

DG 17-198

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

**Petition to Approve Firm Supply, Transportation Agreements,
and the Granite Bridge Project**

REVISED RESPONSE TO MOTION TO AMEND PETITION

Staff of the New Hampshire Public Utilities Commission (Staff) hereby responds to the July 31, 2020 Motion to Amend Petition of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty, or the Company) filed in Docket DG 17-198.

Staff supports the Company's request to withdraw its 2017 petition in Docket DG 17-198 concerning construction of the proposed Granite Bridge natural gas pipeline and liquefied natural gas storage tank facilities (the Granite Bridge Project). Staff also supports the Company's decision to submit its new petition for approval of a firm transportation supply contract with Tennessee Gas Pipeline (TGP) in lieu of the Granite Bridge Project.

However, Staff respectfully objects to the Company's request to adjudicate its new petition regarding the contract with TGP in Docket DG 17-198. Staff further objects to the Company's request to recoup through ratepayers the costs incurred to date for the Granite Bridge Project.

In support of its objection, Staff states:

1. The testimony filed by parties to Docket DG 17-198 uniformly proposed the rejection of the Granite Bridge Project as proposed.
2. A transportation supply contract, if determined to be rationally planned and constructed, is a reasonable alternative to the Granite Bridge option and warrants review through a new docket proceeding.
3. The Company's request to recoup from ratepayers the costs accrued prior to and during more than two years of litigation of the original Granite Bridge Project proposal is not supported by law.

I. Petition to Withdraw the Granite Bridge Project Petition

4. Staff supports the Company’s petition to withdraw its Granite Bridge petition and to submit for review and approval its new supply contract with TGP.
5. Staff notes that the supply contract petition is new to all parties in Docket DG 17-198 and therefore merits the thorough and conscientious review granted to the initial Granite Bridge proposal.
6. The submission for review of a finite supply contract is an appropriate proposal in a changing regulatory environment that requires ever closer scrutiny of the potential carbon emissions impacts of any new natural gas proposal.
7. The Company suggests that the new supply contract proposal it is presenting after more than two years of contentious litigation of the Granite Bridge proposal is a direct result of the decision of a key customer of TGP to not renew its existing long-term supply contract.¹
8. It is Staff’s view that the Granite Bridge Project proposal would have provided little leverage in negotiations with TGP for the following reasons. Staff and intervener testimony in Docket 17-198 was effectively unanimous in opposing the proposed pipeline and LNG facilities and in concluding that Liberty had not demonstrated that the Granite Bridge Project was the least cost option to meet future demand; the procedural schedule was suspended on October 18, 2019; and Liberty had not petitioned the Site Evaluation Commission for approval.

II. Petition to Amend the Company’s Initial Petition in Docket DG 17-198

9. The Company’s request for review and approval of its new supply contract in the existing Granite Bridge docket, DG 17-198, is not warranted and not necessary.
10. The new contract petition warrants a new docket, based on change of scope, change of subject matter, and a likely change of parties with interest in the new proceeding.

¹ Manchester Union Leader, August 1 2020: “When we originally filed Granite Bridge, the capacity was not available,” said Emily Burnett, a spokeswoman for Liberty Utilities. *However, see also* Petition to Intervene and Preliminary Objection to Amendment of Petition filed by Calpine Corporation on August 7, 2020 in Docket DG 17-198.

11. The TGP supply contract is an alternative proposal in lieu of the Granite Bridge Project proposed in DG 17-198; as such, it is a different petition requiring separate and distinct review.
12. The supply contract is a new solution to the Company's gas supply needs and, as such, merits a new petition and docket.
13. The TGP contract petition presents a new proposal based on new data requiring new analysis by interested parties, who may or may not include the same parties to Docket DG 17-198.
14. While there may be some overlap in the substantive review and discovery undertaken on behalf of each petition, the proposals are distinct and substantively different.
15. To the extent that information, discovery responses, and assertions by the Company are still relevant and timely in the review of the new petition, the Company can propose to present them as part of its case. However, the proposals are clearly distinct and different and the 2½ year time lag between the 2 petitions is significant enough to require a new analytical framework and new data for the consideration of the new petition. The switch to review a supply contract versus the Company's proposal to build a 27-mile pipeline and a 2 billion cubic foot LNG storage facility warrants a new and separate review based on more recent data related to the new proposal.
16. The Company's request to withdraw the Granite Bridge petition and to submit for the Commission's consideration the supply contract with Tennessee Gas in lieu of the Granite Bridge petition confirms that the Company will not continue to pursue approval of the Granite Bridge Project.
17. With the withdrawal of the Granite Bridge Project, the interests of new parties may be affected, while the interests of existing parties may be altered or resolved.
18. The Company's new petition seeks approval of a supply contract with a new party. The new contract may affect the entity that the Company asserts chose not to renew its prior existing contract with Tennessee, but which had concluded an MOU with the Company to take supply from the Granite Bridge Project in the event that project was approved and built.

19. The assignment of a new docket is logical and warranted. As noted above, in the event that discovery responses provided in the Granite Bridge docket are still timely and relevant, the Company may introduce them into the new docket.
20. A new docket will facilitate a clean start and clear focus on the Company's new petition.

III. Petition for Approval of Cost Recovery

21. Staff believes it would be inappropriate and contrary to law to recover from ratepayers the costs expended on behalf of a project that has not been and will not be approved.
22. Staff further believes that it would be inappropriate for the Company to reach and present a settlement with any other party agreeing to impose such costs on ratepayers.
23. The applicable statute, RSA 378:30-a, not only does not support the Company's request for cost recovery, it prohibits it. The statute states as follows:

Public utility rates or charges *shall not in any manner* be based on the cost of construction work in progress. At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed. *All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing* construction work in progress, shall not be included in a utility's rate base *nor be allowed as an expense for rate making purposes* until, and not before, said construction project is actually providing service to consumers.

(emphases added)

24. Liberty's initial petition in Docket DG 17-198 requested Commission findings regarding the prudence of proposed investments. The petition and order of notice in that docket did not contemplate or provide for Commission review of or decision on the reasonableness or prudence of investment costs. If Liberty wishes to pursue recovery of Granite Bridge Project costs, it should seek recovery through a rate filing.
25. The costs in question are approximately \$9.2 million incurred for engineering, environmental, and related costs (e.g., permitting, consulting, legal, etc.) associated with the proposed Granite Bridge Project. *See* Supplemental Testimony at Bates Page 34, lines 4-15. An exact accounting with detailed descriptions and explanation was not provided with the Company's July 31, 2020 filing, but Staff is aware of the large number

- consultants and contractors employed by the Company to support its initial petition and litigation efforts. Staff is aware, as well, of at least one ‘host agreement’ with a town along the proposed Granite Bridge route to reimburse that town for reasonable legal fees and other related costs of the town’s participation in proceedings before the Commission and the Site Evaluation Committee regarding the Granite Bridge proposal, and a September 2018 article on Seacoastonline.com that referred to a non-refundable, up-front \$30,000 fee paid to another town to secure an easement for a proposed Granite Bridge metering station. The applicable statute is clear on the prohibition of recovery through ratepayers of any such costs associated with a project that is not actually in service.
26. The Company is asking the Commission to approve the recovery of costs for the canceled project through the Company’s ratepayers – a result that is not only precluded by statute, but would set an unfortunate precedent for future public utility tactics in proposing and sustaining through years of litigation projects that are not well designed, well managed, or justifiable under applicable law and policy.
 27. In the instant case, Liberty seeks to recover the costs of planning, analyzing, and litigating a petition for Commission approval of a proposed project involving a 27-mile gas pipeline and a 2 billion cubic foot liquefied natural gas (LNG) storage tank, a project that would have affected at least 7 municipalities and cost well over \$400 million, according to early estimates. The proposed project would have doubled existing capacity by investing in facilities with an expected service life in excess of fifty years, at a time when climate change is accelerating efforts to eliminate the use of fossil fuels.
 28. The Company is asking the Commission to determine that the more than two years of adjudication thus far in Docket DG 17-198 was the determining factor in the Company’s success in securing a supply contract with Tennessee.
 29. However, Staff posits that the supply contract has always been a more logical alternative to the Granite Bridge proposal, as party testimony against approval of the Granite Bridge project suggested.
 30. While it is plausible that the Company needed to go through three years of litigation and face overwhelming opposition to the Granite Bridge project in order to consider feasible alternatives, the resulting contract proposal is in large part due to the failure of the

Company to justify and support its proposal in the minds of each of the parties and participants who opposed the Granite Bridge petition.

31. Whatever the underlying reasons for Liberty’s current request to withdraw the Granite Bridge Project petition and submit the TGP contract petition – nothing has been submitted in the Company’s request to justify recovery from its ratepayers the estimated \$9.2 million in costs accrued to date. The request itself violates the statutory prohibition of the recovery of costs associated with construction work in progress.
32. The Company’s contention that the recovery of costs in another docket is analogous to the cost recovery requested here is mistaken. *See* Second Supplemental Direct Testimony of DaFonte and Killeen at BP 41-42 (referring to a settlement agreement concerning a request by Northern Utilities, Inc. (Northern) to be released from its contractual obligation with Granite State Gas Transmission (GSGT)). The circumstances are significantly and materially different in the present case. In 1996, the Commission had approved Northern’s Precedent Agreement with GSGT for LNG storage and vaporization services associated with the Wells LNG project in Maine. The precedent agreement between Northern and GSGT contained the following provision, “If Northern decides to terminate the unexecuted contract prior to the end of the primary terms, Northern shall be assessed an exit fee for the stranded costs associated with the facility.”² In 1999, the Commission opened an investigation into Northern’s request to be released from its contractual obligation with GSGT (Docket DG 99-050) and approved the referenced settlement agreement. The settlement agreement did not provide for recovery of costs prohibited by State law under RSA 378:30-a. GSGT petitioned the Federal Energy Regulatory Commission (FERC) for recovery of that fee from Northern after the contract was terminated.³
33. That is not the case here – there is no approved precedent agreement between Liberty and a third party providing for recovery of stranded costs if the project is not placed into service. Thus, there is no contractual contingency at play for the payment or recovery of costs in the event the project is not placed into service. Instead, the Company has

² *See, e.g.*, Granite State Gas Transmission, Inc., FERC Docket No. CP99-238-000, NHPUC Staff Notice of Intervention, Protest, Request for Stay, and Request for Hearing at 9.

³ *See* Granite State Gas Transmission, Inc., FERC Docket No. CP99-238-000.

- attempted to establish a link of similarity between the Granite Bridge Project and its new supply contract with Tennessee to justify the recovery of construction work in progress – in clear violation of New Hampshire law.
34. While perhaps creative, the Company’s proposal is not sustainable. The statute is clear – and a careful reading of the testimony submitted by participants in Docket DG 17-198 will reinforce the position that Liberty’s request for cost recovery should be denied. The existing record supports such a conclusion, and further costly litigation on this point is not warranted or justified by the pleadings now before the Commission.
35. The Company has some history in recent years of launching proposals that have not been well conceived, planned, supported, or managed.⁴
36. With respect to recovery of costs incurred to date for its proposal to build the Granite Bridge Project, the Company has provided no plausible support or argument to address the clear statutory language that prohibits the recovery through customer rates of costs accrued for a project proposal that has never been constructed or put into service.
37. As stated above, the Company’s request that the Commission approve the recovery of the expenditures to litigate the original Granite Bridge petition from ratepayers is contrary to law and should be denied.
38. Any costs associated with project construction if such construction is not completed, “including costs associated with constructing, owning, maintaining or financing construction work in progress, shall not be included in a utility’s rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to consumers.” RSA 378:30-a.
39. Based on the above, Staff asks the Commission to dismiss the Company’s petition to recover the litigation and project planning costs accrued to date in support of the Granite Bridge Project proposal.

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In Order No. 26,122 in Docket DG 17-048, the Commission disallowed full recovery of costs on two capital investments. Liberty filings that were denied, withdrawn, or expired include Liberty’s rate request filed in October 2019, a request for approval of a special contract for renewable natural gas, and franchise requests to serve Jaffrey, Rindge, Winchester, Swanzey, Windham, Hanover, Lebanon and Epping.

40. To entertain the Company's request would be contrary to RSA 378:30-a, because the Project not only has not yet been built and put into service, it will not be built at all.
41. To entertain, much less approve the Company's request – whether by petition or through settlement – would not only violate applicable law and policy, it would set a disturbing precedent for future utility project proposals and litigation tactics.
42. To decline to deny the Company's request for recovery and ask the parties in Docket DG 17-198 to adjudicate this issue further would needlessly extend the time and costs spent on the Granite Bridge Project.

Wherefore, Staff respectfully requests the Commission to provide the following relief:

- A. Accept the Company's petition for approval of its supply contract with Tennessee Gas and open a new docket to review the petition;
- B. Accept the Company's withdrawal of its petition for approval of the Granite Bridge Project in Docket DG 17-198;
- C. Deny the Company's request for recovery of litigation and associated costs incurred in support of the Granite Bridge Project in Docket DG 17-198; and
- D. Grant such other relief as deemed just and equitable.

Respectfully submitted,

/s/ Lynn Fabrizio

Lynn Fabrizio, Esq.
Staff Attorney
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301
(603)271-2431
lynn.fabrizio@puc.nh.gov

Executive.Director@puc.nh.gov
administrator@townofpepping.com
ahewitt@HewittLegalAdvisors.com
al-azad.iqbal@puc.nh.gov
alacasse@seacoastonline.com
amanda.noonan@puc.nh.gov
aperry@scottmadden.com
bill.killeen@libertyutilities.com
chico.dafonte@libertyutilities.com
Christa.Shute@oca.nh.gov
donald.kreis@oca.nh.gov
drosen@kwplaw.com
ECHOactionteam@gmail.com
emaher@dtclawyers.com
email@rpc-nh.org
email@snhpc.org
james.brennan@oca.nh.gov
jcusimano@clf.org
jeanne.dworetzky@exeloncorp.com
jonathan.hoff@repsol.com
jratigan@dtclawyers.com
jvanrossum@clf.org
karen.sinville@libertyutilities.com
kerri-lyn.gilpatric@puc.nh.gov
kimdao@scottmadden.com
kluczko@nashuachamber.com
leo.cody@libertyutilities.com
lila350nh@gmail.com
Liz.stanton@aeclinic.org
lynn.fabrizio@puc.nh.gov
maureen.karpf@libertyutilities.com
michael.licata@libertyutilities.com
michael.sheehan@libertyutilities.com
michael@libertyconsultinggroup.com
mikes@manchester-chamber.org
mkoehler@kwplaw.com
nhatlasman@comcast.net
nkrakoff@clf.org
ocalitigation@oca.nh.gov
Paul.Kasper@puc.nh.gov
pchernick@resourceinsight.com
pmartin2894@yahoo.com
pradip.chattopadhyay@oca.nh.gov
randy.knepper@puc.nh.gov
rkanoff@burnslev.com
robert.neustaedter@repsol.com
sjs@sjsullivanlaw.com
Stephen.Hall@libertyutilities.com
steve.frink@puc.nh.gov
steven.mullen@libertyutilities.com
stracy@pierceatwood.com
susan.bergles@exeloncorp.com
tsink@concordnhchamber.com
whewitt@HewittLegalAdvisors.com