BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Re: Liberty Utilities (EnergyNorth Natural Gas) Corp.

d/b/a Liberty Utilities - Keene Division

Docket No. DG 17-068

JOINT MOTION FOR REHEARING UNDER R.S.A. 541 OF TERRY CLARK, ONE MOVANT, AND BEVERLY EDWARDS, ELIZABETH FLETCHER, DOUGLAS WHITBECK, GWEN WHITBECK, SUSAN DURLING, JULIA STEED MAWSON AND MARILYN LEARNER, AS THEY COLLECTIVELY COMPRISE THE NH PIPELINE HEALTH STUDY GROUP, AND INDIVIDUALLY

Pursuant to R.S.A. Chapter 541 and R.S.A. 541:3, the movants noted above and below, by and through their undersigned counsel, Richard M. Husband, Esquire, being persons directly affected by Order No. 26,065 ("Order") of the Public Utilities Commission ("Commission") entered on October 20, 2017 in this matter, hereby respectfully jointly move for reconsideration of and a rehearing on the Order. As grounds for this motion, the movants say as follows:

1. The Order, entered without notice or a hearing, issues a declaratory ruling that the petitioner, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities - Keene Division ("Liberty Utilities"), a gas utility currently distributing propane-air in Keene, is allowed, under its 1860 Keene "gas" franchise, to convert to compressed natural gas ("CNG") and liquid natural gas ("LNG") and install corresponding facilities—including "technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems," *id*. at 3—without seeking such permission under R.S.A. 374:22 and R.S.A. 374:26, because the Commission finds today's gas to be of the "same character" as propane air and traditional "gas." *See generally* Order and *particularly* at 3. As it is extremely broadly worded and not limited to the subject Keene franchise, or even petitioning utility, the Order allows for the gas utility services in more than 50 gas-franchised New Hampshire municipalities,

see attached Exhibit "A," to be converted, virtually overnight, to such CNG/LNG systems with related extremely high-pressure piping, without notice, a hearing or the opportunity for intervention, public input or challenge respecting any of them. Thus, while the (revised) petition ("Petition") underlying the Order is about increasing Liberty Utilities' customer base in the Keene area, *see* Petition Footnote 1, the Order has the potential to dramatically increase gas use, and dependency, statewide, as it allows CNG/LNG to be transported to service areas that are unreachable by current pipeline-constrained gas systems. *See* Testimony of William J. Clark in Commission Docket No. DG 16-852 at 9:3-6.[1] Moreover, as it suggests no parameters as to what will be considered "gas" going forward, the Order stands for "gas is gas" precedent that allows the industry to essentially sell whatever it wants for the fuel, without public scrutiny, so long as it continues to call it "natural."

2. Movant, Terry Clark ("Clark"), is an approximately 40-year resident of Keene, New Hampshire, currently residing at 14 Barrett Avenue, Keene, New Hampshire 03431, who is in his second term as City Councilor representing Ward 3 in Keene, but who moves for a rehearing solely in his capacity as a citizen, not as City Councilor, albeit from the perspective of a City Councilor who is working to make solar and other sustainable energy sources available to the City of Keene and its residents and businesses, largely because he believes that a rapid transition to sustainable energy sources is necessary to address the climate change crisis. Being directly affected by the Order in all ways that a Keene resident and inhabitant within the Liberty Utility's Keene gas franchise can be, Clark is particularly concerned that the Order issued without notice, a hearing, or any opportunity for intervention, challenge or even public input on issues raised by the proceeding, that many state laws and actions, including the Order, are acting

[1] DG 16-852 involves the petitioner's request for authorization to build similar CNG/LNG facilities to serve the Town of Hanover and City of Lebanon.

as roadblocks to pursuing sustainable energy sources, and that the Order's allowance of the building of a new large, high customer volume hydraulically fractured ("fracked") gas facility in Keene will likely impede the development and availability of sustainable alternatives in Keene for at least another generation.

3. Movants, Beverly Edwards, Elizabeth Fletcher, Douglas Whitbeck, Gwen Whitbeck, Susan Durling, Julia Steed Mawson ("Mawson") and Marilyn Learner ("Learner"), move for reconsideration and a rehearing both (a) as members (hereinafter, also, collectively, "Members") of an unincorporated association of New Hampshire residents dedicated to identifying, preventing and educating the public and state government concerning the health dangers of fracked gas use in New Hampshire, known collectively as the "NH Pipeline Health Study Group," and (b) as individuals. The addresses for these movants are as follows:

Beverly Edwards
41 Twillingate Road
Temple, NH 03084

Elizabeth S. Fletcher
288 Marcel Road
Mason NH 03048

Douglas Whitbeck
756 Brookline Road
Mason, NH 03048

Gwen Whitbeck
756 Brookline Road
Mason, NH 03048

Susan Durling
212 Gould Pond Rd
Hillsboro, NH 03244

Julia Steed Mawson
17 South Shore Dr.
Pelham, NH 03076

Marilyn Learner
62 Baxter Rd
Hollis, NH 03049

Undersigned counsel notes that he was a member of the NH Pipeline Health Study Group, but has withdrawn from membership to pursue representation of the group.

4. As a group, the Order harms the Members by denying their right to provide extremely germane input and evidence on an issue that is not only of great public importance and concern, but one that goes to the very reason for the group's existence—and work the past two years: whether today's gas is of the same character as the gas granted under Liberty Utilities' franchise. It is also an issue on which another state agency has already clearly decided that the Members should be heard.

5. On July 1, 2016, after extensive research, analyses and discussion, the NH Pipeline Health Study Group petitioned the governor and Department of Environmental Services ("DES") for review and revision of Env-1400 , the DES Rules governing Regulated Toxic Air Pollutants ("RTAPs"). Submitted on an emergency basis as to some requests, the petition essentially sought to address the fact that fracked gas is *not* the same as the traditional "natural" gas contemplated by the rules, with studies linking 22 RTAPs—some carcinogens or suspected carcinogens—under Env-1400 to fracked gas (either as additives or produced by combustion), and fracked gas emissions and leaks from gas compressor stations and other gas infrastructure to respiratory and other health problems[2] A copy of this petition, the sources and other contents of which are incorporated in full herein by reference, is attached as Exhibit "B." While the DES denied the petition on an emergency basis, it agreed to undertake a "thorough review" of the

[2] Although fracked gas has been around for decades, it has only replaced traditional gas as the market's "gas" of choice in recent years. *See* Tiemann and Vann, Hydraulic Fracturing and Safe Drinking Water Act Regulatory Issues at 4 (Congressional Research Service)(2015).

matter, as was otherwise requested by the NH Pipeline Health Study Group. *See* copies of DES correspondence dated August 4, 2016 and August 12, 2016 attached as Exhibit "C."

6. On October 28, 2016, the NH Pipeline Health Study Group followed its rule review petition to the DES with a request for a hearing, also to the DES, on Tennessee Gas Company, LLC's application to renew its permit to operate a gas compressor station in Pelham, New Hampshire, noting additional likely RTAPs n fracked gas. A copy of this letter, the sources and other contents of which are incorporated in full herein by reference, is attached as Exhibit "D." The DES granted a hearing in response to the Members' request, *see* attached Exhibit "E," and the Members submitted further information in support of their position in advance of the hearing. *See* submission letter attached as Exhibit "F" (note: the Brigich study referenced in the letter is not part of Exhibit "F" as it is 94 pages, but is available at https://www.atsdr.cdc.gov/HAC/pha/Brigich_Compressor_Station/Brigich_Compressor_Station_EI_HC_01-29-2016_508.pdf . While the Pelham compressor station permit was granted, the DES continues to review the issues raised by the Members concerning fracked gas. In fact, to its credit, the gas industry has worked with the DES to identify the ingredients in fracked gas, even providing the DES with a sample for testing and analysis, thus indicating that the industry itself appreciates the need to address fracked gas concerns openly, publicly and with real, concrete consideration of the chemistry and health effects involved. The Members have met with the DES twice already on the matter for updates on the DES' analyses and findings and are scheduled to meet with the DES again on November 28, 2017.

7. The DES' analyses, findings and ultimate conclusions on the components of fracked gas and propriety of any Env-1400 rule changes responsive to the same should be a part of the information and evidence weighed by the state in comparing its character to that of the gas

previously actually considered and approved for use by the state. The DES certainly believes that the NH Hampshire Pipeline Health Study Group has standing to raise and discuss fracked gas before it, and the Commission should, too—especially since, as these issues will not otherwise be raised but ignored, not only the movant group but the entire process and populace will suffer if the Members are not heard.

8. As individuals, the movants who are Members of the NH Pipeline Health Study Group also have standing to request a rehearing based on their membership and interest in the group, for the reasons discussed. However, as concerns Mawson and Learner, standing further derives from their residency in towns—Pelham and Hollis, respectively—in which Liberty Utilities currently holds a gas franchise. Under the precedent established by the Order, Liberty Utilities could immediately convert the traditional gas supply service currently used in Pelham and Hollis to the type of new CNG/LNG gas service authorized by the Order, including the installation of "technology and piping that requires much higher operating pressures that are found in [current] New Hampshire gas distribution systems" *id*. at 3 next door to Mawson and Learner's residence, without notice, a hearing, or any opportunity for public scrutiny, input or challenge respecting the matter. As to Mawson and Learner, their standing as citizens of franchised utility towns subject to the Order can only be exercised here. In fact, the rights of all citizens of the more than 50 gas-franchised towns in New Hampshire which are subject to the Order, to have any input on whether a whole new type of gas and gas system with higher-pressure piping are coming to their neighborhoods, are lost if this motion is not granted.

9. This motion should be granted, for the following reasons.

The Petition Should be Dismissed Under Puc 207.01(b)

10. The Petition is not "verified under oath or affirmation" as required by Puc 207.01(b): the only signature on the Petition is that of its counsel which, obviously, cannot meet the verification/affirmation requirement as interpreting the rule to allow for only counsel's signature would make its requirement superfluous and meaningless, given that counsel for parties are otherwise required to sign all petitions under Puc 202.07. Particularly as the Petition had to be revised and certainly does not commit to anything by specificity (nothing is offered of the nuts and bolts of the petitioner's plans), the verification/affirmation requirement cannot be ignored. The Petition should have been dismissed under Puc 207.01(b) upon its filing without any other action on the matter.

The Petition Should be Dismissed Under Puc 207.01(c)(1)

11. Likewise, the Commission should have dismissed the Petition upon its filing for failing to "set forth factual allegations that are definite and concrete," as required by Puc 207.01(c)(1)—minimally, because it does not describe the proposed changes to the Keene system at all, precluding a fair opportunity to challenge—or even understand—the Petition.

The Petition Should be Dismissed Under Puc 207.01(c)(4) for Lack of Jurisdiction – the Matter is for the SEC

12. Even if the fatal flaws on its face were corrected, the Petition should still be dismissed, for lack of jurisdiction, as the approval sought under it falls squarely to the SEC. While the Petition is wholly bereft of any description of what its plans actually involve, we do know that it "has begun planning for the conversion of the Keene system from propane-air to compressed natural gas (CNG) and liquefied natural gas (LNG)," with the first step being "the construction of a temporary CNG **facility**," *see* Petition at 1 (emphasis added), and that the final process will include the installation of "technology and piping that requires much higher

operating pressures that are found in [current] New Hampshire gas distribution systems." Order at 3. Whether viewed as "new construction" or "sizeable changes or additions to existing facilities," R.S.A. 162-H:5 clearly covers the petitioner's plans:

> **"162-H:5 Prohibitions and Restrictions. –**
> I. No person shall commence to construct **any energy facility** within the state unless it has obtained a certificate pursuant to this chapter. Such facilities shall be constructed, operated and maintained in accordance with the terms of the certificate. **Such certificates are required for sizeable changes or additions to existing facilities.** Such a certificate shall not be transferred or assigned without approval of the committee.
> II. Facilities certified pursuant to RSA 162-F or RSA 162-H prior to January 1, 1992, shall be subject to the provisions of those chapters; however, **sizable changes or additions to such facilities shall be certified pursuant to this chapter** …"

Id. (emphasis added).

13. The broad definition of "energy facility" under Section VII of R.S.A. 162-H:2—stretching so far as to include all "ancillary facilities"—buttresses this conclusion:

> "VII. 'Energy facility'' means:
> (a) Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities …"

Id.[3]

14. Liberty Utilities' testimony in DG 16-852 concerning a similar planned facility for the Town of Hanover and City of Lebanon, described as an "off pipeline" distribution system in the testimony, certainly sounds like it involves one or more industrial structures "used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities" as are covered by R.S.A. 162-H:

> "Q. How does an 'off pipeline' distribution system work?

[3] The facility may also fall under subsection (g) of the statute: there is insufficient information in the petition to make this determination.

A. An ‘off pipeline’ distribution system has two key components. The first component is the underground gas distribution piping along with service risers and meters located at the customer’s premises. This component of the system is identical to the existing distribution network that has been operated safely, reliably, and efficiently by Company employees for decades. The second unique component of the “off pipeline” distribution system is the **fueling facility** that will be utilized to supply the distribution system with natural gas.

A conventional local distribution network has an interconnection with an interstate pipeline company. At this interconnection an LDC would **receive shipments** of natural gas from its supplier, **regulate pressure** down to LDC operating pressure (typically 60 PSI), **add mercaptan**, which is a gas odorant, and distribute the gas to customers. Because there is not an interstate pipeline within 50 miles of the Hanover/Lebanon franchises with which to interconnect, the Company plans to construct **an LNG storage and vaporization facility along with a CNG decompression facility** to supply the natural gas to the distribution system and customers.

LNG will be trucked to the facility and off-loaded into LNG storage tanks. From the tanks the **liquid will be vaporized into gaseous form, odorized as needed, and injected into the distribution system**. This same procedure has been working reliably and safely at the Company’s current LNG plants for approximately 40 years. **CNG will also be trucked to the facility** and attached to decompression skids, which will **decompress** the gas from approximately 3600 PSI to the working LDC pressure of 60 PSI and **injected [sic]** into the system …”

Testimony of William J. Clark in Docket No. DG 16-852 at 8:12-9:13 (emphasis added) .

15. The Petition's asserted applicability of Commission rules and decisions, and legislative acts that predated the effective date of R.S.A. 162-H:5, falls flat: whatever the law may have arguably been at one time, the SEC statutes plainly govern now, and cannot be skirted. This matter does not involve a simple determination of existing franchise rights, as the petitioner would have us believe, but the right to construct, change and add facilities to allow for an entirely *new source* of energy—as the Petition acknowledges. *See id*. at Footnote 1 ("… what we will do, following acquisition, is look into the economics of converting the system from a propane/air system to some **other** fuel **source**, like CNG or LNG")(emphasis added). This right can only be determined and granted through proceedings before the SEC. Consistent with its prior decisions, the Commission should find that the SEC has jurisdiction over this matter, and that the SEC's jurisdiction is exclusive: if the SEC was not established precisely to oversee the siting and approval of such complex, new energy technology and facilities, what *is* its purpose?[4]

The Petition Should be Dismissed Under Puc 207.01(c)(2) and/or as Speculative and Failing to Claim a Present Justiciable Right

16. Thus, as there can be no right under any franchise to service customers until such SEC approval, the Petition's request for a declaration of franchise rights should be dismissed under Puc 207.01(c)(2), as it presents a purely "hypothetical situation" until there is SEC approval.

17. Similarly, under case law, the Petition should be dismissed as speculative and failing to claim a present justiciable right. The Commission looks to declaratory judgment

[4] From Commission decisions: if the SEC has jurisdiction over the matter, it is exclusive. *See* Commission Order No. 25,822 dated October 2, 2015 at 24 and Footnote 8 (refusing to consider gas pipeline siting issues, in part, because such matters " may also come before the New Hampshire Site Evaluation Committee under RSA ch. 162-H," thereby implying exclusive state agency jurisdiction for the SEC on matters within its jurisdiction, like certifying energy facilities under R.S.A. 162-H:5 (which would also clearly seem to involve "siting"); Commission Order No. 25,843 dated November 20, 2015 at 5 (gas pipeline siting issues are "considerations for other agencies," citing, *inter alia*, an SEC statute, thereby again indicating that it considers potentially overlapping SEC jurisdiction of the matter to be exclusive of the Commission's jurisdiction).

decisions under R.S.A. 491:22 as providing analogous decisions for the requirements of exercising its own declaratory judgment authority. *See Public Service Company of New Hampshire, Petition of 5 Way Realty Trust for Declaratory Ruling,* Commission Docket No.DE 01-088, Order No. 24,137 dated March 14, 2003 at 28. As such, the petition cannot be maintained unless it claims "a present legal or equitable right or title" at both the time of filing of the petition and the Commission's ruling on it. *See* R.S.A. 491:22; *Conway v. Water Resources Bd.*, 89 N.H. 346 (1938)(petition dismissed when petitioner waived claim of right in open court); *Carbonneau v. Hoosiers Engineering Co.*, 96 N.H. 240 (1950)(wife's declaratory judgment petition on damages available for her living husband's injuries could not be maintained due to the lack of a present legal right or title against which an adverse claim could be made, as her only claim would arise on her husband's decease for wrongful death). The petition cannot be construed to claim a present claim legal right or title in any "Keene CNG/LNG franchise rights" as the petitioner will have no right to distribute CNG or LNG to anyone in Keene until such time, if any, that the SEC approves its proposed CNG/LNG facilities. Nor may it be concluded that such a right may arise by the time of the Commission's decision on the petition, as there has been no SEC filing. If the petition had been filed concurrently with an SEC filing for approval of the proposed CNG/LNG facilities, we might have a different story—there would at least be a colorable right in the process of determination—but, in the absence of an SEC filing, the Commission case must be dismissed or, most charitably, stayed until there is an SEC filing and

outcome.[5]

If the Commission Could Afford Relief,
it Would Have to be Pursuant to R.S.A. 374:22 and R.S.A. 374:26

18. Even if the Commission does not yield to the SEC's clear jurisdiction over the matter, the Petition would still have to be dismissed. As is acknowledged in paragraph 3 of the Petition, Commission Staff informed Liberty Utilities even before it filed the Petition that that its new CNG/LNG system would constitute "a change in the character of service," such that, any Commission remedy for the relief sought **must** come from a petition filed under R.S.A. 374:22 and R.S.A. 374:26—it cannot be granted under a petition for a declaratory ruling such as the petitioner has filed.

19. In relevant part, R.S.A. 374:22 provides:

> **"374:22 Other Public Utilities. –**
> I. **No person or business entity**, including any person or business entity that qualifies as an excepted local exchange carrier, shall commence business as a public utility within this state, or shall engage in such business, or begin the construction of a plant, line, main, or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or **shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission** …"

Id. (emphasis added).

20. R.S.A. 374:26 further provides:

> **"374:26 Permission. – The commission shall grant such permission whenever it shall, after due hearing, find that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise**; and may prescribe such terms and conditions

[5] Should the Commission decide, inconsistently with its prior decisions discussed in the preceding footnote, that the Commission may hold concurrent jurisdiction with the SEC over the subject matter, it must still decline the opportunity. Such reasoning would still have to consider the SEC's jurisdiction to be primary, given the expressly applicable language of R.S.A. 162-H:5, and the SEC has not delegated its authority to the Commission in any manner that will allow this proceeding to go forward, even under such reasoning. *See* R.S.A. 162-H:4 (establishing exclusive criteria for delegation of SEC authority, including requirement of hearing under Section IV); *compare EnergyNorth Natural Gas, Inc.*, Order No. 23,657, at 17-18 (by order, SEC delegated its authority over matter to Commission).

> for the exercise of the privilege granted under such permission as it shall consider **for the public interest**. Such permission may be granted without hearing when all interested parties are in agreement."

Id. (emphasis added).

21. While admitting that it has *never* distributed CNG or LNG under its Keene franchise, *see* Petition, ¶ 17, the petitioner contends that the "right" is broadly bestowed by its original 1860 franchise grant. But, even if the right were covered under the franchise, the failure to have "theretofore actually exercised" it requires permission under R.S.A. 374:22. *Id*. Moreover, the petitioner ignores the plain language of the franchise grant, which clearly limits all rights under the franchise to gas use

> **"for the purpose of lighting** the streets, manufactories, machine shops, and all other buildings in the town of Keene, **and to construct** or purchase such buildings, works, furnaces, reservoirs, gas holders, gas pipes, and other things as may be requisite and proper **for such purpose**."

Id. at ¶ 15 (emphasis added).

22. Thus, unless the Petition is amended to expressly limit CNG and LNG distribution solely for lighting Victorian-era gas lamps and not for heating or other non-lighting purposes, the petitioner is clearly requesting a change in the character of its service and rights requiring a petition under R.S.A. 374:22.[6] Indeed, given the complete switch from traditional service to CNG/LNG service, and the need for the installation of corresponding new, extensive, complex facilities, including "technology and piping that requires much higher operating

[6] Whether the petitioner has changed the character of its service (including that of its "gas") in the past, without objection, is irrelevant. A gas franchise is a legislative grant of authority. The petitioner cannot argue any "acquired" franchise rights exceeding the express language of the franchise grant, by the expiration of any statute of limitations, laches, or the like, as all rights are fixed by the language of the legislative grant and cannot be expanded by time and reliance-type defenses. *See State v. Hutchins*, 79 N.H. 132, 139 (1919)(rights in public waters are fixed by the legislative grant and cannot be changed except by further legislative action). This is as should be expected since, as *State v. Hutchins* notes, *see id*. at 139-140, it is not the obligation of town officials (or ordinary citizens) to continually check for compliance with legislative grants of authority. Nor should noncompliance be rewarded by the consequent acquisition of unintended, ill-gotten "rights."

pressures than are found in New Hampshire gas distribution systems," no straight-faced argument can be made to the contrary.

The Order Must be Vacated as it Was Entered Without Notice and a Hearing, Contrary to Statutory Requirements and the Commission's Own Rules, and in Violation of Due Process

23. Of course, filing a petition under R.S.A. 374:22 also invokes R.S.A. 374:26 and its requirement of a "due hearing" on a requested change in franchise rights to ensure that the change would be for the "public good" and the "public interest"—a critical distinction between the standards of the proceeding before us as filed and as it is required to be maintained, since the public good/interest determination does not govern a declaratory ruling. The Commission must reach decisions under governing standards. *See Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1073 (1982)("To turn a [Commission] financing hearing into a prudency determination that could affect future rates, without proper notice, is not in conformity with due process."). Commission decisions reached in violation of statutory requirements are void. *See, e.g., Clark v. New Hampshire Dept. of Health and Welfare*, 114 N.H. 99, 104 (1974)(NH Department of Health and Welfare regulations contrary to statutory requirements held void); *Appeal of Gallant*, 125 N.H. 832, 834 (1984)(NH Department of Employment Security regulations void for conflicting with statutory requirement) .

24. But, the Commission must also follow its own rules. *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.").

25. Even if viewed as a "declaratory judgment" case involving a properly filed complete petition—clearly not the case—the Commission ignored its own rules in deciding this matter without notice and a hearing.

26. In relevant part, Puc 207.01, which governs declaratory rulings, provides that declaratory judgment petitions such as Liberty Utilities' Petition are to be processed in accordance with Puc 203:

> "Puc 207.01 Declaratory Rulings. (a) A person seeking a declaratory ruling on any matter within the jurisdiction of the commission shall request such ruling by submitting a petition **pursuant to Puc 203** …"

Id. (emphasis added). Puc 203 sets forth the rules for "Adjudicative Proceedings." Under these rules, Puc 203.12 requires published notice of, and a hearing on, all adjudicative proceedings:

> "Puc 203.12 Notice of Adjudicative Proceeding. (a) The commission shall give notice of a pre-hearing conference, or of a hearing in a case for which no pre-hearing conference has been scheduled, which shall contain the information required by RSA 541- A:31, III … (b) The commission shall direct the petitioner or other party to the docket to disseminate a notice issued pursuant to this section to the general public by causing the notice to be published in a newspaper of general circulation serving the area affected by the petition or by such other method as the commission deems appropriate and advisable in order to ensure reasonable notification to interested parties …"

Id. Puc 102.07 makes clear that the "hearing" required by the above "means **a properly noticed session** … **which provides for opportunity for any party, intervenor or commission staff to present evidence and conduct cross-examination**." *Id*. (emphasis added); *see also Appeal of Morin*, 140 N.H. 515, 519 (1995) (due process requires "the opportunity to present one's case") (citing *Appeal of Lathrop*, 122 N.H. 262, 265 (1982)). Puc 203.18 additionally makes clear that interested persons are to be afforded a public comment session at the hearing (or prehearing conference, had one been scheduled).

27. In other words, even the declaratory ruling sought in this case was required to be noticed and scheduled for a full evidentiary hearing, with a public comment session. As these requirements were not met, the Order was obtained contrary to the Commission's own rules and due process and is thus a complete nullity for all purposes, subject to challenge in perpetuity, which can only lead to more invalid orders. *See WorldWide Volkwagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)(a judgment rendered in violation of due process is void)(citing *Pennoyer v. Neff*, 95 U.S. 714, 732-733 (1878)); *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1077 (1982)(PUC imprudency finding, improperly made in financing hearing under wrong standard, violated due process and ordered expunged); 2 Am.Jur.2d Judgments § 29 (2004)("It is not necessary to take any steps to have a void judgment reversed or vacated … Such a judgment is open to attack or impeachment in any proceeding … direct … or collateral … and at any time …"); *see also id*. at § 31 (1994)("... A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication. Indeed, a void judgment … has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any rights be based in it … All proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose.").

The Order does not even do Liberty Utilities any good, and all concerned really would be better off if it were vacated.

The Relief Requested Herein Cannot be Granted in Any Proceeding as it is Contrary to the Public Good and Public Interest and Violates R.S.A. 378:37

28. Even if the Commission had jurisdiction over this matter, not the SEC, and even if Liberty Utilities had submitted a proper, signed, sufficiently descriptive petition for the relief sought under R.S.A. 374:22 and R.S.A. 374:26—or even if the Petition could somehow be

construed to overcome all of these obstacles—the Order would be unstainable, as the petitioner's gas expansion plans are not for the "public good" or "public interest," as must be shown for approval under the latter statute. But, of course, this is undoubtedly why Liberty Utilities did not file a petition under R.S.A. 374:22 and R.S.A. 374:26.

29. The R.S.A. 374:26 terms "public good" and "public interest" are analogous, must be construed broadly, and require consideration of the needs of not only the persons and utility directly involved, but also "the needs of the public at large." *See Waste Control Systems, Inc. v. State*, 114 N.H. 21, 24. 314 A.2d 649 (1974)(citing *Boston & Maine R.R. v. State*, 102 N.H. 9, 10, 148 A.2d 652 (1959). Indeed, the PUC's broad discretion in this area, *see Waste Control Systems, Inc. v. State*, *supra* at 24, compels it. Thus, while the PUC usually focuses on financial considerations in its statutory analysis, it also recognizes that it must determine "in general, whether the franchise petition's approval would offer benefits to the public," *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Commission Docket No. DG 15-362, Order No. 25,987 dated February 8, 2017 at 11, and that asserted public benefits must be weighed against actual costs, including environmental costs. *See Public Service Company of New Hampshire d/b/a Eversource Energy*, Commission Docket No. DE 16-241, Order of Notice, at 3-4. Climate change is a large environmental cost of gas use, and one that has already made its way into evidence, *without objection by Liberty Utilities*, in comparable Commission proceedings. *See, e.g.*, Exhibit 17 in DG 16-852; *see also* transcript of September 7, 2017 hearing in the matter at p. 159 (confirming that the Commission is considering Exhibit 17 as a full exhibit without objection).

30. Liberty Utility's customer expansion plans must be denied as contrary to the public good and public interest due to climate change concerns alone.

31. The news on climate change only gets worse. The situation is truly dire, with a rapidly closing window for action. At the end of June, climate change experts, including former United Nations climate chief Christiana Figueres and Hans Joachim Schellnhuber of the Intergovernmental Panel on Climate Change, published a letter in the journal *Nature* warning that an immediate, monumental acceleration in climate change efforts is needed to prevent the worst effects of global warming. *See* attached Exhibit "G." Likewise, two different studies published in the journal *Nature Climate Change* on July 31, 2017 conclude that only a rapid escalation in climate action will prevent rising seas, mass extinctions, super droughts, increased wildfires, more intense hurricanes, decreased crops, fresh water and the melting of the Artic. *See* attached Exhibit "H."

32. The crisis is not debatable. As noted by NASA:

> "... 97 percent or more of actively publishing climate scientists agree: Climate-warming trends over the past century are extremely likely due to human activities. In addition, most of the leading scientific organizations worldwide have issued public statements endorsing this position."

See attached Exhibit "I." A 13-agency study just released by the Trump Administration plainly acknowledges that climate change is real and largely caused by Man:

> "This assessment concludes, based on extensive evidence, that it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th Century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence …"

Please see attached Exhibit "J" concerning the release of the report and attached Exhibit "K" for more on it. If Man is causing climate change by his greenhouse gas producing activities, Man can likewise ameliorate it by cutting back on greenhouse gas emissions. These facts should be administratively noticed by the Commission under Puc 203.27.

33. Of course, as emissions of methane, which comprises roughly 95% of today's "natural" gas, are a major greenhouse gas, any sincere effort to climate change must include curtailing reliance on gas to reduce methane emissions. *Increasing*, rather than reducing, methane emissions, as New Hampshire is doing by continually approving more gas use through Commission proceedings,[7] brings us that much closer, that much faster, to the edge. Gas is not the "bridge fuel" to get us to clean, sustainable energy that everyone hoped: original EPA estimates drastically underestimated the impact of the use of gas on climate change and it is not better than using oil or coal, despite cutting back on their greenhouse gas (CO2) emissions: "[w]hile CO2 persists in the atmosphere for centuries, or even millennia, methane warms the planet on steroids for a decade or two before decaying to CO2," many, many times over CO2. *See* "E & E News" online article attached as Exhibit "L."

34. An opinion recently handed down by the Court of Appeals for the District of Columbia Circuit establishes that the Commission not only has the authority to consider climate change in its public good/public interest analysis, but the obligation. In *Sierra Club v. FERC*, Court of Appeals for the District of Columbia Circuit, Docket No. 16-1329 (Aug. 22, 2017), the Court vacated and remanded a Federal Energy Regulatory Commission ("FERC") decision approving a gas pipeline project under FERC's analogous 15 U.S.C. § 717f(e) public interest analysis for failure to consider the downstream climate impacts of the project. The Court concluded that FERC's analysis was deficient, noting, in pertinent part:

> "… greenhouse-gas emissions are an indirect effect of authorizing this project, which FERC could reasonably foresee, and which the agency has legal authority to mitigate … Quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals. Without such comparisons, it is difficult to see

[7] For Concord (DG 16-770), Pelham/Windham (DG 15-362), Keene (DG 17-068) and possibly Hanover/Lebanon (DG 16-852), as noted above.

> how FERC could engage in 'informed decision making' with respect to the greenhouse-gas effects of this project, or how 'informed public comment' could be possible …"

Id. at 24.

35. The reasoning of *Sierra Club* applies equally here. The Commission has the legal authority— and obligation—under R.S.A. 374:26 to consider the impacts the petitioner's proposed project will have on climate change to allow a comparison with non-fossil fuel alternatives, state, regional and national emissions, and climate change goals.

36. If climate change is properly considered, the petitioner's plans must be stopped. R.S.A. 378:37, which sets forth New Hampshire's official energy policy, supports this conclusion.

37. In its Order of Notice for this matter, the Commission suggests concern with R.S.A. 378:37, as it identifies one of the issues to be addressed as "whether the proposal by Liberty comports with the New Hampshire Energy Policy [under R.S.A. 378:37]." *See* Order of Notice at 2.

38. The petitioner's plans *do not comport* with R.S.A. 378:37.

39. R.S.A. 378:37 provides:

> "378:37 New Hampshire Energy Policy. – The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities."

Id. (emphasis added). Under this statute, the Commission is charged with considering the impacts Liberty Utilities' plans will have on climate change as our state policy is to meet energy needs "at the lowest reasonable cost" while protecting our environment, safety, health and

natural resources. Gas use and climate change comes at enormously high costs to the citizens and businesses of New Hampshire:

(1) **to one of our leading industries, tourism**, by its negative impacts on winter recreation, hunting (by the decimation of the moose population), fishing and foliage—threatening hundreds of millions in annual revenues. *See* 2008 DES Fact Sheet "Global Climate Change and its Impact on New Hampshire" at https://www.des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-23.pdf;

(2) **to our sugar industry**, as "[s]ugar maples are extremely susceptible to mid-winter thaws and summer droughts." *See* 2008 DES Fact Sheet "Global Climate Change and its Impact on New Hampshire's Fall Foliage and Maple Sugar Industry" at https://www.des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-25.pdf;

(3) **to our moose and loon populations (also fueling tourism)**: in fact, climate change is the leading cause of their decline. *See* August 1, 2017 NHPR online article "Climate Change is the Leading Cause of Moose and Loon Population Decline in New Hampshire" at http://nhpr.org/post/climate-change-leading-cause-moose-and-loon-population-decline-new-hampshire#stream/0. Moose hunters and wildlife watchers inject over $340 million a year into the New Hampshire economy. *See* June 1, 2015 *National Geographic* online article "What's a Ghost Moose" at https://news.nationalgeographic.com/2015/06/150601-ghost-moose-animals-science-new-england-environment/;

(4) **to our dairy industry**, by increasing, intensifying droughts. *See* August 30, 2016 "Concord Monitor" online article "Dying dairies: How drought, low milk prices lead to decline in N.H. farms" at http://www.concordmonitor.com/NH-Dairy-Farms-Struggle-Close-Because-of-Drought-Low-Prices-Yeaton-Farm-Epsom-NH-4346716;

(5) **to agriculture**, an annual $330 billion U.S. industry, from climate change induced stresses ranging from extreme weather events to increased insect pests and diseases;

(6) **to our health and health costs**, for example, by the increase in the tick population and associated increase in lyme disease, and by all of the respiratory and other problems caused by breathing the pollutants from fossil fuels. New Hampshire has experienced one of the largest state increases in Lyme diseases since 1991. *See* EPA online article "Climate Change Indicators: Lyme Disease" at https://www.epa.gov/climate-indicators/climate-change-indicators-lyme-disease, *see id.* New Hampshire also has an enormous number of impacted asthma sufferers. In fact, "New Hampshire's asthma rate is among the highest in the nation. Approximately 110,000 NH adults and 25,000 NH children have asthma." *See* page 22 of "Greater Manchester, New Hampshire Health Improvement Plan" online at https://www.manchesternh.gov/Portals/2/Departments/health/GManCHIP.pdf;

(7) **to our seacoast homes and infrastructure**: one study has determined (at page 23) that it will cost just three New Hampshire towns between $1.9 and $2.9 billion to address the impacts of climate change. *See* page 23 of "Changing Tides How Sea-Level Rise Harms Wildlife and Recreation Economies Along the U.S. Eastern Seaboard" at http://www.nwf.org/~/media/PDFs/Global-Warming/Reports/Changing-

Tides_FINAL_LOW-RES-081516.ashx;another. Another concludes that over 7,000 New Hampshire homes could be under water by 2100 due to sea rise caused by climate change. *See* November 30, 2016 "Union Leader" online article "Study: 7,000 Seacoast properties could be under water by 2100 yet NH keep building" at http://www.unionleader.com/apps/pbcs.dll/article?AID=/20161130/NEWS11/161139963&template=printart;

(8) **to taxpayers and ratepayers** in cleaning up from ice and other destructive storms, and addressing all of the above other harms.

(9) **to everyone's cost of insurance** as the price of addressing all of the negatives rise for insurance companies.

40. These costs—and the premature *deaths* due to droughts, severe storms and other climate events are not even factored in the above—are very unreasonable given the far lesser cost of non-fossil fuel alternatives.

41. By all authority, we are in a crisis and only an emergency or urgent need of a nature not found here could justify increasing methane emissions at this point. Yet, by its plans, the petitioner will increase methane emissions and climate damage to the public at large, and to a foreseeably far greater degree than the amount just at issue in this proceeding. "[T]he needs of the public at large," *see Waste Control Systems, Inc. v. State*, *supra*, 114 N.H. at 24, demand climate change mitigation. Indeed, more than a decade ago, the vast majority of New Hampshire cities and towns (160+ out of 234) called for it. *See* attached Exhibits "M" and "N."

42. Citizens need to be heard.

43. The movants assert that the aforementioned grounds establish why the Order is unlawful, unreasonable and otherwise unsustainable, and why this motion for reconsideration of and a rehearing on the Order should be granted.

WHEREFORE, the movant respectfully requests that the Commission:

A. Vacate (or reverse) the Order and, after due notice, schedule this matter for a full evidentiary hearing on the merits conducted in complete compliance with statutory requirements and Commission rules; and

B. Grant such other and further relief is reasonable, lawful, just and otherwise appropriate.

Respectfully submitted,

Dated: November 16, 2017

//s//Richard M. Husband, Esquire
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CERTIFICATE OF SERVICE

I hereby certify that I have on November 16, 2017, I served an e-mail copy of this motion on each person identified on the Commission's service list for this docket, by delivering it to the e-mail address identified on the Commission's service list for the docket.

//s//Richard M. Husband
Richard M. Husband