

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: Liberty Utilities (EnergyNorth Natural Gas) Corp.

Docket No. DG 14-380

**PLAN's Response**  
**To Staff's Motion To Accept Late-Filed Settlement Or Reschedule Hearing**

Pursuant to N.H. Code Admin. Rules Puc § 203.07(e), and as provided for in the Commission's Letter of June 26, 2015, Pipe Line Awareness Network for the Northeast, Inc. ("PLAN") hereby submits its response ("Response") to Commission Staff's Motion to Accept Late-filed Settlement or Reschedule Hearing ("Motion"). On June 26, 2015, Staff and Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth") submitted for the Commission's consideration the Motion and an attached Stipulation and Settlement Agreement ("Settlement").<sup>1</sup> As set forth below, the Commission should accept Staff's recommendation to reschedule the June 30, 2015 hearing to allow sufficient opportunity for PLAN (and the Office of Consumer Advocate ("OCA"), as non-settling parties, to review the proposed Settlement, and prepare for a hearing on the merits of the proposed Settlement and prepare for any hearing on the merits of EnergyNorth's petition as filed.

**I. INTRODUCTION**

1. Since its filing on December 31, 2014, Energy North's Petition for Approval of a Firm Transportation Agreement with Tennessee Gas Pipeline Company, LLC has been the subject of extensive review, consistent with the Commission's Order of Notice ("Order") issued on January 21, 2015. The Order stated specifically that the Commission

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<sup>1</sup> Staff fails to explain why the Settlement Agreement was not filed on or before June 23, 2015 as

had determined it would evaluate “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.” The Commission recognized the importance of this proceeding and the need for an expansive review.

2. Consistent with the Commission’s Order, Staff, OCA and PLAN have undertaken extensive discovery, participated in two technical conferences and filed witness testimony which universally recommended that EnergyNorth’s Petition as filed be denied.

3. Specifically, following its evaluation of EnergyNorth’s petition, Staff sponsored the testimony of Melisa Whitten who unequivocally recommended that the Commission deny EnergyNorth’s Petition. See, Docket No. DG 14-380, Testimony of Melissa Whitten, May 8, 2015, at 56 (“Whitten Testimony”). Ms. Whitten characterized EnergyNorth’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.

4. A hearing on the merits of this case is scheduled for June 30, 2015 and has been scheduled to occur on that date since April 30, 2015.

## **II. THE COMMISSION SHOULD REJECT THE MOTION TO ACCEPT LATE -FILED SETTLEMENT, AND SHOULD RESCHEDULE THE HEARING**

5. The Settlement requires review pursuant to a separate and distinct legal standard from the standard used to evaluate the Petition. In assessing the Settlement, the Commission evaluates whether “*the result* is just and reasonable and serves the public interest.” Puc 203.20(b) (emphasis added).<sup>2</sup> The Commission has indicated that it will “conduct this analysis through a transparent process to ensure that a just and reasonable result has been reached.” *Liberty Utils. (EnergyNorth Natural Gas) Corp.*, Order No. 25,797 (June 26, 2015).

6. The difference in the standard of review and associated implications for the Commission’s analysis is clear from even a cursory examination of the Settlement as proposed for filing. In the Settlement, Staff proposes (i) a minimal adjustment to the amount EnergyNorth has filed in its Petition, assuming certain conditions are met, (ii) a complex growth incentive and (iii) limited conditions that the Company must consider as part of its next Integrated Resource Plan Filings. Each of these specific material revisions needs to be assessed and tested as part of the above described “just and reasonable and serves the public interest” standard. Each of these elements represents a substantive and material last-minute change in position, and wholly ignores the substantive defects associated with EnergyNorth’s petition (as characterized by Staff’s own expert, *see supra* at ¶ 3, and as fully set forth in the Whitten Testimony).

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<sup>2</sup> “Nonetheless, the Commission cannot approve a settlement agreement, even when all parties agree, ‘without independently determining that the result comports with applicable standards.’” *Pittsfield Aqueduct Co., Inc.*, Order No. 25,599 (Nov. 22, 2013) (citing *Unitil Energy Sys., Inc.*, Order No. 24,677 (2006)). *See, e.g., Northern Utils., Inc.*, Order No. 25,641 (Mar. 26, 2014).

7. In order for the Motion to be accepted without the period of time routinely allowed for pre-hearing review, the Commission must determine that acceptance “(1) promotes the orderly and efficient conduct of the proceeding; and (2) will not impair the rights of any party to the proceeding.” Puc 203.20(f). Staff’s Motion does not satisfy either standard, instead simply asserting (without support) that its late-filed settlement “meets those standards [of Puc 203.20(f)] as it reduces the number of parties contesting the Company’s Petition and will require only a modest addition to scope of the hearing.” *See* Motion, ¶ 7.

8. In fact, acceptance of Staff’s late filed Motion outside the normally allowed five-day period will disrupt the orderly and efficient conduct of the proceeding and impair the substantive rights of non-settling parties. There is no opportunity for the Commission to provide guidance to the parties, establish a procedural process with respect to the two hearings at issue here, and allow the parties a reasonable opportunity to procedurally and substantively consider the merits or the impacts of the Settlement on the hearing process as scheduled. In the absence of a rescheduling of the June 30, 2015 hearing, the non-settling parties will be required to (i) undertake a review of the Settlement with only one full work-day’s notice, (ii) cross-examine Staff and EnergyNorth witnesses on the Settlement (with virtually no preparation and limited time to discuss and review the proposal with its experts) and (iii) be prepared at that same hearing to participate in the originally scheduled hearing on the merits of the Petition.

9. In short, there is inadequate time to prepare for any hearing on the Settlement—there is no opportunity to adequately prepare exhibits, discuss the merits with witnesses, and prepare examination for what would likely include a panel of EnergyNorth and Staff

witnesses.<sup>3</sup> The short notice, the impact on the hearing process, the dual standards of review and the unreasonable period of time allowed to consider the merits of the Settlement will disrupt the orderly and efficient conduct of the proceedings and impair substantive rights. Staff does not consider these or other implications in its Motion. This significant change in the process hardly represents just a “modest addition to [the] scope of the hearing,” as Staff suggests.

10. The analysis required by Puc. 203.20(b) involves a distinct legal standard based upon the unique facts and assumptions as set forth in the Settlement. As set forth above, the submission of a settlement at the last minute without adequate opportunity for review and consideration of the proposal by the parties in the case disrupts the orderly and efficient conduct of the proceedings and impairs the rights of non-settling parties.

11. The Commission should not accept the Motion as filed. It should instead, for the reasons noted above, and as submitted by Staff in its Motion, reschedule the June 30, 2015 hearing to allow for full consideration of the Settlement on its merits in a fair and reasonable process.

WHEREFORE PLAN respectfully requests that the Commission:

A. Deny the Motion and decline to accept the late filed Settlement, and reschedule the June 30, 2015 hearing as Staff requests in Paragraph 7 of its Motion, until July 7, 2015<sup>4</sup>; AND

B. Grant PLAN such other and further relief as the Commission may deem just and equitable under the circumstances.

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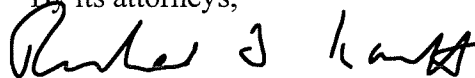
<sup>3</sup> Moreover, in the hearing on the Petition, if that moves forward, Staff asserts in the Settlement that it may not participate, as would normally be the case. Settlement at 6.

<sup>4</sup> This one-week period is consistent with the 5-day notice period as required by the rules.

RESPECTFULLY SUBMITTED

Pipe Line Awareness Network for  
the Northeast, Inc.

By its attorneys,

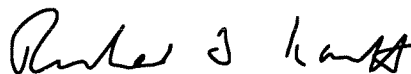


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Dated: June 29, 2015

**Certificate of Service**

I hereby certify that on June 29th, 2015, pursuant to Puc 203.02 & 203.11, I served an electronic copy of this Response on each person identified on the Commission's service list for this docket and with the Office of the Consumer Advocate, by delivering it to the email address specified on the Commission's service list for the docket.



Richard Kanoff