STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 21-008

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

OBJECTION TO MOTION FOR REHEARING

Liberty Utilities (EnergyNorth Natural Gas) Corp d/b/a Liberty ("Liberty" or the "Company") hereby objects to the Motion for Rehearing filed on December 10, 2021, by the Conservation Law Foundation ("CLF") in the above-captioned docket. CLF seeks rehearing of Order No. 26,551 (Nov. 12, 2021) ("Order"), issued by the New Hampshire Public Utilities Commission ("Commission"). The Order approved a capacity agreement ("Contract") between Liberty and Tennessee Gas Pipeline Company ("TGP") based on a finding that Liberty had established 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" (Order, at 8). The Order also approved a Settlement Agreement by and between Liberty, the Department of Energy, and the Office of the Consumer Advocate in which the settling parties agreed "that Liberty's decision to enter into the TGP Contract was prudent, that the costs to be incurred under the TGP Contract are reasonable, and recommended that the Commission approve the TGP Contract" (Order, at 5). The Commission found the Settlement Agreement to be "just and reasonable, and consistent with the public interest" (Order, at 8). The Order conformed to the statutory standards governing the Commission's review and approval of the TGP Contract, duly considered the positions of all the parties, including CLF, and is supported by record evidence.

In its motion for rehearing, CLF (which was not a party to the Settlement Agreement) provides no valid basis by which the Commission should grant rehearing of the Order. CLF fails to provide any legal analysis of the Order based on the Commission's standard for motions for rehearing and fails to demonstrate any "good reason" to reconsider the Order. CLF identifies no matter that the Commission overlooked or mistakenly conceived in the Order (except to state the Commission "erred" by rejecting the CLF position), presents no new evidence that was unavailable prior to the issuance of the Order, and merely restates – often verbatim – the same arguments from CLF's October 14, 2021 brief, asking for a different outcome. This is a textbook example of a motion for rehearing that fails to meet the Commission's legal standard and should be denied. The Company's objection is set forth in more detail below.

I. Standard of Review

The standard governing the Commission's review of a motion for rehearing pursuant to RSA 541:3 is well established. RSA 541:3 allows for rehearing of a Commission order as follows:

> Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

The Commission has held that it "may grant rehearing or reconsideration for 'good reason' if the moving party shows that an order is unlawful or unreasonable." Liberty Utilities (EnergyNorth Natural Gas) Corp., Order No. 26,521 at 3 (Sept. 22, 2021) (*citing* RSA 541:3; RSA 541:4; Rural Telephone Companies, Order No. 25,291 (Nov. 21, 2011); and Public Service Company of New Hampshire d/b/a Eversource Energy, Order No. 25,970 at 4-5 (Dec. 7, 2016)). "A successful motion must establish 'good reason' by showing that there are matters that the Commission 'overlooked or mistakenly conceived in the original decision,' Dumais v. State, 118

N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was 'unavailable prior to the issuance of the underlying decision,' Hollis Telephone Inc., Order No. 25,088 at 14 (April 2, 2010)." Id. "A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome." Id. at 3-4.

As explained below, CLF's motion does not adhere to the Commission's standard of review, fails to show the Order to be unlawful or unreasonable, and provides no "good reason" for the Commission to grant rehearing or reconsideration of the Order.

II. Discussion

A. The Commission Did Not "Overlook or Mistakenly Conceive" Any Matters in the Order.

In its motion, CLF argues that the Commission "erred" in approving the TGP Contract: (1) because Liberty "failed to properly analyze alternatives to the TGP Agreement as required by RSA 378:37;"[1] (2) because of a "lack of proceedings on Liberty's 2017 LCIRP;"[2] (3) because Liberty's filings in this docket "do not align with its filings in the LCIRP docket;"[3] and (4) because Liberty's filings "fail to comply with all elements of the LCIRP statutes."[4] CLF raised the same arguments prior to the Order in its initial brief.[5] In fact, many sections of CLF's motion are taken verbatim from its initial brief.[6]

1 Motion, at 3.

2 Motion, at 6.

3 Motion, at 11.

4 Motion, at 14.

5 See, e.g., CLF Brief, at 2 (the NH LCIRP rules required Liberty to conduct analysis of alternatives), 5 (Liberty's filings fail to comply with all elements of the LCIRP statutes), and 8 (Liberty's filings do not align with its filings in the LCIRP docket).

6 For example, the Motion at pages 3 – 6 is a repackaging of the CLF Brief at pages 2 – 3; the Motion at pages 11 – 13 repeats the CLF Brief at pages 8 – 10; the Motion at page 14 is copied from the CLF Brief at pages 2 – 3; and the Motion at pages 15 – 17 is from the CLF Brief at pages 5 – 8.

CLF asserts that the Commission "erred" in these various respects *not* because matters were "overlooked or mistakenly conceived" in the Order, but because the Commission considered the issues and did not adopt CLF's positions. In fact, the Commission considered, addressed, and disposed of CLF's arguments. The Order properly rejected CLF's argument to impose LCIRP requirements to consideration of the TGP Contract. The Order recognized that the Commission's review of the TGP Contract is "limited to consideration of Liberty's prudence in entering into the Firm Transportation Agreement, and the reasonableness of the terms of the agreement," in accordance with RSA 374:1 and 374:2 (public utilities shall provide reasonably safe and adequate service at "just and reasonable" rates), and RSA 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable). Order, at 6. The Commission adhered to the proper legal standard.[7]

As in its initial brief, CLF's Motion 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 largely ignores the Settlement Agreement, which includes enhancements to the planning standards for the 2022 LCIRP (Exh. 1, §3), among other terms.[8] Based on record evidence, the Order found that Liberty demonstrated a need for additional capacity to serve its customer base in a safe and adequate manner based on its design day forecasting, and that Liberty's

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[7] The Commission previously stated the legal standard as follows:

> 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).

[8] 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.

design day forecasting is adequate to justify its decision to seek out additional capacity resources. Order, at 6. The Commission examined the process leading up to the TGP Contract, including the Company's analysis of alternatives. Order, at 6-7.

As stated in the Company's reply brief, Liberty filed its Petition seeking approval of the TGP Contract 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). Following cancellation of the NED Project, Liberty evaluated its remaining capacity alternatives and options. The Company's capacity need was also noted by the Commission Staff in Docket No. DG 17-198, where it stated 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)).

The Order did not "overlook or mistakenly conceive" any issues in its determination that the TGP Contract is prudent and reasonable and that the Settlement Agreement is just and reasonable and serves the public interest.

B. CLF Presents No New Evidence That Was Unavailable Prior to Issuance of the Order.

As noted above, a successful motion for rehearing may establish "good reason" for rehearing or reconsideration by presenting new evidence that was "unavailable prior to the issuance of the underlying decision." CLF's Motion wholly fails in this regard. CLF presents no evidence that was unavailable prior to the issuance of the Order. As in its initial brief, CLF's Motion is based on a flawed legal standard that CLF seeks to apply in a different context, which is irrelevant to the Commission's consideration of a capacity contract. The crux of CLF's position is that Liberty's LCIRP is inadequate and/or should have been revised in order to support the need for the TGP Contract, which is not the standard. The LCIRP process is a separate and distinct process that informs the Company's resource acquisitions and was not the subject of this docket to consider the prudence of the TGP Contract. 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 in its Motion (or at any time during this docket) that the capacity secured by the TGP Contract is not needed or that the costs are unreasonable. CLF argues that the Commission "erred" in concluding that Liberty sustained it burden of proof to establish the TGP Contract is prudent and reasonable, but bases its argument on statutes that are inapplicable outside of the LCIRP process. The evidentiary record demonstrated a clear need for additional capacity and that the TGP Contract represents the least-cost alternative to meet that need. Liberty proved 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). The Company reached this conclusion by following the Commission-approved resource planning process based on its comparison with other alternatives (id.).

C. CLF Asks for a Different Outcome Based on the Same Arguments the Commission Previously Considered and Rejected.

As noted above, CLF's motion should be denied because it merely restates – largely verbatim – the same arguments that the Commission previously considered and rejected. This is inconsistent with the Commission's standard for a successful motion for rehearing.

i. Updates to the 2017 LCIRP Were Neither Necessary Nor Appropriate for Purposes of Reviewing the TGP Contract

As in its initial brief, CLF asserts that the LCIRP should have been updated to specifically reflect the TGP Contract (CLF Br. at 4-5; Motion at 17-20). CLF provided no support for its assertion then, and none now, that an update to the LCIRP is required by statute or that such update is required before the Commission could review and approve the TGP Contract. 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 statutory process 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. 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. Although the TGP option included in the 2017 LCIRP is different from the TGP Contract presented in this docket, 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 Wrongly Contends that the Order is Deficient for Alleged Failure to "Comply with all Elements" of the LCIRP Statutes

As in its initial brief, CLF argues 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 5-7; Motion at 15-16). 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; Motion at 4).

To the contrary, the record on which the Order is based shows that the Company included all currently approved energy efficiency in the demand forecast. 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 resource deficiency (Exh. 4, Bates 022). The analysis concluded that even if the greater energy efficiency proposed in the 2021-2023 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.).

The record on which the Order is based also shows Liberty 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 0000007). 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 in the Order.

As in its initial brief, CLF also 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; Motion at 16-17). 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 Motion argues that the Company's request for approval of the TGP Contract is not "aligned" with the LCIRP, which is the same claim it made in its initial brief (CLF Br. at 8-10; Motion at 11-13. In essence, CLF's Motion is a continuation of its attempt to use this docket as an additional means of challenging the LCIRP. As Liberty stated in its reply brief, to the extent CLF has issues with the statutory requirements or analysis underling the LCIRP, it can raise them in Liberty's pending LCIRP proceeding, 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. Liberty was not required to address the change in resource options as part of its filing in this docket. The Company has addressed this change in resource options by demonstrating in this docket that the TGP Contract is prudent, reasonable, and in the public interest.

D. The Order is Neither Unlawful Nor Unreasonable.

CLF's motion does not show the Order to be unlawful or unreasonable and provides no "good reason" for the Commission to grant rehearing or reconsideration of the Order. In fact, CLF frames much of its argument in anticipation of the need for future on-system distribution enhancement projects to optimize the increased capacity from the TGP Contract (Motion, at 1). However, the Company did not request pre-approval of any such projects and the Order does not grant pre-approval of such projects. The Order is explicit that its prudence determination on the TGP Contract is "limited to agreeing that Liberty's contracting decision for capacity was prudent. *We make no finding or determination whatsoever with respect to any future capacity enhancement investments or capacity contract extensions*. We expect that Liberty shall manage its business and operations in a manner consistent with good utility practice and its future LCIRP plans will thoroughly evaluate all possible alternatives to additional supply, including all statutory criteria." Order, at 8 (emphasis added).

CLF also asserts that the Commission erred in approving the TGP Contract "due to the lack of proceedings" on Liberty's LCIRP in Docket No. DG 17-152,"[9] which is simply a variation on its previous claims that the Order violated the LCIRP statutes. CLF concedes its claims were previously raised, considered, and rejected by the Commission.[10] In addition, CLF fails to overcome the plain language of RSA 378:40, which states: "nothing contained in this subdivision shall prevent the commission from approving a [rate] 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). Liberty made the required LCIRP filing on October 2, 2017, and the plan is pending in Docket No. DG 17-152 – *i.e.*, "the process of review is proceeding in the ordinary course but has not been completed." CLF makes the spurious argument that the docket

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[9] Motion, at 6.

[10] Motion at 8 ("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 . . .").

is not "proceeding in the ordinary course" because, in CLF's view, there has been a "lack of any meaningful action" on the plan and the Commission "does not intend to complete its review of Liberty's LCIRP,"[11] which is speculation not based on record evidence. Although Docket No. DG 17-152 has not yet progressed to a hearing or final order, there is no indication from the Commission that it will not. Moreover, there is no statutory requirement for the Commission to render its final order on Liberty's LCIRP within a designated timeframe. Even if other LCIRP dockets have concluded on shorter time schedules, Liberty's LCIRP was duly filed and the docket is pending, and thus is proceeding in the ordinary course in the Commission's discretion.[12]

Overall, the Commission considered the TGP Contract and Settlement Agreement under the proper legal standards and the resulting Order is reasonable and lawful. CLF provided no evidence or demonstration to the contrary.

III. Conclusion

The Company respectfully submits that the Commission should deny CLF's Motion for rehearing. The Order approved the TGP Contract and Settlement Agreement based on the proper legal standards. The Order is based on an evidentiary record that shows the TGP Contract provides critically needed capacity and is 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. As determined in the Order, the

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11 Motion at 9.

12 The New Hampshire Supreme Court upheld the Commission's authority to approve a rate change where a utility's LCIRP had been filed two years prior and was still under review and a new LCIRP had not yet been filed. The Court concluded that the Commission's interpretation of RSA 378:40 in relation to the timing of when a utility was required to file its LCIRP was "most consistent with the plain meaning" of the statutory language. Case No. 2013-0307, Appeal of PSNH Ratepayers (Nov. 7, 2014). "Although we are not bound by the PUC's statutory interpretation, 'it is well established in our case law that an interpretation of a statute by the agency charged with its administration is entitled to deference,' when, as in this case, it does not clearly conflict with the statutory language and is not 'plainly incorrect.'" Id. (*citing* Appeal of Town of Seabrook, 163 N.H. 635, 644 (2012)).

TGP Contract is prudent and reasonable, and the Settlement Agreement is just and reasonable and consistent with the public interest.

CLF fails to provide any legal analysis of the Order based on the Commission's legal standard for motions for rehearing and fails to demonstrate any "good reason" for the Commission to reconsider the Order. CLF's Motion identifies no matter that the Commission overlooked or mistakenly conceived in the Order; presents no new evidence that was unavailable prior to the issuance of the Order; and asks the Commission to reach a different outcome based on the very same arguments CLF previously presented to the Commission. As a result, the Motion is insufficient, and the Commission should deny the Motion.

Respectfully submitted,

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Date: December 17, 2021

Certificate of Service

I hereby certify that on December 17, 2021, a copy of this objection has been electronically forwarded to the service list in this docket.

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