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STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

REBUTTAL TESTIMONY

OF

FRANCISCO C. DAFONTE,

WILLIAM R. KILLEEN,

AND

STEVEN E. MULLEN

April 29, 2021

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I. INTRODUCTION

Q. Please state your names, titles, and business addresses.

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

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

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

Q. On whose behalf are you submitting this rebuttal testimony?

A. We are submitting this joint rebuttal testimony before the New Hampshire Public Utilities Commission (the "Commission") on behalf of EnergyNorth.

Q. Are you the same Francisco C. DaFonte, William R. (Bill) Killen, and Steven E. Mullen who filed supplemental direct testimony in this proceeding?

A. Yes. We filed joint supplemental direct testimony on November 20, 2020.

Q. Please state the purpose of your rebuttal testimony.

A. The purpose of our rebuttal testimony is to respond to the direct testimony of Mr. Stephen P. Frink on behalf of Commission Staff ("Staff") and his Attachment SPF-18 with respect to the recovery of the core development costs associated with the Company's investigation and analysis of the Granite Bridge Project (the "Granite Bridge Project Costs").

Q. Prior to discussing the Company's response to Mr. Frink's Attachment SPF-18, please respond to Mr. Frink's argument that the recovery of the Granite Bridge Project Costs is prohibited under RSA 378:30-a,[1] which addresses the costs associated with construction work in progress ("CWIP") and is known as the "Anti-CWIP statute."

A. We do not agree that the Company's recovery of the Granite Bridge Project Costs is prohibited under the Anti-CWIP statute. As noted in our supplemental direct testimony, the Granite Bridge Project Costs are not associated with any construction-related activity; thus, RSA 378:30-a is not applicable. The Granite Bridge Project was never under construction nor is there any completed or uncompleted physical plant associated with the Granite Bridge Project. This is also consistent with Mr. Frink's observation that:

> The costs Liberty incurred were <u>costs necessary to acquire, or attempt to acquire, regulatory approvals needed to commence construction</u> of such a major project.[2] (Emphasis added.)

[1] *See*, Direct Testimony of Stephen P. Frink, at Bates 006.
[2] Attachment SPF-18, at Bates 429.

Thus, we agree with Mr. Frink that the Granite Bridge Project Costs were not only necessary but required to compare the Granite Bridge Project to the alternative options and occurred prior to commencing construction and, therefore, should be recoverable from customers.

Q. Please provide a summary of your rebuttal testimony in response to Mr. Frink's Attachment SPF-18.

A. First, our rebuttal testimony responds to Mr. Frink's criticism that the Company did not "adequately and fairly analyze the various options that might be available with TGP" before deciding on the Granite Bridge Project,[3] which is not factually correct as the Company spent several years considering, analyzing, and pursuing various alternatives with Tennessee Gas Pipeline Company, LLC ("TGP"), including the TGP Northeast Energy Direct ("NED") Project, prior to (and even after) the Company's filing for Commission approval of the Granite Bridge Project in Docket No. DG 17-198.

Second, we respond to Mr. Frink's assertion that "the Granite Bridge Project proposal provided little, if any, advantage in negotiating a lower price for TGP capacity,"[4] because "TGP would have had little reason to expect that the Granite Bridge Project was a viable alternative."[5] This argument fails to acknowledge that (i) absent an alternative to TGP, such as the Granite Bridge Project, there would be little or no pressure on TGP to offer the Company best-effort pricing, an innovative service, or other incentives to enable

[3] *See*, Attachment SPF-18, at Bates 428 to 429.
[4] Attachment SPF-18, at Bates 430.
[5] Attachment SPF-18, at Bates 430.

contract decisions; and (ii) the Company's considerable work in Docket No. DG 17-198, which included entering into a memorandum of understanding ("MOU") with Calpine Corporation ("Calpine") for a peaking service to be provided by the Granite Bridge Project and advancing the design and development of the project to refine the associated capital cost estimates, clearly demonstrated to the market the feasibility and viability of the Granite Bridge Project.

Third, our rebuttal testimony responds to Mr. Frink's suggestion that using an affiliate structure, similar to the arrangement between Northern Utilities, Inc. ("Northern") and Granite State Gas Transmission ("GSGT"), to develop an on-system project, that was later terminated, would allow for cost recovery of development costs through a contractual commitment, but incurring development costs as the utility, such as in this case, precludes any cost recovery, which is a tenuous argument that favors form over substance.

Finally, we respond to Mr. Frink's discussion on the Company's obligation as a utility to acquire the best cost resource and the role of incentives in the utility's resource planning process, which as illustrated in Section V below, is fundamentally flawed and not logically consistent.

II. ENERGYNORTH'S ANALYSIS OF THE TGP OPTIONS

Q. Did the Company analyze various options that might be available with TGP before deciding on the Granite Bridge Project?

A. Yes. Since EnergyNorth's system in southern New Hampshire is served exclusively by the TGP Concord Lateral, the Company considered, analyzed, and pursued various options for capacity with TGP to meet its customers' demand requirements. To that point, the following is the chronology of the Company's actions and analysis of the various TGP options prior to filing for Commission review and approval of the Granite Bridge Project in late December 2017:

- **2013**: In EnergyNorth's 2013 Least Cost Integrated Resource Plan ("LCIRP"), the Company analyzed various scenarios that included "a new capacity resource, the Tennessee Northeast Expansion ("TGP_NEX") project," which was a new pipeline project proposed by TGP.[6] The results of the analyses demonstrated that the Company's least-cost portfolio at that time would include up to 90,000 Dth/day of capacity from the TGP_NEX project. As noted in the 2013 LCIRP, with respect to future portfolio decisions, the Company indicated that it would continue to review its resource portfolio and assess the available options, which included continuing its discussions with TGP regarding the proposed TGP_NEX Project.

- **2014–2015**: In Docket No. DG 14-380, EnergyNorth sought and received Commission approval for a precedent agreement with TGP for 115,000 Dth/day of

[6] *See*, EnergyNorth's 2013 Least Cost Integrated Resource Plan, Docket No. DG 13-313, November 1, 2013, at Bates 048. Note: The proposed TGP_NEX project predated the TGP NED Project.

capacity on the TGP NED Project, which would have provided the Company with a second pipeline feed and diversified its upstream delivery infrastructure, rather than the alternatives that required an upgrade of the TGP Concord Lateral. As part of that docket, EnergyNorth conducted various analyses with respect to upgrading the TGP Concord Lateral and, based on the information at that time, the Company determined that the TGP Concord Lateral option was more costly as compared to the proposed TGP NED Project.[7]

- **2016–2017**: After TGP cancelled the TGP NED Project in early 2016, the Company continued its discussions with TGP, as part of a broader New England LDC group, regarding potential expansion options on TGP. As part of those confidential discussions, TGP provided indicative rates to EnergyNorth on three occasions, dated May 10, 2016, August 25, 2016, and March 28, 2017, for various options that were reviewed and analyzed by the Company. As shown below, the incremental price signals for an expansion of the existing TGP mainline and the TGP Concord Lateral were much higher than the existing rolled-in rate:
    - The indicative rates provided by TGP in May 2016 encompassed six alternatives with various receipt points and ranged from a daily rate of $[redacted]/Dth to $[redacted]/Dth, which were based on certain assumptions regarding volume

[7] In Staff's Closing Statement, Staff also acknowledged this, noting the Company "provided updated, and significantly increased, cost information about work on the Concord Lateral that would be required under the two alternatives to the NED project, because of insufficient pressure and fully subscribed capacity on the Lateral," which led to Staff's conclusion that the Company's contract on the TGP NED Project "secures access to a cost effective, reliable natural gas supply for the Company's customers while minimizing the risk of costly upgrades to the Concord lateral and reliance on aging and costly propane peaking facilities." *See*, Staff's Closing Statement in Docket No. DG 14-380, August 7, 2015.

commitments from each LDC and the associated capital project facility requirements.

- The indicative rates provided by TGP in August 2016 were for two approximately 50,000 Dth/day alternatives with varying receipt/delivery assumptions and associated facility requirements that ranged from a daily rate of $[redacted]/Dth to $[redacted]/Dth.
- The indicative rates provided by TGP in March 2017 included three 75,000 Dth/day alternatives with varying delivery assumptions and associated facility requirements that ranged from a daily rate of $[redacted]/Dth to $[redacted]/Dth.

Thus, while Mr. Frink may question the Company's "efforts to elicit a good faith offer from TGP before deciding on the Granite Bridge Project,"[8] the series of events outlined above demonstrates that the Company spent considerable time analyzing and pursuing the various options available with TGP over the course of those five years. After the TGP NED Project was cancelled and the Company's associated contract with TGP was terminated, EnergyNorth continued to analyze its available options with TGP, but the high price signals provided by TGP, which were the best information available at that time, singularly affected the Company's decision to pursue the Granite Bridge Project as discussed in the initial filing in Docket No. DG 17-198.

[8] Attachment SPF-18, at Bates 428.

Q. Did EnergyNorth continue to assess and analyze the options available with TGP even after the Company's initial filing seeking Commission approval of the Granite Bridge Project?

A. Yes. EnergyNorth continued to engage in discussions with TGP regarding options available to the Company, assessed those options, and confirmed that the Granite Bridge Project remained the preferred resource option. As detailed in our supplemental direct testimony, while the Company conducted the necessary work to refine the cost estimates associated with the Granite Bridge Project to further validate its decision on resource selection, TGP provided capital cost estimates to EnergyNorth in May 2019 for options from two different receipt points, with daily indicative rates in the range of $[redacted]/Dth to $[redacted]/Dth, and also confirmed the price estimates previously provided in the 2016/2017 time frame to the Company. It was not until late October 2019, after EnergyNorth again reached out to TGP for updated expansion cost estimates, did the Company receive cost estimates from TGP that were significantly lower than the prior estimates, at which time the Company suspended its development work on the Granite Bridge Project to better understand these revised TGP cost estimates and options relative to the Granite Bridge Project.

Q. Does Staff also criticize the Company for the higher cost estimates associated with the Granite Bridge Project, and are those criticisms valid?

A. Yes, and those criticisms are not valid. Mr. Frink's discussion of the increase in the Granite Bridge Project cost estimates from the initial conceptual estimate as compared to the estimate received after more detailed design was performed[9] cannot be viewed in isolation. The relevant analysis should be how those Granite Bridge Project cost estimates compared to the Company's alternatives. It is that relative comparison of the options available to the Company that governed the Company's actions; and it is the only way to view the Company's analysis of the resource options.

To reiterate, the price signals provided by TGP, which the Company firmly believes is the best and only information to gauge the economics of the TGP options, singularly affected the Company's actions with respect to the Granite Bridge Project. When the Granite Bridge Project cost estimate was lower than the TGP options, the Company pursued the development of Granite Bridge Project; and when the cost of the TGP option was lower than the estimated cost of the Granite Bridge Project, the Company focused on pursuing the TGP option. To suggest otherwise is simply not aligned with the facts.

III. VIABILITY OF AND NEGOTATING LEVERAGE PROVIDED BY THE GRANITE BRIDGE PROJECT

Q. Do you agree with Mr. Frink that "the Granite Bridge Project proposal provided little, if any, advantage in negotiating a lower price for TGP capacity"[10]?

A. No. As previously discussed, because the Company relies on the single feed from TGP and does not have the option to negotiate with a second pipeline company, the primary lever in any negotiation with TGP is developing an on-system option, such as the Granite Bridge Project, as an alternative. Stated differently, EnergyNorth is a captive customer of

[9] Attachment SPF-18, at Bates 429.
[10] Attachment SPF-18, at Bates 430.

TGP, and absent a viable alternative (*i.e.*, an on-system project, such as the Granite Bridge Project), there would be little or no incentive for TGP to offer the Company best-effort pricing, an innovative service, or other incentives to enable contract decisions. This is clearly evidenced by the high price signals associated with the capacity options offered by TGP to EnergyNorth prior to the announcement of the Granite Bridge Project and the associated filing in Docket No. DG 17-198 (as discussed in Section II above). This concept of creating leverage was also discussed in the direct testimony of The Liberty Consulting Group ("Liberty Consulting") on behalf of Staff in Docket No. DG 17-198. Specifically, in reference to the Granite Bridge Project, Liberty Consulting stated that "adding a connection to two other pipeline systems [via the Granite Bridge Pipeline] could give bargaining leverage over TGP."[11]

Q. Please respond to Mr. Frink's assessment that "the lower price for TGP capacity" was not a direct result of the Granite Bridge Project because "TGP would have had little reason to expect that the Granite Bridge Project was a viable alternative."[12]

A. As shown on the right-hand side of the timeline provided in our supplemental direct testimony (and replicated below as Figure 1), from 2016 through the mid-October 2019 period (*i.e.*, when the capital costs and daily indicative rates associated with the TGP option continued to be substantially higher than the Granite Bridge Project), EnergyNorth performed the necessary work to refine the capital cost estimates and demonstrate the

[11] Direct Testimony of The Liberty Consulting Group on behalf of Staff, Docket No. DG 17-198, September 13, 2019, at Bates 035.
[12] Attachment SPF-18, at Bates 430.

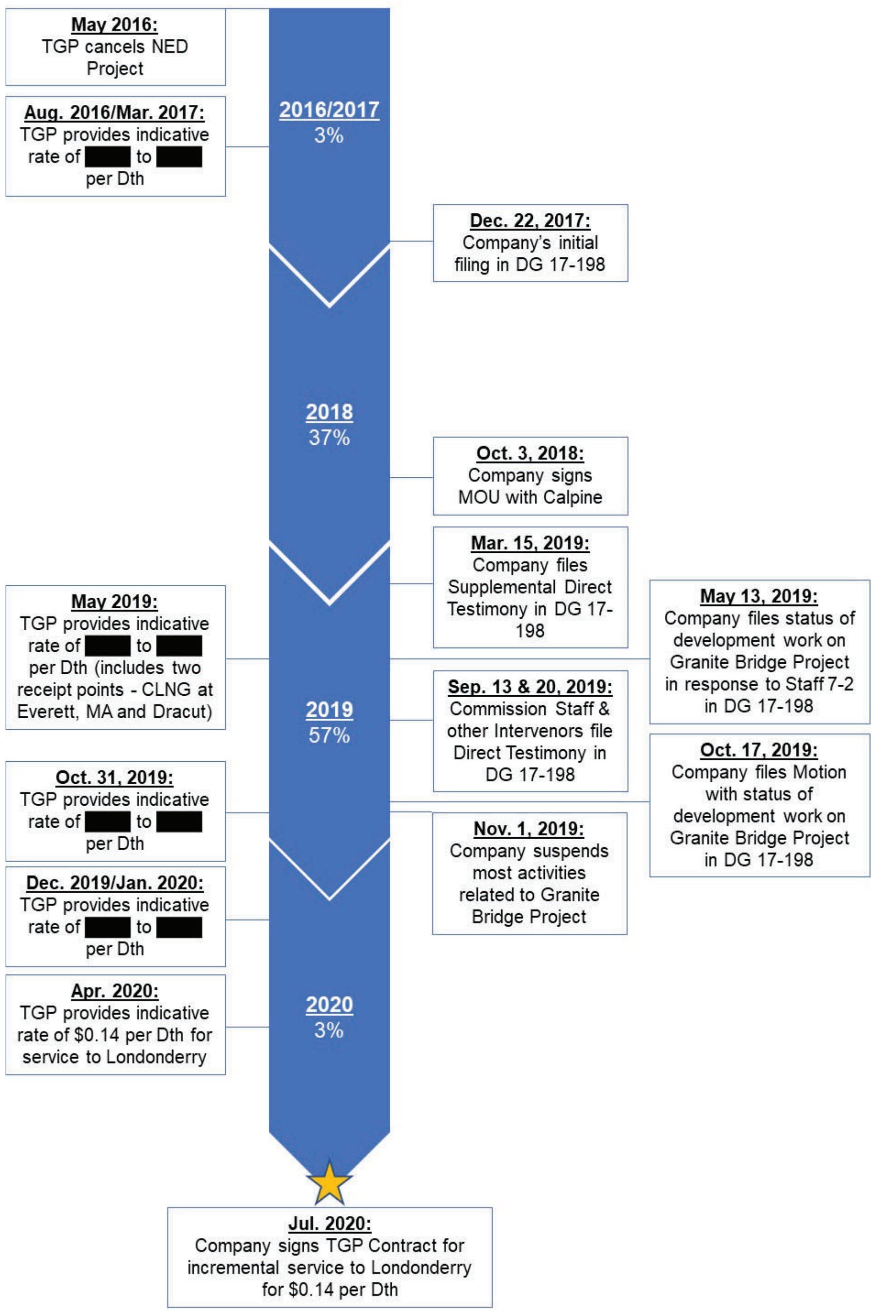
feasibility and viability of the Granite Bridge Project. Specifically, after the initial filing on December 22, 2017, the Company: (i) signed an MOU with Calpine in October 2018 for a peaking service to be provided by the Granite Bridge Project;[13] (ii) filed supplemental direct testimony in March 2019 with an update on the Calpine MOU and refined capital cost estimates for the Granite Bridge Project;[14] (iii) provided an update on the status of development work on the Granite Bridge Project in mid-May 2019; and (iv) announced that the evaluation of the Granite Bridge Pipeline had been completed, representing a 70% design stage, and that the Company was issuing a request for proposals for contractor bids based on that design to further refine the capital cost estimate in mid-October 2019. As shown in Figure 1, it was not until after the Company's announcement regarding the status of the advanced development work on the Granite Bridge Project that EnergyNorth received, for the first time, significantly lower capital cost estimates from TGP for various volume and delivery options. While the commercial motivations of TGP and other market participants, such as Calpine, are not known (as they are not participants in this proceeding), it is reasonable to conclude that the Company's considerable development work on the Granite Bridge Project demonstrated to the market not only the viability of the Granite Bridge Project, but

[13] As stated in Docket No. DG 17-198, EnergyNorth had initial discussions with Calpine as far back as 2016 regarding the potential for Calpine to provide a service to the Company utilizing Calpine's capacity on the TGP Concord Lateral, and Calpine indicated that it could not provide EnergyNorth with a peaking service. *See*, Supplemental Direct Testimony of Francisco C. DaFonte and William R. Killeen, Docket No. DG 17-198, March 15, 2019, at Bates 041.

[14] As discussed in Docket No. DG 17-198, Calpine indicated strong interest in the winter peaking service from the Granite Bridge Project and was "continuing to stand by its MOU with the Company and sees value in a peaking service from the proposed Granite Bridge LNG facility." *See*, Supplemental Direct Testimony of Francisco C. DaFonte and William R. Killeen, Docket No. DG 17-198, March 15, 2019, at Bates 043.

EnergyNorth's ability and willingness to solve the Company's resource constraints through a means other than contracting with TGP.

Figure 1: Timeline of TGP Rates and Granite Bridge Project Costs



IV. OWNERSHIP STRUCTURE OF THE GRANITE BRIDGE PROJECT AND THE RECOVERY OF ASSOCIATED DEVELOPMENT COSTS

Q. Please summarize Mr. Frink's conclusion regarding the Northern/GSGT case relative to the Company's recovery of the Granite Bridge Project Costs.

A. Mr. Frink states that the circumstances in the Northern case regarding the recovery of certain costs associated with a proposed GSGT LNG facility are "significantly and materially different" and not "analogous" to the Company's recovery of development costs associated with the Granite Bridge Project.[15] Mr. Frink further speculates that, "Had the proposed [GSGT] LNG facility been a Northern project, Staff believes none of the project development costs could have been charged to their customers under the New Hampshire anti-CWIP law."[16] In other words, Mr. Frink seems to suggest that should a project under development not go forward and the Company used an affiliate or third-party contract structure, recovery of those development costs (e.g., exit fee) would be allowed, but precluded from recovery if the utility was the developer.

Q. What is your response to this suggestion?

A. The structure of a potential development opportunity should not be determinative as to the recovery of prudently incurred costs. The suggestion places form over substance in assessing the recovery of reasonably incurred development costs, and would drive unintended consequences.

[15] Attachment SPF-18, at Bates 431.
[16] Attachment SPF-18, at Bates 432.

In other words, Mr. Frink is suggesting that rather than the utility ownership structure, EnergyNorth should have used an approach similar to Northern, including: (i) creating an affiliate; (ii) having that affiliate assume the role for the development of the Granite Bridge Project; and (iii) executing a contract for service between EnergyNorth and the affiliate, approved by the Commission, that included an early termination clause subject to an exit fee equal to the Granite Bridge Project development cost. Based on this "Northern" structure, EnergyNorth would be able to recover that exit fee for triggering the early termination clause and the requirement to contractually reimburse the affiliate for development costs. Of further note, under such a structure the affiliate may have been a Federal Energy Regulatory Commission jurisdictional entity with a different capital structure and potentially higher return on equity and a shorter time period for recovery of the investment; all of which would have the unintended consequence of increasing the associated cost of the service and the potential development costs should the project not proceed.

Furthermore, Staff's suggestion would preclude potentially innovative project development opportunities and would unnecessarily narrow the development options available to the Company.

V. ENERGYNORTH'S OBLIGATION AS A UTILITY AND THE ROLE OF INCENTIVES IN THE RESOURCE PLANNING PROCESS

Q. Please respond to Mr. Frink's discussion regarding the role of incentives in the utility's resource planning process and the Company's obligation to "select

least/best cost options regardless of whether those options are sponsored by the utility itself or through a third-party."[17]

A. Contrary to Staff's suggestion, this approach results in a significant disincentive to developing any utility-sponsored alternatives. Not only is the Company required to conduct significant research and analysis on resource alternatives, regardless of sponsor, but Staff often requests additional or further analysis. The Granite Bridge Project was no exception. As noted by Liberty Consulting on behalf of Staff, "At most, the information secured so far by the Company is far too preliminary for making a choice between the Concord Lateral and the Granite Bridge Pipeline as one-to-one alternatives,"[18] clearly stating that further analysis of the utility-sponsored option relative to the alternative was required. Similarly, Mr. Frink acknowledges that the costs associated with the development and analysis of the utility-sponsored option relative to the alternative were "…costs necessary to acquire, or attempt to acquire, regulatory approvals needed to commence construction of such a major project."[19] However, Mr. Frink also asserts that, "Allowing recovery of Granite Bridge Project development costs would to [sic] serve as an incentive to other utilities to 'aggressively pursue' utility sponsored projects, as Liberty suggests, would send the wrong incentive and reward Liberty for not performing a thorough and adequate assessments of alternative options."[20]

[17] Attachment SPF-18, at Bates 432 to 433.
[18] Attachment SPF-18, at Bates 428.
[19] Attachment SPF-18, at Bates 429.
[20] Attachment SPF-18, at Bates 433.

In other words, Staff's approach would have the Company conduct a detailed assessment of various alternatives with full knowledge that any such costs incurred to investigate and assess utility-sponsored options that were ultimately not developed, would result in costs that were not recoverable from customers. In fact, the more utility-sponsored options identified and the more detailed the analysis, the more costs incurred by the utility that would be non-recoverable. Thus, the approach would have the Company knowingly incur significant costs that would not be allowed for recovery, which is the very definition of a disincentive.

Q. Do you have other concerns with this approach?

A. Yes. The following hypothetical example illustrates Liberty's concern with Staff's approach:

- Step 1: The Company has a forecasted resource requirement.
- Step 2: The Company initially identifies three resource alternatives:
    - Utility-sponsored project A;
    - Utility pre-approved contract for service with an affiliate-sponsored project B, with an early termination clause whereby the Company would pay the affiliate an exit fee equal to the development costs incurred prior to triggering termination, if project B is not selected; and
    - Utility pre-approved contract for service with a third-party-sponsored option C, with an early termination clause whereby the Company would pay the third-party

an exit fee equal to the development costs incurred prior to triggering termination, if option C is not selected.

- Step 3: The Company is required to conduct significant research and analysis on each of the resource alternatives, regardless of sponsor, to determine the "least/best cost" option for customers.
- Step 4: As a result of its detailed research and analysis, the Company determines a new alternative D was the best-cost decision, and, thus, the Company terminates the contracts with the affiliate and third-party, and suspends analysis and development work on the Company-sponsored project A. Under Staff's approach:
    - The option with the utility affiliate had a contractual obligation to pay certain costs should the Company trigger the early termination clause, therefore those costs could be recovered from customers, which is consistent with Mr. Frink's observation regarding the Northern/GSGT case where the Commission "…approved recovery of the exit fee required under the terms of the contract…"[21]
    - In the option with the third-party, the third-party also had a contractual obligation to pay certain costs should the Company trigger the early termination clause, and those costs could be recovered from customers, which is consistent with Mr. Frink's testimony as to an "approved contract with a third party providing for cost recovery if the project is not placed into service."[22]

[21] Attachment SPF-18, at Bates 432.
[22] Attachment SPF-18, at Bates 432.

- However, for the utility-sponsored project A, any costs incurred to analyze and develop the project would not be recoverable from customers, because "there is no approved contract with a third party providing for cost recovery if the project is not placed into service. Thus, there is no contractual contingency at play for the recovery of stranded cost in the event the project is not completed and placed into service."[23] In Staff's view, "the recovery of costs sunk in a project that is not in service is prohibited."[24]

This hypothetical demonstrates the inequity and how this creates a significant disincentive to develop any utility-sponsored projects, which, in essence, eliminates this category of resources from consideration. It is unreasonable to treat development costs that are subject to a contractual agreement with a third-party or utility affiliate differently than those that are incurred directly to develop a utility-sponsored project. For these reasons, the Commission should reject Staff's proposal.

VI. CONCLUSIONS

Q. Please summarize your conclusions regarding the Company's proposed recovery of the Granite Bridge Project Costs.

A. EnergyNorth recommends that the Commission approve the Company's request for recovery of the Granite Bridge Project Costs. EnergyNorth's resource planning objective has always been to pursue viable and cost-effective resources to reliably meet its customers' needs and, to that end, the Company has dedicated significant effort to

[23] Attachment SPF-18, at Bates 432.
[24] Attachment SPF-18, at Bates 432.

investigate and analyze the least cost resource option since identifying the need in 2013. As noted previously, even after the TGP NED Project was canceled in 2016, EnergyNorth continued to analyze options with TGP, but the high price signals provided by TGP, which were the best information available at that time, singularly affected the Company's decision to pursue the Granite Bridge Project because it was the least-cost alternative relative to the available TGP options. The continued analysis of the Granite Bridge Project provided the Company negotiating leverage with TGP and demonstrated to the market the viability of the project. Ultimately, the Company's significant development work associated with the Granite Bridge Project was instrumental and critical in achieving the significantly lower pricing from TGP for capacity on the TGP Concord Lateral, which is a highly beneficial outcome for EnergyNorth's customers. Lastly, the Granite Bridge Project costs incurred by the Company were prudent and, as acknowledged by Staff, "<u>necessary to acquire, or attempt to acquire, regulatory approvals needed to commence construction</u>"[25] and, thus, not subject to the Anti-CWIP statute.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

[25] Attachment SPF-18, at Bates 429.