

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

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty  
Request for Approval of a  
Firm Transportation Agreement with Tennessee Gas Pipeline

**Docket No. DG 21-008**

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

Liberty Utilities (EnergyNorth Natural Gas) Corp d/b/a Liberty (“Liberty” or the “Company”) submits this reply brief pursuant to the Procedural Order issued on October 1, 2021 by the New Hampshire Public Utilities Commission (the “Commission”) and in response to the October 14, 2021, initial brief of the Conservation Law Foundation (“CLF”). CLF argues that the Commission should deny the Company’s January 20, 2021, petition (the “Petition”) for approval of a firm transportation agreement with Tennessee Gas Pipeline (“TGP”) dated July 14, 2020 (the “TGP Contract”) because the Company has failed to meet its burden of proof in this proceeding, based on CLF’s view that: (1) Liberty has “failed to update” its least-cost integrated resource plan (“LCIRP”) to reflect the TGP Contract (CLF Br. at 4); and that (2) Liberty’s filings “fail to comply” with all requirements of the LCIRP statutes (CLF Br. at 5-10).

As explained in more detail below, CLF mischaracterizes the legal standard applicable to the Commission’s review of the proposed TGP Contract, raises claims that are wholly irrelevant to the contract approval, and fails to support its assertion that Liberty did not meet its burden of proof in this docket. CLF’s arguments on the LCIRP process are misdirected and inapplicable to the TGP Contract. CLF does not address – and in fact ignores – the settlement agreement by and between Liberty, the Department of Energy (“Energy”), and the Office of the Consumer Advocate (“OCA”), which was filed for approval by the Commission on September 24, 2021 (the “Settlement Agreement”). The Settlement Agreement states the settling parties’ agreement “that

the Company's decision to enter into the TGP Contract was prudent, that the costs incurred under the TGP Contract are reasonable, and thus recommend that the Commission approve the TGP Contract" (Exh. 1, § 2.1), and includes enhancements to the planning standards for the 2022 LCIRP (Exh. 1, §3), among other terms.<sup>1</sup>

As outlined in the Company's filings and throughout this proceeding, approval of the TGP Contract pursuant to the Settlement Agreement is consistent with the Commission's findings in previous dockets that Liberty requires additional pipeline capacity. The TGP Contract will provide critically needed capacity and represents the least-cost option available to Liberty to meet its current capacity need. The TGP Contract is prudent and in the public interest.

## **I. Background**

The Company filed its Petition seeking approval of the TGP agreement on January 20, 2021, to address a long-standing and recognized capacity need. Specifically, in Order No. 25,822 (Oct. 2, 2015), the Commission approved a precedent agreement with TGP for capacity on the Northeast Energy Direct ("NED") Project, acknowledging Liberty's need for additional pipeline capacity, and thus approved a contract with up to 115,000 Dth/day of capacity (Exh. 3, Bates 009 citing Docket No. DG 14-380, Order No. 25,822). TGP cancelled the NED Project in May 2016, leaving Liberty without a solution to its impending capacity shortfall (Exh. 3, Bates 009). Following cancellation of the NED Project, Liberty evaluated its remaining capacity alternatives and identified two viable options: (1) a contract with TGP for an expansion of the Concord Lateral, which is the TGP-owned transmission line that travels from Dracut, Massachusetts to Concord, New Hampshire, and the only existing transmission line that can serve Liberty's distribution

---

<sup>1</sup> Pipeline Awareness Network for the Northeast, Inc. ("PLAN") is also a party in this proceeding. PLAN is not a party to the proposed Settlement Agreement but did not participate in the evidentiary hearing held on October 6, 2021.

system, or (2) a Company sponsored supply and capacity project (see id.).<sup>2</sup>

At the time that the NED Project was cancelled, the Concord Lateral was fully subscribed and any contract with TGP would have required TGP to build new facilities to serve the Company's capacity need (Exh. 3, Bates 020). The second option was for Liberty to build its own pipeline to provide the additional capacity (id.). This option, which became known as the Granite Bridge Project, was initially selected by the Company based on cost estimates that showed the Granite Bridge Project to be the least cost alternative as compared to indicative pricing from TGP for a contract on the Concord Lateral (id.).

Liberty filed its request for approval of the Granite Bridge Project in Docket No. DG 17-198. In that proceeding, Commission Staff<sup>3</sup> acknowledged the Company's capacity need, stating that "[Commission Staff] 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..." (Exh. 3, Bates 009, fn. 3 citing Docket No. DG 17-198 Revised Testimony of The Liberty Consulting Group on behalf of Staff, filed September 20, 2019, at Bates 010 (emphasis added)).

Through May 2019 the Granite Bridge Project remained the least-cost option available to the Company based on its continued refinement of the Granite Bridge Project engineering and price estimates, while it continued discussions with TGP regarding a contract alternative (Exh. 3, Bates 010). However, in October 2019, TGP indicated for the first time that it was able to offer capacity on the Concord Lateral to Liberty that was previously held for another TGP customer (id.,

---

<sup>2</sup> The Company has a finite amount of LNG storage on its system; this storage capacity is already included in the Company's available design day resources (Exh. 11, Bates 000005). As a result, additional LNG was not (and is not currently) a viable alternative.

<sup>3</sup> In July 2021, the Department of Energy was established and Commission Staff have since become Energy Staff.

Bates 011). This meant that an agreement with TGP would no longer require TGP to construct significant new facilities, resulting in lower indicative pricing. In October 2019, the pricing estimate received from TGP became the least cost option (i.e., TGP pricing became lower than the cost estimates for the Granite Bridge Project) (id., Bates 022). Liberty therefore moved forward with negotiation with TGP culminating in the 40,000 Dth/day capacity contract as described in the Petition. The addition of the 40,000 Dth/day TGP contract to the Company's gas resource portfolio will allow the Company to maintain reliable service to its human needs customers during cold weather conditions at the most cost-effective rate available in the marketplace. In addition, the TGP contract will alleviate the Company's significant reliance on LNG trucking and utilization of its aging propane facilities in order to meet design day demand.<sup>4</sup> This extensive reliance on LNG and propane is not an appropriate or adequate long-term solution.<sup>5</sup> Approval of the TGP Contract will result in a Company portfolio that relies on a more sustainable level of LNG trucking and a more reasonable measure of the operational capacity of propane that could be dispatched during a cold snap. Based on the foregoing, the Company has shown that the TGP Contract is reasonable and prudent.

## **II. Discussion**

CLF's Brief relies on a flawed legal standard and assertions that are not relevant to this proceeding. The crux of CLF's Brief is that Liberty's LCIRP is inadequate and/or should have been revised in order to support the need for the TGP agreement. CLF asserts without legal support

---

<sup>4</sup> As Mr. DaFonte testified during the hearing, design day demand is the demand projected on the Company's coldest day as forecasted based on the coldest day, the day with the highest HDD (heating degree days) in the last 40 years (the transcript was not available at the time this brief was filed).

<sup>5</sup> As Mr. DaFonte testified at hearing, when taking into account the expiration dates of the other existing capacity contracts on the Concord Lateral and the 5-year renewal periods of those contracts, the Company has the flexibility in its portfolio to terminate one or both of those other contracts during the 20-year term of the new TGP contract should future demand be less than now forecasted.

that the Petition was required to comply with the LCIRP statutes (CLF Br. at 2) and that the LCIRP should have been “updated” to reflect the TGP Contract (CLF Br. at 4), neither of which are correct. CLF anticipated that the Company would state that these claims are irrelevant (because they are) and tries to pre-empt the Company’s response by suggesting that unless the Commission accepts CLF’s arguments, the LCIRP process would become a “mockery” (CLF Brief at 8). However, as detailed below, the LCIRP process is a separate and distinct process that informs the Company’s resource acquisitions and is not the subject of this proceeding. It is purposeful and appropriate that the LCIRP statutes provide an approach that allows the Commission to review the Company’s overall planning standards and resource needs on a five-year cycle (i.e., the LCIRP) distinct from a request for approval of a capacity contract. The conditions in the Settlement Agreement include forward-looking enhancements to the planning standards for the 2022 LCIRP (Exh. 1, Bates 003).

CLF offered no evidence that the capacity secured by the TGP Contract is not needed or that the costs are unreasonable. The Company also notes that the Commission approved the precedent agreement in the NED docket, DG 14-380, at a time when the LCIRP docket in Docket No. DG 13-313 was pending and travelling a parallel path, similar to this docket and the pending LCIRP in Docket No. DG. 17-152. In addition, the Commission approved a capacity contract in 2018, which was the 7,000 dth/day agreement with Portland Natural Gas Transmission System (PNGTS), without requiring an update of the LCIRP. *See* Order No. 26,409 at 14 (Oct. 6, 2020) (“We note that the two contracts that Liberty sought approval for in this docket [DG 17-198] were discussed and approved in Liberty’s 2018 cost of gas docket, DG 18-137”).

**A. Liberty Has Sustained its Burden of Proof**

The legal standard governing the approval of the TGP Contract is whether the TGP Contract is “reasonable and prudent.” The Commission has stated: “

We must consider whether the Precedent Agreement is prudent and reasonable. RSA 374:1 and 374:2 (public utilities shall provide reasonably safe and adequate service at “just and reasonable” rates), and 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable).

Order No. 25,822 at 25 (Oct. 2, 2015) (order approving Liberty’s contract with TGP for capacity on the proposed NED project).

Conversely, CLF argues that the Company has failed to satisfy its burden of proof based on the LCIRP statutes, which are not applicable to a contract approval. Order No. 25,822, quoted above, made no mention of the LCIRP statutes in describing the applicable law, only mentioning the then pending LCIRP in passing, and in a manner equally applicable here.<sup>6</sup> Moreover, CLF’s claims are inconsistent with the evidentiary record, which demonstrates a clear need for additional capacity and that the TGP Contract represents the least-cost alternative to meet that need. Notably, CLF attempts to support this allegation by pointing to the LCIRP requirements. However, as CLF concedes, this is not a LCIRP proceeding. Instead, Liberty’s most recent LCIRP remains pending before the Commission in Docket No. DG 17-152. CLF’s criticisms of the LCIRP are misdirected and not applicable to the Commission’s review in this docket.

Under the Commission’s legal standard, the proper analysis is whether the TGP Contract was prudently entered into, is reasonable, and is in the public interest. The evidence in this proceeding overwhelmingly supports such a finding and demonstrates why Energy and the OCA entered into the Settlement Agreement. Specifically, Liberty has shown that it considered all viable alternatives to the TGP Contract and determined it to be the least-cost option available to meet a long-standing capacity need (Exh. 3, Bates 011).<sup>7</sup> The Company reached this conclusion

---

<sup>6</sup> “EnergyNorth identified its need for additional, firm capacity in its last approved Least Cost Integrated Resource Plan (IRP) (DG 13-313), and EnergyNorth’s capacity needs have increased since then.” Order 25,822 at 5.

<sup>7</sup> CLF argues that the LCIRP must be updated because the “Concord Lateral Expansion” discussed in the Company’s LCIRP is different from the TGP Contract proposed here, but this is incorrect. As Liberty explained during the evidentiary hearing, at least some of the system upgrades necessitated by the TGP Contract would have been necessary even without the TGP Contract. The material difference between the previous and current TGP options

using the Commission-approved resource planning process based on its comparison with other alternatives (id.).

**B. The Company’s LCIRP Docket is not at Issue in this Proceeding**

CLF devotes the majority of its Brief to criticizing the Company’s LCIRP and alleging that it fails to meet LCIRP statutory requirements (CLF Br. at 5-10), but Liberty’s LCIRP is not at issue in this proceeding. Further, even if the Company’s LCIRP were at issue, CLF has failed to demonstrate that its suggested revisions to the Company’s demand forecast included in the LCIRP would be reasonable and/or lead to a different conclusion regarding the need for the TGP Contract. Indeed, the Company based its decision to enter the TGP Contract on a demand forecast that was developed with a Commission-approved methodology and with Commission-approved planning standards.

i. Updates to the 2017 LCIRP are Not Necessary for Purposes of Reviewing the TGP Contract

CLF asserts that the LCIRP should have been updated to specifically reflect the TGP Contract (CLF Br. at 4). CLF provides no support for its assertion that this update to the LCIRP is required by statute or that such update is required before the Commission can review and approve the TGP Contract (id.). The LCIRP statute cited by CLF requires the Company to include “[a]n assessment of supply options including owned capacity” in its LCIRP. RSA 378:38. Liberty submitted its most recent LCIRP in 2017; at that time, the Company included the supply options that were available (Exh. 3, Bates 019-020). There is nothing in the statute that requires an update to the LCIRP if the options change over time. Instead, the LCIRP statute requires new LCIRP filings at regular intervals to ensure that a company’s LCIRP is never more than five years old.

---

is the price. Under the prior TGP option, customers would have been subject to capital investment costs incurred by TGP as embedded to much higher TGP rates. Under the proposed TGP Contract, the Company will pay only the far less expensive TGP recourse rate.

See RSA 378:38. Further, it would be contrary to the Commission’s standard of review (i.e., contrary to the public interest) to deny approval of the least-cost supply option because the details of the resource options have changed since the 2017 LCIRP was filed. CLF is correct that the TGP option included in the 2017 LCIRP is different from the TGP Contract presented in this docket (CLF Br. at 4). However, the differences have been fully presented in this proceeding and these differences, including the dramatically lower cost, are the very reason that the Company has selected the TGP Contract as the prudent supply option to meet its need.

ii. CLF’s Recommendations Regarding the LCIRP Do Not Change the Reality that Liberty Has a Critical Capacity Need

CLF’s second argument is that Liberty’s planning in the LCIRP fails to properly address demand-side management programs, including energy efficiency or load management programs, as alternatives to the TGP Contract (CLF Br. at 5). CLF argues that because Liberty has not analyzed the potential for increased energy efficiency or other load management programs, it has violated RSA 378:37 by failing to “maximize the use of cost effective energy efficiency and other demand resources” and make it impossible for the Commission to give first priority to energy efficiency and other demand side resources pursuant to RSA 378:39 (CLF Br. at 6).

To the contrary, the Company has included all currently approved energy efficiency in the demand forecast. It is true that the Company has not included additional energy efficiency that could potentially be approved under the pending energy efficiency plan, because to do so would be speculative pending a Commission determination<sup>8</sup> (Exh. 4, Bates 022). However, the Company performed an analysis to determine whether including the proposed 2021-2023 energy efficiency plan (currently pending before the Commission) would have a material impact on Liberty’s

---

<sup>8</sup> CLF cites to the order issued regarding Liberty’s 2013 LCIRP wherein the Company was directed to comply with all elements of the LCIRP statute in a granular way to allow stakeholders to track compliance (CLF Br. at 7). This citation refers not to a prior failure of the Company to comply with statutory requirements but was in reference to the change in LCIRP requirements occurring at that time. Docket No. DG 13-313, Order No. 25,762, at 5 (2015).



resource deficiency (Exh. 4, Bates 022). The analysis concluded that even if the greater energy efficiency proposed in the 2021 plan were included, it would result in an immaterial change to the demand forecast. The deficiency would remain and the capacity provided by the TGP Contract would still be needed (id.).

Liberty also continues to monitor demand response options. However, there is no evidence to suggest that demand response could reduce the Company's resource needs to an extent that would eliminate the need for the TGP Contract (Exh. 4, Bates 028; see also Exh. 10, Bates 000007). None of the three gas demand reduction pilots being monitored by the Company have shown conclusive results regarding reduction of peak gas load (Exh. 10, Bates 000007). Further, the Company has explained that all of its customers would have to participate in a demand response program in order to achieve the reduction in demand necessary to eliminate the need for the TGP Agreement (id. at Bates 030). Obtaining 100 percent participation is highly unlikely if not impossible, and therefore demand response will not change the need for the TGP Contract. Thus, CLF's assertions regarding demand response in the LCIRP are irrelevant to the Commission's analysis.

CLF next argues that Liberty failed to address the environmental and health related impact of the TGP Contract based on RSA 378:38 (CLF Br. at 7-8). However, similar to its other claims, this statutory requirement applies to the LCIRP and not to the evaluation of a specific resource option. Further, the TGP Contract provides the Company with *existing capacity* that is not a new resource for purposes of assessing potential environmental or health impacts (Exh. 10, Bates 000007). Because the TGP Contract does not change the use of an existing resource, there will be no incremental impacts to the environment or public health (id.). As a result, CLF's argument has no bearing on the Commission's evaluation of the TGP Contract.

iii. The TGP Contract is Aligned with the LCIRP

CLF's final argument is that the Company's request in this docket is not "aligned" with the LCIRP (CLF Br. at 8-10), but in essence CLF is attempting to use this docket as an additional means of challenging the LCIRP. To the extent CLF has issues with the statutory requirements or analysis underling the LCIRP, it can raise them in Docket No. DG 17-152. The LCIRP is not intended to be a static document nor is the LCIRP required to be updated mid-cycle based on changed circumstances. It is wholly appropriate for Liberty to address the change in resource options as part of its filing in this proceeding. The Company has addressed this change in resource options here as part of its showing that the TGP Contract is prudent, reasonable, and in the public interest.<sup>9</sup>

### III. Conclusion

The Company respectfully requests that the Commission approve the TGP Contract based on the Settlement Agreement because it provides critically needed capacity, consistent with the Commission's findings in previous dockets that Liberty requires additional pipeline capacity. The TGP Contract represents the least-cost option available to Liberty to meet the needs of its customers. The TGP Contract is prudent, reasonable, and consistent with the public interest.

*[signature page follows]*

---

<sup>9</sup> There is also no evidence to suggest that the Company's LCIRP fails to be aligned with Liberty's "real" planning methods as suggested by CLF (CLF Br. at 9). In fact, the Company did consider a TGP contract option in its LCIRP and only suggested selection of the Granite Bridge Project based on the very "real" circumstances associated with the expensive TGP contract options at that time. The Petition resulted from the change in circumstances that made a more favorable TGP option preferable under the planning criteria used to develop the LCIRP and its resulting conclusion that Liberty will have a Design Day resource deficiency beginning with the 2021/22 split year (Exh. 3, Bates 018). This change in supply options will be reflected in the 2022 LCIRP.

Respectfully submitted,

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

By its Attorney,



Date: October 25, 2021

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](mailto:dvenora@keeganwerlin.com)  
[jralston@keeganwerlin.com](mailto:jralston@keeganwerlin.com)

**Certificate of Service**

I hereby certify that on October 25, 2021, a copy of this reply brief has been electronically forwarded to the service list in this docket.



Matthew

---