

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

DG 16-770

Liberty Utilities (EnergyNorth Natural Gas) Corp., dba Liberty Utilities
and Concord Steam Corporation

Join Petition for Approval of an Asset Purchase Agreement

PETITION TO INTERVENE OF RICHARD M. HUSBAND

Pursuant to the New Hampshire Public Utilities Commission (“PUC”)’s Order of Notice dated July 21, 2016 (“Order”) issued in the above-captioned matter, N.H. Code Admin. Rules Puc 203.17 and N.H. R.S.A. 541-A:32, the petitioner, Richard M. Husband, hereby respectfully petitions for leave to intervene in this proceeding as a party, with all rights as such to the full extent allowed by law. In support of his petition, the petitioner states:

1. The petitioner is a New Hampshire citizen residing at 10 Mallard Court, Litchfield, New Hampshire 03052.
2. On July 21, 2016, Liberty Utilities, *etc.* (“Liberty Utilities”) and the Concord Steam Corporation (“CSC”) commenced this proceeding, as a non-emergency matter, by filing a [Joint Petition for Approval of an Asset Purchase Agreement](#) seeking PUC approval of the agreement as part of a plan to convert CSC operations to fracked (natural) gas use. *See generally id.*
3. Under the [July 26, 2016 Order of Notice](#) for this proceeding, the hearing on the merits is scheduled for September 9, 2016, just seven weeks and one day from commencement of the matter, without any opportunity for discovery, despite the lack of any request for emergency treatment under the commencing petition, any indication of the necessity for such treatment in the Order of Notice, or any other

reasonable grounds for such treatment—especially without notice. As CSC is requesting an emergency rate increase to keep it going in an entirely separate proceeding, [PUC Docket No. DG 16-769](#), and thus will presumably remain operational with it, there seems to be no urgent need to address the petition in this matter—certainly none that has been articulated (and with a proper request for such treatment that plainly places others on notice of the request and grounds therefore).

4. On August 15, 2016, a proposed [Settlement Agreement](#) was filed in this proceeding, pursuant to which Liberty Utilities is to recover the proposed \$1.9 million purchase price “plus an appropriate return, from all its customers,” *Id.* p. 2, which “appropriate return” has subsequently been identified to include an exorbitant 9% interest rate.
5. Although the [Joint Petition for Approval of an Asset Purchase Agreement](#), ¶ [11](#) states that Liberty Utilities “has already determined that it has sufficient capacity to serve all Concord Steam customers, should they all choose to convert,” Liberty Utilities acknowledged at the August 19, 2016 technical session in this matter that it may not have sufficient gas to serve all of its customer needs beyond this coming winter—and such an imminent and increasing deficiency has been spelled out in a comment letter dated September 2, 2016 submitted by the petitioner in this matter.
6. The “assets” of the sale under consideration primarily comprise customer information which is public knowledge and therefore of no real value and infrastructure acknowledged to have only “scrap metal non-operational value” at

the technical session in this matter. There appears to be no valuation or other concrete evidence of value offered in support of the proposed \$1.9 million-plus purchase price for the assets, and, particularly in light of the apparent lack of substantiation for its legitimacy, it is disturbing that the proposed Settlement Agreement provides:

“... The discussions that produced this Agreement have been conducted on the understanding that all offers of settlement and settlement discussions relating to this docket shall be confidential, shall not be admissible as evidence in this proceeding, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

The information and testimony previously provided in this proceeding are not expected to be subject to cross-examination by the Settling Parties, which would normally occur in a fully litigated case ...”

[See Settlement Agreement, pp. 3-4.](#)

7. Equally disturbing is the PUC’s confirmation at the technical session that it will not allow any discovery in the matter necessary to explore the sources and sufficiency of gas for the proposed project and legitimacy of the transaction and purchase price, among other possible areas of reasonable inquiry. This refusal is in direct contravention of the PUC’s own rules allowing discovery into relevant, material matters, *see* PUC [Rule 203.09](#) and [Rule 203.23](#), and the violations of these rules and denial of a meaningful opportunity to fairly prepare and present one’s case through discovery violates due process. *See Attitash Mt. Service Co. v. Schuck*, 135 N.H. 427, 429 (1992)(law well-settled that administrative agencies must follow their own rules and regulations); *In re Union Telephone Co.*, 160 N.H. 309, 317 (2010)(“[T]he PUC may not act contrary to the plain meaning of [its own] Rule 431.01.”); *Society for Protection of N.H. Forests v. Site Evaluation*

Comm., 115 N.H. 163, 168 (1975)("Where issues of fact are presented for resolution by an administrative agency due process requires a meaningful opportunity to be heard."); *Appeal of Lathrop*, 122 N.H. 262, 265 (1982)(parties must be afforded a fair opportunity to present their case).

8. Under the [July 26, 2016 Order of Notice](#), interested persons have until September 6, 2016 to petition to intervene in this matter. *Id.*, p. 3.
9. The petitioner is a taxpayer who will be directly affected by any State decision to approve the proposed Settlement Agreement in this matter or any proposed similar agreement which will be subsidized by taxes paid by taxpayers, including the petitioner.
10. The petitioner is an attorney duly licensed to practice in New Hampshire since 1989.
11. The petitioner is a concerned environmentalist who has been a member of the Town of Litchfield Conservation Commission since 2008.
12. The petitioner has, and has amply demonstrated, a substantial interest in (a) environmental and particularly fracked (natural) gas matters before the PUC, and (b) an interest in ensuring that PUC proceedings, especially those impacting the environment and/or resulting in the increased use of fracked gas, be conducted fairly and openly, allowing citizens a reasonable opportunity to participate in and comment on the proceedings, and in accordance with the PUC's own rules, and due process. With respect to such matters, the petitioner has:
 - litigated, through appeal before the New Hampshire Supreme Court, a proceeding involving a 55-page complaint with 59 exhibits wherein the petitioner alleged that due process and other procedural improprieties in several PUC proceedings held from the mid-1970s to circa 2000

causally contributed to the continuing diminishment and other injury of a New Hampshire great pond. *See* New Hampshire Supreme Court Case No. 2015-0371, *Richard M. Husband, et. al. v. Town of Hudson*. Although the petitioner was unsuccessful on appeal, it was not all for naught, as the State is actively engaged in correctly the concerns at its core;

- litigated, through appeal before the New Hampshire Supreme Court, the PUC's decision under PUC Docket No. DG 14-380 to approve Liberty Utilities' petition for approval of a capacity contract on the Northeast Energy Direct ("NED") high-pressure fracked gas pipeline project, on grounds including the PUC's alleged failure to properly consider public comments and environmental and other negative impacts pertaining to NED in its decision, and alleged PUC due process and other procedure improprieties concerning the same. [See Tab Nos. 79, 80, 82, 83 and 87](#), specifically including [Appeal](#) and [Appendix](#). While the petitioner was unsuccessful on appeal, it is to be noted that the Order of Notice in the next pipeline-related proceeding, DE 16-241, does include consideration of its negative environmental concerns ("environmental costs"), as the petitioner had urged with respect to such matters in the appeal. [See Order of Notice, pp. 3-4](#);
- organized and obtained municipal permitting for a protest outside the PUC concerning its approval of Liberty Utilities' capacity contract on NED, and offered oral public comments before the PUC in Docket No. DG 14-380 respecting the same. [See petitioner's comments at pp. 17-20](#) ;
- participated in a December 8, 2015 "March on Concord" parade to deliver a 10,000-plus page petition to Governor Hassan which called upon her to stop NED, spent a dozen or more weekend hours gathering signatures for the petition, and participated in other NED-related protests and hearings, including commenting at the July 29, 2015 Federal Energy Regulatory Commission ("FERC") scoping meeting concerning the project, [see scoping meeting transcript at pp. 64-68](#);
- been an active member of my hometown Litchfield Pipeline Group and the statewide grassroots organization New Hampshire Pipeline Awareness Network ("NHPLAN") in opposing NED and excessive fossil fuel infrastructure, [see its web site](#), and actively aligned with other New England, regional and national organizations in opposing the extension of fracked gas infrastructure and use;
- petitioned to intervene in PUC Docket No. DG 14-380 with respect to procedural concerns, [see petition here](#) (the petition was withdrawn when the PUC, commendably, addressed the immediate concerns behind its filing, [see withdrawal here](#));
- otherwise participated extensively in PUC Docket No. DG 14-380, including filing several public comments, *see* [July 20, 2015 comment](#), [July 28, 2015 comment](#), [August 5, 2015 comment](#) and [August 7, 2015 comment](#) (in addition to his [oral comments at pp. 17-20](#) previously

referenced), a [motion for rehearing](#) and other pleadings, and attending all or substantial parts of all three days of the final hearing on the merits in the proceeding;

- intervened in PUC Docket No. DE 16-241 and drafted and filed a pending objection, with related lengthy Petition for Disclosure, to requests for confidential treatment and protective orders in that proceeding, [see objection and Petition for Disclosure here](#);
- submitted written comments in PUC Docket Nos. [DE 16-241](#) (*see* [February 24, 2016 comment](#), [June 2, 2016 comment](#) and [June 7, 2016 comment](#)), and a written comment in [DG 16-769](#), [DG 15-289](#) and [DG 15-362](#), as well as this proceeding (see September 2, 2016 comment letter, not yet appearing in the online dockets) opposing more fracked gas infrastructure and expressing environmental concerns relating to the same;
- participated extensively in [Site Evaluation Committee Docket No. 2016-01](#) pertaining to rule changes for high-pressure fracked gas infrastructure projects, including submitting several public comments (along with those of others) pertaining to the need for a comprehensive health impact assessment (“CHIA”) as part of the application for such projects, *see* [February 25, 2016 comment letter](#), [second February 25, 2016 comment letter](#), [March 1, 2016 comment letter](#) and [June 17, 2016 comment letter](#), and attending its hearings. A rule requiring CHIAs has now been adopted under [Site 301.08\(c\)\(1\)](#);
- was interviewed for two half-hour local television community programs (once alone, once with another) and appeared with others on Jack Heath’s morning show on WGIR to discuss NED, fracked gas infrastructure and related concerns;
- participated extensively in the efforts of various state legislators this past year to enact 10 or more largely remedial laws pertaining to high-pressure fracked gas pipeline infrastructure, including attending legislative hearings, providing testimony on the legislation and matter in general, and submitting at least nine, often lengthy, letters to the Legislature concerning the same;
- submitted a pending Right to Know request under R.S.A. Chapter 91-A to the New Hampshire Senate to investigate its relationship with the gas industry and others lobbying for more fracked gas;
- authored, on behalf of 23 New Hampshire organizations, a [March 25, 2016 letter petition](#) to the New Hampshire Congressional Delegation, and follow-up [April 21, 2016](#) and [April 25, 2016](#) correspondence on behalf of NHPLAN, urging changes to FERC, including the establishment of a citizens advocate in FERC proceedings; and attended the May 31, 2016 press conference held by Congresswoman Kuster to announce that, along with Senator Jeanne Shaheen, she had, indeed, introduced legislation to fund [an "Office of Public Participation" in the FERC](#) and give citizens [a greater voice in FERC proceedings](#);

- submitted several comment letters to the FERC concerning my opposition to NED and issues pertaining to the FERC’s flawed processes, *see* [January 14, 2016 submission](#), [January 28, 2016 submission](#), [March 17, 2016 submission](#), April 18, 2016 submission, parts [1](#) and [2](#), [April 21, 2016 submission](#), [April 25, 2016 submission](#) and [May 9, 2016 submission](#);
- submitted numerous letters to various newspaper editors and media outlets concerning the petitioner’s opposition to NED and fracked gas infrastructure, and the petitioner’s concerns relating to the same, several of which have been published, *see, e.g.*, [“A Tribute to Mason”](#), [“Of Pipelines and Lobbyists”](#) (page 4) and [“Surprised by What Senate Democrats Did”](#) (page 7);
- authored, on behalf of more than 50 organizations nationwide, a letter to Senator Bernie Sanders expressing FERC and fracked gas concerns with pending Congressional legislation, *see* attached Exhibit “A”;
- along with other concerned citizens, recently attended a meeting with state representatives to discuss RGGI, the need to fully fund the program, and appropriate outreach;
- joined with other concerned citizens in another petition for fracked gas-related changes presented to the State;
- been quoted with respect to the above matters by the media, *see* [April 21, 2016 Union Leader online article “Mobilized to fight Kinder Morgan, opponents say they will stay vigilant.”](#); [May 6, 2016 Pelham-Windham News, p. 1 online article “NED Pipeline Project ‘Suspended’ Efforts Turn to FERC Reform.”](#); and [May 9, 2016 Union Leader online article “Bills designed to curb energy projects take a hit.”](#).

13. It is fair to say that the petitioner has shown himself to be a very active activist, of some success and credibility, in matters and concerns underlying this proceeding, which matters and concerns the petitioner has further fleshed out in his September 2, 2016 comment letter filed in this proceeding, the contents of which are hereby incorporated by reference as if set forth in full herein.

14. Pursuant to Puc 203.17, “[t]he commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32..” *Id.*

15. Under N.H. R.S.A. 541-A:32 1(b) and (c), a petition to intervene *must* be granted if the petitioner states facts demonstrating how his/her rights, duties, privileges,

immunities or other substantial interests may be affected by the proceeding (or the petition otherwise qualifies under the law), and the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing intervention. Under N.H. R.S.A.541 -A:32 II, the PUC *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.” This petition meets both standards given that the petitioner has substantial interests in this proceeding which will be directly affected by the outcome, justice requires intervention, and there is no reason that such intervention, particularly as it is timely and early in the matter, should impair the orderly conduct of properly conducted proceedings.

16. While the petitioner is entitled to intervene with all intervention rights allowed under the law, and requests such the granting of such intervention rights, he particularly wishes to intervene to ensure that this proceeding properly allows discovery and other rights afforded parties and the public with respect to such proceedings, that important documents are not improperly secreted from public review by a confidentiality order, and that discovery is conducted and pursued through examination at the hearing on the merits which presses the joint petitioners for proof of their underlying petition claims. In terms of any other current or potential party representing the petitioner’s interests in these respects, the petitioner notes that no filings have been made in this proceeding requesting a continuance of the September 9, 2016 hearing on the merits, demanding the right of discovery and/or contesting any formal request for confidential treatment, and indicating that any involved party intends to push for proof in this proceeding.

WHEREFORE, for the reasons expressed, the petitioner respectfully requests that the PUC:

- A. Grant this petition and allow the petitioner to intervene in this proceeding as a party, with all rights as such to the full extent allowed by law; or
- B. Schedule a hearing on this matter; and
- C. Grant such other and further relief as is just, lawful and otherwise appropriate.

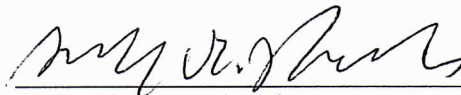
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have, on this 6th day of September, 2016, submitted seven copies of this petition to the PUC by hand delivery, with copies e-mailed to Liberty Utilities, CSC and the Consumer Advocate. I further certify that I have, on this 6th day of September, 2016, served an electronic copy of this petition on every other person/party identified on the PUC's service list for this docket by delivering it to the e-mail address identified on the PUC's service list for the docket.



Richard M. Husband