approximately 47,000 customers, and Liberty Water Co., a Delaware corporation that provides regulated water utility services to more than 75,000 customers with a portfolio of nineteen water distribution and wastewater treatment utility systems.

6. Liberty Energy is a Delaware corporation and a wholly owned subsidiary of Liberty Utilities and an indirect subsidiary of Algonquin.

7. Liberty Energy NH is a Delaware corporation that is wholly and directly owned by Liberty Energy. Liberty Energy NH was formed for the purpose of acquiring ownership of the stock of Granite State and EnergyNorth.

8. Algonquin is a publicly traded corporation that is traded on the Toronto Stock Exchange and is incorporated under the laws of Canada, with a principal place of business in Oakville, Ontario. In 2009, Algonquin became the successor to Algonquin Power Income Fund following conversion from an income trust to a conventional common stock corporation.

9. Algonquin has two business units: (i) a power generation unit that includes forty-five renewable power generating facilities and twelve high-efficiency thermal generating facilities located in six U.S. states and Canada, and (ii) a utility services unit that owns and operates twenty regulated utilities located in five states that provide retail water, sewer and electric utility service. Algonquin has been doing business in New Hampshire since 1998 when it acquired the first of its eight New Hampshire hydroelectric facilities.

10. Organized in 1987, Algonquin has been a successful developer and operator of independent, electric generating facilities and is one of the largest renewable power companies in Canada. Algonquin owns and operates an approximately \$1.1 billion (U.S.) portfolio of renewable power electric generation and utility operations across North America. Over fifty percent of Algonquin's revenues are generated through its U.S.-based operations.

11. Algonquin acquired its first regulated utility operations in 2001 and since then has acquired an additional nineteen different water, waste water and electric utilities serving a total of approximately 125,000 customers in the United States. During that time, Algonquin has not sold any of the regulated utilities it has purchased.

The Stock Transfers

12. On December 8, 2010, National Grid USA and Liberty Energy entered into two stock purchase agreements, one for the sale and purchase of common stock of Granite State and one for EnergyNorth (the “Original Agreements”). On January 21, 2011, National Grid USA and Liberty Energy modified the Original Agreements in several limited respects by entering into amended and restated stock purchase agreements for both Granite State (the “GSE Purchase Agreement”) and EnergyNorth (the “ENGI Purchase Agreement”). (The GSE Purchase Agreement and the ENGI Purchase Agreement are referred to together as the “Purchase Agreements”.) On February 16, 2011, Liberty Energy assigned its rights under the Purchase Agreements to Liberty Energy NH. Copies of the Purchase Agreements, including all attachments thereto as well as the assignment documents, are included as Joint Petitioners Attachments 3 and 4 in the supporting materials that are being submitted to the Commission contemporaneously with this Joint Petition.

13. Pursuant to the GSE Purchase Agreement, National Grid USA will sell all of its Granite State shares to Liberty Energy NH for the aggregate purchase price of Eighty-Three Million Dollars (\$83,000,000) in cash, less certain existing indebtedness of Granite State, and further adjusted based on Granite State’s working capital, capital expenditures, and regulatory assets as of the date of closing.

14. Pursuant to the ENGI Purchase Agreement, National Grid NE Holdings 2 LLC will sell and transfer all of its EnergyNorth shares to Liberty Energy NH for the aggregate purchase price of Two Hundred Two Million Dollars (\$202,000,000) in cash,

adjusted based on EnergyNorth's working capital, environmental remediation costs, capital expenditures, and regulatory assets as of the date of closing.

15. The Purchase Agreements are each subject to several customary closing conditions, including obtaining requisite regulatory approvals. The Purchase Agreements will terminate if the Stock Transfers are not consummated by or on September 30, 2011, subject to the parties' right to extend through March 30, 2012 under certain limited circumstances.

16. Upon consummation of the Stock Transfers, Algonquin will indirectly own, and Liberty Energy NH will directly own, Granite State and EnergyNorth.

17. In connection with the Purchase Agreements, National Grid USA has agreed to enter into transition services agreements (each referred to as a "TSA") to be effective as of the closing—one with Granite State and one with EnergyNorth. Under the TSAs, National Grid USA, either directly or through its affiliates, will provide various services to Granite State, EnergyNorth, and Liberty Energy NH following the consummation of the Stock Transfers until such time as Granite State, EnergyNorth, and/or Liberty Energy NH notifies National Grid USA that one or more of the services provided under its respective TSA are no longer needed.

Standard of Review and Basis for Approval of Transactions

18. RSA 374:30 provides in relevant part:

Any public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state, or contract for the operation of its works and system located in this state, when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise.

19. The Commission has previously ruled that “[t]he transfer of the entire stock of . . . companies is in essence a transfer of the entire assets of both utilities which includes the works, the systems and the franchises of both utilities” and thus, RSA 374:30 governs stock acquisitions involving public utilities. *Gas Service, Inc.*, 67 NH PUC 730, 732 (1982).

20. Pursuant to RSA 374:33:

No public utility or public utility holding company as defined in section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935 shall directly or indirectly acquire more than 10 percent, or more than the ownership level which triggers reporting requirements under 15 U.S.C., section 78-P, whichever is less, of the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state, unless the commission finds that such acquisition is lawful, proper and in the public interest.

21. Although the Public Utility Holding Company Act of 1935 has been repealed, the Joint Petitioners believe that the Commission is likely to determine that the public interest standard set forth in RSA 374:33, together with the public good standard set forth in RSA 374:30, are the applicable legal standards under which the Stock Transfers should be reviewed. The standard for Commission approval under both RSA 374:30 and 33 is effectively whether the proposed transaction is in the public good.

22. The public good standard “is analogous to the ‘public interest’ standard. . . applied and interpreted by the Commission and by the New Hampshire Supreme Court.” *Consumers New Hampshire Water Company*, 82 NH PUC 814, 816 (1977) (citing *Waste Control Systems, Inc. v. State*, 114 N.H. 21, 22-23 (1974)). “The [relevant] test requires a finding that a transaction is one not forbidden by law and is reasonably permitted under all the circumstances of the case and ‘a finding that, based upon the totality of the circumstances there is no net harm to the public as the result of the transaction.’” *Id.* at

817. “Under the public interest or public good standard to be applied by the Commission where an individual or entity seeks to acquire a jurisdictional utility, the Commission must determine that the proposed transaction will not harm ratepayers.” *Pennichuck Corp.*, 83 NH PUC 44, 44 (1998).

23. The Stock Transfers satisfy the foregoing standards because they are lawful and proper and in the public interest and public good. The Stock Transfers are lawful and proper because the Joint Petitioners have received approvals of the respective boards of directors of National Grid US and Liberty Energy and, in addition to the Commission’s approval, are seeking and anticipate receiving all other necessary governmental approvals, including those of the Federal Energy Regulatory Commission (with regard to the transfer of the stock of Granite State and the Site Agreement discussed below), the Committee on Foreign Investment in the United States, and the U.S. Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act. All approvals needed to consummate the Stock Transfers are expected to be obtained before the Commission takes final action in this proceeding.

24. The Stock Transfers and related transactions are also consistent with the public good because they will result in no net harm to the public and, in fact, will benefit, Granite State and EnergyNorth customers because, as is set forth in detail in the written testimony accompanying this Joint Petition, the transactions will result in (i) Granite State and EnergyNorth becoming locally managed and operated, (ii) the return of a significant number of skilled and well-paying jobs to New Hampshire, (iii) ownership of the two utilities by a capable owner for whom the companies are an excellent strategic fit and that is committed to continuing to invest the capital necessary to provide safe and

reliable utility service in New Hampshire, (iv) the two utilities meeting the needs and expectations of customers and regulators alike, and (v) the maintenance of reasonable rates based on costs that are incurred primarily at the local level and that are readily identifiable with the services provided.

The Proposed Transactions Are Consistent with the Public Good

25. Liberty Energy NH intends to operate Granite State and EnergyNorth on a combined basis with personnel located within New Hampshire to the greatest extent practicable and beneficial in order to take advantage of the efficiencies that arise from common ownership of the two companies. From an accounting, regulatory and legal standpoint, Granite State and EnergyNorth will continue to exist as separate entities, each retaining its separate customer base, assets, liabilities, accounting records, and corporate identity.

26. Granite State's and EnergyNorth's existing field operations will remain largely unchanged as a result of the Stock Transfers. As set forth in more detail in the testimony accompanying this Joint Petition, Liberty Energy NH plans to continue to employ the current employees of Granite State and EnergyNorth and conduct the two utilities' field operations consistent with current practice.

27. In addition, Liberty Energy NH plans to employ within New Hampshire the individuals necessary to deliver most of the services that National Grid USA now provides to Granite State and EnergyNorth from service company locations in Massachusetts and New York. In order to do so, Liberty Energy NH intends to utilize a team of professionals who will be employed in New Hampshire and will be drawn

primarily from existing National Grid personnel who currently perform these same functions for the two New Hampshire utilities.

28. The continued employment of knowledgeable field and service employees of the two utilities will benefit customers of the two utilities by retaining the skill and historical knowledge of existing employees.

29. Liberty Energy NH intends to designate a New Hampshire-based President who will be employed in New Hampshire and will have full time responsibility for the day-to-day operations of Granite State and EnergyNorth. As a result, for the first time in many years, the senior executive of both utilities will be physically present on a full time basis in New Hampshire, where the two companies' customers are located.

30. In addition to the capability of the existing management of Algonquin and its affiliates, including Liberty Utilities, as well as the skill and experience of the retained employees of Granite State and EnergyNorth and those former National Grid service company personnel who transfer to employment with Liberty Energy NH, the two utilities will also have the ongoing support of National Grid USA under the TSAs. Specifically, National Grid USA will continue to provide services in all functional areas in which the local utilities are not ready to operate on a stand-alone basis as of the closing. The TSAs will continue in place with regard to each service until the local utilities are fully ready to assume them.

31. Algonquin and Liberty Utilities have consistently shown their commitment to the highest standards of customer service and maintaining strong regulatory relations in the five jurisdictions where they currently operate regulated utilities. Their strategy of establishing a strong locally based management team operating

in each jurisdiction will benefit New Hampshire customers and facilitate a constructive, responsive regulatory relationship.

32. Granite State and EnergyNorth will constitute an important strategic investment for Algonquin and Liberty Energy that form part of a long term business plan to acquire and hold small and medium-sized utilities that will benefit from being operated at a local level and hold the potential for reasonable returns based on reasonable risks.

33. Liberty Energy NH does not intend to cause either Granite State or EnergyNorth to seek rate recovery of any acquisition premium or transaction costs arising from the Stock Transfers, nor does it have plans to make any substantive changes to either Granite State's or EnergyNorth's tariff as a result of the Stock Transfers. Therefore, Granite State and EnergyNorth customers will continue to receive the services currently provided by the two utilities on the same terms and conditions and will not experience an increase in their rates as a result of the Stock Transfers.

34. Because its operational and management approach, including information technology and customer service processes, will be tailored to the smaller size of Granite State and EnergyNorth, rather than a far larger organization operating in other larger states, Liberty Energy NH is confident that it can deliver the highest level of customer service and regulatory responsiveness while maintaining an overall cost structure that is consistent with what customers would have expected under current ownership. Moreover, because the vast majority of utility functions will be performed by personnel employed within New Hampshire, the cost allocation process will be less complex than is the case in larger organizations and, therefore, will be more transparent for regulatory purposes.

Other Approvals and Agreements

35. In connection with the Stock Transfers, Granite State will issue a promissory note to Liberty Energy NH for up to \$20 million and EnergyNorth will issue a promissory note to Liberty Energy NH for up to \$85 million to support debt financing to be undertaken by Liberty Energy NH. The promissory notes will each have a maturity date of between ten and fifteen years, with the exact maturity date to match the maturity of the debt instruments to be issued by Liberty Energy NH.

36. Issuance of the promissory notes by Granite State and EnergyNorth is subject to the Commission's approval under RSA 369:1, which provides in relevant part:

A public utility lawfully engaged in business in this state may, with the approval of the commission but not otherwise, issue and sell its stock, bonds, notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes. The proposed issue and sale of securities will be approved by the commission where it finds that the same is consistent with the public good.

37. The proposed issuance of promissory notes by Granite State and EnergyNorth is consistent with the public good because it will facilitate and support the Stock Transfers and will result in a capital structure of approximately forty-five percent debt and fifty-five percent equity for each of the utilities—a capital structure that will be beneficial to the two utilities' ability to continue to access the capital markets on favorable terms and will, in turn, benefit customers.

38. In addition to the Purchase Agreements and the TSAs, the Joint Petitioners will be submitting a Site Agreement and, pursuant to RSA 366, a management services agreement to the Commission for its information and review as part of this transaction. The Site Agreement relates to the ongoing operation of six electric substations where facilities of both Granite State and another subsidiary of National Grid USA, New

England Power Company, are located. The management services agreement relates to ongoing management services and working capital lending arrangements that are anticipated between the two utilities and Algonquin and/or its affiliates.

39. Furthermore, under applicable accounting rules, the assets and liabilities associated with Granite State's and EnergyNorth's respective pension plans and post retirement benefits other than pensions ("OPEBs") must be valued at fair market value as of the date of the Stock Transfers. Granite State and EnergyNorth propose to defer the recognition of these previously unrecognized amounts and, instead, book them as a regulatory asset or liability to be amortized over the average remaining service period of active employees expected to receive benefits under the plans.

Request for Relief

For all the reasons stated above and in the written direct testimony submitted contemporaneously herewith, the Joint Petitioners respectfully request that the Commission:

- (a) Find that the acquisition of the stock of Granite State and EnergyNorth by Liberty Energy NH will be in the public interest;
- (b) Authorize National Grid USA to transfer all of the issued and outstanding stock of Granite State to Liberty Energy NH in accordance with the GSE Purchase Agreement;
- (c) Authorize National Grid NE Holdings 2 LLC to transfer all of the issued and outstanding stock of ENGI to Liberty Energy NH in accordance with the ENGI Purchase Agreement;

- (d) Authorize Granite State to borrow up to \$20 million from Liberty Energy NH and, for such purpose to issue its promissory note for such amount, such note to bear a maturity of up to fifteen years;
- (e) Authorize EnergyNorth to borrow up to \$85 million from Liberty Energy NH and, for such purpose to issue its promissory note for such amount, such note to bear a maturity of up to fifteen years;
- (f) Authorize Granite State to record a regulatory asset or liability to reflect the valuation of the assets and liabilities of its pension plan and OPEBs and to amortize the regulatory asset or liability over the average remaining service period of active employees expected to receive benefits under such plans;
- (g) Authorize EnergyNorth to record a regulatory asset or liability to reflect the valuation of the assets and liabilities of its pension plan and OPEBs and to amortize the regulatory asset or liability over the average remaining service period of active employees expected to receive benefits under such plans; and
- (h) Grant such other and further relief as may be consistent with the public interest.

Dated: March 4, 2011

Respectfully Submitted,

**NATIONAL GRID USA
NATIONAL GRID NE HOLDINGS 2 LLC
GRANITE STATE ELECTRIC COMPANY
ENERGYNORTH NATURAL GAS, INC.**

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Certificate of Service

I hereby certify that a copy of this Joint Petition has this day been sent electronically or by First Class Mail to Meredith A. Hatfield, Esq., Consumer Advocate, Alan Linder, Esq., and Evan Mulholland, Esq.

Dated: March 4, 2011


