

 ORIGINAL

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

February 13, 2015 - 9:04 a.m.
Concord, New Hampshire

**RE:DG 14-380 LIBERTY UTILITIES (ENERGYNORTH
NATURAL GAS) CORP., D/B/A LIBERTY UTILITIES
Petition for Approval of a Firm Transportation
Agreement with the Tennessee Gas Pipeline Company,
LLC - PREHEARING CONFERENCE**

PRESENT: Alexander F. Speidel, Hearing Examiner
Sandy Deno - Clerk

APPEARANCES:

Reptg. Liberty Utilities, et al:
Sarah B. Knowlton, Esq.

Reptg. Town of Dracut:
James P. Hall, Esq. (Qua, Hall, Harvey & Walsh)

Reptg. PLAN:
Richard A. Kanoff, Esq. (Burns & Levinson, LLP)

Reptg. Staff:
Rorie E. Patterson, Esq.

COURT REPORTER: SUSAN J. ROBIDAS, N.H. LCR NO. 44

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P R O C E E D I N G S

1
2 HRG. EXAMINER SPEIDEL: I'm
3 Attorney Speidel, the hearings examiner for
4 this matter, and I greet you all today. I
5 would like to open this hearing, specifically
6 this prehearing conference in DG 14-380, which
7 is the Liberty Utilities filing for approval
8 of a long-term firm transportation gas
9 agreement. I would like to begin by taking
10 appearances first, please.

11 MS. KNOWLTON: Good morning,
12 Attorney Speidel. My name is Sarah Knowlton.
13 I'm here today on behalf of Liberty Utilities
14 and EnergyNorth Natural Gas Corp.

15 HRG. EXAMINER SPEIDEL: Thank
16 you.

17 MR. HALL: Attorney James Hall
18 for the Town of Dracut. We filed a petition
19 to intervene.

20 HRG. EXAMINER SPEIDEL: And
21 feel free to just remain seated so you have
22 better access to the microphone.

23 MR. KANOFF: Richard Kanoff,
24 representing PLAN, appearing on behalf of

1 PLAN.

2 HRG. EXAMINER SPEIDEL: Thank
3 you.

4 MS. PATTERSON: Good morning,
5 Attorney Speidel. Rorie Patterson and Steve
6 Frink here on behalf of the Public Utilities
7 Commission.

8 HRG. EXAMINER SPEIDEL: I do
9 see that we have some other parties monitoring
10 the proceeding. I imagine that some of them
11 are Liberty personnel, some of them are not
12 Liberty personnel. I would like to invite the
13 Staff attorney to perhaps circulate a sign-up
14 sheet so that everyone in the room can mark
15 down who they are. And they should indicate
16 as to whether they are the petitioner, an
17 intervenor or an interested party. Thank you.

18 I understand from having read
19 the record that we have two motions to
20 intervene and that there are objections from
21 the Company for both. Is that right, Ms.
22 Knowlton?

23 MS. KNOWLTON: That's correct.

24 HRG. EXAMINER SPEIDEL: Would

1 you prefer to begin by making a statement of
2 objection, or would you rather that the
3 intervenors make their own statement and their
4 position first?

5 MS. KNOWLTON: I'd rather have
6 the intervenor go first, the proposed
7 intervenor, and then I'm happy to articulate
8 the objection.

9 HRG. EXAMINER SPEIDEL: Very
10 well. I suppose we could begin with the Town
11 of Dracut.

12 Sir, would you like to make a
13 statement in support of your intervention
14 request?

15 MR. HALL: Yes, sir. As
16 detailed in the -- we provided more detail in
17 our supplement in regards to the interest
18 Dracut has and the public interest at large.
19 But our belief, and while there are some
20 things redacted in the filings, is the current
21 pathway majorly impacts Dracut. Additionally,
22 there are two proposed alternative pathways,
23 with a major compression system in Dracut and
24 expanded pipelines. And the citizens of

1 Dracut are concerned about additional takings
2 and environmental impacts. And, again, if the
3 alternative pathways are also, as proposed,
4 established, those also utilize Dracut. For
5 all those reasons and those cited in the
6 pleadings, we believe Dracut does have a
7 substantial interest.

8 And additionally, there is a
9 great public interest in having its citizens
10 involved and its board of selectmen. We
11 believe this is very important, and we
12 request that we be given the right to be a
13 full intervenor. And Dracut is still
14 assessing what level of participation it
15 would ultimately want, but it would like to
16 be granted full intervenor status. Thank
17 you.

18 HRG. EXAMINER SPEIDEL: Now, is
19 it fair to say that Dracut is not part of the
20 Liberty Utilities New Hampshire franchise
21 footprint? It's in Mass.

22 MR. HALL: That's correct.

23 HRG. EXAMINER SPEIDEL: So you
24 have another gas company I presume there.

1 Would you happen to know what it is?

2 MR. HALL: I do not at this
3 time.

4 HRG. EXAMINER SPEIDEL: But
5 there's another service territory across the
6 Massachusetts border.

7 My other follow-up question to
8 that would be: Is it fair to say that your
9 hometown gas company is probably involved in
10 some level of involvement in the NED
11 expansion project?

12 MR. HALL: I think it's fair to
13 say yes. I can't really speak on authority on
14 that. Unfortunately, I think the selectmen
15 received some notice that was probably ordered
16 to be published and just on Tuesday night
17 voted to petition to intervene. So I'm
18 somewhat handicapped by lack of information at
19 this time, which I apologize for.

20 HRG. EXAMINER SPEIDEL: Well,
21 what I'm driving at is the Town of Dracut's
22 nexus to New Hampshire affairs, in terms of
23 this specific filing, seem to revolve around
24 its role as a host for physical infrastructure

1 that does not necessarily depend on a New
2 Hampshire process for approval for review, for
3 siting and so forth. We don't have any
4 jurisdiction over the siting of those
5 infrastructure elements. And on top of that,
6 there is, I'm sure, a responsible
7 Massachusetts agency or an agency that's going
8 to be involved in the review of that physical
9 siting. On top of that, you also have a
10 hometown gas company that is directly sited in
11 your community and also very much -- there's a
12 distinct likelihood that the Town of Dracut is
13 at least a distribution customer of the gas
14 utility, if not a supply customer as well.
15 So, there you have an iron-clad nexus, in
16 terms of your role in New Hampshire law under
17 the Part I mandatory intervention standard in
18 a Massachusetts proceeding, but not
19 necessarily in a New Hampshire proceeding.
20 And I would actually state categorically not
21 in New Hampshire proceeding under Part I.

22 Now, under Part II, you say
23 there are certainly interests that militate
24 in favor of your town's participation in this

1 proceeding. Could you describe those a
2 little bit more specifically, please.

3 MR. HALL: The major interests,
4 from what I --

5 (Court Reporter interrupts.)

6 MR. HALL: What we believe are
7 our interest right now is, should this be
8 approved, ultimately the burden on Dracut will
9 be much larger because there will be an
10 expansion. It certainly benefits Dracut and
11 the public to be able to get a lot of these
12 facts or allegations or plans or systems which
13 potentially are going to impact Dracut. And
14 additionally, I think it would also benefit
15 the companies, too, because there's going to
16 be more hysteria and uncertainty amongst the
17 people if the information is not out publicly
18 for them to assess.

19 And yes, while we're in
20 Massachusetts and we have redress there over
21 certain things should this go through, I
22 think it would benefit the process and the
23 public interest for Dracut to receive and
24 participate at this stage in New Hampshire,

1 even though we are a Massachusetts municipal
2 entity.

3 HRG. EXAMINER SPEIDEL: So you
4 believe that there are interests implicated
5 that would not be adequately protected through
6 a review of the public docket record that is
7 supplied to any interested member of the
8 public through our Web site, for instance.
9 And you are not satisfied that your
10 participation in a Massachusetts DPU
11 proceeding, for instance, for your area's
12 utility's involvement in the NED project, or
13 local siting affairs, or Massachusetts court
14 proceedings regarding siting in the Town of
15 Dracut, you believe that all those elements
16 together would not adequately protect the
17 interests of the Town of Dracut?

18 MR. HALL: Yes, sir. The
19 selectmen believe that because, basically, a
20 number of citizens petitioned them and
21 basically revealed that they couldn't get
22 certain plans or ideas because they were
23 redacted. And that was one of the major
24 things that led the selectmen to vote to

1 petition to intervene.

2 HRG. EXAMINER SPEIDEL: So you
3 would expect that having access to unredacted
4 documents would be helpful to the Town of
5 Dracut. Now, in light of that interest, have
6 you engaged in any discussions with the
7 Liberty company about a non-disclosure
8 agreement regarding such confidential
9 materials?

10 MR. HALL: No, I haven't, sir.

11 HRG. EXAMINER SPEIDEL: Because
12 under our law in New Hampshire, it would be
13 required that if the Company were to share
14 what they view to be confidential business
15 information or commercially sensitive
16 information, it would be most likely that the
17 Town of Dracut would be required to enter into
18 a non-disclosure agreement with the Company
19 about that. So I do want to caution that,
20 even if the Town of Dracut were to achieve the
21 status of a full intervenor, they would have
22 access to confidential documents only subject
23 to the Company's right to extend a binding
24 non-disclosure agreement. And so you

1 understand the implications of that, I
2 believe?

3 MR. HALL: I do, sir, yes.

4 HRG. EXAMINER SPEIDEL: Okay.
5 So do you have any amendments you'd like to
6 make to your position in light of that fact,
7 or would you require further discussion with
8 the folks down in Dracut?

9 MR. HALL: No, sir. I think
10 I'd think just like to emphasize that the
11 selectmen do understand that they would have a
12 burden of confidentiality, but I think at
13 least they would be able to inform the public,
14 who is very worried about this proceeding and
15 others, that they've had the opportunity to
16 discuss it and hear about it. And I think
17 that would benefit the public, knowing that
18 their governing body was informed. That's the
19 main, I guess, thrust of why they sent me up
20 here.

21 HRG. EXAMINER SPEIDEL: Good.
22 Well, thank you for your time, and thank you
23 for your explanations.

24 I would like to invite Ms.

1 Knowlton to present the Company's response to
2 these discussions.

3 MS. KNOWLTON: Thank you. The
4 Company does not dispute the importance of
5 Dracut as a location of a city gate for
6 natural gas delivery. But that said, the
7 Company does object to the Town of Dracut's
8 petition to intervene in this docket. This
9 docket involves the consideration of a
10 financial transaction that the Company seeks
11 to enter into, and that is to purchase firm
12 capacity from Tennessee Gas Pipeline Company,
13 LLC, over a 20-year term.

14 As the attorney for the Town
15 of Dracut outlined, his citizenry is
16 concerned about takings and alternative
17 impacts associated with the construction of a
18 natural gas pipeline. Those sound like
19 environmental impacts to me and concerns of
20 landowners with regard to taking issues
21 presumably under some eminent domain statute
22 not here in New Hampshire, obviously, because
23 our courts would not have jurisdiction over
24 land in the Commonwealth of Massachusetts.

1 Those are not issues that are before the
2 Commission in this proceeding. Those issues,
3 in terms of the siting of the natural gas
4 pipeline and any environmental impacts of
5 that pipeline, will be considered by the
6 Federal Energy Regulatory Commission, you
7 know, and possibly a state siting agency in
8 Massachusetts. But, you know, I'm not
9 familiar with myself, in terms of, you know,
10 whether a state agency in Massachusetts is
11 even preempted by the FERC to consider those
12 issues.

13 So, while I recognize that the
14 people of Dracut may have those issues and
15 want to explore them, this is not the docket
16 to pursue that because, again, this docket
17 doesn't involve Massachusetts. It's a New
18 Hampshire-focused docket, and it's focused
19 solely on the financial transaction that the
20 Company seeks to enter into.

21 On the same day the Company
22 filed its petition seeking approval to enter
23 into an agreement with Tennessee, it
24 submitted a motion for protective agreement

1 in which it outlined the types of information
2 that were redacted from the Company's filing.
3 And it's financial information, again,
4 relating to the terms of the proposed
5 transaction with Tennessee, you know, various
6 costs and other commercial terms. And those
7 are not the -- it doesn't even go to the
8 nature of the interests that Dracut has
9 identified as wanting to pursue in this
10 docket. Again, their interests appear to be
11 takings and alternative impacts. So I think
12 they're in the wrong venue, and for that
13 reason I would ask that the Commission deny
14 the petition to intervene.

15 I also am concerned about the
16 timing of this docket. As we've outlined in
17 our petition, there are some time constraints
18 here for the Company to receive approval in
19 order to proceed with the contract with
20 Tennessee. We're looking for a final
21 order -- meaning, the appeal period has run
22 by July 1st, 2015. And if we are in a
23 situation where we have intervenors that are
24 going to deviate into issues that are outside

1 the scope, noticed scope of the docket, I am
2 concerned that that will also have a negative
3 impact on the timing requirements that the
4 Company has. So I would ask that that be
5 taken into consideration as well as the
6 Commission considers the Dracut petition to
7 intervene. Thank you.

8 HRG. EXAMINER SPEIDEL: If I
9 may, Ms. Knowlton, I'd like to ask a follow-up
10 question regarding one of the authorities that
11 you cited in your brief of objection to the
12 Dracut filing, and that related to the camp
13 association in Maine in 2002 on Aziscoos Lake,
14 I believe roughly in the area of Effingham,
15 New Hampshire, or thereabouts. Ultimately in
16 that case, the Commission ruled that the camp
17 association had no describable interests that
18 was impacted by the Seabrook construction; is
19 that right?

20 MS. KNOWLTON: That's correct.

21 HRG. EXAMINER SPEIDEL: Now, in
22 this instance, the Town of Dracut is the host
23 town for some of the physical infrastructure
24 affiliated with the pipeline for which the

1 Company is contracting. Would you be able to
2 maintain that Dracut, in fact, does not have
3 any interest in this proceeding that could be
4 served by their participation in this
5 proceeding on that basis?

6 MS. KNOWLTON: I don't think
7 so. I mean, I think if one were to adopt the
8 view that Dracut did have some interest that
9 would be affected, I mean, the natural gas
10 pipeline extends -- you know, actually, many
11 pipelines that this company obtains capacity
12 on, I mean, we have states, you know, down to
13 the Gulf area that would be intervening in our
14 docket. I mean, there's gas pipelines, as I
15 think Mr. DaFonte's testimony has outlined in
16 the Company's Least Cost Integrated Resource
17 Plan, DG 13-313, has extensive information
18 about all the different gas pipelines that we
19 have agreements with for firm capacity. And
20 those pipelines span, you know, from Dracut,
21 Massachusetts, all the way down to the Gulf
22 Coast. And I think if we were to take the
23 view that there's assets in Dracut or any of
24 these other gas pipeline locations that are

1 necessary to serve our customers, I mean, we
2 could have, you know, a very substantial
3 number of parties show up and intervene in our
4 dockets. And I certainly don't think that
5 that would be in the interest of this
6 commission, or necessary.

7 HRG. EXAMINER SPEIDEL: Thank
8 you. I appreciate that.

9 I don't see that we have a
10 representative of the Office of Consumer
11 Advocate here. Does Staff have any
12 viewpoints regarding this specific petition
13 to intervene?

14 MS. PATTERSON: Thank you.
15 Staff is not satisfied that Dracut has
16 satisfied the requirement to demonstrate
17 rights, privileges, duties or other types of
18 interests that would require the Commission to
19 grant intervention. And we agree that this is
20 not the appropriate venue for Dracut's
21 arguments to occur within, that that argument
22 is more -- is best addressed at the FERC
23 proceeding.

24 And we would also say that, as

1 far as discretionary participation goes,
2 Staff views the expedited schedule as fairly
3 important and not something that could be
4 necessarily accomplished if we allow people
5 who don't have direct interests in the
6 outcome of this case to participate. So we
7 would ask that the Staff -- or that the
8 Commission deny the petition.

9 HRG. EXAMINER SPEIDEL: Thank
10 you.

11 In light of this information,
12 and on the basis of the record that has been
13 presented, I will enter in an order of denial
14 of the intervention by Dracut. I will
15 mention that in my hearings examiner report
16 because, for starters, I do not see any basis
17 under Part I. And under Part II, Dracut
18 really does have better venues for its
19 interests and its participation. I think a
20 Massachusetts DPU filing by one of the
21 Massachusetts utilities, especially its very
22 own in its own service territory, would be an
23 excellent place for the Town of Dracut to hop
24 aboard and do what it needs to do to protect

1 its interests. But the New Hampshire Public
2 Utilities Commission does not have any
3 jurisdiction over Massachusetts siting law or
4 Massachusetts review of gas acquisition
5 contracting. So I will deny the motion to
6 intervene in my report, which will be issued
7 very shortly.

8 Now I would like to begin discussion of
9 the second intervenor, the PLAN entity.

10 Just like last time, Ms. Knowlton, would
11 you like to begin, or should PLAN begin its
12 presentation?

13 MS. KNOWLTON: If we could
14 proceed in the same manner with PLAN
15 beginning?

16 HRG. EXAMINER SPEIDEL: Very
17 good.

18 Sir, could you state the
19 position of PLAN for its request for
20 intervention in this proceeding.

21 MR. KANOFF: Is the microphone
22 on?

23 HRG. EXAMINER SPEIDEL: I don't
24 know. The red light should be on. You press

1 the little silver button --

2 MR. KANOFF: It's on.

3 HRG. EXAMINER SPEIDEL: Okay.

4 Great.

5 MR. KANOFF: Thank you. I
6 appreciate the opportunity to appear here on
7 behalf of PLAN. The Pipeline Awareness
8 Network for the Northeast is a new entity
9 formed in response primarily to the new filing
10 and the new reality that in New Hampshire the
11 NED pipeline is now officially routed. And
12 the specific impacts on PLAN and on its
13 members are noted explicitly in our petition
14 to intervene. And I don't need to go into
15 that.

16 What I do want to say is that
17 PLAN and its members have specific impacts
18 and specific nexus to this proceeding, in the
19 fact that it has members that are ratepayers,
20 it has members that are affected by the route
21 that the pipeline is going to take, and its
22 intervention is legally supported in the same
23 manner as other organizations have
24 historically been received and evaluated in

1 the Commission, and all the precedence for
2 that, and in fact support that, are in our
3 petition to intervene.

4 If we're allowed to intervene,
5 we plan to evaluate as part of the procedural
6 schedule here, and consistent with the
7 schedule here, the choice that the Company
8 made with respect to this particular pipeline
9 and gas supply opportunity versus other
10 pipelines and gas supply opportunities as
11 noted in its submittal. It had a choice and
12 made a choice, and they characterize that
13 choice primarily as "financial." But we all
14 know from its filing that there are costs
15 financial and non-cost elements associated
16 with its selection. And all of those should
17 be appropriately considered and evaluated by
18 the Commission, consistent with very broad
19 standard public interests. And the public
20 interest doesn't necessarily define this
21 proceeding to just the financial, quote,
22 implications of the contract, but it's a much
23 more broader standard that allows, even in
24 the Company's submittal, to encompass

1 non-cost factors. They've identified some of
2 those. There may be others. But certainly,
3 even on a specific cost basis, the Company's
4 need for this particular contract, its choice
5 to select this one versus others, and its
6 decision and evaluation of cost and non-cost
7 factors is something that PLAN very much
8 believes it has a right to participate in.
9 There were -- consistent with precedent, we
10 have filed, and it didn't show up on the Web
11 site at the time that the information was
12 available yesterday, given the storm, but
13 PLAN has certainly filed with the secretary
14 of state's office in New Hampshire
15 appropriate paperwork for it to qualify as a
16 foreign non-profit corporation, that if it's
17 not on the Web site now, it should be. This
18 was filed, with the storm-related impacts,
19 earlier in the week. And I can certainly
20 present that documentation.

21 So, having said that, we would
22 appreciate the opportunity to intervene
23 consistent with the precedent, and given the
24 importance of the issues to PLAN and its

1 membership in New Hampshire.

2 HRG. EXAMINER SPEIDEL: Thank
3 you.

4 I would like to invite Ms.
5 Knowlton to give the Company's response to
6 that statement.

7 MS. KNOWLTON: Thank you. The
8 Company continues to iterate its objection to
9 the PLAN's petition to intervene. As stated
10 in our objection, PLAN makes a bald-face
11 assertion that it has members who are
12 customers of ours here in New Hampshire.
13 There is no support behind that statement.
14 There is no affidavit. There is not even a
15 number of members that they have that are our
16 customers. We don't know whether they're
17 residential customers, whether they're
18 commercial and industrial customers.

19 I think if the hearing officer
20 were to go and to look into the Commission
21 orders from prior cases where intervenors
22 have -- membership organizations have sought
23 to intervene in other dockets, you know, one
24 would see that the Commission has typically

1 required something more than just a statement
2 that, "We have members that are affected."
3 In some cases, organizations have provided
4 affidavits making that connection between
5 membership in an organization and receipt of
6 services of a customer from a distribution
7 utility. And we don't have any of that here,
8 so there is no way for me to evaluate that
9 assertion. And I am concerned that, you
10 know, we don't have enough to evaluate
11 whether or not, in fact, some of the PLAN
12 members are our customers in our service
13 territory. So I have a concern about that.

14 PLAN also seeks to intervene
15 to address concerns with regard to land-
16 taking-related issues. And I would -- as I
17 stated in my objection to the Town of
18 Dracut's intervention, this is not the venue
19 for that. The Commission does not have
20 authority to consider taking issues. That's
21 an issue, again, that is a FERC issue, and
22 possibly a siting issue here in New
23 Hampshire. But that's not what this
24 commission has jurisdiction to do. And I

1 don't believe that will be the focus of this
2 docket. So, on that basis as well, I don't
3 think that PLAN should be permitted to
4 intervene.

5 If the Commission were going
6 to grant intervention to PLAN, alternatively
7 I would ask that it only be on a limited
8 basis, consistent with RSA 541-A:32, III,
9 that it be limited to a designated issue.
10 And Attorney Kanoff has indicated that the
11 only issue that they seek to pursue is the
12 choice, the supply choice issue.

13 And I also am -- again, if we
14 had clarity about who their members are
15 relative to service by EnergyNorth, the
16 utility here, if the residential customers
17 that they're claiming to represent, that they
18 be required to coordinate their position with
19 the Office of Consumer Advocate so that we
20 have some efficiency around the presentation
21 of evidence and argument in the case and
22 discovery. While I know that the consumer
23 advocate is not here today, the OCA did file
24 a letter of participation in this docket. So

1 I do believe that such a coordination would
2 be possible.

3 So, with that I'll close.

4 Again, we don't believe that PLAN has stated
5 a basis to intervene, and we object to the
6 intervention. But again, alternatively, if
7 the intervention is going to be granted, I
8 would request that it be done so on a limited
9 basis only.

10 HRG. EXAMINER SPEIDEL: Thank
11 you, Ms. Knowlton.

12 Ms. Patterson, do you have
13 anything to add to that as Staff?

14 MS. PATTERSON: Thank you.
15 Yes. Like its position with regard to Dracut,
16 Staff takes the position that there is not
17 sufficient demonstration by this party to show
18 that it has rights, duties, privileges,
19 immunities or other substantial interests that
20 may be affected by the Commission's decision
21 in this proceeding. I agree that in the past,
22 the Commission has received affidavits
23 attached to petitions to intervene filed on
24 behalf of membership groups. To the extent

1 that that is something that PLAN is able to
2 provide, it's possible that Staff would have a
3 different position. But at this point, we
4 don't have sufficient information to make a
5 recommendation to the Commission. Thank you.

6 HRG. EXAMINER SPEIDEL: Thank
7 you.

8 It would appear that we have a
9 question of fact outstanding regarding PLAN's
10 membership. And I would concur with Staff
11 and the Company that the proper remedy for
12 this situation is a record request requesting
13 that PLAN proffer an affidavit certifying
14 that it does indeed have members that are
15 residents and customers of Liberty in its
16 service territory. That would be most
17 helpful, I believe, to clarifying this
18 situation.

19 So I would like to ask the
20 clerk to enter in Record Request No. 1 from
21 PLAN regarding an affidavit for its
22 membership, and on the basis of receipt of
23 that, I will follow-up with a recommendation
24 regarding its intervention status. When the

1 affidavit is received by the parties, I
2 invite all of the parties also to enter their
3 own responses to the affidavit and their
4 positions regarding intervention. And I
5 address that to the Company and Staff
6 specifically. That would be most helpful.
7 So that would be Record Request 2, Staff and
8 the Company's response to PLAN'S affidavit.

9 In the meantime, sir, I would
10 recommend that, if you do wish to
11 participate -- is there a technical session
12 at the end of this proceeding?

13 MS. PATTERSON: Yes.

14 HRG. EXAMINER SPEIDEL: Is
15 there an expectation that there would be any
16 objection to PLAN's participation as, shall we
17 say, an observer of the technical session
18 versus an active participant?

19 MS. KNOWLTON: No, we have no
20 objection, again, I mean, so long as
21 confidential information is not being
22 discussed. We will ask them to leave the room
23 if we discuss confidential terms.

24 HRG. EXAMINER SPEIDEL: Right.

1 MS. KNOWLTON: But for the
2 public piece of the technical session, we have
3 no objection.

4 HRG. EXAMINER SPEIDEL: Okay.
5 That would be an acceptable way of handling
6 the pendency of your intervention request, I
7 believe. So, feel free to join in the
8 technical session and observe the proceedings.

9 So that affidavit would be
10 Record Request 1. And Record Request 2 would
11 be the response from Staff and the Company,
12 just to be sure.

13 Well, that relates to the
14 intervention requests. We do have some
15 confidential material that was filed under a
16 motion for confidential treatment. In
17 general terms, I would like to ask the
18 Company to just summarily explain its reasons
19 for seeking confidentiality of this material.

20 MS. KNOWLTON: Thank you. The
21 Company has submitted its filings both in
22 confidential and redacted form so that the
23 Commission would be in a position to look at
24 what is confidential in the documents.

1 Essentially, as I indicated earlier, there are
2 commercial terms in the precedent agreement,
3 pricing terms and other related terms that the
4 Company seeks protective treatment of. This
5 is not information that the Company has
6 otherwise disclosed to the public, and we
7 believe if disclosed could cause harm to the
8 Company. These terms are also terms that --
9 many of these terms were terms that were
10 negotiated by all nine local distribution
11 companies that have been negotiating with
12 Tennessee. The pricing is the same for all of
13 the companies. And so, you know, this
14 information is, again, not just confidential
15 as to EnergyNorth, but also to the other
16 nine -- excuse me -- eight other LDCs that
17 participated in this negotiation. It's the
18 kind of information that the Commission has
19 protected in the past. I don't think the
20 nature of the request is unusual. The Company
21 typically, as part of its cost of gas
22 proceedings, will present to the Commission
23 the commercial terms upon which it purchases
24 either capacity or commodity from suppliers,

1 and we regularly receive protective treatment
2 for that information. And in fact, the PUC
3 200 rules recognize that and provide for
4 protective treatment in cost of gas
5 proceedings for those contracts. This is very
6 similar to that type of information. It's
7 just, you know, obviously earlier in the
8 contracting process than some of the contracts
9 that are -- this is sort of a precontract, but
10 it still has the material financial terms in
11 it.

12 So, for those reasons, and
13 others stated in the motion for protective
14 treatment, I would ask that the Commission
15 grant the motion.

16 HRG. EXAMINER SPEIDEL: Very
17 well. And this sort of material has been
18 routinely provided confidential treatment in
19 past proceedings; is that right, Ms. Knowlton?

20 MS. KNOWLTON: Well, the last
21 proceeding that was, I would say like this,
22 was DG 07-101, which was the last time that
23 EnergyNorth came before the Commission to seek
24 additional capacity on a gas pipeline and to

1 seek permission from the Commission to enter
2 into a contract in advance, you know, of the
3 work to be done on the pipeline. So I believe
4 that in 07-101 there was similar information
5 that was redacted.

6 But with regard to the cost of
7 gas proceedings, whether it's winter cost of
8 gas or summer cost of gas, the Company is
9 presenting in those proceedings contracts
10 with pricing information that reflects the
11 cost to procure capacity or either commodity
12 that then, you know, is wrapped into the
13 Company's rates that the Commission approves.
14 And those contracts, again, under the 200
15 rules, are regularly protected from public
16 disclosure, I think with the recognition that
17 if that information was public, it would
18 impair the Company's ability to negotiate
19 favorable terms in the marketplace.

20 HRG. EXAMINER SPEIDEL: Thank
21 you.

22 Staff? Ms. Patterson?

23 MS. PATTERSON: Thank you. I
24 agree that there is a privacy interest on

1 behalf of the Company for this information.
2 It is analogous to information that the
3 Commission provided protection to in the past.
4 I also agree that there -- but I disagree
5 respectfully with the Company that there is no
6 public interest whatsoever in the information.
7 I do believe that there is a public interest
8 in what the Company terms as "critical terms"
9 to a contract which ratepayers may eventually
10 have to pay. However, I think the privacy
11 interest outweighs the public's interest in
12 that information, and for that reason I would
13 support the motion for confidential treatment.
14 Thank you.

15 HRG. EXAMINER SPEIDEL: Thank
16 you.

17 Do any other parties present
18 or persons present today have any objection
19 against the motion for confidential
20 treatment?

21 (No response.)

22 HRG. EXAMINER SPEIDEL: Hearing
23 none, I will grant the motion for confidential
24 agreement due to the fact that it is

1 commercially sensitive financial information
2 that requires protection, and I would ask that
3 all parties that have access to such
4 information maintain its confidentiality
5 subject to Commission rules and the New
6 Hampshire statutes. Thank you.

7 MS. KNOWLTON: Hearing Officer
8 Speidel, if I might circle back for a minute
9 to Record Request 1 and 2 --

10 HRG. EXAMINER SPEIDEL: Sure.

11 MS. KNOWLTON: -- and inquire
12 whether you wish to consider a deadline for
13 the filing of them?

14 HRG. EXAMINER SPEIDEL: The
15 affidavit?

16 MS. KNOWLTON: And a time for
17 response, just given that we're on a -- trying
18 to keep a tight time frame on the docket.

19 HRG. EXAMINER SPEIDEL: That's
20 actually a good suggestion. I would have
21 expected that folks would have filed these
22 with all deliberate speed. But establishing
23 specific deadlines is quite wise.

24 I would recommend that the

1 deadline for the affidavit be next Thursday.
2 That would be Record Request 1. And the
3 response would be the following Thursday.
4 And I would make sure to have an expeditious
5 recommendation ginned up probably that Friday
6 and filed with the commissioners for their
7 consideration. The reason I haven't ruled on
8 it definitively is because there's a question
9 of fact outstanding here. So we have to be
10 patient and just wait a couple weeks. But I
11 found that it's better to have a little extra
12 time for quality work and everyone is able to
13 get their ducks in a row at both ends. So
14 that's much appreciated.

15 And I believe that would
16 conclude -- let me see. We do have -- we
17 have received -- just for the record, oral
18 record, we have received the affidavit of
19 publication from the Company of the order of
20 notice. I don't believe there are any
21 ancillary procedural matters to address. Ms.
22 Knowlton? Ms. Patterson?

23 MS. PATTERSON: No.

24 HRG. EXAMINER SPEIDEL: So,

1 therefore, I would invite the participants to
2 make their initial statements of position.
3 And that actually extends to non-intervenors.
4 Any member of the public is welcome to make
5 comments regarding any proceeding and to
6 monitor the docket's public filings, and so
7 when there is a public hearing on this -- and
8 I address this to all potential or possible
9 intervenors -- you're welcome to make public
10 statements regarding your viewpoints on such
11 matters.

12 So I would like to begin by
13 offering the Town of Dracut an opportunity to
14 speak a few words if you'd like.

15 MR. HALL: I don't have
16 anything further today, sir. Thank you.

17 HRG. EXAMINER SPEIDEL: Thank
18 you. PLAN?

19 MR. KANOFF: We'll reserve and
20 have appropriate comments should we be allowed
21 to intervene.

22 HRG. EXAMINER SPEIDEL: Okay.
23 Very well. Any other persons in the room
24 would like to make a comment?

1 (No response)

2 HRG. EXAMINER SPEIDEL: Hearing
3 none, I would invite Staff to make its
4 position.

5 MS. PATTERSON: Thank you. In
6 recent years, in the context of the
7 Commission's oversight of natural gas rates
8 and long-term resource planning by natural gas
9 distribution utilities, the Commission and
10 Staff have heard about developments in the New
11 England natural gas market. The discovery of
12 large quantities of natural gas reserves in a
13 rock formation known as Marcellus shale has
14 resulted in historically low prices in states
15 just outside of New England and historically
16 high prices within New England. Two
17 contributors to the high New England prices
18 are the increases in electric generation
19 fueled by natural gas and the state of
20 existing New England pipeline infrastructure
21 that falls short in terms of capacity or
22 pipeline size of the demands these and other
23 customers are driving. When customers' needs
24 for gas increase beyond the utilities' firm

1 pipeline capacity, the utilities must purchase
2 capacity in the spot market and pay the prices
3 demanded at that time. As we saw last winter,
4 these circumstances leave some natural gas
5 customers, particularly those without
6 competitive alternatives for supply, like
7 residential and small commercial customers, at
8 high financial risk to the instability of the
9 New England gas spot market. This isn't to
10 mention the risk that capacity could not be
11 purchased at any price because demand exceeds
12 all existing pipeline capacity. While these
13 conditions are serious, a utility's decision
14 to enter into a 20-year contract for pipeline
15 capacity at substantial cost to customers
16 requires careful, thoughtful analysis and
17 consideration by the Commission. A number of
18 substantive issues must be explored, including
19 alternative analysis, underlying assumptions,
20 associated contract commitments, the impact on
21 the Company's gas distribution and
22 transmission systems within New Hampshire, and
23 the ability to reach unserved or underserved
24 New Hampshire markets and the associated rate

1 impacts. The Company's right to terminate the
2 precedent agreement with Tennessee Gas
3 Pipeline expires on July 1st, 2015. To
4 satisfy that deadline, the Company requested
5 approval at least 30 days in advance of it.
6 And in an effort to satisfy that request,
7 Staff has already sent out data requests and
8 received responses from the Company.

9 Staff has no position at this
10 time but will be looking at what hopefully
11 will be the best-case solution for all
12 concerned and will use its very best efforts
13 to move the docket along and expect the
14 Company and other parties to do likewise.

15 Melissa Whitten and Dr. Al
16 Pereira, of La Capra Associates, which is a
17 consulting firm in Boston, Massachusetts,
18 will assist Staff in its review of these
19 issues and other related issues.

20 Thank you for your -- oh, I
21 just wanted to let you know that at the
22 prehearing conference, it's Staff's intention
23 to discuss a potential procedural schedule
24 for submission to the Commission and to

1 also -- to the extent that there are any
2 procedural issues, preliminary procedural
3 issues identified in the context of the tech
4 session, Staff will report that to the
5 Commission as well following the tech
6 session.

7 As you had indicated earlier,
8 Staff welcomes the participation of potential
9 intervenors, as well as members of the public
10 may participate, to the extent that -- may
11 attend the tech session, to the extent that
12 there is not confidential information
13 discussed. It is a public meeting as far as
14 the Commission is concerned, except to the
15 extent that confidential information is
16 discussed.

17 And also, as I indicated,
18 Staff has propounded two sets of data
19 requests to date. We've received responses
20 to the first set, and the second set of
21 responses are due early next week.

22 To the extent that there are
23 interventions granted, I am happy to forward
24 Staff's data requests, make sure that those

1 are forwarded to the intervenor or
2 intervenors. And I would ask that the
3 Company handle forwarding responses to those
4 individuals that may be added to the parties
5 because there is confidential information
6 contained in at least the first set.

7 Thank you for your time and
8 attention.

9 HRG. EXAMINER SPEIDEL: Thank
10 you, Ms. Patterson.

11 Ms. Knowlton.

12 MS. KNOWLTON: Thank you. As
13 indicated by the Company's petition, it is
14 seeking approval from this Commission to enter
15 into a 20-year contract with Tennessee,
16 pursuant to which the Company would purchase
17 on a firm basis up to 115,000 dekatherms per
18 day in capacity. The Company is seeking
19 Commission approval in advance of entering
20 into the transaction, given the very
21 substantial financial commitment that is
22 required for this long-term agreement. As Mr.
23 DaFonte explained in his prefiled testimony,
24 the contract with Tennessee is prudent and in

1 the public interest because the Company needs
2 this firm transportation capacity to reliably
3 serve its existing customers, as well as
4 future customer load requirements within its
5 service territory.

6 The Commission considered the
7 Company's forecast in its most recently filed
8 IRP in Docket DG 13-313, which was approved
9 by Order 75,762 just about a week ago. The
10 Commission in that docket recognized that the
11 Company does have additional need for
12 capacity in the future.

13 As Staff has indicated, this
14 capacity is necessary to replace very costly
15 market-area capacity that we're now
16 purchasing. And, you know, this really is an
17 opportunity that is important to seize now.
18 There has not been another opportunity to
19 purchase capacity like this, you know, and
20 it's been I think close to 20 years
21 previously that there was a pipeline
22 constructed that provided this type of
23 opportunity. And our concern is we've
24 evaluated this option and we think it's the

1 best cost option for our customers and we
2 think it's important to seize the option
3 while it's available. We don't know whether
4 there will be a similar opportunity in the
5 future that is as well positioned as this
6 one. Our customers have been paying high
7 prices for natural gas, when, as attorney for
8 Staff indicated, there is much more
9 affordable Marcellus gas that's available.
10 That supply source is the closest it's ever
11 been to our customers, and yet, we have not
12 been able to access that. We've been buying
13 gas from much further away which is more
14 costly. So we really believe quite strongly
15 that we need to take advantage of this
16 opportunity as it exists today.

17 The pricing terms that the
18 Company has entered into we believe are quite
19 favorable, having been negotiated by the
20 Company and other distribution utilities in
21 New England. We think we have a very
22 favorable rate that will be beneficial to our
23 customers. This opportunity also provides
24 for system reliability, which we think is

1 important for the Commission to consider. It
2 will allow for a secondary point of delivery
3 on the west end of our distribution system.
4 Right now, there is just one delivery point,
5 which, you know, does leave some
6 vulnerability in our system. And it would be
7 very important for long-term reliability to
8 have a second delivery point through which we
9 can receive commodity.

10 So, for those reasons we look
11 forward to consideration of the Company's
12 proposal in this docket. And we very much
13 appreciate the Staff and the consumer
14 advocate have worked with the Company to put
15 together a procedural schedule that does meet
16 the Company's proposed time frame. So we
17 look forward to hammering out any other
18 details associated with that in the technical
19 session that follows.

20 HRG. EXAMINER SPEIDEL: Thank
21 you, Ms. Knowlton.

22 I believe that would conclude
23 our prehearing conference. Thank you all for
24 your attendance. And you can expect my

1 hearings examiner report very shortly on
2 this. Thank you very much. Good-bye.

3 (WHEREUPON the hearing was adjourned at
4 9:51 a.m.)

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C E R T I F I C A T E

1
2 I, Susan J. Robidas, a Licensed
3 Shorthand Court Reporter and Notary Public
4 of the State of New Hampshire, do hereby
5 certify that the foregoing is a true and
6 accurate transcript of my stenographic
7 notes of these proceedings taken at the
8 place and on the date hereinbefore set
9 forth, to the best of my skill and ability
10 under the conditions present at the time.

11 I further certify that I am neither
12 attorney or counsel for, nor related to or
13 employed by any of the parties to the
14 action; and further, that I am not a
15 relative or employee of any attorney or
16 counsel employed in this case, nor am I
17 financially interested in this action.

18
19 

20 Susan J. Robidas, LCR/RPR
21 Licensed Shorthand Court Reporter
22 Registered Professional Reporter
23 N.H. LCR No. 44 (RSA 310-A:173)
24