

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

DG 17-152

Liberty Utilities (EnergyNorth Natural Gas) Corp. dba Liberty Utilities

Least Cost Integrated Resource Plan

**INTERVENOR, TERRY CLARK’S, SUMMARY OF POSITIONS
PURSUANT TO MARCH 16, 2022 COMMISSION PROCEDURAL ORDER**

Intervenor, Terry Clark (“Clark”), by and through undersigned counsel, Richard M. Husband, Esquire, hereby respectfully submits the following summary of his positions in this matter pursuant to the Commission’s March 16, 2022 procedural order (“[Order](#)”). Clark reserves the right to amend and/or supplement his positions as appropriate.

PREAMBLE

Over four years ago, Clark, a long-time Keene resident concerned with Liberty Utilities (EnergyNorth Natural Gas) Corp. dba Liberty Utilities (“Liberty”)’s planned conversion from propane air to fracked natural gas in Keene, and expansion of its fracked natural gas services in Keene and throughout the state, presented his dispositive position to the Commission.¹ Clark contends that Liberty’s planning is unlawful and not approvable as it is inconsistent with the state’s official energy policy under [RSA 378:37](#) and contrary to the public interest. He asserted this in not only this Least Cost Integrated Resource (“LCIRP”) docket seeking approval under [RSA 378:38](#) and [RSA 378:39](#) for Liberty’s planning for the forecast period 2017/2018 - 2021/2022, but also in [Docket No. DG 17-068](#), wherein the first phase of the Keene conversion/expansion was allowed to proceed without such approval. While noting that

¹ The Commission has been comprised of different individuals over the period, none of whom were involved in the matters discussed, to Clark’s knowledge, until the [Order](#). Clark notes this to make clear that his “Commission” complaints that follow are not directed at any individual commissioners and certainly not the Commission as it is comprised now.

individual environmental, health, safety, economic and other concerns also weigh against Liberty's planning, Clark stressed that those collectively associated with the climate crisis alone preclude it since the planning results in substantially increasing rather than decreasing the utility's methane (GHG) emissions over the planning period and next two decades in conflict with [Paris Climate Accord \(Paris Agreement\)/Intergovernmental Panel on Climate Change \("IPCC"\)](#) emissions reduction goals for the decarbonization needed to address the climate crisis.² Clark's position was clearly asserted and amply supported in both proceedings from his first involvement, including in his [motion to dismiss and for a moratorium on Liberty's expansion plans](#) filed in this case only four days after Clark was allowed to intervene,³ and pleadings in [Docket No. DG 17-068](#).⁴ Although the Commission denied Clark's [motion to dismiss](#), it assured consideration of his position at the end of the proceedings, after full development of the record. [Order No. 26,225 \(Mar. 13, 2019\)](#) at 6. Through the subsequent proceedings, Clark repeatedly

² The Paris Agreement was informed by and follows the IPCC Fifth Assessment Report (AR.5) and emission goals. See <https://www.ipcc.ch/sr15/faq/faq-chapter-1/>. Clark requests that the Commission take administrative notice of this fact pursuant to [Puc 203.27\(a\)\(1\)](#). See also [N.H. R. Ev. 201\(a\)](#).

³ See [Intervenor, Terry Clark's, Motion to Dismiss and for a Moratorium on Gas Plans](#). As it has been over four years since Clark's filings, some of the URL links to sources supporting Clark's position are no longer valid. Clark believes that there is still ample support for his position on the record notwithstanding this issue—especially as Liberty agrees with it, as discussed below, and much involving the matter is the proper subject for administrative notice, in any event. But, given that the delay in the consideration of Clark's position is not due to Clark, as discussed herein, and the issue is of immediate public concern, Clark urges the Commission to allow and notify Clark to provide new valid URL links or printouts for any support deemed necessary for his position that is now unavailable through a URL link provided in Clark's filings.

⁴ See [Joint Motion for Rehearing, etc.](#) dated and filed November 16, 2017 and [Initial Brief of Intervenor, Terry Clark](#) brief dated and filed May 1, 2018. **Clark requests that the Commission take administrative notice of these pleadings and, if not otherwise specifically requested at the time they are presented for consideration, any other filings in its dockets referenced herein pursuant to [Puc 203.27\(a\)\(2\)](#).**

reasserted and further bolstered his position through his [testimony](#)⁵ and pleadings,⁶ and was reassured, in both cases, that the Commission would consider his position in *this* case, at its conclusion. [Order No. 26,294 \(Sep. 25, 2019\)](#) at 10 (“... [W]e decline to dismiss this matter on the merits as contrary to the public interest under the LCIRP statute, RSA 378:37-39, or out of deference to the jurisdiction of the SEC, as requested by Mr. Clark. Liberty’s LCIRP has been filed and will be evaluated in DG 17-152 ...”); [Order No. 26,613 \(Apr. 22, 2022\)](#) at 5 (“Clark’s pending motion in [Docket No. DG 17-068] is DENIED without prejudice as to his right to continue to seek appropriate relief through his identical motion in Docket DG 17-152.”).

Clark contended, up front, that the climate crisis is not debatable⁷ and Liberty has not only never disputed this fact, or Clark’s assertion that planning consist with [Paris Climate Accord/IPCC](#) emission reduction goals is the only responsible planning for addressing it, but, as discussed below, markets itself as a firm believer in both facts. Clark showed, up front, that the utility’s own projections and representations call for planning that will substantially increase rather than decrease its emissions for nearly two decades (or more);⁸ Liberty has never disproved this fact and it has been plain for nearly three years that it never will in this proceeding as the utility’s [RSA 378:38](#) and [RSA 378:39](#) submissions are too deficient and error-ridden to establish

⁵ See generally [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#).

⁶ See, e.g., Clark’s pleadings under Tabs 33, 45, 65, 97 and 101 (**Exhibit “A”** to pleading) in this docket.

⁷ See [Intervenor, Terry Clark’s, Motion to Dismiss and for a Moratorium on Gas Plans](#) at ¶ 8.

⁸ See [Petition to Intervene of Terry Clark](#) at ¶ 8; [Intervenor, Terry Clark’s, Motion to Dismiss and for a Moratorium on Gas Plans](#) at ¶ 10. For updated Liberty planning forecasts, see discussion of projected design day demand in [Direct Testimony of Francisco D. DaFonte and William R. Killeen \(Redacted\)](#) submitted in [Docket No. DG 21-008](#) at Bates Nos. 017-018. Clark requests that the Commission take administrative notice of these updated forecasts pursuant to [Puc 203.27\(a\)\(2\)](#). See also discussion below.

anything in the company’s favor,⁹ Liberty has failed and refused to properly supplement its submissions, and the Commission disclaimed authority to order additional filings under its [Order No. 26,286 \(Aug. 12, 2019\)](#).¹⁰ Three years ago, the Office of the Consumer Advocate (“OCA”) informed the Commission of the OCA’s position that: “Liberty should consider whether it would be a prudent use of all parties’ resources (and those of the Commission) for the utility to go back to the LCIRP drawing board ... Given the current state of this proceeding, there is a significant risk that the Commission will, after the extensive litigation contemplated ... be compelled to reject the current edition of the LCIRP.”¹¹ The docket was already irretrievably broken when the OCA expressed its concern, and that was even before Liberty decided to just unilaterally “switch” its “first option” from the Granite Bridge Project to [Docket No. DG 21-008](#) without appropriate [RSA 378:38](#) and [RSA 378:39](#) submissions,¹² and before Liberty’s advertising and marketing representations, discussed now and further below, made the record.

⁹ See discussion below. See also CLF pleadings under Tabs 34, 39 and 46 and generally [May 20, 2019 letter from the Consumer Advocate, D. Maurice Kreis, to the Commission](#) under Tab 35. The deficiencies extend to all information required under [RSA 378:38](#) and [RSA 378:39](#), including all environmental, economic, health and safety impact assessments mandated under the statutes. Keene has a pollution/particulate problem discussed in Clark’s pleadings that especially must be assessed under proper [RSA 378:38](#) and [RSA 378:39](#) submissions, and Liberty has never provided information on Keene in its [LCIRP](#) filings. In fact, other than general expansion plans, the only real planning discussed in the [LCIRP](#) is for the since abandoned Granite Bridge Project.

¹⁰ Although it had already ordered Liberty to make one supplemental filing under [Order No. 26,225 \(Mar. 13, 2019\)](#).

¹¹ See [May 20, 2019 letter from the Consumer Advocate, D. Maurice Kreis, to the Commission](#) at 3.

¹² The only other option to the Granite Bridge Project identified in Liberty’s [LCIRP](#) and related filings is a “Concord Lateral” option that is not sufficiently assessed in Liberty’s submissions to meet [RSA 378:38](#) and [RSA 378:39](#) requirements. The option presented to the Commission under [Docket No. DG 21-008](#) does not even appear to line up with the “Concord Lateral” option, needs to be scrutinized through discovery and, to provide a fair opportunity for discovery, would first have to be supplemented with the requisite complete, granular [RSA 378:38](#) and [RSA 378:39](#) submissions, including those for Liberty’s planned “on-system enhancements” for the [Docket No. DG 21-008](#) contract. See [Transcript of October 6, 2021 hearing \(Morning Session\)](#) in [Docket No. DG 21-008](#) at 60:16 – 67:6. As indicated in Clark’s

Over 20 months ago, by a motion¹³ discussed further below, Clark established that Liberty represents through its website advertising and marketing that (i) climate mitigation should, and does, form the foundation for all proper natural gas planning (including Liberty’s) (ii) Liberty should and does support [Paris Climate Accord/IPCC](#) emission reduction goals (iii) Liberty should and does commit to planning that will provide “immediate, deep decarbonization” (iv) Liberty should, and does, commit to developing “net-zero or carbon-negative fuels” and other “innovative solutions” for heating, and (v) Liberty’s commitments are made “*regardless of the regulations*” (emphasis added). The Commission’s response to this information and Liberty’s contemporaneous unilateral “switch” to a new “first option” under its [LCIRP](#) without corresponding new [RSA 378:38](#) and [RSA 378:39](#) submissions should have been to finally consider Clark’s position in light of the information and [motion](#) and promptly order a reboot of the case with reasoning that provided appropriate guidance. The broken docket, Liberty’s representations, the Commission obligation to enforce them under [RSA 374:1](#), [RSA 374:3](#) and [RSA 374:4](#), discussed below,¹⁴ and urgent need to immediately address climate change clearly of record at the time, compelled such a conclusion. Instead, the docket languished outside the scope of approved activity until the [Order](#) while, based on its own projections and [LCIRP](#) representations, Liberty increased emissions through aggressive expansion.¹⁵

pending [motion](#) at 10, the parties (with the possible exception of Liberty) agreed that Liberty’s new proposal would require additional discovery and testimony.

¹³ [Intervenor, Terry Clark’s, Amended Motion to Condition Keene Project on RSA 378 Consistency and Compliance and to Order Supplemental RSA 378 Filing.](#)

¹⁴ Clark’s counsel was not aware of this Commission obligation until his research for this pleading made the connection between all three statutes, but the Commission was required to be aware of it at the time the [motion](#) was filed pursuant to its duty to know Commission laws.

¹⁵ See, e.g., [LCIRP](#) at Bates Nos. and 061-062 (“EnergyNorth has expanded into several communities in New Hampshire, and its goal is to continue such expansion ... EnergyNorth has increased its internal sales force, which has resulted in growth within existing EnergyNorth service territories and where the

Nothing has changed by way of facts, science or law since Clark raised his position, except that all have increasingly tipped the scales more indisputably in Clark's favor while Liberty's methane emissions increased by planning and development¹⁶ that has never been weighed against Clark's [RSA 378:37](#)/public interest position or approved under the provisions of [RSA 378:38](#) and [RSA 378:39](#), a clear precondition to development under [RSA 378:39](#).

Yet, the Commission has repeatedly deferred consideration of Clark's position until now. *See* [Order No. 26,286 \(Aug. 12, 2019\)](#) at 6; [Order No. 26,294 \(Sep. 25, 2019\)](#) at 10; [Order No. 26,613 \(Apr. 22, 2022\)](#) at 5.

Clark urges the Commission to finally consider his [RSA 378:37](#)/public interest position to provide much needed, long-overdue correction and guidance in Liberty's planning, as it would be extremely unreasonable, as well as unlawful, unjust and against the public interest, for the Commission to do otherwise, particularly at this point in time. Clark asserts this and his other positions as follows:

Company is replacing its cast iron and bare steel mains. The Company is also expanding its system into new service territories, most recently Windham and Pelham. The Company will continue these efforts ...").

¹⁶ Including the first phase of the Keene project, a "five-year plan to expand the gas supply to Laconia," *see* [petition](#) under [Docket No. DG 21-006](#), and possibly "on-system enhancements" for the [Docket No. DG 21-008](#) contract that Liberty has planned for 2022. *See* [Transcript of October 6, 2021 hearing \(Morning Session\)](#) in [Docket No. DG 21-008](#) at 60:16 – 67:6. [RSA 378:38](#) and [RSA 378:39](#) requirements clearly apply to Liberty's *entire* service area under [RSA 378:38\(I\)](#), including Keene and Laconia, without exception. While Liberty has attempted to distinguish its Keene service area from Keene by calling it the "Keene Division," there is only one legally recognized entity operating as a Liberty gas utility in New Hampshire and the subject [LCIRP](#) is the only LCIRP filed by that entity in any proceeding for the planning period covering the Keene development to date, so it must apply to Keene and meet [RSA 378:38](#) and [RSA 378:39](#) requirements for Keene.

CLARK'S POSITIONS

1. **POSITION NO. 1:** *Liberty's planning is unlawful and not approvable on the merits as it is inconsistent with the state's official energy policy under RSA 378:37 and contrary to the public interest since it plans for substantially increasing rather than decreasing the utility's natural gas methane emissions in conflict with Paris Climate Accord/IPCC emissions reduction goals, and any final order in this proceeding would commit errors of law and would be otherwise unlawful, unreasonable, unjust and against the public interest which does not expressly find this to be the first grounds for rejecting Liberty's LCIRP and planning to provide immediate, much needed, long-overdue correction and guidance in the utility's planning.*

See above, to which Clark adds:

Some huge issues for the state boil down to one simple question and answer.

Question: Does our official state energy policy's expressed concern for the protection of our physical environment and the health and safety of citizens mandate utility planning that responsibly addresses the climate crisis? Answer: Of course it does; any other interpretation of [RSA 378:37](#) would unreasonably and unlawfully render the statute irrational and essentially meaningless and, in any event, the public interest compels it.

[RSA 378:37](#) must recognize climate change, for it is "the defining crisis of our time,"¹⁷ and, as discussed below and in Clark's pleadings and testimony, the state clearly recognizes it under a number of other statutes and in a number of different

¹⁷ See <https://www.un.org/en/un75/climate-crisis-race-we-can-win>.

ways. Thus, it follows that [RSA 378:37](#) must also contemplate substantial, immediate emissions cutting in line with [Paris Climate Accord/IPCC](#) goals. This is the only lawful standard to follow under a statute mandating planning not at “the lowest cost,” but at “the lowest **reasonable** cost” (emphasis added), as the environmental, health and safety protection components of the statute cannot be achieved without such emissions cutting, and statutes should not be read to mandate compliance with express, important objectives without providing the authority or other means to achieve them.¹⁸

On its face, Liberty’s [LCIRP](#) acknowledges that it is pursuant to an overall business plan to substantially expand the utility’s service¹⁹ which runs through at least 2038/2039.²⁰ As Liberty’s planning improperly relies on natural gas as its sole energy supply option going forward, *see generally* [LCIRP](#),²¹ it necessarily results in increased methane emissions, rather than a substantial decrease in emissions, as the vast scientific consensus agrees is required to combat climate change. Liberty has not met its burden under [Puc 203.25](#), proof “by a preponderance of the evidence,” of establishing that its planning, including that under the [LCIRP](#), will somehow result in

¹⁸ *See also* discussion in [motion to dismiss](#) at ¶¶ 30-36.

¹⁹ *See discussion* in Footnote 15, *supra*.

²⁰ Again, for an update on planning forecasts in the [LCIRP](#), *see* discussion of projected design day demand in [Direct Testimony of Francisco D. DaFonte and William R. Killeen \(Redacted\)](#) submitted in [Docket No. DG 21-008](#) at Bates Nos. 017-018, of which Clark requests administrative notice pursuant to [Puc 203.27\(a\)\(2\)](#).

²¹ [RSA 378:37](#) mandates consideration of all energy supply options “to meet the energy **needs** of the **citizens and businesses of the state**” (emphasis added), *i.e.*, the public at large, not just Liberty customers, necessitating consideration of non-methane energy options. For the reasons (climate, health, safety, *etc.*) expressed in the entirety of Clark’s [testimony](#) and pleadings from the inception of this matter, the planning under Liberty’s LCIRP does not meet these needs (primarily less emissions and a faster green transition ...), but only an unsupported, unreasonable, projected increasing demand for natural gas.

appropriate short and long-term emissions reductions consistent with [Paris Climate Accord/IPCC](#) goals notwithstanding overall planning reflecting substantial emissions increases between now and 2038/2039, little more than a decade from when we have to achieve net-zero under those goals.²² The climate crisis compels substantial emissions reductions by 2030 and Liberty's next LCIRP filing will govern planning almost to the end of 2028, only two years from that critical deadline: it must come out of the gate with appropriate, responsible, approvable climate mitigation. As discussed under Clark's next position, Liberty admits that proper planning requires deep emissions cutting to address the climate crisis and that the [Paris Climate Accord/IPCC](#) goals are the only appropriate standard to follow.

It would be especially unreasonable and unlawful for the Commission to not finally consider and decide Clark's [RSA 378:37](#)/public interest position now as (i) its orders in both [Docket No. DG 17-068](#) and this proceeding have already unduly delayed consideration of the matter for years, losing critical time needed to address the climate crisis while the need, and Liberty's emissions, increased; and (ii) kicking the can into the next LCIRP docket will not bring resolution under the Commission's current orders but will only allow another noncompliant, unapprovable LCIRP filing which the Commission will also refuse to address.

2. **POSITION NO. 2:** *The Commission has all of the facts, science and law it needs to decide as Clark urges.*

If the Commission is waiting for specific direction from the legislature, it should reconsider. The Commission is an institution long-charged with grounding its

²² See IPCC publication dated April 4, 2022, *The evidence is clear: the time for action is now. We can halve emissions by 2030* at <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>.

decisions in facts established according to the burden of proof, as supported or disproved by established science, in interpreting applicable law and deciding matters in the public interest, with reasoning. That is all that is requested, that is all that must be done, now. This does not require “deciding” legislative policy under [RSA 378:37](#) that should be left for the legislature to flesh out; it only requires not unlawfully doing, *i.e.*, not approving, planning that is declared to be unlawful under the statute, with supporting analyses. Until such time as it clearly expresses a superseding policy, the legislature has already plainly expressed all of the policy the Commission needs: the *official state energy policy* codified in [RSA 378:37](#) itself. [RSA 378:37](#) must simply be applied to the facts of the climate crisis and Liberty’s planning.

The climate crisis and compelling need for responsive emissions reductions consistent with [Paris Climate Accord/IPCC](#) goals are established scientific facts shown, without dispute, on the record. Indeed, Liberty itself not only admits that climate change is real, but, in its advertising and marketing, now discussed, also admits and otherwise represents that (i) climate mitigation should, and does, form the foundation for all proper natural gas planning (including Liberty’s) (ii) Liberty should and does support and commit to IPCC (also Paris Climate Accord, *see* Footnote 2, *supra*) emission reduction goals (iii) Liberty should and does commit to planning that will provide “immediate, deep decarbonization” (iv) Liberty should, and does, commit to developing “net-zero or carbon-negative fuels” and other “innovative solutions” for heating, and (v) Liberty’s commitments are made “*regardless of the regulations*” (emphasis added). These admissions and other representations are game, set and match for Clark’s position, as Liberty’s only substantive defense of

record is that the utility is “legally entitled” to its planning. *See generally* Liberty’s filings, and particularly Liberty’s [Objection to Motion to Dismiss](#) and [Objection to Intervenor Terry Clark’s Amended Motion to Condition Keene Project on RSA 378 Consistency and Compliance, and to Order Supplemental RSA 378 Filing](#).

The following Liberty representations, from a press release included in advertising and marketing on the company’s website, are noted on the record in Clark’s pending motion,²³ evidenced by the accompanying Attachment “A,” and were still published online at the time of this submission.²⁴

“Making sure natural gas is available for customers who want it is critical not only for New Hampshire’s economy and for families’ pocketbooks, but also to enable the deepest, fastest, and most achievable pathway for decarbonizing our economy and taking action on climate change. Customers choosing cleaner natural gas over dirtier fuels in Liberty’s service territory alone could result in 1 million tons of greenhouse gases emission reductions over the next 20 years. But we know we must go even further to achieve the kind of emissions reductions necessary to avoid the worst effects of climate change. That’s why Liberty is committed to expanding energy efficiency, developing local sources of net-zero or carbon-negative fuels like Renewable Natural Gas and hydrogen from renewable electricity, and other innovative solutions to keep Granite Staters warm in the winter and fuel our economy while enabling immediate, deep decarbonization. Liberty is proud to be part of the Algonquin Power & Utilities Corp. family, and we are honored to be ranked #10 on the Global 100 list of the planet’s most sustainable companies. Sustainability guides everything we do, including our company-wide support for the Intergovernmental Panel on Climate Change’s goals to limit planetary warming through decarbonization. We look forward to continuing to work toward a sustainable future for New Hampshire.”

The above representations should be considered to constitute the utility’s contention that climate mitigation should, and does, form the foundation for all proper

²³ [Intervenor, Terry Clark’s, Amended Motion to Condition Keene Project on RSA 378 Consistency and Compliance and to Order Supplemental RSA 378 Filing](#) at ¶ 14.

²⁴ *See* <https://new-hampshire.libertyutilities.com/concord/liberty-utilities-announces-new-solution-to-preserve-energy-choices-for-nh-consumers.html>.

natural gas planning as Clark fairly characterized the representations as such in his [motion](#) at ¶ 14 and Liberty has never disputed either Clark’s wording or characterization of the representations.²⁵ They should also be considered a representation/admission that Liberty agrees that climate mitigation should, and already does (“Sustainability guides everything we do We look forward to continuing to work toward a sustainable future for New Hampshire”), form the foundation for all proper natural gas planning—or the fact undisputed and otherwise considered established, by administrative notice under [Puc 203.27\(a\)\(1\)](#),²⁶ under [Puc 203.23\(i\)](#),²⁷ or by any other reasonable analysis. By the same analysis, the above representations should also be considered admissions and/or facts otherwise established that Liberty should and does commit to (i) [Paris Climate Accord/IPCC](#) emission reduction goals, (ii) planning that will provide “immediate, deep decarbonization,” (iii) developing “net-zero or carbon-negative fuels” and (iv) other

²⁵ See Liberty’s [objection](#) to the [motion](#) and generally Liberty’s pleadings in [Docket No. DG 17-152](#).

²⁶ When presented by a party, the Commission shall take administrative notice under [Puc 203.27\(a\)\(1\)](#) of “[a]ny fact which could be judicially noticed in the courts of New Hampshire.” This includes matters of public record that are not in dispute. See [Order No. 25,714 \(Sep. 8, 2014\)](#) at 8. Liberty’s website and press release are certainly public and intended to be public and the representations at issue were otherwise made a public record by publication of the representations in the [motion](#), itself a public record. As noted, Liberty’s [objection](#) does not dispute Clark’s wording or characterization of the representations.

²⁷ If the Commission declines Clark’s request to consider Liberty representations to be an admission by administrative notice (which Clark contends would be unreasonable and otherwise improper), it could and should, if deemed necessary for recognition of the admission, allow/order Clark to serve a data request upon Liberty to establish the Liberty representations at issue to be an admission or admissions pursuant to [Puc 203.23\(i\)](#), or serve its own official confirmatory request on Liberty. Clark avers that neither course should be necessary since, again, Liberty has not disputed Clark’s wording or characterization of Liberty’s representations. If all that separates Liberty’s representations from the realm of deemed admissions is essentially just authentication, though, it would be unreasonable, unlawful and unjust for the Commission to decide the matter on essentially a technicality.

“innovative solutions” to address the climate crisis—because this is precisely what is represented.

From an online article constituting advertising and marketing on Liberty’s website that is also discussed in Clark’s pending [motion](#):

“Relaxing the regulation of methane emissions is troubling. However, regardless of the regulations, Liberty Utilities remains firm in our position to reduce emissions and fight climate change. We are committed to meeting our customers’ energy needs today, without compromising tomorrow.”

Id. at ¶ 14.

These representations, a matter of public record by their publication on Liberty’s website and in this docket, have never been disputed by Liberty.²⁸ Although the representations have since been removed from Liberty’s website²⁹ and Clark does not have a printed copy to offer as an exhibit, they should still be considered to constitute an admission, undisputed or other established fact that Liberty makes its commitments “*regardless of the regulations*” (emphasis added). Or, as with the previously discussed representations, Clark should be afforded a fair and reasonable opportunity to meet any largely technical requirement that the Commission deems prerequisite to deciding as Clark urges.

Under [RSA 374:1](#), Liberty has a duty to “furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.”

Id. See also [Order No. 24,632 \(June 8, 2006\)](#) at 6 (recognizing statute imposes duty).

As Liberty also has a duty to not mislead ratepayers/consumers and other members of

²⁸ See Liberty’s [objection](#) to the [motion](#) and generally Liberty’s pleadings under this docket.

²⁹ They were available at the URL <https://new-hampshire.libertyutilities.com/keene/commitment-to-reducing-methaneemissions-1.html>, as noted in the [motion](#) at ¶ 14.

the public in its advertising, marketing and other representations,³⁰ the only safe, adequate, just and reasonable service and facilities (including infrastructure) the utility may lawfully provide under the statute are as advertised, marketed and represented. Lawfulness under other Commission statutes is, of course, a requirement for any planning approvable under [RSA 378:39](#) or in the public interest, and Liberty's representations are the final nail in the coffin of any defense it may be considered to have offered against Clark's position.

If the Commission is not convinced that Clark has met his burden of proof as to Liberty's representations, then, as Clark has clearly offered significant uncontroverted evidence on the issue, the Commission should submit a formal request (as Clark's counsel believes the Commission often does to assist its consideration of matters) for Liberty to submit all of its advertising, marketing and public representations on the same subject matter, including those published but removed from the internet and those of its parent, Algonquin Power and Utility Corp., applicable to Liberty, as the matter is too important to decide otherwise.³¹

The need for immediate, deep emissions cuts and net-zero planning within the guardrails of the [Paris Climate Accord/IPCC](#) goals³² has been increasingly urged in

³⁰ Under Federal Trade Commission laws, *see generally* <https://www.ftc.gov/business-guidance/resources/advertising-marketing-internet-rules-road> and likely otherwise.

³¹ If Liberty is allowed to respond with respect to any such submissions to the Commission, the other parties should be allowed to respond, as well.

³² Such guardrails are absolutely necessary as the only reasonable, lawful standard for appropriate gas utility planning since emissions cutting projects in isolation—for example, RNG projects—may provide more of a pathway to increased emissions than net-zero, if not approved with proper conditions (*e.g.*, restricting RNG infrastructure use in perpetuity to only RNG use, not traditional gas use, and the RNG use itself to IPCC goals), assuring adherence to the ultimate net-zero goal.

scientific reports and other relevant, credible, publicly known, widely accepted and available publications since Clark's submissions on the topic, a fact that Clark now requests be administratively noticed pursuant to [Puc 203.27](#).

The legal support for Clark's position, amply supported in his filings, including [motion to dismiss](#) and [testimony](#), has only increased since this case dropped off-line and Clark's pleadings correspondingly ceased.

To begin with, the [RSA 378:37](#)/public interest analysis clearly favors Clark. Adding to his analysis of record, including that in his [motion to dismiss](#) and [testimony](#), Clark notes that the only [RSA 378:37](#) concern that properly might be considered to weigh in Liberty's favor under an analysis of the statute is the concern for the "financial stability" of the utility. *See id.* "The protection of investors' interests, however, 'must be secondary to the primary concern of the commission, which is the protection of the consuming public.'" *Appeal of Eastman Sewer Co., Inc.*, 636 A.2d 1030, 138 N.H. 221 (N.H. 1994)(quoting *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708, 720, 490 A.2d 1329, 1338 (1985)(quotations omitted)).

Recently, through several laws, our legislature has signaled strong recognition for the increasing need for substantial emissions cutting and a swift transition to renewable energy. *See, e.g.*, 2021 session [House Bill 315](#) (raising the municipal net-metering cap from one to five megawatts); 2022 session [Senate Bill 268](#) (authorizing power purchase agreements for offshore wind energy resources); 2022 session [Senate Bill 424](#) (authorizing the use of RNG, providing it is determined to be in the public interest, finding that RNG "can provide benefits to gas utility customers and to the public, by offsetting or reducing naturally-occurring emissions and waste streams,

including offsetting conventional natural gas use” consistent with the objectives of [RSA 378:37](#).³³ See also [Order No. 26,358 \(May 22, 2020\)](#) at 17 (“The least-cost planning and restructuring statutes support an emphasis on keeping New Hampshire technologically innovative, economically competitive, and in step with the region ... The least-cost planning, restructuring, and multiple pollutant reduction program statutes support an emphasis on reducing environmental impacts and emissions in New Hampshire.”).

Particularly at this moment in time, especially in light of all of the harm threatened to New Hampshire by climate change,³⁴ justice under the law requires that Liberty be held to its advertising and marketing commitments to emissions reductions and net-zero planning in line with [Paris Climate Accord/IPCC](#) goals, as this is the only reasonable standard to follow in gas utility planning under [RSA 378:37](#), as Liberty itself admits and otherwise represents, and consequently the only service Liberty may provide under [RSA 374:1](#).

3. **POSITION NO. 3:** *Clark’s counsel calls upon the Commission and DOE to hold Liberty to its representations because this is their duty, not Clark’s.*

³³ Note: although passed by the legislature, to undersigned counsel’s knowledge, [Senate Bill 424](#) has not yet been signed into law by the governor—but (barring an amazingly surprising veto by the governor), it should be law by the time of the Commission’s review of this pleading.

³⁴ As noted on the record, natural gas (especially fracked) use comes with enormous stranded and other, largely hidden, costs not associated with renewable/sustainable energy, including millions of premature deaths, losses suffered by New Hampshire’s tourism, sugar, agriculture and dairy industries, losses to seacoast property owners and towns, increased health costs (New Hampshire has over 100,000 asthma sufferers), and the rising remedial costs of addressing storms, droughts and other weather events associated with climate change—with studies concluding that thousands of New Hampshire homes may be under water within decades, not centuries, due to sea rise caused by climate change and that it will cost between \$1.9 million and \$2.9 million to address the climate impacts to just three New Hampshire coastal towns and another. See, e.g., [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 28:7 – 33:25, 37:4 – 38:7. As projected by the "The Fourth National Climate Assessment," see *id.* at 32:14 – 33:25, the economic losses for New Hampshire and the rest of the country will be staggering.

Both the Commission and DOE have supervisory authority over utilities under [RSA 374:3](#) to effectuate statutory compliance with all statutes under RSA Chapter 374's general utility regulations, including the duty under [RSA 374:1](#). *See id.*; *see also* [Order No. 24,632 \(June 8, 2006\)](#) at 6 (recognizing statute imposes duty). Both the Commission and DOE also have the *duty* under [RSA 374:4](#) to enforce such utility statutory compliance, and consequently to hold Liberty to its representations in planning and development, under [RSA 374:1](#), for compliance with [RSA 378:37](#). As discussed above, the only “safe, adequate, just and reasonable service” the utility may lawfully provide under [RSA 374:1](#) is as advertised, marketed, admitted and otherwise represented.

Energy choices are expensive, important decisions for ratepayers which invoke the concerns of [RSA 378:37](#), *see id.*, and the record reflects strong support among New Hampshire citizens (including ratepayers) for energy choices that address the climate crisis.³⁵ Liberty surely knows this and has undoubtedly acquired and maintained customers by its marketed commitment to decarbonization while providing service to the contrary, violating two ago old New Hampshire principles:
You should deliver what you promise and get what you pay for.

4. **POSITION NO. 4:** *The submissions Liberty has made under [RSA 378:38](#) and [RSA 378:39](#) contain critical, unacceptable deficiencies and errors* that are discussed in Clark's filings, including the [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 16:10-20:19 and in [Intervenor, Terry Clark's, Motion to Compel Response to Data Request](#) and the sources referenced therein. They are also discussed in CLF

³⁵ *See* [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 4:13 – 7:11.

pleadings under Tabs 34, 39 and 46 and *generally in the [May 20, 2019 letter from the Consumer Advocate, D. Maurice Kreis, to the Commission](#)* under Tab 35.

Of particular concern to Clark are three problems which repeat in Liberty's filings:

- Liberty's [RSA 378:38](#) and [RSA 378:39](#) submissions and impact analyses fail to consider all infrastructure that will result or is a reasonably likely result of the planning;
- Liberty's [RSA 378:38](#) and [RSA 378:39](#) submissions and impact analyses fail to consider emission and other impacts that will result or are a reasonably likely result of the planning through the entire projected lifetime of all resulting (or likely resulting) infrastructure; and
- Liberty's methane emissions analyses improperly utilize a GWP that is too low vis-à-vis the GWP used for IPCC goals (which Liberty represents it agrees with).

On its face, Liberty's [LCIRP](#) acknowledges:

“The Commission’s charge in this docket, therefore, is to evaluate whether EnergyNorth’s LCIRP is consistent with the State’s energy policy as articulated in RSA 378:37.”

Id. at Bates No. 059.

In opposing Clark's [motion to dismiss](#), Liberty promised:

“As for the LCIRP’s compliance with New Hampshire law, Liberty demonstrated in its filing, and will continue to prove during this adjudicative process, the LCIRP is consistent with applicable law, RSA 378:37 through RSA 378:39.”

[Objection to Motion to Dismiss](#) and [Objection to Intervenor Terry Clark’s Amended Motion to Condition Keene Project on RSA 378 Consistency and Compliance, and to](#)

[Order Supplemental RSA 378 Filing](#) at ¶ 8. Thus, by Liberty’s own admission, its [LCIRP](#) is not approvable since the Commission obviously cannot possibly meet its charge of [RSA 378:37](#) (and public interest) consistency without the appropriate [RSA 378:38](#) and [RSA 378:39](#) submissions.

As noted above, any final order should clearly express that the first grounds for approval denial is that Liberty’s expansion and other planning is inconsistent with the official state energy policy under [RSA 378:37](#), and contrary to the public interest, but the Commission should nonetheless clearly discuss the deficiency/error issue, to provide guidance for Liberty’s next LCIRP.

5. **POSITION NO. 5:** *The Commission must insist upon complete, granular³⁶ [RSA 378:38](#) and [RSA 378:39](#) submissions for the utility’s entire service area,³⁷ not just the “planning” Liberty chooses to disclose, with noncompliance mandating non-approval.*

The reasons for this position are thoroughly set forth above and in Clark’s pleadings.

6. **POSITION NO. 6:** *The Commission has all of the authority it needs to decide as it should.*

To begin with, if the Commission decides as urged, *see* Conclusion below, it will not need to exercise any authority over Liberty for *anything*, unless of its own volition: it will just be following its own obligations to not approve unlawful

³⁶ As required under the Commission’s orders. *See* [Order No. 25,762 \(Feb. 9, 2015\)](#) at 5; [Order No. 26,225 \(Mar. 13, 2019\)](#) at 7.

³⁷ As required under [RSA 378:38\(I\)](#).

planning and to decide matters according to appropriate standards with appropriate reasoning.

But, in any event, the Commission has all of the authority it could possibly need for the final order needed here, as it clearly falls within the Commission authority that is expressly granted or fairly implied under [RSA 378:37](#), [RSA 374:1](#), [RSA 374:3](#) and [RSA 374:4](#),³⁸ and the broad discretionary authority (and duty) it has to act in the public interest.³⁹

As noted in the Keene case (and pending [motion](#) at ¶ 2), the Commission has “plenary authority [under [RSA 374:3](#)] to regulate the provision of safe and reliable service by public utilities,” [Order No. 26,294 \(Sep. 25, 2019\)](#) at 9, which subjects utility operations to such conditions as the Commission may, or must impose, including those necessary to meet legal requirements. *See also* [Order No. 26,065 \(Oct. 20, 2017\)](#); [Order No. 26,274 \(Jul. 26, 2019\)](#) at 8-9. Imposing emissions limitations/reduction requirements on Liberty’s planning consistent with its representations would only be a lawful “condition” required for consistency with [RSA 378:37](#), the public interest and Liberty’s duty under [RSA 374:1](#), such as the Commission has clearly recognized may be imposed, and [RSA 374:3](#) and [RSA 374:4](#) require must be imposed to meet Commission duties. Consequently, such authority must be deemed to be expressly delegated or fairly implied under [RSA 378:37](#), [RSA 374:1](#), [RSA 374:3](#) and [RSA 374:4](#).

³⁸ "The PUC is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." *Appeal of Public Service Co. of New Hampshire*, 454 A.2d 435, 122 N.H. 1062, 1066 (N.H. 1982)(citing *Petition of Boston & Maine Railroad*, 82 N.H. 116, 116, 129 A. 880, 880 (1925)).

³⁹ *See* [Intervenor, Terry Clark’s, Motion to Dismiss and for a Moratorium on Gas Plans](#) at ¶ 5.

Besides the duty to enforce statutory compliance, the Commission has other obligations under [RSA 374:4](#), including the duties to keep informed of Commission dockets and oversee and regulate resource investments under the statute,⁴⁰ as well as the overarching duty to act in the public interest,⁴¹ which Clark contends mandate more active and proactive control of planning cases to the point of not only authorizing and mandating supplementation as needed for compliant filings, but the rejection of LCIRPs that are not approvable on their face—as Clark avers was the appropriate result for this matter at the outset.⁴² The Commission somewhat recognized its authority and responsibilities in ordering granular LCIRP submissions and a supplementation of Liberty’s initial filing in this proceeding,⁴³ but more was needed here and will be needed moving forward.

7. **POSITION NO. 7:** Clark interprets the [Order](#) to mean that the Commission is concluding this case and is going to decide the matter on the record between the June 21, 2022 status conference and the October 4, 2022 final order deadline established the [Order](#), without further proceedings. This is appropriate as *there plainly is not sufficient time under current scheduling for (i) proper supplementation of the prerequisite [RSA 378:38](#) and [RSA 378:39](#) submissions (including supporting*

⁴⁰ See [Intervenor, Terry Clark’s, Amended Motion to Condition Keene Project on RSA 378 Consistency and Compliance and to Order Supplemental RSA 378 Filing](#) at ¶ 2; Intervenor, Terry Clark’s, Reply to Liberty’s Objection to Clark’s Amended Motion to Condition Keene Project on RSA 378 Consistency and Compliance and to Order Supplemental RSA 378 Filing, attached as **Exhibit “A”** to [Intervenor, Terry Clark’s, Amended Motion to File Reply to Liberty’s Objection to Clark’s Motion to Condition Keene Project on RSA Consistency and Compliance and to Order Supplemental RSA 378 Filing](#) at ¶ 14.

⁴¹ See [Intervenor, Terry Clark’s, Motion to Dismiss and for a Moratorium on Gas Plans](#) at ¶ 5.

⁴² *Id.* at 35, Prayer B.

⁴³ See [Order No. 25,762 \(Feb. 9, 2015\)](#) at 5; [Order No. 26,225 \(Mar. 13, 2019\)](#) at 7.

testimony) needed to consider the matter, (ii) reasonable discovery on the same, (iii) testimony revision/supplementation and other necessary final hearing preparation, and (iv) a final hearing on the matter (unless the hearing is on a settlement agreement involving all parties).

Among other reasons, the most basic principles of fairness and due process, which Clark will flesh out if/as necessary, support this.

8. **POSITION NO. 8:** *The Commission is wrong and unreasonable in apparently interpreting the planning statutes to not prohibit construction and other development of planning prior to planning approval under [RSA 378:38](#) and [RSA 378:39](#), or in otherwise allowing it to proceed.*

The first sentence of [RSA 378:39](#) expressly mandates that the Commission “*shall* review” (emphasis added) each LCIRP and [RSA 378:38](#) and [RSA 378:39](#) submissions for their consistency with [RSA 378:37](#) for planning approval—the obligation is not discretionary and is plainly rational and necessary to achieve the important objectives of [RSA 378:37](#). For the same reasons, the second sentence of [RSA 378:39](#) must be construed to mandate approval grounded in that review (“In deciding whether or not to approve the utility’s plan, the commission *shall* consider [the submissions] ...”)(emphasis added). This is the normal, only rational practice in planning and development to achieve the objectives: planning review and approval is a precondition to development.

As there have never been compliant [RSA 378:38](#) and [RSA 378:39](#) submissions in this proceeding, there could not have been compliant [RSA 378:38](#) and [RSA 378:39](#) review and approval. Until the same, planning must be limited to the drawing board

as allowing construction, expansion and other development prior to careful emissions and other impacts analyses and approval under [RSA 378:38](#) and [RSA 378:39](#) thwarts important objectives of [RSA 378:37](#) and unduly encourages approval to avoid substantial stranded costs to utilities and/or ratepayers, which is plainly not in the public interest.

Now, more than ever, utility planning must be carefully scrutinized to establish that is not just a business plan that addresses only the utility's best interests (financial stability), as the [LCIRP](#) clearly is here, but responsible energy planning that meets the state's overall environmental, health, safety, economic and other objectives under [RSA 378:37](#), *i.e.*, planning truly in the public interest, before it becomes not just planning but part of the landscape, someone's very large bill, and all of our emissions.

9. **POSITION NO. 9:** *At this point, natural gas supply contracts and infrastructure should not be approved for durations longer than are consistent with [Paris Climate Accord/IPCC](#) goals.*

Clark raised this standard in Footnote 2 of his pending [motion](#). Since then, critical time has been lost. While this would be a good standard for the Commission to adopt to further [Paris Climate Accord/IPCC](#) goals, it would not suffice as the overarching standard, which must be the goals.

CONCLUSION

The Commission should grant Clark's pending [motion](#), find Liberty's current [LCIRP](#) to not be adequate or approvable and deny approval (rendering the request for supplementation under the [motion](#) moot), with clear, concise findings and reasoning grounded in the reasons set forth herein. Besides Keene, the Commission should make clear that any construction and

development of Liberty’s planned “on-system enhancements” for the [Docket No. DG 21-008](#) contract and any other planned, ongoing or future Liberty project or expansion may not lawfully proceed until such projects and expansion have been finally approved under Liberty’s next, or other appropriate, LCIRP, as [RSA 378:39](#) conditions such construction, development and expansion on approval under [RSA 378:38](#) and [RSA 378:39](#). The Commission should also make clear that, for compliance, consistency and to further the purposes of the planning statutes, the prohibition against rate changes for unapproved planning under [RSA 378:40](#) must be interpreted to include not just all approvals and orders in RSA 378:27-28 proceedings but all approvals and orders which, through *res judicata* principles, become rate increases through RSA 378:27-28 proceedings or otherwise (including prudency determinations, if applicable). This will provide Liberty with much needed planning guidance going forward. Any alternative final order must achieve the same results. Especially at this critical period in time, it would not be reasonable, just, in the public interest or consistent with the objectives of [RSA 378:37](#) to conclude this proceeding otherwise.⁴⁴

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: June 1, 2022

//s//Richard M. Husband, Esquire
Richard M. Husband
10 Mallard Court
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⁴⁴ It is again stressed that the Commission and DOE should enforce compliance with [RSA 374:1](#), but left to the proper exercise of their jurisdiction, discretion and authority as to whether such enforcement is a necessary component of the final order Clark seeks, in which case it should be included, or the proper subject of other proceedings. Clark further notes that this is only a summary of his positions pursuant to the [Order](#) and therefore should not be considered exhaustive of the facts, law and arguments Clark could and may put forth in favor of his positions going forward, and Clark reserves all rights with respect to the same.

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CERTIFICATE OF SERVICE

I hereby certify that I have, on this 1st day of June, 2022, served an electronic copy of this pleading and its accompanying Attachment "A" on every other person/party identified on the Commission's service list for this docket by delivering the same to the e-mail address identified on the Commission's service list for the docket.

//s//Richard M. Husband, Esquire
Richard M. Husband, Esquire