BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Re: Liberty Utilities (EnergyNorth Natural Gas) Corp.
D/B/A Liberty Utilities

Docket DG 14-380

MOTION FOR REHEARING, RECONSIDERATION, AND CLARIFICATION

Pursuant to RSA 541:3, Puc 203.33, and RSA 365:28, Pipe Line Awareness Network for the Northeast, Inc. ("PLAN") hereby moves the New Hampshire Public Utilities Commission ("Commission" or "PUC") to rehear, reconsider, and clarify Order No. 25,822 (Oct. 2, 2015) (the "Order"), which approved the settlement (the "Settlement") between Commission staff and Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth" or the "Company") and the precedent agreement (the "Precedent Agreement") between EnergyNorth and Tennessee Gas Pipeline Company, LLC ("TGP") as modified by the Settlement.[1]

As set forth below, the Commission erred in its Order with respect to its findings relating to: (i) burden of proof; (ii) the replacement of Dracut transportation capacity; (iii) liquefied natural gas ("LNG") as a supply alternative; (iv) the expansion of the Concord Lateral; (vi) the affiliate connection between Algonquin and EnergyNorth; (vii) negotiations with the LDC Consortium; and (vii) other important implications relating to excess capacity and speculative growth, propane and segmentation.

In support of this Motion, PLAN provides the following memorandum of law and facts.

[1] As a matter of law, a state administrative agency must provide reasons for its decision. RSA 541-A:35. In addition, the Commission has specific statutory provisions governing its conduct, RSA 363:17-B, III, which requires a final order on all matters presented to it that includes "a decision on each issue including the reasoning behind the decision." The Commission failed to do so here. Instead, the Commission either adopted without substantive analyses the Company's position or it unreasonably ignored record evidence to the contrary.

I. Standard Of Review

"The procedure for rehearing and appeals shall be that prescribed by RSA 541, except as herein otherwise provided." RSA 365:21. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration 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 (November 21, 2011) at 9. "Good reason" (as referenced in RSA 541:3) "may be shown 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), or by identifying specific matters that were 'overlooked or mistakenly conceived' by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978)." *Pub. Serv. Co. of N.H.*, N.H. PUC Order No. 25,239, 2011 N.H. PUC LEXIS 40, *13 (June 23, 2011). *See also Holiday Acres Water & Wastewater Servs.*, Order No. 23, 766, 2001 N.H. PUC LEXIS 157, *4 (Aug. 24, 2001) (explaining "good reason" standard). In this case, among other things, we have specific matters that were unreasonably overlooked, mistakenly conceived or unlawfully determined as well as new evidence that the Commission should consider.

II. EnergyNorth Did Not Carry Its Burden Of Proof, Both As A Matter Of Fact And As A Matter Of Law

a. EnergyNorth Did Not Meet Its Burden of Proof

The issues to be addressed by EnergyNorth's filings were set forth in the Order of Notice. *See* Puc 203.12(a) (4) (notice shall contain, *inter alia*, "[a] short and plain statement of the issues presented"). The issues to be evaluated "include[d] 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." *See* Order of Notice, p. 5. For all these issues, EnergyNorth, as the petitioner, has "the burden of proving the truth of any factual proposition by a preponderance of the evidence." Puc 203.25.[2]

EnergyNorth failed to meet its burden of proof. All experts in the case agreed that EnergyNorth failed to reasonably investigate its long-term supply requirements and undertake the rigorous review required for a commitment of this scope and size. PLAN Brief at 4-8. Its filing, based upon a "best-cost resource portfolio", was critically short on detailed and required factual support and failed to present the type of least-cost analysis that this Commission requires in cases for approval of such significant transportation capacity contracts.[3] The need for a very detailed and complete filing is particularly necessary in this case, where EnergyNorth has requested (and the Commission pre-approved) the prudence and reasonableness of a very expensive and long-term contract. Accordingly, the Commission should reconsider its determination to accept the Company's deficient filing and reject the filing as submitted. Simply stated, the filing lacks an adequately developed cost-benefit analysis of the Company's need for the Precedent Agreement and does not provide for any meaningful evaluation that the Precedent Agreement is a least-cost, or even best-cost, option for ratepayers.

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[2] EnergyNorth has "[t]he burden of showing the reasonableness of . . . participation in" a supply agreement. *Appeal of Sinclair Mach. Prods.*, 126 N.H. 822, 834 (1985). "[I]t is a generally accepted principle of administrative law that petitioners bear the burden of proving their allegations in a contested administrative proceeding. See, e.g., B. Schwartz, Administrative Law (1976), § 121 at 121 (noting that the term "burden of proof" encompasses both duty of going forward with evidence and burden of persuasion)." *Pub. Serv. Co. of N.H.*, Order No. 24,070, 2002 N.H. PUC LEXIS 155, *10 (Oct. 24, 2002). EnergyNorth made no such showing in this case and the Commission's acceptance of its case in the Order was unreasonable.

[3] The specific significant shortcomings of the Company's analysis are highlighted in PLAN's Brief and are incorporated by reference herein. *See* PLAN Brief at 4-8. Most notably, the Company failed, among other things (and as referenced by Staff's own witness) to estimate least cost and needs, revise its demand forecast, assess additional resource options, reevaluate its NED analysis with a lower quantity, develop additional information regarding the cost of the Concord Lateral upgrade, specifically evaluate how a second western interconnection will generate new customers, and undertake a scenario analysis with respect to the supply risks at Wright. PLAN Brief at 5-6.

b. The Commission Erred In Its Consideration Of The Company's Filing As A Prudence Review

The Company requested pre-approval of prudence and reasonableness. Order at 25. 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. Among other things, traditional ratemaking criteria in prudence cases involve a detailed assessment of least-cost procurement and prudence. "[P]rudence judges an investment or expenditure in the light of what due care required at the time an investment or expenditure was planned or made," and includes determining whether certain costs should have been foreseen as wasteful. *Appeal of Conserv. Law Found.*, 127 N.H. 606, 637-638 (1986). In determining whether an agreement or decision is prudent, "only those facts known or knowable at the time of the decision can be considered," which limitation is "consistent with the prudence standard that this Commission and the courts have traditionally applied." *Pub. Serv. Co. of N.H.*, Order No. 23,549, 2000 N.H. PUC LEXIS 184, *54, 57 (Sept. 8, 2000).

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 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.[4] Accordingly, the Commission should reconsider its determination that "the proposed acquisition of capacity contracted for in the Precedent Agreement is prudent and reasonable" and deny EnergyNorth any pre-approval with respect to the prudency of the Precedent Agreement.

III. The Commission Unreasonably Determined to Replace Dracut Transportation Capacity

The Commission erroneously 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." Order at 27. In support of its conclusion, the Commission asserts that the NED project (i) avoids the supply-constrained purchase point at Dracut; (ii) will increase 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; (iii) provides the opportunity to develop off of the West Nashua delivery point an alternative lateral; and (iv) avoids immediate and costly upgrades to the Concord Lateral. Order at 27-28. In making its determination, the Commission concludes that an acceptable level of liquidity will exist at Wright. *Id*. In addition, the Commission found that

[4] As one notable example, in DG 07-101, there was a detailed evaluation of alternatives and the Commission Staff experts undertook a rigorous evaluation of the Company's assumptions as presented and filed a detailed report in support of the Settlement as submitted. In that proceeding, the Company devoted over 70 pages of analysis to its assessment of alternatives with numerous evaluations of the different amounts, costs and options available, and Staff's independent experts in turn were able to successfully review and challenge both the figures and methodologies employed by the Company. Unlike the present case, in which the Commission accepted the Company's disconcertingly limited discussion of alternatives related to one core scenario (115,000 Dth/d of demand without any further consideration of customer requirements), Staff and the Commission did not rely on the as-filed base case submitted by the Company. The magnitude of the costs alone at issue here should have compelled at least the same effort by the Company, Staff and the Commission, and the failure to do so makes any determination of prudence unreasonable and unlawful.

"EnergyNorth appropriately considered alternatives to the capacity contracted for in the Precedent Agreement." *Id.*

The record indicates otherwise, and the Company and the Commission unreasonably failed to evaluate the specific benefit to ratepayers of continuing to utilize existing gas transportation service with Dracut as a primary receipt point as compared to replacing it with NED capacity. The reasons identified by the Commission as justifications for replacement of Dracut by Wright are primarily generic benefits that *arguendo* may be provided by the NED project whether or not the existing transportation service from Dracut is removed from EnergyNorth's supply portfolio. The important question then, which EnergyNorth and the Commission did not specifically address, is (and should be) whether the Company should replace its existing 50,000 Dth/day contract with Tennessee at Dracut with a similar capacity on NED. The Company simply did not present any evidence of comparative benefit or cost to ratepayers of terminating its 50,000 Dth/day of relatively low cost market area transportation service and replacing that service with an additional 50,000 Dth/d on the NED project. The significant failure of proof by itself warrants reconsideration and denial of the Petition and the Settlement Agreement.

In order to reach its incorrect conclusion with respect to Dracut capacity, the Commission necessarily and unreasonably overlooked expert testimony that demonstrated that EnergyNorth's customers will pay substantially more per year with the unnecessary shift in supply from the New England market area to Wright. Exhibit 17 at 15; PLAN Brief at 9. The Commission did not consider record evidence that delivered costs will be higher from NED, even assuming current prices and with EnergyNorth's current level of market area purchasers at Dracut. In addition, the Commission ignored the Company's failure to undertake any specific analysis that

evaluated the net cost to ratepayers that would result from changing the receipt point for 50,000 Dth/day of existing Tennessee transportation service from Dracut to Wright.

Had the Commission analyzed the clear evidence to the contrary and recognized the Company's blatant failure to analyze the comparative benefits of retaining (or not) the existing Tennessee contract, it would have reached a different conclusion. As noted, there is no evidence that the capacity costs associated with replacing Dracut gas are outweighed by the benefits of the Precedent Agreement as the Commission suggests.[5] Order at 27. Moreover, the Commission's analysis of other factors is flawed:

- The Commission incorrectly accepts the notion that Dracut gas "is one of the highest priced purchase points in the country over the past few years due to a lack of supply" as the basis to replace Dracut. It reached this conclusion without any consideration that EnergyNorth could continue to meet its design day requirements by purchasing a portion of its gas supply at Dracut at less cost than replacing 50,000 Dth/d of Dracut capacity with NED. PLAN Brief at 8, Exhibit 12 at 53; Day 3 Tr. at p. 73, ll. 13-15 ("The analysis shows that 65,000/50,000 Dth/day combination for NED and Concord Lateral is less costly than going just to NED."). There is no evidence that EnergyNorth has been, or will be, unable to obtain gas using its Dracut transportation capacity because of lack of gas supply.

- There is no evidence that any purported reliability benefit, referenced in the Order at 27, will be lost if the Dracut contract is retained. The Commission erred by considering the potential benefits of constructing a "parallel backbone" system from West Nashua to other distribution areas. This possibility was not raised before the hearing, and was not supported by any evidence.

- The Concord Lateral, notwithstanding the Company's assertion to the contrary in this case, will continue to provide a source of least-cost supply to the Company's customers in the future. For example, in a recently filed case, the Company relies upon the Concord Lateral and an expanded interconnection as a central component of its proposed expanded franchise in Windham and Pelham. The Company is not concerned in that case, as it is here, with fundamental assumptions with respect to rates, availability or reliability associated with the Concord Lateral. *See* DG-15-362, Petition at 2 (customers would be served off the Concord Lateral and Tennessee Gas Pipeline would construct an

[5] It was not the Commission's place to fill in the gaps with its own belief as to what the evidence *might* be. "As fact finder, the Commission must weigh the evidence in the record before it to determine whether factual propositions have been proved." *Comcast Phone of N.H.*, Order No. 24,938, 2009 N.H. PUC LEXIS 9, *29 (Feb. 6, 2009) (emphasis added).

interconnection). Given this new information, the Commission should reopen the hearings for a further assessment of assumptions with respect to the Concord Lateral.

- Maintaining the existing transportation service from Dracut will not require any upgrades of the Concord Lateral.

- There will continue to be opportunities to expand EnergyNorth's distribution system, with or without NED and even assuming that service is retained on the Concord Lateral. *See* DG-15-362; *see also* DG 15-289 and DG 15-442 (where EnergyNorth seeks to expand its service territory (with or without) NED by using the Concord Lateral and (as noted below) by expanding its use of LNG).

- The Commission (and the Company) failed to consider the implications of continued availability of supply at Dracut—both Portland Natural Gas Transmission System and Maritimes and Northeast currently deliver gas to Dracut from multiple sources and the Spectra Atlantic Bridge project will allow gas to be delivered to Dracut from Algonquin Gas Transmission.[6] PLAN Brief at 8-9; Day 3 Tr. at p. 81, l. 16; p. 82, l. 13; p. 94, l. 18; p. 96, l. 6. Similarly, the Commission's conclusions with respect to EnergyNorth's consideration of alternatives (Order at 28) ignores the obvious flaws in the Company's consideration of alternatives—the Company did not present and the Commission did not analyze whether any alternative was least cost at levels below the 115,000 Dth/d assumed as required for NED. Similarly, as discussed below, there was no analysis of the ratepayer benefits of the more modest upgrades to the Concord Lateral that would be the case if the 50,000 Dth/d of existing transportation service from Dracut to points on the Concord Lateral was retained and the Concord Lateral was expanded to meet the projected demand growth over a 10-year planning horizon.

- The Company's comparison of natural gas prices in New England and Wright relies upon unreviewable information from the LDC Consortium and uses the highest historical gas prices in New England over the previous three winters. Exhibit 17 at 16. PLAN Brief at 10. The Commission ignored the positive price impact that ongoing pipeline expansions, in advanced stages of market development (Atlantic Bridge, C2C) or in construction (AIM) will have on New England market pricing.[7]

Respectfully, the Commission erred in its determination that Dracut capacity should be replaced by NED and should reconsider its ruling on this point.

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[6] The Commission notes EnergyNorth's assertion that renegotiating the Precedent Agreement may put customers at risk because the alternatives that EnergyNorth considered are "fully subscribed". Order at 10. The Commission fails to consider other recent and proposed pipeline projects and, specifically, that Spectra, the Atlantic Bridge sponsor, and TransCanada, the C2C sponsor, are offering transportation capacity in other projects that would commence in 2018. *See*, Exhibit 17 at 19-20. These are viable alternatives to NED that warrant detailed consideration in rehearing.

[7] Algonquin Gas Transmission and Maritimes and Northeast filed a joint certificate application for the Atlantic Bridge project on October 22, 2015. *See*, Federal Energy Regulatory Commission, Docket No. CP 16-09.

IV. The Commission Erred In Its Determinations Regarding LNG

EnergyNorth did not consider the option of adding LNG storage and vaporization at any new site to replace propane or meet a portion of its anticipated growth requirement. LNG should have been evaluated as a least-cost alternative to obtaining transportation capacity through a Precedent Agreement concerning NED. The Company's failure to undertake any evaluation of LNG, based upon a flawed (and misleading) interpretation of law distorted its analysis and undermined its conclusions. Moreover, there is new evidence from recently filed franchise cases that the Company intends to rely on LNG and expand its LNG facilities in its franchise area. As noted below, the Commission's reliance upon the Company's position was unreasonable.

a. There Is No Evidence, Or Insufficient Evidence Of Record, To Conclude That LNG Is Not A Viable Alternative To NED

Inexplicably, the Commission failed to require EnergyNorth to evaluate and consider LNG capacity as a possible cost effective option (as compared to NED) to meet projected growth that EnergyNorth forecasts may be needed over the next five to 10 years. Order at 8, 29.[8] The Commission determined without analysis that the LNG global market is unstable and "may compromise the reliability of EnergyNorth's service to customers at least-cost." *Id.* at 29. However, Mr. DaFonte did note that LNG was an important resource when testifying that one factor in the reduction in the 2015 Winter price spike was "the fact that LNG was brought in to take advantage of the forward basis that came out of the 2013/2014 Winter Period." Day 1 Tr., p. 154, ll. 19-22. Mr. DaFonte further testified that "LNG is a significant and important resource available to gas companies/LDCs generally to support [EnergyNorth's] peaking requirements," and added: "That's why it's part of our diversified portfolio." Day 2 Tr., p. 69, ll. 10-14. In

[8] The Commission referenced that EnergyNorth is unaware of any new sites in its franchise territory that would accommodate an LNG peaking facility with 115,000 Dth/d (*id.*); the Company failed to evaluate the availability of LNG at any site, in any amount and cost.

fact, EnergyNorth "every year" "explor[es] all alternatives for LNG in liquid form . . . to replenish [its] facility storage." Day 2 Tr., p. 69, ll. 19-20.

If LNG truly was not a cost-effective option, then why does EnergyNorth nonetheless continue to treat it as part of its diversified portfolio every year? The answer is simple: LNG is not prohibited by federal regulations, and is available, both as a standalone source of supply and as an alternative to NED. EnergyNorth's claims to the contrary are contradicted by the law and its filings in other docket cases. The Commission's reliance on EnergyNorth's conclusions with respect to LNG is unreasonable.

b. The Commission Erred In Its Conclusion That Federal Regulations Prohibit Expansion Or Construction Of LNG Facilities In New Hampshire

The Commission unreasonably relied upon Company testimony and determined that expansion is not possible due to setback requirements in federal law. The Commission apparently accepted (without question), and was seemingly misled by EnergyNorth's, unequivocal (and apparently false) representation that NFSA 59A prohibits EnergyNorth (or anyone else) from developing or expanding an LNG facility in New Hampshire.

The regulation as it existed in 2007 remained the same until 2010, when it simply added select references to the portions of NFPA 59A (2006 edition, approved Aug. 18, 2005) "pertaining to the seismic design of stationary LNG storage tanks" and "for the ultrasonic examination of LNG tank welds for storage tanks." See 75 FR 48593, 48599, 48604 (Aug. 11, 2010). The standards regarding "vapor dispersion" and "thermal radiation zones" – referenced specifically by Mr. DaFonte in testimony (*see id.* at 62) - are set forth at 49 C.F.R. §§ 193.2057 & 193.2059, and neither one has been materially amended regarding the portions referencing NFPA 59A. NFPA 59A will not preclude the development or expansion of LNG in New Hampshire. PLAN Brief at 13-14.

c. EnergyNorth Promoted LNG In Other Proceedings

The Commission has required a consideration of LNG in virtually all other cases involving any assessment of least-cost options. For example, EnergyNorth's predecessor, National Grid, indicated in the DG 07-101 proceeding that up to 25,000 Dth/day was feasible from an expansion of existing LNG facilities. In addition, as noted above, LNG is an instrumental component of the Company's Integrated Resource Plan. In its most recent IPR filing on November 1, 2013 in DG 13-313, EnergyNorth explained its continued use and pursuit of LNG as a supply portfolio component. *See* IRP, pp. 10, 18, 54-55, 57-58. Moreover, at a December 2, 2014 hearing, Mr. DaFonte testified: "[W]e did develop a LDC consortium to look at various LNG projects. We have not made any decision with regard to that. At this point in time, we're still negotiating with a couple of the projects. And, we should have some decision on that probably within the next probably three to six months or so." Tr., p. 37, ll. 1-7. There was no reference, as in the instant case, to any federal regulations that would impact LNG availability.

Significantly as well, in a recent filing, offered herein as new evidence, the Company submitted that it is evaluating LNG as an alternative to NED as part of its franchise expansion plans in Jaffrey, Rindge, Swanzey and Winchester and as key component to conversion of its Keene division propane facilities. *See*, DG 15-442, Direct Testimony of William J. Clark, ll 6-10, at Bates 007 (EnergyNorth is currently evaluating a conversion of the Keene Division to natural gas utilizing LNG and CNG in advance of NED as well as a stand-along option should the NED pipeline not be constructed); *see*, *also* Clark testimony, ll 18-19, at 8, and ll 1-8 at 9 (with respect to Southwestern towns "[i]n the event the NED Pipeline is not constructed,

EnergyNorth will evaluate the possibility of serving these communities by utilizing liquefied natural gas (LNG) and compressed natural gas (CNG))".

Similarly, EnergyNorth also has pending before the Commission in Docket No. DG 15-289 a request to serve Lebanon and Hanover through an LNG and CNG facility. EnergyNorth plans to analyze the possibility of converting the Keene system to LNG/CNG and extending service south to Swanzey and Winchester. EnergyNorth would also evaluate the possibility of serving Rindge and Jaffrey with LNG and CNG. Moreover, the Company notes that the State Energy Strategy recognizes the importance of LNG and, in stark contrast to its testimony in the instant case, lauds LNG as a viable alternative promoting diversity and reliability. DG 15-289 at Bates 29- 30. Echoing the testimony of PLAN's witness in this case, the Company acknowledges the viability of Canaport and Distrigas terminal supply, multiple proposals for new LNG facilities at various stages of development in the region, as well as additional compressed natural gas facilities. *Id*. at 30, ll 1-19. EnergyNorth concludes, again in apparent contradiction of its testimony in this case, that "these varied options certainly constitute a diverse supply chain option that EnergyNorth could tap…" *Id*. at 30, ll 9-12.

These filings wholly contradict EnergyNorth's testimony in this case: either LNG is available to serve customers as claimed in the above dockets or it is not available as claimed in the instant case. In short, the Company's and the Commission's failure to evaluate LNG as a viable option is incompatible with Commission precedents, not precluded by governing federal regulations, and inconsistent with the Company's own testimony in other dockets appreciating the benefits of LNG as a key, reliable and least-cost source of supply. The Company's willful failure in this case to analyze LNG as an alternative source of supply is a fatal flaw in its submittal. The Commission should reconsider its decision, determine that LNG should be

evaluated as a viable option, reject the filing, and require the Company to file a new petition and present a full analysis (as was the case in DG 07-101) of LNG.

V. The Commission Erred In Its Assessment Of The Cost To Expand The Concord Lateral

The Commission addresses the alleged cost of the Concord Lateral noting that the capacity contracted for in the Precedent Agreement "avoids immediate and costly upgrades to the Concord Lateral." Order at 28. The Commission's statement underscores the importance of Concord Lateral—the purported cost of the upgrade of the Concord Lateral is a significant factor driving the Company's conclusion that NED is the best option. The Commission unreasonably accepted and relied upon the estimates as provided by TGP to EnergyNorth as filed.

Specifically, the Commission incorrectly interpreted the cost estimate included in the June 22, 2015 response to PLAN Data Request 4-18 (*see* Hearing Exhibit No. 34) as an "update" that replaced the earlier estimate. This estimate presented an entirely different route with significantly expanded (and unspecified) assumptions. This self-serving, late "update" was not requested by PLAN and was not shown to have any specific relationship to the case as originally filed or to anything specifically in the record regarding the Company's expansion plans.

In addition, EnergyNorth has not provided any information regarding the availability of alternatives and the costs of upgrading the Concord Lateral at levels below the 65,000 Dth/d proposed in the case, even though capacity levels below 65,000 Dth/d will reduce the total costs to upgrade the lateral and when combined with other supply choices may very well provide the desired least cost alternative. PLAN Brief at 14-15; Day 1 TR. at 213-215.

Further, EnergyNorth did not provide any estimates from an independent source. Instead, the Company submitted "ballpark" estimates, without work papers or any supporting information to document its extremely high cost estimates. PLAN Brief at 14-15; Day 1 TR. at 213-215.

Moreover, in reviewing the estimates, the Commission did not consider TGP's ongoing awareness of these proceedings and its incentive to provide high "indicative" estimates for Concord Lateral expansion to support the Company's commitment to the NED project.

Given the shortcomings in the Company's analysis, the Commission should reconsider its decision, reject the filing as submitted, and require the Company to file a new petition and present a specific analysis of Concord Lateral expansion options undertaken by an independent source that considers an expansion of the lateral at levels below 65,000 Dth/day.

VI. The Commission Failed To Properly Examine The Relationship Between Algonquin and EnergyNorth

In its decision, the Commission declined to take a position on whether EnergyNorth's affiliates biased EnergyNorth to act contrary to the best interests of customer by oversubscribing to capacity contracted for in the Precedent Agreement. Order at 30.

This relationship requires further consideration in rehearing. As Commission Staff noted in its Report on Investigation into Potential Approaches to Mitigate Wholesale Electric Prices ("Report") in Docket IR 15-124 (September 15, 2105), affiliate relationships pose a real risk of undermining the competitive process, and, in particular, it "will be difficult if not impossible [for utility companies] to make a convincing case that pipeline open seasons qualify as fair, open and transparent competitive processes." Report at 46. Indeed, it is well recognized that transactions between affiliate or parent and subsidiary companies are not arm's length and may not be just and reasonable.[9] Staff has it right in the report—the affiliate relationships may irreparably taint the process.

[9] "RSA 366 exists because collusion between a public utility and an affiliate in the absence of arm's length dealings can harm ratepayers' legitimate interests and unjustifiably benefit others such as shareholders." *Verizon N.H.*, Order No. 24,345, 2004 N.H. PUC LEXIS 73, *216 n. 122 (Jul. 9, 2004). *Cf. Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822, 835 (1985) (allegations related to the parent/subsidiary relationship existing between Central Vermont and CVEC "reflect[ed] upon the prudency of CVEC in incurring wholesale power costs"). *See generally*

In this case, the common management and the significant investment (over $400 million) of the parent entity in the NED project are a cause for concern. The testimony elicited from Mr. DaFonte should give the Commission pause, and prompt reconsideration and rehearing. *See* Day 2 Tr., p. 9, l. 15 – p. 41, l. 21. In other cases, the Commission has seen fit to exercise its authority (under RSA 366:5) to examine affiliate relationships, and it should undertake the same review in this case as part of a rehearing.[10]

VII. The Commission Erred In Refusing To Allow Evidence Developed by the LDC Consortium To Be Reviewed

Numerous references were made in Mr. DaFonte's pre-filed testimony to a consortium of New England Local Distribution Companies of which EnergyNorth is a part. *See* DaFonte Testimony, p. 19, ll.6-15; p. 23, ll. 1-3. Mr. DaFonte explained that "[t]he terms and conditions of the PA were negotiated *within the context of* a broad consortium of New England Local Distribution Companies (LDCs)," which LDCs "together made up the anchor shippers on the NED project." *Id.*, p. 19, ll. 6-7, 9 (emphasis added). According to Mr. DaFonte, "*[t]his consortium approach allowed* the LDCs to leverage their aggregate capacity commitment in the NED project *to negotiate a deeply discounted anchor shipper rate* as well as other key terms and conditions discussed later in [his] testimony." *Id.*, p. 19, ll. 9-12 (emphasis added). In addition, the Consortium's analysis was a fundamental element of the Company's analyses of the comparative benefits of Wright versus Dracut as accepted by the Commission in this decision. By including this information in Mr. DaFonte's testimony, EnergyNorth represented that those are either "facts relied upon," "other relevant facts," or "policy arguments in support of the result

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Pub. Serv. Co. of N.H. v. New Hampton, 101 N.H. 142, 152 (1957) (rejecting utility company's assertion that net book cost was the proper measure of valuation based on prior sales of electric utility property in New Hampshire; "it was findable on the record that many of these sales were between affiliates or parent and subsidiary companies and were not actual arms-length transactions").

[10] *See, e.g., Lakes Region Water Co., Inc.*, Order No. 25,391, 2012 N.H. PUC LEXIS 76, *28-30 (Jul. 13, 2012); *Lakeland Mgmt. Co., Inc.*, Order No. 25,357, 2012 N.H. PUC LEXIS 42, *18-19 (May 1, 2012).

sought," and therefore should have been treated as relevant areas for further inquiry. Puc 203.06(d)(2).[11] Yet, when Mr. DaFonte reiterated the role of the Consortium during his testimony at the hearing, further examination, upon objection, was not allowed. *See* Day 1 Tr., p. 179, l. 4 – p. 181, l. 7.

The Commission's refusal to allow examination of EnergyNorth about the work of the Consortium and its communications with EnergyNorth is unreasonable, particularly considering that material and substantive information derived from those discussions was allowed into the case. The Commission should reconsider its decision and allow rehearing in order to provide for further consideration of this issue.[12]

VIII. Other Errors

There are other findings, or lack of findings, in the Order that warrant reconsideration and/or rehearing.

a. Excess Capacity And Speculative Growth

As approved, the NED contract will burden EnergyNorth's ratepayers with excess pipeline transportation capacity and related costs for over 20 years. In an attempt to justify such a burdensome and unprecedented result, the Company proposed and the Commission accepted speculative commitments to (i) reduce excess capacity arising from the Precedent Agreement; and (ii) expand service to unserved and underserved areas of New Hampshire. Order at 11-13.

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[11] PLAN is aware of the Commission's Order in *Pub. Serv. Co. of N.H.*, Order No. 25,174, which merely adopted the conclusion of an earlier decision (89 N.H. PUC 226, 230 (2004)) that "[i]n contrast to the results of any such negotiations, we can conceive of no circumstances in which we would deem information about the negotiations themselves admissible." Order No, 25,174, at 18. Respectfully, PLAN contends that the Commission's adoption of this rule, both in the general context of "public interest" determinations by the Commission, and in the specific circumstances of this case, is an error of law.

[12] The Commission has stated that "the process leading up to a proposed settlement is a relevant factor in determining whether the settlement should be approved." *EnergyNorth Nat. Gas Inc.*, Order No. 25,202, 2011 N.H. PUC LEXIS 5, *29 (Mar. 10, 2011). If the Commission believes that the "process leading up to" a proposed settlement is relevant in assessing whether a settlement agreement is in the public interest, the Commission equally should be interested in the negotiations that led to relevant facts in the Company's analysis as filed.

The Order accepts EnergyNorth's unreasonable assumptions that it will grow into this excess capacity because of (i) growth in iNATGAS requirements; (ii) capacity-exempt customers transportation customers switching to capacity assigned service; and (iii) Concord Steam customers converting to natural gas. Order at 11. The Order assumes that growth in these areas will exceed 10,000 Dth/d over the next two years beginning July, 2015, an amount that exceeds EnergyNorth's projections of demand. *Id.* Thus, EnergyNorth's growth must exceed its own projections in order for it justify its (as filed) request of 115,000 Dth/d; if growth is less than assumed, EnergyNorth will reduce the amount of capacity under the Precedent Agreement from 115,000 Dth/d to 100,000 Dth/d. *Id.*

The Order essentially allows EnergyNorth to grow into the full amount of its originally proposed capacity requirement. As a further incentive, the Company has a growth incentive which provides a penalty if it fails to grow its customer base or its annual sales. *Id*. In addition, the penalty will no longer be applicable if the Company retires all non-pressure support propane facilities or meet other target related to customer growth. *Id.* at 14. The Commission also points to possible growth in other areas—projects in existing franchise areas and expanded territory including Keene, Bedford and Southwest New Hampshire communities along the route of the NED pipeline, as well as potential growth from a new lateral off the West Nashua city gate. Order at 15. The point is clear—the Precedent Agreement has so much excess capacity that the Company requires incentives and penalties in order to expand its growth to mitigate to some extent this excess capacity. Given the limited analyses undertaken by the Company as set forth in Section II a and b, it is mere speculation whether the Company will be able to mitigate the over capacity allowed by the Commission in this case.

The Commission justifies this unparalleled result by declaring it to be legally permissible, i.e. prudent, for a regulated entity to serve not only present demand but also "potential" future peak day requirements. However, EnergyNorth failed to demonstrate that entering into a long-term contract to meet potential customer requirements more than 20 years in the future, even if the Company's forecasts are accepted, is necessary or consistent with the public interest. Moreover, as noted, there was no rigorous analysis of alternatives to serve this potential demand.

Significantly as well, the Commission did not consider the negative impacts of the Precedent Agreement on supply diversity and contract flexibility. Over-contracting for pipeline capacity can also create a disincentive to pursue demand side management. The implications of the Commission's determination with respect to diversity, contract flexibility and demand-side management are inconsistent with the goals of New Hampshire's State Energy Strategy. *See New Hampshire 10-Year State Energy Strategy*, N.H. Office of Energy & Planning (September 2014), at 25 ("[R]ecent changes to the State's utility planning law now make clear that utilities must 'maximize the use of cost effective energy efficiency and other demand side resources.'") and 37 ("[T]here is a need for focused efforts to reduce New Hampshire's vulnerability to price volatility and supply disruptions, and increase our flexibility and resiliency. Diversifying our fuel portfolio and increasing the use of in-state resources will be critical tools in achieving those goals, in combination with increased efficiency.")

The Commission should reconsider its determination with respect to excess capacity and future growth in and out of EnergyNorth's franchise area, and revise its order to exclude excess capacity from any additional capacity requirement assumed for NED.

b. Propane

In its decision, while the Commission noted that EnergyNorth did not propose the immediate retirement of most of its propane capacity outside of Keene (Order at 27), it nevertheless assumed that this "potential outcome" warranted consideration of additional capacity from the NED Project. There is no basis to assume on this record that the propane facilities would be retired (that is a future determination) and to conclude, assuming propane facilities are retired, that NED capacity would be a cost-effective and necessary replacement option. Both the retirement and the replacement options should be evaluated prior to approving surplus NED capacity as a cost-effective resource to replace propane.

Thus, the Commission erred by concluding that the contract level in the Precedent Agreement is reasonable if propane peaking is retired, even though EnergyNorth did not propose to retire any propane peaking, and no evidence was presented to show that retiring any of the propane plants is in the best interests of consumers. The fact that "this is a potential outcome of the next IRP" is not enough to justify this conclusion. The Commission should reconsider its determination with respect to propane facilities and revise its order to exclude capacity associated from the replacement of the propane facilities from any additional capacity requirement assumed for NED. Alternatively, the Commission should reopen the hearings to allow for submittal and examination of additional information about the replacement of propane facilities in this docket.

c. Segmentation of the Market Path and Supply Path Projects

The Order refers to NED as having "two separate projects, described as the 'Supply Path' and the 'Market Path." *Id*., p.4, n. 1. The projects are functionally and financially interrelated with Supply Path providing transportation capacity from Marcellus to Wright, NY and Market

Path (the noticed subject of this proceeding) providing transportation capacity from Wright, NY to Dracut, MA. *Id., also,* at 17. The Company testified that the Market Path project is dependent upon and contingent upon the success of the Supply Path contracts and that it intends to file for Precedent Agreement approval in the future with respect to Supply Path. *See* Day 1 Tr., p. 182, l. 24 – p. 184, l. 12 (noting that "[i]t's the assumption, but it's also a requirement in the PA, that an infrastructure to transport gas from the Marcellus/Utica shale to Wright has to be built" and that "[w]e [EnergyNorth] would likely terminate [the PA], if no supply comes in at Wright"); Day 1 Tr., p. 188, ll. 13-15 ("You know, I would say, within the next month or so, we should have a final PA executed and ready to be filed."); Day 2 Tr., p. 79, ll. 15-21 ("[W]e are in negotiations with Tennessee Supply Path, which would bring another Bcf or so of supply to Wright. And, so, that's really the liquidity piece that we would be looking for. And, not just at Wright, but then diversifying, going all the way back to Marcellus as well through that Supply Path piece.")[13] On its face, Market Path and Supply Path constitute one pipeline connected from Marcellus Shale to Dracut, MA. Indeed, TGP has pre-filed the Market Path and Supply Path components as a single project at FERC. *See TGP Request to Use Pre-Filing Procedures*, September 15, 2014, FERC Docket No. PF14-22 (at Accession No. 20140915-5200).

The Company unreasonably determined to segment this one pipeline project into two Precedent Agreement approval filings, thus understating the costs and risks to ratepayers of the Settlement and Precedent Agreement in this case, and the Commission erred in its consideration of Supply Path and Market Path as two separate projects. Accordingly, the Commission should reconsider its determination to accept the NED Precedent Agreement as filed in this case and,

[13] The Commission was incorrect in suggesting in the Order that Supply Path "is another possible way" for the Company to get supply from Marcellus to Wright and "into the Precedent Agreement's proposed NED Pipeline capacity." Order at 17. In fact, Supply Path is the only path forward presented in this case to get supply from Marcellus to NED. *See* Day 1 Tr., p. 185, ll. 13-16 ((DaFonte) "The only negotiations that are currently active are negotiations with Tennessee for the Supply Path project, which accesses Marcellus/Utica shale directly.")

instead, reject the filing with leave to re-file as a unified case to be included as part of the filing of the Company's Supply Path Precedent Agreement. At that time, the Commission will be able to evaluate the value, costs, and alternatives of the complete project.

WHEREFORE, PLAN respectfully requests that the Commission:

(A) open the proceeding for a rehearing on all matters identified herein;

(B) reconsider the Commission's Order, by (i) specifically reviewing the Company's filing and testimony and (ii) applying the correct legal standards;

(C) clarify where in the record the factual support exists for each of the Commission's conclusions; and

(D) grant such other and further relief as the Commission deems just and equitable under the circumstances.

RESPECTFULLY SUBMITTED,

Pipe Line Awareness Network for the Northeast, Inc.

By its attorneys,

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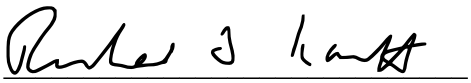
Dated: November 2, 2015

Certificate of Service

I hereby certify that on November 2, 2015, pursuant to Puc 203.02 & 203.11, I served an electronic copy of this Motion 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