

**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, OBJECTION TO  
PETITIONER'S MOTION TO AMEND PROCEDURAL SCHEDULES**

Intervenor, Terry Clark ("Clark"), by and through undersigned counsel, Richard M. Husband, Esquire, hereby respectfully objects to the Motion to Amend Procedural Schedules ("Motion") filed by the petitioner, Liberty Utilities (EnergyNorth Natural Gas) Corp., dba Liberty Utilities ("Liberty"), on July 26, 2019, on grounds as follows:

1. After Liberty itself delayed these proceedings by months, first in attempting to line up its best case with the Calpine contract, then by failing and refusing to meet R.S.A. 378 filing requirements, the utility filed the Motion to compress the remaining schedule approved by the Commission to maintain the current November 21-22, 2019 hearing date, even though it will truncate discovery and prejudice the other parties' case preparation.

2. Under the current schedule, approved by [May 7, 2019 Commission letter](#), two full rounds of Staff/OCA/Intervenor discovery were allowed on Liberty's filings, including the supplemental [R.S.A. 378:38](#) and [R.S.A. 378:39](#) filings required under [Order No. 26,225 \(Mar. 13, 2019\)](#), from May 8 - 30, 2019 and June 21 - July 12, 2019, with two technical sessions also scheduled on the same for May 23, 2019 and June 21, 2019.

3. Pending pleadings by Clark and the Conservation Law Foundation<sup>1</sup> challenge the adequacy of Liberty's filings and the ability for this case to proceed but, if the Motion is granted, this case will proceed with the loss of the two full discovery periods and technical sessions scheduled between May 8, 2019 and July 12, 2019, and replaced by a period for a single round of discovery, between July 15-31, 2019, that will already be completely or essentially expired. While the Motion, *id.* at ¶ 6, contends that Clark cannot raise this loss of discovery because Clark has not served discovery in the month since Liberty made its June 28, 2019 filing: (1) Clark could not have served discovery beyond July 12, 2019, as that was the deadline per the [current schedule](#); and (2) Clark was busy addressing Liberty's filing right up until July 8, 2019, when he filed his response. See [Intervenor, Terry Clark's, Response to Liberty Utilities' June 28, 2019 Filing and Correspondence](#). It is disingenuous for Liberty to require parties to continually devote their time and resources to addressing Liberty deficiencies which prevent the case from going forward, while contending that they should, nonetheless, be devoting their time and resources to moving the case forward.

4. As is acknowledged in the Motion, *id.* at ¶ 6, Clark would have supported a schedule in-between Liberty's proposed schedule and CLF's proposed schedule.<sup>2</sup> However, the Motion refuses the compromise, and fails to include the entirety of Clark's reasoning for not

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<sup>1</sup> [Intervenor, Terry Clark's, Objection to, and Motion to Strike, Liberty's Supplemental Filing](#), [Intervenor, Terry Clark's, Reply to Liberty's Objection to Motion to Strike Supplemental Filing](#), [Intervenor, Terry Clark's, Response to Liberty Utilities' June 28, 2019 Filing and Correspondence](#), [Conservation Law Foundation Motion to Find Liberty's April 30 Supplement Filing Non-Compliant](#), [Conservation Law Foundation's Reply to Liberty's Objection to CLF's Motion](#) and [Conservation Law Foundation's Reply to Liberty Utilities' June 28, 2019 Filing and Motion to Direct Liberty to Refile its Plan with Meaningful Alternatives and Impact Analyses](#).

<sup>2</sup> See [Conservation Law Foundation's Request to Modify Schedule](#).

supporting Liberty's proposed schedule. Clark's complete stated position on the matter, as conveyed to Liberty by e-mail, is/was actually:

“Mr. Clark would support a schedule in-between Liberty's proposed schedule and the schedule proposed in CLF's Request to Modify Schedule, but Liberty's proposed schedule is too compressed for Mr. Clark to support. For one thing, there certainly should be at least one period for discovery on Liberty's filing, if it is allowed to go forward; but it should be a full period of discovery, and the DES should be a part of it: the DES is essentially the state experts in the environmental and health fields, so corners should not be cut on its involvement. But Liberty's proposed schedule only affords a partial discovery period running right now (4 days left, not counting the weekend) which will be over by next Wednesday--and the DES has not even been allowed in yet. For another, Liberty's proposed schedule barely extends the deadline for Staff/OCA/Intervenor testimony in the case, by one week (it is 8/9, Liberty proposes 8/16). Seven weeks from essentially the initial filing (if the 6/28 submission is allowed to count as a filing) to the deadline for Staff/OCA/Intervenor testimony is too short. As originally scheduled, there was almost six months between just the start of discovery and the deadline for Staff/OCA/Intervenor testimony. This is an important case and we should strive to get it right.”

5. The DES still has not been allowed to intervene in this proceeding, amplifying Clark's reasoning: even though the DES will be a late intervenor, and the practice normally is for late intervenors to accept the current schedule, the DES must be given at least one full period of discovery—a good three weeks, as allowed under the [May 7, 2019 Commission letter](#)—for a meaningful opportunity to inquire into Liberty's plans, should the DES be allowed to intervene. The DES must be allowed to intervene, as it is clearly an “appropriate” state agency for the Commission to draw upon for its ultimate decision in this proceeding, as instructed by [R.S.A. 378:39](#) (“The Commission is encouraged to consult with appropriate state and federal agencies ... in evaluating such impacts.”). Two full Staff/OCA/Intervenor discovery periods and technical sessions going forward, as were wiped out under the [May 7, 2019 schedule](#) by Liberty's failure to meet filing requirements, would be more appropriate—but at least one full discovery period is indispensable. The Commission should deny the Motion, accordingly.

6. In closing, Clark also notes that the Motion is incorrect in contending that Clark's response to Liberty's June 28, 2019 filing "does not formally seek relief." See Motion at Footnote 3. Clark's response does formally seek relief, as is plainly requested on the first page and in Footnotes 2 and 3 of the pleading. See [Intervenor, Terry Clark's, Response to Liberty Utilities' June 28, 2019 Filing and Correspondence](#). The relief—if the Commission does not otherwise deny the approval requested herein for the reasons set forth in Clark's prior pleadings—is for denial of approval under [R.S.A. 378:39](#), pursuant to Prayer B of [Intervenor, Terry Clark's, Objection to, and Motion to Strike, Liberty's Supplemental Filing](#). As this pleading has not been decided and its Prayer B allows for such relief, there is no reason why the request should not be considered sufficiently presented and appropriate for the Commission's consideration.

WHEREFORE, for the reasons expressed, Clark respectfully moves that the Commission:

- A. Deny the Motion and order the scheduled proposed in [Conservation Law Foundation's Request to Modify Schedule](#); or
- B. Schedule a hearing on this matter; and
- C. Provide such other and further relief as is just and proper.

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: July 29, 2019

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

I hereby certify that I have, on this 29<sup>th</sup> day of July, 2019, 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 29<sup>th</sup> day of July, 2019, 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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