

BEFORE THE
STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.

d/b/a LIBERTY

Request for Change in Rates

**DEPARTMENT OF ENERGY'S OBJECTION TO LIBERTY'S MOTION FOR
REHEARING OF ORDER NO. 26,536**

The New Hampshire Department of Energy (Department) respectfully objects to Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Motion for Rehearing of Order No. 26,536. In support of this objection, the Department states as follows:

I. Introduction

1. Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty or the Company) seeks rehearing of Order No. 26,536 (October 29, 2021) (the Order) which denied Liberty's request to recover approximately \$7.5 million related to the Granite Bridge Project (which consisted of a natural gas pipeline and a liquefied natural gas (LNG) tank) finding that recovery of those costs is barred by RSA 378:30-a (the so-called anti-CWIP statute). Order at 6.
2. The Order is based on sound reasoning and is not unlawful or unreasonable. Liberty's Motion brings in no new evidence that could not have presented in the docket, nor does Liberty demonstrate that the Commission overlooked or mistakenly conceived matters in reaching its decision. Therefore, Liberty's Motion must be denied because no "good reason" exists to grant it. RSA 541:3; RSA 541:4; *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,149 at 6 (June 22, 2018); *Dumais v. State*, 118 N.H. 309, 311 (1978). To the contrary, the purpose of this objection is to highlight certain areas where Liberty mistakenly conceives matters

concerning the nature and purpose of the Granite Bridge costs and what the Order actually disallowed for recovery.

3. Liberty's Motion for Rehearing (Motion) argued, among other things, that:

- a. The Commission has not established in the Order that the costs were, in fact, in 'preparation for a construction project,' as opposed to costs incurred to evaluate and assess the cost and viability of one or more project alternatives, which was the case. Motion at 9 (quoting Order at 5);
- b. New Hampshire utilities are required to explore and develop supply and delivery options on a daily basis and the theory that the cost of any viability, feasibility, or design analysis that does not result in completed utility plant is precluded for recovery would not only violate the plain language of the statute but would severely constrain utility planning and engineering efforts, ultimately having a detrimental effect on customers. Motion at 14; and.
- c. [T]aken to its logical conclusion, virtually any action undertaken by a gas or electric utility in advance of construction to assess project alternatives, could be considered construction work in progress and excluded from recovery if a project does not go forward. The Order would set a policy that would discourage gas and electric utilities from investigating and evaluating various resource options to address the needs of customers 'at the lowest reasonable costs.' Motion at 16-17 (quoting RSA 378:37).

4. The Department supports the Order, objects to Liberty's request for rehearing, and provides the following rebuttal to the three above-quoted statements contained in Liberty's Motion.

II. Liberty's Testimony Establishes that the \$7.5 Million in Costs were Incurred in Preparation for a Construction Project

5. Liberty's Motion attempts to construe the \$7.5 million as resource feasibility and assessment costs, or routine planning costs. In its Motion at 6, Liberty states "[t]he Granite Bridge Project costs are limited to costs that were necessary to fulfill the Company's obligation to survey, study, and determine the feasibility of a least costs alternative to meet deliverability obligations to customers." At p. 14, Liberty states that RSA 378:30-a "does not preclude

recovery of costs a utility may incur to plan for and assess the viability of projects and resources needed to meet the public service obligation.” “The costs were necessarily incurred to investigate the viability of capacity and supply resources in fulfillment of the obligation that a gas utility has for assuring adequate gas deliverability on the coldest days.” Motion at 16.

6. In fact, the \$7.5 million in costs were specifically related to the Granite Bridge Project and represented necessary preliminary steps toward the construction of the facilities or, as the Commission phrased its Order, “in preparation for a construction project.” Order at 5. Liberty agreed that \$3.3 million of the costs were properly categorized as engineering costs, and that the \$3.3 million were “incurred to determine the feasibility and cost to potential development of the Granite Bridge Project to comply with all necessary and state and local permitting.” Hearing Transcript (Tr.) 1 at 57. When asked about \$1,736,266 (of the \$3.3 million in engineering costs) paid to CHI Engineering Services, Inc., Liberty stated that those costs were for “preliminary engineering design” in connection with determining “where the pipeline might be able to be sited within the DOT right- of- way ... the actual location of the pipe, where it might best be suited.” *Id.* at 57-58; Hearing Exhibit (Exh.) 9 at 5. Further, when asked about \$1,270,332 paid to Vanasse Hangen Brustlin (VHB), Liberty stated that VHB performed work that “was required in order to determine if the pipeline could pass through sensitive environmental areas along the right-of-way. It was work that had to be done for the New Hampshire Division of Historical Resources.” Tr. 1 at 59- 60; Exh. 9 at 5. Similarly, \$84,042 paid to CHA Consulting for the preliminary pipeline route design, and \$948,440 paid to Sanborn Head and Associates Inc. to design the LNG facility were Granite Bridge Project specific costs. Tr. 1 at 62; Exh. 9 at 5. Finally, Liberty described the \$7.5 million as core development costs, specifically related to the Granite Bridge pipeline and LNG tank, consisting of engineering design, environmental

assessments, and analysis and development work to assess the feasibility and viability of that project. Tr. 1 at 65; Exh. 15 at 12. Just this small sampling of Liberty's testimony demonstrates clearly that the \$7.5 million were incurred specifically to design and site the Granite Bridge Project, which was never put into service, and are not more general planning costs. Tr. 1 at 58-59.

III. The Order Does Not Deny Recovery of Liberty's Planning Costs – Only Costs Specifically Incurred for the Granite Bridge Project, Which Was Never Placed into Utility Service

7. The Order denied recovery of \$7.5 million of costs specifically attributed to the Granite Bridge Project. It did not disallow any other costs Liberty incurred in connection with resource planning. Liberty stated: "The IRP [integrated resource planning] costs were not included in the 9.1, nor the 7.5 [million dollars]. So, they're not part of this proceeding. I can tell you that we expensed those as they're incurred." Tr. 2 (afternoon) at 140. Thus, planning costs are treated as ongoing operation and maintenance (O&M) cost, which are eligible for recovery through test-year based, distribution rate recovery. Exh. 27 at 1.

8. Costs related to the Granite Bridge Project are easily distinguished from ongoing planning O&M if only due to the sheer size of the project. Granite Bridge was estimated to cost \$425 million, which far exceeds the entire rate base Liberty proposed in this distribution rate proceeding. *Compare* Tr. 2 (afternoon) at 12 (Granite Bridge projected to cost \$425,000,000) *with* Exh. 29 at 11, 49 (proposed rate base equals \$356,411,727).

9. Liberty's claims that the Order would: (1) work to preclude recovery of routine planning costs incurred to evaluate options that do not result in completed plant, and (2) constrain legislatively- mandated least cost planning efforts, do not stand as grounds for rehearing. Granite Bridge was unique due to the enormous investment involved, and the costs incurred to

evaluate the feasibility and viability of that singular project are easily distinguished from routine planning costs and were recorded in a separate account. Tr. 1 at 66-67. Further, had Granite Bridge been placed in service, Liberty would have capitalized the \$7.5 million to various plant accounts (Tr. 1 at 68), whereas routine planning costs are expensed. Tr. 2 (afternoon) at 140.

WHEREFORE, the Department respectfully requests that the Commission:

1. Deny Liberty's Motion for Rehearing of Order No. 26,536 (October 29, 2021); and
2. Grant such other and further relief as is equitable and just.

Respectfully submitted,

New Hampshire Department of Energy

By its Attorney,

Date: December 3, 2021

/s/ Paul B. Dexter

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Certificate of Service

I hereby certify that, on December 3, 2021, a copy of this objection has been electronically forwarded to the service list for the docket.

By: */s/ Paul B. Dexter*