

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 20-105

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

Request for Change in Rates

Order Denying Request to Recover Costs Related to the Granite Bridge Project

O R D E R N O. 26,536

October 29, 2021

In this order the Commission finds that RSA 378:30-a bars recovery of the costs related to the Granite Bridge project and denies Liberty Utilities' request to recover those costs.

I. PROCEDURAL HISTORY

On July 31, 2020, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("Liberty") filed a Petition for Permanent and Temporary Rates pursuant to RSA 378:27 and RSA 378:28. The Office of the Consumer Advocate ("OCA") notified the Commission of its intent to participate in the docket by letter dated July 8, 2020. No other parties intervened.

On November 20, Liberty filed a Motion to Amend its petition to include a request for recovery of approximately \$7.5 million in costs incurred to investigate, evaluate, and assess a potential project ("Granite Bridge"), which was to include a liquefied natural gas tank and related gas pipeline. Liberty sought to recover these costs through its Local Distribution Adjustment Clause ("LDAC") over a period of five years.

On May 24, 2021, former staff of the Commission appearing in the docket¹ filed a letter on behalf of the parties informing the Commission that the parties had reached a settlement in principle resolving all issues in the proceeding except for the recovery of costs associated with the Granite Bridge project, which the parties intended to litigate.

On June 30, Liberty filed a proposed settlement agreement, which the Commission approved by order dated July 30.² On a parallel track, the Commission held duly noticed hearings on June 22 and 23 limited to the recovery of costs associated with Granite Bridge. The OCA, Liberty, and Department of Energy (“Energy”) filed post-hearing briefs on June 25. The OCA and Liberty then filed replies on June 29.

Liberty’s petitions and related filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted on the Commission’s website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-105.html>.

II. POSITIONS OF THE PARTIES

A. Liberty

Liberty argues that recovery of the costs associated with investigation, evaluation, and assessment of the Granite Bridge project is not barred by RSA 378:30-a, the anti-construction-work-in-progress (“anti-CWIP”) statute. Brief of Liberty Utilities (Jun. 25, 2021) at 13. Specifically, Liberty asserts that these costs were part of a feasibility study of the Granite Bridge project that occurred before any actual

¹ These positions were transferred to the newly created New Hampshire Department of Energy by legislation effective July 1, 2021.

² On August 24, Liberty sought rehearing, in part, of the July 30 order, which the Commission denied by order dated September 22.

construction work occurred and could not, therefore, qualify as “construction work in progress” under RSA 378:30-a. *Id.*

Liberty further argues that the recovery it seeks here is analogous to the recovery of contract exit fees, which the Commission previously approved in another docket. *Id.* at 16 (citing *In Re N. Utilities, Inc.*, Docket No. DG 99-050, Order No. 23,362 (Dec. 7, 1999) (“*Northern Utilities*”).

Liberty next argues that the Commission should permit recovery of these costs because the costs were incurred reasonably as part of Liberty’s pursuit of the least-cost option for its ratepayers. *Id.* at 17. According to Liberty, its existing gas supplier, Tennessee Gas Pipeline Company (“TGP”), is the only interstate pipeline that reaches New Hampshire, and TGP has taken advantage of its position as Liberty’s sole supplier to extract higher prices. *Id.* Liberty pursued the Granite Bridge project to access a new supplier and use market competition to bring down rates for its ratepayers. *Id.* at 18. Liberty notes that, even though it never completed the Granite Bridge project, it was able to leverage the prospect of the project to bargain with TGP for a new contract at significantly reduced cost (so reduced, in fact, that the newly negotiated contract with TGP ultimately became the least-cost option). *Id.*

B. OCA

The OCA argues that recovery of the Granite Bridge project costs is categorically barred by RSA 378:30-a. Brief of the OCA (Jun. 25, 2021) at 2. It urges the Commission to draw no distinction between costs associated with construction projects that begin but are abandoned and costs associated with investigating and evaluating construction projects upon which no actual construction work has

commenced.³ *Id.* at 7–8. The OCA asserts that the plain language of the statute and its legislative history both support this interpretation. *Id.* at 2–6.

Next, the OCA argues that, even if recovery is not precluded by RSA 378:30-a, the Commission should, nevertheless, deny recovery of those costs because the costs were not prudently incurred. *Id.* at 10–18.

C. Energy⁴

Energy similarly asks that the Commission deny Liberty’s request to recover the costs associated with the Granite Bridge project. Brief of Energy (Jun. 25, 2021) at 5. Energy principally argues that recovery is barred under RSA 378:30-a. *Id.* Even if not barred, however, Energy argues that recovery of these costs is not supported by sound regulatory policy. *Id.* at 7. Finally, Energy distinguishes Liberty’s Granite Bridge project costs from the contract exit fees approved by the Commission in Docket No. DG 99-050. *Id.* at 8.

III. COMMISSION ANALYSIS

A. Legal Standard

The anti-CWIP 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.

³ The parties all agree that under *Appeal of Pub. Serv. Co. of N.H.*, 125 N.H. 46 (1984), costs associated with construction projects that begin but are abandoned prior to completion may not be recovered under RSA 378:30-a.

⁴ As noted above, Staff Advocates for the Commission filed their brief in this docket prior to their transfer to the newly created Department of Energy on July 1, 2021. This order will refer to them as “Energy,” notwithstanding their earlier affiliation to the Commission.

RSA 378:30-a. In interpreting this statute, the New Hampshire Supreme Court has followed its “familiar principles.” *Appeal of Pub. Serv. Co. of N.H.*, 125 N.H. 46, 52 (1984) (“*PSNH*”). Among them are that, “[i]n seeking the intent of the legislature, [the Court] will consider the language and the structure of the statute.” *Id.* (citing *State v. Flynn*, 123 N.H. 457, 462 (1983)). Additionally, the Court must “follow common and approved usage except where it is apparent that a technical term is used in a technical sense.” *Id.* (citing RSA 21:2). Legislative history need be “a guide to meaning only if ambiguity requires choice.” *Id.* (citing *Greenhalge v. Dunbarton*, 122 N.H. 1038, 1040 (1982)). Finally, although the three sentences of RSA 378:30-a speak to roughly similar ideas, the Court concluded that they must each have independent effect and not be redundant to each other. *Id.* at 54.

The court in *PSNH* provided a few additional guideposts in its reading of RSA 378:30-a. First, the Court noted that “[t]he statute does not use the term ‘construction work in progress’ in a technical accounting sense.” *Id.* Next, the court focused its attention on the second sentence of RSA 378:30-a (“At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed.”), noting specifically that it does not use the term “construction work in progress” at all. *Id.* Finally, the Court rejected the idea that construction work can be considered “completed” when it is abandoned. *Id.* at 54–55.

B. Analysis

The feasibility studies that Liberty undertook for the Granite Bridge project are unambiguously costs “associated with construction.” The Commission can identify no other plausible purpose for undertaking these studies and the other actions it took that resulted in the costs at issue except in preparation for a construction project. Specifically, and as acknowledged by Liberty in its own brief, the feasibility studies

and other costs at issue were incurred as part of a plan for construction of a pipeline and liquefied natural gas facility. Brief of Liberty at 7 n.3.

It is also beyond dispute that the construction work in question was never “completed” within the meaning of the statute. The Supreme Court has already rejected the interpretation that “completed,” within the meaning of the second sentence of RSA 378:30-a, means something other than “concluded upon reaching its desired objective.” *PSNH* at 54. The objective of the Granite Bridge project was to provide Liberty with an alternative source of gas to its existing contract with TGP. Brief of Liberty at 7–8. No Granite Bridge project facilities were ever built or put into use. This construction work was, therefore, not completed within the meaning of RSA 378:30-a.

Because the costs associated with the Granite Bridge project were associated with construction work, and because that construction work was never completed, Liberty’s recovery of those costs is barred by RSA 378:30-a.

Numerous of the parties’ arguments do nothing to disturb this conclusion. The parties, for example, ascribe significance to the term “construction work in progress.” As explained by the Supreme Court, this term is nowhere to be found in the second sentence of RSA 378:30-a. *PSNH* at 53. Because the phrase “associated with construction work” in the second sentence of RSA 378:30-a must mean something other than “construction work in progress” in order to read the statute consistently with the presumption against redundancy, *id.* at 54, the parties focus on the term “construction work in progress” is misplaced.⁵

⁵ In this sense, the term “anti-CWIP,” (a term which also appears nowhere in the text of RSA 378:30-a) is also something of a misnomer.

Next, the Commission finds no benefit to inquiring into the technical accounting definition of the term “construction work in progress.” In addition to that term’s absence from the relevant sentence of the statute, the Supreme Court has already definitively ruled that this term is not used in the technical accounting sense. *Id.*

Nor are the parties’ policy arguments on either side persuasive. Regardless of whether the so-called “anti-CWIP” statute encourages or discourages utilities from pursuing novel least-cost alternatives, or whether the public is well served by that incentive structure, the text of the law is clear: costs “associated with construction work” that is “not completed” may not be the basis for a utility’s rates. RSA 378:30-a. Even assuming *arguendo* that Commission found a party’s policy arguments persuasive, it would not empower the Commission to flout the requirements of RSA 378:30-a.

Finally, the Commission’s earlier decision in *Northern Utilities* does not compel a contrary conclusion. RSA 378:30-a is a statute with specific application to costs associated with a utility’s construction projects. The contract in that docket was an agreement between Northern Utilities and its affiliate utility, Granite State Gas Transmission. *Northern Utilities* at *1. Under the agreement, it was Granite State—not Northern Utilities—that planned to construct a liquefied natural gas facility. *Id.* Although Liberty dismisses this distinction, it is important that the construction work in question was not Northern Utilities’ own. Utilities contract with a multitude of entities for a wide variety of purposes unrelated to construction. It is well within the realm of possibility that Liberty has paid, for example, some amount of money to TGP to purchase gas, which TGP used to fund an as-yet incomplete construction project. If RSA 378:30-a also prohibited recovery such attenuated costs as the uncompleted

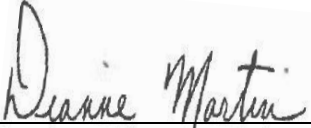
construction work by a utility's contracting partner utility, the result would be unworkable. If RSA 378:30-a is to be applied rationally and practically, it must apply—and apply only—to projects that the utility undertakes or contracts to construct its *own* plant, facilities, and other infrastructure. The *Northern Utilities* docket is, therefore, entirely distinguishable from the present docket.

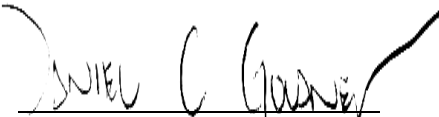
Having concluded that RSA 378:30-a bars recovery of the Granite Bridge project costs, the Commission need not address the parties' arguments regarding the public interest or the project's prudence.

Based upon the foregoing, it is hereby

ORDERED, that Liberty shall not recover through its LDAC the costs it incurred associated with the construction of the Granite Bridge project.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of October, 2021.



Dianne Martin
Chairwoman

Daniel Goldner
Commissioner

Service List

Docket# : 20-105

Printed: 10/29/2021

Email Addresses

ClerksOffice@puc.nh.gov
william.clark@libertyutilities.com
paul.b.dexter@energy.nh.gov
lynn.h.fabrizio@energy.nh.gov
kerri-lyn.gilpatric@energy.nh.gov
Robert.Hilton@libertyutilites.com
maureen.karpf@libertyutilities.com
ckimball@keeganwerlin.com
tklaes@blueridgecs.com
randall.s.knepper@energy.nh.gov
donald.kreis@oca.nh.gov
jayson.p.laflamme@energy.nh.gov
Ian.McGinnis@fticonsulting.com
catherine.mcnamara@libertyutilities.com
jmierzwa@exeterassociates.com
Robert.Mostone@LibertyUtilities.com
steven.mullen@libertyutilities.com
dmullinax@blueridgecs.com
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
jralston@keeganwerlin.com
michael.sheehan@libertyutilities.com
david.simek@libertyutilities.com
karen.sinville@libertyutilities.com
Mark.Stevens@LibertyUtilities.com
heather.tebbetts@libertyutilities.com
dvenora@keeganwerlin.com
david.k.wiesner@energy.nh.gov
jrw@psu.edu

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 20-105

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY**

Petition for Permanent Rates

Order Denying Motion for Rehearing of Order No. 26,536

O R D E R N O. 26,583

February 17, 2022

In this order, the Commission denies Liberty Utilities' motion for rehearing of Order No. 26,536 pertaining to its request to recover approximately \$7.5 million in costs related to the Granite Bridge project.

I. BACKGROUND AND PROCEDURAL HISTORY

In Order No. 26,536 (October 29, 2021), the Commission found that RSA 378:30-a barred recovery of approximately \$7.5 million in costs Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty) incurred related to Granite Bridge, a proposed gas supply project which was to include a new natural gas pipeline and liquified natural gas (LNG) storage, and denied Liberty's request to recover those project costs.

On November 24, 2021, Liberty filed a Motion for Rehearing of Order No. 26,536.

On December 3, 2021, both the Office of the Consumer Advocate (OCA) and the New Hampshire Department of Energy filed objections to Liberty's Motion for Rehearing of Order No. 26,536.

On December 22, 2021, the Commission issued Order No. 26,558, in which it suspended Order No. 26,536 while it considered the merits of Liberty's Motion for Rehearing and the objections.

On January 18, 2022, Liberty filed a letter regarding the Motion for Rehearing.

On January 19, 2022, the OCA filed a letter in response to Liberty's January 18, 2022 letter.

Order No. 26,536, Liberty's Motion for Rehearing of Order No. 26,536, the objections, and related docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at: <https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-105.html>.

II. POSITIONS OF THE PARTIES

a. Liberty

According to Liberty, good reason exists to rehear Order No. 26,536 because it unlawfully denied cost recovery. In support of its position, Liberty argued that Order No. 26,536 is unlawful because it misconstrues RSA 378:30-a and disregards the underlying evidentiary record.

In support of its argument that the Commission misconstrued RSA 378:30-a, Liberty argued that the Commission mistakenly interpreted the second sentence of RSA 378:30-a in isolation and ignored the plain meaning of the statute and the precedent in *Appeal of Pub. Serv. Co. of N.H.*, 125 N.H. 46 (1984) (*PSNH*). According to Liberty, the Commission did not establish that the identified costs were in preparation for a construction project as opposed to costs incurred to evaluate and assess the costs and viability of one or more project alternatives. To this point, Liberty construed the holding in *PSNH* as limiting the statutory prohibition against recovery of

construction work to only the physical aspects of construction, as opposed to pre-physical construction project activities, such as feasibility studies.

In support of its argument that the Commission disregarded record evidence, Liberty stated that the Commission did not address that the majority of disallowed costs were booked in Account 183, titled Preliminary Survey and Investigation Charges.

Finally, Liberty argued that the Commission's distinction between the instant matter and exit fees approved for recovery in Docket No. DG 99-050 was speculative and not fact-based, arguing that factually the matters are similar but for the classification of the costs as survey and feasibility as opposed to exit fees.

b. Office of Consumer Advocate

The OCA objected to Liberty's Motion for Rehearing of Order No. 26,536. In support of its objection, the OCA argued that the Commission properly construed RSA 378:30-a, arguing that undue weight was not given to the second sentence, while also noting that the third sentence is dispositive of any argument limiting application of the statute to physical construction activities due to its inclusion of pre-construction categories of expense such as "owning" and "financing." The OCA recommended that the Commission clarify that the third sentence of the RSA 378:30-a also supports the Commission's determination.

The OCA reiterated its prior arguments relating to the legislative intent and language of RSA 378:30-a and the holding in *PSNH*. With respect to Liberty's policy-based arguments, the OCA refuted those arguments, stating that it is not within the Commission's discretion to overrule a legislative determination on recoverability based on policy. The OCA also pointed out that Liberty is not precluded from recovering

costs associated with routine planning and preliminary project investigations though the Least Cost Integrated Resource Planning framework in RSA 378:37 *et seq.*

According to the OCA, the determination in Order No. 26,536 was a fact specific determination that the costs sought for recovery were incurred to prepare for a particular construction project. Finally, in response to Liberty's argument relating to Docket DG 99-050, the OCA posited that several specific factual differences exist, including that the exit fees in Docket DG 00-050 were associated with a Commission-approved precedent agreement, whereas the Commission never approved any aspect of the Granite Bridge project.

c. New Hampshire Department of Energy

Energy objected to Liberty's Motion for Rehearing of Order No. 26,536. In support of its objection, Energy argued that Liberty did not state good cause for rehearing because Order No. 26,536 was based on sound reasoning, was neither unreasonable nor unlawful, and that the Commission did not overlook or mistakenly conceive any matters. With respect to the evidentiary support for the Commission's determination, Energy argued that contrary evidence exists in the record, including testimony that established the costs were incurred in preparation for a construction project, that evidence in the record supported that the costs were engineering costs, permitting costs, route design, or otherwise project-specific costs as opposed to general planning costs. Energy also argued that Order No. 26,536 does not deny recovery of planning costs, but only costs that were incurred for a specific project that was never placed into service. In support of this argument, Energy cited to portions of the record where Liberty acknowledged that Least Cost Integrated Resource Planning costs pursuant to RSA 378:37 *et seq.* were not included in the request for recovery and

routine planning costs would be expensed, where the identified costs would be capitalized if the project had been placed in service.

d. Liberty Letter

Liberty's January 18, 2022 letter supplemented the legal argument in its Motion for Rehearing, positing that a definition contained in RSA Ch. 162-H was relevant to the Commission's analysis of its Motion.

e. Office of Consumer Advocate Reply Letter

On January 19, 2022, the OCA requested in the first instance that the Commission strike Liberty's January 18th letter as untimely pursuant to RSA 541:3. The OCA went on to argue that the definition cited to in the letter is not material, and only distantly related, if at all, to the arguments in Liberty's Motion.

III. COMMISSION ANALYSIS

As a preliminary matter, we address Liberty's Letter of January 18, 2022. RSA 541:3 is dispositive of the issue of whether Liberty can raise new arguments after the 30-day deadline to file for rehearing of a Commission order. The party seeking rehearing must specify "all grounds for rehearing" within the 30-day statutory deadline. As Liberty's January 18, 2022 letter contained new arguments and was filed more than 30 days after the issuance of Order No. 26,536, the Commission has not and will not consider either Liberty's new arguments raised on January 18, 2022 or the OCA's January 19, 2022 substantive reply to those arguments because they were untimely filed. The Commission declines to strike the filings from the general record or docket book, while noting that exhibits become part of the evidentiary record of a proceeding only if and when admitted into evidence at a hearing.

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4;

Rural Telephone Companies, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4-5 (December 7, 2016). A successful motion must establish “good reason” by showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4-5 (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

In Order No. 26,536, the Commission considered each party’s legal arguments relating to RSA 378:30-a, restated the full text of RSA 378:30-a¹, and analyzed the New Hampshire Supreme Court’s interpretation of RSA 378:30-a in *PSNH*, including the Court’s conclusion that although the three sentences of RSA 378:30-a speak to roughly similar ideas, that they must each have independent effect and not be redundant to each other. The Commission determined that the underlying Granite Bridge project costs were costs “associated with construction.” Order No. 26,536 at 5.

We therefore, do not agree that Liberty stated good cause to grant rehearing. Liberty did not present new evidence, nor did it establish that the Commission misconstrued RSA 378:30-a relating to the denial of cost recovery associated with the

¹ The full text of RSA 378:30-a bears repeating: “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.”

Granite Bridge project. Liberty's argument that the Commission mistakenly interpreted the second sentence of RSA 378:30-a in isolation and ignored the plain meaning of the statute RSA 378:30-a is not persuasive. As pointed out by the OCA, the definition of cost associated with construction work, construction project, or construction work in progress is broader than costs of actual physical construction pursuant to the text of third sentence of RSA 378:30-a. That sentence is an illustrative list that specifically includes costs of ownership and financing, which do not fit within Liberty's arguments pertaining to physical construction. As pointed out by the OCA and Energy, these costs were not routine planning to determine the least-cost course of action, but were costs incurred in furtherance of a specific course of action, i.e., a specific project, Granite Bridge.

Furthermore, we do not agree that record evidence was ignored. As Energy points out, it is clear that evidence in the record demonstrates that the disputed costs were distinct from least-cost planning costs. Regardless, as noted in Order No. 26,536 at 5, *PSNH* holds that 378:30-a does not use the term "Construction Work in Progress" in the technical accounting sense. Liberty's argument that because costs were booked to Account 183 as "Other preliminary survey and investigation charges" is unpersuasive in challenging the Commission's denial of cost recovery with regards to the Granite Bridge project. The operative question is whether the costs were "associated with construction," not how Liberty chose to document those costs for accounting purposes. Here, these costs were plainly associated with the construction of the Granite Bridge project.

It is also apparent that the Commission heard and considered the policy arguments (*see* Order No. 26,536 at 5) and other arguments relating to Docket No. 99-


050. *Id.* Therefore, we agree with the OCA that Liberty's Motion does not present good reason for rehearing on these bases.

As such, the Commission finds that Liberty has not stated good cause to rehear the Commission's in Order No. 26,536.

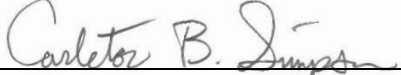
Based upon the foregoing, it is hereby

ORDERED, the Liberty's Motion for Rehearing of Order No. 26,536 (October 29, 2021) is DENIED.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of February, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 20-105

Printed: 2/17/2022

Email Addresses

ClerksOffice@puc.nh.gov
william.clark@libertyutilities.com
julianne.m.desmet@oca.nh.gov
paul.b.dexter@energy.nh.gov
lynn.h.fabrizio@energy.nh.gov
kerri-lyn.gilpatric@energy.nh.gov
Robert.Hilton@libertyutilites.com
maureen.karpf@libertyutilities.com
ckimball@keeganwerlin.com
tklaes@blueridgecs.com
donald.m.kreis@oca.nh.gov
jayson.p.laflamme@energy.nh.gov
Ian.McGinnis@fticonsulting.com
catherine.mcnamara@libertyutilities.com
jmierzwa@exeterassociates.com
Robert.Mostone@LibertyUtilities.com
steven.mullen@libertyutilities.com
dmullinax@blueridgecs.com
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
jralston@keeganwerlin.com
michael.sheehan@libertyutilities.com
david.simek@libertyutilities.com
karen.sinville@libertyutilities.com
Mark.Stevens@LibertyUtilities.com
heather.tebbetts@libertyutilities.com
dvenora@keeganwerlin.com
david.k.wiesner@energy.nh.gov
jrw@psu.edu



Michael J. Sheehan, Esq.
Senior Counsel
Phone: 603-724-2135
Email: Michael.Sheehan@libertyutilities.com

November 24, 2021

Via Electronic Mail Only

Daniel Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

**Re: Docket No. DG 20-105; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty
Petition for Permanent Rates**

Dear Chairman Goldner:

On behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, enclosed please find the Company's *Motion for Rehearing*.

Pursuant to the Commission's March 17, 2020, secretarial letter, only an electronic version of this filing will be provided. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Sheehan', is written over a light gray, semi-transparent background that resembles a signature strip or a watermark.

Michael J. Sheehan

Enclosure

Cc: Service List

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY

Petition for Permanent Rates

Motion for Rehearing

Pursuant to RSA 541:3, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty” or the “Company”) submits this motion for rehearing of Order No. 26,536 (Oct. 29, 2021) (the “Order”), in which the Public Utilities Commission (the “Commission”) denied Liberty’s request to recover costs it incurred to assess the cost and viability of the Granite Bridge Project as an alternative to its gas-resource constraints. In the Order, the Commission found that RSA 378:30-a bars recovery of the Granite Bridge project costs as a matter of statutory interpretation, denying Liberty’s request for recovery exclusively on that basis.

As demonstrated in this motion, the Order is unlawful in denying recovery of the Granite Bridge Project costs on the stated legal grounds. There is “good reason” for granting this motion because there are matters that the Commission “overlooked or mistakenly conceived” in reaching the Order’s outcome. Among other reasons justifying rehearing, the Order misconstrues RSA 378:30-a in determining that the subject costs were “associated with construction work,” which is a conclusion that directly contradicts findings of applicable case law rendered by the New Hampshire Supreme Court (the “Court”). Because the Commission’s decision rests exclusively on a narrow statutory interpretation, the Order also disregards the underlying evidentiary record, which establishes that the Granite Bridge costs were not associated with construction work, but rather were prudent and necessary costs incurred to protect the interests of the Company’s customers.

In support of this motion, Liberty states as follows:

I. Standard of Review

1. RSA 541:3 allows for rehearing of a Commission order, as follows:

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

2. The standard governing the Commission's review of a motion for rehearing pursuant to RSA 541:3 is well established. "The Commission may grant rehearing or reconsideration for 'good reason' if the moving party shows that an order is unlawful or unreasonable." Liberty Utilities (EnergyNorth Natural Gas) Corp., Order No. 26,521 at 3 (Sept. 22, 2021) (*citing* RSA 541:3; RSA 541:4; Rural Telephone Companies, Order No. 25,291 (Nov. 21, 2011); Public Service Company of New Hampshire d/b/a Eversource Energy, Order No. 25,970 at 4-5 (Dec. 7, 2016)). "A successful motion must establish 'good reason' by showing that there are matters that the Commission 'overlooked or mistakenly conceived in the original decision,' Dumais v. State, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was 'unavailable prior to the issuance of the underlying decision,' Hollis Telephone Inc., Order No. 25,088 at 14 (April 2, 2010)." Id. "A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome." Id. at 3-4.

3. RSA 541:4 states that a motion for rehearing “shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.” Moreover, a motion for rehearing is a prerequisite to appeal. “No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.” Id.

II. Background

4. As a public utility, Liberty is obligated to procure appropriate capacity and supply resources to meet the needs of its customers. Since at least 2013, the Company has identified a capacity shortfall necessitating new resources to meet its obligation to provide reliable service on its design day (i.e., the coldest day in its forecast). Unfortunately, however, there were no existing alternatives to meet this need because the Company’s system relies on a single feed from Tennessee Gas Pipeline Company, LLC (“TGP”) for the delivery of gas supply to its service territory in southern and central New Hampshire (Exh. 14, at Bates 009), and, as of 2013 and continuing through 2019, there was no capacity available on the TGP Concord Lateral (id. at Bates 018). This meant that any additional capacity options were limited to a TGP-sponsored construction project to increase the capacity of its Concord Lateral, or a project that could increase capacity outside of an upgrade of the Concord Lateral (id. at Bates 013). As early as 2013, the Company began

analyzing various options to meet this identified capacity need (Exh. 16, at Bates 009).

5. The Granite Bridge Project costs were incurred between 2016 to 2019, following TGP's May 2016 cancellation of the NED project, which eliminated a Commission approved¹ capacity solution for the Company (Exh. 14, at Bates 009, citing TGP Notice of Withdrawal in FERC Docket No. CP15-21-000). That cancellation left the Company with no choice but to initiate due diligence in relation to the only two capacity alternatives that did exist at the time, which were to: (1) procure a new contract with TGP for TGP to construct new facilities to upgrade the existing TGP Concord Lateral; or (2) explore the feasibility of a Company-sponsored supply and capacity project, which ultimately became the Granite Bridge Project (id.).² The underlying record is crystal clear that the Company investigated the only two viable capacity options at that time. Liberty incurred the Granite Bridge Project costs beginning in 2016 to survey, study, and investigate the feasibility of Granite Bridge as the least-cost alternative as compared to a new TGP contract. Over this timeframe, the TGP alternative was a resoundingly more expensive alternative, and remained the more costly and less viable option throughout the time Liberty

¹ See Order No. 25,822 (Oct. 2, 2015).

² The Company's assessment focused on a project comprised of the Granite Bridge pipeline (to provide additional capacity and a second feed to the EnergyNorth service territory), and the Granite Bridge liquefied natural gas ("LNG") facility (the primary source of supply for the Granite Bridge Project) (Exh. 14, at Bates 010).

assessed the feasibility of what became the Granite Bridge alternative and progressed through the associated regulatory process.³

6. As late as May 2019, the Granite Bridge Project was again demonstrated to be substantially less expensive than the TGP contract alternative (Exh. 14 at Bates 020). In October 2019, right after Liberty announced that it had completed the 70 percent design evaluation of the Granite Bridge Pipeline and would be issuing a request for proposals based on that design to further refine its capital cost estimate, TGP for the first time offered significantly lower pricing for incremental capacity on the Concord Lateral (Exh. 14, at Bates 022-023). Liberty immediately suspended further assessment (and cost incurrence) of the Granite Bridge Project and, through continued negotiations with TGP, executed a new agreement on July 14, 2020, for 40,000 Dth per day of capacity on the Concord Lateral (id. at Bates 028-029).⁴ The record is clear that the TGP revised option only became available after Liberty had fully evaluated and pursued the Granite Bridge Project.
7. Construction of the Granite Bridge Project would have required a siting permit from the New Hampshire Site Evaluation Committee.⁵ The Company did not make an application for a siting permit, nor were any pre-construction or construction

³ Liberty requested Commission approval of the Granite Bridge Project as the least-cost option to meet its identified need in Docket No. DG 17-198, and the docket process resulted in continued analysis and refinement of the Company's cost estimates, which continued to show it as the least-cost resource as compared to a new contract with TGP. Through the course of that proceeding, the Company engaged in further feasibility analysis through the regulatory process (Exh. 14, at Bates 019).

⁴ The Commission approved the contract in Order No. 26,511 (Nov. 12, 2021).

⁵ See RSA 162-H:5, I ("No person shall commence to construct any energy facility within the state unless it has obtained a certificate pursuant to this chapter").

activities commenced for the Granite Bridge Project. The 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-cost alternative to meet deliverability obligations to customers. The project did not progress beyond a conceptual stage and Liberty did not initiate any building or construction of physical plant. Instead, the Company incurred the costs to meet the public-service obligation that the Company has to assure the safe and reliable delivery of gas supply to customers. In no uncertain terms, Liberty did exactly what a responsible and prudent utility should do when faced with limited capacity options, i.e., the Company evaluated all potential options to determine the feasibility and cost of project alternatives to resolve the capacity shortfall. This is in the direct interest of customers and, had the lower-cost TGP capacity not materialized, there would have been no other option to serve customer needs other than the Granite Bridge Project.

III. Legal Analysis.

8. The Order finds that the Company's request for recovery of Granite Bridge Project costs is barred by RSA 378:30-a, which is the so-called "anti-CWIP" statute. RSA 378:30-a 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.

(Emphasis added.)

9. The Commission's determination that cost recovery is barred by RSA 378:30-a, as a matter of law, rests exclusively on an interpretation of RSA 378:30-a, but even more precisely on *only the second sentence* of RSA 378:30-a, which states that: "At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed."
10. With respect to its interpretation of the second sentence of RSA 378:30-a, the Commission's fundamental premise is that "the feasibility studies that Liberty undertook for the Granite Bridge project are unambiguously 'costs associated with construction.'" Order at 5. From this, the Commission concludes that: (a) because the feasibility study costs were "associated with construction work;" and (ii) because that construction work was never "completed" (meaning "built or put into use"), Liberty's recovery of those costs is barred by operation of law under RSA 378:30-a. Order at 5-6.
11. Although the Order takes note of "numerous" arguments advanced by the parties, the Commission summarily pronounces that these arguments "do nothing to disturb this conclusion." Order at 6. For example, the Commission refuses to ascribe any meaning to the term "construction work in progress," stating that this term is "nowhere to be found in the *second sentence* of RSA 378:30-a," which is the sentence containing the phrasing "associated with construction work" and "if said construction work is not completed," on which the Order rests. Id. (emphasis added). The arguments noted in the Order are dismissed on the basis of the

Commission’s isolated interpretation of the *second sentence* of RSA 378:30-a, which the Commission asserts does not include the term “construction work in progress.” Therefore, the Commission finds that focus on the term “construction work in progress” is “misplaced” and there is “no benefit” to inquiring into the technical accounting definition of the term “construction work in progress,” because the term is not used in the second sentence.⁶

12. The Order is unlawful and unreasonable in denying recovery of the Granite Bridge Project costs and there is “good reason” for granting this motion because the Commission’s decision rests solely on an isolated interpretation of the second sentence of RSA 378:30-a, which contradicts the statutory interpretation delineated by the Court in Appeal of Public Service Company of New Hampshire, 125 N.H. 46, at 52, 480 A.2d. 20 (1984) (“PSNH”). As a result, there are matters that the Commission “overlooked or mistakenly conceived in the original decision” and there are multiple grounds supporting this request for rehearing.⁷ Tellingly, there is no analysis in the Order that applies the holding of the Court in the PSNH case to the facts in this case.
13. First, the Commission mistakenly conceived the Order’s foundational premise, which is that “[t]he feasibility studies that Liberty undertook for the Granite Bridge project are ***unambiguously*** costs ‘associated with construction,’” as that term is

⁶ Order at 6-8. The Commission also asserts that: (1) policy arguments in favor of cost recovery are not persuasive and barred by the text of the statute; and (2) the Commission’s earlier decision in *Northern Utilities* does not compel a contrary conclusion. However, these determinations lack any element of adequacy given that the Order rests on the legal premise that RSA 378:30-a bars recovery.

⁷ Liberty Utilities (EnergyNorth Natural Gas) Corp., Order No. 26,521 at 3 (Sept. 22, 2021).

used in RSA 378:30-a. The Commission states that it “can identify no other plausible purpose for undertaking these studies and the other actions it took that resulted in the costs at issue except *in preparation* for a construction project,” Order at 5, but the Commission does not address (1) the plain meaning of the statute; (2) the PSNH precedent construing the plain language; or (3) the record evidence regarding the purpose of the costs, in rendering this declaration. Consequently, this foundational premise is arbitrary, baseless and wrong as a matter of law.

14. The second sentence of RSA 378:30-a provides that: “At no time shall any rates or charges be based upon any costs associated with ***construction work if said construction work*** is not completed.” The Commission’s fundamental premise is that “the feasibility studies that Liberty undertook for the Granite Bridge project are unambiguously costs “associated with construction.” However, this premise does not quote the statute correctly. The statute’s second sentence uses the specific term “construction work” not the more general term “construction.”
15. The Commission’s explanation that there is “no other plausible purpose” for the actions that resulted in the costs except “*in preparation* for a construction project” fails to account for the actual plain language of the second sentence of RSA 378:30-a referring specifically to costs that are associated with “construction work.” 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. Further, the statutory use of the specific term “*construction work*” (twice) in

the same sentence does not reasonably support the Commission's finding that RSA 378:30-a "unambiguously" precludes the recovery of costs for a preliminary assessment as to whether a "construction *project*" should be undertaken *at all*. No "construction work" was undertaken by the Company and none was permitted under New Hampshire law. Thus, there are no "costs associated with construction work" and the lack of any Commission explanation as to how the feasibility studies and other activities "unambiguously" constitute "construction work" renders the Commission's foundational premise arbitrary and baseless.

16. Moreover, any attempt by the Commission to make such a finding would run contrary to the statutory interpretation already provided by the Court in the PSNH case. Notably, the Court's decision in PSNH focused on the meaning of the second sentence of RSA 378:30-a, with the Court finding that the second sentence "appears on its face to have the broadest scope both in time and in subject matter." PSNH at 52 (stating "[o]ur examination will focus on the second sentence").
17. With respect to the second sentence, the Court noted that parties were "urging us to simply recognize the language of the second sentence in a straightforward way as prohibiting the recovery of the investment in Pilgrim 2 through rates charged to customers." Id. However, the Court's finding was more nuanced in that the Court found that the "second sentence forbids basing rates on uncompleted 'construction work,' not on 'construction work in progress'" and, because the utility "cited no authority indicating the 'construction work' is either synonymous with 'construction work in progress' or a term of art in its own right," the Court itself construed the term "construction work." Specifically, the Court stated that,

“[t]aking it rather, in its *common sense referring to a physical structure*, it carries no suggestion that it refers to uncompleted construction work *only before*, but not after, abandonment.”⁸ PSNH at 54. The Court found that: “Construction work on an abandoned plant *is* construction work that is ‘not completed,’” and further, “the investment in such an uncompleted and abandoned plant is a cost ‘associated’ with its uncompleted construction work.” Thus, the Court concluded that “the statute simply forbids recovery of *such* investment through rates.” PSNH at 54-55 (emphasis added).

18. Accordingly, it is significant that: (1) the Court has already specifically construed the terminology used in the second sentence of RSA 378:30-a; (2) the Court’s interpretation is that the term “construction work” is taken in its “common sense referring to a physical structure;” (3) construction work on abandoned plant is construction work that *is* “not completed;” and (4) the investment in “*such* uncompleted and abandoned plant” is a “cost associated with uncompleted construction work.” None of these meanings or circumstances apply to the costs incurred by the Company to complete feasibility studies and other preliminary activities assessing the viability of the Granite Bridge project as a reasonably available resource to meet its public-service obligation. Thus, the Commission’s failure to address the directly applicable findings of the Court in the PSNH case,

⁸ PSNH took the position that the statute deals only with the treatment of CWIP, and that the statute’s use of the term “construction work in progress” assumes the technical accounting definition of the phrase as the “total of the balances of work orders for electric plant in process of construction.” The Court reject this interpretation stating that this would mean that the statute regulates only the *timing of recovery*, forbidding recovery during the “period of the process of construction,” but freeing the commission to allow recovery when that process is over (even if the process ends with a abandonment). The Court rejected this interpretation as “untenable.” PSNH at 53.

specifically construing the second sentence of RSA 378:30-a, is a critical omission constituting legal error.

19. Moreover, if addressed, the Court's decision **would not** substantiate the Commission's foundational premise that the cost of feasibility studies and other activities undertaken by the Company to assess the viability of the Granite Bridge project prior to the commencement of construction of a "physical structure" and prior to any permitting application to commence construction of a physical structure were "unambiguously" costs "associated with construction."
20. In Footnote 3 of the Order, the Commission asserts that "the parties all agree that under *Appeal of Pub. Serv. Co. of N.H.* 125 N.H. 46 (1984), costs associated with **construction projects** that begin but are abandoned prior to completion may not be recovered under RSA 378:30-a" (Order at 4, fn.3, emphasis added.) This statement is misleading and not completely correct. No citations are provided for this assertion. The transcript reflects two questions along this line that were posed to the parties, neither of which used the term "construction project." These two questions were: (1) "[w]hat is the definition ... of "construction work" referenced in the second sentence of the statute?" (Tr. 6/8/21, PM Session Only, at 161, 178); and (2) "If this were to be determined to be construction or construction work in progress, what other basis does the PUC have to allow for recovery in light of the anti-CWIP statute?" (Id. at 183). In both cases, the Company responded that there has to be a "physical aspect" and "physical construction" to stay in alignment with the Court's decision in PSNH. As a result, there is no agreement reflected in the record that "construction *projects*" that begin but are abandoned prior to completion

may not be recovered under RSA 378:30-a. The Commission asked about “construction work” and “construction work in progress,” which are the terms used in the statute. There was no consensus or discussion on the definition of a “construction project.”

21. Even without the Court’s interpretation, the Commission’s Order overlooks any analysis of the plain language of the statute. For example, the word “construction” is defined as “the process, art, or manner of constructing something.”⁹ To “construct” is “to make or form by combining or arranging parts or elements.”¹⁰ With respect to Granite Bridge, the Company’s work never progressed to the point of construction or pre-construction activities. Under these plain meaning definitions, the Company’s feasibility assessments of the Granite Bridge Project did not serve to “construct” the project or even to “prepare” to construct the project. Therefore, these costs are not “unambiguously” barred for recovery by RSA 378:30-a, as claimed by the Commission.
22. The Commission’s decision also neglects to address the record evidence that would explain the “plausible purpose” of the feasibility studies and other activities. and that would indicate that a decision as to project viability had to be made before any “construction work” including the permitting necessary to authorize “construction work” in the first instance could occur. For example, the record shows that most of the Granite Bridge Project costs (\$7,092,154) were booked to Account 183, which is entitled “Preliminary Survey and Investigation Charges.” (Exh. 9 at Bates

⁹ <https://www.merriam-webster.com/dictionary/construction>

¹⁰ <https://www.merriam-webster.com/dictionary/constructing>

004). Costs booked to this account are not associated with “construction work.” That fundamental flaw in the reasoning underlying the Order is problematic because 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.

23. The Commission’s Order lacks **any** analysis of the plain language of RSA 378:30-a, notwithstanding that Commission found that the statutory language bars recovery. The Court has held that, “[i]n addressing the issues of statutory interpretation, we follow familiar principles. In seeking the intent of the legislature, we will consider the language and the structure of the statute.” PSNH at 52; see State v. Flynn, 123 N.H. 457, 462, 464 A.2d 268, 271 (1983). The Court “will follow common and approved usage except where it is apparent that a technical term is used in a technical sense.” PSNH, 125 N.H. at 52, *citing* RSA 21:2.
24. In PSNH, the Court construed the precise language of RSA 378:30-a. RSA 378:30-a precludes recovery of costs associated with “construction work” that is not completed, as discussed above. The statute is specific to “construction work.” It 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.
25. The Commission also “overlooked or mistakenly conceived” in the Order that there is “no benefit to inquiring into the technical accounting definition of the term

‘construction work in progress.’” Order at 7. As framed by the Court, the question of law presented to the Court was: “Does RSA 378:30-a, as a matter of law, prohibit the Public Utilities Commission from allowing public utilities to recover, through rates, amounts such utilities *have invested in plant construction projects that have been abandoned.*” PSNH at 48 (emphasis added). In that appeal, PSNH took the position that the statute deals only with the treatment of CWIP, and that the statute’s use of the term “construction work in progress” assumes the technical accounting definition of the phrase as the “total of the balances of work orders for electric plant in process of construction.” The Court rejected this interpretation stating that this would mean that the statute regulates only the *timing of recovery*, forbidding recovery during the “period of the process of construction,” but freeing the commission to allow recovery when that process is over (even if the process ends with abandonment). This does not mean there is “no benefit to inquiring” into the technical definition of the term “construction work in progress.” To the contrary, the inquiry is necessary to evaluate the circumstances of the case and to substantiate any decision by the Commission in this proceeding regarding the “plausible purpose” of the costs.

26. For example, accounting requirements in the Commission’s rules provide further support that the Granite Bridge project costs were not associated with “construction work.” Puc 507.08, titled “Uniform System of Accounts,” requires gas utilities to maintain accounts in conformity with the “Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act” promulgated by the United States Federal Energy Regulatory Commission (FERC).

(Exh. 10 at Bates 001). The FERC chart of accounts describes the purpose of Account 183 as “Other preliminary survey and investigation charges.” As stated previously, the large majority of the Granite Bridge Project costs were booked to Account 183, and costs booked to this account are not costs associated with “construction work.”

27. The Order also warrants rehearing to the extent the Commission “overlooked or mistakenly conceived” the policy arguments in favor of cost recovery as not persuasive and barred by the text of the statute. The Granite Bridge project costs arose from a Commission-approved process the Company was earnestly conducting to find a solution for incremental peak day capacity, which, by all accounts, is needed to serve customers on the coldest days of the winter season. The costs were necessarily incurred to investigate the viability of capacity and supply resources in fulfillment of the obligations that a gas utility has for assuring adequate gas deliverability on the coldest days. The Commission has authority to grant recovery of the costs in question under its general ratemaking authority. There is no law or precedent that bars the Commission from allowing cost recovery. The statutory prohibition of the “anti-CWIP” statute does not apply to the Granite Bridge project costs.
28. The Order mistakenly concluded, without analysis, that there could be “no other plausible purpose for undertaking these studies and the other actions it took that resulted in the costs at issue except in preparation for a construction project,” Order at 5, because, taken 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 cost.” RSA 378:37. The anti-CWIP statute is not written nor intended to prevent the recovery of costs that are necessary, prudent, and reasonable in determining options to service customers reliably. In this case, assessing the feasibility of the Granite Bridge Project as the least-cost solution to meet the long-term capacity and supply requirements of customers was an important – and fruitful -- endeavor for customers.

29. The Company has an undisputed need for capacity and an obligation to customers to do everything it reasonably can to meet that need and at least cost consistent with RSA 378:38. The Company is obligated to work diligently to address any resource shortfall so that the needs of customers are met unfailingly on the coldest days. The Granite Bridge Project costs were incurred to meet this obligation.
30. Lastly, the Commission “overlooked or mistakenly conceived” in the Order that “the Commission’s earlier decision in Northern Utilities does not compel a contrary conclusion.” Order at 7. The Order attempts to distinguish the Northern Utilities order¹¹ based on speculation, not facts. The Northern Utilities order provides an example of the Commission allowing recovery of costs related to efforts to achieve a lower cost option for customers. In Docket No. DG 99-050, the Commission approved recovery of contract exit fees incurred by Northern Utilities to abandon a

¹¹ Order No. 23,362, at 3 (Dec. 7, 1999).

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 (Dec. 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.

31. Liberty undertook an analysis that is virtually identical to that presented in Docket DG 99-050 by Northern Utilities, and pursuant to which customers will realize substantial savings from terminating the Granite Bridge Project in favor of entering contracts with TGP (Exh. 14, at Bates 037). The only difference between the Company’s request in this proceeding and customer payment of the Exit Fee in Docket DG 99-050 would be how the costs are *labelled*, i.e., “Exit Fee” instead of “Survey and Feasibility Costs.”

IV. Conclusion

32. By this motion, the Company has demonstrated good reason for the Commission to grant rehearing of its decision to deny recovery of the Granite Bridge Project costs. The Order is based on an incorrect interpretation of the statutory language and does not address substantial record evidence that the costs were not “associated with construction.” For these reasons, the Company respectfully requests rehearing of the Order to allow recovery of the Granite Bridge Project costs.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this motion for rehearing;
- B. Allow recovery of the Granite Bridge Project costs; and
- C. Grant such further relief as is just and equitable.

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

By its Attorneys,



By: _____
Michael J. Sheehan, Esq. #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
Michael.Sheehan@libertyutilites.com



By: _____
Daniel P. Venora, Esq. #269522
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, MA 02110
(617) 951-1400
dvenora@keeganwerlin.com

Date: November 24, 2021

Certificate of Service

I hereby certify that today, November 24, 2021, a copy of this Motion has been electronically forwarded to the service list.



Michael J. Sheehan

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Energy North Natural Gas Corp. d/b/a Liberty

Request for Change in Rates

Docket No. DE 20-105

Objection of the Office of the Consumer Advocate to Motion for Rehearing

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and respectfully opposes the RSA 541:3 motion for rehearing filed on November 24, 2021 by the subject utility, Energy North Natural Gas Corp. (“Energy North”). In support of its position, the OCA states as follows:

I. Introduction

On October 29, 2021, the Commission entered Order No. 26,536, denying the request of Energy North to recover approximately \$7.5 million in costs associated with the Company’s abandoned Granite Bridge project. Following an evidentiary hearing that was specifically devoted to this question, the Commission ruled that such recovery is precluded by RSA 378:30-a, commonly referred to as the “anti-CWIP” statute (“CWIP” being an acronym for “construction work in progress”). Energy North contends that the Commission misapplied the statute. Therefore, Energy North asks that the Commission grant rehearing, reverse course, and

determine that the Company may recover the disputed costs via its Local Distribution Adjustment Clause (“LDAC”) over a period of five years.

The Commission must reject this request. Via its rehearing motion, Energy North continues its assault on a statute it dislikes and would prefer the Commission disregard. For the reasons that follow, the Commission cannot distort the anti-CWIP statute in the manner urged by Energy North, nor fail to heed the statute’s inexorable command.

II. Reply to Energy North Objection

The crux of the Company’s argument on rehearing is succinctly stated in paragraph 12 of its motion: Rehearing is warranted, according to Energy North, “because the Commission’s decision rests solely on an isolated interpretation of the second sentence of RSA 378:30-a, which contradicts the statutory interpretation delineated by the [New Hampshire Supreme] Court in *Appeal of Public Service Company of New Hampshire*,” 125 N.H. 46, 52 (1984) (“*PSNH*”). We address each of those contentions in turn.

A. Proper Construction of RSA 378-30-a

After briefly summarizing the familiar approach to statutory interpretation as adopted by the New Hampshire Supreme Court, the Commission noted that “the three sentences of RSA 378:30-a speak to roughly similar ideas” but that the Court in *PSNH* “concluded that they must each have independent effect and not be redundant to each other.” Order No. 26,536 at 5 (citing *PSNH* at 54). Although the Commission noted that the *PSNH* decision deemed the second sentence in RSA

378:30-a to be dispositive of that case, the Commission's order does not treat the instant controversy in such fashion. Rather, the agency's entirely sound conclusion is that "the Commission can identify no other plausible purpose for undertaking [feasibility] studies [related to Granite Bridge] and the other actions it [i.e., Energy North] took that resulted in the costs at issue except in preparation for a construction project." *Id.* The Commission therefore found that the \$7.5 million in costs were incurred in connection with "construction work" as that term is used in RSA 378:30-a and that it is "beyond dispute that the construction work in question was never 'completed' within the meaning of the statute." *Id.* at 6.

This amounts to a commonsense, straightforward application of an unambiguous statute that was adopted in 1978 with such a firm legislative resolve that (as the Commission explicitly acknowledges) the General Court essentially stated the same command in three successive sentences. The Commission focused on the second sentence only insofar as that one was deemed dispositive in PSNH, which concerned a construction project that was commenced but ultimately abandoned. But the OCA in its post-hearing pleading directed the Commission's particular attention to the *third* sentence of RSA 378:30-a as well.

The third sentence of the anti-CWIP statute reads: "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.” The Commission may wish to clarify that this sentence also supports a determination, based on the entirety of RSA 378:30-a and its evident purpose, that capital projects such as Granite Bridge are appropriate for cost recovery only if and when they become used and useful.

It is noteworthy – indeed, it is arguably dispositive – that the General Court via the second sentence explicitly did not limit its rule of non-recovery to costs associated with “constructing” utility infrastructure but also to “owning, maintaining, or financing” it. Obviously, financing and ownership are inevitably costs incurred prior to construction; Energy North, in effect, asks the Commission to ignore the statute’s explicit reference to pre-construction activities.

At hearing, in its post-hearing brief, in its reply brief, and now in its rehearing motion, Energy North seeks to lure the Commission into violating the command of the New Hampshire Supreme Court not to “consider words and phrases in isolation, but rather within the context of the statute as a whole” so as to “interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” *White v. Auger*, 171 N.H. 660, 666-67 (2019) (citations omitted). One could, as Energy North again urges the Commission to do, distinguish among “construction,” “construction work,” and “construction work in progress,” so as to exempt from the recovery prohibition costs that would have been subject to capital recovery but for project cancellation. But, as we pointed out in our initial brief, the overall purpose of RSA 378:30-a is to overrule a preexisting interpretation of the phrase “used and useful” by the Commission (from 1978) that

was in derogation of the simple cost-of-service ratemaking principle that a project not actually serving customers should not be paid for by customers. Post Hearing Brief of the Office of the Consumer Advocate (tab 58) at 5.

B. The 1984 *Public Service Company of New Hampshire* Decision

Energy North's suggestion that the Commission has misapplied *PSNH* is likewise unpersuasive. As we have previously noted, *id.* at 7, *PSNH* actually counsels against recovery of Granite Bridge Costs because the case stands generally for the proposition that a utility cannot get out of RSA 378:30-a on a technicality (there, the fact that the project was abandoned after construction began and was thus no longer "in progress"). But even if the Commission were to avoid absorbing that general lesson, *PSNH* certainly cannot withstand the gloss placed upon it by Energy North on rehearing. According to Energy North, because the Court in *PSNH* referred to "construction work" (as that exact term appears in the second sentence of the statute) as "in its common sense referring to a physical structure," recovery is permissible here because no "physical structure" ever came into existence. Energy North Motion for Rehearing at 11, citing *PSNH*, 125 N.H. at 54. But that would amount to an overextension of the actual holding in *PSNH*, which is that the effect of RSA 378:30-a does not evaporate when construction work is no longer "in progress" but abandoned.

C. Policy Arguments

If Energy North has made anything clear via its quest to recover the \$7.5 million in Granite Bridge costs, it is that the utility – like essentially all utilities –

wishes there were no anti-CWIP statute in New Hampshire. The statute has certainly had its vocal detractors over the years and in some circles it is believed that RSA 378:30-a caused significant harm to electric customers by forcing PSNH into bankruptcy 34 years ago.

In this instance, Energy North complains via its rehearing motion that “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 . . . severely constrain utility planning and engineering efforts, ultimately having a detrimental effect on customers.” Energy North Rehearing Motion at 14. This contention is flawed for several reasons.

First, the Commission did *not* conclude in Order No. 26,536 that no costs associated with viability, feasibility, or design analysis can ever be recovered from customers absent a completed project and placement of the costs into rate base. The decision in this case is limited to its facts – costs incurred to gear up for a particular construction project that a utility presented to the Commission but ultimately withdrew. The parade of horrible hypotheticals offered by Energy North should be ignored.

Second, routine planning efforts are part of the statutorily mandated, least-cost-integrated resource planning process and are thus appropriate for recovery as a component of a utility’s operating costs. Energy North might have a more compelling case for recovery of costs associated with Granite Bridge had that project

ever been part of an approved least-cost integrated resource plan – but that is not the situation the Commission confronts here, as has already been pointed out. *See* OCA Reply Brief (tab 61) at 5.

Third, to the extent that RSA 378:30-a inhibits utilities from exploring capital projects that deserve consideration, Energy North's beef is with the Legislature and not the Commission. The OCA does not concede that the anti-CWIP statute has a detrimental effect on utility planning processes, but the proper place for such an argument with Energy North is in the hearing rooms of the State House and Legislative Office Building.

D. Energy North Now vs. Northern Utilities Then

The only remaining basis on which Energy North seeks rehearing appears at page 18 of its motion at paragraph 31, which states in relevant part: "Liberty undertook an analysis that is virtually identical to that presented in Docket DG 99-050 by Northern Utilities The only difference between the Company's request in this proceeding and customer payment of the Exit Fee in Docket DG 99-050 would be how the costs are labelled, i.e., 'Exit Fee' instead of 'Survey and Feasibility Costs.'"

It is disappointing to see a utility make an assertion that it knows to be incorrect. As we explained in our post-hearing brief, referring to a similar case decided in 1996, the exit fee in question was incurred in connection with a Commission-approved precedent agreement of the sort that pipeline developers enter into with local distribution companies so as to demonstrate project need to the

Federal Energy Regulatory Commission for purposes of approval under the Natural Gas Act. As we previously noted, and as we reiterate here, whether the issue is the exit fee incurred by the state's other natural gas utility in Docket No. DG 95-345 or the one similarly incurred in Docket No. 99-050, the difference from present circumstances is that, unlike the precedent agreements in those dockets, the Commission never so much as hinted at a favorable inclination toward the Granite Bridge project.

III. Conclusion

For the foregoing reasons, the Commission must deny the pending motion for rehearing.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Deny the motion of Energy North Natural Gas Company for rehearing of Order No. 26,536, and
- B. Clarify Order No. 26,536 as necessary.

Sincerely,



Donald M. Kreis
Consumer Advocate
Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, NH 03301
(603) 271-1174
donald.m.kreis@oca.nh.gov

December 2, 2021

Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.



Donald M. Kreis

STATE OF NEW HAMPSHIRE

INTERIM COMMISSIONER
Jared S. Chicoine

DEPUTY COMMISSIONER
Christopher J. Ellms, Jr.



DEPARTMENT OF ENERGY
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-3670

FAX No. 271-1526

Website:
www.energy.nh.gov

December 3, 2021

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301-2429

Re: 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

Dear Chairman Goldner:

Attached for filing in the above captioned proceeding is the Department of
Energy's Objection to Liberty's Motion for Rehearing of Order No. 26,536.

Consistent with the Commission's *Temporary Changes in Filing Requirements*
(March 17, 2020) this letter is being filed solely in electronic form.

Thank you for your attention to this matter.

Sincerely,

/s/ *Paul B. Dexter*

Paul B. Dexter
Staff Attorney/Hearings Examiner

Cc: Service List

ClerksOffice@puc.nh.gov
amanda.o.noonan@energy.nh.gov
catherine.mcnamara@libertyutilities.com
ckimball@keeganwerlin.com
david.k.wiesner@energy.nh.gov
david.simek@libertyutilities.com
dmullinax@blueridgecs.com
donald.m.kreis@oca.nh.gov
dvenora@keeganwerlin.com
heather.tebbetts@libertyutilities.com
Ian.McGinnis@fticonsulting.com
jayson.p.laflamme@energy.nh.gov
jmierzwa@exeterassociates.com
jralston@keeganwerlin.com
jrw@psu.edu
julianne.m.desmet@oca.nh.gov
karen.sinville@libertyutilities.com
kerri-lyn.gilpatric@energy.nh.gov
lynn.h.fabrizio@energy.nh.gov
Mark.Stevens@LibertyUtilities.com
maureen.karpf@libertyutilities.com
michael.sheehan@libertyutilities.com
ocalitigation@oca.nh.gov
paul.b.dexter@energy.nh.gov
randall.s.knepper@energy.nh.gov
Robert.Hilton@libertyutilites.com
Robert.Mostone@LibertyUtilities.com
steven.mullen@libertyutilities.com
tklaes@blueridgecs.com
william.clark@libertyutilities.com

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

Paul B. Dexter, Esq. # 4866
Staff Attorney/Hearings Examiner
21 South Fruit Street, Suite 10
Concord, NH 03301
603-271-3670
Paul.B.Dexter@energy.nh.gov

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*

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

Distribution Service Rate Case

Motion to Amend Petition

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth”), through counsel, and as directed by the Commission in Order No. 26,409 (Oct. 6, 2020), respectfully moves the Commission to amend its *Petition for Permanent and Temporary Rates* to add the Company’s request to recover costs incurred to investigate, evaluate, and assess the future development of the Granite Bridge Project (the “Granite Bridge Project Costs”).

In support of this motion, EnergyNorth represents as follows:

1. In July 2020, EnergyNorth filed a motion to amend its petition in Docket No. DG 17-198, which was the docket to review EnergyNorth’s proposed Granite Bridge Project. The motion included requests to withdraw consideration of the Granite Bridge Project and to obtain approval to recover the Granite Bridge Project Costs.
2. The Commission denied the request to add consideration of the Granite Bridge Project Costs to Docket No. DG 17-198, stating: “Requests for authority to recover capital project and supply planning costs are appropriately reviewed in a full rate case.” Order No. 26,409 at 13 (Oct. 6, 2020).
3. By this motion, EnergyNorth is following the Commission’s directive and is presenting for review in this docket the Company’s request for approval to recover the Granite Bridge

Project Costs.

4. In support of this request, the Company is filing with this motion the *Supplemental Direct Testimony of Francisco C. DaFonte and William R. Killeen and Steven E. Mullen* (the “Supplemental Testimony”). The Supplemental Testimony provides evidence demonstrating the prudence of the Company’s decisions that led to the Granite Bridge Project Costs.
5. Note that this request does not change the Company’s proposed revenue requirement for temporary or permanent rates. Rather, the Company seeks recovery of the Granite Bridge Project Costs through a reconciling charge within the Local Distribution Adjustment Clause. Therefore, this filing does not give rise to the need to amend the existing testimony and schedules that were filed in support of the proposed changes to distribution rates.
6. The Company has discussed with Commission Staff and the Office of the Consumer Advocate measures that will ensure the smooth integration of this issue into the existing procedural schedule and preserve the hearing dates now scheduled for late May and early June 2021. Those measures include the Company’s agreement to provide Audit Staff with immediate access to the documentation supporting the Granite Bridge Project costs.

WHEREFORE, EnergyNorth respectfully requests that the Commission:

- A. Grant this motion to amend the petition in this docket; and
- B. Grant such other relief as is just and equitable.

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



Date: November 20, 2020

By: _____
Michael J. Sheehan, Esq. #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
Michael.Sheehan@libertyutilites.com



By: _____
Daniel P. Venora
Jessica Buno Ralston, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, MA 02110
(617) 951-1400
dvenora@keeganwerlin.com
jralston@keeganwerlin.com

Certificate of Service

I certify that on November 20, 2020, a copy of this Motion has been electronically forwarded to the service list.



Michael J. Sheehan

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Docket No. DG 20-105

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities
Distribution Service Rate Case

SUPPLEMENTAL DIRECT TESTIMONY

OF

FRANCISCO C. DAFONTE,

WILLIAM R. KILLEEN,

AND

STEVEN E. MULLEN

November 20, 2020



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1 **I. INTRODUCTION**

2 **Q. Please state your name, title, and business address.**

3 A. (FD) My name is Francisco C. DaFonte. I am Vice President, Regulated Infrastructure
4 Development – Gas, of Liberty Utilities Service Corp., which provides services to Liberty
5 Utilities (EnergyNorth Natural Gas) Corp. (“EnergyNorth” or the “Company”). My
6 business address is 15 Buttrick Road, Londonderry, New Hampshire.

7 (WK) My name is William R. (Bill) Killeen. I am Director, Energy Procurement, of
8 Liberty Utilities (Canada) Corp., the indirect parent company of EnergyNorth. My
9 business address is 354 Davis Road, Oakville, Ontario, Canada.

10 (SM) My name is Steven E. Mullen. I am Director, Rates and Regulatory Affairs, of
11 Liberty Utilities Service Corp. My business address is 15 Buttrick Road, Londonderry,
12 New Hampshire.

13 **Q. On whose behalf are you submitting this Supplemental Direct Testimony?**

14 A. We are submitting this joint Supplemental Direct Testimony before the New Hampshire
15 Public Utilities Commission (the “Commission”) on behalf of EnergyNorth.

16 **Q. Mr. DaFonte, please summarize your educational background and your business and**
17 **professional experience.**

18 A. I attended the University of Massachusetts Amherst where I majored in Mathematics with
19 a concentration in Computer Science. In 1985, I was hired by Commonwealth Gas
20 Company (now NSTAR Gas Company), where I was employed primarily as a supervisor

1 in gas dispatch and gas supply planning for nine years. In 1994, I joined Bay State Gas
2 Company (now Columbia Gas of Massachusetts) where I held various positions including
3 Director of Gas Control and Director of Energy Supply Services. In 2011, I was hired as
4 the Director of Energy Procurement by Liberty Energy (NH) and promoted to Senior
5 Director in July 2013 and Vice President in July 2014. In November 2016, I became Vice
6 President, Regulated Infrastructure Development – Gas, of Liberty Utilities.

7 **Q. Mr. Killeen, please summarize your educational and professional background.**

8 A. I earned a Bachelor of Engineering Science (Chemical) degree from the University of
9 Western Ontario (now Western University) in 1985. I also earned a Master's degree in
10 Business Administration from the Ivey School of Business at Western University in 1989.

11 I have 30 years of professional experience in the energy and utilities industries in the areas
12 of regulation, supply, operations, and customer service. I have worked at natural gas
13 utilities and electric utilities, as well as in consulting, marketing, and government positions.
14 Early in my career, I was employed by Union Gas Limited, a major natural gas utility
15 serving over 1.4 million customers in Ontario, Canada, for twelve years in varying
16 capacities, including regulatory and supply. Prior to joining Liberty Utilities in February
17 2014, I was employed by Enersource Hydro Mississauga Inc., a major electric utility
18 serving the City of Mississauga, Ontario, for three years as Manager, Regulatory Affairs.
19 In between my employment at these two large utilities, I was employed at various other
20 companies, always retaining responsibility for oversight of regulatory affairs and supply,
21 typically in Ontario or eastern Canada. These companies included Engage Energy Canada

1 Inc., Direct Energy as Manager, Regulatory Affairs, and a consulting company, ECNG
2 Energy LP, as Director, Supply and Regulatory Affairs for eight years. Following ECNG,
3 I spent a brief tenure within the Ministry of Energy of the Ontario Government.

4 **Q. Mr. Mullen, did you previously sponsor Direct Testimony in this docket on July 31,**
5 **2020?**

6 A. Yes. That testimony sets forth my educational background and professional qualifications.

7 **Q. What is the purpose of your Supplemental Direct Testimony?**

8 A. The purpose of our Supplemental Direct Testimony is to seek Commission approval for
9 recovery of the costs incurred to investigate, evaluate, and assess the future development
10 of the Granite Bridge Project as part of EnergyNorth's current rate case proceeding.
11 Specifically, EnergyNorth is seeking to recover approximately \$7.5 million of core
12 development costs incurred from 2016 into 2020 associated with the Company's
13 investigation and analysis of the Granite Bridge Project (the "Granite Bridge Project
14 Costs"), as these costs were necessary to assess and pursue the least-cost resource
15 alternative to meet the natural gas demand needs of EnergyNorth's customers in
16 accordance with the Company's Commission-approved resource planning standards and
17 decision-making process.¹

¹ The Commission most recently reviewed and approved the Company's resource planning process and the results of that process in Docket No. DG 14-380 related to the Company's firm transportation agreement regarding the Northeast Energy Direct ("NED") Project. *See*, Order No. 25,822 (Oct. 2, 2015).

1 **Q. Why is the Company seeking authority to recover the Granite Bridge Project Costs**
2 **in this rate case proceeding?**

3 A. EnergyNorth is following the guidance provided in the Commission's October 6, 2020,
4 order issued in Docket No. DG 17-198. With respect to the Company's request for
5 approval to recover the Granite Bridge Project Costs, Order No. 26,409 stated: "Requests
6 for authority to recover capital project and supply planning costs are appropriately
7 reviewed in a full rate case."² Order No. 26,409 was issued subsequent to the Company's
8 July 31, 2020, initial filing in this rate case proceeding. Therefore, the Company is
9 providing this joint Supplemental Direct Testimony to present the Company's rationale
10 and support for recovery of the Granite Bridge Project Costs.

11 **II. EXECUTIVE SUMMARY**

12 **Q. Why did the Company incur costs to investigate, evaluate, and assess the development**
13 **of the Granite Bridge Project?**

14 A. As detailed in Section III, several key developments and events in recent years led to the
15 Company's decision to investigate, analyze, and pursue the development of the Granite
16 Bridge Project, which resulted in the incurrence of reasonable and prudent development
17 costs. The motivation for that decision was to pursue the least-cost resource alternative to
18 meet the demand needs of EnergyNorth's customers, and to fulfill the Company's
19 obligation to provide safe and reliable natural gas service.

² Order No. 26,409 (Oct. 6, 2020) in Docket No. DG 17-198, at 13.

1 Since the 2012 acquisition of EnergyNorth by Liberty Energy Utilities (New Hampshire)
2 Corp. (“Liberty”), the Company has continued to experience growth in customers and
3 overall natural gas demand and, as a result, EnergyNorth determined it necessary to acquire
4 additional gas supply and pipeline capacity to serve that demand.³ The Company relies on
5 a single feed from Tennessee Gas Pipeline Company, LLC (“TGP”) for the delivery of gas
6 supply to its service territory in southern and central New Hampshire. In 2014–2015, the
7 Company sought and received Commission approval for a precedent agreement with TGP
8 for capacity on the NED Project,⁴ which would have provided EnergyNorth a second
9 pipeline feed and diversified its upstream delivery infrastructure. However, TGP cancelled
10 the NED Project in 2016.⁵ After the cancellation of the NED Project, the Company
11 initiated due diligence on the only two viable options to meet its customers’ projected
12 demand requirements, which were a contract for incremental capacity on the existing TGP
13 Concord Lateral or a Company-sponsored supply and capacity project.

14 In late 2017, based on extensive quantitative and qualitative analysis of the best available
15 information at that time, EnergyNorth announced plans to develop the Granite Bridge
16 Project, comprised of the Granite Bridge Pipeline (as a second feed to the Company’s

³ The Commission Staff has acknowledged this circumstance, stating: “[W]e nevertheless do find sound the Company’s conclusion that its needs for the next five years require additional capacity to support its gas-supply requirements. *Specifically, we find increased pipeline capacity to be necessary*” Revised Testimony of The Liberty Consulting Group (“Liberty Consulting”) on behalf of Staff submitted in Docket No. DG 17-198, September 20, 2019, at Bates 010 (emphasis added).

⁴ See, Order No. 25,822 (Oct. 2, 2015) in Docket No. DG 14-380.

⁵ See, Tennessee Gas Pipeline, LLC, Notice of Withdrawal of Certificate Application, FERC Docket No. CP16-21-000, May 23, 2016.

1 service territory) and the Granite Bridge LNG Facility (the primary source of supply for
2 the Granite Bridge Pipeline). The Company filed for Commission approval of its natural
3 gas supply strategy, which included the Granite Bridge Project as the least-cost option, in
4 Docket No. DG 17-198.⁶ During the course of that proceeding (*i.e.*, over the 2018 to 2020
5 timeframe),⁷ the Company continued to evaluate and pursue the two resource options.
6 Specifically, the Company conducted significant engineering design and other
7 development work necessary to refine the capital costs for the Granite Bridge Project and
8 to support a final determination that the Granite Bridge Project was the least-cost, long-
9 term solution for customers. When the Company's resource portfolio with the Granite
10 Bridge Project initially demonstrated a lower cost than the resource portfolio with the
11 proposed capital costs and indicative rates from TGP, the Company continued to incur
12 investigative and evaluation costs to refine the cost projections for the Granite Bridge
13 Project to further validate the decision on resource selection.

14 In refining the cost estimates for the Granite Bridge Project while continuing to pursue
15 both resource options, the Company assured its ability to meet the resource needs of
16 customers on a timely basis. The Company's pursuit of the Granite Bridge Project
17 demonstrated to TGP and other market participants EnergyNorth's commitment to identify

⁶ See, Petition to Approve Firm Supply and Transportation Agreements and the Granite Bridge Project submitted in Docket No. DG 17-198 on December 21, 2017.

⁷ As part of that docket, the Company engaged with Commission Staff, the Office of Consumer Advocate ("OCA"), and other intervenors through the discovery process, intervenor discussions, and numerous technical sessions. Through that engagement process, EnergyNorth also conducted additional analyses as requested by intervenors and submitted certain updates to its analyses through the discovery process, Supplemental Direct Testimony filed on March 15, 2019, and Second Supplemental Direct Testimony filed on July 31, 2020.

1 the least-cost supply and capacity alternative. This approach positioned the Company to
2 continue discussions with TGP regarding service and price options from a position of
3 strength, and created negotiating leverage for EnergyNorth that better enabled the
4 Company to negotiate and execute a new contract with TGP on favorable terms.
5 Specifically, on July 14, 2020, the Company entered into a firm transportation agreement
6 (“FT-A”) with TGP for 40,000 Dth per day of capacity from the Dracut, Massachusetts,
7 receipt point to the Londonderry, New Hampshire, delivery point (the “TGP Contract”) at
8 a significantly lower rate than the indicative rates initially provided by TGP from 2016
9 through early 2019. Through its negotiations with TGP, EnergyNorth ultimately received
10 a proposal for significantly lower rates in late 2019, and through continued negotiations
11 into 2020 was able to secure the lowest possible filed rate under TGP’s Federal Energy
12 Regulatory Commission (“FERC”) approved tariff. The TGP Contract provided a capacity
13 alternative at a lower cost than the Granite Bridge Project. Therefore, consistent with its
14 Commission-approved resource planning process, the Company suspended all
15 development activity associated with the Granite Bridge Project as the revised TGP option
16 emerged as the least-cost option, and, after the TGP Contract was signed, the Company
17 decided to cancel the project and withdraw its request for approval of the Granite Bridge
18 Project.

19 **Q. Please summarize the total costs incurred to develop the Granite Bridge Project.**

20 A. Over the 2016 to 2020 timeframe when the Company was investigating and analyzing the
21 two available resource options to meet customers’ needs (*i.e.*, a capacity contract with TGP

1 or the Granite Bridge Project), the Company incurred a total of approximately \$9.1 million
2 in development costs associated with the Granite Bridge Project. As discussed in Section
3 IV, the vast majority of those costs were incurred during 2018 and 2019 prior to securing
4 the low rate associated with the TGP Contract and when the cost of the TGP alternative
5 was higher than the estimated cost to develop the Granite Bridge Project.

6 **Q. Is EnergyNorth seeking to recover the full \$9.1 million of development costs**
7 **associated with the Granite Bridge Project?**

8 A. No. As noted earlier and further outlined in Section IV, the Company has conducted a
9 detailed review of the costs incurred over the 2016 to 2020 period and has used certain
10 guiding principles to determine the specific costs for which it seeks recovery. Based on
11 that analysis, the Company seeks to recover approximately \$7.5 million of the total \$9.1
12 million, which consists of core development costs associated with the engineering design,
13 environmental assessments, and other analysis and development work for the Granite
14 Bridge Project. The Company is not seeking recovery of the Allowance for Funds Used
15 During Construction (“AFUDC”), costs incurred for public outreach, and legal and
16 miscellaneous costs related to the planned New Hampshire Site Evaluation Committee
17 (“SEC”) filing for the Granite Bridge Project. Lastly, there are no carrying charges
18 included in the Company’s request.

1 **Q. Please summarize the Company's proposed mechanism to recover the Granite Bridge**
2 **Project Costs from customers.**

3 A. As described in Section IV, the Company proposes to recover the approved Granite Bridge
4 Project Costs through a reconciling charge collected through the Local Distribution
5 Adjustment Clause ("LDAC") over a period of five years, which does not affect the
6 revenue requirement requested in this docket. That is, the Company would calculate and
7 propose in the cost of gas proceeding following an order in this docket, an appropriate per-
8 therm charge allowing for the recovery of the \$7.5 million from all customers over a five-
9 year period. That charge would be reconciled in each year's cost of gas filing to ensure
10 recovery of precisely the approved amount.

11 **Q. Please explain why the costs associated with the analysis and development of the**
12 **Granite Bridge Project should be recovered from EnergyNorth's customers.**

13 A. As detailed in Section V, the Granite Bridge Project Costs should be recovered from
14 customers for several reasons. First, these costs were necessary to evaluate and
15 demonstrate the feasibility of an alternative to the Company's sole delivery pipeline, the
16 TGP Concord Lateral. From 2016 until late 2019, the rates offered by TGP for a new
17 capacity contract were substantially higher than the expected costs of the Granite Bridge
18 Project, making the Granite Bridge Project the clear lower cost alternative. Second, the
19 work that gave rise to the Granite Bridge Project Costs strongly positioned the Company
20 in its negotiations with TGP and other market participants, as it indicated EnergyNorth's
21 ability and willingness to solve the Company's resource constraints through a means other

1 than contracting with TGP. The pursuit of the Granite Bridge Project positioned the
2 Company to continue the years-long discussions with TGP and benefit from the
3 significantly lower pricing ultimately offered by TGP for capacity on the TGP Concord
4 Lateral. EnergyNorth's work to investigate and analyze the viability and feasibility of the
5 Granite Bridge Project was instrumental and critical in achieving the current, highly
6 beneficial outcome for EnergyNorth's customers. Third, EnergyNorth's customers will
7 receive the benefit associated with the Company's pursuit of the Company-sponsored
8 development option, in that the customers are the direct and sole beneficiaries of the
9 significant cost savings associated with the TGP Contract. As such, the Company should
10 be allowed to recover the costs to achieve that benefit. Fourth, the Company's request to
11 recover these necessary and prudently incurred costs is consistent with the payment of a
12 termination or exit fee associated with a third-party precedent agreement for pipeline
13 capacity, which have been allowed for recovery. Finally, allowing recovery of the Granite
14 Bridge Project Costs will incentivize EnergyNorth and other utilities to continue seeking
15 the least-cost option for customers regardless of whether that option is sponsored by the
16 Company or a third-party.

17 **III. BACKGROUND**

18 **Q. Please provide relevant context and background for the Company's resource**
19 **decisions.**

20 **A.** EnergyNorth has experienced a significant increase in natural gas customers and associated
21 demand since Liberty's acquisition of EnergyNorth. The Company has successfully

1 focused on meeting the energy needs of the residents and businesses in New Hampshire by
2 providing natural gas as a fuel choice for various end-use applications and, therefore, the
3 Company has experienced -- and continues to experience -- an increase in natural gas
4 demand.⁸ Over the 2011/12 to 2019/20 split-years,⁹ annual demand has increased at a
5 compound annual growth rate of approximately 2.4% per year. Figure 1 below depicts, as
6 load duration curves,¹⁰ the actual natural gas demand in 2011/12 relative to the projected
7 demand for 2020/21.¹¹

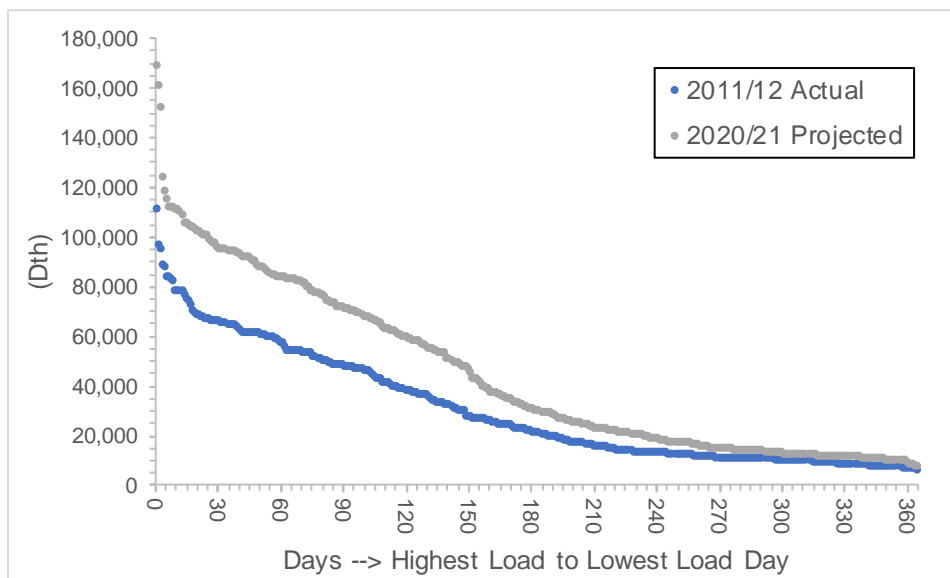
⁸ The Company has submitted natural gas demand forecasts in Docket Nos. DG 13-313, DG 14-380, DG 15-494, DG 17-152, and DG 17-198. While the Company's demand forecasts may vary across those dockets, the Company has consistently projected demand for natural gas to increase over the various forecast periods.

⁹ The split-year is defined as the twelve months from November through October.

¹⁰ The load duration curves were developed by re-sorting the daily demand requirements by highest load day to lowest load day for each of the specified years.

¹¹ The projected demand for 2020/21 is consistent with the demand forecast submitted in the Company's most recent Least Cost Integrated Resource Plan in Docket No. DG 17-152.

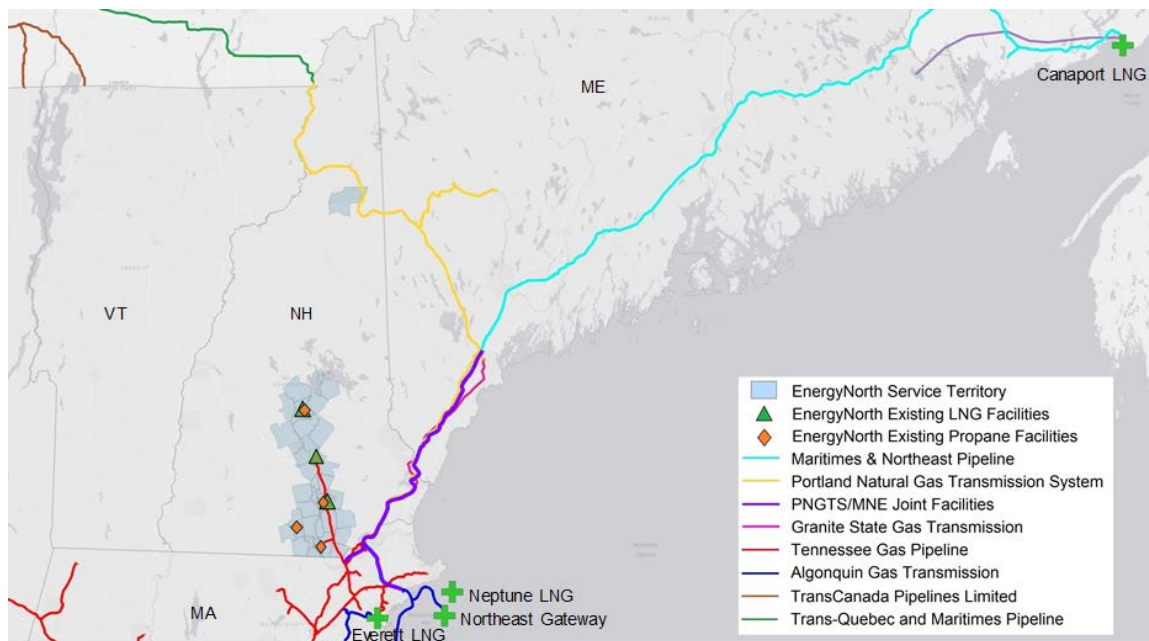
Figure 1: EnergyNorth Actual and Projected Natural Gas Demand



To meet customers' demand requirements, the Company's current resource portfolio is comprised of the following resources: (1) long-haul and short-haul transportation capacity; (2) underground storage; and (3) on-system LNG and propane facilities. As discussed above, and as illustrated in Figure 2 below, the Company's existing service territory is served exclusively by the TGP Concord Lateral.¹²

¹² Exceptions to this statement are the City of Berlin, which is served by PNGTS, and the City of Keene, which receives propane and compressed natural gas via truck deliveries.

Figure 2: EnergyNorth Service Territory and Infrastructure Map¹³



This sole reliance on the TGP Concord Lateral for the deliveries of pipeline gas supplies means that any upstream gas supply option is limited to those that can access this lateral. Given this deliverability limitation on the Concord Lateral, EnergyNorth determined it necessary to identify and analyze available gas supply and pipeline capacity alternatives to meet the growing demand requirements of its customers.

Q. What actions did the Company take to meet the forecasted demand requirements of its customers?

A. In Docket No. DG 14-380, EnergyNorth requested and received Commission approval in late 2015 for a 20-year precedent agreement with TGP for 115,000 Dth per day of firm

¹³ Source: S&P Global Market Intelligence [modified by ScottMadden, Inc.].

1 transportation capacity on the proposed NED Project.¹⁴ This would have provided a second
2 pipeline feed into the west end of the Company's distribution system and diversified its
3 upstream delivery infrastructure. However, the NED Project was cancelled by TGP in May
4 2016.¹⁵ After the cancellation of the NED Project, EnergyNorth conducted a rigorous
5 evaluation of reasonably available resource options in the marketplace to meet its demand
6 requirements using the Commission-approved resource planning standards.

7 Specifically, over the 2016 to 2017 timeframe, the Company identified, reviewed, and
8 evaluated the only two available and viable options for incremental capacity to meet its
9 customers' demand requirements: a contract for incremental capacity on the TGP Concord
10 Lateral or a Company-sponsored capacity and supply project. The TGP Concord Lateral
11 was, and continues to be, fully subscribed and, therefore, any requests for TGP to increase
12 capacity and deliverability would have, at a minimum, required TGP to construct
13 incremental facilities on the its Concord Lateral. Thus, the Company had confidential
14 discussions with TGP regarding an expansion of the TGP Concord Lateral and received
15 capital cost estimates and indicative rates in August 2016 and March 2017 for an expansion
16 of approximately 75,000 Dth per day. Those daily indicative rates received from TGP in
17 2016 and 2017 for an expansion of the TGP Concord Lateral ranged from [REDACTED] to [REDACTED]
18 per Dth. The second option, a Company-sponsored project, was the Granite Bridge Project,

¹⁴ See, Order No. 25,822 (Oct. 2, 2015) in Docket No. DG 14-380.

¹⁵ See, Tennessee Gas Pipeline, LLC, Notice of Withdrawal of Certificate Application, FERC Docket No. CP16-21-000, May 23, 2016.

1 which included two components, the Granite Bridge Pipeline as a second delivery feed to
2 the Company's service territory and the Granite Bridge LNG facility as the primary source
3 of supply to the Granite Bridge Pipeline.¹⁶

4 After the Company's extensive quantitative and qualitative analysis, including preliminary
5 engineering cost estimates and work to determine the project's viability, EnergyNorth
6 recommended the Granite Bridge Project as the preferred, least-cost option. The Company
7 then filed its petition in Docket No. DG 17-198 on December 22, 2017, requesting the
8 Commission's affirmation that the Granite Bridge Project was the prudent choice.

9 **Q. Did the Company continue to review and assess the two resource options following**
10 **the initial filing in December 2017 in Docket No. DG 17-198?**

11 A. Yes. After making its initial filing in Docket No. DG 17-198, EnergyNorth continued to
12 review and assess the two resource options to confirm that the Granite Bridge Project
13 remained the preferred option prior to commencement of any construction. Those efforts
14 included public outreach and substantial engineering and environmental work associated
15 with the Granite Bridge Project. In addition to these project-specific efforts, the Company
16 also undertook further analysis associated with the regulatory process in Docket No. DG
17 17-198 (*e.g.*, discovery, intervenor discussions, and numerous technical sessions).

¹⁶ As described in the Company's initial filing in Docket No. DG 17-198, based on conceptual engineering and feasibility studies, the preliminary capital cost estimate for the Granite Bridge Pipeline resulted in an estimated levelized annual cost of approximately \$12.8 million, or unit cost of approximately \$0.47 per Dth per day (which assumed a capacity of 75,000 Dth per day to compare on an "apples-to-apples" basis with the TGP option).

1 **Q. Did the Company’s analysis include the potential mitigation value associated with a**
2 **third-party contract and updating the cost estimates for the Granite Bridge Project?**

3 **A.** Yes, it did. Between 2018 and early 2019, the Company updated its analysis to include:
4 (i) an outline and evaluation of the mitigation value for the Granite Bridge Project and the
5 benefits to the Company’s customers associated with a Memorandum of Understanding
6 (“MOU”) executed on October 3, 2018, between the Company and Calpine Corporation
7 (“Calpine”); and (ii) updated project designs and refined cost estimates for the proposed
8 Granite Bridge Project, which included a 30% engineering design and detailed construction
9 costs estimates from four engineering, procurement, and construction (“EPC”) companies
10 for the Granite Bridge Pipeline, as detailed in the Company’s Supplemental Direct
11 Testimony in Docket No. DG 17-198 filed on March 15, 2019.

12 **Q. Following the March 15, 2019, Supplemental Direct Testimony in Docket No. DG 17-**
13 **198, did the Company continue to have discussions with TGP regarding the options**
14 **available to the Company on the Concord Lateral?**

15 **A.** Yes. In May 2019, TGP confirmed the August 2016 and March 2017 price estimates, and
16 also provided capital costs and daily indicative rates for a lower capacity contract volume
17 of 50,000 Dth per day from two receipt points (CLNG at Everett, Massachusetts, or Dracut,
18 Massachusetts), which ranged from [REDACTED] to [REDACTED] per Dth. Thus, based on the information
19 provided by TGP in 2016, 2017, and again in May 2019, the Granite Bridge Pipeline

1 remained the least-cost delivery option¹⁷ and the Company continued to work on
2 developing the Granite Bridge Project as its best long-term solution to meet customers'
3 needs.

4 **Q. What additional development work was the Company doing on the Granite Bridge**
5 **Project?**

6 A. As disclosed in discovery responses in Docket No. DG 17-198 submitted in May 2019, the
7 Company continued its detailed engineering and other development work to achieve a 70%
8 design level for the Granite Bridge Pipeline and to obtain a Front End Engineering and
9 Design ("FEED") study that would bring the design engineering for the Granite Bridge
10 LNG Facility to a minimum of 30% design. Both the 70% pipeline design and LNG FEED
11 study were expected to be completed by October 2019.

12 **Q. Was the engineering and other development work necessary to support the**
13 **Company's determination of whether the Granite Bridge Project was the least-cost**
14 **option for customers?**

15 A. Yes. The engineering and other development work was necessary to refine the capital cost
16 estimates associated with the Granite Bridge Project and to confirm the Company's
17 determination that the Granite Bridge Project was the least-cost, long-term solution to meet
18 customers' needs. This is also in line with the Revised Testimony of Liberty Consulting

¹⁷ As described in the Company's March 15, 2019, Supplemental Direct Testimony in Docket No. DG 17-198, based on the average of the EPC cost estimates for the Granite Bridge Pipeline, the updated levelized annual cost estimate for the Granite Bridge Project was approximately \$17.6 million, or a unit cost of \$0.64 per Dth per day (assuming a capacity of 75,000 Dth per day to compare to the TGP option).

1 submitted on behalf of Commission Staff in Docket No. DG 17-198 in September 2019,
2 which indicated that more analysis was required to refine the cost estimates. Specifically,
3 with respect to the cost estimate for the Granite Bridge Pipeline, Liberty Consulting stated:
4 “This estimate remains based on a fairly low level of preliminary engineering, specifically,
5 the 30 percent minimum required by the New Hampshire Department of Transportation for
6 a Preliminary Conceptual Feasibility Study.”¹⁸ Liberty Consulting also stated:
7 “Development of more data and analysis about both the Granite Bridge Pipeline and the
8 Concord Lateral alternative is necessary to permit a fully-informed decision between
9 them.”¹⁹

10 **Q. Did the Company conduct additional analyses of the two resource options following**
11 **Staff’s and other parties’ testimony in September 2019 in Docket No. DG 17-198?**

12 A. Yes, the Company continued to analyze and pursue both resource options. On October 16,
13 2019, EnergyNorth announced that the evaluation of the Granite Bridge Pipeline had been
14 completed, representing a 70% design stage, and that the Company was issuing a request
15 for proposals for contractor bids based on that design to further refine the capital cost
16 estimate.²⁰ Shortly before the disclosure, EnergyNorth had again contacted TGP to obtain
17 updated expansion cost estimates. At this point, and for the first time, the Company
18 received from TGP significantly lower capital cost estimates for 25,000 Dth per day,

¹⁸ Revised Testimony of The Liberty Consulting Group submitted on behalf of Staff in Docket No. DG 17-198, September 20, 2019, at Bates 030.

¹⁹ Ibid, at Bates 028–029.

²⁰ See, *Expedited Motion to Extend Date for Filing Rebuttal Testimony* submitted in Docket No. DG 17-198, October 16, 2019.

1 50,000 Dth per day, and 75,000 Dth per day delivery options. These new indicative rates
2 ranged from [REDACTED] to [REDACTED] per Dth. These revised TGP estimates, which were received
3 at the end of October 2019, were significantly lower than the prior estimates provided by
4 TGP in 2016, 2017, and May 2019. Based on an initial assessment of the revised TGP
5 estimates, EnergyNorth determined that the TGP option could be cost competitive with the
6 Granite Bridge Project. Thus, the Company continued to engage with TGP to better
7 understand and further analyze the resource options provided by TGP relative to the
8 Granite Bridge Project.

9 **Q. Subsequent to receiving the revised estimates and rates from TGP in October 2019,**
10 **please summarize the Company's on-going discussions with TGP.**

11 A. EnergyNorth requested additional capital cost and price scenario options from TGP to
12 better understand and further analyze the revised TGP estimates received in late October
13 2019. In response to these requests for alternative scenarios, the Company received
14 additional updated information from TGP in December 2019 and January 2020 that further
15 reduced the cost estimates from those provided in October 2019. Specifically, TGP
16 provided estimates for 25,000 Dth per day and 50,000 Dth per day delivery options with
17 daily indicative rates ranging from [REDACTED] to [REDACTED] per Dth. Based on these even lower
18 estimates, EnergyNorth concluded that, if these TGP options and prices materialized, then
19 the Granite Bridge Pipeline would no longer be the least-cost delivery option. The
20 Company thus suspended most activities associated with the Granite Bridge Project to
21 focus on assessing the TGP options.

1 **Q. Did the Company receive additional information from TGP?**

2 A. Yes. In April 2020, again at the request of EnergyNorth, TGP provided revised information
3 to the Company for various scenarios (*i.e.*, different quantities to be delivered to different
4 metering stations along the TGP Concord Lateral) with lower cost estimates than the
5 revised cost estimates provided to EnergyNorth in December 2019 and January 2020.

6 **Q. Did the Company narrow the options provided by TGP?**

7 A. Yes. To address the high growth areas on the Company's distribution system (*i.e.*, Nashua,
8 Manchester, Londonderry, and surrounding towns), the Company focused on two
9 alternatives provided by TGP in April 2020 that were considered the best options for
10 meeting that demand growth and optimizing the TGP deliveries.

11 **Q. Please describe the two TGP alternatives that the Company evaluated.**

12 A. The first TGP alternative, hereinafter referred to as the "TGP Nashua/Manchester
13 Alternative," consisted of a 40,000 Dth per day contract originating at Dracut and
14 delivering 20,000 Dth per day to the Nashua gate station and 20,000 Dth per day to the
15 Manchester gate station. Under this alternative, TGP would need to "loop" the existing
16 Nashua/Hudson Lateral. That is, in order to deliver the higher quantities of natural gas,
17 TGP would have to construct a new pipeline that would effectively parallel the existing
18 pipeline, which runs through dense neighborhoods. This option resulted in a daily
19 indicative rate of [REDACTED] per Dth for an annual cost of approximately [REDACTED] million.²¹

²¹ Annual cost calculated as 40,000 Dth per day multiplied by the rate of [REDACTED] per Dth, multiplied by 365 days.

1 The second TGP alternative, hereinafter referred to as the “TGP Londonderry Alternative,”
2 consisted of a 40,000 Dth per day contract originating at Dracut and delivering to the
3 Londonderry gate station. Because there was no need for TGP to incur the capital costs to
4 loop the existing Nashua/Hudson Lateral in this alternative, or to engage in any other
5 substantial construction, the daily indicative rate was the lowest possible rate under TGP’s
6 FERC-approved tariff of \$0.14 per Dth, resulting in an annual cost of approximately \$2.0
7 million.²²

8 **Q. Please explain how deliveries from TGP would be optimized.**

9 A. Both the TGP Nashua/Manchester and TGP Londonderry Alternatives would require
10 EnergyNorth to complete certain on-system distribution enhancement projects to optimize
11 deliveries. These on-system enhancement projects would provide an increase in pressure
12 support and additional supply to the parts of the Company’s distribution system that are
13 experiencing high growth.

14 **Q. Does the Company require different levels of investment in on-system distribution**
15 **enhancements under the TGP Nashua/Manchester and TGP Londonderry**
16 **Alternatives?**

17 A. Yes, it does. However, prior to discussing the different levels of on-system investment
18 needed to optimize deliveries under the two TGP alternatives, there are certain common
19 investments across both alternatives. Specifically, under both TGP alternatives, the

²² Annual cost calculated as 40,000 Dth per day multiplied by the rate of \$0.14 per Dth, multiplied by 365 days.

1 Company would need to upgrade the Candia Road Station, which is estimated to cost [REDACTED]
2 million. The Company would also need to uprate a feeder line in Manchester at an
3 estimated cost of [REDACTED] million. For simplicity, the upgrade of the Candia Road Station and
4 the uprate of the feeder line in Manchester, the estimates for which total \$5.5 million, are
5 referred to as the “Common Costs.”

6 The estimated capital costs for the TGP Nashua/Manchester Alternative are as follows:

- 7 • TGP Costs:
 - 8 ○ Nashua/Hudson Lateral Loop: [REDACTED] million
 - 9 ○ Remote Crossover: [REDACTED] million
 - 10 ○ TGP Sub-total: [REDACTED] million
- 11 • Common Costs: \$5.5 million
- 12 • Company On-System Enhancements:
 - 13 ○ Replace feeder line in Nashua: [REDACTED] million
 - 14 ○ Cross Souhegan River: [REDACTED] million
 - 15 ○ Company On-System Enhancements Sub-total: [REDACTED] million

16 Therefore, under the TGP Nashua/Manchester Alternative, TGP estimated [REDACTED] million
17 in capital costs and the Company on-system capital investments are estimated to be [REDACTED]
18 million resulting in a total capital cost estimate for this alternative of \$44.5 million.

1 For the TGP Londonderry Alternative, the Company has the following estimates of capital
2 costs:

- 3 • Common Costs: \$5.5 million
- 4 • Company On-System Enhancements:
 - 5 ○ Granite Ridge Station: [REDACTED] million
 - 6 ○ Budweiser line in Nashua: [REDACTED] million
 - 7 ○ Brown Avenue pipeline and regulator in Manchester: [REDACTED] million
 - 8 ○ Daniel Webster Highway Merrimack station in Manchester: [REDACTED] million
 - 9 ○ Company On-System Enhancements Sub-total: [REDACTED] million

10 In total, the capital cost estimate is \$50.5 million under the TGP Londonderry Alternative.

11 **Q. Please provide the cost impacts to customers associated with the TGP**
12 **Nashua/Manchester and TGP Londonderry Alternatives.**

13 **A.** To compare the cost of service consequences of the estimated capital costs for the two TGP
14 alternatives, the Company calculated the annual cost of service associated with the total
15 capital cost estimates, then levelized those costs so they could be combined with the fixed,
16 annual TGP contract costs. The annual cost of service under the TGP Nashua/Manchester
17 Alternative is approximately \$10.2 million, of which [REDACTED] million represents the TGP
18 annual contract cost²³ and [REDACTED] million is the levelized annual cost associated with the

²³ Annual cost calculated as 40,000 Dth per day multiplied by the rate of [REDACTED] per Dth, multiplied by 365 days.

1 Company's on-system enhancement projects. In the TGP Londonderry Alternative, the
2 annual cost of service is approximately \$6.5 million, with the TGP annual contract cost
3 representing \$2.0 million²⁴ and the Company's levelized annual cost for the on-system
4 investment representing \$4.5 million. Therefore, the annual cost under the TGP
5 Londonderry Alternative is approximately \$3.7 million lower than the annual cost of
6 service associated with the TGP Nashua/Manchester Alternative.

7 **Q. Please summarize the Company's analysis regarding the TGP alternatives and its**
8 **conclusion.**

9 A. As described above, the cost of the TGP Londonderry Alternative is over 30% lower than
10 the TGP Nashua/Manchester Alternative. In addition, the TGP Londonderry Alternative
11 would provide significant qualitative benefits, including: (i) secondary feeds into the
12 Nashua and Manchester distribution systems; (ii) a TGP minimum guaranteed pressure of
13 300 PSI at the Londonderry interconnect (a 200% increase in the TGP minimum
14 guaranteed pressure when compared to the other TGP/EnergyNorth interconnects), which
15 increases on-system pressure at key points on the distribution system; (iii) reductions in
16 flow/stress in certain distribution locations; and (iv) the ability to phase in the on-system
17 facilities, thus spreading out the cost impacts and reducing the risk associated with
18 constructing all the required facilities in a shorter period of time. As a result, EnergyNorth
19 determined that the TGP Londonderry Alternative is the better of the two TGP alternatives.
20 The Company thus executed the TGP Contract for 40,000 Dth per day of capacity from the

²⁴ Annual cost calculated as 40,000 Dth per day multiplied by the rate of \$0.14 per Dth, multiplied by 365 days.

1 Dracut receipt point to the Londonderry delivery point on July 14, 2020. In addition, and
2 consistent with its Commission-approved resource planning process, since the revised TGP
3 option is now the least-cost option, the Company made the decision to cancel the Granite
4 Bridge Project and withdraw its request for approval of the Granite Bridge Project in
5 Docket No. DG 17-198 on July 31, 2020.²⁵

6 **Q. Is EnergyNorth seeking the Commission's approval of the TGP Contract and**
7 **authorization to recover the costs of the on-system distribution enhancement projects**
8 **in this docket?**

9 A. The Company does not seek approval of the TGP Contract in this docket, but will file a
10 separate petition in the near future for this purpose. As for recovering the costs associated
11 with the on-system enhancement projects required to optimize the TGP deliveries, the
12 Company may seek recovery after completion of the projects, either in a step adjustment
13 as part of this docket, or in a future rate case.

14 **IV. CALCULATION OF GRANITE BRIDGE PROJECT COSTS AND PROPOSED**
15 **RECOVERY MECHANISM**

16 **Q. Please summarize the costs incurred by the Company related to the investigation,**
17 **analysis, and development of the Granite Bridge Project and the associated timing of**
18 **those costs.**

19 A. As discussed in Section III above, given the Company's reliance on a single feed from TGP
20 Concord Lateral, EnergyNorth analyzed the only two viable options to meet the projected

²⁵ See, the Company's Second Supplemental Direct Testimony submitted in Docket No. DG 17-198 on July 31, 2020.

1 natural gas demand needs of its customers – a contract for capacity on the Concord Lateral
2 and the Granite Bridge Project. As a result of the Company's efforts to investigate,
3 develop, and analyze the viability of the Granite Bridge Project, EnergyNorth has incurred
4 a total of approximately \$9.1 million in costs over the 2016 to 2020 time period. The vast
5 majority of these costs were incurred during 2018 and 2019, when the Granite Bridge
6 Project remained the least-cost option as compared to the TGP option.

7 **Q. Did the Company review the \$9.1 million in development costs to determine which**
8 **costs should be submitted for recovery in this docket?**

9 A. Yes. The Company reviewed the \$9.1 million in development costs by applying a set of
10 guiding principles. The development costs that met these guiding principles have been
11 submitted for cost recovery in this docket.

12 **Q. Please summarize the guiding principles used by the Company.**

13 A. The Company applied the following four guiding principles in determining which costs
14 should be submitted in this docket for recovery:

- 15 • The costs were core expenditures to assess the viability and feasibility of the
16 Granite Bridge Project as a least-cost resource alternative to meet the natural gas
17 demand needs of EnergyNorth's customers;
- 18 • The costs were directly incurred to develop the feasibility assessment with an
19 appropriate level of detail to support the cost estimate for the Granite Bridge
20 Project;

- 1 • The costs were incurred during the identified period; and
- 2 • The costs were reviewed, verified, and approved for payment by authorized
- 3 personnel.

4 Please note, the supporting documents associated with the development costs were
5 reviewed and confirmed by the Company's accounting and auditing departments for
6 purposes of this filing.

7 **Q. Based on the Company's application of its guiding principles, is the Company seeking**
8 **to recover all of the development costs associated with the Granite Bridge Project?**

9 A. No. The Company has reviewed the development costs for the Granite Bridge Project by
10 cost category. Based on the application of its guiding principles, EnergyNorth has
11 identified the costs most appropriate for recovery, and has excluded other costs to be
12 conservative in its request. The Company does not seek recovery of costs related to public
13 outreach, legal costs associated with the Company's planned filing with the New
14 Hampshire SEC, AFUDC, and other miscellaneous costs related to the Granite Bridge
15 Project. Although these were necessary costs, the Company has focused its request on the
16 portion of costs that were most central to the project development. In addition, there are
17 no carrying charges included in the Company's request.

1 **Q. What portion of the \$9.1 million in development costs is the Company seeking to**
2 **recover?**

3 **A. Based on the guiding principles described above, the costs for which the Company seeks**
4 **recovery are associated with the following cost categories:**

- 5 • Engineering – costs related to developing preliminary designs and analyzing capital
6 cost estimates for the Granite Bridge Pipeline and Granite Bridge LNG Facility
7 (e.g., CHI Engineering Services, and Sanborn, Head & Associates);
- 8 • Environmental – costs related to the environmental assessment, analysis, and
9 compliance associated with the Granite Bridge Project (e.g., VHB Engineering);
- 10 • General consulting costs – fees for outside consulting services (e.g., ScottMadden,
11 Inc.) associated with certain project viability tasks (e.g., review and analysis of TGP
12 rates, review and analysis of SENDOUT® modeling assumptions and results) and
13 regulatory activities including providing evidence in support of the petition for
14 approval of the Granite Bridge Project in Docket No. DG 17-198;
- 15 • Commission-related costs – the costs associated with Commission Staff's
16 consultant, Liberty Consulting, and for the court reporter in Docket No. DG 17-
17 198;
- 18 • Internal labor – costs associated with work conducted by Liberty personnel in
19 support of the viability and feasibility assessment of the Granite Bridge Project;

management of external resources; and conducting and reviewing detailed cost analyses; and

- Land – costs associated with options to purchase the land in Epping for the proposed Granite Bridge LNG Facility, and to acquire easements to locate the metering stations at either end of the proposed Granite Bridge Pipeline in Exeter and Manchester.

In total, as summarized in Table 1 below, the Company is seeking authority to recover approximately \$7.5 million of the development costs associated with the Granite Bridge Project.

Table 1: Granite Bridge Project Costs by Cost Category

Cost Category	Total (\$000)
Engineering	\$3,327
Environmental	\$1,485
General Consulting Costs	\$838
Commission-related Costs	\$268
Internal Labor	\$1,299
Land	\$329
Total	\$7,547

Q. Are the Granite Bridge Project Costs summarized in Table 1 consistent with the guiding principles outlined above?

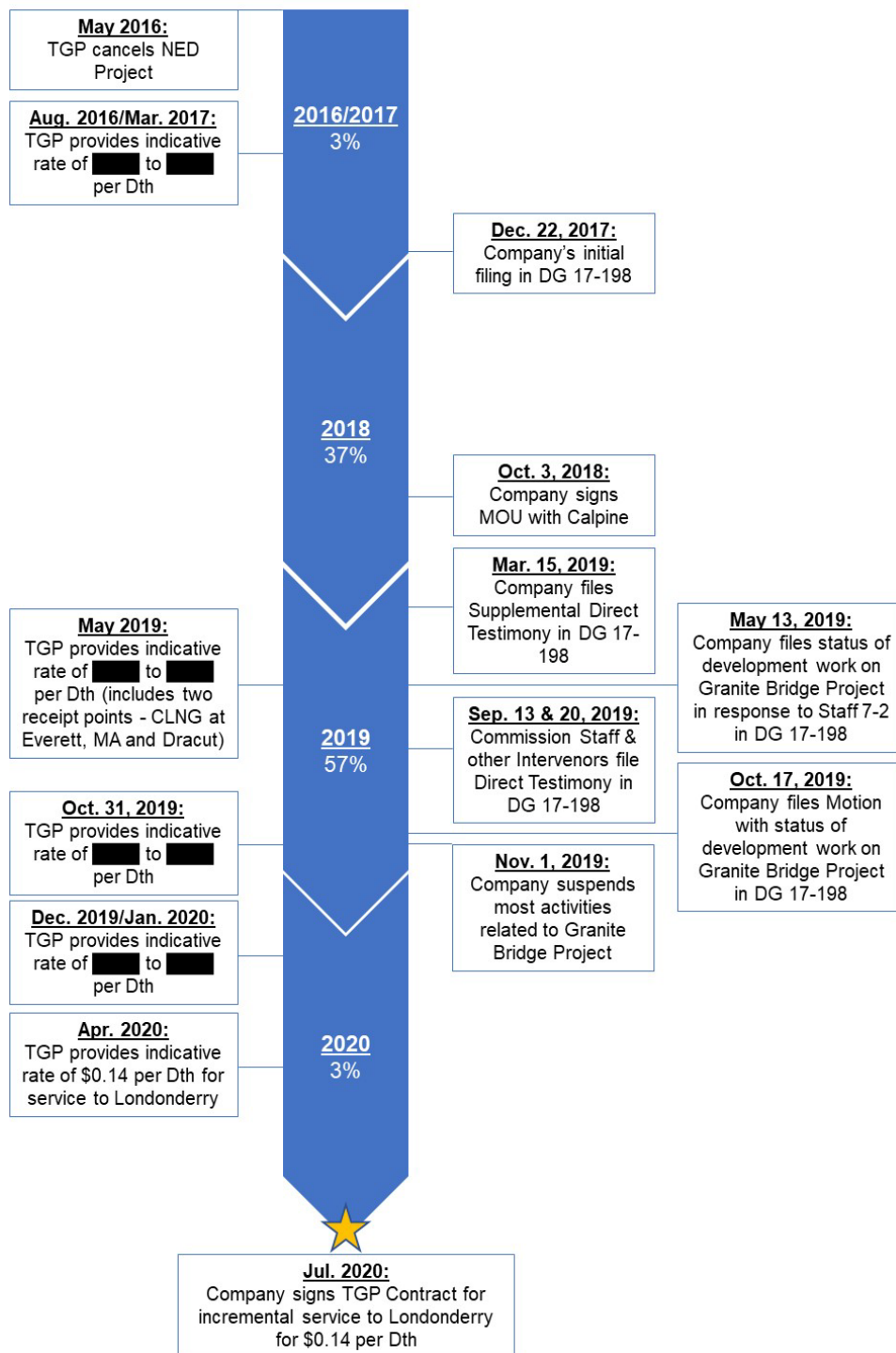
A. Yes. All of the Granite Bridge Project Costs summarized in Table 1 are consistent with the above-stated guiding principles.

1 **Q. Please summarize the Granite Bridge Project Costs by year.**

2 A. To provide context regarding timing of the Granite Bridge Project Costs relative to the
3 indicative rates for a capacity contract on TGP, in Figure 3 the Company provides a
4 timeline with respect to the indicative rates from TGP and the Company's related activities
5 described in Section III. Figure 3 also provides the proportion of costs incurred by the
6 Company for each year relative to the total Granite Bridge Project Costs (\$7.5 million from
7 Table 1). Specifically, as illustrated in Figure 3, the Company incurred approximately 3%,
8 37%, 57%, and 3% of the total \$7.5 million of Granite Bridge Project Costs in 2016/2017,
9 2018, 2019, and 2020, respectively.

1

Figure 3: Timeline of TGP Rates and Granite Bridge Project Costs



2

1 As shown in Figure 3 above, the Company incurred the vast majority, approximately 94%,
2 of the total \$7.5 million in Granite Bridge Project Costs, during the 2018 through 2019
3 period, which was the timeframe in which the TGP estimated rates for service ranged from
4 [REDACTED] to [REDACTED] per Dth. That is, the Company incurred costs to continue its viability
5 assessment and refine the capital cost projections for the Granite Bridge Project as it was
6 the lower cost alternative compared to the TGP option at that time. However, once the
7 TGP indicative rates were significantly reduced, EnergyNorth suspended most activities
8 associated with the Granite Bridge Project to focus on assessing the TGP options.

9 **Q. How does the Company propose to collect the Granite Bridge Project Costs in rates?**

10 A. EnergyNorth proposes to recover the approved Granite Bridge Project Costs through a
11 reconciling charge collected through the Company's LDAC over a period of five years.
12 That is, the Company would calculate and propose, in the cost of gas proceeding following
13 an order in this docket, an appropriate per-therm charge to be recovered from all customers
14 over a five-year period. That charge would be reconciled in each subsequent year's cost
15 of gas filing to ensure recovery of precisely the approved amount.

16 **Q. Given the proposed approach of recovering the identified Granite Bridge Project**
17 **Costs over a five-year period using the Company's LDAC mechanism, please provide**
18 **the cost implication for a typical residential heating customer.**

19 A. Assuming the \$7.5 million in Granite Bridge Project Costs is recovered over a five-year
20 term, which results in an annual value of \$1.5 million, and assuming an annual throughput
21 volume of approximately 176,000,000 therms, the per therm charge to recover the Granite

1 Bridge Project Costs would be \$0.008523. Applying that charge to the 780 therms
2 consumed by a typical residential heating customer results in an annual cost increase of
3 approximately \$6.65, or a 0.6% increase.

4 **Q. Please compare that 0.6% (or \$6.65 per year) increase to the annual savings that same**
5 **customer would receive from the lower rate in the TGP Contract.**

6 A. To calculate the savings associated with the lower rates received from the TGP Contract,
7 the first step is to calculate the cost that customers would have paid using the indicative
8 rate of [REDACTED] per Dth provided by TGP during the 2016 through October 2019 period,
9 which results in an annual cost of [REDACTED] million. The next step is to use the actual rate
10 contracted by the Company in the TGP Contract, which results in an annual cost of \$2.0
11 million. Comparing the cost of [REDACTED] million associated with the initial rate provided by
12 TGP to the contracted cost of \$2.0 million results in an annual savings of [REDACTED] million for
13 each year of the 20-year agreement. Lastly, by dividing the annual savings of [REDACTED] million
14 by the assumed throughput of 176,000,000 therms results in a per therm value of [REDACTED].
15 Applying this calculated per therm value to the typical residential heating customer volume
16 of 780 therms results in an annual savings of [REDACTED]. In the end result, the benefit of [REDACTED]
17 per year for at least 20 years for a typical residential heating customer resulting from the
18 significantly reduced price from TGP overwhelms the \$6.65 cost over only five years to
19 achieve that benefit (*i.e.*, the \$7.5 million of Granite Bridge Project Costs).

1 **V. SUPPORT FOR RECOVERY OF GRANITE BRIDGE PROJECT COSTS**

2 **Q. Please explain why the Granite Bridge Project Costs should be allowed for recovery.**

3 **A.** The Company should be allowed recovery of its necessary and prudently incurred
4 development costs associated with the Granite Bridge Project for several reasons:

- 5 • These costs were necessary to conduct due diligence on the Company-sponsored
6 project as it was one of only two identified resource options that could meet the
7 projected long-term needs of EnergyNorth's customers and, therefore, required
8 various analyses and assessments.
- 9 • Since the Company relies on a single feed from TGP to serve its customers, the
10 pursuit of the Granite Bridge Project as an alternative to incremental capacity on
11 the TGP Concord Lateral strongly positioned the Company in its negotiations with
12 TGP.
- 13 • EnergyNorth's customers are the sole beneficiaries of the cost savings that are a
14 direct result of the substantial due diligence and analysis undertaken by the
15 Company with respect to the Granite Bridge Project.
- 16 • The Company's request to recover the Granite Bridge Project Costs is comparable
17 to how the Company would treat the costs to exit or terminate any other precedent
18 agreement for pipeline capacity.

- Allowing recovery of the Granite Bridge Project Costs will incentivize utilities like EnergyNorth to continue seeking the least-cost option even if that alternative requires the utility to incur project development costs.

Q. Please explain why it was necessary for the Company to conduct its due diligence on the Granite Bridge Project as an option.

A. EnergyNorth is fundamentally obligated to take the necessary steps to pursue safe and reliable gas supply for its customers. As discussed in Section III above, the Company has continued to experience growth associated with new and converting customers resulting in significant increases in load. Indeed, over the 2011/12 to 2019/20 split-years, annual demand has increased at a compound annual growth rate of approximately 2.4% per year.

Since EnergyNorth's system relies on a single feed from TGP for the delivery of natural gas supply to its service territory (*see*, Figure 2 above), and because the Concord Lateral is fully subscribed, the Company explored options to acquire additional gas supply and pipeline capacity to serve its customers' growing needs. As noted by the Company in Docket No. DG 17-198: "Without additional capacity that can deliver incremental natural gas supply into EnergyNorth's service territory in southern and central New Hampshire, the Company will be forced to impose a moratorium."²⁶ As such, and given the cancellation of the NED Project (even though EnergyNorth received approval for a long-term capacity contract), the Company investigated the remaining viable resource options

²⁶ *See*, the Company's Supplemental Direct Testimony submitted in Docket No. DG 17-198 on March 15, 2019, at Bates 012.

1 to meet long-term forecasted demand. At that time, the options for EnergyNorth were
2 limited to a capacity contract with TGP or a Company-sponsored project.

3 EnergyNorth evaluates and develops viable resource options using Commission-approved
4 resource planning standards and decision-making processes. The Company's objective has
5 always been to develop a gas supply portfolio that provides reliable service to customers
6 at the lowest reasonable cost. The Company also employs a gas supply portfolio strategy
7 that seeks to increase the reliability, flexibility, and diversity of the assets and contracts in
8 the portfolio, thus enabling the Company to respond to changing market and regulatory
9 conditions over both the short- and long-term.

10 As a prudent utility, EnergyNorth needed to assess and analyze the viable resource options,
11 which were a capacity contract with TGP or the development of the Granite Bridge Project.
12 In order to do this, EnergyNorth needed to incur costs as part of its due diligence on various
13 aspects of the Granite Bridge Project, including: developing capital cost estimates;
14 identifying and evaluating the potential location of the components of the Granite Bridge
15 Project; assessing the environmental compliance costs; meeting and engaging with
16 stakeholders; working with various state agencies to ensure compliance and assess
17 feasibility of the Granite Bridge Project (*e.g.*, the New Hampshire Department of
18 Transportation and New Hampshire Division of Historical Resources); conducting various
19 economic analyses of the options and associated resource portfolios; and developing and
20 supporting evidence summarizing the Company's various research and analyses.

1 **Q. Did the Company conduct additional analysis as a result of the regulatory process in**
2 **Docket No. DG 17-198?**

3 A. Yes. As discussed in Docket No. DG 17-198, in addition to the analysis presented in its
4 initial filing, the Company conducted a number of additional SENDOUT® runs and
5 analyses to reflect certain sensitivities as requested by Staff, the OCA, and intervenors
6 through the discovery process.²⁷

7 **Q. From the NED Project cancellation in 2016 through early October 2019, did the**
8 **Company's analysis support the development of the Granite Bridge Project?**

9 A. Yes. Based on the results of the extensive analysis conducted by the Company from the
10 May 2016 cancellation of the NED Project through early October 2019 (when the resource
11 portfolio with the Granite Bridge Project demonstrated a lower cost than the resource
12 portfolio with the proposed capital costs and indicative rates from TGP), the Company
13 concluded that the Granite Bridge Project was the preferred least-cost alternative and
14 continued to refine the cost projections for the Granite Bridge Project to further validate its
15 decision.

16 **Q. Did the Company continue to incur development costs associated with the Granite**
17 **Bridge Project once it received the lower indicative rate from TGP in October 2019?**

18 A. Once the Company received the lower price signals from TGP in late October 2019, it
19 suspended further development activity on the Granite Bridge Project, thereby minimizing

²⁷ See, the Company's Supplemental Direct Testimony submitted in Docket No. DG 17-198 on March 15, 2019, at Bates 5–6.

1 the level of development costs associated with the Granite Bridge Project and ultimately
2 the costs subject to this request for recovery. The costs incurred after October 2019 relate
3 to required status reports filed with state agencies and closeout costs.

4 **Q. Please discuss how the Granite Bridge Project better positioned the Company in its**
5 **negotiations with TGP.**

6 A. As illustrated in Figure 2 above, the Company is directly connected to the TGP Concord
7 Lateral and, therefore, relies on this single feed to serve its customers. The Company does
8 not have the option to negotiate with a second pipeline company, thus a primary lever in
9 any negotiations with TGP is to develop an on-system project, such as an LNG facility.
10 Absent this lever, EnergyNorth is a captive customer of TGP and there would be little or
11 no pressure on TGP to offer the Company best-effort pricing, an innovative service, or
12 other incentives to enable contract decisions. Thus, incurring the costs necessary to create
13 this leverage was prudent, and the Commission should allow recovery because the
14 Company's due diligence efforts directly reduced costs for customers.

15 **Q. Please summarize the initial discussions with TGP prior to the announcement of the**
16 **Company's proposed Granite Bridge Project.**

17 A. As discussed above, over the 2016 to 2017 period, when the TGP Concord Lateral was
18 fully subscribed, TGP offered incremental capacity to the Company at rates that were well
19 above the FERC-approved recourse rate, the lowest filed rate for capacity.

1 **Q. Did the Company contact other shippers on the TGP Concord Lateral regarding**
2 **options for service?**

3 A. Yes, the Company contacted Calpine, which is the other major shipper on the TGP Concord
4 Lateral as the owner of power plant known as the Granite Ridge Energy Center (“GREC”).
5 The discussions with Calpine date as far back as 2016 regarding the potential for Calpine
6 to provide a peaking service to EnergyNorth utilizing Calpine’s contracted capacity on the
7 TGP Concord Lateral.²⁸ As part of those discussions, however, Calpine indicated that it
8 could not provide the Company with a peaking service, but indicated that it may be
9 interested in receiving or contracting for a service from the Company.²⁹ Stated differently,
10 since the other major shipper on the TGP Concord Lateral was **not** interested in providing
11 a service to EnergyNorth, there were no other alternatives available to the Company but
12 for an expansion of the TGP Concord Lateral or a Company-sponsored development.
13 Thus, the Company began to analyze the viability and feasibility of a Company-sponsored
14 project as an alternative to the TGP expansion option. Based on preliminary cost estimates
15 for the Granite Bridge Project, the Company filed for approval of the Granite Bridge
16 Project in Docket No. DG 17-198 in December 2017 as the preferred, least-cost alternative
17 to meet customers’ long-term needs.

²⁸ Based on a review of TGP’s index of customers, the TGP capacity to serve Calpine’s GREC in Londonderry, New Hampshire, is under contract for 130,000 Dth per day at negotiated rates with an effective date of October 7, 2001, and contract end date of October 6, 2021.

²⁹ In fact, after further discussions with Calpine, the Company executed an MOU with Calpine on October 3, 2018, which outlined the natural gas supply service to be provided by the integrated Granite Bridge Project (*i.e.*, Granite Bridge Pipeline and Granite Bridge LNG Facility) to Calpine’s GREC.

1 **Q. Did the Company supplement its December 2017 filing in March 2019?**

2 A. Yes. EnergyNorth submitted additional information in the March 15, 2019, Supplemental
3 Direct Testimony in Docket No. DG 17-198, which detailed the various engineering and
4 environmental-related activities undertaken over the 2018 to early 2019 period to further
5 the Company's analysis of the Granite Bridge Project. As concluded in that filing, the
6 Granite Bridge Project continued to be the preferred, least-cost option based on the
7 information available at that time.

8 **Q. Please explain how the Company's continued evaluation and analysis of the Granite**
9 **Bridge Project resulted in lower rates from TGP.**

10 A. The significant engineering, environmental, economic analysis, and other development
11 work associated with the Granite Bridge Project strongly positioned the Company in its
12 negotiations with TGP as it indicated EnergyNorth's ability and willingness to solve the
13 Company's resource constraints by a means other than contracting with TGP. The pursuit
14 of the Granite Bridge Project provided the Company with leverage in its discussions with
15 TGP and yielded benefits in the form of significantly lower pricing from TGP for capacity
16 on the Concord Lateral that TGP eventually provided.

17 **Q. Please quantify the difference in the annual cost associated with the initial indicative**
18 **rates provided by TGP during the 2016/2017 period to the rate outlined in the TGP**
19 **Contract, assuming a contract service level of 40,000 Dth.**

20 A. To quantify the annual cost savings associated with the reduction in the TGP pricing, the
21 Company used indicative daily rates of [REDACTED] and [REDACTED] per Dth to represent the range of

1 price signals provided by TGP over the 2016/2017 period, and assumed a contract volume
2 of 40,000 Dth per day. The resultant *annual* cost, under the aforementioned indicative rate
3 and volume assumptions, ranged from [REDACTED] million to [REDACTED] million. However, using the
4 \$0.14 per Dth per day recourse rate in the TGP Contract executed by the Company in July
5 2020 results in an annual cost of approximately \$2.0 million. In other words, the reduction
6 in the indicative daily rate signals from TGP of [REDACTED] and [REDACTED] per Dth to the contract rate
7 of \$0.14 per Dth (a decrease of over [REDACTED]) results in an *annual* cost savings of
8 approximately [REDACTED] million to [REDACTED] million for customers.

9 **Q. Why is it appropriate for the Company to be able to recover the Granite Bridge**
10 **Project Costs?**

11 A. As noted above, the rate in the executed TGP Contract is over [REDACTED] lower than the
12 previously provided indicative rates, thus saving customers hundreds of millions of dollars
13 (approximately [REDACTED] million to [REDACTED] million) over the 20-year term. EnergyNorth's
14 customers are the direct and sole beneficiaries of these significant cost savings. Customers
15 will receive the substantial benefit that arose from EnergyNorth's pursuit of the Company-
16 sponsored development option, which led to the lower TGP rates, and, as such, it is
17 appropriate for the Company to recover the costs to achieve that benefit.

18 **Q. Is the request to recover the Granite Bridge Project Costs comparable to how the**
19 **Company would treat the costs to exit or terminate any other gas supply option?**

20 A. Yes. If the Company had signed a precedent agreement for pipeline capacity in lieu of
21 pursuing the Granite Bridge Project and, subsequent to that decision, another gas supply

1 option was identified as the preferred option, then the Company would have evaluated its
2 alternatives and the cost implications to customers. Typically, precedent agreements for
3 pipeline capacity have certain clauses that allow the customer to terminate the contract but
4 with a cost consequence, usually paying a pro rata share of development costs incurred by
5 the pipeline company prior to receiving the customer's termination notice, or an exit fee,
6 that approximates those costs. Under this scenario, the Company would compare the cost
7 of the gas supply option that was subject to the precedent agreement to the combined cost
8 of terminating the precedent agreement and the expected cost of the new alternative. If the
9 cost of the new alternative combined with the termination cost outlined in the precedent
10 agreement was lower than the original alternative, the prudent course of action would be
11 to incur the termination cost and request approval to recover those costs from customers.

12 In other words, regardless of the resource arrangement (*e.g.*, contract with a third-party,
13 contract with an affiliate, or asset under development), if the Company and its customers
14 are better positioned by a new option, then the Company would terminate its existing
15 precedent agreement or suspend asset development, incur the cost of that termination (exit
16 fees or development costs), and commit to the new alternative. As such, recovery of the
17 contract termination or asset development costs from customers who benefited from the
18 Company's decision to pursue a lower cost alternative gas supply option is reasonable.

1 **Q. Is there a prior situation in New Hampshire where a local distribution company**
2 **(“LDC”) recovered an exit fee from customers associated with canceling an**
3 **arrangement for a gas supply resource because of the availability of a new resource?**

4 A. Yes, Northern Utilities Inc. (“Northern”) recovered certain costs associated with
5 terminating an arrangement with its affiliate Granite State Gas Transmission (“GSGT”) for
6 service from a proposed LNG facility.

7 **Q. Please summarize the circumstances associated with the Northern and GSGT**
8 **arrangement and recovery of an exit fee.**

9 A. In August 1996, the Commission approved Northern’s precedent agreement with GSGT
10 for capacity associated with a proposed 2 Bcf LNG facility near Wells, Maine (“Wells
11 LNG”). In May 1998, GSGT received authorization from the FERC to construct and
12 operate the Wells LNG facility. In February 1999, Northern provided notice to GSGT
13 requesting that it be released from the contract obligations associated with Wells LNG
14 because Northern had received new gas supply proposals that were less expensive than the
15 arrangement with GSGT. In February 1999, GSGT agreed to release Northern from its
16 obligation pending an approval from FERC for an exit fee associated with Northern’s
17 decision. In March 1999, GSGT filed at the FERC for recovery from Northern of Wells
18 LNG project development costs equal to \$11.6 million. In August 1999, the parties to the
19 proceeding, including Northern, GSGT, the Commission Staff, and the OCA, submitted a
20 settlement agreement to the FERC. The settlement agreement addressed certain issues
21 including: (i) identification of the recoverable project costs as \$6.95 million, which

1 excluded amounts related to AFUDC; (ii) identification of the total collections of \$8.34
2 million, which reflected the recoverable project costs plus carrying costs; (iii) setting a
3 recovery period of seven years; and (iv) determining that any benefit associated with the
4 land remained with GSGT shareholders.

5 **Q. Please discuss the similarities of the Northern/GSGT settlement and the Company's**
6 **proposed recovery of Granite Bridge Project Costs.**

7 A. The Northern/GSGT settlement and the Company's proposed recovery of Granite Bridge
8 Project Costs have similarities including: (i) the Wells LNG facility and the Granite Bridge
9 Project were proposed to provide more reliable and flexible service to LDC customers; (ii)
10 although Northern had a commitment to Wells LNG, and EnergyNorth incurred costs for
11 the Granite Bridge Project, in each circumstance gas supply options continued to be
12 reviewed by the LDC; (iii) in both situations, a better alternative was later identified that
13 was lower cost than the initial resource identified and pursued by the LDC; (iv) both
14 Northern and EnergyNorth exited or terminated project development to take advantage of
15 new gas supply alternatives; (v) the cost to terminate the initial resource (*i.e.*, exit fee from
16 GSGT or investigative costs for Granite Bridge Project) when added to the cost of the
17 preferred alternative were lower than the cost of the initial resource; and (vi) the customers
18 of the LDC were the beneficiary of the lower cost resource.

1 **Q. Please discuss why it is important for the Commission to allow recovery of the Granite**
2 **Bridge Project Costs.**

3 A. Similar to the Northern/GSGT circumstances discussed above, EnergyNorth continued to
4 analyze and pursue the least-cost option even after the Company filed for approval of the
5 Granite Bridge Project, which ultimately resulted in a lower cost solution for customers
6 through the TGP Contract. Allowing recovery of the costs associated with the development
7 of the Granite Bridge Project (which is similar to the recovery of the Northern contract
8 termination costs) incentivizes utilities to continue seeking the least-cost option that may
9 arise even after the utility has identified a different opportunity or alternative. The
10 Commission should encourage EnergyNorth (and all utilities) to behave similarly by
11 allowing recovery of such prudently incurred costs.

12 **Q. Are you familiar with the statute that excludes from base rates the costs associated**
13 **with construction work in progress?**

14 A. We are generally aware that RSA 378:30-a addresses the costs associated with construction
15 work in progress (“CWIP”) and is known as the “Anti-CWIP statute.”

16 **Q. Are the Granite Bridge Project Costs associated with construction-related activity?**

17 A. No, they are not. The Granite Bridge Project was never under construction nor is there any
18 completed or uncompleted physical plant associated with the Granite Bridge Project. RSA
19 378:30-a is thus not applicable. As discussed in detail above, the costs for which the
20 Company seeks recovery were in the nature of investigating, analyzing, and working
21 toward the future development of the Granite Bridge Project.

1 **VI. CONCLUSIONS AND RECOMMENDATION**

2 **Q. Please summarize your conclusions and recommendation.**

3 A. EnergyNorth recommends that Commission approve the Company's request to recover a
4 portion of the necessary and prudently incurred development costs associated with the
5 Granite Bridge Project. The Company's proposed Granite Bridge Project was designed for
6 the sole purpose of serving the natural gas demand of customers in New Hampshire with
7 the least-cost alternative. The work of analyzing the viability of the Granite Bridge Project
8 was instrumental and critical in achieving the significantly lower pricing from TGP for
9 capacity on the TGP Concord Lateral, which is a highly beneficial outcome for
10 EnergyNorth's customers. As discussed above, the \$7.5 million of Granite Bridge Project
11 Costs will, in effect, be paid back in the first year compared to the TGP indicative rates
12 provided during the 2016 through early October 2019 time period. If these types of costs
13 are disallowed for recovery, EnergyNorth and its customers would be placed at a
14 significant disadvantage in future contract negotiation with TGP and would likely result in
15 higher costs for customers. Lastly, should the Company not be allowed to recover these
16 costs it would result in asymmetrical risk, whereby the Company incurred costs to
17 investigate and propose the Granite Bridge Project, yet the customers benefited from that
18 expenditure. This would result in a disincentive for the Company to pursue such a strategy
19 in the future, potentially leading to higher costs for its customers.

20 **Q. Does this conclude your Supplemental Direct Testimony?**

21 A. Yes, it does.

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 20-105

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES**

Request for Change in Rates

SUPPLEMENTAL ORDER OF NOTICE

In this proceeding, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty) seeks temporary and permanent rate increases, as well as a step increase in distribution rates. The Commission issued Order No. 26,412 (September 30, 2020) approving Liberty's request for a temporary rate increase, effective October 1, 2020. A hearing on Liberty's request for a permanent rate increase is scheduled to begin in May of 2021.

On November 20, 2020, Liberty filed a Motion to Amend Petition (Motion) to add to this proceeding a request to recover costs incurred to investigate, evaluate, and assess the future development of the Granite Bridge Project proposed in Docket DG 17-198, a project that Liberty has since withdrawn (Granite Bridge Project Costs). Along with its Motion, Liberty filed the supplemental direct testimony of Francisco C. DaFonte, William R. Killeen, and Steven E. Mullen, and a motion for protective order and confidential treatment. Liberty's supplemental filing and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-105.html>.

In its Motion, Liberty stated that it filed its request to recover Granite Bridge Project Costs in this rate proceeding based on the Commission's statement in Order No. 26,409, issued on October 6, 2020 in Docket No. DG 17-198, that a request to recover Granite Bridge Project

Costs is “appropriately reviewed in a full rate case.” *Id.* at 13. Liberty seeks recovery of Granite Bridge Project Costs through a reconciling charge within the Local Distribution Adjustment Clause.

The November 20, 2020 filing raises, inter alia, issues related to whether the scope of this proceeding should be broadened to include issues related to recovery of Granite Bridge Project Costs. If Liberty’s Motion were granted, then Liberty’s currently pending request in this docket would be broadened to include a review of, inter alia, what costs, if any, related to the Granite Bridge Project are recoverable through this proceeding; whether Liberty prudently incurred those costs; whether Liberty is entitled to recover Granite Bridge Project Costs through a reconciling charge within the Local Distribution Adjustment Clause; and whether recovery of those costs would result in just and reasonable rates, as required by RSA 374:2, and RSA 378:5 and :7. Because granting Liberty’s Motion would significantly broaden the scope of Liberty’s existing request, we will allow new parties to request to intervene at this time.

Based upon the foregoing, it is hereby

ORDERED, that the Executive Director shall publish this order of notice on the Commission’s website no later than one business day after the date of issue; and it is

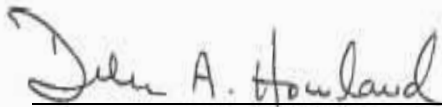
FURTHER ORDERED, that written comments on Liberty’s Motion to Amend Petition may be filed by electronic mail sent to executive.director@puc.nh.gov on or before January 4, 2021; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any party seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to Liberty and the Office of the Consumer Advocate on or before December 30, 2020, such petition stating the facts demonstrating how its rights, duties,

privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, any party seeking to intervene may elect to submit this filing in electronic form; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before January 4, 2021.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 2020.



Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

Service List - Docket Related

Docket# : 20-105

Printed: 12/18/2020

Email Addresses

ExecutiveDirector@puc.nh.gov
Todd.Bohan@fticonsulting.com
pradip.chattopadhyay@oca.nh.gov
william.clark@libertyutilities.com
Matthew.DeCourcey@fticonsulting.com
paul.dexter@puc.nh.gov
lynn.fabrizio@puc.nh.gov
steve.frink@puc.nh.gov
brian.frost@libertyutilities.com
al-azad.iqbal@puc.nh.gov
maureen.karpf@libertyutilities.com
ckimball@keeganwerlin.com
tklaes@blueridgecs.com
randy.knepper@puc.nh.gov
donald.kreis@oca.nh.gov
jayson.laflamme@puc.nh.gov
Ian.McGinnis@fticonsulting.com
catherine.mcnamara@libertyutilities.com
jmierzwa@exeterassociates.com
Robert.Mostone@LibertyUtilities.com
steven.mullen@libertyutilities.com
dmullinax@blueridgecs.com
amanda.noonan@puc.nh.gov
ocalitigation@oca.nh.gov
jralston@keeganwerlin.com
michael.sheehan@libertyutilities.com
Christa.Shute@oca.nh.gov
david.simek@libertyutilities.com
karen.sinville@libertyutilities.com
Mark.Stevens@LibertyUtilities.com
heather.tebbetts@libertyutilities.com
dvenora@keeganwerlin.com
david.wiesner@puc.nh.gov
jrw@psu.edu

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 20-105

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY

Petition for Permanent Rates

Order of Suspension

O R D E R N O. 26,558

December 22, 2021

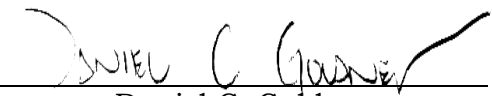
On November 24, 2021, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty) filed a motion for rehearing of Order No. 26,536 (October 29, 2021). The Office of the Consumer Advocate and the New Hampshire Department of Energy filed objections to Liberty's motion on December 3, 2021.

The Commission has suspended Order No. 26,536, effective immediately, pending its consideration of the issues raised in Liberty's motion. See RSA 365:21. The Commission will issue a further directive regarding this matter in due course.

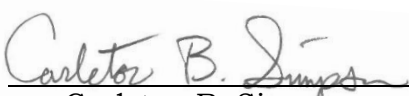
Based upon the foregoing, it is hereby

ORDERED, that Commission Order No. 26,536 is **SUSPENDED** pending further consideration of Liberty's motion for rehearing.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 2021.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 20-105

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Email Addresses

ClerksOffice@puc.nh.gov
william.clark@libertyutilities.com
julianne.m.desmet@oca.nh.gov
paul.b.dexter@energy.nh.gov
lynn.h.fabrizio@energy.nh.gov
kerri-lyn.gilpatric@energy.nh.gov
Robert.Hilton@libertyutilites.com
maureen.karpf@libertyutilities.com
ckimball@keeganwerlin.com
tklaes@blueridgecs.com
randall.s.knepper@energy.nh.gov
donald.m.kreis@oca.nh.gov
jayson.p.laflamme@energy.nh.gov
Ian.McGinnis@fticonsulting.com
catherine.mcnamara@libertyutilities.com
jmierzwa@exeterassociates.com
Robert.Mostone@LibertyUtilities.com
steven.mullen@libertyutilities.com
dmullinax@blueridgecs.com
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
jralston@keeganwerlin.com
michael.sheehan@libertyutilities.com
david.simek@libertyutilities.com
karen.sinville@libertyutilities.com
Mark.Stevens@LibertyUtilities.com
heather.tebbetts@libertyutilities.com
dvenora@keeganwerlin.com
david.k.wiesner@energy.nh.gov
jrw@psu.edu



Michael J. Sheehan, Esq.
Senior Counsel
Phone: 603-724-2135
Email: Michael.Sheehan@libertyutilities.com

January 18, 2022

Via Electronic Mail Only

Daniel Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

**Re: Docket No. DG 20-105; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty
Petition for Permanent Rates**

Dear Chairman Goldner:

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a/ Liberty ("Liberty") recently filed a motion for rehearing of Order No. 26,536 (Oct. 29, 2021) which denied Liberty's request for cost recovery of its pre-construction expenses related to the Granite Bridge Project. Liberty argued that the Granite Bridge Project would have required a siting permit from the New Hampshire Site Evaluation Committee ("SEC") pursuant to RSA 162-H:5, I ("No person shall commence to construct any energy facility within this state unless it has obtained a certificate pursuant to this chapter"). See Motion at Paragraph 7 and footnote 5.

However, as noted in its Motion, Liberty never applied for a siting permit nor commenced any construction activities related to the Granite Bridge Project. See id. Without an SEC permit, Liberty was in fact prohibited from commencing any construction and did not do so.

I write to respectfully direct the Commission's attention to RSA 162-H:2, III, which defines "commencement of construction" and enumerates several activities that are expressly excluded from the definition. Where neither RSA chapter 378, the Commission's rules, nor the Court in Appeal of Pub. Serv. Co. of N.H., 125 N.H. 46 (1984) address the issue of

Daniel Goldner, Chairman

January 18, 2022

when construction work commences, the Commission should be guided in its interpretation of whether construction work within the meaning of RSA 378:30-a ever commenced by considering the especially relevant definition of "commencement of construction" in RSA 162-H:2, III.

Pursuant to the Commission's March 17, 2020 secretarial letter, only an electronic version of this filing will be provided.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Sheehan", with a stylized, cursive flourish extending to the right.

Michael J. Sheehan

Cc: Service List



OFFICE OF THE CONSUMER ADVOCATE

21 S. Fruit St., Suite 18
Concord, N.H. 03301-2429

Website:
www.oca.nh.gov

January 19, 2022

New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DG 20-105
Energy North Natural Gas Corp. d/b/a Liberty
Order No. 26,536 Rehearing Proceedings

To the Commission:

The Office of the Consumer Advocate (“OCA”) is in receipt of a letter filed yesterday in the above-referenced docket by the subject utility, Energy North Natural Gas Corp. d/b/a Liberty. In its letter, Liberty attempts to interpose an additional argument in support of its pending motion for rehearing of Order No. 26,536.

Although the letter from Liberty refers to the rehearing motion as having been “recently filed,” in fact the motion was submitted almost two months ago, on November 24, 2021. The OCA interposed a timely objection to the motion, filed on December 3, 2021.

Therefore, the OCA respectfully requests that the Commission disregard the letter filed yesterday by Liberty and strike it as untimely in light of the applicable statutory requirements. RSA 541:3 states that a motion for rehearing must be filed within 30 days of the applicable order or decision. Such a motion must “set forth fully *every* ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.” RSA 541:4 (emphasis added). Should appellate proceedings ultimately ensue, RSA 541:3 clearly provides that “no ground not set forth” in the rehearing motion “shall be urged, relied on, or given any consideration by the court.” Because these limitations are statutory in nature, the Commission is not free to waive or otherwise to bend them.

Moreover, the additional argument asserted in the January 18 letter from Liberty is not persuasive. Liberty urges the Commission to interpret RSA 378:30-a, which precludes the inclusion in a utility’s rate base of “construction work in progress” (“CWIP”) including construction work that is “not completed,” in light of the definition of “commencement of construction” in the enabling statute of the Site Evaluation Committee, RSA 162-H:2, III.

The two statutes are not *in pari materia* and, thus, the meaning of a phrase in RSA 162-H, which dates from 1991, sheds no light on what the General Court meant when it adopted the anti-CWIP statute 12 years earlier in 1979. See *New Hampshire Center for Public Interest Journalism v.*

New Hampshire Dep't of Justice, 173 N.H. 648, 653 (2020) (citation omitted); *cf. Appeal of Old Dutch Mustard Co.*, 166 N.H. 501, 509-510 (2014) (noting that some statutes must be construed together “so that one statute does not permit what the other statute prohibits”) (citation omitted). RSA 162-H:5 prohibits the commencement of construction of certain facilities without a certificate issued by the Site Evaluation Committee. It is a statutory regime whose purpose is the regulation of certain land uses, whereas the anti-CWIP statute protects ratepayers from providing a return on utility investments that are not used and useful in the provision of service to the public. The concepts are only distantly related, if at all.

This substantive argument notwithstanding, the OCA strongly urges the Commission to strike the January 18 letter from Liberty so as not to allow a party to evade the strict statutory limitations on rehearing and appeal adopted by the General Court so as to assure that these processes are fair to all concerned. Thank you for considering our views.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Donald M. Kreis', with a stylized, flowing script.

Donald M. Kreis
Consumer Advocate

cc: Service list, via e-mail