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September 8, 2016

Ms. Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, New Hampshire 03301-7319

RE: Docket No. DG 16-770, Energy North Natural Gas, Inc. d/b/a Liberty Utilities  
and Concord Steam Corporation  
Petition for Approval of Asset Transfer Agreement

Dear Ms. Howland:

Please treat this letter as the response of the Office of the Consumer Advocate (OCA) to the pleading jointly filed earlier today by Energy North Natural Gas, Inc. d/b/a Liberty Utilities (Liberty) and Concord Steam Corporation captioned "Joint Objection of Liberty and Concord Steam to the Jordan Institute's Petition to Intervene." The OCA respectfully disagrees with the assertions in the Joint Objection and further suggests that the unresolved state of the issues in this docket counsels in favor of postponing the merits hearing presently scheduled for tomorrow morning.

This proceeding presents the Commission with a straightforward question: Is it consistent with the "public good" standard in RSA 374:30 for Liberty, a natural gas utility, to pay Concord Steam \$1.9 million to shut down next year and turn its heating customers over to the gas utility? The implications of this transaction for the promotion of energy efficiency are well within the universe of questions that are relevant to a RSA 374:30 inquiry, particularly given the Commission's recent approval of an Energy Efficiency Resource Standard (EERS) for New Hampshire and, with it, the objective of achieving "all cost effective energy efficiency." See Order No. 25,932 (Aug. 2, 2016) in Docket No. DE 15-137 at 55 ("setting a long-term qualitative goal of ultimately achieving all cost-effective efficiency savings as recommended by the Settlement Agreement follows the recommendations of the New Hampshire specific studies

and allows flexibility to set that goal in the context of the market conditions that develop over time within the EERS Structure”).

The Jordan Institute, which holds a seat on the Energy Efficiency and Sustainable Energy Board by appointment of the Commission Chairman pursuant to RSA 125-O:5-a, II(1), is a nonprofit organization dedicated to the promotion of energy efficiency. The Institute is actively engaged in efforts to deploy energy efficiency measures in the non-residential building stock in Concord – it is not merely a think tank dedicated to promoting the *idea* of energy efficiency. This is a concrete and particularized interest in the outcome of this proceeding that falls well within the “substantial interests” criterion for intervention under the Administrative Procedure Act. See RSA 541-A:32, I (requiring intervenor status when “[t]he petition states facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests *may be affected* by the proceeding”) (emphasis added).

Presumably because Concord Steam is in dire financial straits in light of publicly announced plans to deprive the utility of its dominant customer – the State of New Hampshire itself – the Commission deviated from its normal practice in contested cases by eschewing a prehearing conference and setting the case for hearing on an expedited basis. While the OCA acknowledges the pressing need to resolve issues related to Concord Steam, the truncated nature of the procedural schedule in this docket leaves significant issues in a state of uncertainty at the threshold of hearing. Among the questions that deserve to be answered are: To what extent will current customers of Concord Steam be able to adopt, and be encouraged to adopt, the most cost-effective alternatives to steam service in light of ratepayer-funded energy efficiency programs made available not just by Liberty Utilities but also by Unitil as the electric distribution company serving Concord? Have the Sustainable Energy Division of the Commission, and the energy efficiency divisions of the two affected utilities, been involved in structuring the proposed transaction with the objective of energy efficiency in mind? Are opportunities for the Department of Administrative Services, as the ‘landlord’ of the state-owned buildings served by Concord Steam, to maximize energy efficiency being overlooked by either the terms or the timeline of this transaction? What about the same concerns as to the City of Concord and its public school system?

In most cases in which the transfer of a utility franchise is at issue pursuant to RSA 374:30, questions such as the ones raised in the preceding paragraph would become part of a larger, skeptical inquiry conducted by the Staff of the Commission. However, in light of the unusual circumstances of this case it is the OCA’s understanding that the Staff of the Commission was actively involved in the development of the proposal reflected in the petition. Indeed, within days of Liberty and Concord filing their Joint Petition, Staff had entered into a settlement agreement with the petitioners adopting the terms of their agreement without modification. The OCA has every confidence in the good faith of the discussions that led to this proposed settlement and we commend the Staff of the Commission for proactive efforts to address the Concord Steam situation. However, in these circumstances it becomes all the more important for the Commission to hear fully from an outside party such as the Jordan Institute with respect to issues that are critical from a public policy standpoint but may have not been fully explored in

light of the zest to come up with a proposal for the Commission to consider.

The participation of the Jordan Institute as a party is all the more important in light of the relatively limited interest of the OCA in this proceeding. Our mandate is to advance the interests of residential utility customers, of which Concord Steam has very few. We believe that the officially adopted EERS objective of all cost-effective energy efficiency produces benefits for *all* customers, even to the extent that measures are deployed on non-residential premises, but we lack the expertise and institutional commitment to energy efficiency on commercial premises that the Jordan Institute brings to the table.

The Joint Objection additionally argues that the Jordan Institute should be denied intervenor status because its involvement as a full party would not meet the standard articulated in RSA 541-A:32, I(c) (requiring the presiding officer to determine “that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention”). The OCA disagrees, particularly because the Jordan Institute would likely qualify under RSA 541:3 as having been “directly affected” by a Commission order approving the pending settlement such that it could pursue rehearing and appeal. It would be more consistent with the notion of orderly Commission proceedings, and the objective of resolving the Concord Steam situation expeditiously, to allow the Jordan Institute to be fully heard now rather than later.

Part of fast-tracking this proceeding involved scheduling an informal technical session in lieu of a prehearing conference. As the Commission is aware, the technical session took place on August 19, 2016. Staff did not file a report of this gathering, so in an effort to convey a sense of what transpired on August 19 I am appending a copy of the attendance sheet that was circulated. The session was well-attended and it is fair to say there was significant interest in this case, not just from institutional customers of Concord Steam and from agencies and organizations with a commitment to energy efficiency, but also among members of the public. The discussion was, at times, a heated one and many questions remained unanswered. Staff flatly refused to consider any suggestions for discovery (indeed, Staff even refused to keep those who signed the attendance sheet informed of the progress of the docket) or a less rigorous procedural schedule. Nevertheless, in light of the controversy this docket has engendered and the issues that remain unresolved it is the respectful contention of the OCA that it would not be in the public interest to proceed with tomorrow’s scheduled hearing.

The transaction proposed by the petitioners is not scheduled to close until May 31, 2017. The question of emergency and/or temporary rates sufficient to keep Concord Steam in business until then is the subject of a separate proceeding, DG 16-769, which is progressing toward resolution. In these circumstances, a brief delay is not just prudent but conducive to the negotiation of a revised settlement agreement that will address pending uncertainties and include a broader spectrum of parties than the current signatories. The OCA stands prepared to be of assistance in achieving such an end.

We are, of course, aware that Puc 203.13 requires seven days of notice to the Commission prior

to a hearing postponement request, along with a "good faith attempt to seek the concurrence of the other parties to the request." I have sought such concurrence from the petitioners, but they do not agree. Therefore, we are not formally requesting a postponement but, rather, offering this as a suggestion in the context of a case that has already been compromised by significant and arguably improvident deviations from the Commission's established practices.

If you have any questions about this filing, please contact our office. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "DKreis", written in a cursive style.

Donald M. Kreis  
Consumer Advocate

cc: Service list via electronic mail  
Enclosure

## SIGN-UP

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