

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DG 17-068

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

Petition for Declaratory Ruling

Docket No. DG 17-152

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

Least Cost Integrated Resource Plan

**INTERVENOR, TERRY CLARK’S, MOTION TO
CONDITION KEENE PROJECT ON RSA 378 CONSISTENCY AND
COMPLIANCE AND TO ORDER SUPPLEMENTAL RSA 378 FILING**

Terry Clark (“Clark”), an intervenor in each of the above-captioned proceedings before this Commission, hereby respectfully moves that the Commission condition the development of the Keene project by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a (“Liberty”), which is the subject of Docket No. DG 17-068, on RSA 378 consistency and compliance, and to order Liberty to supplement its filings in Docket No. DG 17-152 with the requisite RSA 378:38-39 filings for the project. As grounds for this motion, Clark states as follows:

1. In both Docket No. DG 17-068, concerning Liberty’s natural gas conversion/expansion plans for Keene, and Docket No. DG 17-052, assessing the consistency of all of Liberty’s expansion and other plans for the planning period 2017/2018 - 2021/2022 with the state’s Official Energy Policy under [RSA 378:37](#), Clark claims that Liberty’s plans cannot be approved as such expansion, with its resulting increase in methane greenhouse gas emissions, is against the public interest and inconsistent with [RSA 378:37](#) due to the associated environmental, health and safety concerns, including the deleterious climate impact alone.

2. Docket No. DG 17-068 resulted in [Order No. 26,065 \(Oct. 20, 2017\)](#), [Order No. 26,274 \(Jul. 26, 2019\)](#) and [Order No. 26,294 \(Sep. 25, 2019\)](#), which collectively hold that Liberty has the authority under its original Keene gas franchise grant to distribute LNG/CNG, ***subject to such conditions as the Commission may, or must, impose.*** See [Order No. 26,274 \(Jul. 26, 2019\)](#) at 8-9 (“We clarify that the decision in Order No. 26,065 was limited to a ruling that Liberty has the general right to change the type of gas that it provides to its customers under its franchise authority ... Such a conversion raises a number of regulatory issues that warrant further oversight and approval.”). Such conditions may be based on the Commission’s “plenary authority to regulate the provision of safe and reliable service by public utilities,” [Order No. 26,294 \(Sep. 25, 2019\)](#) at 9, and Clark contends, the obligation to act in the public interest. See Intervenor, [Terry Clark’s, Motion to Dismiss and for a Moratorium on Gas Expansion Plans](#), ¶ 5. They may also arise by statute, including the [RSA 378:39](#) requirement that utility planning be consistent with [RSA 378:37](#).

3. While the Commission refused to consider Clark’s public interest/[RSA 378:37](#) claim against the Keene project in Docket No. DG 17-068, its last order supported the refusal by noting that “Liberty’s LCIRP has been filed and will be evaluated in DG 17-152 ...” [Order No. 26,294 \(Sep. 25, 2019\)](#) at 10. Obviously, such an evaluation could only possibly be justification for ignoring the Keene claim in the Keene case if the claim were to be included in the Docket No. DG 17-152 analyses and determination. Indeed, the Commission’s DG 17-152 analyses and determination must include the Keene project, or at least such phases of the project as are commenced within the 2017/2018 – 2021/2022 planning period under consideration, as the project was approved and commenced within the planning period, mandating review under RSA 378.

4. Clark’s appeal of the aforementioned decisions in Docket No. DG 17-068 resulted in a final affirming order from the New Hampshire Supreme Court, a copy of which is attached to this motion as Exhibit “A,” which deemed Clark’s public interest/[RSA 378:37](#) claim “policy arguments inapplicable to the narrow issue before the commission concerning the scope of Liberty Utilities’ franchise.” *Id.* at 1.

5. However, Clark’s policy arguments—legal arguments grounded in science and other indisputable facts—are indisputably applicable to the proper interpretation and application of the state’s Official Energy Policy under [RSA 378:37](#) in Docket No. DG 17-152; and, again, the Commission has already indicated that they will be considered in the proceeding. [Order No. 26,294 \(Sep. 25, 2019\)](#) at 10. Moreover, Clark’s claim will have to be addressed under the public interest standard by Commission rule for any proposed settlement of the matter, *see* [Puc 203.20\(b\)](#), a common result of Commission proceedings, *see, e.g.,* [Order No. 26,382 \(Jul. 23, 2020\)](#) (approving Unitel’s plan and corresponding settlement), whether the standard is otherwise applicable or not. Thus, it would be counterproductive to settlement, encouraged by the Commission as “often a better alternative to litigation,” *id.* at 6, to preclude the best interest analysis from DG 17-152, as it may likewise preclude parties and the Commission from confirming that this essential requirement of any settlement has been met. It would also be unfairly prejudicial to any party opposing settlement on public interest grounds, as they will have been denied the opportunity for reasonable discovery to support their position on the issue.

6. Clark’s claims must be considered in Docket No. DG 17-152 for consistency in the approach taken to date in the proceedings in maintaining procedurally parallel dockets for Docket No. DG 17-152 and Docket No. DG 17-198, concerning the Granite Bridge Project. As Staff (and the OCA) expressed at the DG 17-152 prehearing conference, such projects—

including the one proposed for Keene—should be thoroughly scrutinized under **both** the project approval and planning approval cases:

“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 DG 17-152 pre-hearing conference](#) at 18:15 - 19:15.

7. As the environmental (most importantly, climate), health, economic and other significant impacts and concerns Clark has raised with respect to the Keene project were not considered at all under Docket No. DG 17-068, they must be considered in Docket No. DG 17-152 for there to not only be an adequate legal review of the project under RSA 378, but any arguable reasonable review of the project under Commission standards. It would be completely unreasonable for the Commission to require scrutiny of the Granite Bridge Project and the opportunity to explore its emissions’ impacts in two cases, but not consider the impacts of the Keene project in *any* proceeding.

8. For these reasons, the Commission must consider Clark’s arguments concerning the inconsistency of Liberty’s expansion plans with RSA 378:37 in general, and specifically as to Keene, in Docket No. DG 17-152.

9. Moreover, to satisfy RSA 378, a requisite to moving forward with the project, the Keene project must not only be evaluated under Docket No. DG 17-152 but also conditioned on consistency with [RSA 378:37](#), as this requirement was not met under Docket No. DG 17-068.¹

10. However, to adequately and reasonably evaluate the Keene project's consistency with [RSA 378:37](#), the Commission and parties plainly need the requisite RSA 378:38-39 filings for the project. They have not been submitted to date with Liberty's LCIRP in Docket No. DG 17-152 as Liberty took the position at the outset of the case that the Keene franchise was a separate division from the rest of the company that was exempt from the RSA 378 review. But, [Order No. 26,122 \(Apr. 27, 2018\)](#) consolidated the Keene operations with the rest of Liberty's business. [Order No. 26,294 \(Sep. 25, 2019\)](#) at 10. This eradicated Liberty's argument. Thus, the company's RSA 378 filings are not adequate and Liberty's LCIRP is not approvable absent a supplemental filing which addresses the RSA 378:38-39 assessments required for the Keene project, and the Commission should so order one before DG 17-152, currently essentially procedurally suspended, begins to contemplate the new proposal Liberty recently put forth in lieu

¹ In terms of [RSA 378:37](#) consistency, Clark reserves the right of final briefing on the issue, as allowed by the Commission, but notes the following. If it is not determined that Liberty's LCIRP is unapprovable as natural gas expansion at this point in time is *per se* unlawful under a [RSA 378:37](#) (and public interest) analysis, as Clark contends, the Commission must still apply reasonable standards to its consistency determination. For example, given the climate crisis and IPCC circa 2030 and 2050 deadlines, *see* [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 8:1-19, it would be unreasonable for the Commission to approve Liberty's LCIRP or any other natural gas utility's LCIRP going forward absent proof that every new project and supply contract proposed for the planning period is the best option, on *due* consideration of the climate crisis as a *crisis*, and will result in emissions reduction and a positive, not negative, climate impact, for both the next decade and the full projected lifespan of the project or supply contract (applying the GWPs most appropriate to the time period, *see generally* [Direct Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 18:13-20:13); or to approve any new infrastructure or supply contracts with projected lifespans beyond 2050, period. It is to be noted that the conversion and expansion components of the Keene project could, and should, be discussed and evaluated separately, with potentially different results.

of its Granite Bridge Project plan: all parties (with the possible exception of Liberty) have agreed that forward scheduling should include ample time for Staff/OCA/intervenor discovery and testimony amend/supplementation to address Liberty's essentially new case. Clark respectfully requests that the supplementation order specifically include the filing of the requisite RSA 378:38-39 materials as to the proposed Keene LNG/CNG facilities and equipment, as Liberty's previous LCIRP filings failed to include such information for the proposed Epping LNG facility. Clark also requests that the supplementation order specifically include the filing of the option information required under RSA 378:38-39 as to the option(s) Liberty considered in lieu of the Keene project, even if the Commission does not agree that the requirement is applicable to its situation at this stage of the legal proceedings, to allow Clark and potentially other parties a fair opportunity to prepare and present the theory of their case(s).

11. Clark realizes that the Commission's orders have made plain that it does not intend to address adequacy issues until the conclusion of the DG 17-152 proceedings. *See* [Order No. 26,225 \(Mar. 13, 2019\)](#) at 6-7; [Order No. 26,286 \(Aug. 12, 2019\)](#) at 6-7. Thus, Clark apologizes for raising the issue again with respect to Keene, but must to ensure preservation of his objection for appellate purposes: **Clark objects to proceeding without supplementation of Liberty's LCIRP filing to include adequate RSA 378:38-39 filings for the Keene project.**²

² In further support of the need for supplementation, Clark refers the Commission to his prior pleadings on the due process and other concerns mandating supplementation. *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, 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](#); [Intervenor, Terry Clark's, Motion to Compel Response to Data Request](#); [Intervenor, Terry Clark's, Reply to Liberty's Objection to Terry Clark's Motion to Compel](#).

12. Besides being required under the law and proper standards, Clark’s requests are not unreasonable. As [Liberty represents that “\[n\]atural gas is the cleanest available heating fuel”](#) and “propane-air emits greater greenhouse gases than natural gas,”³ the company has presumably already undertaken, or could easily provide, the bulk of RSA 378:38-39 assessments for the conversion aspect of the project. Since Liberty is required to file comprehensive business plans with customer commitments supporting expansion for each phase of the project, [Order No. 26,294 \(Sep. 25, 2019\)](#) at 14, the utility should also have sufficient information available—indeed, must have it available to proceed with the project—to readily prepare the RSA 378:38-39 assessments for the planned expansion side of the project. Liberty already has experts in Docket No. DG 17-152 who should be able to pull the assessments together in short order—and there is more than ample time.

13. The first of the five phases of the Keene project has been completed, so Clark’s requests will not interrupt that, and the second phase will not commence until the spring of 2021 “at the earliest.”⁴ As Liberty may not commence the next phase any sooner than 180 days from the time of its submission of the requisite supporting filings, [Order No. 26,274 \(Jul. 26, 2019\)](#) at 12, and has not submitted the filings for the second and ensuing phases, Liberty cannot even commence construction on the project again for at least another six months.

14. Moreover, it is indisputable that emissions’ analysis and reductions are critical components of responsible, reasonable natural gas utility planning in light of the climate crisis. We are rapidly running out of time to address the crisis, and all emissions matter. See [Direct](#)

³ Liberty’s [Motion for Reconsideration](#) dated August 26, 2019, ¶ 8 filed in Docket No. DG 17-068.

⁴ Affidavit of Mark Stevens in Support of Appellee’s Objection to Appellant’s Emergency Motion, ¶ 16, filed by Liberty relative to the appeal of the decisions. See attached Exhibit “B” (affidavit exhibits omitted).

[Testimony of Terry Michael Clark \(Sept. 6, 2019\)](#) at 7:14-10:20. Liberty itself touts the importance of emissions reductions, and its concern for the same as a selling point of Liberty's service. In an online article titled "Commitment to Reducing Methane Emissions" on its website, Liberty expresses a position favoring rigid emissions' regulation to address climate change:

"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."

See <https://new-hampshire.libertyutilities.com/keene/commitment-to-reducing-methane-emissions-1.html>. Moreover, in its press release explaining its switch from the Granite Bridge Project to its new proposal, Liberty contends that climate mitigation should, and does, form the foundation for all of proper natural gas planning:

"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."

See <https://new-hampshire.libertyutilities.com/concord/liberty-utilities-announces-new-solution-to-preserve-energy-choices-for-nh-consumers.html>. Likewise, in a recent filing concerning the

Granite Bridge Project, Staff acknowledges “a changing regulatory environment that requires ever closer scrutiny of the potential carbon emissions impacts of any new natural gas proposal,” and condemns that project for inconsistency with the climate crisis:

“The proposed project would have doubled existing capacity by investing in facilities with an expected service life in excess of fifty years, at a time when climate change is accelerating efforts to eliminate the use of fossil fuels.”

See [Revised Response to Motion to Amend Petition](#), ¶¶ 27 filed in Docket No. DG 17-198.

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

- A. Grant this motion; and
- B. Condition the development of the Keene project which is the subject of Docket No. DG 17-068 on RSA 378 consistency and compliance; and
- C. Order Liberty to supplement its LCIRP filings in Docket No. DG 17-152 with the requisite RSA 378:38-39 filings for the Keene project, specifically including, but not limited to, all such filings relating to proposed Keene LNG/CNG facilities and equipment and the option information required under RSA 378:38-39 as to the option(s) Liberty considered in lieu of the Keene project; and
- D. Grant such other and further relief as is reasonable, just and proper.

Respectfully submitted,

Dated: August 28, 2020

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

I hereby certify that I have, on this 28th day of August, 2020, submitted this motion by e-mail to the petitioner and the Consumer Advocate. I further certify that I have, on this 28th day of August, 2020, served an electronic copy of this pleading on every other person/party identified on the Commission's service list for Docket No. DG 17-068 and Docket No. DG 17-152 by delivering it to the e-mail address identified for each person/party on the Commission's service list for the dockets.

//s//Richard M. Husband
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