

**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 THE OFFICE OF
THE CONSUMER ADVOCATE’S MOTION FOR REHEARING OF ORDER NO. 26,684**

Intervenor, Terry Clark (“Clark”), by and through counsel, Richard M. Husband, Esquire, hereby respectfully objects to the [Motion for Rehearing of Order No. 26,684](#) (“Motion”) filed by the Office of the Consumer Advocate (“OCA”) on September 29, 2022, on grounds as follows:

1. The Commission issued interim [Order No. 26,684](#) (“Order”) in this Least Cost Integrated Resource Plan (“LCIRP”) proceeding on September 14, 2022. The Order denied the proposed [Settlement Agreement](#) of three of the seven parties to this proceeding, the OCA, the Department of Energy (“DOE”) and the petitioner, Liberty Utilities (EnergyNorth Natural Gas) Corp., dba Liberty Utilities (“Liberty”), which would approve Liberty’s LCIRP *sub judice*, and established an October 3, 2022 filing deadline for Liberty’s next LCIRP. Liberty accepted the [Order](#) by filing a [Motion for Waiver of Certain LCIRP Requirements](#) on September 22, 2022 as directed under the [Order](#), by agreeing to the October 3, 2022 filing under that motion, and by (presumably) filing its new LCIRP on October 3, 2022, thereby waiving any right to contest the [Order](#) by motion for rehearing under [RSA 541:3](#) or otherwise.¹

¹ Clark states that the October 3, 2022 filing was “presumably” made as, again, Liberty did not timely contest the Order by the October 3, 2022 deadline, but the filing does not yet appear in the Commission’s online docket.

2. Nevertheless, the OCA filed its [Motion](#) on September 29, 2022 requesting rehearing/reconsideration of not just the [Order](#)'s denial of approval for the [Settlement Agreement](#), but also its October 3, 2022 filing deadline.
3. The [Order](#) was properly decided and the [Motion](#) must be denied, not just because the October 3, 2022 deadline is a decided/moot issue at this point, but for numerous other reasons.
4. For all of the reasons of record, particularly as set forth in [Clark's testimony](#), [position statement](#), [response to the Settlement Agreement](#) and at the final hearing in this matter, *see* [Transcript of final hearing held August 18, 2022](#) and *particularly* at 219:13 - 227:4, which reasons are hereby incorporated herein as if set forth in full, the [Settlement Agreement](#) and [LCIRP](#) at issue are not approvable. The [Motion](#) does not show where any rebuttal to these reasons was provided on the record, and no substantive rebuttal was ever offered by the OCA, Liberty or DOE in their pleadings or at the final hearing. Indeed, in both their filings and at the final hearing, Liberty and the OCA offered only naked general denials to the *prima facie* case of unlawful conduct precluding approval that was established by Clark on the record—nothing close to rebuttal meeting their burden.
5. The [Motion](#)'s assertion that the [Order](#) renders an improper advisory opinion is wrong. The crux of the decision under the [Order](#) is the Commission's denial of approval for the [Settlement Agreement](#), which is clearly an adjudication of a justiciable controversy. The [Motion](#)'s "advisory" complaint goes to Commission guidance offered in the [Order](#), which is clearly expressed as not part of the decision:

“The Commission makes clear that this guidance is not binding—nor could it be. Rather, in the interest of efficient process, the Commission provides these expectations but remains open to receiving and reviewing any LCIRP that is consistent with the applicable statutes.”

Id. at 6. As such, the OCA’s complaint, at most, concerns *dicta*, which would not invalidate the [Order](#).

6. Moreover, the [Motion](#) unfairly ignores that the [Order](#) issued this guidance at the request of parties, starting with Liberty. *See* [Liberty’s June 1, 2022 filing](#) at 2 (“... there is less to be gained from an order resolving the disputes that were contested in 2018 and 2019, and much to be gained from an order providing guidance on what should be included in Liberty’s next LCIRP and how Liberty should demonstrate compliance with the statute.”). This issue was discussed extensively at the June 21, 2022 status conference in this matter with substantial party support—including the OCA’s concurrence that such guidance was “Desirable even.” [Transcript of June 21, 2022 status conference](#) at 12:16-20, 46:23-47:1, 54:4-11, 78:7-9, 81:11-13. Accordingly, the [Motion](#)’s advisory argument was waived and/or is barred by estoppel.
7. The OCA’s real concern here is plainly Commission approval of the recommendations in Section 2.3 of the [Settlement Agreement](#). However, the Commission may not and need not indulge the fiction that the [Settlement Agreement](#) is approvable just to approve the recommendations: the recommendations could—and should—be adopted under the Commission’s final ruling in this matter, as a clear roadmap for utility planning and LCIRP analysis. While the Commission has rejected the adoption of the recommendations for Northern Utilities, Inc. in [Docket No. DG 19-126](#), the special circumstances of

this case, as established on the record by Clark, compel their adoption for Liberty's filings. Indeed, they would only provide clearly necessary guardrails to facilitate compliance with the statutory standard Liberty must meet under [RSA 374:1](#),² and professes to want to meet.³

8. The [Motion](#)'s equitable arguments for reconsideration of the [Order](#) are unavailing. Contrary to the OCA's attempt to paint the [Settlement Agreement](#) as a "settlement of the parties," the agreement represents the will of less than half of the parties, and only their concept of an equitable resolution of the proceedings. Moreover, the [Motion](#) cites no authority to support the proposition that the statutory, *legal* requirements at issue may all be ignored as a matter of "equity." Nor, in any event, would equity favor the OCA's position on a view of the case as a whole, especially on the facts established by Clark's [response to the Settlement Agreement](#) and at the final hearing.⁴
9. The [Order](#) is well-grounded and the [Motion](#) without merit.

² See Clark's [position statement](#), Positions 2 and 3; [Transcript of final hearing held August 18, 2022](#) at 220:3-20.

³ See [Transcript of final hearing held August 18, 2022](#) at 243:12-13 ("... for the New Hampshire president to say that 'Liberty is on a path to net zero by 2050' is entirely true ...") and 248:14-15 (approval of recommendations would "help our Company meet its net zero goals.").

⁴ As to the facts established at the final hearing, Clark notes that this includes all facts alleged and supported in Clark's [response to the Settlement Agreement](#) that Liberty did not rebut at the final hearing (it was not Clark's obligation to elicit Liberty rebuttal testimony), which are damning. The Commission's obligation to consider the entire record in deciding the matter is clear. See [RSA 541:3](#) (within 30 days of a Commission order, "any person directly affected RSA 541:3 thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding ..."); *Dumais v. State Personnel Commission*, 386 A.2d 1269, 1271, 118 N.H. 309 (1978)("The purpose of a rehearing 'is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon the record upon which that decision rested.' ")(quoting *Lambert Constr. Co. v. State*, 115 N.H. 516, 519 (1975); Supreme Court Rule 10(2)("The order sought to be reviewed or enforced, the findings and rulings, or the report on which the order is based, and the pleadings, evidence, and proceedings before the agency shall constitute the record on appeal.").

10. As its arguments and relief are intertwined with the [Motion](#), Clark notes that, contrary to the OCA’s pending [Objection to “Motion for Waiver of Certain LCIRP Requirements”](#), [Liberty’s Motion for Waiver of Certain LCIRP Requirements](#) presents a lawful waiver request under [RSA 378:38-a](#). Liberty requests the May 1, 2023 supplementation deadline as a reasonable condition on the waiver. See [Liberty’s Motion for Waiver of Certain LCIRP Requirements](#) at ¶ 6 (“Therefore, the Commission indicated it would waive the requirement that Liberty include those assessments in the October 3 filing, provided Liberty supplements the 2022 Plan with those assessments and planning information no later than May 1, 2023”). Again, though, with the October 3, 2022 filing, the issues the OCA raises were waived and mooted.

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

- A. Deny the OCA’s [Motion for Rehearing of Order No. 26,684](#); and
- B. Provide such other and further relief as is just and proper.

Respectfully submitted,

Terry Clark,

By his Attorney:

Dated: October 6, 2022

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

I hereby certify that I have, on this 6th day of October, 2022, served an electronic copy of this pleading 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, Esquire
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