

**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,
MOTION TO COMPEL RESPONSE TO DATA REQUEST**

Intervenor, Terry Clark (“Clark”), by and through undersigned counsel, Richard M. Husband, Esquire, hereby respectfully moves that the Commission compel the petitioner, Liberty Utilities (EnergyNorth Natural Gas) Corp. dba Liberty Utilities (“Liberty”), to respond to a data request identified below that was propounded by Clark to Liberty in this proceeding. As grounds for and in support of this motion, Clark states as follows:

1. On August 16, 2019, Clark propounded a fifth set (Set 5) of data requests to Liberty.
2. Set 5 included request 5-26, a copy of which is attached as Exhibit “A” to this motion. Request 5-26 provides:

“Please state how the inclusion of the projected emissions from the Epping LNG facility in Paul J. Hibbard’s emissions calculations and assessments would change them (including relevant tables and figures) and Mr. Hibbard’s conclusions.”

See Exhibit “A.”

3. On August 23, 2019, Liberty served its response to Set 5. Its response to 5-26 failed to provide the requested information:

“Mr. Hibbard has not estimated emissions from the Granite Bridge LNG facility as the Granite Bridge LNG facility is not a component of the Company’s resource portfolio during the LCIRP forecast period.”

See Exhibit “A.”

4. Clark was entitled to the information requested by 5-26 under the Commission's rules and case law.
5. [Puc 203.09\(a\)](#) provides that "[t]he petitioner, the staff of the commission, the office of consumer advocate and **any person granted intervenor status shall have the right to conduct discovery** in an adjudicative proceeding pursuant to this rule." *Id.* (emphasis added). As an intervenor in this proceeding, Clark is thus entitled to discovery under this rule.
6. The Commission has minimum threshold requirements for admissibility, and thus discoverability. The Commission does not follow technical rules of evidence: only that which is "irrelevant, immaterial or unduly repetitious" is barred. [R.S.A. 541-A:33, II](#); [Puc 203.23](#).
7. Requests 5-26 does not request information that is "irrelevant, immaterial or unduly repetitious," but information that is plainly relevant and material to this proceeding; and, as it is the only request for the information, it is clearly not "unduly repetitious."
8. The information sought under request 5-26 is relevant and material to this proceeding as it concerns the short- and long-term environmental and health impacts of Liberty's [LCIRP](#) planning. The short- and long-term environmental impacts of Liberty's planning must be assessed under [R.S.A. 378:38, VI](#). Moreover, the environmental and health impacts of planning must be considered under [R.S.A. 378:39](#) for consistency with [R.S.A. 378:37](#).
9. Additionally, the discovery is relevant and material to Liberty's claims concerning its planning impacts. In the summary of Liberty's position on the

environmental and health impacts of the Granite Bridge Project, the linchpin of Liberty' planning under consideration,¹ Liberty claims, through the testimony of its proffered expert, Paul J. Hibbard, that the project would reduce greenhouse gas and pollutant emissions relative to the status quo and “thereby contribute to a lowering of risks associated with climate change.”² Besides a pipeline, the second main component of the Granite Bridge Project is a proposed LNG facility in Epping. *See generally* [petition](#) in Granite Bridge Project case, Docket No. DG 17-198.

10. Clark disputes Liberty's claims, especially as Liberty acknowledges that the Granite Bridge Project will result in approximately the same emissions as the *status quo even without* factoring in the short- and long-term emissions impacts of the proposed Epping LNG facility (as well as all of the short- and long-term emissions impacts of its planning and other required information).³ The sufficiency of Liberty's R.S.A. 378 filings has been the subject of robust pleading⁴ and, to some extent, two Commission rulings.⁵

¹ *See* [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 12.

² *See* [Direct Testimony of Paul J. Hibbard \(June 28, 2019\)](#) at Bates 036-037.

³ *See* [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 14-25.

⁴ *See* [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](#). *See also* [May 19, 2019 OCA letter responding to pending motions](#).

⁵ [Order No. 26,225 \(Mar. 13, 2019\)](#)(ordering supplementation of Liberty's filings under [R.S.A. 378:38](#) and [R.S.A. 378:39](#)); [Order No. 26,286 \(Aug. 12, 2019\)](#)(denying motions to strike and to find Liberty's filings noncompliant, but confirming that decision on filing sufficiency will be made).

11. This motion does not concern the sufficiency of Liberty's R.S.A. 378 filings. It concerns Clark's right to discovery and the information sought under request 5-26.
12. Request 5-26 is not only relevant and material to this specific proceeding, but such requests to utilities for data and/or analyses are common and proper in Commission proceedings in general. Indeed, as is the case with this particular matter, the information sought may be critical to case preparation.
13. Accordingly, Clark is entitled to the information because due process requires "the opportunity to present one's case." *Appeal of Morin*, 140 N.H. 515, 518 (1995)(citing *Appeal of Lathrop*, 122 N.H. 262, 265 (1982)). It also requires the Commission to abide by its own rules, *see Appeal of Morin, supra*, at 518, which includes Puc 203.09(a), the rule granting intervenors like Clark the right to discovery.
14. Liberty's position on the matter is without merit. It first raised the issue in a footnote May 20, 2019, more than 19 months after commencement of this case. In that footnote, Liberty declared that its proposed LNG facility is "not part of Liberty's LCIRP because its earliest projected service date was outside the [2017/2018-2021/2022] five year planning window of this LCIRP, which is the planning period of all recent LCIRPs." [Liberty's Objection to Intervenor Terry Clark's Motion to Strike Supplemental Filing](#) at 7 Footnote 3. However, Liberty's footnote notwithstanding, the proposed LNG facility has always been—and must be—under consideration in this proceeding.

15. Clark raised his concerns with the facility as a reason for intervening. *See* [Petition to Intervene of Terry Clark](#) at 9. The Commission expressly noted Clark's concern with the LNG facility in the order allowing his intervention. *See* [Order No. 26,134 \(May 11, 2018\)](#) at 3. The parties then conducted extensive discovery relating to the LNG facility, which was responded to without objection by Liberty that the LNG facility is "not part of Liberty's LCIRP." *See, e.g.*, Intervenor, Terry Clark's, Objection to, and Motion to Strike, Liberty's Supplemental Filing at ¶ 23 and [Exhibits "A," "B" and "C"](#). Clark raised his concerns with the LNG facility in his [motion to dismiss and for a moratorium](#) to dismiss and for a moratorium, *see id.* at ¶¶ 12 and 26, which the Commission denied, but in a decision which expressly noted Clark's facility concerns, *see* [Order No. 26,225 \(Mar. 13, 2019\)](#) at 3, and ordered Liberty to supplement its [LCIRP](#) filing to provide detailed information which should have addressed them. *Id.* at 8. It would be unfairly prejudicial to Clark, and would deny him "the opportunity to present [his] case" in violation of due process, *see Appeal of Morin, supra*, 140 N.H. at 518, to remove the proposed LNG facility from consideration and discovery in this proceeding at this point.
16. Moreover, the LNG facility plainly *must* be subject to scrutiny under *an* [LCIRP](#). It a major addition of infrastructure, carries a roughly quarter of a billion dollar price tag,⁶ is the linchpin (along with the Granite Bridge pipeline) for Liberty's plans for expansion to 2038 and beyond, and presents serious environmental,

⁶ *See* [Supplemental Direct Testimony of Francisco C. DaFonte and William R. Killeen \(March 15, 2019\)](#), at Bates 011 (cost of the LNG facility is approximately \$246 million), filed in Docket No. DG 17-198.

health and safety concerns.⁷ As such, it would be a mockery of the R.S.A. 378 planning statutes if it, and its impacts, are not considered under an LCIRP—and it has to be this one, as the facility will already have been approved and probably largely built before Liberty’s next LCIRP is even put before the Commission.

17. Liberty acknowledges that the proposed LNG facility is part of the “Granite Bridge Project” under consideration in [Docket No. DG 17-198](#), *see* attached Exhibit “B,” which is scheduled for hearing December 2-4, 2019 and thus will be approved, if at all, well within the term of the [LCIRP](#) *sub judice*, which runs through 2021/2022. While Liberty refuses to confirm that the LNG facility will be built, or largely built, within the term of the [LCIRP](#), as well, *see* attached Exhibit “C,” this is plainly the case as the LNG facility is slated to be in-service no later than 2023, which would obviously require substantial, if not complete, construction by the end of 2022. So, why should the LNG facility be omitted from an LCIRP running through 2022—especially when it would be covered by no other LCIRP prior to its approval in [Docket No. DG 17-198](#)?
18. Liberty’s argument, *i.e.*, that it can just remove the LNG facility from discovery in this proceeding, presents the untenable position that the Commission cannot oversee and regulate resource investments, which, minimally, conflicts with the Commission’s duty to “keep informed” as to such infrastructure under [R.S.A. 374:4](#):

“374:4 Duty to Keep Informed. – The commission shall have power, and it shall be its duty, to keep informed as to all public utilities in the state, their capitalization, franchises and the manner in which the lines and property controlled or operated by them are managed and operated, not only with respect to the safety, adequacy and accommodation offered by

⁷ *See* [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 14-28.

their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements.”

Id. (emphasis added). Being “informed” requires review. While the Granite Bridge Project is being considered in [Docket No. DG 17-198](#), the importance of subjecting it to review in this proceeding, as well, cannot be overstated. As Staff has noted, the cases concern common supply and operational issues (revolving around the facility), and the LNG facility must be considered in both proceedings to thoroughly “probe and test” Liberty’s claims:

“In Staff’s view, and we’ve expressed this through informal recommendations, this docket is closely related to Docket DG 17-198, the Granite Bridge proceeding. We believe a lot of the issues regarding supply planning and operational planning are common ...
... So, we do share Mr. Kreis’s concerns about the need to make sure that we probe and test this Plan quite carefully, in light of what the Company is saying in a parallel docket ...”

[Transcript of March 9, 2018 pre-hearing conference](#) at 18:15 - 19:15.⁸

19. The Granite Bridge pipeline cannot be considered for approval in this proceeding without the LNG facility, as it is the pipeline’s source of supply—and thus the LNG facility must be reviewed, and subject to discovery, as well. The pipeline and LNG facility have always been presented, and are integrally connected, as a package deal, and cannot be properly separated for approval in this, or any other, proceeding. If Liberty does not want the proposed LNG facility to be subject to its current [LCIRP](#) and discovery in this case, it should dismiss [Docket No. DG 17-198](#) and refile it for approval under the next LCIRP; otherwise, the facility must be considered in this proceeding, and subject to discovery.

⁸ Litigants cannot “probe and test” what Liberty is saying in this docket about the LNG facility, compared to what it is saying about it in the parallel Granite Bridge Project docket, if the LNG facility is not part of the [LCIRP](#).

20. Additionally, it is to be noted that Liberty contradicts its own position, *i.e.*, that emissions occurring after the term of the [LCIRP](#) (from the LNG facility) are not relevant to the current plan review, by including emissions impact information through 2037/2038 for the pipeline.⁹ If such emissions “outside the term of the [LCIRP](#)” should be considered, as Liberty implicitly acknowledges in providing the information, there is no rational reason why LNG facility emissions arising after the term of the [LCIRP](#) should not be considered, as well.
21. Moreover, as the approval of the nearly \$250 million LNG facility in [Docket No. DG 17-198](#), along with the pipeline, would substantially add to rate base,¹⁰ such an approval without review and approval of the LNG facility in this proceeding would seem to conflict with the [R.S.A. 378:40](#) prohibition against raising rates outside of an approved plan.
22. Clark has attempted to obtain the information at issue from Liberty several times, through several pleadings concerning Liberty’s filing deficiencies, identified in Footnote 4, *supra*, without success. As Liberty’s objection to 5-26 confirms that Clark would have no greater success in an informal attempt now, the [Puc 203.09\(i\)\(4\)](#) rule requirement that Clark make “a good-faith effort to resolve the dispute informally” should be deemed to have been met. However, unlike the result of the parties’ dispute over the sufficiency of Liberty’s filings, the

⁹ See Direct Testimony of Paul J. Hibbard (June 28, 2019), [Exhibit 2](#) at Bates 048 (“The time period for the GB-LR scenario extends to the 2037/2038 gas year ...”).

¹⁰ See [OCA response to motion at 1](#) (“Granite Bridge pipeline and liquefied natural gas storage tank proposal (along with certain wholesale supply agreements) ... would add upwards of \$400 million to rate base.”)

Commission does not even have a straight-faced (albeit wrong) argument for delaying consideration of the discovery issue until the end of this proceeding, as Clark's case preparation and due process rights will be trampled by that time. This is too big of a case with too much at stake, given the climate crisis, to allow Liberty to slide through this proceeding presenting the façade that its plans promote responsible climate action, with evidence limited to that which Liberty wants presented on the issue, should the opposite be true. Full disclosure now is mandated: Liberty has made its claims, since it will not so voluntarily, it should be compelled to prove them and completely respond to request 5-26, providing all of the short- and long-term emissions for the LNG facility, and changing all of Mr. Hibbard's calculations and assessments (including relevant tables and figures), and conclusions, as appropriate.

WHEREFORE, for the reasons expressed, Clark respectfully requests that this Honorable Commission:

- A. Grant this motion to compel and order Liberty to completely respond to request 5-26 within 10 days, providing all of the short- and long-term emissions for the LNG facility, and changing all of Mr. Hibbard's calculations and assessments (including relevant tables and figures), and conclusions, as appropriate; or
- B. Schedule a hearing on this matter; and
- C. Provide such other and further relief as is just and appropriate.

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: September 11, 2019

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

I hereby certify that I have, on this 11th day of September, 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 11th day of September, 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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