

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

Docket No. DG 21-008

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

**Petition for Approval of a Firm Transportation Agreement
with Tennessee Gas Pipeline Company, LLC**

CONSERVATION LAW FOUNDATION'S MOTION

REQUESTING LEAVE TO SUBMIT A BRIEF

NOW COMES the Conservation Law Foundation (“CLF”), an intervenor in this docket, and respectfully moves that the New Hampshire Public Utilities Commission (“Commission”) grant CLF’s request to file a brief in relation to the hearing scheduled for October 6, 2021, in this matter, pursuant to N.H. Code Admin. Rule Puc 203.32.

I. Background

In this matter, Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (“Liberty”) has filed a petition for approval of a firm transportation agreement with Tennessee Gas Pipeline Company, LLC (“TGP”) for 40,000 dekatherms of natural gas capacity. In the attachments filed with its petition, Liberty asserts that to optimize the increased capacity from the proposed TGP agreement, it must complete certain on-system distribution enhancement projects totaling approximately \$45 million. (Francisco C. DaFonte and William Kileen Testimony, Docket No. DG 21-008, at Bates 24-26). As the Commission held in its order of notice initiating this docket, Liberty’s filing raises issues related to whether the proposed agreement with TGP “is prudent, reasonable, and consistent with the public interest; and whether the testimony provided with the petition addressing resource requirements, evaluation of resource alternatives, possible

future capital investment to fully utilize the capacity, and TGP contract risks and risk mitigation, supports approval of the agreement.” (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021)). As the petitioner, Liberty has the burden of proving its petition by a preponderance of the evidence. Rule Puc 203.25.

During the proceedings in this matter, several matters of law, which are relevant to whether Liberty has met its burden of proof, have arisen. In particular, throughout discovery, CLF has raised the question of whether Liberty’s petition for approval of the TGP agreement complies with New Hampshire’s Least Cost Integrated Resource (“LCIRP”) Statutes, RSA 378:37-378:40. Indeed, in the testimony of CLF’s expert, Dr. David G. Hill, Dr. Hill stated that, in his professional opinion, Liberty’s petition does not adequately comply with several elements of New Hampshire’s LCIRP statutes. (Dr. David G. Hill Testimony, Docket No. DG 21-008, at 10).

II. Motion

CLF requests that the Commission grant CLF’s request to submit a brief in conjunction with the October 6 hearing. Because the question of whether Liberty’s filing conforms to the New Hampshire LCIRP statutes is primarily a legal issue, rather than a factual issue, briefing this matter would likely assist the Commission in reaching a decision in this matter.

Here, CLF has repeatedly asserted throughout the proceedings that Liberty’s petition fails to comply with the New Hampshire LCIRP statutes. For example, at the March 24, 2021 preliminary conference, CLF argued that because Liberty was proposing a new project following its withdrawal of the Granite Bridge project, Liberty was required to file an amended LCIRP plan in Docket No. DG 17-152 that included the new proposal and that that docket should then proceed

in tandem with the instant docket.¹ (Preliminary Conference Transcript, Docket No. DG 21-008, at 15 (March 24, 2021)). Further, in CLF expert Dr. David G. Hill’s testimony, Dr. Hill stated that Liberty’s filings in the instant matter contravened the LCIRP statutes by failing to consider alternatives to the proposed TGP agreement, such as increased energy efficiency, demand response programs, and/or other non-pipeline alternatives that could potentially reduce or eliminate the need for the additional capacity of the agreement. (Dr. David G. Hill Testimony at 12, 15-16). Dr. Hill also testified that Liberty had failed to analyze the environmental impacts of the proposed TGP agreement and related on-system enhancements, as required under the LCIRP statutes. *Id.* at 10, 18-19.

Since abandoning Granite Bridge approximately a year ago, Liberty has not updated its LCIRP filings to reflect the newly proposed TGP agreement and associated on-system distribution enhancements. Liberty’s LCIRP filings in Docket No. DG 17-152 only make vague references to a “Concord Lateral expansion” as an alternative to Granite Bridge.² Moreover, Liberty’s references to a Concord Lateral expansion in the LCIRP filings appear to refer to a situation in which the Concord Lateral would be expanded by its owner, TGP,³ which is different from the on-system enhancements to Liberty’s distribution network that Liberty is proposing, here, and which Liberty intends to construct itself.

Under Rule Puc 203.25(a), “[u]pon the request of a party or on its own motion, the [C]ommission shall allow parties to submit briefs at any point in an adjudicative proceeding if the

¹ It is notable that prior to Liberty’s abandonment of the Granite Bridge project this is precisely what happened in that the Granite Bridge docket, Docket No. DG 17-198, and the Liberty LCIRP docket, Docket No. DG 17-152, proceeded under parallel schedules.

² *See, e.g.*, William R. Killeen Testimony, Docket No. DG 17-152, at Bates 7-8 (April 30, 2019).

³ *See*, Sherrie Trefrey Testimony, Docket No. DG 17-152, at Bates 71 (June 28, 2019) (stating that “an alternative to the Granite Bridge Pipeline is an expansion of the Concord Lateral, which expansion would be constructed by its owner, TGP”).

[C]ommission determines that such briefing would assist the [C]ommission in its determination of the issues presented.” Here, granting CLF’s request to brief the Commission on whether Liberty has complied with New Hampshire’s LCIRP statutes and other related matters of law would assist the Commission in deciding this and other issues that will be presented at the October 6 hearing. More specifically, briefing would help the Commission decide whether it can approve Liberty’s petition given that (1) Liberty has not updated its LCIRP filings to reflect the proposal at issue in this docket; and (2) Liberty has not presented an analysis of potential alternatives to its proposal, including increased energy efficiency and load management programs, as required under the LCIRP statutes. *See* RSA 378:38, 378:39. These issues are directly related to issues identified by the Commission in its Order of Notice as germane to its review, including “whether the agreement is prudent, reasonable, and consistent with the public interest” and whether the testimony provided with the petition “address[s] *resource requirements, evaluation of resource alternatives*, [and] possible future capital investment to fully utilize the capacity.” (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021) (emphasis added)).

Pursuant to Rule Puc 203.32(b), the Commission “shall set any briefing deadline or deadlines so as to permit the parties adequate time to draft their briefs and without causing undue delay in the conclusion of the proceeding,” and under Rule Puc 203.32(d), the Commission “shall establish a page limit for briefs when it determines that such a limit would promote the efficient resolution of issues without adversely affecting the rights of any party.” To avoid causing undue delay in the conclusion of the proceeding, CLF would support an expedited briefing schedule, such as requiring briefs to be filed within a short time after the conclusion of the October 6 hearing.⁴

⁴ However, given that Liberty has stated that under the terms of the TGP agreement it has until July 31, 2022, to notify TGP if it intends to terminate the agreement due to lack of Commission approval, it is unlikely that granting CLF’s request to file a brief in the matter would delay the proceedings such that it would impact Liberty’s purported

Further, CLF would support the Commission establishing a page limit for briefs, such as a 10-page limit, to promote the efficient resolution of the matter.

The Office of Consumer Advocate, the Department of Energy, and the Pipeline Awareness Network for the Northeast, Inc. do not oppose CLF's motion requesting leave to submit a brief. Moreover, Liberty has stated that it does not currently oppose CLF's motion.

WHEREFORE, CLF respectfully requests that the Commission permit CLF to brief the Commission on legal issues related to the instant proceedings, and to set any deadlines and/or page limits that the Commission deems necessary to avoid undue delay and promote the efficient resolution of the proceedings.

Respectfully submitted,

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schedule. *See* Francisco C. Dafonte and William Killeen Testimony, Docket No. DG 21-008, at Bates 13 (January 20, 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.

/s/Nicholas A. Krakoff

Nicholas A. Krakoff