

**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 FOR  
REHEARING OF ORDER NO. 26,551**

NOW COMES the Conservation Law Foundation (“CLF”), an intervenor in this docket, and moves pursuant to RSA 541:3 and N.H. Code Admin. Rule Puc 203.33 for rehearing of Order No. 26,551, entered by the New Hampshire Public Utilities Commission (“Commission”) in the above-captioned docket on November 12, 2021. In support of its motion, CLF avers as follows:

**I. Background**

In this matter, Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (“Liberty”) 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 asserted that to optimize the increased capacity from the proposed TGP agreement, it must complete certain on-system distribution enhancement projects totaling approximately \$45 million.<sup>1</sup>

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<sup>1</sup> Ex. 3, Francisco C. DaFonte and William Killeen Testimony, Docket No. DG 21-008, at Bates 24-26.

In its order of notice initiating this docket, the Commission held that Liberty’s petition raised 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)). Further, as the Commission noted in its order, RSA 374:1, RSA 374:2, and RSA 378:7 require that all services furnished by public utilities—and that all charges and rates rendered for such services—be just and reasonable. *Id.* As the petitioner, Liberty had the burden of proving by a preponderance of the evidence, *See* Rule Puc 203.25, that the proposed TGP agreement was “prudent, reasonable, and consistent with the public interest.” (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021)).

On September 24, 2021, Liberty filed a proposed settlement agreement regarding the petition that was entered into by Liberty, the Office of Consumer Advocate, and the Department of Energy (“Settlement Agreement”). On October 6, 2021, the Commission conducted an evidentiary hearing on Liberty’s petition where CLF was the only party opposed to the petition.<sup>2</sup> At the hearing, Liberty presented the testimony of its witnesses Francisco C. Dafonte and Deborah M. Gilbertson, and CLF presented the testimony of its witness Dr. David G. Hill. Thereafter, on November 12, 2021, the Commission issued an order approving the Settlement Agreement and the TGP agreement.

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<sup>2</sup> Although the Pipeline Awareness Network for the Northeast, Inc. (“PLAN”) did not join the proposed Settlement Agreement, it did not participate in the October 6, 2021 hearing.

## II. Argument

### A. **Because Liberty Failed to Properly Analyze Alternatives to the TGP Agreement as Required by RSA 378:37, the Commission Erred in Concluding that Liberty Met Its Burden of Proof in Demonstrating that the TGP Agreement Is Prudent, Reasonable, and Consistent with the Public Interest.**

As the Commission correctly recognized in its order of notice initiating this docket, in seeking approval of the TGP agreement, Liberty was required to present evidence that it evaluated resource alternatives to the TGP agreement. However, at the hearing, Liberty failed to demonstrate that it evaluated demand-side alternatives to the TGP agreement.

Pursuant to RSA 378:37, the New Hampshire General Court has declared as follows:

it shall be the energy policy of this state *to meet the energy needs* of the citizens and businesses of the state *at the lowest reasonable cost* while providing for the reliability and diversity of energy sources; *to maximize the use of cost effective energy efficiency and other demand-side resources*; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.

*Id.* (emphasis added). While the requirements of this statute are in part effectuated by the additional least cost integrated resource planning (“LCIRP”) statutory provisions that follow, *see* RSA 378:38-40, nowhere in RSA 378:37, or any other statute, does it state that the Commission and utilities must consider the state energy policy requirements of RSA 378:37 only in conjunction with utilities’ least cost integrated plan filing obligations. Indeed, to do so would lead to unreasonable results. This is because, in instances where the Commission does not compare cost-effective energy efficiency and other demand resource alternatives to supply options, the Commission cannot properly evaluate whether a supply contract or capital investment that a utility has petitioned the Commission to approve is the least cost option, *i.e.*, that it could meet the utility’s customers’ needs “at the lowest reasonable cost.” *Id.* The

Commission, in fact, has acknowledged the relevance of RSA 378:37 outside of LCIRP dockets. *See Investigation into Grid Modernization*, Docket No. 15-296, Order No. 26,358, at 11, 13-14 (May 22, 2020) (finding that the least-cost planning requirement under RSA 378:37 was relevant to that docket); *Energy Efficiency Resource Standard*, Docket No.15-137, Order No. 25,932, at 47, 51(August 2, 2016) (relying, in part, on RSA 378:37 to establish New Hampshire’s Energy Efficiency Resource Standard (“EERS”)).

At the hearing, Liberty acknowledged that the issue of whether the TGP alternative was the least cost alternative was relevant to the Commission’s review in this docket, with Mr. DaFonte stating that Liberty had identified the TGP agreement as the least cost alternative.<sup>3</sup> Moreover, in approving the TGP agreement and Settlement Agreement, the Commission implied that it had assessed other alternatives, concluding that the TGP agreement “represents the most viable, reasonably available alternative for Liberty to meet its current and forecasted customer requirements in an adequate and reliable manner.” (Order Approving Petition, Docket No. DG 21-008, Order No. 26,551, at 8 (November 21, 2021)).

While Liberty sought approval of the TGP agreement based on its assertion that the TGP agreement is the least cost alternative, it ignored the remaining language in RSA 378:37. In particular, Liberty ignored the requirement in RSA 378:37 that it is the energy policy of the state “to maximize the use of cost-effective energy efficiency and other demand-side resources.” RSA 378:37. At the hearing, Liberty did not attempt to demonstrate whether increased cost-effective energy efficiency and other demand-side resources could obviate the need for the TGP Agreement. In other words, although Liberty sought approval of the TGP agreement based on its claim that it was the least cost alternative, it failed to demonstrate whether it could meet its

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<sup>3</sup> Francisco C. DaFonte Testimony, Hearing Transcript (Morning) at 36, 55. Similarly, in Liberty’s post-hearing brief, it claimed that the TGP agreement is the least cost option. *See* Liberty Reply Brief at 4, DG 21-008.

customers' energy needs by maximizing cost effective energy efficiency and other demand-side resources, as required by RSA 378:37.

Throughout the hearing, Liberty admitted that it had not analyzed energy efficiency savings beyond the programs that were approved by the Commission for the 2018-2020 New Hampshire Statewide Energy Efficiency Plan ("Triennial Plan").<sup>4</sup> Liberty also acknowledged that it had not conducted its own analysis of whether demand response programs, which are a type of "demand-side resource," could reduce Liberty's purported resource deficiency or whether demand response programs are feasible.<sup>5</sup>

CLF's witness, Dr. David G. Hill, testified that in seeking approval of the TGP agreement, Liberty had only compared it to other supply options, but that it was in the best interest of ratepayers for Liberty to also compare it to demand-side alternatives.<sup>6</sup> Dr. Hill further testified that increased cost-effective energy efficiency can meet customers' needs and can avoid some supply contracts and, thus, that Liberty should have analyzed potential energy efficiency beyond the approved 2018-2020 Triennial Plan and the proposed 2021-2023 Triennial Plan when seeking approval of the TGP agreement.<sup>7</sup> Similarly, Dr. Hill testified that other demand-side options, such as demand response programs, also can address design day concerns and reduce the need for additional supply contracts.<sup>8</sup> He also noted that in certain situations energy efficiency programs and other demand-side options can be more cost-effective than supply-side options.<sup>9</sup>

In comparing the TGP agreement only to other supply-side options, and not demand-side options, Liberty violated RSA 378:37 and, therefore, did not meet its burden to demonstrate that

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<sup>4</sup> See Francisco C. DaFonte Testimony, Hearing Transcript (Morning) at 70-71.

<sup>5</sup> *Id.* at 74, 76.

<sup>6</sup> Dr. David G. Hill Testimony, Hearing Transcript (Afternoon) at 52-53.

<sup>7</sup> *Id.* 54-57.

<sup>8</sup> *Id.*

<sup>9</sup> See *id.* at 51-53, 63, 71.

the TGP agreement is prudent, reasonable, and consistent with the public interest. Energy efficiency programs and other demand-side options can, in many instances, be the least cost option, meaning that they are less costly than supply-side options.<sup>10</sup> In fact, a supply-side option, like the contract here, is unlikely to be reasonable or consistent with the public interest where increased demand-side alternatives would be more cost effective. RSA 378:37 establishes a statewide energy policy of meeting the state's energy needs at the lowest reasonable cost, while maximizing cost-effective energy efficiency and other demand-side resources. By failing to analyze energy efficiency and other demand-side resources as alternatives to the TGP agreement,<sup>11</sup> Liberty did not satisfy the requirements of RSA 378:37 and, thus, rehearing is warranted.

**B. The Commission Erred in Approving Liberty's Petition Due to the Lack of Proceedings on Liberty's 2017 LCIRP.**

On October 2, 2017, Liberty filed its 2017 LCIRP in Docket No. DG 17-152, as required by the Commission in Order No. 25,762, dated February 9, 2015, and subsequent secretarial letters. *See* Liberty LCIRP, Docket No. DG 17-152 (October 2, 2015); Order Finding Integrated Resource Plan Adequate, Docket No. DG 13-313, Order No. 25,762 (February 9, 2015). Over the next two years, Liberty and the other parties to the 2017 LCIRP docket engaged in discovery and submitted pre-filed testimony. At that time, Liberty alleged that the Granite Bridge pipeline was its least cost resource option; accordingly, the Commission required that the Granite Bridge

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<sup>10</sup> *See* preceding paragraph; Dr. David G. Hill Testimony, Hearing Transcript (Afternoon) at 51-53, 63, 71.

<sup>11</sup> While the Commission recently rejected the proposed 2021-2023 Triennial Plan, which was filed by Liberty and New Hampshire's other utilities, *see* Docket No. DE 20-092, Order No. 26,553 (Nov. 12, 2021), and mandated different energy efficiency savings, the requirement in RSA 378:37 that utilities maximize cost-effective energy efficiency is independent of any approved EERS plan. Thus, irrespective of any energy efficiency savings gains under the EERS, pursuant to RSA 378:37 the Commission should require a utility to increase energy efficiency measures where such measures could meet energy needs at the lowest reasonable cost.

docket, DG 17-198, and the Liberty LCIRP docket proceed under parallel schedules. *See* Sec. Letter Approving Procedural Schedule, Docket No. DG 17-198 (April 5, 2018).

Subsequently, on November 26, 2019, Liberty filed a motion seeking to suspend the procedural schedule in the LCIRP docket on the basis that Liberty was working on an issue of potentially significant impact on the LCIRP docket. *See* Liberty Assented to Motion to Suspend Procedural Schedule, Docket No. DG 17-152 (November 26, 2019). Liberty's motion to suspend the procedural schedule was granted. Since then, nothing of significance has occurred in the LCIRP docket. In fact, even though Liberty abandoned the Granite Bridge project in the summer of 2020 and, instead, sought approval of the TGP agreement, there have been no supplemental filings or further proceedings in the LCIRP docket.

Under RSA 378:38, a natural gas utility is required to file a least cost integrated plan at least every five years. *Id.* Additionally, RSA 378:39, mandates that the “***Commission shall review integrated least-cost resource plans*** in order to evaluate the consistency of each utility's plan with [RSA 378:39], ***in an adjudicative proceeding.***” *Id.* (emphasis added). Moreover, RSA 378:40 states:

***No rate change*** shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and approved in accordance with the provisions of RSA 378:38 and RSA 378:39. ***However***, nothing contained in this subdivision ***shall prevent the commission from approving a change***, otherwise permitted by statute or agreement, ***where the utility has made the required plan filing*** in compliance with RSA 378:38 ***and the process of review is proceeding in the ordinary course but has not been completed.***

RSA 378:40 (emphasis added)

The Settlement Agreement in the instant docket, which the Commission approved, states that Liberty shall recover the costs associated with the TGP agreement through its cost of gas

tariff.<sup>12</sup> Given the complete lack of activity in the 2017 Liberty LCIRP adjudicatory docket for two years, however, under RSA 378:40 the Commission could not lawfully or reasonably approve Liberty’s recovery of the costs associated with the TGP agreement through its cost of gas tariff. Pursuant to RSA 378:40, the Commission may only approve a rate change where (1) an LCIRP has been filed and approved or (2) a utility has filed an LCIRP plan and the “*process of review is proceeding in the ordinary course but has not been completed.*” *Id.* (emphasis added).

Black’s Law Dictionary defines “ordinary” as “[o]ccurring in the regular course of events; normal; usual.” ORDINARY, Black’s Law Dictionary (11th ed. 2019). Here, because nothing of significance has occurred in the Liberty LCIRP docket in two years, the proceedings in that docket have not been taking place in their ordinary or regular course. In its order approving the TGP agreement, the Commission disagreed with CLF’s contention that approval of the agreement was prohibited by the LCIRP statutes and noted that “the Settlement Agreement provides for Liberty to file *its next LCIRP* in 2022 in accordance with RSA 378:38’s requirement that LCIRP filing occur no later than five years from a company’s previous filing.” (Order Approving Petition, Docket No. DG 21-008, Order No. 26,551, at 8 (November 12, 2021) (emphasis added)). However, in acknowledging that Liberty’s next LCIRP filing is due in 2022, the Commission ignored the fact that the current Liberty 2017 LCIRP docket has laid dormant for two years and recognized that there is no expectation that any further proceedings will take place in that docket or that its review will ever be “*completed.*”<sup>13</sup> RSA 378:40 (emphasis added).

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<sup>12</sup> Settlement Agreement at 5, Docket No. DE 21-008.

<sup>13</sup> Liberty also acknowledged the lack of activity in the present LCIRP docket in its closing statement at the hearing, noting that “we didn’t get to hearing in the Granite Bridge or the 2017 IRP.” Closing Statement, Hearing Transcript (Afternoon) at 124.

The Commission's approval of the TGP agreement and Settlement Agreement incorrectly disregarded the plain language of RSA 378:40 that prohibits the Commission from approving rate changes unless a utility's LCIRP has been approved or the LCIRP has been filed and the Commission's review of the LCIRP is "proceeding in the ordinary course but has not been completed." *Id.* Under New Hampshire law every statutory word, including "proceeding in the ordinary course," must be given their full effect. *See Town of Amherst v. Gilroy*, 950 A.2d 193, 197 (N.H. 2008) ("The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect."); *see also Garand v. Town of Exeter*, 977 A.2d 540, 544 (N.H. 2009) (quoting *Amherst* and adding that the courts "also presume that the legislature does not enact unnecessary and duplicative provisions") (internal citations omitted). Further, as the New Hampshire Supreme Court has stated:

We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole. This enables us to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.

*Petition of Carrier*, 82 A.3d 917, 920 (N.H. 2013) (internal citations omitted).

Thus, in construing RSA 378:40, the Commission must give full effect to all words in the statute. Here, in approving the TGP agreement and Settlement Agreement, the Commission ignored the plain language in RSA 378:40 that permits the approval of rate changes only when an LCIRP that has not been approved is proceeding before the Commission in its ordinary course of review and toward ultimate completion. The lack of any meaningful action in the Liberty LCIRP docket in two years demonstrates that the Commission is not currently conducting an ordinary review and does not intend to complete its review of Liberty's LCIRP.

The Commission’s past practices with regard to LCIRP proceedings establish that the 2017 Liberty LCIRP docket is not proceeding in the ordinary course. With the exception of Liberty’s 2017 LCIRP docket, since 2010, virtually every LCIRP plan filed with the Commission has either been approved following a hearing or approved via settlement agreement.<sup>14</sup> Moreover, for the most recent LCIRP plans filed with the Commission, hearings have already taken place or are currently scheduled for the dockets.<sup>15</sup> Thus, over the last 11 years, the 2017 Liberty LCIRP docket, Docket No. DG 17-152, is the only instance in which an LCIRP has been filed and the docket has laid dormant for such an extended period of time, with no hearings scheduled. The inaction in the 2017 Liberty LCIRP docket also stands in clear contrast to Northern Utilities (“Unitil”) gas planning dockets in which the Commission approved Unitil’s LCIRPs and/or the dockets have proceeded to hearings.<sup>16</sup>

The incongruous nature of the 2017 Liberty LCIRP docket, when compared to other LCIRP dockets, establishes that the Commission’s review of that docket has not proceeded in the ordinary course, which is required under RSA 378:40 for the Commission to allow Liberty to recover the costs from the TGP agreement in Liberty’s cost of gas tariff. Accordingly, because the Commission has not conducted the proper review of Liberty’s most recent LCIRP and

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<sup>14</sup> The Commission approved the LCIRP plans or settlement agreements for LCIRPs in the following orders: Docket No. DE 19-120, Order No. 26,408 (Sept. 23, 2020); Docket No. DG 19-126, Order No. 26,382 (July 23, 2020); Docket No. DE 19-139, Order No. 26,362 (June 3, 2020); Docket No. DE 16-463, Order No. 26,098 (January 9, 2018); Docket No. DE 15-248, Order No. 26,050 (August 27, 2017); Docket No. DE 16-097, Order No. 26,039 (July 10, 2017); Docket No. DG 15-033, Order No. 26,027 (June 19, 2017); Docket No. DG 13-313, Order No. 25,762 (February 9, 2015); Docket No. DE 13-177, Order No. 25,659 (May 1, 2014); Docket No. DE 13-195, Order No. 25,651 (April 17, 2014); Docket No. DG 11-290, Order No. 25,641 (March 26, 2014); Docket No. DE 12-347, Order No. 25,625 (January 27, 2014); Docket No. 10-261, Order No. 25,459 (January 29, 2013); Docket No. DG 10-041, Order No. 25,317 (January 11, 2012). In the following LCIRP dockets, a hearing has already taken place or is currently scheduled to take place: Docket No. DE 20-002; Docket No. 20-161; Docket No. 21-004. Finally, in one anomalous LCIRP docket, Docket No. DE 10-142, proceedings were suspended due to the transfer of ownership of Granite State Electric Corporation from National Grid to Liberty. *See* Docket No. DE 10-142, Suspension of Proceedings (April 1, 2011).

<sup>15</sup> *See* Docket No. DE 20-002; Docket No. 20-161; Docket No. 21-004.

<sup>16</sup> *See* Docket No. DG 19-126, Order No. 26,382 (July 23, 2020); Docket No. DG 15-033, Order No. 26,027 (June 19, 2017).

appears to have no intention of conducting further review of that docket, including scheduling hearings, the Commission lacked authority to approve the TGP agreement. Therefore, the Commission should grant CLF's motion for rehearing.

**C. The Commission Erred in Granting Liberty's Petition Because Liberty's Filings in this Docket Do Not Align with its Filings in the LCIRP Docket.**

In its reply brief, Liberty argued that its LCIRP was not at issue in these proceedings and that Liberty was not required to update its LCIRP to reflect the TGP agreement.<sup>17</sup> However, if Liberty's contention were accepted, it would effectively silo LCIRP planning requirements from a utility's more specific investment planning decisions, would relegate the LCIRP to little more than a meaningless reporting form, and would be contrary to the Commission's own past practices regarding consideration of utility infrastructure investments.

It is axiomatic that when construing the meaning of a statute, our Supreme Court does "not presume that the legislature would pass an act leading to an absurd result" and that our Supreme Court will "consider other indicia of legislative intent where the literal reading of a statutory term would compel an absurd result." *State v. Warren*, 794 A.2d 790, 792 (N.H. 2002). Liberty's argument that LCIRP filings are not at issue in proceedings like the instant docket leads to absurd results in that it produces situations where a utility's investment decisions are at odds with its filed LCIRP.

The statutes that establish the particular requirements for filing an LCIRP, RSA 378:38- RSA 378:40, are directly preceded by RSA 378:37, which sets forth the energy policies of the state, including meeting energy needs at the lowest reasonable cost while maximizing cost-effective energy efficiency and other demand-side resources, protecting the physical

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<sup>17</sup> See Liberty Reply Brief at 7, Docket No. DG 21-008.

environment of the state, etc. The legislature placed the LCIRP statutes after RSA 378:37 to indicate the roles that those statutes are intended to play in effectuating the state's energy policies. Moreover, RSA 378:38 underlines the role the LCIRP statutes play in helping achieve the state's energy policy, providing that “[p]ursuant to the [state energy] ***policy established under RSA 378:37***, each electric and natural gas utility . . . shall file” an LCIRP.” RSA 378:38 (emphasis added).

Given that the LCIRP statutes effectuate the state's energy policies, it would be an absurd and unreasonable reading of the LCIRP statutes for the requirements of those statutes to be applied and considered only in LCIRP dockets and not in other dockets related to utility investment decisions. In other words, it would be an absurd interpretation of the framework governing the LCIRP statutes for those statutes to exist completely separate from the state energy policy considerations of RSA 378:37 that are relevant in all Commission proceedings.

Additionally, the Commission has made clear that the LCIRP “should not exist in a vacuum, and it should incorporate as much of a utility's true business planning information as possible.” *Public Service Company of New Hampshire*, Docket No. DE 10-261, Order No. 25,459, at 18 (January 29, 2013). In *Public Service Company of New Hampshire*, the Commission expressed concern “that the time and expense of producing an LCIRP as done in the past may no longer result in a document that has significant value to a utility, to the Commission or to ratepayers” and that it was “troubled” by PSNH's view of its “LCIRP filing as a document tantamount to a reporting form, filed for compliance purposes, with its ***‘real’ planning methodologies being implemented internally in parallel to the LCIRP process.***” *Id.* (emphasis added). Not surprisingly, the Commission directed PSNH to consider the LCIRP process “not as an arid regulatory compliance, but rather, as a component of and a reflection of its internal

planning processes” and, “for the integrity and usefulness of the LCIRP process,” directed PSNH, in its next LCIRP filing to “demonstrate that it *synchronizes* (if even at a general level of detail) *the information provided in its LCIRP with its internal business planning.*” *Id.* (emphasis added).

Standing in stark contrast to the Commission’s decision in *Public Service Company of New Hampshire*, Order No. 25,459, here, Liberty sought Commission approval of the proposed TGP agreement without demonstrating that it aligns with Liberty’s LCIRP filings. As discussed in further detail below, Liberty did not consider the proposed TGP agreement and associated on-system enhancements in its LCIRP filings and did not assess demand-side management alternatives to or the environmental and public health impacts of the TGP agreement, as required under RSA 378:38-39. The Commission’s directive that the LCIRP “should not exist in a vacuum” and that the LCIRP must incorporate a utility’s business planning, *id.*, demonstrates that Liberty’s proposed supply contract and infrastructure investments cannot exist divorced from LCIRP planning.<sup>18</sup>

The LCIRP statutes are the fundamental planning statutes for the New Hampshire utilities and the Commission cannot ensure that utility projects have been soundly selected and planned in the absence of compliance with these laws. Because Liberty did not demonstrate that the TGP agreement and associated on-system enhancements “synchronize” with its LCIRP filings, *Public Service Company of New Hampshire*, Order No. 25,459, at 18, the Commission erred in granting Liberty’s petition and rehearing is warranted.

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<sup>18</sup> The Commission more recently acknowledged that LCIRP planning cannot exist separate from a utility’s general investment decisions to the extent it required that the Granite Bridge docket and the Liberty LCIRP docket proceed under parallel schedules. *See* Sec. Letter Approving Procedural Schedule, Docket No. DG 17-198 (April 5, 2018). Further, the provision in RSA 378:39, stating that the Commission’s “approval of a utility’s [LCIRP] plan shall not be deemed a pre-approval *of any actions taken or proposed by the utility in implementing the plan.*” establishes that LCIRP plans and actions proposed by utilities in separate dockets are intrinsically related. *Id.* (emphasis added).

**D. The Commission Erred in Approving the TGP Agreement Because Liberty's Filings Fail to Comply with All Elements of the LCIRP Statutes.**

Neither Liberty's filings in this docket nor its LCIRP filings comply with the required elements of RSA 378:38-39. Under 378:38, a natural gas utility is required to file a least cost integrated plan at least every five years, and the plan "*shall include*," *inter alia*:

- "A forecast of future demand for the utility's service area";
- "An assessment of demand-side energy management programs, including conservation, efficiency, and load management programs";
- "An assessment of supply options including owned capacity, market procurements, renewable energy, and distributed energy resources";
- "An assessment of plan integration and impact on state compliance with the Clean Air Act of 1990, as amended, and other environmental laws that may impact a utility's assets or customers"; and
- "An assessment of the plan's long- and short-term environmental, economic, and energy price and supply impact on the state." *Id.* (emphasis added).

Additionally, RSA 378:39 requires that the Commission "review integrated least-cost resource plans in order to evaluate the consistency of each utility's plan with [RSA 378:39], in an adjudicative proceeding." *Id.* In deciding whether to approve the utility's plan, the Commission must, as a matter of law, "consider potential environmental, economic, and health-related impacts of each proposed option," and the Commission's "approval of a utility's plan shall not be deemed a pre-approval of any actions taken or proposed by the utility in implementing the plan." *Id.* Importantly, in instances where the Commission "determines the options have equivalent financial costs, equivalent reliability, and equivalent environmental, economic, and health-related impacts, the following order of energy policy priorities shall guide the commission's evaluation: I. Energy efficiency and other demand-side management resources; II. Renewable energy sources; III. All other energy sources." *Id.*

**1. Liberty Has Failed to Comply with the Energy Efficiency and Demand-Side Management Requirements of the RSA 378:38-39.**

As explained in section II.B, *supra*, Liberty’s failure to analyze increased cost-effective energy and other demand-side options as alternatives to the TGP agreement violates RSA 378:37. Liberty’s failure to analyze the potential for increased energy efficiency or other load management projects, including demand response programs, also violates the mandate in RSA 378:38 that LCIRP plans include “an assessment of demand-side energy management programs, including conservation, efficiency, and load management programs.”<sup>19</sup> Further, Liberty’s deficient filings vis-à-vis energy efficiency rendered it impossible for the Commission to prioritize “energy efficiency and other demand-side resources” over other energy solutions, as it is required to do under RSA 378:39.

In *Northern Utilities Inc. d/b/a Unitil*, Docket No. DG 15-033, Order No. 26,027 (June 19, 2017), the Commission recognized that the legislature had recently extended the LCIRP statutes to apply to natural gas utilities, including the requirement that an LCIRP include an assessment of demand-side energy management programs. *Id.* at 2-3. While the Commission granted Unitil a waiver from meeting all of the LCIRP requirements for that particular LCIRP, it nonetheless ordered Unitil to “comply with *all statutory provisions*” of the LCIRP statutes, including the requirement that its LCIRP contain an assessment of demand-side energy management programs, in its next LCIRP. *Id.* at 1, 5 (emphasis added). Similarly, nearly seven years ago in *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Docket

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<sup>19</sup> Liberty’s filings are also deficient because they do not examine the possibility of strategic electrification as an alternative to the TGP contract proposal. RSA 378:37 states that it is the energy policy of New Hampshire to “provid[e] for the reliability and diversity of energy sources, and RSA 378:38 requires utilities to provide an “assessment of supply options including owned capacity, market procurements, renewable energy, and distributed energy resources.”

No. DG 13-313, Order No. 25,762 (February 9, 2015), the Commission held that for Liberty’s 2017 LCIRP (*i.e.*, the current LCIRP), Liberty was required to “***address all of the statutory elements*** of RSA 378:38 and RSA 378:39 in its plan development in a granular way, so that reviewing parties may track the correspondence of the plan with the relevant statutory standards.” *Id.* (emphasis added). In fact, in its order of notice initiating this docket, the Commission recognized that its approval of the proposed TGP agreement was, in part, contingent on whether Liberty had sufficiently evaluated “resource alternatives.” (Commission Order of Notice, Docket No. DG 21-008).

As discussed in section II.C, *supra*, Liberty’s filings in this docket must align with its LCIRP filings. Liberty violated RSA 378:38-39 by failing to analyze enhanced energy efficiency and load management programs beyond the programs included in the 2018-2020 Triennial Plan—as alternatives to the proposed TGP agreement—in either this docket or the LCIRP docket. This failure also represents a violation of the Commission’s directives in Order Nos. 26,027 and 25,762. Because Liberty failed to align its LCIRP filings and the instant petition and comply with the requirements of RSA 378:38-39, the Commission erred in granting Liberty’s petition and in any reliance it placed on the filed LCIRP.

**2. Liberty Has Failed to Analyze the Environmental and Health Related Impacts of the TGP Agreement.**

Liberty also failed to conduct any analysis whatsoever of the environmental and health impacts of the proposed TGP agreement and related on-system enhancements. Liberty stated that it had not assessed the potential environmental and public health impacts of the proposed TGP agreement, including the climate change impacts, because Liberty’s agreement with TGP uses

existing TGP capacity.<sup>20</sup> In contrast, CLF’s witness, Dr. David G. Hill, testified that it was not proper to assume that if Liberty does not use the contracted for capacity from the TGP agreement, that another entity will use that capacity.<sup>21</sup>

The lack of *any* analysis by Liberty of the environmental or public health impacts from the proposed TGP agreement contravenes the clear requirement in RSA 378:38 that least cost integrated resource plans include “[a]n assessment of the plan’s long- and short-term environmental, economic, and energy price and supply impact on the state” and precludes the Commission from considering “the potential environmental, economic, and health-related impacts of each proposed option,” as required by RSA 378:39. *See also Northern Utilities Inc. d/b/a Unital*, Docket No. DG 15-033, Order No. 26,027, at 6 (June 19, 2017) (directing Unital to provide “more detailed evidence of reliability, environmental, economic, and health related impacts” in its next LCIRP).

### **3. Liberty Failed to Update its LCIRP Filings to Reflect its New Proposal.**

Liberty’s petition and associated filings in this docket also violated New Hampshire’s LCIRP statutes because Liberty failed to update its 2017 LCIRP plan to reflect the TGP agreement and proposed on-system upgrades. In the 2017 LCIRP plan and supplemental filings in Docket No. DG 17-152, Liberty vaguely refers to a “Concord Lateral expansion” as an alternative to the now abandoned Granite Bridge project.<sup>22</sup> However, based on Liberty’s filings

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<sup>20</sup> *See* Franciso C. DaFonte Testimony, Hearing Transcript (Morning) at 88; Ex. 10, Liberty Responses to CLF Data Requests 1-23, at Bates 25.

<sup>21</sup> *See* Dr. David G. Hill Testimony, Hearing Transcript (Afternoon) at 77-78.

<sup>22</sup> *See, e.g.,* William R. Killeen Testimony, Docket No. DG 17-152, at Bates 13 (April 30, 2019). Pursuant to N.H. Code Admin. Rule Puc 203.27, the Commission “shall take administrative notice when a party presents one or more of the following: (1) Any fact which could be judicially noticed in the courts of New Hampshire; [or] (2) *The relevant portion of the record of other proceedings before the commission . . .*” *Id.* (emphasis added).

in the LCIRP docket, the “Concord Lateral expansion” is different from the project that Liberty proposed in this docket.

While Liberty makes several references to the so-called “Concord Lateral expansion” throughout its LCIRP filings, Liberty’s actual description of this alternative project demonstrates that this project is different than what was proposed in the instant docket. For example, in Liberty’s LCIRP filings, Liberty testified that “an alternative to the Granite Bridge Pipeline is an expansion of the Concord Lateral, which expansion *would be constructed by its owner TGP*,” and that this option would likely involve new sections of transmission pipeline and would likely require approval by New Hampshire’s Site Evaluation Committee (“SEC”) and the Federal Energy Regulatory Commission (“FERC”).<sup>23</sup>

In contrast, here, Liberty’s preferred option does not involve TGP incurring capital costs to upgrade the Concord Lateral or require SEC or FERC approval; instead, it would involve Liberty completing “on-system distribution enhancement projects to optimize deliveries.”<sup>24, 25</sup> Thus, Liberty proposes a project in this docket that is different from the alternative options it proposed in its LCIRP plan. Liberty’s failure to include its proposed project in its LCIRP plan, thus, violates RSA 378:38, which requires LCIRP plans to include “[a]n assessment of supply options including owned capacity” in the LCIRP.

In Liberty’s post-hearing reply brief, Liberty stated that there is nothing in the LCIRP statutes that requires Liberty to update its LCIRP as options change over time.<sup>26</sup> However, while Liberty’s assertion may be correct in the context of *an approved LCIRP*, Liberty’s statement is

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<sup>23</sup> Sherrie Trefrey Testimony, Docket No. DG 17-152, at Bates 71 (June 28, 20 19) (emphasis added).

<sup>24</sup> Ex. 3, Francisco C. Dafonte, William R. Killeen Testimony, Docket No. 21-008, at Bates 24, 26); *see also* Testimony of Francisco Hearing C. Dafonte, Hearing Transcript (Morning) at 64-65.

<sup>25</sup> Liberty admits in its post-hearing reply brief that the TGP option included in the 2017 LCIRP is different from the TGP agreement presented in this docket. Liberty Reply Brief at 8, Docket No. DG 21-008.

<sup>26</sup> *Id.* at 7.

incorrect with respect to LCIRP plans that have not been approved. In *Public Service Company of New Hampshire d/b/a Eversource Energy*, Docket No. 19-139, Order No. 26,362 (June 3, 2020), in the context of approving an Eversource LCIRP, the Commission stated that

approval of an LCIRP does not tie the Company to the planning processes, procedures, and criteria described in that LCIRP. A well-crafted LCIRP should allow the Commission the opportunity for input regarding the Company’s current planning processes, procedures, criteria, and planned investments. There is value in such an opportunity, even if those items may change between LCIRP filings.

*Id.* at 8. The Commission also noted that an LCIRP “provides a regular snapshot of the factors supporting a utility’s investment decisions, which can be helpful in a later rate case when the Commission determines whether the costs of an investment were prudently incurred” and that “[m]aterial departures from approved planning processes, procedures, criteria, or adjudicated options, and the basis for those departures, will be a key consideration during prudence reviews.

*Id.*

While the Commission concluded that a utility’s planning processes, procedures, and criteria may change following the approval of one LCIRP and the next LCIRP filing, its conclusion hinged on *approval* of an LCIRP. Logistically and practically, there is no reason that a utility should not update its LCIRP where its planning processes change after an LCIRP plan is filed but before it is approved. Moreover, where a utility’s planning processes change after filing of an LCIRP plan but before Commission approval, it would be illogical for the Commission to approve an LCIRP plan based on stale information, because such a plan would neither allow the Commission the opportunity for input regarding a company’s *current* planning processes and planned investments nor provide a *regular snapshot* of the factors supporting a utility’s investment decisions. *Id.*

Because Liberty in this docket proposed a different least cost option than what it proposed in the LCIRP docket and Liberty's LCIRP has not been approved, for the Commission to have the opportunity to provide input on Liberty's current planning processes and a regular snapshot of the factors supporting Liberty's investment decisions, Liberty should have updated its LCIRP to reflect the proposed project. Because Liberty did not do so, the Commission should grant CLF's motion for rehearing.

### **III. Conclusion**

Liberty did not establish that its petition complied with New Hampshire's state energy policy and LCIRP statutes or that the petition is aligned with its LCIRP filings in Docket No. DG 17-152. Thus, Liberty failed its burden to demonstrate that the TGP agreement is prudent, reasonable, and consistent with the public interest or that it has evaluated resource alternatives, (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021)), and the Commission erred as a matter of law in granting Liberty's petition. Accordingly, rehearing of the matter is warranted.

WHEREFORE, CLF respectfully requests that the Commission grant rehearing for the reasons set for in this Motion.

Respectfully submitted,

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December 10, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Rehearing has, on this 10th day of December 2021, been sent by email to the service list in Docket No. DG 21-008.

Respectfully submitted,

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