

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**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**

**Order Denying Motion for Rehearing  
by Pipe Line Awareness Network for the Northeast, Inc.**

**ORDER NO. 25,845**

**December 2, 2015**

In this order, we deny PLAN's motion for rehearing, reconsideration, and clarification of Order No. 25,822 (October 2, 2015), which approved a settlement and an amended agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty and the Tennessee Gas Pipeline Company for the purchase of firm gas transportation.

**I. PROCEDURAL HISTORY**

On December 31, 2014, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth") filed a Petition for Approval of a Firm Transportation Agreement ("Precedent Agreement") with Tennessee Gas Pipeline Company, LLC ("TGP"). The Precedent Agreement is a 20-year contract between EnergyNorth and TGP for firm capacity on the proposed Northeast Energy Direct Market Path pipeline project ("NED Pipeline"). On June 26, 2015, Commission Staff ("Staff") filed a Stipulation and Settlement Agreement ("Settlement") between EnergyNorth and Staff. Following hearings and written submissions by the parties, the Commission issued Order No. 25,822, in which the Commission approved the Settlement and the Precedent Agreement as modified by the Settlement. *Liberty Utilities (EnergyNorth Natural*

*Gas*) Corp., Order No. 25,822 (October 2, 2015) at 31 (the “Order”). Specifically, the Commission found that EnergyNorth’s acquisition of capacity from TGP was prudent and reasonable. *Id.*

On November 2, 2015, Richard M. Husband and the Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”), each moved for rehearing of the Order,<sup>1</sup> and the Office of Consumer Advocate (“OCA”) filed its concurrence with PLAN’s motion. EnergyNorth filed timely objections to the two motions.

## II. COMMISSION ANALYSIS

We will grant rehearing when a party states good reason for such relief and demonstrates that a decision is unlawful or unreasonable. *See, e.g., Rural Telephone Companies*, Order No. 25,291 (Nov. 21, 2011) at 9. Good reason may be shown by identifying specific matters that were “overlooked or mistakenly conceived” by the deciding tribunal, *see Dumais v. State*, 118 N.H. 309, 311 (1978), or by identifying new evidence that could not have been presented in the underlying proceeding, *see O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977); *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25,088 (Apr. 2, 2010) at 14.

In this case, PLAN has not given us good reason to reconsider our Order. Although we find that each of PLAN’s arguments in its rehearing motion has been raised and considered we will address each argument briefly for clarity.

### A. Burden of Proof

PLAN argues that EnergyNorth failed to meet its burden of proof concerning whether it reasonably investigated and analyzed its long term supply requirements and alternatives for meeting those requirements. PLAN Motion at 2-3. PLAN claims that all experts in the case

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<sup>1</sup> In Order 25,843 (November 20, 2015), we denied Mr. Husband’s motion for rehearing.

“agreed that EnergyNorth failed to reasonably investigate its long-term supply requirement and undertake the rigorous review required for a commitment of this scope and size.” *Id.* at 3.

PLAN states that EnergyNorth failed to develop an adequate cost-benefit analysis and did not demonstrate that “the Precedent Agreement is a least-cost, or even best-cost, option for ratepayers.” *Id.* PLAN argues that the Commission’s prudence determination should have been based on known facts and a complete record, but that in this case the record is inadequate and the Commission relied on future activities. PLAN also argues that the Commission erred in its prudence analysis of the Precedent Agreement.

According to EnergyNorth, the Company’s demand forecast established the need for the capacity procured through the Precedent Agreement, demonstrating capacity shortfalls of approximately 32,000 Decatherms per day (“Dth/day”) in 10 years and 62,000 Dth/day in 20 years. EnergyNorth Objection at 2-3. EnergyNorth points out that all witnesses in the case, including the PLAN witness, agreed that the Company will need additional capacity to serve customers over the next 10 years. EnergyNorth Objection at 3 (citing Exhibit 12 at 6, lines 23-25; Tr. Day 3 at 21; and Exhibit 17 at 21, lines 13-14). EnergyNorth relies on testimony concerning its evaluation of three options to meet future capacity needs and its conclusion that, of those three options, the Precedent Agreement was the least expensive by approximately \$537 million. EnergyNorth Objection at 3 (citing Exhibit 3 at 35, lines 5-8). Further, EnergyNorth points to evidence in the record that the Precedent Agreement provides non-price advantages over other options, including greater reliability, flexibility and viability. EnergyNorth Objection at 3 (citing Exhibit 3 at 36-37; Exhibit 9 at 55).

Although PLAN disagrees, the record, as well as our Order, demonstrates a more than sufficient basis for our findings. Order at 25-28. PLAN presented evidence in the form of cross

examination of EnergyNorth witnesses, and arguments in briefs concerning the adequacy of the Company's analysis of future capacity needs, as well as the cost and benefit analysis of the Precedent Agreement versus the other two pipeline projects. *See, e.g.*, PLAN Brief at 7 (urging the Commission to reject the Company's "deficient proposal" because it lacks "an adequately developed cost-benefit analysis ... and any meaningful evaluation that the Precedent Agreement is a least-cost ... option for ratepayers). In its presentation of the case, EnergyNorth described its process for forecasting its customer demand for natural gas and its analysis of various alternatives for meeting that demand. *See, e.g.*, Exhibit 4 at 8, lines 3-5 (the Company used a design day forecast process to project design day demand for the Precedent Agreement consistent with its last approved Integrated Resource Plan). The OCA agreed that EnergyNorth appropriately used the "resource mix methodology" to project demand in the 2013 IRP. Tr. Day 3 at 10, line 17 to 11, line 23.

Prudence determinations concerning utility investments are an integral part of the Commission's ratemaking process. There is no constitutional or statutory directive as to a specific ratemaking analysis. "It is a constant in the law of ratemaking that there is no single formulation sufficient to express constitutional, statutory, or judicially derived standards for determining rate base inclusion." *Appeal of Conservation Law Found.*, 127 N.H. 606, 637 (1986) (citing *Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 602 (1924)); *see also Appeal of Richards*, 134 N.H. 148, 164 (1991) (citing *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944)). The standards used by the Commission to determine rate base "are said to be flexible, *LUCC v. Public Serv. Co. of N.H.*, 119 N.H. 332, 343-344 (1979), and their application subject to 'pragmatic' adjustment, *New Eng. Tel. & Tel. Co. v. State*, 98 N.H. 211, 219 (1953)." *Appeal of Conservation Law Found.*, 127 N.H. at 637. The determination of

prudence requires “the exercise of judgment and discretion in determining the recognition that is appropriately due to the competing interests of the company and its investors and of the customers who must pay the rates to provide the revenue permitted.” *Appeal of Conservation Law Found.*, 127 N.H. at 638.

Our determination in this case that EnergyNorth’s contract with TGP for firm pipeline capacity is prudent necessarily involves considerable discretion in the factors weighed and analyzed. We found the record developed in this case sufficient to meet EnergyNorth’s burden in demonstrating that its entry into the Precedent Agreement, as modified by the Settlement, was prudent.

#### **B. Supply from Dracut**

PLAN contends that the Commission’s determination that the NED project was more cost effective than retaining existing capacity on the Concord Lateral was not supported by the record. PLAN Motion at 5-8. Instead, PLAN posits that the Commission should have analyzed keeping existing supply from Dracut, Massachusetts, over the Concord Lateral. *Id.*

EnergyNorth disagrees with PLAN’s assertion that replacing the 50,000 Dth/day supply at Dracut, Massachusetts, with supply from the Precedent Agreement was unreasonable. EnergyNorth Motion at 5. EnergyNorth argues that there was extensive evidence on the costs and benefits of the use of Dracut supply, and the fact that the Commission did not require the Company to perform, or did not itself perform, a different kind of analysis, does not make the Order unreasonable or unlawful. *Id.*

PLAN repeats its arguments concerning a lack of support for our finding that the Precedent Agreement was a cost effective substitute for the 50,000 Dth/day currently supplied through Dracut. PLAN brief at 2-3 and fn. 5 (replacement of Dracut capacity will cost customers

more); *id.* at 7-10 (the Company does not require replacement capacity on NED). They lacked merit before and they lack merit now. As discussed in the Order, we found the testimony supporting the price volatility at Dracut credible. Order at 27-28; *see, e.g.*, Tr. Day 1 at 66, lines 4-10 (NED avoids Dracut, described as “one of the highest price points in North America” for purchasing gas); Tr. Day 3 at 79, line 4 to 80, line 5 (PLAN witness agreed with EnergyNorth’s witness’s concern about price spikes at Dracut, stating “his point is certainly well taken that there’s been a great deal of price volatility in New England the last several winters”); *id.* at 82, lines 10-13 (PLAN’s witness testified the “issue with supply at Dracut, in particular, and New England more generally, is largely an issue of price”).

As PLAN noted in its motion, we also based our conclusions on other benefits of replacing the Dracut supply: (1) avoidance of supply constraints at Dracut, (2) increased reliability, (3) opportunity for a new lateral off West Nashua delivery point, and (4) avoidance of costly upgrades to the Concord Lateral. PLAN Motion at 3 (citing Order at 27-28). Based on the evidence presented, the alternate supply provided by the Precedent Agreement appears to be a less expensive source of supply compared with the alternatives. Hearing Tr. Day 1 at 57, lines 2-7, and 177, lines 10-14 (115,000 on NED, ensures long-term reliability of supply at least cost); Tr. Day 2 at 83, line 23, to 84, line 16 (NED project less expensive than alternatives even without costs of Concord Lateral expansion). Therefore, we reject PLAN’s argument that we erred in our findings about the replacement of the existing Dracut capacity.

### **C. LNG to Meet Demand**

PLAN argues that the Commission erred in not considering adding liquid natural gas (“LNG”) storage and vaporization to meet anticipated growth requirements. PLAN Motion

at 9-13. PLAN claims that the Commission's concerns about the unstable global market for LNG and reliability of supply were not a valid basis for not considering LNG as an alternative future supply for EnergyNorth. PLAN Motion at 9-10. Further, PLAN criticizes the Commission's reliance on EnergyNorth's testimony that safety regulations prevent the company from expanding its LNG facilities within its New Hampshire franchise area. PLAN Motion at 10. PLAN also relies on EnergyNorth's recent proposals to use LNG to supply customers in Lebanon, Keene, and southwestern New Hampshire, as a basis for claiming that the Commission improperly failed to consider LNG to supply EnergyNorth's future growth. PLAN Motion at 11-13. In its concurrence with PLAN's Motion, the OCA argues that EnergyNorth failed to thoroughly analyze the cost of LNG as an alternative to pipeline capacity.

EnergyNorth contends that the Commission and the Company did the appropriate analysis and considered appropriate alternatives and that LNG is not an appropriate alternative to meet the Company's need for 115,000 Dth/day. EnergyNorth maintains that the Commission heard "extensive testimony on the reduced production of LNG in Canada" as well as "the impact of global demand for LNG." EnergyNorth Objection at 8 (citing Exhibit 9 at 38-39; Tr. Day 1 at 61-63). EnergyNorth asserts that it was "not unreasonable for the Commission to rely on this evidence in reaching its conclusion in this case" and no "good reason" exists for rehearing. EnergyNorth Objection at 8.

In response to PLAN's argument regarding expansion of LNG facilities, the Company points to uncontroverted testimony that the LNG facilities, "are in, for the most part, densely populated areas, and are grandfathered because of the fact that they're ... 30-40 years old. Any expansion would bring them under the new regulation, which clearly would not allow the plants to function even as they function today." EnergyNorth Objection at 6-7 (citing Tr. Day 2

at 62-63). EnergyNorth asserts that any additional LNG would need to be located close to the urban areas of the system and that added LNG facilities would have to be very large to provide the additional capacity needed in the future. EnergyNorth Objection at 7 (citing Tr. Day 2 at 65-66). EnergyNorth thus claims that the record supports a finding that LNG is not a viable long term supply option to meet 115,000 Dth/day.

EnergyNorth also disputes PLAN's claim of "new evidence," that other pending proceedings demonstrate that LNG is a viable alternative to the Precedent Agreement. EnergyNorth Objection at 7-8. PLAN's argument relies on statements that the Company may use LNG or Compressed Natural Gas ("CNG") on a temporary basis in Keene, or that it plans on building an LNG or CNG facility in Lebanon. EnergyNorth Objection at 7. According to EnergyNorth, use of LNG to serve small outlying areas does not contradict the testimony concerning use of LNG to serve Nashua, Manchester, or Concord. EnergyNorth Objection at 7-8. Further, EnergyNorth asserts the evidence regarding LNG in Keene is not new. In fact the Settlement Agreement requires the Company to analyze supply alternatives to a lateral in the Keene area in its next LCIRP. EnergyNorth Objection at 8 citing Exhibit 14 at 6.

Although PLAN disputes our findings that LNG supply is unstable, both as to supply and pricing due to global demand, we found the evidence presented on the issue credible. Order at 29; *see also* Tr. Day 1 at 62, lines 16-21 (LNG is a global commodity that sells to the highest bidder); *id.* at 61, line 16 to 63, line 1, and at 88, lines 7-17 (offshore LNG supplies available at Dracut are declining, lack of LNG "liquidity" causes price spikes).

In addition, the Commission was not obliged to consider LNG as an alternative to pipeline capacity, and we disagree with PLAN and the OCA that our analysis was deficient or incorrect. Even if we had required consideration of LNG, the Company provided a sufficient



explanation to support a finding that expansion of its existing LNG peaking capacity or the development of new LNG peaking capacity within its franchise is not an available option to meet its long-term design day needs. *See, e.g.*, Tr. Day 2 at 62, line 1, to 63, line 9 (EnergyNorth did not consider expansion of its existing LNG peaking capacity because of federal requirements for “vapor dispersion of LNG facilities and thermal radiation zones” and the densely populated locations of the facilities); *id.* at 64, line 6; to 66, line 12 (EnergyNorth unaware of locations within its franchise to site a new LNG facility to meet long-term design day demand comparable to the Precedent Agreement capacity); *see also* Order at 8 and 29.

Lastly, we disagree with PLAN that its “new evidence” concerning EnergyNorth’s pending proposals to use CNG/LNG to serve small satellite systems “wholly contradict[s] EnergyNorth’s testimony in this case.” Motion at 12. The pending CNG/LNG dockets<sup>2</sup> do not compare to this docket. For example, the number of customers to be served in either of the satellite systems would be no more than a few thousand compared to the approximately 90,000 customers currently being served by EnergyNorth’s distribution system. The fact that EnergyNorth may propose the use of LNG to supply considerably smaller satellite systems, including Keene, does not undermine our finding that LNG is not a viable long-term substitute for capacity demand levels in the 100,000 Dth/day range. The record supports our finding that expansion of EnergyNorth’s LNG facilities does not provide an adequate resource for additional long-term capacity.

#### **D. Cost of Upgrades to Concord Lateral**

PLAN challenges our finding that the costs to upgrade the Concord Lateral are substantial and that other pipeline projects that supply through Dracut to the Concord Lateral are

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<sup>2</sup> DG 15-289 (Liberty request for a franchise to serve customers in Lebanon and Hanover); DG 15-442 (Liberty request for a franchise to serve customers in Jaffrey, Rindge, Swanzey and Winchester).

significantly more expensive than obtaining capacity through the Precedent Agreement. PLAN Motion at 13 (citing Order at 28). PLAN claims that the Commission erred in relying on TGP, the owner of the Concord Lateral, for estimated cost of upgrades to the Concord Lateral to increase capacity to meet EnergyNorth's projected needs. PLAN Motion at 13-14. According to PLAN, the estimates relied on a different route in some areas, and were merely estimates without sufficient work papers or supporting information. PLAN Motion at 13. Further, PLAN maintains that the Commission should have requested estimates to upgrade the Concord Lateral to increase capacity to levels well below 65,000 Dth/day.

EnergyNorth disagrees. EnergyNorth Objection at 3-4. The upgrade costs were provided by TGP, the owner and operator of the Concord Lateral, because TGP is the entity that would be responsible for having the pipeline upgraded. EnergyNorth Objection at 4. According to EnergyNorth, the upgrade cost estimates for the Concord Lateral demonstrated that the cost of the upgrade would be significant, and would cause the costs of purchasing capacity on one of the competing pipeline projects to exceed the cost of the Precedent Agreement by hundreds of millions of dollars. *Id.* (citing Tr. Day 1 at 210-213; Exhibit 33).

PLAN's objection to the Concord Lateral estimates is not a new argument. Tr. Day 3 at 83, line 9 to 84, line 18. We found those estimates to be sufficiently reliable as a cost comparison to other supply alternatives. Order at 28. The cost estimates for upgrades to the Concord Lateral were prepared by TGP, the owner and operator of the Concord Lateral. Tr. Day 1 at 210, line 8 to 211, line 13, and at 212, lines 18-22 (Company witness testifies about initial and updated cost estimates for the Concord Lateral upgrade); Tr. Day 2 at 83, line 23 to 84, line 16 (Company witness testifies that the updated cost estimate for Concord Lateral upgrades exceeds the costs of the NED project "all the way back to Marcellus"). The

fact that PLAN disagrees with our conclusion does not render the evidence on the issue insufficient.

### **E. Demand Forecast**

PLAN argues that the Commission has allowed EnergyNorth to contract for excess capacity in reliance on speculative load growth. PLAN Motion at 16-18. In its concurrence with PLAN's Motion, the OCA points out that it had objected to EnergyNorth's lack of analysis of varying levels of capacity from the NED pipeline. According to the OCA, EnergyNorth's analysis should have included cost comparisons at decreasing levels of NED capacity in increments of 5,000 Dth/day.

EnergyNorth contends that it was entirely appropriate and prudent for the Company to plan for future demand growth. EnergyNorth Objection at 4-5. As a result, EnergyNorth argues that it was not error for the Commission to approve the Company's planning to ensure that it has sufficient capacity to serve its customers, both today and into the future. EnergyNorth Objection at 5.

We disagree with PLAN that the record does not support our finding that EnergyNorth should procure pipeline capacity to support future demand growth. We also disagree with the OCA that EnergyNorth should have analyzed multiple additional demand scenarios. Planning for future load growth is always a central component of utility planning and a demand forecast is the foundation for a utility least cost integrated resource plan. Order at 25-26. We found EnergyNorth's estimates of increased demand credible and consistent with its last filed 2013 LCIRP. Order at 25-27. There is ample support in the record for our findings on future demand growth. *See, e.g.*, Exhibit 8 at 26, lines 2-6 and fn. 33 (accelerated reverse migration has occurred for several years now and is likely to continue based on volatile natural gas pricing

arising from constrained pipeline capacity in New England); Tr. Day 1 at 52, lines 18-22 (since the filing of the Company's rebuttal, two or three additional capacity customers have returned to firm sales service and assigned capacity, with approximately a 200 Dth requirement on design day; the Company still has approximately 14,000 Dth of design day capacity-exempt load that could migrate back to sales service and capacity assignment); *id.* at 54, lines 2-9 (the Company is in discussion with Concord Steam customers who may become sales and capacity-assigned customers).<sup>3</sup> We acknowledge that EnergyNorth's growth projections may not end up being perfect, but they are far from speculative.

#### **F. Propane Facilities**

According to PLAN, the Commission mistakenly assumed retirement of most of the propane capacity outside of Keene. PLAN Motion at 19-21. PLAN claims that the record does not support such an assumption, and that the Commission erred in finding capacity would be needed to replace the propane facilities after retirement. PLAN Motion at 19. In its concurrence, the OCA contends that the Company failed to adequately explore the continued use of its propane system.

With regard to the potential retirement of the EnergyNorth propane facilities, EnergyNorth points to testimony that "given the age of the facilities, the propane plants are not a

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<sup>3</sup> See also Tr. Day 1 at 56, lines 7-12 (the Company's design day demand forecast in this case did not include demand associated with potential Concord Steam customers); *id.* at 72, line 7 to 75, line 24 (Company witness testifies about recent increased growth and Company efforts to accommodate growth); at 76, lines 1-7 (Company witness testifies that Settlement's growth requirements are achievable); at 76, line 18 to 77, line 13 (Company witness testifies about potential growth of "between 850,000 and 1.2 million Dekatherms annually" along the NED pipeline route); at 79, line 14 to 80, line 12 (Company will look at retiring propane plants if projected demand does not materialize, which reduces reserve capacity by approximately 34K Dth per day); and at 84, lines 2-16 (Company witness testifies that the Settlement is in the public interest and will allow the Company to continue "aggressive customer expansion"); Tr. Day 3 at 40, line 12 to 41, line 12, and at 64, line 22 to 65, line 13 (OCA witness testifies that the addition of post-IRP demand growth to the design day demand projected in the 2013 IRP exceeds 100K Dth per day, assuming the retirement of the Manchester and Nashua propane facilities); and at 65, line 14 to 67, line 1 (OCA witness testifies that the addition of 34K, representing the capacity of some of the Company's aging propane facilities, to the OCA's incremental capacity recommendation for NED exceeds the 100K and 115K of NED capacity contracted for in the Precedent Agreement).

viable long-term solution.” EnergyNorth Objection at 6 (citing Exhibit 8 at 51). Further, the Company argues that the Settlement provides for future analysis of the retirement of the propane facilities as a part of the Company’s next least cost integrated resource plan. EnergyNorth Objection at 6 (citing Exhibit 14 at 6). EnergyNorth asserts that it was reasonable for the Commission to consider the possible retirement of the propane facilities during the next twenty years as part of the Company’s supply planning. EnergyNorth Objection at 6.

We find that the record supports our assumption that the Company’s propane facilities are not a long-term supply option and that, due to their age, they will likely be retired during the term of the Precedent Agreement. Order at 27. The Settlement requires the Company to analyze the retirement of the propane facilities in the next LCIRP, and the record supports consideration of retirement in the future. Tr. Day 1 at 57, lines 10-13 (“the Company believes that its existing propane facilities are not a viable long-term solution, and would not ultimately be part of the Company’s portfolio”); *id.* at 79, lines 11 to 14, and 80 lines 9-12 (Company witness confirms that continued applicability of growth requirements and financial penalties is tied to retirement of certain propane facilities; Company can avoid Settlement disallowances by retiring certain propane plants); *id.* at 174, lines 14-19 (Company witness testifies about Company’s intention to evaluate the cost effectiveness of its propane plants and that the plants are “not long-term, viable supply alternatives within the portfolio”). Consequently, we reject PLAN’s contention that we erred in considering the retirement of the propane plants.

#### **G. Affiliate Relationship between EnergyNorth and Algonquin**

PLAN asserts that the Commission failed to consider the affiliate relationship between Algonquin and EnergyNorth. PLAN Motion at 14-15. According to PLAN, it is well recognized that affiliate transactions are not arm’s length and may not be just and reasonable. PLAN

Motion at 14. PLAN claims that testimony from EnergyNorth witness DaFonte should have prompted the Commission to examine the affiliate relationship further. PLAN Motion at 15.

EnergyNorth argues that there is no good reason for the Commission to reconsider its rulings on affiliate issues, because the Commission has already found the Precedent Agreement both prudent and reasonable without reaching those affiliate issues. EnergyNorth Objection at 8-9.

PLAN's motion to compel raised issues about EnergyNorth's affiliate relationship with Algonquin and the record confirms the existence of that affiliate relationship. Nonetheless, the testimony referenced by PLAN describes the affiliate relationships, but does not evidence any communications between or among the various affiliates. Tr. Day 2 at 14, line 11 to 17, line 6. Thus any claim of bias or collusion is purely speculative. Tr. Day 2 at 21, lines 4-12, and 22, line 9 to 34, line 17. We have found, based on extensive evidence, that the terms of the Precedent Agreement as amended by the Settlement are reasonable. Order at 25. Having found the terms reasonable, and absent any evidence of collusion, we need not delve further into PLAN's claim that the affiliate relationship tainted the negotiation process. Order at 30.

#### **H. LDC Consortium Negotiations**

PLAN claims that the Commission erred when it failed to allow discovery of the discussions and analysis among the members of the consortium of local distribution companies ("LDCs") that negotiated the terms of the Precedent Agreement. PLAN Motion at 15-16. According to PLAN, the consortium, of which EnergyNorth is a member provided an analysis that the terms of the Precedent Agreement were favorable. PLAN Motion at 15. Without access to those discussions and that analysis, PLAN claims that a basis for EnergyNorth's decision to enter into the Precedent Agreement cannot be adequately probed. PLAN Motion at 15-16.

EnergyNorth claims that PLAN cannot seek rehearing on the issue of information concerning the negotiations among the LDC consortium members because the Commission already denied this request in Order No. 25,789 (June 5, 2015). EnergyNorth argues that the issue is *res judicata*, and it urges the Commission to reject PLAN's request for rehearing on that ground.

We disagree with PLAN that it was error for us to deny cross-examination about the analysis and discussions among the LDC Consortium members. Order 25,789 (June 5, 2015) at 3-5. Without evidence of the negotiations, the record supported the Company's assertion that the Precedent Agreement provided lower cost supply than other alternatives analyzed. Order at 31. The Commission is free to consider the terms of the contract resulting from the negotiations and to analyze whether its terms are reasonable and prudent. As noted herein, there was ample evidence presented on the terms of the Precedent Agreement to support the Commission's determinations. Consequently, it was not legal error to ignore the negotiations leading to those contract terms.

Because we reject the substance of PLAN's argument regarding the LDC Consortium, we do not need to consider EnergyNorth's argument that PLAN was required to seek rehearing or reconsideration of Order 25,789 to preserve its right to pursue this particular issue.

### **I. Supply Path Project**

PLAN also suggests that the Commission should have required the Supply Path project, which will carry Marcellus gas to Wright, New York, to be heard with the Market Path, the pipeline carrying Marcellus gas from Wright to New Hampshire, the capacity considered in this docket. PLAN Motion at 19-21. PLAN claims that the Market Path is contingent and dependent upon the Supply Path being developed. *Id.* As a result, PLAN urges the Commission to reject

the Precedent Agreement and require contracts for capacity on the Market Path and the Supply Path to be considered as a unified case. PLAN Motion at 20-21.

EnergyNorth asserts that the Commission was not required to hear the Precedent Agreement, dealing with the Market Path supply, together with any Supply Path agreement. EnergyNorth Objection at 9. EnergyNorth points out that PLAN raises this argument for the first time in its motion on rehearing and should have raised it earlier in the proceeding. *Id.*

We agree with EnergyNorth that PLAN may not raise this issue for the first time in motion for rehearing. EnergyNorth first mentioned the Supply Path as a way of accessing, through the Market Path capacity, supply directly from Marcellus. DaFonte Direct at 25, lines 6-11. The Company's witness testified about the Supply Path project and its relationship with the Market Path project at the hearing. Tr. Day 1 at 65- 66. Nevertheless, PLAN did not advocate combining our review of the Market Path capacity with our review of a future precedent agreement for capacity on the Supply Path project.

Assuming PLAN has the right to raise this issue, we disagree with PLAN that it was an error not to require the Supply Path Project contract and the Market Path Project contract, the Precedent Agreement, to be heard together. The record supports our conclusion that we can review the Precedent Agreement as a stand-alone arrangement. *See, e.g.*, Tr. Day 1 at 65, line 17 to 66, line 24 (Company witness testifies about NED Supply Path project and that the Precedent Agreement stands alone as a cost-effective alternative). Also, if supply at Wright is not sufficiently liquid, EnergyNorth can terminate the Precedent Agreement. Tr. Day 1 at 67, lines 1-8. We found testimony concerning liquidity of supply at Wright to be credible and have approved the Precedent Agreement on that record. Order at 28. *See, e.g.*, Tr. Day 1 at 182, line 12 to 184, line 23 (testimony concerning pricing and availability of supply at Wright); at 185,



lines 13-16 (EnergyNorth negotiating for firm supply at Wright); at 186, line 16 to 187 line 7 (several suppliers at Wright other than NED Supply Path); at 193, lines 15-24 (new pipelines expected to create a “market” at Wright); Tr. Day 2 at 77, line 5 to 80, line 19 (basis for EnergyNorth’s expectations of sufficient liquidity at Wright); and Tr. Day 3 at 93, line 20 to 95, line 11 (between 600 and a million Dth of new pipeline capacity being built to Wright versus “several hundred thousand” of new capacity being built to Dracut).


### III. CONCLUSION


As explained above, none of the issues raised by PLAN is grounds for us to rehear or reconsider Order No. 25,822. PLAN’s arguments were either dealt with in the Order, or are new and insufficient to justify the relief requested.

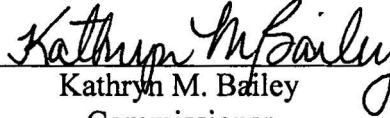
**Based upon the foregoing, it is hereby**

**ORDERED**, that the motion for rehearing is **DENIED**.


By order of the Public Utilities Commission of New Hampshire this second day of  
December, 2015.

  
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Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Robert R. Scott  
Commissioner

  
\_\_\_\_\_  
Kathryn M. Bailey  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director