

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 17-198

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
D/B/A LIBERTY UTILITIES

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

**Sur-Reply to Objections to Motion to Amend**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”) submits this sur-reply<sup>1</sup> to address new issues, factual assertions, and claims contained in objections filed by the New Hampshire Public Utilities Commission Staff (“Staff”),<sup>2</sup> the Conservation Law Foundation (“CLF”),<sup>3</sup> and Calpine Corporation (“Calpine”)<sup>4</sup> to the Company’s July 31, 2020, Motion to Amend Petition (“Motion”) in the above-captioned docket. The Motion seeks to amend the Company’s initial petition to request approval of a new transportation agreement with Tennessee Gas Pipeline (the “TGP Contract”), to withdraw its request to approve the Granite Bridge Project in light of the favorable terms of the TGP Contract, and to authorize recovery of the costs associated with evaluation of the Granite Bridge Project, which were integral to achieving the cost savings associated with the TGP Contract. The Motion asks the Commission to consider these issues in this docket because the issues are properly within

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<sup>1</sup> On this date, the Company filed a Motion for Leave to File Sur-Reply, requesting approval from the New Hampshire Public Utilities Commission (“Commission”) to submit this sur-reply.

<sup>2</sup> Staff filed its initial response on August 10, 2020, and a revised response on August 12, 2020. The Company’s references to Staff’s response in this sur-reply are to the revised version.

<sup>3</sup> CLF filed its response on August 10, 2020.

<sup>4</sup> Calpine’s response to the Motion was filed on August 7, 2020, and was combined with a petition to intervene; the Company does not object to Calpine’s intervention in this proceeding.

its scope and rest on the substantial foundation of discovery and testimony already completed in this docket.

In its objection, Staff agrees that the Commission should review the new supply contract with TGP but should do so in a new docket (Staff Response at 8), which would be administratively inefficient and prejudice the Company's ability to demonstrate the legal and factual circumstances leading to the contract. Staff also asserts the Commission should accept the Company's "*withdrawal of its petition for approval of the Granite Bridge Project*" in this docket (Staff Response at 8 (emphasis added)), which mischaracterizes the Company's amended request.<sup>5</sup> Lastly, Staff argues that the Company's cost recovery proposal is precluded by statute and the Commission should "[d]eny the Company's request for recovery of litigation and associated costs incurred in support of the Granite Bridge Project" (Staff Response at 1, 8), which is a *de facto* motion to dismiss consideration of a key element of the Company's amended petition leading to the favorable TGP Contract. As demonstrated in this sur-reply, these costs were necessary to the Company's efforts to find the best way to meet customers' needs while balancing affordability, reliability, and resiliency.

CLF argues that the proposed amendment to the Company's petition is not permitted by the Commission's rules because it "broadens the scope" (CLF Response at 3-4), which CLF argues is inconsistent with the plain language of the Commission's rules and the Company's Motion. The Company's amended petition fits squarely within the scope of this docket. CLF also asserts that the Motion would violate the due process rights of persons affected by the new

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<sup>5</sup> The Motion seeks to withdraw the Company's *request to approve* the Granite Bridge Project as the prudent option to meet its identified capacity need, but does not seek to withdraw the petition in its entirety. The Company's initial petition also sought approval of the ENGIE and PNGTS agreements, and these requests were unaffected by the Motion; *see* note 7 below.

proposal (CLF Response at 6), which is a baseless and unsupported claim.<sup>6</sup> Similarly, Calpine argues that proper notice was not provided in relation to the TGP Contract proposal and the Commission should deny the Motion and consider the issue in a new docket (Calpine Intervention and Objection, at 8). The claims ignore the fact that the TGP Contract is within the scope of this docket and no parties will be prejudiced if the contract is reviewed in this docket.

As set forth in more detail below, this proceeding has always required consideration of a transportation agreement with TGP in the context of an alternatives analysis, and the TGP Contract has since emerged as the most cost-effective solution to meet customers' needs. Contrary to Staff's suggestion, it would be inefficient to dismiss the Company's filing and open a new proceeding to review the merits of these issues. More broadly, Staff's objection is a de facto motion to dismiss, in that it seeks to preempt the Commission's consideration of factual issues with respect to recovery of the Granite Bridge evaluation costs and how those facilitated the proposed TGP Contract.

As explained below, dismissing the Motion without further investigation would deprive the Company of its due process right to a determination on the merits of the amended petition. In fact, Staff's objection relies on factual assertions that are incorrect and serves to highlight that the Motion presents important information for the Commission to evaluate for its ultimate determination in this docket (*e.g.*, what is the right capacity option, including the associated costs, to meet the Company's identified need).

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<sup>6</sup> CLF also asserts that whether the Commission grants or denies the Motion, it should allow robust discovery on the TGP proposal (CLF Response at 9). The Company has no objection and anticipates the Commission would allow discovery on its amended petition.

## I. Background

The Company filed its petition in this proceeding on December 21, 2017, requesting approval of a supply contract with ENGIE Gas & LNG, LLC (“ENGIE”),<sup>7</sup> a precedent agreement with Portland Natural Gas Transmission System (“PNGTS”) for firm transportation capacity, and determinations of prudence regarding the Company’s proposal to build an in-state pipeline, the Granite Bridge Pipeline, together with an on-system liquefied natural gas (“LNG”) facility, the Granite Bridge LNG facility (together with the Granite Bridge Pipeline referred to as the “Granite Bridge Project”). These requests were all part of the Company’s long-term supply strategy. It is critically important for a utility to have the ability, as a prudent operator, to look at its future load demand and assure that the associated supply plan is adequate to ensure a reliable system.

This review occurs primarily through development of EnergyNorth’s least cost integrated resource plan (“LCIRP”). Thus, the Company’s initial petition and supporting exhibits discussed the need for additional capacity based on EnergyNorth’s most recent LCIRP, including the 2017 LCIRP currently pending before the Commission.<sup>8</sup> As discussed in the petition and supporting testimony in this docket, the Company projected that growth on its system would continue at least through the years 2037-2038.<sup>9</sup> The TGP price signals for incremental service on the Concord Lateral to accommodate this growth were, until late 2019, more expensive than the proposed Granite Bridge Project. The Concord Lateral is a pipeline owned by TGP and is the pipeline that exclusively serves the Company’s service territory (with the exception of the City of Berlin,

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<sup>7</sup> Constellation LNG, LLC (“Constellation”) is a subsidiary of Exelon Generating Company, LLC (“Exelon”). Exelon acquired the Everett LNG Facility in October 2018. As a subsidiary of Exelon, Constellation became the assignee of the contract between ENGIE and EnergyNorth. Constellation filed for leave to file a petition to intervene out-of-time on December 12, 2018, that was granted by the Commission on April 8, 2019.

<sup>8</sup> The Company’s 2017 LCIRP has proceeded under a parallel timeline and thus remains pending before the Commission.

<sup>9</sup> See, e.g., Direct Testimony of William R. Killeen and James M. Stephens at 47 (December 17, 2017).

served by PNGTS).<sup>10</sup> In order to address this need, EnergyNorth developed a strategy to meet demand that included the ENGIE contract as a short-term solution (through 2022) and a long-term strategy that included the PNGTS contract.

The Company explored two options to meet the additional need: (a) an expansion of the Concord Lateral (through an agreement with TGP, hereinafter referred to as the “TGP Option”); and (b) the Granite Bridge Project. EnergyNorth developed a quantitative and qualitative comparison of these two delivery options.<sup>11</sup> Based on this analysis, the Company concluded that the Granite Bridge Project was in the best interests of customers because the estimated daily transportation rate associated with the Granite Bridge Project was a significantly lower cost than the TGP Option and would also provide system diversity, reliability, pressure support, and customer choice benefits.<sup>12</sup> EnergyNorth also explained that by moving forward with the Granite Bridge Project it would decrease its dependence on TGP *creating negotiation leverage when its existing contracts come up for renewal*.<sup>13</sup>

During the pendency of this proceeding, EnergyNorth remained in contact with TGP regarding opportunities to secure additional capacity on the Concord Lateral. The Company also continued to investigate and refine its plans and cost estimates for the Granite Bridge Pipeline. Due to the lead-time necessary for an infrastructure project like the Granite Bridge Project, the Company determined that it was reasonable to begin the Commission prudency review while simultaneously refining its analysis of the Granite Bridge Project. These efforts have not been in vain, because in October 2019 TGP communicated a revised offer for capacity on the Concord

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<sup>10</sup> Direct Testimony of William R. Killeen and James M. Stephen at 50.

<sup>11</sup> Direct Testimony of William R. Killeen and James M. Stephens at 63 (December 22, 2017).

<sup>12</sup> Id. at 67-68.

<sup>13</sup> Id. at 67.

Lateral at a much more favorable rate than previously offered. This is precisely the negotiation leverage identified in the Company's initial filing that would not exist but for EnergyNorth's serious consideration and evaluation of the Granite Bridge Project. The Company's work to evaluate the Granite Bridge Project was instrumental in the outcome of achieving the TGP Contract.

Based on the revised offer from TGP, the Company paused its evaluation of the Granite Bridge Project and performed an updated analysis of its options to meet its long-term needs.<sup>14</sup> This updated analysis resulted in a determination that the Granite Bridge Project would no longer be the least cost option, and that the TGP Contract would yield substantially reduced costs and provide savings to EnergyNorth's customers. On July 31, 2020, EnergyNorth filed its Motion to amend the petition to reflect this change in circumstance. The Company's action was that of a prudent utility working to find the best way to meet the customers' needs while balancing affordability, reliability, and resiliency.

The Commission's consideration of the TGP Option, revised to reflect the updated terms of the TGP Contract, is appropriate in this docket because an agreement with TGP was always the alternative to the Granite Bridge Project. In fact, intervenor Pipeline Awareness Network for the Northeast, Inc. ("PLAN") specifically recommended in its August 12, 2019, testimony that the Company contract for transportation with TGP in lieu of moving forward with the Granite Bridge Project.<sup>15</sup> Staff recommended at the time that additional analysis of a TGP Option be considered.<sup>16</sup> Thus, contrary to the objections, the TGP solution to EnergyNorth's identified need

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<sup>14</sup> During the various discussions with TGP, had TGP provided such lower rates, the Company would have then paused its evaluation of the Granite Bridge Project accordingly. Since that did not happen until October 2019, the Company prudently continued with its evaluation of the least-cost option for its customers.

<sup>15</sup> Direct Testimony of John A. Rosenkranz, at 2 (September 13, 2019).

<sup>16</sup> Testimony of Liberty Consulting Group at 33 (as revised on September 20, 2019).

is not outside the scope of this proceeding.<sup>17</sup>

## **II. The Company is Entitled to Amend its Petition Pursuant to the Commission's Rules**

As an initial matter, the Company's amended petition is consistent with the Commission's rules and scope of this proceeding.<sup>18</sup> The Commission's rules allow for amendment of any document if the following criteria are met:

- (a) Notice is provided to all parties on the service list;
- (b) The Commission determines that the amendment will encourage the just resolution of the proceeding and will not cause undue delay;
- (c) The amendment does not have "the effect of broadening the scope of the proceeding unless it provides notice to those affected and an opportunity to comment prior to final commission action."<sup>19</sup>

The amended petition meets each of these criteria as follows: (a) the Company served its Motion and supporting documents on the service list<sup>20</sup> in this proceeding on July 31, 2020; (b) consideration of the amended petition in this docket will result in a just resolution of this proceeding based on the changed circumstances requiring this amendment and will not delay the proceeding because the procedural schedule is currently suspended;<sup>21</sup> and (c) because a determination of the Granite Bridge Project has always included consideration of alternatives, including a contract with TGP, there is no broadening of the scope of the proceeding associated with the Motion.

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<sup>17</sup> The Company notes that Staff refers to this TGP Option in numerous instances as a supply contract or a transportation supply contract (see, e.g., Staff Response, paras. 2, 7, and 9). The TGP Option proposed in the amended petition is an agreement for transportation or capacity. It is not a supply contract.

<sup>18</sup> CLF Opposition at 3 (arguing that the amended petition will broaden the scope of this proceeding).

<sup>19</sup> Puc 203.10.

<sup>20</sup> Calpine has also requested an opportunity to file an additional objection to the Motion, to which the Company does not object.

<sup>21</sup> No party responding to the Motion has expressed concerns that granting the Motion will cause undue delay. However, Staff's and CLF's objection, which suggested that the Company's amended petition should be investigated in an entirely new docket, may result in undue delay in the ultimate approval of the Company's least cost solution. .

Further, even assuming *arguendo* that the Commission finds that granting the Motion would broaden the scope of this proceeding, a revised procedural schedule could easily allow for an additional notice and comment period as permitted under the Commission's rules. Any determination that additional notice is warranted should not be a basis for denying consideration of the amended petition. The Company fully expects and supports a new procedural schedule in this proceeding that would allow for additional discovery and testimony to address the amendments to its proposal.<sup>22</sup> Additional notice could be incorporated into this extended schedule.

However, as noted, a TGP Option has always been within the scope of this proceeding as an available alternative to the Granite Bridge Project. The testimony and supporting attachments filed with the Motion represent an updated analysis of the TGP Option resulting in a changed alternatives analysis. This alternatives analysis, however, still includes a comparison of the Granite Bridge Project and capacity on the Concord Lateral (the TGP Option). This means that the scope and issues in this proceeding remain the same. The key change is the Company's conclusion about which option would be prudent to move forward based on new information, but this does not change the analysis performed by the Commission and will require consideration of the complete record in this proceeding. Staff specifically asserted that in its testimony that "[d]evelopment of more data and analysis about *both the Granite Bridge Pipeline and Concord Lateral alternative* were necessary to permit a fully-informed decision between them."<sup>23</sup>

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<sup>22</sup> See CLF Opposition at 9 (arguing that the Commission should allow robust discovery on the Company's amended proposal). The Company does not object to additional discovery in this docket. Granting EnergyNorth's Motion will allow parties to this proceeding to benefit from the discovery already conducted and build on same; this will allow a more complete record to conduct an evaluation of all alternatives available to meet EnergyNorth's established need.

<sup>23</sup> Testimony of Liberty Consulting Group filed on behalf of Staff at 27 (September 13, 2019) (emphasis added).



For example, the Company’s supplemental filing accompanying the Motion discusses certain trade-offs associated with selecting the TGP Option over the Granite Bridge Project (*e.g.*, the TGP Option cannot accommodate growth in the towns of Epping, Raymond, and Candia, and selection of the TGP Option does not provide the increase in resiliency and diversity to EnergyNorth’s portfolio facilitated by the Granite Bridge Project). Additional details regarding these considerations are already in the record in DG 17-198. It is not clear why the parties responding to the Motion are proposing to open a new docket when the analysis conducted in this docket is directly relevant to the amended petition and a determination by the Commission regarding the TGP Option. The Commission should reject the proposal to open a new docket in the interest of administrative efficiency. Moving forward in this docket will also allow for consideration of Calpine’s concerns regarding service on the EnergyNorth-owned Granite Ridge Lateral.

### **III. Granting the Motion Will Not Deprive Interested Parties of Adequate Notice**

CLF argues that the Commission’s rules preclude amendment of the Petition because the title of the docket will prevent adequate notice to interested parties.<sup>24</sup> CLF suggests that the reference to the Granite Bridge Project in the docket title means that consideration of any other system upgrades is beyond the scope of this proceeding.<sup>25</sup> This argument is nonsensical and not supported by the procedural history of this docket. It is the duly published, Commission-issued Order of Notice that governs the scope of this docket, not the title.<sup>26</sup> Calpine’s petition to

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<sup>24</sup> CLF Opposition at 8.

<sup>25</sup> CLF Opposition at 3 (arguing that “[t]he title of the docket, as established in the Initial Petition, indicates that the Amended Petition is outside the scope of the instant proceeding”).

<sup>26</sup> As quoted in the motion, *and not even referenced by Staff or CLF*, the Order of Notice states: “These issues embrace, but are not limited to, the question of whether Liberty reasonably investigated and analyzed its long-term supply requirements and the alternatives for satisfying those requirements.” February 8, 2018, Order of Notice at 2.

intervene in response to the amended petition is evidence that interested parties are not confused by the title of the proceeding.

Further, the title of a proceeding often does not encompass all issues under consideration. Again, it is the Order of Notice that lists the issues to be addressed. For example, the title of a base distribution rate case would not list all issues before the Commission. Here, the first half of the title of this proceeding is “Petition to Approve Firm Supply and Transportation Agreements” without specifying the counterparties to such agreements. This is not uncommon and also easily allows for this docket to add the Company’s request for approval of an additional transportation agreement, *i.e.*, the TGP agreement. Thus, even if the Commission accepts CLF’s argument that a proceeding title must reference all issues before the Commission, there is nothing in the title of this docket to preclude the Motion.

There is also nothing prohibiting the Commission from simply amending the title of this proceeding to include specific reference to the TGP Option.<sup>27</sup> The Company is not opposed to an additional notice period and if the Commission were to determine that additional notice is warranted based on the amended petition, it could easily amend the title of this proceeding for inclusion in any such additional notice. CLF’s argument that any subsequent notice would be inadequate based on the *title* of this proceeding ignores the Order of Notice and this very simple fix and instead spends pages of its opposition attempting to create obstacles and distractions to the Motion that simply do not exist.

Lastly, CLF’s arguments on these issues seems to confuse the purpose of this proceeding with the theoretical, and unnecessary, review by a siting authority. The new TGP Contract will

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<sup>27</sup> Such a revised title and/or supplemental notice in this proceeding could also reference the Company’s request for consideration of authority to recover the costs associated with the Granite Bridge Project. Staff Response at 4, para 24 (stating that the initial order of notice did not contemplate a request to consider cost recovery).

not trigger any siting review because TGP can provide EnergyNorth with the capacity called for in that contract without having to perform any upgrades of the Concord Lateral. No siting approval is required. Also, the distribution projects EnergyNorth will have to complete to optimize the new capacity comfortably fall outside the jurisdiction of the New Hampshire Site Evaluation Committee. Therefore, CLF's references to the impacts of the TGP Option to individuals and communities in the geographic area of the TGP Concord Lateral are not relevant. The TGP Contract requires no construction on the existing Concord Lateral and thus there will be no subsequent proceeding. As a result, CLF's arguments regarding notice are not persuasive and should be disregarded by the Commission.

**IV. The Company's Request to Recover the Costs Associated with the Development of the Granite Bridge Project is Based on Facts to be Evaluated by the Commission and is Not Precluded by Statute**

Staff argues that the Company's request for the authority to recover the costs incurred to investigate the Granite Bridge Project through its cost of gas adjustment is precluded by statute and adverse to Commission policy. However, contrary to Staff's arguments, the statute does not apply here and there is a strong policy argument in favor of granting EnergyNorth's request because: (a) the costs were necessarily incurred and created leverage for the Company in negotiating a new contract with TGP on favorable terms; and (b) approval of this cost recovery will create a regulatory environment where companies are appropriately incentivized to pursue the least cost option for their customers.

Staff opposes the Company's request for authority to recover these costs based on two arguments: (1) that the costs are precluded by RSA 378:30-a, a statute that prohibits cost recovery for construction projects until such projects are completed (sometimes referred to as the anti-CWIP statute); and (2) that the initial petition in this proceeding did not contemplate Commission

review of costs associated with the Granite Bridge Project.<sup>28</sup> Staff seeks to have the Commission predetermine these issues before assessing all of the facts and the Company's legal position. EnergyNorth disputes both of these arguments and respectfully requests Commission review of these issues as part of this proceeding.<sup>29</sup>

As acknowledged by Staff, and explained in the Company's supplemental testimony filed with the Motion, the costs incurred for analysis of the Granite Bridge Project were engineering, environmental, and related costs (permitting, consulting, legal and the like).<sup>30</sup> In relation to the TGP Option, these costs are not construction costs.<sup>31</sup> The Company has specifically *not commenced construction* of the Granite Bridge Project because it has been determined that the TGP Option is the more prudent option based on the updated analysis presented with the Motion. Therefore, by the plain language of the statute cited by Staff, recovery of these costs is not precluded because the Granite Bridge Project did not progress to a point where it became a construction project, but were necessarily incurred as part of the Company's alternatives

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<sup>28</sup> Staff Response at 4, paras. 23 and 24.

<sup>29</sup> The Company also disagrees with Staff's suggestion that if the Company wishes to pursue recovery it should do so in a rate case (see Staff Response at 4). The support for recovery of these costs is appropriately included with the request for approval of the TGP Option because the actions taken by EnergyNorth to incur these costs fall within the scope of this docket ("whether Liberty reasonably investigated and analyzed its long-term supply requirements and the alternatives for satisfying those requirements") and led to the favorable TGP Option. It would be inefficient to approve the TGP Contract in this proceeding but delay consideration of the Granite Bridge Project analysis costs to a future rate case.

<sup>30</sup> Staff Response at 2, para. 25; see also Second Supplemental Testimony of Francisco C. Dafonte and William R. Killeen at 32 (July 31, 2020).

<sup>31</sup> The costs are also not the costs to "*litigate* the Granite Bridge petition." See Staff Response at 7, para. 37 (emphasis added). This seems to imply that the Company is simply seeking reimbursement for any costs associated with this docket and that is simply untrue. However, Staff's reference to the costs as "litigation" costs undermines its own argument that these costs are precluded from recovery as construction costs. Litigation costs are very different from construction costs and thus, Staff's Response highlights the need to grant the Company's Motion and move forward with consideration of EnergyNorth's proposal in this proceeding.

analysis.<sup>32</sup> Staff seems to acknowledge this fact by referring to the costs as the “costs to litigate the Granite Bridge project,” and not the costs to “construct” the project.<sup>33</sup>

It is also incorrect for Staff to suggest that the Company is attempting to recover the costs associated with a canceled project when it was continuing to gather additional data for analysis of the project; this additional analysis is consistent with a utility’s obligation to prudently investigate its future capacity options, and is also consistent with the recommendations of Staff in this proceeding.<sup>34</sup> Thus, contrary to Staff’s assertion, denial of the Motion would create an “unfortunate precedent” pursuant to which a utility would be penalized for remaining vigilant by performing updated cost analyses prior to commencing construction of an infrastructure project. The precedent suggested by Staff appears to be contrary to its concerns regarding project planning and management. In order to achieve the level of analysis desired by Staff, the Company had to incur certain costs. The Company should not be denied cost recovery simply because it was able to reach a more favorable agreement with TGP after these other costs were incurred.

The Company’s position is consistent with Commission precedent, despite Staff’s assertions to the contrary. Staff is correct that the precedent cited by the Company in its supplemental testimony is not identical to the facts here;<sup>35</sup> specifically, there is no contract

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<sup>32</sup> The Supreme Court of New Hampshire has confirmed that the language of the anti-CWIP statute should be interpreted based on its plain language, and stated that a company “constructs or owns physical plants and uncompleted physical plants are what the statute must mean by ‘construction work in progress.’” Appeal of Public Service Co. of New Hampshire, 125 N.H. 46, 54; 480 A.2d. 20, 25 (1984). The Supreme Court applied this analysis to reject the argument made by the utility seeking cost recovery (Public Service Company of New Hampshire) that “construction work in progress” referred to the accounting definition of the term, *i.e.*, balances of work orders for plant in process of construction, because utilities do not own work order balances. Id. Here, the costs of data gathering and associated analysis would similarly not be considered “costs of construction” under the plain language of the statute and common understanding of “construction.”

<sup>33</sup> Staff Response at 7, para. 37.

<sup>34</sup> Testimony of Liberty Consulting Group, on behalf of Staff, at 29 (September 20, 2019) (arguing that the information secured by the Company was too preliminary to support a Commission decision on the Granite Bridge Project versus a TGP option).

<sup>35</sup> Second Supplemental Testimony of Francisco C. Dafonte and William R. Killeen at 38-39 (July 31, 2018) (discussing a contract termination that resulted in net benefits to customers even when termination fees were

termination clause at issue (and because the precedent involved a contract, there would not have been any decision implicating the Anti-CWIP statute). However, the Company's cost recovery proposal is based on the same policy considerations.

A utility should be afforded cost recovery for termination costs (contract or development) when incurring such termination costs results in net benefits to customers. Here, the Company has incurred costs to develop its Granite Bridge Project analysis but now, due to changed circumstances, it was able to achieve customer savings by ceasing its work on the Granite Bridge Project in favor of moving forward with the TGP Option. These benefits to customers accrue even when the costs of the Granite Bridge Project are taken into account. The only reason to reject the Company's request for cost recovery would be if it were prohibited under the Anti-CWIP statute, but such statute only applies to construction costs and the Company has not commenced construction.

Recovery of the costs is further warranted because the costs incurred to investigate the Granite Bridge Project are directly tied to the savings achieved through the TGP Option. This is because pursuit of the Granite Bridge Project created leverage for the Company to negotiate a more favorable agreement. As explained above, the Concord Lateral is the pipeline serving nearly all of EnergyNorth's service territory; this near-monopoly gives TGP the "upper hand" in negotiations between the parties because TGP knows that EnergyNorth has limited options. Staff attempts to undercut the negotiating position that Granite Bridge afforded the Company by referring to a newspaper article discussing the increased capacity available on the TGP system that was not available at the time EnergyNorth filed its initial petition.<sup>36</sup> Regardless of the

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recovered from customers).

<sup>36</sup> Staff Response at 2, fn. 1. Staff's Response states that the Company is supporting the TGP Option based on "a decision of a key customer of TGP not to renew its existing long-term contract" and cites to a newspaper article. Staff Response at 2, para. 7. This statement is not supported by the Company's Motion; the

contracting strategy of a “key customer” of TGP, absent the Granite Bridge Project there would be no motivation for TGP to offer a lower price option to the Company if TGP was under the impression that EnergyNorth lacked alternatives. TGP was on notice that the Granite Bridge Project was a viable option for meeting its incremental capacity needs. This circumstance ensured that TGP would submit a competitive offer to the Company. As noted, the Company’s work to evaluate the Granite Bridge Project was instrumental in the outcome of achieving the TGP Contract.

Lastly, Staff argues that the length of this proceeding is evidence that the Granite Bridge Project would not have been approved, but this argument is speculative at best. Staff’s testimony in this proceeding suggested that additional analysis was warranted and the Company agreed to undertake such analysis. TGP had no guarantee that additional analysis would be unfavorable to the Granite Bridge Project or that the Commission would not approve the Granite Bridge Project at the end of this proceeding. The Commission is the ultimate decision maker and the Commission is under no obligation to accept the recommendations of Staff if the record supports a different outcome. Based on the foregoing, the Company has presented reasonable arguments in support of its request for cost recovery that should be considered by the Commission.

## **V. Conclusion**

As demonstrated in the Motion and this sur-reply, the merits of the Company’s amended petition should be addressed in this docket. The issues presented in the amended petition are squarely within the scope of this docket and build upon the substantial foundation of discovery and testimony already completed in this docket. The objections rely on legal and factual assertions that are incorrect and serve to highlight that the Motion presents important

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Company’s decision to enter into an agreement with TGP was based on TGP’s revised pricing.

information for the Commission to evaluate for its ultimate determination in this docket. The most efficient process for the Commission is to allow the Motion and review of the proposed TGP Contract in this docket as the most viable and reasonable alternative to meet the needs of EnergyNorth customers. This analysis necessarily requires comparison to the Granite Bridge Project. For these reasons, the Commission should grant the Motion and consider the amended petition in this docket.

Respectfully submitted,

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A LIBERTY UTILITIES

By its Attorney,



Date: August 19, 2020

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**Certificate of Service**

I hereby certify that on August 19, 2020, a copy of this sur-reply has been electronically forwarded to the service list in this docket.

A handwritten signature in black ink, appearing to read "M. Sheehan", is positioned above a horizontal line.

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Michael J. Sheehan