

**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, REPLY TO
PETITIONER, LIBERTY UTILITIES’, OBJECTION TO MOTION TO DISMISS**

Intervenor, Terry Clark (“Clark”), by and through undersigned counsel, Richard M. Husband, Esquire, hereby respectfully replies to the [objection](#) (“Objection”) that Liberty Utilities (EnergyNorth Natural Gas) Corp., dba Liberty Utilities (“Liberty”) has filed in this proceeding in response to Clark’s [motion to dismiss and for a moratorium](#) (“Motion”) on Liberty’s expansion plans, stating as follows:

1. Clark files this reply with the understanding that, although the rules of the Public Utilities Commission (“Commission”) are silent on the filing of replies to objections to motions, *see* [Puc 203.07](#), replies are appropriate to Commission practice. *See, e.g.,* [Liberty’s Response to Mr. Chaffee’s Objection to Motion for Confidential Treatment](#) filed in [Commission Docket No. DG 16-852](#).

2. This reply is necessary to correct the [Objection](#)’s mischaracterization of and/or attempt to bury the main arguments in Clark’s [Motion](#) as to why this proceeding should be dismissed and a moratorium should be placed on Liberty’s expansion plans.

3. Clark’s [Motion](#) makes over 30 pages of argument as to why dismissal and a moratorium are appropriate because: (1) Liberty’s plans are inconsistent with the public interest; and (2) Liberty’s plans are inconsistent with [R.S.A. 378:37](#), New Hampshire’s official state energy policy. *See generally* [Motion](#).

4. The [Motion](#) makes over 20 pages of arguments as to why Liberty’s expansion plans are inconsistent with the public interest alone, from their beginning on the top of page 3 of the Motion to their transition into the [R.S.A. 378:37](#) arguments on page 24:

“... Clark ... opposes Liberty’s expansion plans ... as largely creating, not addressing, demand, as being **contrary to the public interest** ...

The Commission must act consistent with the public interest ... This requires consideration of not only the needs of the persons and utility directly involved, but also “the needs of the public at large ...

The ‘needs of the public at large’ are obvious: **the public demands climate action, particularly energy decision-making that results in fewer greenhouse gas emissions** ...

We are running out of time to cut emissions; the United States is, in fact, already falling short of its goals under the [Paris Climate Accord](#), and a **major reason is that we use too much methane** ...

Yet, despite the clear public clamor and need for climate action emphasizing greenhouse gas emissions mitigation, from now through 2038, just 12 years before New Hampshire has pledged to achieve near net-zero greenhouse gas emissions as a member of the [Under2Coalition](#) and while the nations of the world (hopefully still including the United States) are [ratcheting up their efforts](#) to meet a similar mid-century zero emissions goal under the [Paris Climate Accord](#), Liberty’s LCIRP and overall expansion plans call for it to *increase* its use of methane gas use—a potent greenhouse gas, as discussed below—by nearly 50%, from a current Design Day demand of 156,822 to a Design Day demand of 229,590 for 2037/2038 ...

The Granite Bridge Project alone renders the LCRIP unapprovable ...

The Granite Bridge Project calls for the outrageously expensive huge *future* development of, and commitment to, fracked gas infrastructure and supplies—including approximately 27 miles of 16-inch diameter pipeline, a 2 billion cubic feet LNG facility and a 22 year gas supply contract—at a time when the climate crisis and our own energy policies and greenhouse gas reduction commitments compel a freeze on expansion and a reduction in emissions...

A recent opinion from the Court of Appeals for the District of Columbia Circuit last fall establishes that **the Commission not only has the authority to consider climate change in its public interest analysis, but the obligation** ...

... The reasoning of *Sierra Club* applies equally here. **The Commission has the legal authority—and obligation—under its required public interest analysis to consider the impacts that Liberty’s expansion plans will have on greenhouse gas emissions and**

the state’s commitments and obligations to address climate change, largely through emissions mitigation, and conclude that a moratorium on Liberty’s expansion plans is called for, accordingly ...

Even assuming *arguendo* that the public demand and need for climate action, emphasizing emissions mitigation, were not sufficient to invoke the **Commission’s obligation to consider the climate crisis, and thus compel a determination that Liberty’s expansion plans are contrary to the public interest**, Section VI of [R.S.A. 378:38](#) leads to the same result ...

Nor is the expansion of fracked gas use and extension of our reliance on it for decades, as called for under Liberty’s LCIRP and associated future plans, in the public interest from health and safety standpoints ...

The climate issue aside, a moratorium should be placed on gas expansion until the contents of the gas that Liberty distributes in New Hampshire are completely, unequivocally disclosed, the potential health impacts of its use are analyzed and better understood, and clear standards are established for the content of the gas Liberty may distribute in New Hampshire ...

Then, there are the safety issues ...

If the climate crisis, health and safety issues, and the potential for enormous stranded costs are properly considered, **Liberty’s expansion plans cannot be approved, as they are not in the public interest**, but, on their face, irresponsibly responsive to “the needs of the public at large.” ... Plainly, the asserted public benefits are outweighed by the actual costs. ...

[R.S.A. 378:37](#), which sets forth New Hampshire’s official energy policy, mandates the rejection of Liberty’s plans, as well. Besides meeting the **public interest requirement**, Liberty must also satisfy this statute—as is acknowledged in the LCIRP. See [LCIRP at p. 55](#) (“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.”).

However, Liberty’s expansion plans *do not comport* with [R.S.A. 378:37](#). ...”

Id. (emphasis added).

5. In a nutshell, the [Motion](#) argues that, since Liberty’s plans are inconsistent with the public interest (from environmental, *i.e.*, largely climate, as well as health and safety perspectives), a legal prerequisite to approval, they cannot be approved, compelling dismissal

and a moratorium. This issue is discussed in great detail, with ample supporting authority, in the [Motion](#), requiring dismissal and a moratorium absent a substantive rebuttal.

6. Liberty's [Objection](#) not only fails to substantively rebut Clark's public interest argument, it fails to even recognize it, pretending, instead to interpret Clark's argument to rest on the exact same grounds supporting [Commission Order No. 25,950 \(October 6, 2016\)](#) and/or dismissal under [R.S.A. 378:38](#) and/or [R.S.A. 378:39](#). See generally [Objection](#).

7. Clearly, the [Motion](#) does not argue that this proceeding should be dismissed because Liberty's plans run afoul of the electric utility restructuring statute, the subject of [Commission Order No. 25,950 \(October 6, 2016\)](#). The [Motion](#) only references that order once, in a single sentence at the outset of the more than 20 pages of discussion as to why Liberty's plans are contrary to the public interest, and solely as precedential support for the dismissal of a Commission proceeding for the *reason* (not all of the underlying grounds) asserted here: inconsistency with New Hampshire law.

8. While the [Motion](#) does argue that [R.S.A. 378:38](#) requires dismissal, see [Motion](#) at ¶15, this argument, again, is but one small part of a lengthy public interest discussion—and is only raised in the alternative to such grounds for dismissal (not as an overriding or superseding basis for dismissal on public interest grounds). The [Motion](#) does not even mention [R.S.A. 378:39](#), but if there are grounds for a dismissal and moratorium under that statute, the Commission should consider the same, as well.

9. It is even less understandable how Liberty missed the [Motion](#)'s argument that Liberty's plans are inconsistent with [R.S.A. 378:37](#), which takes up the bulk of the remaining 10 pages of discussion in the [Motion](#) from paragraph 28 on page 25 on.

10. The [Motion](#)'s discussion of [R.S.A. 378:37](#) is *almost a verbatim recitation* of the same argument that Clark makes from the top of page 5 to the middle of page 34 in the [Initial Brief of Intervenor, Terry Clark](#) filed in [Commission Docket No. DG 17-068](#). Responding to that argument just two weeks ago, Liberty clearly recognized it as a position taken in not only that proceeding, but in this case, as well: that Liberty's plans cannot be approved as they violate [R.S.A. 378:37](#), our official state energy policy. From Liberty's reply brief in [Commission Docket No. DG 17-068](#):

“... Mr. Clark's 50-page brief makes three broad arguments. First, Mr. Clark argues that this docket “is part of Liberty's expansion plans being considered under” Liberty's integrated resource plan filing, Docket No. DG 17-152, that **Mr. Clark is arguing in the IRP docket that such expansion plans violate the state's energy policy ...**”

See [Liberty's Reply Memorandum of Law](#) (emphasis added)

11. As Liberty was able to comprehend Clark's exact same [R.S.A. 378:37](#) argument in [Commission Docket No. DG 17-068](#)—and the argument *is* well-stated—the Commission should not accept that the lack of response to the argument in Liberty's [Objection](#) is due to a lack of understanding now. Liberty is simply playing linguistic gymnastics as it has no legitimate counter to Clark's claims.

12. As Liberty's [Objection](#) fails to rebut (or even address) the substantive grounds underlying the [Motion](#), dismissal and a moratorium are not only not premature, and entirely appropriate, but mandatory: utilities cannot operate inconsistently with the law and, contrary to the suggestion in Liberty's [Objection](#), there is nothing in the New Hampshire Supreme Court's recent opinion reversing [Commission Order No. 25,950 \(October 6, 2016\)](#), or in the utility statutes, which suggests the contrary. Indeed, the obligation and broad discretionary authority of the Commission to act in the public interest compels immediate dismissal and a moratorium.

See, e.g., Waste Control Systems, Inc. v. State, 114 N.H. 21, 24 (1974); *Boston & Maine R.R. v. State*, 102 N.H. 9, 10 (1959); *Harry K. Shepard, Inc. v. State*, 115 N.H. 184, 185 (1975); *Browning-Ferris Industries of New Hampshire, Inc. v. State*, 115 N.H. 190, 191 (1975).

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: May 29, 2018

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

I hereby certify that I have, on this 29th day of May, 2018, submitted seven copies of this pleading to the Commission by hand delivery, with copies e-mailed to the petitioner and the Consumer Advocate. I further certify that I have, on this 29th day of May, 2018, served an electronic copy of this pleading on every other person/party identified on the Commission's service list for this docket by delivering it to the e-mail address identified on the Commission's service list for the docket.

//s//Richard M. Husband, Esquire
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