STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

Distribution Service Rate Case

REPLY BRIEF OF LIBERTY UTILITIES IN SUPPORT OF RECOVERY OF COSTS RELATED TO THE GRANITE BRIDGE PROJECT

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty ("EnergyNorth" or the "Company") submits this reply brief to the New Hampshire Public Utilities Commission (the "Commission") in support of its request to recover a portion of the costs incurred to assess the feasibility of the Granite Bridge Project (the "Granite Bridge Project Costs") as the least-cost solution to meet the long-term capacity requirements of EnergyNorth customers. This reply brief is submitted in accordance with the briefing schedule established by the Commission at the June 8, 2021, evidentiary hearing, and responds to various claims contained in the briefs filed on June 25, 2021, by the Staff of the New Hampshire Public Utilities Commission ("Staff") and the Office of the Consumer Advocate ("OCA").

I. Overview

As explained below, both Staff and OCA seek to convince the Commission that the plain language of RSA 378:30-a categorically bars the Company's request to recover the Granite Bridge Project Costs. However, this is not correct. Staff and OCA propose their own interpretations of the statutory provision that are inherently inconsistent with the clear direction provided by the New Hampshire Supreme Court (the "Court"), which has already construed the plain language of RSA 378:30-a.

In construing the statutory language, the Court rejected a reading of the term "construction work in progress" as referring to "total balances of work orders," stating that "the statute does not use 'construction work in progress' in a technical accounting sense." Under the circumstances of this case, this is a critical distinction given the suppositions put forward by Staff and OCA regarding the alleged prohibition on recovery. Rather than relying on accounting constructs as argued by Staff and OCA, the Court found that a company "constructs and owns physical plants, and uncompleted physical plants are what the statute must mean by 'construction work in progress.'" There is no interpretation of the statutory terms put forth by Staff or OCA that adheres to, or validly distinguishes, the Court's reading of the statute. Therefore, the proposition that the recovery of the feasibility study costs is barred by law as constituting "construction work in progress" is legally wrong under New Hampshire law.

Staff and OCA offer a number of other, non-legal arguments contesting recovery of the costs in question. However, the opinions voiced by Staff and OCA arise from premature, reflexive conclusions that the Granite Bridge Project was not the correct strategy for solving the Company's capacity shortfall and that the project would not have been prudent if it had moved forward. Moreover, these opinions are thoroughly colored by the fact that a lesser cost alternative materialized for customers, obviating the need for New Hampshire to make hard choices about how customer requirements on the coldest days could or would be met in the future. The Company does not have the luxury of waiting for resource alternatives to fall from the sky. Instead, the Company has a fundamental obligation to identify and assess alternatives and to plan for the future so that the needs of customers <u>are met without fail</u> on those coldest days.

EnergyNorth's activities to evaluate Granite Bridge were in the best interest of customers, ultimately positioning the Company to take advantage of a lower-cost capacity contract from Tennessee Gas Pipeline Company, LLC ("TGP"), which subsequently became available. The

costs at issue are the costs of that necessary process. If the lower-cost TGP capacity had not materialized – and the Company had not moved forward with its feasibility assessment of the Granite Bridge Project – the Company would not have met its obligations to customers. In the absence of the TGP capacity, inaction by the Company would have left the Commission *with no alternatives for meeting customer need*, which is an untenable result given that options did *potentially* exist.[1] Thus, the issue is not whether the Granite Bridge Project would have been prudent if it had moved forward (as the Staff and OCA argue), but rather whether it was necessary for the Company to take action (and incur cost) to establish a viable alternative to the TGP offerings in 2016-2017, and whether the Company should have the opportunity to recover costs that it reasonably incurred in fulfilling its obligations as a gas utility responsible for assuring gas deliverability on the coldest days. The Company should have that opportunity because it worked diligently to fulfill its obligations to customers in the only way that was possible under the circumstances known at the time.

Staff and OCA also argue that the Company's proposal is not supported by the Commission's precedent in Docket No. DG 99-050 related to analogous costs incurred by Northern Utilities, Inc. ("Northern Utilities"), which the Commission allowed for recovery, and that granting the Company's request would set a bad policy. Although there are certain distinctions in the Northern Utilities case, the core result in that case was that the utility incurred and was allowed to recover costs from customers that were for the *identical* core purpose as the Granite Bridge Project Costs, albeit through a contractual relationship instead of direct cost incurrence.

[1] The Commission's approval of the NED contract in 2015 acknowledged the Company's design-day capacity shortfall and deemed it prudent for the Company to enter into a contract for a "to-be-built" project. In fact, Granite Bridge would have been a lower cost option than NED ([redacted]/Dth v $0.64/Dth). As a result, the conclusion that there would have been no basis for the Company to move ahead with the Granite Bridge Project is a premature, reflexive perspective easily arrived at now that a very attractive, least-cost option has materialized. In the absence of this least-cost option, hard choices would have had to be made about serving New Hampshire customers and, in that context, there is a strong potential that the Granite Bridge Project would have been the foremost viable option to serve customer load.

As explained below, allowing the Company to recover these costs would be consistent with the Commission's regulatory policy in that it would be supportive of, and align with, the Company's obligation to pursue least-cost resources to serve customers.

Lastly, OCA offers its own "inferences" of events in support of its claim that, even if the Granite Bridge Project Costs are not barred by statute, the costs were not reasonable and should not be allowed in rates. As explained below, OCA's inferences are not supported by record evidence. In fact, OCA's inferences are contrary to evidence that shows the Company was acutely aware that time was running out to meet the incremental need for design day capacity and had worked hard to develop the cost and feasibility analyses necessary to prove out an alternative solution to the Commission. Throughout the entire process, the Company acted solely in the best interest of customers to find the least-cost resource. This is demonstrated by the fact that, as soon as a less expensive resource became available through TGP in October 2019, the Company stopped its work on the Granite Bridge assessment and pursued the TGP alternative for customers, ultimately reducing TGP's revised cost of ██ million per year to just $2 million a year.

The Company addresses Staff's and OCA's arguments in more detail below. The Company has made a reasonable request to the Commission to allow recovery of approximately $7.5 million of the $9.1 million incurred by the Company to undertake feasibility studies and engineering to develop an alternative solution to the high cost TGP capacity option. The Company's request is consistent with the plain language of the statute, is consistent with the law as interpreted by the Court, and sound public policy. Staff and OCA have not offered any persuasive arguments to the contrary that the Company should be denied recovery of costs it incurred to meet its unabated obligation to assure the delivery of gas supply to customers on the coldest days of the year at the least possible cost.

II. Response to Staff and OCA

A. The Plain Language of RSA 378:30-a and New Hampshire Case Law Do Not Bar Recovery

Staff argues that the Granite Bridge Project Costs "fall within the anti-CWIP prohibition of RSA 378:30-a, and the statute is clear on the prohibition of recovery through ratepayers of any such costs associated with the construction of a project that is not actually in service" (Staff Br. at 5). Similarly, OCA argues that recovery is "absolutely precluded" by the statute and that the plain meaning bars recovery (OCA Br. at 2, 4). OCA offers its own parsing of the sentences of statute (OCA Br. at 4), notwithstanding the Court previously provided clear direction on the statutory language and plain meaning of each sentence.

Although Staff recognizes Appeal of Public Service Company of New Hampshire, 125 N.H. 46, at 52, 480 A.2d. 20 (1984) ("PSNH") as the "seminal New Hampshire court decision" on RSA 378:30-a (Staff Br. at 5), Staff does not provide any analysis of the case in relation to the Granite Bridge Project Costs. Staff merely observes that PSNH "pertains to a project that was approved by the commission but subsequently abandoned by the utility and never put into service" and that in contrast, "the Granite Bridge proposed project was never approved – in fact, it was withdrawn by the Company before it reached the Commission for consideration" (Staff Br. at 5). Staff does not address the main import of the case, which is found in the Court's statutory interpretation of RSA 378:30-a, and the term "construction work in progress." Yet, notably, this is the precise basis by which Staff claims that the costs are barred.

Similarly, OCA argues that PSNH bars recovery because "Granite Bridge was not, and will never be, completed – and, therefore, Energy North's investment in Granite Bridge is likewise a ""cost "associated"' with 'uncompleted construction work' that is forever barred from inclusion in rates" (OCA Br. at 8). OCA reluctantly concedes that because physical construction of Granite

Bridge never commenced, a "slavishly literalist gloss on Justice Souter's words could lead to the result that Energy North desires," which in OCA's view would be an incorrect interpretation of PSNH (OCA Br. at 8). On the one hand, OCA argues for the Commission to make its own interpretation of the "plain meaning" of R.S.A. 378:30-a without regard to the Court's determination, and on the other hand to dismiss the "plain meaning" of the Court's words as "literalist gloss" because it does not suit OCA's desired outcome.

Contrary to Staff's and OCA's assertion, the significance of PSNH to the issue currently before the Commission does not turn on whether the Granite Bridge Project was "approved" by the Commission. The significance of the PSNH decision is that the Granite Bridge Project Costs do not constitute construction costs, as interpreted by the Court, because the project never progressed to the point of "physical" construction – not even to the earliest stages of a filing for siting approval by the New Hampshire Site Evaluation Committee. It stands to reason that the Granite Bridge Costs cannot be classified as construction work in progress if there was not any actual "construction" ongoing for the Granite Bridge project, which is precisely the determination that the Court made in PSNH. This is a fact that cannot be overcome. Therefore, the costs are not barred for recovery by R.S.A. 378:30-a.

As the Company explained in its initial brief, the Court thoroughly addressed the application of R.S.A. 378:30-a. in PSNH and construed the precise language of R.S.A. 378:30-a at issue in this proceeding. R.S.A. 378:30-a precludes recovery of construction costs associated with projects that are not completed and/or projects that are abandoned without completion. The statute is specific to "construction" costs. It does not preclude recovery of costs a utility may incur to plan for and assess projects and resources needed to serve customers. 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.

R.S.A. 378:30-a (emphasis added).

The issue before the Court in PSNH was whether R.S.A. 378:30-a precluded recovery of "investment in plant abandoned before completion of construction." PSNH, 125 N.H. at 53. The Court held that the statute "does not use 'construction work in progress' in a technical accounting sense," which would mean "'balances of work orders for electric plant in process.'" Id. The Court explained:

> The text of the statute is simply inconsistent with this reading. If the statute used the term to mean a balance of work orders, its first and third sentences would forbid the basing of rates on the "cost" of the balance of work orders. A balance of work orders records or represents a cost, and it would be pointlessly redundant for the statute to speak of a cost of a cost. Still less would it make sense to speak, as the third sentence does, of the costs of CWIP as including the costs of "constructing" or "owning" construction work in progress. A company does not construct or own a balance of work orders. It constructs and owns physical plants, ***and uncompleted physical plants are what the statute must mean by "construction work in progress***."

Id. (emphasis added.)

The Court held that the statute uses "'construction work in progress' to refer to the physical plant" and "construction work" in its "common sense referring to a physical structure." Id. at 54. The reading of the statute thus would "fall beneath the customary presumption that the legislature does not waste words or enact redundant provisions." Id. (citing Appeal of Village Bank & Trust Co., 124 N.H. 492, —–, 471 A.2d 1187, 1188 (1984); Blue Mountain Forest Ass'n v. Town of Croydon, 117 N.H. 365, 373 A.2d 1313 (1977)).

Moreover, the Court's precise interpretation of individual terms used within R.S.A. 378:30-a defeats any claim by OCA that the "legislative history" of RSA 378:30-a is something the Commission "could consider" in its analysis (OCA Br. at 4). OCA opines that this is a proper exercise when statutory language is ambiguous or subject to more than one interpretation (id.). OCA is incorrect for two reasons. First, OCA's reminiscences do not constitute "legislative history." Although entertaining, OCA's reminiscences are merely OCA's retelling of past events, including the "musings" of a Washington Post columnist (OCA Br. at 6), which are entirely outside of the evidentiary record and provide no reliable or probative information that would be relevant to the Commission's analysis.

Second, and most importantly, the Court has definitively interpreted the plain meaning of the statute and found *no ambiguity in the statutory language*. Appeal of Public Service Company of New Hampshire, 125 N.H. 46, at 52, 55, 480 A.2d. 20 (1984). "Since we have reached these conclusions without finding any ambiguity in the applicable provisions, we have no occasion to look to legislative history as an aid to statutory construction." Id. Thus, the Court found no ambiguity in the statute and did not resort to legislative history to glean a different interpretation as applied to the Granite Bridge Project Costs. Accordingly, this path would be improper for the Commission in rendering a decision on the applicability of the statutory language in this case.

In fact, PSNH is directly applicable to, and dispositive of, the issue presently before the Commission, which is recovery of the Granite Bridge Project Costs. As a matter of law, the Granite Bridge Project costs were not construction costs and are not barred for recovery by R.S.A. 378:30-a. Because the Court has previously interpreted the specific application of R.S.A. 378:30-a, a decision rendered by the Commission in this case that applies the statutory provisions in a manner inconsistent with that decision would be legally invalid. Neither Staff nor OCA have provided the Commission with a sound legal basis for applying the statutory terms in the manner

for which they advocate. Therefore, the Commission should find that there is no legal bar to recovery.

B. The Accounting Treatment of the Granite Bridge Project Costs Supports Cost Recovery

Staff asserts that the Granite Bridge Project Costs "were not general planning costs" and are barred from recovery because "had this project progressed to the point of Commission approval in DG 17-198, these same costs ***would have been charged to*** [FERC Account 107] Construction Work in Progress" (Staff Br. at 5) (emphasis added). At hearing, Staff conceded that the project had not reached a point where the costs were actually recorded as CWIP: "Liberty agrees that these costs *would have* been booked as CWIP had Granite Bridge -- *had the Granite Bridge Project progressed further*" (June 8, 2021, p.m. Tr. at 17) (emphasis added). Similarly, OCA argues that the costs are barred from recovery because the costs eventually "would have [been] capitalized as part of a completed project" (OCA Br. at 4, 9). This demonstrates the faulty logic in Staff's and OCA's position, arguing that the costs should be considered CWIP when Staff admits that the project had not reached a point where the costs were recorded as CWIP.

The Company explained in its initial brief that the Granite Bridge Project Costs total $7,489,309 and are comprised of six categories of expenses: Engineering, Environmental, General Consulting, Commission Related, Internal Labor, and Land. (Exh. 9 at Bates 002). The large majority of these costs ($7,092,154) were booked to Account 183, which is entitled "Preliminary Survey and Investigation Charges." (Exh. 9 at Bates 004). Costs booked to this account are not "construction costs." The Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts for natural gas companies describes the purpose of Account 183 as the account "charged with all expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of utility projects under contemplation, other than the acquisition of

land and land rights to provide a future supply of natural gas." The account is also used for the "costs of studies and analyses mandated by regulatory bodies related to plant in service."[2]

Staff and OCA arguments on this point hinge on their belief that the costs are barred from recovery because these costs "would have been capitalized (i.e., booked to plant), had the project been completed" and that "[i]f the costs had been booked as plant, then recovery should be barred by the anti-CWIP statute" (Staff Br. at 6; OCA Br. at 9). However, Staff concedes that "*planning costs (i.e., pre-plant) are not barred from recovery because they are more akin to on-going administrative expenses than construction costs*, but that is not what we are dealing with here" (Staff Br. at 6). In fact, that is *exactly* what we are dealing with here. The Granite Bridge Project Costs were necessary for the investigation, evaluation, and assessment of the Granite Bridge Project, consistent with the Company's resource obligations.

C. Cost Recovery is Consistent with Sound Regulatory Policy

Staff also argues that allowing recovery of the Granite Bridge Project Costs would set a bad precedent and would not be sound regulatory policy, citing the Company's testimony that denying cost recovery would create a disincentive and that allowing cost recovery would provide an incentive for the Company and other utilities to pursue least-cost resource options (Staff Br. at 7). Staff claims that "no such incentive is needed because that result - least cost integrated resource planning - is required by statute of all public utilities under RSAs 378:38 and: 39" (Staff Br. at 7). Staff does not address (or counter) the point that the Company has a responsibility to fulfill its core obligations as a natural gas distribution company to assure the delivery of safe and reliable natural gas service to customers, particularly on the coldest days of the winter season, nor that the Company was diligently striving to do so. Similarly, OCA argues that because natural gas utilities

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[2] The Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act is available at: https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=054f2bfd518f9926aac4b73489f11c67&rgn=div5&view=text&node=18:1.0.1.6.46&idno=18

are required by statute to seek least-cost options, the terms of RSA 378:38 and :39 are "incentive enough" (OCA Br. at 18).

These arguments are fundamentally flawed because, if it is true that the Company is statutorily required to investigate resource alternatives as part of its duty to engage in least-cost resource planning, then the argument that costs of fulfilling that obligation are not reasonably incurred is baseless. Conversely, if investigation of least-cost resource options is classified as a non-recoverable cost (CWIP), as argued by Staff and OCA, then prudent utilities would not incur such costs. The obligation and the cost go together. If a lower cost resource alternative did not materialize, the Company's obligation would still exist and the Granite Bridge Project would be the alternative on the table for consideration and development subject to regulatory and permitting approvals.

Thus, Staff and OCA argue around the main point, which is that the Commission's regulatory policy should align with the Company's least-cost planning responsibilities. The Company has an obligation to customers to do everything it reasonably can to meet that need. Under New Hampshire law, gas companies are required to file least-cost integrated resource plans no less frequently than every five years. In those filings, gas companies are required to show that they are adequately forecasting customer demand and compiling a portfolio of supply and capacity resources to deliver gas on the design day (i.e., the coldest day in its forecast). As a result, EnergyNorth is obligated to work diligently to address any resource shortfall so that the needs of customers are met unfailingly on the coldest days. Contrary to Staff's and OCA's claims, allowing the Granite Bridge Project Costs would promote sound regulatory policy by aligning cost recovery with the Company's obligations, and would not penalize the Company for incurring costs in fulfilling these obligations.

D. The Company's Proposal is Consistent with Commission Precedent

Staff and OCA argue that the Northern Utilities involved different circumstances and is inapplicable to the Granite Bridge Project Costs (Staff Br. at 8; OCA Br. at 17-18). The Company addressed this issue in detail in its initial brief. In Docket No. DG 99-050, the Commission approved recovery of contract exit fees incurred by Northern Utilities to essentially abandon a precedent agreement with Granite State Gas Transmission, Inc. ("Granite State") in order to pursue a more favorable peak supply contract with Distrigas of Massachusetts ("DOMAC") that became available after Northern Utilities signed the precedent agreement. See Order No. 23,362, at 3 (December 7, 1999).

In support of its determination that early termination of the agreement with Granite State was in the best interests of customers, Northern Utilities provided a cost analysis that demonstrated a net savings for customers arising from the DOMAC contract. Id. at 6. The net savings were achieved due to the lower cost of the alternative supply options with DOMAC that would be pursued in lieu of the agreement with Granite State, i.e., the alternative supply option was at a lower cost than the original project, even after adding the exit fees incurred by Northern Utilities to terminate its agreement with Granite State. Id. at 11. It is important to note that, similar to Energy North's situation, the DOMAC option was not available as a least-cost option and thus Northern Utilities pursued the least cost alternative for its customer's, e.g. the LNG storage and vaporization service from the Wells LNG project proposed by its affiliate, Granite State.[3]

Here, the Company is similarly seeking to recover costs associated with its investigation of the Granite Bridge Project. EnergyNorth undertook an analysis that is virtually identical to that presented in Docket No. DG 99-050 by Northern Utilities, and pursuant to which the Company's

[3] Northern's precedent agreement was approved by the Commission in Order 81 NHPUC 648 (August 26, 1996).

customers will realize substantial savings from terminating the Granite Bridge Project in favor of entering contracts with TGP (Exh. 14, at Bates 037). EnergyNorth is proposing to amortize the Granite Bridge Costs over a five-year period (id. at 036). Although Staff conceded that Northern Utilities customers paid CWIP associated with its project through the Exit Fee (June 8, 2021, p.m. Tr., at 117), none of the costs in question in this proceeding were recorded to CWIP on the Company's books. Even if characterized as CWIP, however, the record remains clear that the only difference between the Company's request in this proceeding and customer payment of the Exit Fee in Docket No. DG 99-050 would be how the costs are *labelled*, i.e., "Exit Fee" instead of "Survey and Feasibility Costs."

For these reasons, the Staff's and OCA's position regarding the Northern Utilities case is incorrect.

E. OCA's "Inferences" are Not Supported by Record Evidence

OCA argues that "[e]ven if the Commission were to conclude that recovery of Granite Bridge costs is not precluded by RSA 378:30-a, these costs must still be disallowed" because the Company has not met its "burden of establishing the basis for cost recovery" (OCA Br. at 10). OCA draws its own "inferences" of events to support its view that the costs were not reasonable and should not be allowed in rates. OCA's inferences are not supported by record evidence and are largely contrary to record evidence for several reasons.

First, OCA disputes the Company's position that the Granite Bridge Project Costs were necessary to evaluate and demonstrate the feasibility of an alternative to its sole reliance on the Concord Lateral owned by TGP (OCA Br. at 10). OCA observes that "[m]eticulous evaluation of available capital deployment options *are routine operating costs* for electric and natural gas utilities inasmuch as this is precisely the sort of work these companies *must undertake as part of the least-cost integrated resource planning process mandated by RSA 378:37-40*" (OCA Br. at 11-

12). The Company is typically allowed recovery of reasonable operating costs in its cost of service. RSA 374:2. The Granite Bridge Project Costs were incurred as part of the Company's "meticulous evaluation" of options in connection with the least-cost integrated resource planning process. In essence, the OCA's support for its own arguments makes the case for cost recovery of the Granite Bridge costs. In a revealing footnote, OCA appears to recognize the unfairness of its position: "Assuming, arguendo, that the Company did a good job of vetting available supply alternatives, it is still incontrovertible that bad things sometimes happen to good companies" (OCA Br. at 11, fn. 5).

Second, the OCA argues that the Company's actions did not strongly position it or provide leverage in its negotiations with TGP (OCA Br. at 12, 15-16). OCA draws its own inferences, including that EnergyNorth engaged in only "cursory efforts" to obtain price quotes from TGP; investigated no other alternatives beyond the Granite Bridge Project; that any additional review of the project was required by the regulatory process in Docket No. DG 17-198 did not constitute due diligence; that unrelated events caused TGP capacity to subsequently become available to the Company; and that because of these events Energy North was "compelled to abandon" the Granite Bridge Project (OCA Br. at 13-14). OCA's inferences are unfair and not supported by record evidence. The Company addresses these inferences as follows.

1. EnergyNorth Diligently Worked to Solve the Capacity Shortfall for Many Years.

EnergyNorth was acquired by Liberty Utilities (New Hampshire) Corp. in 2012 (Exh. 14, at Bates 009). Since that time, the Company has continued to experience customer growth and increased overall natural gas demand (id. at Bates 009). Based on this growth and increased demand, EnergyNorth determined that it was necessary to acquire additional gas supply and pipeline capacity to meet that demand (id. at Bates 009). EnergyNorth relies on a single feed from TGP for the delivery of gas supply to its service territory in southern and central New Hampshire

(id. at Bates 009). This means that any upstream gas supply option is limited to those that can access the TGP Concord Lateral (id. at Bates 013). As early as 2013, the Company began analyzing various scenarios to meet this identified need (see Exh. 16, at Bates 009).

In 2014-2015, the Company sought and received Commission approval for a precedent agreement with TGP for capacity on the Northeast Energy Direct ("NED") Project, which would have provided EnergyNorth with a second pipeline feed and diversified its upstream delivery infrastructure (Exh. 14, at Bates 009, citing Order No. 25, 822 (October 2, 2015) in Docket No. DG 14-380; see also Exh. 16, at Bates 009-010). In approving the NED Project, the Commission noted that the Company's 2013 integrated resource plan[4] ("IRP") projected a need for 90,000 Dth per day of long-term pipeline capacity. Order No. 25,822, at 11. The capacity to be procured by EnergyNorth on the NED Project included 65,000 Dth of incremental capacity. But for an established need for incremental capacity, it seems unlikely that the Commission would have approved the NED Project (June 7, 2021, Tr. at 89).

2. Cancellation of the NED Project Left the Company with Only Two Viable Options

TGP withdrew its application for Federal Energy Regulatory Commission ("FERC") approval on May 23, 2016, cancelling the NED Project and eliminating this resource option for the Company (see Exh. 14, at Bates 009, citing TGP Notice of Withdrawal in FERC Docket No. CP15-21-000). Following cancelation of the NED Project, the Company initiated due diligence to explore the only two viable options available to meet its customers projected demand requirements: (1) incremental capacity on the existing TGP Concord Lateral, or (2) a Company-sponsored supply and capacity project (id.).

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[4] EnergyNorth's 2013 IRP was approved in Docket No. DG 13-313. See Order No. 25,762 (February 9, 2015). The Company's subsequent IRP was filed in Docket No. DG 17-152 and remains pending before the Commission. The 2017 IRP continues to identify a resource need. See October 2, 2017 Least Cost Integrated Resource Plan filed in Docket No. DG 17-152, at Bates 053.

Over the 2016 to 2017 timeframe, EnergyNorth identified, reviewed, and evaluated the only two available and viable options for incremental capacity to meet customer demand requirements: a contract for incremental capacity on the TGP Concord Lateral and a Company-sponsored capacity and supply project (Exh. 14, at Bates 018). At that time, the TGP Concord Lateral was fully subscribed (id.). Therefore, any request for increased capacity would have required construction of incremental facilities on the Concord Lateral resulting in additional costs and lead time (see id.). The Company's discussions with TGP in the 2016-2017 timeframe explored this scenario for an expansion of approximately 75,000 Dth (id.). These were hardly cursory efforts (see, e.g., June 7, 2021, Tr. at 94-95, 100-01, 115-17; June 8, 2021, a.m. Tr. at 53). At the same time, the Company considered a Company-sponsored LNG option (Exh. 14, at Bates 018-019). Based on cost estimates from TGP, the Company-sponsored project was the least-cost resource with an added benefit of portfolio diversity through addition of a new supply source (see id.). At that time, the Granite Bridge Project estimate was approximately one-half to one-third of the cost of a TGP option (June 7, 2021, Tr. at 23). Pursuit of a more expensive option (the TGP option) without this added diversity benefit would not have been reasonable.[5]

3. The Company Properly Commenced and Conducted a Feasibility Assessment.

In 2017, based on extensive quantitative and qualitative analysis of the best available information at that time, EnergyNorth announced its plans to develop the Granite Bridge Project, comprised of the Granite Bridge Pipeline (to provide additional capacity and a second feed to the EnergyNorth service territory), and the Granite Bridge liquified natural gas ("LNG") Facility (the primary source of supply for the Granite Bridge Project) (Exh. 14, at Bates 010). EnergyNorth

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[5] There were also risks associated with pursuit of an interstate pipeline option. The same risks that ultimately led to the cancelation of the NED Project existed for any required upgrades to the TGP Concord Lateral and were a necessary consideration for the Company (June 7, 2021, Tr. at 30-31). The Company's need is well established and ensuring that the selected option could come to fruition in a timely manner was a factor in EnergyNorth's evaluation.

requested Commission approval of the Granite Bridge Project as the least-cost option to meet its identified need in Docket No. DG 17-198. Through the course of that proceeding, the Company engaged in further analysis through the regulatory process (id. at Bates 019). This additional analysis was recommended by Commission Staff's consultant to inform a final determination on the Granite Bridge Project (versus a TGP option) (see id. at Bates 022). The additional analysis included consideration of a third-party contract to take service from the Granite Bridge Project (to mitigate costs for customers) and updated cost estimates (id. at Bates 020)[6].

This continued evaluation involved significant engineering design and other investigative work necessary to refine the capital costs of the Granite Bridge Project and to support a final determination that the project was the least-cost, long-term solution for customers (Exh. 14, at Bates 010; see also Exhs. 13 and 23). When the Company's resource portfolio with the Granite Bridge Project initially demonstrated a lower cost than the resource portfolio with the proposed capital costs and indicative rates from TGP, the Company continued its investigation and evaluation of Granite Bridge and incurred the associated costs to do so (Exh. 14, at Bates 010). The Granite Bridge Project remained the least-cost option based on continued discussions with TGP; TGP provided cost updates supporting this conclusion as recently as May 2019 (id. at Bates 020).

4. The Company's Activities Assured its Ability to Meet Resource Needs.

These conversations with TGP continued while the Company moved forward with its investigation and evaluation of the Granite Bridge Project. By refining the cost estimates for the Granite Bridge Project while continuing to pursue TGP, the Company assured its ability to meet the resource needs of customers on a timely basis (Exh. 14, at Bates 010). This provided

[6] See also Exh. 14, at Bates 043. Calpine indicated that it was interested in receiving or contracting for a service from the Company.

EnergyNorth assurance that it could meet its identified resource needs using the least- cost option available to the Company. This also positioned EnergyNorth for meaningful negotiations with TGP when additional capacity became available on TGP's lateral (see id. at Bates 011).

On October 16, 2019, EnergyNorth announced that the evaluation of the Granite Bridge Project had been completed, representing a 70% design stage, and that the Company would be issuing a request for proposals based on that design to further refine its capital cost estimate (Exh. 14, at Bates 022). At the same time, TGP offered a significantly lower capital cost estimate for incremental capacity of up to 75,000 Dth per day (id. at Bates 022-023). These rates represented a significant decrease from TGP's prior offers and resulted in a determination by the Company that a TGP option could be competitive with the Granite Bridge Project (id. at Bates 023). The Company continued its discussions with TGP to conduct a complete evaluation of the option (id.).

These continued discussions resulted in lower estimates in December 2019 and January 2020; these lower estimates ultimately supported a conclusion that if these TGP options and prices materialized, then the Granite Bridge Pipeline would no longer be the least-cost delivery option (Exh. 14, at Bates 023). EnergyNorth immediately suspended all discretionary activities associated with the Granite Bridge Project to focus on its assessment of the TGP options (id.). An agreement with TGP was executed on July 14, 2020, for 40,000 Dth per day of capacity (id. at Bates 028-029). Following execution of the TGP agreement, the Company canceled the Granite Bridge Project and withdrew its request for approval in Docket No. DG 17-198 on July 31, 2020.

5. EnergyNorth Could Not Sit Idle While Hoping for a Solution to Emerge.

At the time that the Company began pursuing the Granite Bridge Project, the currently available capacity on the TGP lateral was not available because it was assigned to Calpine through a capacity contract with TGP. Calpine's contract with TGP terminated no earlier than 2021 (Exh. 14, at Bates 043). Although EnergyNorth is not privy to the terms of Calpine's agreement with

TGP, it is the Company's understanding and experience that a typical Firm Transportation Agreement with TGP, or any pipeline, has some form of renewal right subject to negotiations between the contract parties (Exh. 18, at Bates 001-002, Exh. 19). All of the Company's contracts with TGP contain a "rollover" provision that allow for continuation of the contract beyond its initial term and the Company had no reason to believe that a roll-over provision was excluded from Calpine's contract with TGP (Exh. 18, at Bates 001). For these reasons, the Company could not assume that the Calpine contract would not be renewed thereby precluding EnergyNorth from concluding that additional capacity would be available and/or that more favorable contract terms could be offered by TGP.

EnergyNorth's assumption that the Calpine capacity would not become available was further corroborated by its own experience as a supplier to Calpine. The Company provides service to the Calpine facility and during the time that the Granite Bridge Project was under consideration, Calpine was using all gas resources received from EnergyNorth (June 7, 2021, Tr. at 38-39)). Further, as part of the Company's alternatives evaluation EnergyNorth discussed the possible receipt of peaking service from Calpine and Calpine declined this request (id. at 38). Instead, Calpine requested a peaking service on the Granite Bridge Project and signed a memorandum of understanding ("MOU") for such service in 2018 (id. at 38-39; see also Exh. 14, at Bates 043). All of these discussions pointed to a conclusion that Calpine's need was not decreasing, and that Calpine would still require its capacity contract with TGP. Without any projected capacity availability on the TGP Concord Lateral, buttressed by the fact that TGP never offered or made the Company aware that capacity would become available until late 2019, it was reasonable and prudent to move forward with the Granite Bridge Project.

Staff argues that no costs should be allowed for recovery because the Company went forward with the Granite Bridge Project with incomplete analysis, but the Company had to move

forward with the feasibility analysis in order *to achieve* a complete analysis. If the Company had waited to bring the potential Granite Bridge solution to the Commission only once it achieved the 70 percent design, the Company would never have been able to meet the peak needs of customers. The Company has stated repeatedly that these projects take years to build, and the Company could not, in good conscience, wait two to three years to put an alternative solution in front of the Commission.[7]

6. The Company Made Good Faith, Persistent Efforts to Negotiate a Lower Price from TGP.

EnergyNorth reasonably and diligently explored all options available to the Company beginning with the NED Project in 2014 (June 7, 2021, Tr. at 20; see also Exh. 14, at Bates 043). When the NED Project was ultimately canceled in 2016, the Company's need did not disappear. As a result, EnergyNorth continued its discussions with TGP over the course of three years (June 7, 2021, Tr. at 21-24; see also Exh. 14, at Bates 018). At no time between the cancelation of NED and 2019 did TGP offer an option to meet EnergyNorth's incremental need that was not exorbitantly more expensive for customers (June 7, 2021, Tr. at 21-24). As a result, the Company focused on the Granite Bridge Project. At the time that the Company filed for preapproval of the Granite Bridge Project with the Commission in Docket No. DG 17-198, the Granite Bridge Project costs were estimated as less than half the costs of the then-current TGP offering (June 7, 2021, Tr. at 37). Cost estimates favoring the Granite Bridge Project persisted up until the Company reached approximately 70% completion of its feasibility and engineering studies (June 7, 2021, Tr. at 24; see also Exh. 14, at Bates 022-023). In 2019, as EnergyNorth approached 70% completion of its

[7] At the time the Company filed for approval of the TGP NED contract in 2014, the NED project estimated in-service date was 4 years later on November 1, 2018. Moreover, the contract had a cost overrun provision and was approved by the Commission. This supports the fact that the Company needed to submit the Granite Bridge filing promptly not just because of the time it takes to get necessary approvals and construct, but also because feasibility and cost refinement would be ongoing in order to establish a final contract rate.

engineering and feasibility studies, TGP made an offer that was not only significantly lower than its previous offer but also significantly lower than the Granite Bridge Project (June 7, 2021, Tr. at 24, 53, 92; see also Exh. 14, at Bates 022). Specifically, the October 2019 TGP offer represented a 50 percent cost savings for customers on an annual basis versus the Granite Bridge Project (June 7, 2021, Tr. at 37).

The Company did not accept this initial offer from TGP. Consistent with EnergyNorth's efforts since 2013 to procure the least-cost resource available, the Company continued to negotiate with TGP until the parties agreed to a contract with the lowest possible rate that is a fraction of the previously offered price (by TGP) and a fraction of the costs associated with the Granite Bridge Project (June 7, 2021, Tr. at 37; June 8, 2021, a.m. Tr. at 45). The annual costs of the TGP contract represents a remarkable savings for customers and is directly attributable to the Company's efforts (id.). The Company cannot know all of TGP's motivations for offering the contract ultimately agreed to with EnergyNorth. However, it is reasonable to assume that the Company's longstanding resistance to the higher priced alternative and consistent design and feasibility progress on the Granite Bridge Project demonstrated a clear message to TGP that the Company was willing, able and ready to move forward with an alternative resource (June 7, 2021, Tr. at 36). It would be difficult to imagine that a business entity such as TGP would not be highly motivated to find a solution for EnergyNorth, particularly where it was becoming obvious that Calpine *might also have a solution* to its capacity needs through its MOU with respect to the Granite Bridge Project.

Conversely, it is not reasonable to conclude that the Company's actions had no impact, particularly given that TGP's return to the negotiating table with a lower offer came only after the Company reached out and contacted TGP to indicate that it was nearing 70 percent completion of the feasibility work (June 8, 2021, a.m. Tr., at 12). Therefore, the Commission should find the costs were prudently incurred to investigate Granite Bridge because it was at all relevant times the

least cost option to address the Company's needs. Allowing recovery of these costs is therefore warranted and consistent with the Commission precedent from Docket DG 99-050.[8]

7. The Company Appropriately Mitigated the Granite Bridge Project Costs.

EnergyNorth is requesting approval to recover approximately $7.5 million in costs related to the investigation of the Granite Bridge Project (Exh. 14, at Bates 012; see also Exhs. 9 and 13).[9] The Commission's Audit Staff did not find the costs to be unreasonable or imprudent, and based the conclusion that the costs should be disallowed solely on an incorrect reading of the Anti-CWIP statute (Exh. 9, at Bates 016-017).[10]

Prior to filing this request for recovery, the Company reviewed and screened the Granite Bridge Project Costs by applying the following four guiding principles (Exh. 14, at Bates 030): (1) the costs were core expenditures to assess the viability and feasibility of the Granite Bridge Project as a least-cost resource alternative to meet the natural gas demand needs of EnergyNorth's customers; (2) the costs were directly incurred to develop the feasibility assessment with an appropriate level of detail to support the cost estimate for the Granite Bridge Project; (3) the costs were incurred during the identified period; and (4) the costs were reviewed, verified, and approved for payment by authorized personnel (Exh. 14, at Bates, 030-031). Supporting documents

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8 It is also telling that the Commission did not deny cost recovery associated with the Granite Bridge Project in Docket No. DG 17-198 and instead determined that review of these costs was more appropriately considered in a full rate case. Order No. 26,409, at 13. If recovery of the Granite Bridge Project costs were so clearly precluded by the CWIP Statute, the Commission could have so indicated in its Order in Docket No. DG 17-198 in the interests of administrative efficiency.

9 The Company has incurred a total of $9.1 million in costs related to the Granite Bridge Project but is seeking recovery of only $7.5 million (Exh. 14, Bates 011-012). EnergyNorth removed Allowance for Funds Used During Construction, public outreach, and legal and miscellaneous costs related to the planned New Hampshire Site Evaluation Committee filing from its request for cost recovery (id. at Bates 012). The request for cost recovery does also not include carrying costs (id.). EnergyNorth's request for cost recovery is focused on the core costs associated with engineering design, environmental assessments, and other analysis to determine the feasibility of the Granite Bridge Project (id.).

10 Exhibit 9 provides the Commission Audit Staff's review of the Granite Bridge Project Costs. Notably, the recommendation to disallow costs was based on an interpretation of accounting standard. The report does not contest that the costs were reasonable and prudently incurred.

associated with the Granite Bridge Project Costs were reviewed and confirmed by the Company's accounting and auditing departments prior to submission for recovery in this proceeding (id. at 031). Based on these principles, the Company excluded from its request costs related to public outreach, legal work associated with a future filing at the New Hampshire Site Evaluation Committee, and AFUDC (id.).

It also cannot be disputed that the Company ceased its investigation of the Granite Bridge Project upon receipt of the more favorable contractual terms from TGP (see Exh. 14, at Bates 036 (stating that 94% of the costs incurred by the Company were incurred during 2018 through 2019 when indicative rates from TGP were higher than those for the Granite Bridge Project)). EnergyNorth received an offer from TGP that was competitive when compared to the costs associated with the Granite Bridge Project in October 2019 (Exhs. 12 and 20; see also Exh. 14, at Bates 035). Upon receipt of this more favorable offer, the Company suspended most activities associated with the Granite Bridge Project to focus on assessing the TGP options (Exh. 14, at Bates 036). Costs incurred after October 2019 relate to required status reports filed with state agencies and closeout costs (id. at Bates 042).

F. The Company's Efforts Resulted in Substantial Customer Savings

Lastly, OCA argues that customer benefit/savings resulting from the Company's efforts is not an independent basis for recovery (OCA Br. at 16-17). However, the Company presented uncontested evidence that the Granite Bridge Project was the least cost option, and provided substantial reliability benefits, during the time that EnergyNorth incurred the costs at issue here to determine its feasibility. The most recent Granite Bridge pipeline estimates would result in estimated annual costs of $18 million while the TGP pricing for its incremental capacity option through May 2019 were in excess of ██ million per year. These uncontested facts support a determination that EnergyNorth acted prudently by investigating Granite Bridge. Customers

would have realized a substantial benefit from construction of Granite Bridge over the more expensive, and likely infeasible, TGP options to increase capacity on the Concord Lateral.

The after-the-fact emergence of the new TGP pricing as the lowest cost option (██ million per year in October 2019, falling to $2 million per year in the signed 2021 contract) caused the Company to cease work on Granite Bridge. It also should be noted that the $7.5 million requested for recovery by the Company represents over 50 percent of the Company's net income for 2020, *i.e.*, the costs are not insignificant (June 7, 2021, p.m. Tr., at 44). By contrast, amortizing these costs over a five-year period would result in a bill impact of only $6.65 annually for the average customer (June 7, 2021, p.m. Tr., at 42).

Denying recovery of Granite Bridge Costs would result in a particularly unbalanced outcome given the Company's clearly identified resource need and its obligation to reliably serve customers. In fact, given the financial impact, a decision to deny recovery of this amount is a *de facto* penalty, assessed despite the Company's diligent efforts to meet its obligations as a gas company by finding the least cost resource to meet customer demand. Further, a decision to deny recovery of these investigative and feasibility costs would, in effect, deter the Company from pursuing potential least cost alternatives and accept the only option offered by a pipeline to which it is a captive customer. This harsh result is unwarranted and inherently unfair given: (1) the costs were incurred in diligent and good faith pursuit of customer interests; and (2) there is no meaningful or legally valid reason put forth to warrant disallowance of cost reasonable and prudently incurred.

III. Conclusion

For the reasons stated above, the Commission should reject the arguments put forth by Staff and OCA recommending that the Commission reject the Company's request for cost recovery. EnergyNorth incurred these costs to investigate, evaluate, and assess the Granite Bridge Project as a long-term solution for customers, where no affordable alternatives existed. Recovery of these costs through the Local Distribution Adjustment Clause over a period of five years is a reasonable and equitable exercise of the Commission's discretion under its general ratemaking authority given the substantial magnitude of savings that have accrued to the benefit of customers.

Respectfully submitted,
Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a
Liberty Utilities
By its Attorney,

By: ________________________________

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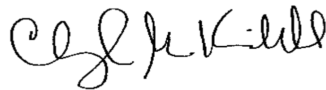

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Certificate of Service

I certify that on June 29, 2021, a copy of this Brief has been electronically forwarded to the service list.

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