

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

DG 20-105
Distribution Service Rate Case

Record Request, Exhibit 25

Date Request Received: 6/8/2021

Date of Response: 6/9/21
Respondent: Chico DaFonte

REQUEST:

Please provide a copy of the document that defined the Company real estate rights in Exeter related to the Granite Bridge Pipeline.

RESPONSE:

Attached is the Option Agreement under which the Company paid \$30,000 for the right to later purchase a permanent easement over property in Exeter where the Company could have constructed the meter station to connect the proposed Granite Bridge Pipeline with the Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline, LLC. If the Company exercised the option during the option period, the Company would have paid the owner an additional \$100,000.

Note that the \$30,000 payment made pursuant to this option agreement is included in the costs for which the Company seeks recovery in this docket.

OPTION AGREEMENT

THIS OPTION AGREEMENT ("Option Agreement") is made as of October 22, 2018 (the "Effective Date"), by and between the Town of Exeter, a municipal corporation duly established under the laws of the State of New Hampshire ("Owner"), and Liberty Utilities (EnergyNorth Natural Gas) Corp., a New Hampshire corporation ("Liberty").

RECITALS

A. Owner is the owner of real property in the Town of Exeter, New Hampshire, which is located easterly of Newfields Road, so-called, and southerly of N.H. Route 101, being shown on the Town of Exeter Tax Maps as Map 38, Lot 13, and Map 49, Lot 15.

B. Owner desires to grant to Liberty, and Liberty desires to acquire from Owner, an option to purchase a permanent natural gas facilities easement (the "Easement") over a 100 foot by 300 foot portion of the Property that abuts the southerly edge of N.H. Route 101 and that abuts the existing natural gas pipeline easements granted to Granite State Gas Transmission, Inc. and to Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline, LLC (the "Easement Area"), as more fully described in the Easement Agreement, attached and incorporated as Exhibit A

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Grant of Option. Owner grants to Liberty an irrevocable exclusive option (the "Option") to purchase the Easement "AS IS, WHERE IS, WITH ALL FAULTS" on the terms and conditions in this Option Agreement. This Option Agreement grants to Liberty a true option to purchase the Easement; Liberty has no obligation to purchase the Easement.

2. Purchase Price. If Liberty exercises the Option, the purchase price for the Easement is One Hundred Thousand Dollars.

3. Option Period and Termination.

a. The term of the Option is Thirty Six months, commencing on the Effective Date (the "Option Period").

b. Liberty may terminate this Option Agreement at any time during the Option Period by giving written notice to Owner. Owner may not terminate this Option Agreement.

4. Option Payment.

a. Liberty shall deliver to Owner a payment of Thirty Thousand Dollars (the "Option Payment") when the parties execute this Option Agreement.

b. The Option Payment is non-refundable and is not to be credited toward the Purchase Price.

5. Exercise. No later than thirty days prior to the end of the Option Period and no less than thirty days prior to the date Liberty exercises the Option, Liberty shall give written notice to Owner if its intent to exercise the Option. Liberty may then exercise the Option by delivering to Owner the Purchase Price, at which time Owner shall promptly deliver to Liberty the properly executed Easement Agreement. If Liberty fails to exercise the Option prior to the end of the Option Period, then this Option Agreement shall, without any notice to any party hereto, automatically terminate.

6. Runs with the Land. The Option contained in this Option Agreement runs with the Property and is a benefit to Liberty. This Option Agreement is binding on Owner and its successors in interest in the Property, and inures solely to the benefit of Liberty. Liberty has the sole right and ability to enforce the terms of this Option Agreement against Owner or its successors in interest in the Property, and may record the memorandum, attached hereto and incorporated herein as Exhibit B, of this Option Agreement at the Registry. Liberty shall discharge the memorandum within thirty days of whichever of the following occurs first: Liberty's termination of this Option Agreement, the exercise of the Option, or the termination of this Option Agreement by Liberty's failure to timely exercise the Option. If Liberty fails to timely record a proper discharge, Owner may do so as Liberty's attorney in fact.

7. Certain Covenants.

a. Use of the Easement. Owner may continue to use the Easement Area for its current purpose, and no other, unless and until Liberty exercises the Option.

b. No Encumbrances. Without the prior written consent of Liberty, Owner shall not enter into any transaction, encumber or convey the Property or Easement Area, or create or suffer to exist any additional exceptions to title that will affect the Easement rights; provided however that such prior consent shall not be and is not required for the Owner and its successors to convey the Property or to mortgage the Property if such conveyance or mortgage does not affect the Easement rights. Owner shall provide Liberty with contemporaneous notice of any such conveyance or mortgage.

c. Cooperation. Owner shall fully support and cooperate with Liberty, at Liberty's expense, in applying for and securing any permits, licenses, approvals, and the like as Liberty desires with respect to its proposed development of the Easement Area. If requested by Liberty, Owner will sign applications for such permits, licenses, and approvals and, if necessary, any related appeals. All applications and proceedings for obtaining permits, licenses, approvals, and related appeals shall be under Liberty's control and direction and at Liberty's sole cost and expense. Such applications and appeals shall be made in the name of Owner, or Liberty, or jointly, as shall be determined by Liberty in

its discretion. Liberty shall, contemporaneously with any filing or submittal, copy Owner on all applications, approvals, and permits.

8. Owner's Representations and Warranties. Owner represents and warrants that as of the Effective Date:

a. Owner has full and lawful right and authority to execute and deliver this Option Agreement and to consummate the contemplated transactions.

b. Owner owns good fee simple marketable title to the Property.

c. There is no litigation, bankruptcy, or other proceeding pending or threatened that affects the Easement Area.

d. There is no pending or threatened condemnation of the Easement Area.

e. To Owner's knowledge, no unrecorded liens, encumbrances, or adverse claims exist with respect to the Easement Area.

f. There are no leases or occupancy agreements affecting all or any portion of the Easement Area, and no management contracts, service contracts, options (other than this Option Agreement), or any other material agreements relating to the Easement Area.

g. Owner is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from its withholding requirements.

9. Access to Easement and Inspections by Liberty. Owner shall allow Liberty and its representatives reasonable access to the Easement Area, on reasonable advance notice, solely for the purposes of conducting such surveys and inspections of the Easement Area prior to the exercise of the Option as Liberty deems appropriate. After the exercise of the Option, all access to the Easement Area shall be as provided in the Easement Agreement, attached as Exhibit A. Liberty shall not incur any mechanics' liens in connection with its inspections and, if so incurred, shall have them removed by payment or bond or other method reasonably satisfactory to Owner within thirty days of receipt of notice of attachment. If the Property shall be disturbed by any such survey and inspection, then Liberty shall forthwith restore the Property to its same condition as prior to any such disturbance.

10. Notice. All notices and other communications are to be in writing, and are deemed to have been given or made: (i) when delivered in person; (ii) three business days after deposited in the United States certified mail, postage prepaid; or (iii) in the case of overnight courier services that provides confirmation of delivery, one business day after delivery to the overnight courier service with payment provided for, addressed as follows:

If to Owner:	Town Manager Town of Exeter 10 Front Street Exeter, NH 03833
With a copy to:	_____, Esquire _____, NH
If to Liberty	Liberty Utilities (EnergyNorth Natural Gas) Corp. Attn: President 15 Buttrick Road Londonderry, NH 03053
With a copy to:	Liberty Utilities (EnergyNorth Natural Gas) Corp. Attn: Legal Department 116 North Main Street Concord, NH 03301 Michael.sheehan@libertyutilities.com

or to such other persons or addresses as either party designates by notice given in accordance with this Section.

11. Benefit and Binding. This Option Agreement shall bind and inure to the benefit of the heirs, administrators, executors, successors, and assigns of the respective parties.

12. Amendment and Modification; Waiver. This Option Agreement may only be amended by an agreement in writing signed by both parties. No waiver of any provision of this Option Agreement shall be effective unless explicitly set forth in writing and signed by the waiving party.

13. Governing Law, Waiver of Jury Trial.

a. Governing Law; Jurisdiction. This Option Agreement shall be governed by and construed in accordance with the internal laws of the State of New Hampshire without giving effect to any choice or conflict of law provision or rule (whether of the State of New Hampshire or any other jurisdiction). All litigation of any nature arising under this Option Agreement shall take place in a court of competent jurisdiction located in Rockingham County, New Hampshire.

b. Jury Trial Waiver. **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS OPTION AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY**

**JURY FOR ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS
OPTION AGREEMENT.**

14. Remedies.

a. Waiver of Consequential Damages. **UNDER NO CIRCUMSTANCES (SAVE FOR FRAUD) SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, OR LOST PROFITS ARISING OUT OF ANY CLAIM, DEMAND, OR ACTION ARISING OUT OF OR RELATING TO THIS OPTION AGREEMENT.**

b. Specific Performance. The parties agree that irreparable damage would occur if any provision of this Option Agreement were not performed in accordance with its terms and that the parties shall be entitled to specific performance of its terms as its sole and exclusive remedy.

15. Miscellaneous.

a. Time of Essence. Time is of the essence in this Option Agreement.

b. Counterparts. This Option Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall be one agreement. A signed copy of this Option Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall have the same legal effect as delivery of an original signed copy of this Option Agreement.

c. Business Days. If any date, time period, or deadline falls on a Saturday, Sunday, or legal holiday in New Hampshire, then that date, time period, or deadline shall be extended to the next business day.

d. Further Actions. The parties agree to execute further documents and take further actions as may be reasonably required to carry out the provisions and intent of this Option Agreement.

e. Assignment. Liberty shall not assign this Option Agreement, in whole or in part, without the Owner's prior written consent, which shall not be unreasonably withheld.



f. Effective Date. The "Effective Date" is defined as the date Owner and Liberty have both signed this Option Agreement and have dated their respective signatures below.

g. Brokers. Liberty and Owner each represent that they have involved no real estate agent or broker in this transaction other than Premier Properties, Inc. representing



Liberty. Liberty is solely responsible for the payment of all compensation and costs due Premier Properties, Inc. regarding this Option Agreement. Each of the parties shall indemnify and defend the other against any claim or demand for a real estate commission, fee or other compensation for real estate broker services by any other person or entity claimed to have been retained, hired or to be acting for or on behalf of such party.

IN WITNESS WHEREOF, the parties have executed this Option Agreement as of the respective dates below written.

TOWN OF EXETER By its  Name: Julie Gilman Title: Chair, Exeter Select Board Dated:	LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  Name: Susan L. Fleck Title: President Dated: 10/22/18
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