

**THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**Docket DE 16-241**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY**

**Petition for Approval of Gas Capacity Contract with Algonquin Gas Transmission, LLC,  
Gas Capacity Program Details, and Distribution Rate Tariff for Cost Recovery**

**RICHARD M. HUSBAND'S OBJECTION TO MOTIONS  
AND REQUESTS FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDERS**

Pursuant to N.H. Code Admin. Rules Puc 203.07 and Puc 203.08, Richard M. Husband ("Husband"), an intervening party in the above-captioned matter, hereby respectfully objects to the various motions and requests for confidential treatment and protective orders filed in this proceeding, as identified in paragraph 2 below (and any subsequent, similar requests made hereafter), requesting that the same be denied, in whole or in part, on grounds as follows:

1. The background of this proceeding is set forth in the various orders of the Public Utilities Commission ("Commission") and pleadings of the parties filed to date.

2. The following motions and requests for confidential treatment and/or protective orders are pending before the Commission:

- a. Motion for Protective Order and Confidential Treatment Regarding Proposed Contract Between Public Service Company of New Hampshire d/b/a Eversource Energy and Algonquin Gas Transmission, LLC;
- b. Algonquin Gas Transmission, LLC Motion for Protective Order and Confidential Treatment;
- c. Tennessee Gas Pipeline Company, L.L.C. Objection to Motion for Protective Order and Confidential Treatment Regarding Proposed Contract Between Public Service Company of New Hampshire d/b/a Eversource Energy and Algonquin Gas Transmission, LLC (requesting that all parties, and only parties, to the proceeding be allowed access to information claimed to be confidential under a non-disclosure agreement);
- d. Tennessee Gas Pipeline Company, L.L.C.'s Response to Algonquin's Motion for Protective Order and Confidential Treatment (including request for order protecting responding party's information at issue from public disclosure and disclosure to competitors).

3. R.S.A. Chapter 91-A, the so-called “Right-to-Know Law,” governs.

4. The various motions and requests for confidential treatment are grounded in, and must meet the requirements of, R.S.A. 91-A:5, IV, for allowance.

5. Husband concurs in the Consumer Advocate’s position that that a three-step analysis must be applied to the claim that the subject information is exempt from disclosure as confidential information, the disclosure of which would constitute an invasion of privacy and privacy interests. *See* Opposition of the Office of Consumer Advocate to Motion for Protective Order and Confidential Treatment, filed February 29, 2016, p. 3. Specifically, there must be:

- “(1) a determination of ‘whether there is a privacy interest at stake that would be invaded by the disclosure,’
- (2) an assessment of ‘the public's interest in disclosure,’ and
- (3) an effort to ‘balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure.’”

*Id.* (citing *Professional Firefighters of New Hampshire v. Local Government Center, Inc.*, 159 N.H. 699, 707 (2010); *see also Liberty Utilities*, Order No. 25,868 (Docket DG 15-289, at 5-6), cited therein.

6. Where such a claim asserts competitive harm: “**the party resisting disclosure must prove** that disclosure ‘is likely ... to cause **substantial harm** to the competitive position of the person from whom the information is obtained.” *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 552, 554 (citations omitted)(emphasis added).

7. The burden of proof for nondisclosure has not been met here, and disclosure is otherwise required, for the reasons set forth below and in the attached Petition for Disclosure (“Petition”), the contents of which are hereby incorporated by reference as if set forth in full herein, in further support of this objection. As is established by the Petition and the large public sampling of those affected by the outcome who are its signatories: this proceeding involves matters of great public import and interest, compelling disclosure. As is also established by the Petition, and below, the

information at issue is plainly not confidential or private, and there would be no “substantial” competitive harm by its disclosure--certainly not any “harm” outweighing the harm of nondisclosure.

8. Further, with respect to the public interests of concern and balancing of respective harms by disclosure or nondisclosure, while this proceeding expressly concerns numerous issues greatly impacting the public—including consideration of the legality of a novel energy contract and ratepayer tariff, and the “environmental costs” of the contract *sub judice*<sup>1</sup>—particularly as a favorable determination opens the door to like contracts and tariffs on other pipeline projects (including NED, NED 2.0 or similar New Hampshire infrastructure), *see* Petition, ¶¶ 6, 9, the Commission’s public interest determination, requested in the underlying petition and required under the Order of Notice, must take into account broader considerations than have thus far been recognized by the Commission, some even more compelling. Such considerations include the health and safety of citizens, affected property interests, prudence of entering into such a long-term contract relying on “fracked” natural gas, especially given the alternatives and problems caused by overreliance on natural gas to date, and the state’s energy policies. *See generally* Petition, and particularly ¶¶ 1-17; public comments filed in Commission Docket No. DG 14-380; Commission Order No. 25,843 dated November 20, 2015 entered in Docket No. DG 14-380, at 4-5 (acknowledging that the public comments in Docket No. DG 14-380 identified “numerous potential negative impacts of siting the NED Pipeline in southern New Hampshire ... negative effects on, among other things, water wells and aquifers, wildlife, environmentally sensitive land areas, property values, the general economy, public health and safety, and the rural character of the region”).

9. As Husband has previously noted in pleadings involving the Commission and Commission proceedings:

“The PUC must act in the public interest. *See, e.g., Waste Control Systems, Inc. v. State*, 114 N.H. 21, 24 (1974); *Boston & Maine R.R. v. State*, 102 N.H. 9, 10 (1959);

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<sup>1</sup> *See* Order of Notice, at 3-4.

*Harry K. Shepard, Inc. v. State*, 115 N.H. 184, 185 (1975); *Browning-Ferris Industries of New Hampshire, Inc. v. State*, 115 N.H. 190, 191 (1975).

The term ‘public interest’ is analogous to the term ‘public good’ and should be broadly construed ‘not only to include the needs of particular persons directly affected . . . but also . . . the needs of the public at large ...’ *Waste Control Systems, Inc. v. State*, *supra*, 114 N.H. at 21)(citing *Boston & Maine R.R. v. State*, *supra*, 102 N.H. at 10); *see also Black’s Law Dictionary* (6<sup>th</sup> Ed., West Publishing Co., St. Paul, MN)(1990), p. 1229 (‘Public interest’ defined as ‘Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights are affected. ...’). The “public at large” means the public ‘as a whole; in general’ or ‘the whole of a state, district or body rather than one division or part of it ...’ *Webster’s New Universal Unabridged Dictionary*, p. 808 (defining ‘at large’).

It is well-established that the PUC has broad discretion when it comes to making ‘public interest’ determinations. *See, e.g., Waste Control Systems, Inc., supra*, 102 N.H. at 24.

But, with this broad discretion comes a corresponding obligation to cast its net as widely as possible to properly consider the matter. The PUC is well aware that it has this obligation, not just the obligation to make sure that rates are ‘just and reasonable’ for one class of utility customers:

“[W]e have general supervisory authority over utilities operating in this state, requiring us to assure that the rates are just and reasonable **and** imposing on us **the obligation to assure citizens of this state that the transactions as in issue here are in the public interest.**”

*Merrimack County Telephone Company*, 87 NH PUC 278, 281 (2002)(emphasis added); *see also Hampton Water Works, Inc.*, 87 NH PUC 104, 108 (2002) ...

... [I]t is an abuse of [the Commission’s] discretion constituting legal error to **apply a more limited standard for determining the ‘good of the public,’ ...**”

*See* Appeal of Richard M. Husband filed under New Hampshire Supreme Court Docket No. 2015- 0729, at 15-17, also filed in Commission Docket No. DG 14-380 (emphasis in last paragraph added).<sup>2</sup>

10. In stark contrast to all of the public interests that are at stake and of compelling concern in this proceeding, weighing in favor of disclosure, there is no comparable harm that may be claimed by disclosure. As the alleged “confidential,” “private” and “competitively sensitive” information at issue derived from and/or was exchanged in an “open and transparent” process involving competitors, any

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<sup>2</sup> Available at the URL [https://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380/SUPREME%20COURT%20DOCUMENTS/14-380\\_2015-12-23\\_R\\_HUSBAND\\_APPEAL\\_BY\\_PETITION\\_NH\\_SUPREME\\_COURT.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380/SUPREME%20COURT%20DOCUMENTS/14-380_2015-12-23_R_HUSBAND_APPEAL_BY_PETITION_NH_SUPREME_COURT.PDF), with Appendix, also filed in the same Commission proceeding, available at the URL [https://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380/SUPREME%20COURT%20DOCUMENTS/14-380\\_2015-12-23\\_R\\_HUSBAND\\_APP\\_APPEAL\\_BY\\_PETITION\\_NH\\_SUPREME\\_COURT.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380/SUPREME%20COURT%20DOCUMENTS/14-380_2015-12-23_R_HUSBAND_APP_APPEAL_BY_PETITION_NH_SUPREME_COURT.PDF).

harm of disclosure has already been voluntarily incurred by those involved, and any claim respecting the same therefore waived—or certainly not of credible concern and countervailing weight. *See* Petition, ¶¶ 22-28. Indeed, it is clear that the only real concern with disclosure here lies in keeping the secreted information from the public being asked to foot the bill for the proposed contract.

11. Additionally, specifically concerning the harms caused by disclosure or nondisclosure of the information at issue, all impacted ratepayers and citizens—which Husband contends to be all New Hampshire citizens, including himself, for the reasons set forth in the attached Petition; but minimally tens of thousands of electric ratepayers, including Husband, as the Commission acknowledges<sup>3</sup>—would have the right to rehearing and appeal of any decision in this proceeding, as “directly affected” persons, including Husband, even should he withdraw as an intervening party. *See* R.S.A. 541:3 and R.S.A. 541:6. These rights carry the due process and other rights of such individuals to a fair outcome, which would be violated by nondisclosure. The same would, *inter alia*, substantially impede if not totally preclude their ability to fully and evenly evaluate, prepare and present their case(s)— by public comment as well as intervention in the proceedings leading to a decision on the merits, on rehearing and appeal—preserve issues, and obtain a just result from a two-sided decision-making process, accordingly. If Husband is cut off from the input of citizens with greater expertise in evaluating secreted information offered in support of the underlying petition because the rights of such citizens to review the information was improperly denied, while those on the opposite side of Husband’s position, with greater

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<sup>3</sup> *See* Commission Order No. 25,886 entered in this proceeding at 3 (identifying the interests at stake as “the interests of residential, commercial and industrial customers, as applicable. We define those interests to be any impacts of the rates or services provided to customers as a result of the contract under consideration.”) available at the URL [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241\\_2016-04-22\\_ORDER\\_25886.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241_2016-04-22_ORDER_25886.PDF).

financial resources allowing experts, are afforded free access to the information, Husband's rights, including the rights to a fair procedure and due process, are likewise improperly denied.

12. "An agency, like a trial court, must follow fair procedures and provide due process ..." *Appeal of Morin*, 140 N.H. 515, 518 (1995) (citing *Appeal of Lathrop*, 122 N.H. 262, 265 (1982)); *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062 (1982)(due process clauses of federal and state constitutions apply to administrative proceedings, including Commission proceedings). "Its discretion must be exercised 'in a manner to subserve and not to impede or defeat the ends of substantial justice.'" *Appeal of Morin, supra*, 140 N.H. at 518 (quoting *Sturman v. Socha*, 191 Conn. 1, 463 A.2d 527, 531 (1983)(quotation omitted)). "One element of this requirement is the opportunity to present one's case--to attempt to meet one's burden of proof--in a fair manner before an impartial fact-finder." *Id.* (citing *Appeal of Lathrop, supra*, 122 N.H. at 265).<sup>4</sup> "Where issues of fact are presented for resolution by an administrative agency due process requires a **meaningful** opportunity to be heard." *Society for Protection of N.H. Forests v. Site Evaluation Comm.*, 115 N.H. 163, 168 (1975)(emphasis added). Husband's right to rely on others for case assistance respecting information that should plainly be **public information**, the right of the public (including Husband) to provide "fully consider[ed]" public comment input under R.S.A. 541-A:12 and "state their position" under Puc 203.18 (the public comment rule), the right of all "to present one's case in a fair manner before an impartial fact-finder" with a "meaningful opportunity to be heard" recognized under our case law, embody the fairness demanded by due process and our system of justice. *See* U.S. Const., Amends. V, XIV, Section 1 at App. at 158; N.H. Const., Pt. I, Arts. 15, 35 at App. at 159; *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884).

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<sup>4</sup> One relying on one-sided evidence, unchallengeable by the opposition, is not an "impartial fact-finder."

13. Clearly, the harms of nondisclosure more than sufficiently outweigh any claimed harms of disclosure in this matter, compelling denial of the subject motions, and disclosure.

14. Husband obviously cannot know at this time the identity of other documents and information the various parties may claim should receive confidential treatment moving forward, but his position is that all documents relied on to support the petition and requests in this proceeding should be deemed subject to disclosure, for the reasons aforesaid and stated in the attached Petition.

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

- A. Deny the pending motions and requests for confidential treatment and protective orders in whole; or in part, clearly stating the reason(s) supporting nondisclosure of each separate document deemed worthy confidential treatment and protection such that challenging parties, including Husband, may sufficiently address the matter on rehearing and appeal; and
- B. Order that all documents and information relied on in support of the underlying petition and any requests in this proceeding must be publicly disclosed; or
- C. Schedule a hearing on this matter.

Respectfully submitted,

Date: May 12, 2016

/s/ Richard M. Husband \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 12<sup>th</sup> day of May, 2016, filed the original and seven copies of this pleading by hand delivery of the same to the Commission, and delivered an electronic copy of this pleading to the Commission and every other person/party identified on the Commission's service list for this docket, including the petitioner and the Office of the Consumer Advocate, by delivering it to the e-mail address for every such person/party identified on the Commission's service list for the docket.

/s/ Richard M. Husband \_\_\_\_\_  
Richard M. Husband

## PETITION FOR DISCLOSURE

We the undersigned New Hampshire committees, groups and other organizations, as identified below (the “Undersigned”), all being affected by the outcome of the proceedings in Public Utilities Commission (“Commission”) Docket No. DE 16-241 (“DE 16-241”), hereby oppose the requests for confidential treatment pending in the proceeding, and petition for full disclosure of any and all information currently and subsequently offered in support of the underlying petition in DE 16-241, for the following reasons set forth in this petition, prepared by Richard Husband:

### BACKGROUND

1. Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), an electric distribution company (“EDC”), is the petitioner in DE 16-241. As is set forth in the March 24, 2016 Order of Notice (“Order of Notice”) for the proceeding:

“In its petition, Eversource seeks approval of: (1) a 20-year interstate pipeline transportation and storage contract providing natural gas capacity for use by electric generation facilities in the New England region (Access Northeast Contract); (2) an Electric Reliability Service Program (ERSP) to set parameters for the release of capacity and the sale of LNG supply made available to electric generators through the Access Northeast Contract; and (3) a LongTerm Gas Transportation and Storage Contract (LGTSC) tariff for Eversource rates, to be applied through uniform cents-per-kWh rate on all retail electric customers served by Eversource, to provide for recovery of costs associated with the Access Northeast Contract. If Eversource were to receive the approval of the Commission, Eversource would release the natural gas capacity to the electric generation market in accordance with an Algonquin Electric Reliability Service tariff, approved by the Federal Energy Regulatory Commission (FERC) as a wholesale gas tariff that would reflect the ERSP structure approved by the Commission.”

*Id.* at 2-3; *see* Order of Notice at

[https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241\\_2016-03-24\\_OON.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241_2016-03-24_OON.PDF).

2. As is noted in Commission Order No. 25,860, entered in Commission Docket No. IR 15-124, the contract under consideration in DE 16-241 has never been allowed in New Hampshire:

“ ... [T]here is no New Hampshire precedent for EDCs to purchase gas pipeline capacity for electric generators ...”

*Id.*, at 4; *see* <https://www.puc.nh.gov/Regulatory/Orders/2016orders/25860e.pdf>.

**The legality of such a contract is, therefore, plainly of great public import and interest.**

3. As is acknowledged by its Order of Notice, **DE 16-241 presents numerous other substantial issues of great public import and interest, including whether the proposed new LGTSC tariff cost of such contracts, to be passed on to electric ratepayers, is legal, “just, reasonable and in the public interest,” and whether**

**the environmental and other costs of such contracts support their purported overall ratepayer savings and other benefits, as well:**

“The filing raises, inter alia, issues related to whether Eversource has the corporate authority to enter into the Access Northeast Contract under RSA Chapter 374-A and RSA 374:57; whether Eversource’s entering into the Access Northeast Contract, development of the ERSP, and assessment of the LGTSC would violate the Restructuring Principles of RSA Chapter 374-F, or any other New Hampshire law, or any federal law, including the Federal Power Act; whether the LGTSC assessment would be permitted under RSA Chapter 374-A, RSA 374:57, and RSA Chapter 378, and Commission **precedential standards for ratemaking, as just, reasonable and in the public interest**; whether the RFP process presented by Eversource in support of its selection of the Access Northeast Contract comports with the requirements of N.H. Code Admin. Rules Puc 2100, Order No. 25,860, and the standards of prudence applied by the Commission for such contracting; whether the assertions made by Eversource regarding expected benefits and costs of its participation in the Access Northeast Contract are supported by the evidence, including evidence of economic, engineering, and **environmental costs**, benefits, and feasibility; and whether ERSP and companion FERC tariff filing comport with relevant federal law, including the Natural Gas Act, and whether FERC approval should be a condition precedent for the enactment of any Commission approval ..”

*Id.* at 3-4 (emphasis added); *see* Order of Notice at [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241\\_2016-03-24\\_OON.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241_2016-03-24_OON.PDF).

4. **The outcome of DE 16-241 will affect all New Hampshire electric ratepayers, and all New Hampshire citizens, including, but not limited to, the Undersigned.**

### **SPECIFIC REASONS SUPPORTING OPPOSITION**

#### **Not Just Eversource Electric Rates are at Issue:**

#### **All New Hampshire Retail Electric Ratepayers are Impacted by DE 16-241, Establishing a Compelling Public Interest in Disclosure of the Secreted Information**

5. All Eversource customers will be directly, unquestionably impacted by the new charge placed on their bills. The Order of Notice acknowledges this in its first sentence:

“On February 18, 2016, Public Service Company of New Hampshire d/b/a Eversource (Eversource) filed a petition with the New Hampshire Public Utilities Commission (Commission) for approval of a proposed 20-year contract between Eversource and Algonquin Gas Transmission, LLC (Algonquin) for natural gas capacity on Algonquin’s Access Northeast Project, and **recovery of associated costs through a new distribution rate tariff, to be assessed on all Eversource customers.**”

*Id.* at 1 (emphasis added); *see* Order of Notice at [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241\\_2016-03-24\\_OON.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241_2016-03-24_OON.PDF).

6. As noted on the Commission’s website, Eversource serves roughly 70% of all retail electric customers in New Hampshire. *See* <https://www.puc.nh.gov/Electric/electric.htm>. The Undersigned include residents from the towns of Brookline, Greenville, Hollis, Litchfield, Mason, Merrimack, New Ipswich, Rindge and Temple—all serviced exclusively by Eversource. *See* <https://www.puc.nh.gov/Consumer/communitiesserved.pdf>. Additionally, the Undersigned include electric customers from the Town of Pelham, which is also serviced by Eversource (as well as by Liberty Utilities). But not just the retail electric rates of Eversource customers will be impacted by the proposed LGTSC tariff. Again, a favorable ruling on the legality of the proposed contract and LGTSC tariff opens the door for all New Hampshire EDCs to enter into such contracts and impose such tariffs on their customers in the future, making them all impacted citizens with a substantial interest in DE 16-241 under the Commission’s own April 22, 2016 Order No. 25,886, identifying the interests the Commission believes to be at stake in the proceeding:

“We define those interests to be any impacts of the rates or services provided to customers as a result of the contract under consideration.”

*Id.* at 3; *see* Commission Order No. 25,886 at [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241\\_2016-04-22\\_ORDER\\_25886.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/ORDERS/16-241_2016-04-22_ORDER_25886.PDF).

7. Moreover, the customers of New Hampshire’s other electric suppliers will be impacted by a favorable ruling on the petition requests in DE 16-241, for these reasons:

Fairpoint Customers and Customers of any other NH Electric Suppliers Charging a Transmission Fee

On information and belief, Fairpoint includes in its customer billing a transmission fee component paid to Eversource, which is subject to increase by the proposed new tariff. There may be other New Hampshire electric suppliers charging such a fee, as well. As such, these customers will have some component of the new tariff passed on to them.

Eversource Itself Claims that the Contract Under Consideration Impacts all New England Retail Electric Rates

In its underlying petition for this matter, Eversource contends that there is a direct correlation between wholesale and retail electric rates. In paragraph 1 of the petition, it asserts:

“ ... higher wholesale electricity prices convert directly into high retail electricity prices for New Hampshire customers, particularly in the winter period.”

*See* paragraph 1 of Eversource petition at <https://www.puc.nh.gov/Regulatory/Docketbk/2016/16->

[241/INITIAL%20FILING%20-%20PETITION/16-241\\_2016-02-18\\_PSNH\\_DBA\\_EVERSOURCE\\_PETITION\\_CONTRACT\\_AGTLCC.PDF.](#)

Further, in paragraph 3, it quotes the following in support of its petition:

“On September 15, 2015, the Staff issued a report in Docket No. IR 15-124 wherein it noted, among other things, that there is a near universal opinion that *‘the root cause of the high and volatile winter period wholesale and/or retail electricity prices . . . can be attributed to a wholesale market imbalance of supply and demand for natural gas.’*”

*See id* at 3 (emphasis added).

In paragraph 16 of its petition, Eversource claims that the “overriding objective” of the contract it proposes is to “reduce prices in the wholesale electric market,” and, in paragraph 17, that it will “have a meaningful impact on wholesale market prices.” *Id.*; *see also id.*, ¶ 18.

So, Eversource asserts that there is a direct connection between wholesale and retail rates, and a connection between the proposed contract and wholesale rates.

In paragraph 23, Eversource connects the dots with a bold assertion of purported retail savings “in all New England states”:

The ICF Report developed for the Eversource EDCs and included with this filing demonstrates that Access Northeast would generate significant cost savings to New England electric consumers by reducing the price of natural gas delivered to New England power generators, and subsequently, wholesale energy prices in all New England states. ICF estimates wholesale power price reductions of up to \$12/MWh, with the total cost of the Access Northeast project equating to \$4/MWh and net savings for customers of approximately \$8/MWh. Taking 000011 - 12 - into account the cost of the pipeline, the net benefits to New England electric consumers could range from \$0.9 to \$1.3 billion per year on average, under normal weather conditions with capacity-release and LNG sales revenues only increasing that count.”

Thus, as Eversource’s own petition **contends** that the proposed contract will impact all New England retail electric customers, this matter and all materials Eversource relies on in support of its claims are of great public interest and import to all such customers, including all of the Undersigned.

**Environmental, Energy Alternatives and Other Important Public Interest Considerations are at Stake in this Proceeding**

8. Algonquin will use the contract for which approval is sought in DE 16-241 to show the alleged customer and capacity “need” and “necessity” for the Algonquin Access Northeast pipeline. The Federal Energy Regulatory Commission (“FERC”) considers such precedent agreements to be essential for approval of pipeline projects, as FERC showed in an order just this past March 11, 2016 denying approval of such a project where it found that the applicant had “presented little or no evidence of need” as it had not “entered into any precedent agreements . . .” *See* <http://www.troutmansandersenergyreport.com/2016/03/ferc-denies-the-applications->

[for-certificate-and-section-3-authorization-pertaining-to-the-pacific-connector-pipeline-and-jordan-cove-lng-terminal/](#); see also *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities)*, 88 FERC ¶ 61,227 at 61,748 (1999)(service contract commitments for capacity “important” and “significant” evidence of demand for a project) at <http://www.ferc.gov/legal/maj-ord-reg/PL99-3-000.pdf>. Thus, if it comes to fruition, the Algonquin Access Northeast pipeline would result, at least in part, from approval of the petition in this proceeding. Moreover, the Access Northeast pipeline is just one of 17 high-pressure natural gas pipeline projects in the works for the Northeast. See [http://www.northeastgas.org/pipeline\\_expansion.php](http://www.northeastgas.org/pipeline_expansion.php). Either by final route planning or subsequent extension, these projects may result in considerable pipeline infrastructure expansion in New Hampshire, with consequent environmental and other costs which are the subject of great debate throughout the state and region. Pursuant to its duties and from the public comments and pleadings filed under its various dockets, see, e.g., Commission Docket No. DG 14-380, the Commission should be well aware of this debate and, therefore, may and should take the equivalent of judicial notice of the great public concern involving the continued growth and reliance on such project infrastructure.

9. In fact, one such proposed project, the Northeast Energy Direct (“NED”) pipeline, is planned to cut through more than 70 miles of New Hampshire, with devastating environmental and other consequences, as have been noted by the Undersigned and numerous others. See, e.g., <http://nhplan.org/wp-content/uploads/2016/05/March%2025,%202016%20NH%20Congressional%20Delegation%20letter.pdf> (NOTE: **please allow time for uploading as it is a 131- page document**); see also generally public comments in Commission Docket No. DG 14-380 at <https://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>. While currently “suspended,” NED is clearly not dead, with its application by the Tennessee Gas Pipeline Company, LLC (“TGP”) still pending under FERC Docket No. CP16-21, and only a “status report”—not dismissal with prejudice—supposedly to be provided to FERC by May 26, 2016. See attached Exhibit “A.” Moreover, even in the NED project application is dismissed before FERC and for all other intents and purposes seemingly terminated in the upcoming weeks, TGP may attempt to resurrect it in some modified form after that. TGP has shown a strong interest in DE 16-241 by intervening and filing other pleadings, has not withdrawn its intervention, and may well be intending to take advantage of any favorable decision on the legality of the proposed contract and LGTSC tariff as a means to reinvigorate the NED project—as other natural gas pipeline projects may be expected to rely on such contracts and the new tariff going forward. All of the Undersigned oppose one or more of the 17 currently proposed pipeline projects for the Northeast, including the NED project.
10. **All high-pressure natural gas pipeline projects resulting, at least in part, from contracts determined to be legal under DE 16-241 will have devastating environmental and other consequences to New Hampshire and New Hampshire citizens, making all matters of great public import and interest.**
11. Moreover, approval of such contracts will effectively lock New Hampshire into a long-term energy choice—natural gas—and a reliance thereon that many in the general public, including all of the Undersigned, oppose, for good reasons.

12. First, today’s “natural” gas is “fracked,” bringing with it impurities and concerns not known to conventional natural gas. Although all of the components of fracked gas are not publicly known, pipeline leaks and compressor emissions, such as the one planned for New Ipswich under the NED project, have been claimed to cause health problems. *See, e.g.*, <http://www.cnn.com/2016/01/07/us/california-porter-ranch-gas-leak-emergency/index.html>; and <http://www.utne.com/environment/gas-compressors-and-nose-bleeds-zm0z15fzsau.aspx>. Thus, there is unquestionably a great public interest in, and consequent right to know, information submitted in support of reliance on fracked gas as an energy source.
13. Furthermore, there are clearly better energy solutions for New Hampshire than locking the state into increasing long-term dependence on a fossil fuel that we should be phasing out, if we are really committed to preventing, or at least limiting, the horrific consequences of climate change—particularly when all of the construction and eventual disposition nightmares associated with its infrastructure are considered, and especially when “natural” gas is *the* fossil fuel which caused our “energy need” concerns to begin with.
14. New Hampshire’s energy policy under R.S.A. 378:37 obligates the state, and Commission, to diversify energy sources:  

**“378:37 New Hampshire Energy Policy.** – The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and **diversity of energy sources**; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.”

*Id.* (emphasis within statute added).
15. Governor Hassan has emphasized the importance of adhering to this policy. *See* [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/COMMENTS/16-241\\_2016-04-13\\_M\\_HASSAN\\_COMMENT.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/COMMENTS/16-241_2016-04-13_M_HASSAN_COMMENT.PDF).
16. Moreover, with respect to the Commission Staff’s “Report on Investigation into Potential Approaches to Mitigate Wholesale Electricity Prices,” issued in Commission Docket No. IR 15-124 on September 15, 2015, the New Hampshire Office of Energy and Planning (“OEP”) concluded:  

“ ...OEP is concerned that the report falls short by focusing only on natural gas investments and ignoring the challenges the region faces as our fuel mix becomes less diverse. Investing in more natural gas infrastructure could lead to even more reliance on natural gas. However, **increasing reliance on one fuel, namely natural gas, is what caused the wholesale price spikes in the winter of 2013-2014 in the first place ...**”

*See* page 2 at <https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124/LETTERS-MEMOS-TARIFFS/15-124%202015-10-15%20OEP%20COMMENT.PDF> (emphasis added).
17. Far better solutions than increasing “natural” (fracked) gas infrastructure include:
  - a) Reliance on Existing Liquid Natural Gas Availability. Distrigas of Massachusetts LLC has signed long-term contracts to bring in additional

liquid natural gas (“LNG”) to New England that will be stored in EXISTING infrastructure over the summer to be used during winter peak demand (as LNG has been used to supplement our energy needs and prevent price spikes in the past).<sup>1</sup>

- b) Renewable Resources and Distributed Generation. Wind, solar, water, thermal ... renewable sources of energy are energy solutions already mandated by the New Hampshire legislature.<sup>2</sup> New Hampshire’s official energy action plan encourages using smaller “generation facilities,” such as residential rooftop solar panels, to supplement large power plants:

“Distributed Generation (DG) refers to producing electricity and/or thermal energy through dispersed, smaller scale generation facilities rather than relying on large centralized power plants. DG includes sources from residential rooftop solar photovoltaics (PV) to large combined heat and power (CHP) systems. DG supports a system that is more resilient, flexible, and efficient. Small scale energy projects also enhance New Hampshire’s economy, as installation of these projects creates jobs that are difficult to outsource, and money spent on the projects circulates within the state’s economy. Despite these benefits, DG remains under-developed in New Hampshire because it is difficult for many residents to pursue. New Hampshire should work to improve access to renewable generation for homes and businesses.”<sup>3</sup>

**New Hampshire should stick to its game plan and work toward the development of renewables and other energy generation facilities to diversify our energy sources and replace our unhealthy (in so many respects) overdependence on fossil fuel generated energy.<sup>4</sup> Piling on pipelines that only increase our dependence on fossil fuels will not solve our problems.**

- c) Energy Efficiency Coupled with Demand Response Programs. “Energy efficiency is the cleanest and cheapest way for New England to meet its energy needs.”<sup>5</sup> Energy efficiency measures to date have already caused electric consumption to decline in New England.<sup>6</sup> Add demand response incentive programs—such as providing big manufacturing companies

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<sup>1</sup> See <https://www.bostonglobe.com/business/2015/05/10/distrigas-inks-big-lng-deals/guafPIHwoFG4bhENhaERYK/story.html>. See also pages 8 and 9 of [http://northeastgas.org/pdf/g\\_whitney\\_2014.pdf](http://northeastgas.org/pdf/g_whitney_2014.pdf).

<sup>2</sup> [http://www.puc.state.nh.us/Sustainable%20Energy/Renewable\\_Portfolio\\_Standard\\_Program.htm](http://www.puc.state.nh.us/Sustainable%20Energy/Renewable_Portfolio_Standard_Program.htm).

<sup>3</sup> See “New Hampshire State 10-Year Energy Strategy,” p. iv, at <http://www.nh.gov/oep/energy/programs/documents/energy-strategy.pdf> (emphasis added).

<sup>4</sup> See <http://www.nh.gov/oep/energy/programs/documents/energy-strategy.pdf> (emphasis added), beginning with “RPS” discussion on page 37.

<sup>5</sup> See <http://www.nh.gov/oep/energy/programs/documents/sb191pc-2014-7-25-necec.pdf>.

<sup>6</sup> See <http://www.platts.com/latest-news/electric-power/portland-maine/energy-efficiency-cut-new-england-prices-by-24-21305989>.

incentives to cease operations during peak consumption hours—and the squeeze that contributes to rate hikes would be alleviated. Home “nesting” systems and smart meters can contribute to demand response, too.

- d) Dual Fuel Power Plants. The Granite Ridge power plant in Londonderry was actually designed to be dual fuel gas-fired with oil storage tanks on the side for “backup” generation. Although funding was not secured for the oil tanks, such a “backup generator” makes all the sense in the world to address those brief, crunch periods of energy need in the winter: back-up generators and/or supplemental heating systems have become commonplace for residences in New England; if such planning and solutions can be implemented at the residential level, why not at the generation level?
- e) Incremental Pipeline Upgrades of Existing Infrastructure. Not ideal, as it still increases dependency on fracked gas, but it is better than overbuilding ...

**The Public has the Right to Review, and Therefore a Fair Opportunity to Challenge, the Claimed Support for What it Will be Paying for, One Way or Another**

- 18. The Commission itself recognized, in its January 19, 2016 Order No. 25,860 entered in Commission Docket No. IR 15-124, that this matter involves determinations of great public interest not only in these proceedings, but with respect to other proceedings of a like nature that may be filed, should the proposed kind of contract and LGTSC tariff under consideration be determined to be lawful. *See generally* Commission Order No. 25,860 entered in Commission Docket No. IR 15-124 at [https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124/ORDERS/15-124\\_2016-01-19\\_ORDER\\_25860.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124/ORDERS/15-124_2016-01-19_ORDER_25860.PDF).
- 19. The Commission has also recognized a particular concern with such contracts: “... [D]ue to the practicalities of private-sector contracting for such capacity taking place in advance of petitions for regulatory approval, the Commission will outline one policy directive to EDCs and stakeholders related to the terms under which such acquisitions would be made. Under the Commission’s Affiliate Transactions Rules, N.H. Code Admin. Rules, Chapter Puc 2100, there exists a strong policy preference against self-dealing in relations between New Hampshire EDCs and their unregulated affiliates.”  
*See* Commission Order No. 25,860, p. 4 at [https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124/ORDERS/15-124\\_2016-01-19\\_ORDER\\_25860.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124/ORDERS/15-124_2016-01-19_ORDER_25860.PDF).
- 20. Contracts between affiliated parties raise a preeminent concern with competitive bidding, necessitating close scrutiny. Again, as expressed by the Commission: “The LDCs know they must follow appropriate competitive processes for their gas supply and capacity purchases. Each such procurement is subject to scrutiny to make sure that the decision is consistent with prudent utility practice.”

See Commission Order No. 25,860, p. 4 at [https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124/ORDERS/15-124\\_2016-01-19\\_ORDER\\_25860.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124/ORDERS/15-124_2016-01-19_ORDER_25860.PDF).

21. Unless and until Eversource and Algonquin proves otherwise, the contract at issue should be treated as a contract between affiliates requiring close scrutiny—including allowance of the same by ratepayers and the general public. As stated in paragraph 20 of the opposition filed by the Office of the Consumer Advocate (“OCA”) to the Algonquin motion for confidential treatment:

“... [I]t is the OCA's understanding that Algonquin and an affiliate of Eversource (Eversource Gas Transmission LLC) each hold a 40 percent interest in the ANE Project (with a subsidiary of National Grid, National Grid Algonquin LLC) owning the remaining 20 percent interest. This suggests the Commission should treat the Precedent Agreement as an affiliate transaction.”

See paragraph 20 of the OCA Algonquin opposition at

[https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/MOTIONS-OBJECTIONS/16-241\\_2016-03-18\\_OCA\\_OPPPOSITION\\_AGT\\_MOTION\\_CONF.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/MOTIONS-OBJECTIONS/16-241_2016-03-18_OCA_OPPPOSITION_AGT_MOTION_CONF.PDF).

22. Eversource’s motion for confidential treatment seeks to preclude public disclosure of two categories of information provided as underlying support for its petition: (1) “prices and other terms” and (2) “information on the evaluation of the prices and terms”; the first category allegedly being “confidential,” the second category purportedly “competitively sensitive”:

“The filing contains confidential prices and other terms, as well as information on the evaluation of the prices and terms. This information is competitively sensitive information that, if disclosed, could harm the competitive business position of the Eversource and its customers, as well as its contract counterparty, Algonquin.”

See paragraph 1 of the motion at [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/INITIAL%20FILING%20-%20PETITION/16-241\\_2016-02-18\\_PSNH\\_DBA\\_EVERSOURCE\\_MOTION\\_CONF\\_TREATMENT.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/INITIAL%20FILING%20-%20PETITION/16-241_2016-02-18_PSNH_DBA_EVERSOURCE_MOTION_CONF_TREATMENT.PDF) (emphasis added).

Algonquin’s motion for confidential treatment concerns the same materials and essentially reiterates the same arguments. See the Algonquin motion for confidential treatment *generally* at [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/MOTIONS-OBJECTIONS/16-241\\_2016-03-10\\_AGT\\_MOTION\\_CONF\\_TREATMENT.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/MOTIONS-OBJECTIONS/16-241_2016-03-10_AGT_MOTION_CONF_TREATMENT.PDF).

23. Especially as Eversource and Algonquin are requesting that ratepayers foot the bill for their contract, and the “prices and terms” being secreted allegedly support that it provides “the highest value” of an *affiliate* agreement reached through “competitive” bidding, how can such information be kept from the public view—why should ratepayers *not* be allowed to review, evaluate and reach their own conclusions on these claims? Per paragraph 9 of the Eversource petition:

“Eversource has undertaken ... to identify the infrastructure alternative with the highest value for New Hampshire electricity customers. This filing for contract approval demonstrates that the proposed ANE Contract will provide the significant value to New Hampshire electricity customers because the agreement: (1) results in net benefits for Eversource customers at a reasonable cost; and (2) compares favorably to the range of alternative options reasonably available to Eversource as a result of the competitive solicitation.”

Again, the Eversource petition is at [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/INITIAL%20FILING%20-%20PETITION/16-241\\_2016-02-18\\_PSNH\\_DBA\\_EVERSOURCE\\_PETITION\\_CONTRACT\\_AGTLCC.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/INITIAL%20FILING%20-%20PETITION/16-241_2016-02-18_PSNH_DBA_EVERSOURCE_PETITION_CONTRACT_AGTLCC.PDF).

24. Moreover, contrary to its claim that “information on the evaluation of the prices and terms” is “competitively sensitive,” the Eversource petition contends that such evaluation was “open and transparent,” in a process involving several competitors and projects—including TGP and the NED project. *See* paragraph 9 of the petition (“Eversource has undertaken an open and transparent competitive evaluation and selection process ...”); and paragraphs 13 and 17 of the petition (claiming the “competitive bidding process” involved the pipeline projects of four pipeline companies and three liquefied natural gas suppliers, including “a comparative assessment of the Access Northeast project and the Tennessee NED project.”).
25. If Eversource’s evaluation was truly conducted openly and transparently in a process involving its competitors, as it claims, there is no basis to contend that its evaluation information is “competitively sensitive.”
26. Indeed, some of the information at issue is plainly neither Eversource nor Algonquin information, but information pertaining to the NED project—for which neither Eversource nor Algonquin may claim any harm by disclosure. *See* the documents Bates numbered 360-366 and 373-377 in “Attachment J. Stephens” to the petition at [https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/INITIAL%20FILING%20-%20PETITION/16-241\\_2016-02-18\\_PSNH\\_DBA\\_EVERSOURCE\\_ATT\\_DTESTIMONY\\_J\\_STEPHENS.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241/INITIAL%20FILING%20-%20PETITION/16-241_2016-02-18_PSNH_DBA_EVERSOURCE_ATT_DTESTIMONY_J_STEPHENS.PDF). For the reasons already stated, TGP should not be able to claim any harm overriding the harm caused by nondisclosure, either.
27. The right of the Undersigned, and right of the public in general, to information offered in support of the petition underlying these proceedings, under the New Hampshire Right-to-Know Law, R.S.A. Chapter 91-A, and otherwise—including the right to a final decision in accordance with due process and other principles of procedural fairness, and an appropriate “public interest” determination—outweigh any claimed right to exempt such information from public disclosure under the rubric that such information is “confidential” information, or otherwise.
28. It is impossible for the Undersigned and other members of the general public affected by these proceedings to make any meaningful assessment of the merits of the Eversource petition when all of the underlying “support” for it, as has been presented with the petition, or may be presented going forward, is redacted. There is no “privacy” interest in this information; if there ever was, Eversource and Algonquin waived it by making it making it information of great public interest through its submission in DE 16-241.
29. The undersigned, being authorized, hereby sign this petition by affixing their signatures hereto in accordance with Puc 202.07, which provides:  
“Puc 202.07 Signatures. Each filing submitted to the commission shall be signed by a person authorized to make such a filing. An electronic signature, or “/s/” mark, with the full name of the signing person provided with the electronic signature or “/s/” mark, shall be an acceptable means of signing the filing.”

NHPLAN:

By: /s/ Richard M. Husband

Pelham Pipeline Awareness:

By: /s/ Kaela Law

Mason Conservation Commission:

By: /s/ Robert B. Larochelle, Chairman

New Ipswich Pipeline Resistance Citizens Group:

By: /s/ Timothy Somero

Temple Ad Hoc Pipeline Advisory Committee:

By: /s/ Beverly Edwards

Temple Energy Committee:

By: /s/ Beverly Edwards

Mason Pipeline Committee:

By: /s Kathleen Chapman

NH Pipeline Awareness:

By: /s/ Robert Chesebrough

Greenville NH Pipeline Resistance:

By: /s/ Henri Vaillancourt

New Ipswich Pipeline Awareness:

By: /s/ Stephen Matthews

Merrimack Citizens for Pipeline Information  
Group:

By: /s/ Amanda Yonkin

Rindge Pipeline Awareness:

By: /s/ Betty Anders

Litchfield Pipeline Group:

By: /s/ Stephen Tirrell

Brookline Pipeline Task Force:

By: /s/ Tad Putney

Pelham Pipeline Awareness  
Outreach Subcommittee:

By: /s/ Julia Steed Mawson

Kidz of the Pipeline Resistance:

By: /s/ Sebastian Barthelmess,  
father of member Josiah Barthelmess  
and legal-aged representative of group

**EXHIBIT "A"**



Tennessee Gas Pipeline  
Company, L.L.C.  
a Kinder Morgan company

April 22, 2016

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: Tennessee Gas Pipeline Company, L.L.C., Docket No. CP16-21-000  
Northeast Energy Direct Project

Dear Ms. Bose:

On November 20, 2015, Tennessee Gas Pipeline Company, L.L.C. ("Tennessee") filed with the Federal Energy Regulatory Commission ("Commission") a certificate application ("Application") in the above-referenced docket for the Northeast Energy Direct Project ("Project"). The Application remains pending before the Commission.

As a result of inadequate capacity commitments from prospective customers and a determination that the Project is uneconomic, Kinder Morgan, Inc., Tennessee's parent company, announced on April 20, 2016 that the company would suspend further work and expenditures on the Project. At this time, Tennessee is in the process of determining how best to proceed consistent with existing contracts. As a result, Tennessee respectfully requests that the Commission not take any further action in processing the Application, pending Tennessee submitting a status report to the Commission no later than May 26, 2016.

In accordance with the Commission's filing requirements, Tennessee is submitting this filing with the Commission's Secretary through the eFiling system, and is providing a copy of this filing copy of this filing to the Office of Energy Projects and to all parties on the official service list for this proceeding.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY, L.L.C.

By: /s/ J. Curtis Moffatt  
J. Curtis Moffatt  
Deputy General Counsel and Vice President Gas  
Group Legal

cc: Mr. Terry Turpin (Commission Staff)  
Mr. Rich McGuire (Commission Staff)  
Mr. Eric Tomasi (Commission Staff)  
All parties on service list