STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

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

Docket No. DG-21-008

OBJECTION OF THE OFFICE OF THE CONSUMER ADVOCATE
TO CONSERVATION LAW FOUNDATION'S
MOTION FOR REHEARING OF ORDER NO. 26,551

NOW COMES the Office of the Consumer Advocate ("OCA"), a party to this adjudicative proceeding, and objects to the Motion for Rehearing filed on December 10, 2021 by Conservation Law Foundation ("CLF"). In support of this Objection, the OCA states as follows:

## I. Background

On January 20, 2021, 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"), with accompanying written testimony. Following discovery and the submission of responsive testimony by other parties, Liberty submitted a settlement agreement entered into by Liberty, the OCA, and the Department of Energy ("Department") on September 24, 2021. The Commission conducted an evidentiary hearing on October 6, 2021 at which CLF appeared in opposition to the settlement. By Order No. 26,551 (November 12,

2021), the Commission approved the settlement and, with it, the TGP agreement. CLF's motion for rehearing followed.

## II. The Applicable Standard

RSA 541:3 provides that the Commission may grant rehearing upon a showing by the movant of "good reason" for such action. The Commission has elaborated on this standard in *Lakes Region Water Company*, Order No. 26,360 (Docket No. DW 18-058, May 27, 2020) at 4. "Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding." *Id.* (citing *O'Loughlin v. N.H. Personnel Comm'n,* 117 N.H. 999, 1004 (1977)). Good reason can also be shown "by identifying specific matters that were 'overlooked or mistakenly conceived' by the Commission." *Id.* (quoting *Dumais v. State*, 118 N.H. 309, 311 (1978)). "A successful motion for rehearing does not merely reassert prior arguments and request a different outcome." *Id.*

The CLF motion does not refer to any new evidence that was previously unavailable. It does not challenge the Commission's determination that Liberty "has demonstrated a need for additional capacity to serve its customer base in a safe and adequate manner based on its design day forecasting," Order No. 26,551 at 6, nor the ultimate finding that "based on both price and non-price factors, the contracted capacity represents the most viable, reasonably available alternative for Liberty to meet its current and forecasted customer requirements in an adequate and reliable manner," *id.* at 8. Nor does CLF assert that specific matters were overlooked or mistakenly conceived.

CLF's Motion reasserts its prior arguments, that were made in brief and at the hearing, to the effect that the approval of the TGP Agreement would violate the Least-Cost Integrated Resource Planning ("LCIRP") statute, RSA 378:37-:40. CLF requests a rehearing presumably to argue for and request a different outcome from the Commission. Ongoing disagreement with the Commission's findings and rulings does not meet the standard of "good reason" for rehearing.

## III. The "Ordinary Course" Argument

As stated in Order No. 26,551, approval of the TGP Agreement is not precluded by the LCIRP statute. However persuasive CLF's contentions may be as to the inadequacy of Liberty's most recently submitted least-cost plan, or the inadequacy of the Commission's review of that plan, the appropriate place for CLF to make such arguments is in the adjudicative proceeding the Commission must conduct to review such plans under RSA 378:39, as opposed to this docket and its focus on the prudence and reasonableness of the TGP Agreement pursuant to RSA 374:1, 374:2, and RSA 378:7.

The only new argument CLF advances here – which it does without explaining why it could not have raised this issue in its prehearing brief or at hearing – concerns RSA 378:40, which provides:

> 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.

According to CLF, the Commission's approval of the TGP Agreement contravenes this statute because there is no "filed and approved" least-cost plan for Liberty, nor a "required plan filing" for which "the process of review is proceeding in the ordinary course but has not been completed."

This argument is unpersuasive for several reasons. First, RSA 378:40 is inapplicable here because this docket does not concern a "rate change" within the meaning of the statute because, as already noted, at issue here is simply the prudence and reasonableness of the TGP Agreement. Second, as CLF itself concedes, there is an open docket – DG 17-152 – in which the Commission is reviewing Liberty's most recently filed least-cost plan. CLF's contention is that because there has been a "complete lack of activity in the 2017 Liberty LCIRP adjudicatory docket for two years," CLF Motion at 8, it cannot be said that review of that plan is "proceeding in the ordinary course." This characterization of DG 17-152 is not entirely correct; the most recent activity was a technical session on June 30, 2020 that was attended by the parties to DG 17-152 as well as Staff of the Commission.[1] Although the OCA shares CLF's concerns about the Commission's longstanding dilatory and torpid approach to its responsibilities under the LCIRP statute, this is what qualifies as "proceeding in the ordinary course" given the current state of affairs. CLF's claims about the plain meaning of "proceeding in the

[1] The June 30, 2020 technical session, obviously, took place before the creation of the Department of Energy and the resulting transfer of what was formerly known as the "PUC Staff" to the Department. Thus, at the technical session, the Commission itself was represented in a manner that would no longer be appropriate at technical sessions conducted in Commission dockets.

ordinary course" notwithstanding, the obvious intent of this statutory language is to protect a utility and its ratepayers from any adverse consequences arising out of the lack of a Commission ruling on a least-cost plan that has neither been approved nor rejected.

In other words, granting the relief requested by CLF in this docket would be manifestly unfair to the customers of this utility, particularly its residential customers. TGP has offered Liberty existing pipeline capacity on its Concord Lateral at the bargain-basement, federally tariffed rate, which obviated the need for what would have been the vastly more expensive addition of new pipeline capacity by Liberty or otherwise. Liberty has, admittedly, referenced certain enhancements of its own system that will be necessary in order to make full use of the 40,000 dekatherms of capacity the utility is acquiring from TGP, about which CLF is quite reasonably concerned. But those enhancements and their costs are not before the Commission in this docket. It is undisputed in the record of this case that Liberty can make full use of the newly acquired 40,000 dekatherms of capacity while still pursuing the non-pipeline alternatives, including additional demand-side measures, that CLF seeks to encourage via its participation in this and other Liberty-related dockets. Liberty has a laddered supply portfolio that allows for such a transformation. In these circumstances, rejection of the TGP Agreement would simply force Liberty to pursue other sources of pipeline capacity that would be more expensive than the agreement approved in Order No. 36,551 – and every dollar would be recovered from customers.

## IV. Conclusion

Therefore, CLF has failed to show "good reason" for a rehearing pursuant to RSA 541:3 the CLF motion for rehearing must be denied.

WHEREFORE, the Office of the Consumer Advocate respectfully requests that this honorable Commission:

A. Deny Conservation Law Foundation's Motion for Rehearing of Order 26,551 filed on December 10, 2021, and

B. Grant any other such relief as it deems appropriate.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of this Objection was provided via electronic mail to the individuals included on the Commission's service list for this docket.

Julianne Desmet, Esq.