

**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, RESPONSE TO SETTLEMENT AGREEMENT**

Richard M. Husband, Esquire, counsel for Intervenor Terry M. Clark (“Clark”) in the above referenced proceeding, pursuant to the Public Utility Commission (“Commission”)’s July 20, 2022 Procedural [Order](#) Re Hearing on Settlement Agreement, hereby respectfully responds to the proposed Settlement Agreement (“Agreement”) between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty”), the Department of Energy (“DOE”) and the Office of the Consumer Advocate (“OCA”), on behalf of Clark, as follows:

PREFACE

1. First, Clark reaffirms that his [position statement](#) sets forth his positions as to the appropriate resolution of this matter.
2. Liberty, a natural gas utility, commenced this [docket](#) on October 2, 2017 requesting approval under RSA 378:37-39 of its [“Least Cost Integrated Resource Plan” \(“LCIRP”\)](#) for the planning period 2017/2018 through 2021/2022. *See id.* at 1 (Bates No. 5).
3. On information and belief, much, if not the vast majority, of natural gas that Liberty distributes in New Hampshire is hydraulically fractured (“fracked”) natural gas. Clark has alleged this. *See, e.g.*, Clark’s [motion to dismiss and for a](#)

moratorium at ¶ 3. Liberty has not disputed it; it is common knowledge.<sup>1</sup>

Fracked gas contains particulates and other unhealthy components, some of which may not even be identified, and is associated with respiratory, heart and other health problems. *Id.* at ¶¶ 17-21.

4. Liberty is in the process of converting Keene’s propane-air system to a fracked gas system, with planned fracked gas expansion. The emission impacts of Liberty’s planning for Keene have never been reviewed and approved under RSA 378:37-39 in any docket, including under [Docket No. 17-068](#), which allowed the first phase of planned Keene development, or under this docket.
5. Clark, a long-time resident of Keene, is concerned with Liberty’s fracked gas use for two reasons: emissions and emissions, first with respect to climate, second because Keene has a pollution/particulate problem which may be exacerbated by emissions.
6. For nearly five years, through two proceedings, this and [Docket No. DG 17-068](#), Clark has tried to get the Commission to consider this issue: whether Liberty’s planning is even legal, as it is not consistent with [RSA 378:37](#), the requirement for approval under [RSA 378:39](#), as acknowledged under the [LCIRP](#), *see id.* at Bates No. 059 (“The Commission’s charge in this docket, therefore, is to evaluate whether EnergyNorth’s LCIRP is consistent with the State’s energy policy as

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<sup>1</sup> See [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](#), ¶ 2 (citing July 31, 2020 wmur.com online news article, “Liberty Utilities abandons ‘Granite Bridge’ natural gas project, shifts to existing pipeline,” which discusses Liberty’s fracked gas use, available at <https://www.wmur.com/article/liberty-utilities-abandons-granite-bridge-natural-gas-project-shifts-to-existing-pipeline/33484973>). This pleading is attached as Exhibit “A” to [Intervenor, Terry Clark’s, Amended Motion to File 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](#) (Tab 101).

articulated in RSA 378:37”), and is plainly not in the public interest. *See generally* Clark’s [motion to dismiss and for a moratorium](#) and [Direct Testimony of Terry Michael Clark dated September 6, 2019](#) (“Clark’s testimony”); [Clark’s position statement](#) at 7-9. The concern is exacerbated by the fact that Liberty is pursuing expansion projects that are not even being reviewed and approved under 378:37-39, a clear prerequisite to any development. *See* [Clark’s position statement](#) at 1-6, 22-23. Keene is one of these unapproved projects that has moved forward to development within the [LCIRP](#) planning period. For nearly five years, the Commission has delayed consideration of Clark’s issue while Liberty expanded, promising to consider it at the conclusion of this case. *See* [Clark’s position statement](#) at 6. It is irresponsible to move into the next planning period, which covers from roughly the end of this year until circa 2028—critical years for emission concerns with respect to the climate crisis—without resolving this issue and other concerns about Liberty’s improper practices, *see generally* [Clark's position statement](#) and as discussed herein, as that will only enable more improper expansion until circa 2028, impeding transition much longer.<sup>2</sup>

#### RESPONSE TO PROPOSED SETTLEMENT AGREEMENT

7. Subject to the reaffirmation in paragraph 1 and a complete reservation of all rights concerning the same, Clark submits this response to the Agreement to express his concerns and objections specific to the agreement and its proposed approval.

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<sup>2</sup> As the Commission knows, expansion usually comes with 20-year or more supply contracts and infrastructure historically approved for much longer which, especially if it comes with the hook of an initially cheap price, as does the supply approved under [Docket No. DG 21-008](#), discussed *infra*, may delay transition for decades (if ratepayers do not pay for a transition twice within a short period of time, first to gas, then to the necessary near or net-zero emissions energy source needed to address the climate crisis, discussed *infra*).

8. By Notice of Counsel Concerns submitted July 18, 2022, Clark’s undersigned attorney raised a matter alleged to constitute a great injustice, continuing misrepresentation and seeming fraud involving this proceeding, inviting correction of any underlying misunderstandings.
9. On July 28, 2022, Liberty and the OCA filed largely non-substantive responses to the Notice of Counsel Concerns which do not fairly rebut the concerns and indicia of fraud discussed therein.
10. Accordingly, Clark asserts that, in addition to the other reasons set forth in his [position statement](#), the Agreement may not be approved because it lacks appropriate corrective/remedial terms such that approval would consummate, approve and/or be tantamount to approval of past and continuing fraud, the fruits of such fraud and the harm to ratepayers and the general public. Obviously, this is not within the authority provided the Commission under the enabling statutes for the proceeding, RSA 378:37-39, or under Commission rule [Puc 203.20\(b\)](#), which requires that the proposed settlement be “just and reasonable and [serve] the public interest,” rendering any such approval a nullity. *See Attitash Mt. Service Co. v. Schuck*, 135 N.H. 427, 429 (1992) (law well-settled that administrative agencies must follow their own rules); *In re Union Telephone Co.*, 160 N.H. 309, 317 (2010) (“PUC may not act contrary to the plain meaning of [its own] Rule 431.01.”); 2 Am.Jur.2d Admin. Law § 51 (2004) (“An agency has no power to act in conflict with the authority granted to it by the legislature or outside of its own regulations ... and administrative actions exceeding authority delegated by law are void. An agency cannot expand its granted powers by its

own authority ...”) (footnotes omitted); 2 Am.Jur.2d Admin. Law § 264 (2004) (“An attempt to exercise a power without compliance with statutory provisions as to the manner and circumstances of its exercise is a nullity.”) (footnote omitted).

11. As further grounds for this position, Clark realleges and supplements concerns previously noted by his counsel, as follows.
12. On August 23, 2019, Liberty served its response to Clark’s fifth set of data requests, request number nine (“Liberty’s response to Clark DR 5-9”) in this proceeding, accompanying as “**Attachment A.**” This response shows that Liberty was aware as of that date that its planning only provides, by its own estimation, under a proper [Intergovernmental Panel on Climate Change \(“IPCC”\)](#) analysis, roughly an 11% decrease in carbon dioxide equivalent emissions over a 20-year period of time.<sup>3</sup> This is reflected in the comparison between projected “status quo” emissions during that period of time and two planning options, the Granite Bridge Project, and a “Concord Lateral Option.” *See id.* at p. 3,

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<sup>3</sup> Using the appropriate time-frame specific 20-year Global Warming Potential (GWP) for methane (natural gas), 84 per the IPCC, as Liberty was fully informed was the proper analysis both before and after Liberty’s response to Clark DR 5-9. *See* [Intervenor, Terry Clark’s, Response to Liberty’s June 28, 2019 Filing and Correspondence](#) dated July 8, 2019 at ¶ 5(D); [Clark’s testimony](#) at 18:13-20:19. Liberty’s submissions actually use a 100-year GWP of 25 for their 20-year emissions analysis, with the company deeming “it most appropriate to use the 100-year value, as this has been and is the most commonly used value in regulatory analyses.” *See* [Rebuttal Testimony of Paul J. Hibbard dated October 25, 2019](#) at 17:12-13. However, Liberty acknowledges that appropriate use of the GWPs depends upon “the purpose of the analysis,” *id.* at 11, and it should not be deemed “most appropriate” of Liberty to use a methodology that hides, to its own benefit, a damning fact clearly relevant to the purpose of emissions impact analysis, *i.e.*, that methane’s warming impact is so enormous the first two decades that its use is incompatible with responsible climate action at this point in time. *See* [Clark’s motion to dismiss and for a moratorium](#) (Tab 16) at ¶ 9. Moreover, it is not the “most appropriate” use of a methodology by a company, especially one really wanting to do the right thing, to employ it to provide unsophisticated consumers with information known to be contrary to the truth, but advertised as “fact.” *See* discussion, *infra*. Clark notes that the IPCC may have subsequently adopted or may be in the process of adopting a slightly lower 20-year GWP of 81.2 for methane, *see* [Table 7.SM.7](#), but 84 was the appropriate GWP to apply at the time, and application of the new, slightly lower number likely does not materially change the results and certainly not the impropriety of the Liberty conduct complained of herein.

Sensitivity Figure 3, Sensitivity Table 2 (the 11% reduction estimation is derived from the figures in this table). Projected “status quo” emissions are essentially defined as emissions “but for” Liberty’s natural gas planning, with the rate of use of all other energy alternatives, including renewables, projected to hold constant over the 20-year period of the analysis. *See* discussion and references in [Clark's testimony](#) at 14:16–15:6. While the projections only concern emissions impacts from two specific project options, Liberty asserts that the projections establish reasonably representative impacts for all projects and expansion.<sup>4</sup>

13. Even before the Ukraine reality check reminded us, again, of the compelling need to wean ourselves from fossil fuels as soon as possible, it was highly unlikely from the increasing urgency of the climate crisis and price volatility of natural gas, as well as the likely availability of wind power and other cheaper renewable alternatives well before then, that renewable energy use would only continue at the low roughly 3% rate reflected in Liberty’s projections<sup>5</sup> into the late 2030s. The projection was patently unreasonable,<sup>6</sup> self-serving and, as discussed below,

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<sup>4</sup> *See* accompanying Attachment A, p.3, Sensitivity Figure 3, and [Transcript of Status Conference held on June 21, 2022](#) at 72:15-73:2 (“Maybe the numbers would have wiggled a little.”).

<sup>5</sup> *See* Direct Testimony of Paul J. Hibbard dated June 28, 2019, [Exhibit “2,”](#) Bates No. 65 (Table A5a and Table A5b).

<sup>6</sup> The 2018 New Hampshire 10-Year State Energy Strategy, released prior to Liberty’s projection, projected that, as well as natural gas, “renewables will likely make up an increasingly sizeable fraction of New Hampshire’s fuel mix.” *Id.* at p. 28. The recently released 2022 New Hampshire 10-Year State Energy Strategy notes, “electric demand for heating is projected to dramatically increase across the region. By 2030, the load from electric heating is projected to be 63 times greater than it is in 2021. New Hampshire comes in slightly lower than the regional average at only 50 times greater ...” *Id.* at 29. The rise in state renewable energy use should really begin to accelerate now with not only the development of offshore wind power, but also the renewables associated with the Commission’s recent approval of the [Community power rules](#), the federal enactment of the [Bipartisan Infrastructure Deal](#) and the impending passage of the federal Inflation Reduction Act of 2022.

becomes a self-fulfilling prophecy when the projection is used with advertising/marketing to draw potential renewable users to large volume gas expansion projects that consume the field of competition.<sup>7</sup> Clark disputed the accuracy of Liberty’s low, flat renewable projection in his [testimony](#) at 14:16-16:9, as did fellow intervenor, the Conservation Law Foundation (“CLF”), through the testimony of two experts citing, in particular, the rise of “high-performance air-source electric heat pumps” and electrification,<sup>8</sup> clearly putting Liberty on notice that its projection was inappropriate. Liberty’s response was to dismiss such a world and any world powered by renewable, sustainable energy technology with low or zero emissions as pure fantasy only potentially possible in a “distant future”:

“Rather than focus on present circumstances, the intervenor witnesses wander far off the mark, and instead postulate a distant future world where: (1) residential and commercial consumers have only one option for meeting heating and service needs - electric heat pumps; (2) the heat pumps do not require any supplemental heating to meet customer needs on cold New Hampshire days (an assumption contrary to current technology capabilities and expectations); and (3) the electric system in New England has undergone a rapid transition to only low- and zero-carbon forms of generation.

The world constructed by the intervenor witnesses - and on which their observations are based - is not real. It does not exist now, will not exist over the course of this LCIRP, and may not exist as imagined for many years (if ever).”

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<sup>7</sup> Such as and including the expansion approved under [Docket No. DG 21-008](#) (also subject to approval in this proceeding), discussed *infra*.

<sup>8</sup> [Direct Testimony of Paul Chernick dated September 6, 2019](#) at 3:21-23 (“The plan fails to reasonably address future need in light of the availability of cleaner and lower cost resources, including electricity and high-performance air-source electric heat pumps.”). *See also* [Direct Testimony of Elizabeth A. Stanton, PhD, dated September 6, 2019](#) at 13:17-14:10 (citing and supporting Chernick’s testimony).

[Rebuttal Testimony of Paul J. Hibbard dated October 25, 2019](#) at Bates No.

196:20-197:8. Indeed, as Liberty subsequently testified in [Docket No. DG 21-008](#), discussed *infra*, Liberty's planning does not even contemplate the possibility of electric heat pumps, electrification and a transition to low or no emissions sustainable energy:

Q So, Liberty models for its demand forecast, they don't -- they don't incorporate the possibility of electrification, you know, increase in electrification or legislation adopting mandatory greenhouse gas reductions over the next 20 years, correct?

A (DaFonte) No, they don't. It's, you know, as far as, you know, we look at it, at this point in time, that that's not what our planning process is. If it's required, we'll do it. But anything at this point is purely speculative, in terms of the impact to customers, and, you know, who the targeted customers are going to be. Are they going to go after gas customers or customers that have a greater carbon footprint, like oil customers, propane customers? There's a lot of variables that come into play. We have no way of knowing what is going to be required, you know, five, ten, twenty years from now

...

[Transcript of hearing held 10/06/2021 \(Morning Session Only\)](#) filed in [Docket No. DG 21-008](#) at 87:3-21.

14. That was Liberty's story to the Commission, anyway.
15. But, to the paying public, Liberty presented a different picture.
16. Just nine months after submission of the above testimony rejecting even the notion of any path to a renewable, sustainable future other than that grounded in technology of "a distant future world," Liberty abandoned its No. 1 supply option under its [LCIRP](#), the Granite Bridge Project, which was meeting stiff resistance



because of fracked gas health and climate concerns.<sup>9</sup> Liberty marked the event with a press release included in an online marketing and advertising campaign, continuing two years later, to this date, which may only reasonably be read as a new Liberty commitment to immediate, deep emissions reductions and “green” planning for sustainability through “renewable electricity and other innovative solutions” consistent with [IPCC](#) decarbonization/emission reduction goals.<sup>10</sup> In pertinent part, the representations therein include:

“... 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.<sup>1</sup> **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 ...**

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<sup>9</sup> See July 31, 2020 [wmur.com](https://www.wmur.com/article/liberty-utilities-abandons-granite-bridge-natural-gas-project-shifts-to-existing-pipeline/33484973) online news article, “Liberty Utilities abandons ‘Granite Bridge’ natural gas project, shifts to existing pipeline,” which is referenced in Footnote 1, *supra*, and is available at <https://www.wmur.com/article/liberty-utilities-abandons-granite-bridge-natural-gas-project-shifts-to-existing-pipeline/33484973>.

<sup>10</sup> The [Paris Climate Accord \(Paris Agreement\)](#) 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/>. IPCC emission goals are discussed below.

<sup>1</sup> See Corporate Knights 2020 Global 100 ranking:  
<https://www.corporateknights.com/reports/2020-global-100/2020-global-100-ranking-15795648/>”

*Id.* (emphasis added). This press release was included in Liberty’s online advertising and marketing by August 31, 2020, as is established by the date of Clark’s pending [motion](#) raising the matter, which references the advertising and marketing at issue in its paragraph 14. It was still online at the URL address <https://new-hampshire.libertyutilities.com/concord/liberty-utilities-announces-new-solution-to-preserve-energy-choices-for-nh-consumers.html> as of August 8, 2022, but a copy of this advertising/marketing also accompanies this submission as “**Attachment B**” in case it is not available at the time of the reader’s review. Also as of August 31, 2020, Liberty advertised and marketed that its commitments were “regardless of the regulations,” as is noted in the pending [motion](#), *id.* at ¶ 14, but this representation was removed from the utility’s website after the issue was raised, as is shown by attempting to access the material by the link provided in paragraph 14 of the [motion](#).

17. As noted in paragraph 13, from its own representations to the Commission, Liberty did/does not even believe that the decarbonized, sustainable energy future for New Hampshire touted on its website is even possible, at least not before some “distant future,” and does not even consider it in its 20-year planning.
18. Five months into its new online “green” campaign, with full knowledge of its advertising/marketing representations, Liberty appeared before the Commission, on January 20, 2021, under [Docket No. DG 21-008](#), with its new “green” planning solution. Unfortunately, it was just the old one, gas and more gas, beginning with a new 20-year 40,000 Dth per day natural gas supply contract that

Liberty plans to utilize with certain “on-system distribution enhancement projects” in the areas of Manchester, Nashua, Londonderry and/or Merrimack. See [petition](#), ¶1; [Testimony of Francisco C. DaFonte and William R. Killeen](#) dated January 20, 2021 at Bates Nos. 7:13-15, 11:13-16, 31:1-32:3. Liberty has equated this project to the “Concord Lateral Option” discussed in the [LCIRP](#) and analyzed in Liberty’s response to Clark DR 5-19 (Attachment A), accompanying;<sup>11</sup> and, again, as noted above, claims that the 20-year emissions impact shown therein is reasonably representative of all Liberty planning, including that under [Docket No. DG 21-008](#). Moreover, Liberty’s January 20, 2021 DG 21-008 filings indicate that the utility also intends to seek approval for another 27,000 Dth per day supply of natural gas by 2025/2026, and that all of its planning is/was pursuant to projections for *increasing* its gas use and resulting emissions until at least 2038/2039. See [Testimony of Francisco C. DaFonte and William R. Killeen](#) at 31:1-32:3 (including Table 3). It was also supported by its advertising and marketing at issue which, as discussed below, was and is false and used for a fraudulent purpose.

19. Liberty feeds and supports its supply need projections, including those put forth under [Docket No. DG 21-008](#), which, in turn, support its supply request approvals, including the approval provided under [Docket No. DG 21-008](#) and the additional 27,000 Dth per day approval Liberty intends to request by 2025/2026, by customers acquired through its sales activity (presumably including

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<sup>11</sup> See [Transcript of hearing held 10/06/2021 \(Morning Session Only\)](#) filed in Docket No. DG 21-008 at 11:17-20 (“We finally learned that Tennessee was going to offer capacity on the Concord Lateral. We paused Granite Bridge, we negotiated this contract, and we signed it.”).

advertising) and marketing,<sup>12</sup> including that at issue.

20. Liberty does not have a plan to decarbonize its operations—by 2050, or any other time. At least, such a plan is certainly not reflected in the accompanying Attachment A and Liberty’s DG 21-008 planning projections through 2038/2039 ([p. 31, Table 3](#)), and Liberty has not produced such a plan in DG 17-152 or, on information and belief, otherwise publicly, although it would certainly be advantageous to its “green” campaign to disclose one.
21. Liberty’s planning is clearly not supportive of IPCC goals. Besides targeting decarbonization by circa 2050, the IPCC has critical goals that are clearly inconsistent with Liberty’s planning:

“In the scenarios we assessed, limiting warming to around 1.5°C (2.7°F) requires global greenhouse gas emissions to peak before 2025 at the latest, and be reduced by 43% by 2030; at the same time, methane would also need to be reduced by about a third.”<sup>13</sup>

See accompanying “**Attachment C.**” As discussed above, under a proper IPCC analysis using the appropriate 20-year GWP for methane, Liberty is planning, at best, for emissions reductions just north of 11% over the next 20 years. But this is with the patently unreasonable, low (approximately 3%) renewable use rate projected for the entire period of time. If the renewable use rate were properly

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<sup>12</sup> See [Direct Testimony of Paul Chernick on Behalf of the Conservation Law Foundation dated September 6, 2019](#) at 8:10-9:11 (including “The additional natural gas use by new customers resulting from Liberty’s planned promotion efforts accounts for 68% of the load growth that Liberty projects over the 10 forecast period. Without these new heating customers, Liberty’s forecast would fall from 11 2.7% annually to 0.9%.”). See also [Transcript of hearing held 10/06/2021 \(Morning Session Only\)](#) filed in [Docket No. DG 21-008](#) at 76:23-77:3.

<sup>13</sup> From the IPCC publication *The evidence is clear: the time for action is now. We can halve emissions by 2030* dated April 4, 2022 available at <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>. This publication is also referenced in Footnote 22 of [Clark's position statement](#).

adjusted to reflect an appropriate likely transition rate going forward under fair competition, and if Liberty did/does not poach the customer cupboards of its (fewer emissions) competitors through its false advertising, it seems likely that the actual emissions impact would be far less positive over the 20 years—perhaps even negative. There is a reason for 20-year GWPs and a reason that the IPCC simultaneously targets a methane reduction of about one-third to go along with the 43% total greenhouse gas emissions reduction required by 2030: with its explosive initial 20-year GWP, *increasing* methane use is incompatible with responsible climate action at this point in the crisis. This was known to Liberty at the time of its emissions analysis, as Clark had underscored the problem, up front, in the proceedings. See [motion to dismiss and for a moratorium](#) at ¶ 9. Whatever 20-year emissions reduction Liberty improperly claims under its 100-year methane GWP likely still falls materially short of the IPCC goals of a 43% GHG reduction by 2030 and essentially 100% reduction by circa 2050; but, in any event, Liberty’s planning plainly does not support IPCC goals because it *increases* methane use to at least circa 2040.

22. At the rate of planning reflected in [Docket No. DG 21-008 \(p. 31, Table 3\)](#), Liberty’s approximately 96,000 natural gas customer business, *see* Attachment B, will balloon to well over 100,000 such customers in the next 20 years. Thus, as Liberty essentially only projects fossil fuel users in the next 20 years, with very low, flat line renewable development as a whole—none utilized by Liberty—Liberty is planning for a New Hampshire energy future with well over 100,000 Liberty natural gas customers, all the Unitil natural gas customers, still a whole

lot of other fossil fuel use, and very little renewable use needed to transition to sustainability—only 7-8 years from 2050. That is way too many emissions, way too much fossil fuel reliance to be planning for 20 years from now, and nothing suggesting “work toward a sustainable future for New Hampshire.” *See* accompanying Attachment B. ["New Hampshire is leading the nation in holding these polluting companies accountable."](#) We cannot let Liberty’s misrepresentations go.

23. Liberty’s “green” campaign is just part of the continued “greenwashing” of fossil fuels by the fossil fuel industry. Many of the components and concerns of “greenwashing,” as discussed in the following complaint filed by the Attorney General of the State of Delaware, are clearly present here:

“165. These misleading ‘greenwashing’ campaigns are intended to capitalize on consumers’ concerns for climate change and lead Delaware consumers to believe that Defendants are actually substantially diversified energy companies making meaningful investments in low carbon energy compatible with avoiding catastrophic climate change ...

...

172. Exxon is currently running a series of full-page advertisements in print editions and posts in the electronic edition of the New York Times, as well as on Exxon’s YouTube channel, in which Exxon misleadingly promotes its efforts to develop energy from alternative sources such as algae and plant waste—efforts that are vanishingly small in relation to the investments Exxon continues to make in fossil fuel production.

173. For example, an online advertisement in the New York Times, accessible to and marketed toward Delaware consumers, promotes the company’s development of algae biofuels, but omits that it is extremely resource intensive to produce algae for biofuel on a large scale due to the massive amounts of land and fertilizer needed. The advertisement also misleadingly tells consumers that Exxon is “working to decrease [its] overall carbon footprint,” and that the company’s “sustainable and environmentally friendly” biodiesel fuel could reduce “carbon emissions from transportation” by greater than 50%.

174. Exxon’s advertisements promoting its investments in “sustainable and environmentally friendly” energy sources further fail to mention that the company’s investment in alternative energy is miniscule compared to its ongoing “business as usual” ramp-up in global fossil fuel exploration, development, and production activities. From 2010 to 2018, Exxon spent only 0.2% of its capital expenditures on low-carbon energy systems, with nearly the totality of its spending (99.8%) focused on maintaining and expanding fossil fuel production. The company has simultaneously invested billions of dollars into development of Canadian tar sands projects, some of the most carbon intensive oil extraction projects in the world.

175. Exxon’s investment is not nearly enough to produce alternative energy on the scale falsely implied and touted by Exxon in its advertisements ...”

See <https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2020/09/2020-09-09-Final-Complaint.pdf>.

24. As indicated in the complaint referenced in the preceding paragraph, “greenwashing” may include claims sounding in fraud, and the elements of fraud are all present here.
25. “To establish fraud, a plaintiff must prove that the defendant made a representation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause another to rely upon it. *Patch v. Arsenault*, 139 N.H. 313, 319, 653 A.2d 1079, 1083–84 (1995). In addition, a plaintiff must demonstrate justifiable reliance. *Gray v. First NH Banks*, 138 N.H. 279, 283, 640 A.2d 276, 279 (1994). A plaintiff cannot allege fraud in general terms, but must specifically allege the essential details of the fraud and the facts of the defendants’ fraudulent conduct. *Proctor v. Bank of N.H.*, 123 N.H. 395, 399, 464 A.2d 263, 265 (1983).”  
*Snierson v. Scruton*, 761 A.2d 1046, 145 N.H. 73, 77 (N.H. 2000).
26. In the process of its planning under this docket, Liberty clearly made and continues to make inconsistent and otherwise false representations to the Commission, ratepayers and other members of the general public to further its planning and resultant profits to the company, “with knowledge of [their] falsity

or with conscious indifference to [their] truth with the intention to cause] reliance on them. *Snierson v. Scruton, supra*, 145 N.H. at 77. “Justifiable reliance” should be deemed demonstrated because, as noted in paragraph 165 of the Delaware Attorney General’s brief quoted in paragraph 23, such advertising and marketing preys on a targeted audience with a justified concern promised to be addressed.

27. Corrective/remedial terms are clearly required under the Agreement, or its approval would consummate, approve and/or be tantamount to approval of Liberty’s past and continuing fraud conducted through its planning under this docket, the fruits of such fraud<sup>14</sup> and the resulting harm to ratepayers and the general public. Whether the Commission considers emissions or climate change its concern or not, it cannot condone the unlawful practices and resultant harm described herein, and certainly may not issue any approval or other order that, albeit completely unintentionally, would approve unlawful acts, complete a fraud and/or perpetuate it and its fruits for potentially decades, or be tantamount to such approval, as would be the result of the requested approval if the fraud is not corrected/remedied under the Agreement.
28. Energy decisions are important, costly decisions for ratepayers. “On average, each New Hampshire resident spent \$4,078 on energy in 2019.”<sup>15</sup> Liberty has unconscionably, intentionally defrauded ratepayers over a critical energy choice

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<sup>14</sup> Which will continue for the duration of time, up to 20 years and longer, that Liberty receives profits from the 20-year supply contract approved under DG 21-008 and its associated “on-system distribution enhancement projects.”

<sup>15</sup> From the New Hampshire Department of Energy website at <https://www.energy.nh.gov/energy-information/energy-new-hampshire>.



issue, and used that fraud to commit fraud on the Commission by advocating for and receiving approval for greater fuel supplies than would be arguably necessary but for the fraud on ratepayers that increased and continues to increase its customer base.

29. Moreover, the misinformation conveyed in Liberty's "greenwashing" campaign over the past two years (if not longer, through other similar misrepresentations not only to the general public but to state energy decisionmakers) has not only injured targeted ratepayers and members of the general public concerned with emissions reduction and responsible climate action during that period of time. Together with other such industry misinformation out there, it has misinformed energy decisionmaking and policies at the worst possible time for real responsible emissions reduction, climate action and forward-thinking energy strategy.
30. Fracked gas use comes at enormous, largely hidden, costs not associated with sustainable energy, including premature deaths, losses suffered by our tourism, sugar, agriculture and dairy industries, as well as the loss of seacoast homeowners and towns, increased health costs, and the rising remedial costs of addressing storms, droughts and other weather events associated with climate change—with one study determining that it will cost between \$1.9 million and \$2.9 million to address the climate impacts to just three New Hampshire coastal towns. *See [Clark's testimony](#) at 28:7-32:13.* As projected by the "[The Fourth National Climate Assessment, Vol. 2](#)", the economic losses for New Hampshire and the rest of the country will be staggering. [Clark's testimony](#) at 32:14-33:25.

31. Liberty acknowledges that natural gas (methane) emissions contain particulates and other harmful pollutants which may cause or exacerbate health problems, including asthma, heart issues and premature deaths. *See* [Direct Testimony of Paul J. Hibbard dated June 28, 2019](#) at Bates Nos. 026-029. "New Hampshire's asthma rate is among the highest in the nation. Approximately 110,000 NH adults and 25,000 NH children have asthma."<sup>16</sup>
32. Moreover, Liberty's unreasonable expansion, accomplished in part through the fraud complained of herein, has created and is exacerbating an unhealthy reliance on a finite energy resource that is already subject to great volatility in pricing and may increase substantially in cost, especially in relation to renewables, over the next two decades and beyond.
33. Simultaneously, Liberty's offending advertising/marketing (together with similar advertising and marketing campaigns in the fossil fuel industry) is unfairly impeding the progress of renewable development and competition that would grow our economy through associated industries and "good-paying" jobs and lead to lower energy prices.<sup>17</sup> "New Hampshire's energy prices are among the highest in the nation."<sup>18</sup> The situation will not improve if we do not mandate fair competition. As the 2022 New Hampshire 10-Year State Energy Strategy notes,

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<sup>16</sup> *See* page 22 of "Greater Manchester, New Hampshire Health Improvement Plan" at <https://www.manchesternh.gov/Portals/2/Departments/health/GManCHIP.pdf>.

<sup>17</sup> From, *inter alia*, the development of offshore wind power and the full, fair market development of renewables that could be associated with the Commission's recent approval of the [Community power rules](#), and the federal enactment of the [Bipartisan Infrastructure Deal](#) and the impending passage of the federal Inflation Reduction Act of 2022.

<sup>18</sup> [2022 New Hampshire 10-Year State Energy Strategy](#) at 6.

quoting the American economist Alfred Kahn, “the single most widely accepted rule for the governance of he [sic] regulated industries is regulate them in such a way as to produce the same results as would be produced by effective competition, if it were feasible.”<sup>19</sup>

34. Although the 40,000 Dth per day natural gas supply contract has been approved under [Docket No. DG 21-008](#), Liberty’s proposed “on-system distribution enhancement projects” and use of the approved natural gas supply have not been reviewed and approved under RSA 378:37-39 in any proceeding and lawfully must be approved under the [LCIRP](#) or Liberty’s next LCIRP to proceed. *See* discussion, *supra*. The supply use and infrastructure associated with the DG 21-008 contract may still be planned and should be planned in a manner more consistent with Liberty’s advertising and marketing that could simultaneously provide a corrective/remedial break or even boost to renewables, renewable jobs and the renewable economy. For example, the contract supply could be planned to use as much capacity as possible to replace more expensive supplies already in service, which would result in not only fewer “baked in” emissions, but less gas reliance going forward.<sup>20</sup> This potential was suggested during the DG 21-008 final hearing.<sup>21</sup> Similarly, Liberty could be required to amend its DG 21-008 projects and supply needs and projections going forward to accurately reflect the

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<sup>19</sup> *Id.* at 10 Footnote 10.

<sup>20</sup> And possibly a much-needed break for existing ratepayers, to the extent that the cheaper DG 21-008 supply price were blended into general distribution rather than used for expansion.

<sup>21</sup> *See* [Transcript of hearing held 10/06/2021 \(Morning Session Only\)](#) filed in Docket No. DG 21-008 at 39:24-41:10.

real likely future use of renewables (and energy efficiency) and incorporate such a rate of utilization in its own operations consistent with its advertising and marketing. Such measures only hold Liberty to the service it is obligated to provide under [RSA 374:1](#), anyway. See Clark's [position statement](#) at 11-14.

35. Appropriate corrective/remedial relief not only may be afforded in this proceeding, it must be afforded for any approval of Liberty's planning, not just because the Commission may not approve planning tainted with fraud,<sup>22</sup> but also because approval without such relief may preclude it<sup>23</sup> and/or the extent of appropriate relief available here may not be available in other proceedings. It is nonsensical for the OCA to argue, as it has here, that:

“The Commission does have plenary authority over the state’s public utilities, and thus does have authority to investigate a utility’s advertising practices. But those practices are not fairly within the issues noticed for decisionmaking in this proceeding.”

See [July 28, 2022 OCA filing](#). The issues raised by Clark are clearly not outside the scope of this proceeding since (a) illegality, as a legal impediment to the relief sought, is always within the scope of a proceeding, (b) the governing standard for the specific relief (approval) requested in this matter requires consideration of whether the proposed settlement is “just and reasonable and serves the public interest,” [Puc 203.20\(b\)](#), and (c) again, the Commission does not have the

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<sup>22</sup> Requiring, minimally, that Liberty’s planning be brought more in line with its advertising/marketing to meet the reasonable expectations of those relying on the same, and that the harms resulting from Liberty’s conduct be reasonably mitigated.

<sup>23</sup> Under principles of *res judicata* or otherwise. Clark does not agree that this is true, just notes the concern.

authority to approve an uncorrected fraud under the enabling statutes for this proceeding or otherwise.

36. Liberty's position that its advertising/marketing should not represent the utility's commitment to IPCC decarbonization goals and targets,<sup>24</sup> but only Liberty goals and targets to meet the IPCC's goals and targets per information on another website not even referenced in the subject advertising, only further compels the conclusion that the advertising is false and fraudulent because, on top of everything else, it is knowingly misleading. See [Liberty's Response to Notice of Counsel Concerns dated July 28, 2022](#) at ¶¶ 8, 11-12. Besides, a review of the other website only reaffirms that the company is representing that it is on "a pathway to net-zero by 2050." See *id.* at <https://algonquinpower.com/sustainability/net-zero-2050.html>.
37. Even assuming *arguendo* that the Commission does not agree that the facts alleged herein evidence fraud, they certainly also establish, as Clark also alleges, a great injustice and misrepresentation on ratepayers and the general public, for which the same relief is appropriate and should be provided.
38. Subject to any late intervention and objection by the New Hampshire Department of Justice, Clark proposes the following as appropriate corrective/remedial terms for the proposed Agreement, both to address Clark's specific concerns regarding Keene and its pollution problem, and general concerns regarding Liberty's overall planning:

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<sup>24</sup> Which is only part of the misrepresentations. See discussion, *supra*.

### STYLED AS NEW SECTION 3

3.1 In the course of this docket, Clark expressed concerns with emissions associated with Liberty's planning for his hometown City of Keene, which has a pollution/health problem whereby air inversions in the Keene valley trap unhealthy pollutants, including particulates, to a degree causing respiratory and other health issues.

3.2 To address Clark's concerns, Liberty shall include all planning for its Keene franchise in its next and all appropriate subsequent LCIRPs and use best efforts to conduct all planning for its Keene franchise in a manner that results in the fewest potential emissions, pollutants and particulates, utilizing all technology and resources as are consistent with RSA 378:37, including such emissions-free or near emissions-free (wind or otherwise) technology and resources as are or may become available.

3.3 Moreover, Liberty shall conduct its planning for the natural gas supply contract approved under Docket No. DG 21-008 and its associated "on-system distribution enhancement projects" in a manner that utilizes as much of the new capacity to replace previously existing supplies, as is possible and permitted by the Commission.

3.4 Additionally, prior to submission of its next LCIRP, Liberty shall amend its 20-year projections for supply needs and emissions to accurately update and reflect the likely future rate of use of renewables and energy efficiency and the emissions impacts of Liberty's planning for that period of time. Such amendment and update will be accomplished through consultation and agreement with the DOE and OCA, to the extent that either invokes this requirement, and Liberty shall use best efforts, consistent with RSA 378:37, to incorporate its new projected future use rates of renewable use and energy efficiency in its own operations going forward, utilizing the analyses of Section 2.3.

3.5 Liberty shall post any and all plans that it has for decarbonization and sustainability of its New Hampshire service area consistent with the advertising at issue on its website by the time of submission of its next LCIRP or immediately remove said advertising from the internet.

### CONCLUSION

39. Again, this response to the Agreement only conveys Clark's specific fraud and related concerns involving the proposed approval of the Agreement under its current terms. It is not intended and should not be construed to alter Clark's position(s) as to the proper disposition of the proceedings, as set forth in his [position statement](#). If Clark's proposed corrective/remedial terms were added as

terms to the Agreement, though, Clark would agree<sup>25</sup> that his specific fraud and related concerns involving the Agreement (and only those concerns) were met. Moreover, if Liberty, the DOE and OCA were willing to agree to these terms and discuss terms for a complete resolution of the matter in good faith, Clark is optimistic that this could still be accomplished.

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: August 9, 2022

//s//Richard M. Husband  
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### **CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 9<sup>th</sup> day of August, 2022, served electronic copies of this pleading and its accompanying Attachments “A,” “B” and “C” 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  
Richard M. Husband, Esquire

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<sup>25</sup> Subject to any late intervention and objection by the New Hampshire Department of Justice.