STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DG 21-127

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY
Petition to Approve Special Contract with Granite Ridge Energy, LLC

MOTION FOR REHEARING OF GRANITE RIDGE ENERGY, LLC

Pursuant to RSA 541:3, Granite Ridge Energy, LLC ("Granite Ridge") respectfully requests rehearing on the New Hampshire Public Utilities Commission's (the "Commission") August 25, 2022 Order No. 26,671 (the "Order") issued in the above-captioned proceeding. The Order approved, in part, a Gas Transportation Agreement dated as of May 13, 2021 between Granite Ridge and Liberty Utilities (Energy North Natural Gas) Corp d/b/a Liberty ("Liberty") (the "Transportation Agreement" or "Agreement") as a special contract pursuant to RSA 378:18.[1] Although Granite Ridge appreciates the Commission's recognition that the Transportation Agreement is just and consistent with the public interest, the Order expressly limits the Commission's approval of the Agreement to its initial term, namely the period ending October 31, 2026. Rather than approve the renewal provisions in the Transportation Agreement as negotiated between Liberty and Granite Ridge, the Order treats those terms as if they constitute separate and distinct agreements that will require prior Commission approval in the future. The renewal provisions are fundamentally important and material to the Transportation Agreement

[1] Although Granite Ridge has not intervened in this proceeding, RSA 541:3 allows "any person directly affected" by a Commission order to seek rehearing. To the extent intervenor status is required, Granite Ridge respectfully requests such status pursuant to Puc 203.17 and RSA 541-A:32, II for the limited purpose of proceedings on this Motion for Rehearing.

negotiated between the parties and the record evidence demonstrates that neither Liberty nor its customers would be harmed if the Agreement were approved by the Commission now, as presented, and the renewal provisions were exercised in the future as the Agreement clearly provides. The Order, as issued, introduces regulatory risk that Granite Ridge will not have access to gas supply after October 31, 2026, and that risk is likely to cause harm not only to Granite Ridge, but also to Liberty, its customers, and the New England region that relies on the Granite Ridge generating facility. As such, the Commission should grant rehearing and approve the Transportation Agreement, including the renewal provisions, as presented.

Moreover, the record evidence is undisputed that Granite Ridge has already paid Liberty and its predecessors well in excess of the $7 million cost to construct the 2.7-mile Granite Ridge Lateral (the "Lateral") through the demand charge payments made in accordance with the initial gas transportation agreement between the parties. It is also undisputed that Granite Ridge has historically subsidized the gas distribution service that Liberty provides to its other customers because the revenue Liberty has received from Granite Ridge far exceeds Liberty's cost of providing transportation service across the already-paid-for Lateral. This subsidization will continue under the new Transportation Agreement, including any renewal terms.

If the Commission desires to ensure that this subsidization does not reverse course during any future renewal period (a circumstance that is difficult to imagine given the underlying facts), that objective could be met through a targeted compliance filing process in conjunction with the renewal, rather than additional and separate requests for Commission approvals for each renewal. A compliance-based approach would preserve the Commission's important regulatory oversight function, while also avoiding the creation of regulatory risk that Liberty and Granite Ridge sought to avoid when they negotiated the renewal terms in the Transportation Agreement.

Finally, although the Order approves the Transportation Agreement as filed by Liberty on June 25, 2021, Liberty also filed and requested approval of an amendment to the Transportation Agreement in this docket on August 27, 2021, with the pre-filed supplemental direct testimony of Deborah Gilbertson. Among other things, that amendment modifies the term of the Transportation Agreement to accommodate the time needed to conclude this proceeding. The Commission's Order, however, does not appear to approve the amendment that Liberty filed. Although this appears to be an oversight, rehearing is appropriate to clarify and confirm the Commission's approval of the amendment.

For these reasons, as well as others discussed in greater detail below, there is good reason for Commission to grant rehearing on the Order and Granite Ridge respectfully requests that rehearing be granted consistent with this Motion.

BACKGROUND

A. Procedural Background.

On June 25, 2021, Liberty filed a Petition seeking approval of the Transportation Agreement as a special contract pursuant to RSA 378:18. In support of its Petition, Liberty submitted the pre-filed direct testimony of William R. Killeen and various attachments. As noted in the Petition, Liberty and its predecessors have provided Granite Ridge with gas transportation services under a substantively similar existing gas transportation agreement that the Commission approved as a special contract in 2001 in *EnergyNorth Natural Gas*, Order No. 23,657 (March 22, 2001).

On June 28, 2021, the Office of the Consumer Advocate ("OCA") filed a letter of participation in this docket.

On August 27, 2021, Liberty submitted pre-filed supplemental direct testimony sponsored by Deborah M. Gilbertson. The Transportation Agreement filed with the Commission on June 25, 2021 contemplated the receipt of Commission approval on or before September 15, 2021. When it became apparent that the Commission would need additional time to process the case, Liberty and Granite Ridge negotiated an extension of their existing transportation agreement and a "First Amendment to the May 12, 2021 Gas Transportation Agreement" (the "Amendment").[2] Among other things, the Amendment modified the term of the Transportation Agreement to better coordinate with any approval order issued by the Commission in this proceeding. Liberty's August 27, 2021 filing requested Commission approval of the Amendment and an extension of the existing transportation agreement between the parties.

On September 14, 2021, the Commission issued Order No. 26,518 authorizing the extension of the existing transportation agreement, but that order did not address the proposed Amendment to the new Transportation Agreement. The Commission's order also established September 30, 2021 as the deadline for the OCA and the New Hampshire Department of Energy ("DOE" or the "Department") "to make a filing providing input on Liberty's Petition in this matter."

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[2] For the reader's convenience, throughout the remainder of this Motion references to the "Transportation Agreement" or "Agreement" are to the Transportation Agreement as amended by the Amendment. Where it is necessary to refer to the Amendment as a separate document, it will be referenced as the "Amendment."

On September 30, 2021, the DOE filed comments in support of the Commission's approval of Transportation Agreement as a special contract. The DOE's recommendation was based, among other things, on the fact that the Transportation Agreement: (1) "essentially continues" the previously approved transportation agreement and will require no new investments by Liberty; (2) provides Liberty with additional operational flexibility with regard to the Lateral, including to reinforce service to the Manchester and Nashua areas; and (3) will produce demand charge revenue that will exceed Liberty's cost of providing service to Granite Ridge. The OCA filed no comments by the September 30 deadline.

On March 30, 2022, after Liberty responded to discovery requests issued by the Commission, the Commission issued an order commencing an adjudicative proceeding. On July 26, 2022, after Liberty responded to additional discovery requests from the Commission, an evidentiary hearing was held on Liberty's Petition.

The Commission issued its Order on the merits on August 25, 2022 (Order No. 26,671). Granite Ridge now seeks rehearing of that Order.

B. The Transportation Agreement and Amendment.

As the DOE correctly observed, the proposed Transportation Agreement replaces a substantively similar agreement between Liberty and Granite Ridge that was approved by the Commission in 2001. At a high level, the material terms of the Transportation Agreement are:

- Granite Ridge will be supplied with up to 130,000 Dth/day of firm transportation service over the Lateral;
- Liberty will have the right to connect new facilities to the Lateral, a right it does not possess under the initial transportation agreement approved by the Commission in 2001;

- Granite Ridge will relinquish its rights to be the "operator" of the interconnection facilities between Liberty and Tennessee Gas Pipeline and will designate Liberty as the operator; and
- Granite Ridge will pay Liberty a fixed annual demand charge, which is subject to an annual inflation escalator.

(Direct Testimony of William R. Kileen[3] at 5:16 – 6:08.)

As for the term of the Transportation Agreement, Section 3.01, as amended, provides:

> Section 3.01 Term. This Agreement shall continue in full force and effect from the first day of the month following the date on which the PUC order approving the 2021 GTA becomes final (the "Commencement Date") until October 31, 2026. Granite Ridge may elect to extend the Term until October 31, 2031, by providing written notice to Liberty on or before October 31, 2025. If Granite so elects, it will have a similar election to extend the Term until October 31, 2036, by providing written notice to Liberty on or before October 31, 2030. Thereafter, the Agreement shall continue on a year-to-year basis, unless terminated by either Party on at least twelve (12) months' prior written notice to the other Party.

(Attachment DMG-2 at 1.)

Thus, the term of the Transportation Agreement commences on the first day of the month after the Commission's order approving the Transportation Agreement becomes final and continues until October 31, 2026. Granite Ridge may elect to renew the agreement for two five-year periods ending October 31, 2031 and October 31, 2036. Thereafter, the Agreement will continue on a year-to-year basis unless terminated by Liberty or Granite Ridge with advance notice as required by the Agreement, as amended.

[3] Mr. Kileen retired between the filing of his Direct Testimony and the evidentiary hearing. (July 26, 2022 Hearing Transcript ("Tr.") at 8:07-09.). His testimony was adopted by Liberty's witness, Deborah Gilbertson, who provided testimony during the hearing. (*Id.* at 8:10-15.)

C. The DOE Supported Approval of the Transportation Agreement Throughout the Proceeding Without Objection or Qualification.

The Department of Energy was created by the Legislature "to improve the administration of state government by providing unified direction of policies, programs, and personnel in the field of energy and utilities, making possible increased efficiency and economies from integrated administration and operation of the various energy and utility related functions of the state government." RSA 12-P:2, II. The Department is responsible for, among other things, providing technical and administrative support to the Commission, assisting the Commission in carrying out its regulatory and adjudicative functions, and "appear[ing] before the commission to advocate for the department's position and for the purposes of providing a complete record for consideration by the commission." RSA 12-P:2, III- IV.

Consistent with its authority, the Department participated throughout this proceeding. The DOE's September 30, 2021 comments in support of the Commission's approval of the Transportation Agreement cited the following facts:

> The 2021 Special Contract essentially continues a transportation contract that was approved by the Commission, with support from the Commission Staff, in 2001 (See Order No. 23,657 in DG 00-145).
>
> The 2021 Special Contract provides Liberty with additional flexibility concerning its existing lateral gas line which serves Granite Ridge. Specifically, the 2021 Special Contract allows Liberty to use this lateral to serve other customers, whereas the prior contract prohibited such use. Liberty states that it will use this flexibility to optimize use of additional capacity it had recently contracted with Tennessee Gas Pipeline Company (See DG 21-008), by tapping into the lateral to distribute gas to other customers in the Manchester and Nashua areas.
>
> The demand charges Liberty will receive under the 2021 Contract will be adjusted upward annually for inflation.

> Liberty states that demand charges collected under the 2001 Contract have far exceeded the original cost of the lateral to serve Granite Ridge and that the revenues from the 2021 Contract will exceed Liberty's cost to provide service to Granite Ridge.
>
> No new investments by Liberty are needed to provide service to Granite Ridge under the 2021 Contract.

Thus, the DOE's comments emphasized the many benefits of the Transportation Agreement and were supportive of Commission approval, without qualification. Moreover, the OCA did not file any comments, and presumably would have objected to the Transportation Agreement if it had concerns. Accordingly, there have been no objections lodged, or even concerns raised, by any party with regard to any provision of the Transportation Agreement.

D. The Evidentiary Hearing.

The Commission conducted an evidentiary hearing on July 26, 2022. Evidence was admitted into the record, without objection, that:

- The Transportation Agreement is a "modified renewal" of the existing gas transportation contract. (Tr. at 10:2-5.)
- Liberty owns the Lateral and Granite Ridge is the only customer that has ever been served by the Lateral. (*Id.* at 10:22 – 11:05.)
- Liberty's predecessor constructed the Lateral at a cost of approximately $7 million. (*Id.* at a16:17-22.)
- Liberty has received more than $7 million in demand charges since the Lateral was constructed and thus the Lateral has been paid for in full. (*Id.* at 17:05-07, 24:03-12.)
- The Lateral is not yet fully depreciated and Liberty has received "well in excess" of its revenue requirement associated with the Lateral "every year since it went into service." (*Id.* at 17:08-19.)
- The excess amounts that Liberty receives from Granite Ridge has the effect of lowering the rates for all other Liberty customers and the increase in the demand charge under the Transportation Agreement provides added benefits to Liberty's other customers. (*Id.* at 18:02-09.)
- No additional investments will be needed by Liberty to continue serving Granite Ridge under the Transportation Agreement. (*Id.* at 39:14 – 40:05.)

- The Transportation Agreement is subject to renewal at the election of Granite Ridge and Liberty expects that Granite Ridge will exercise its renewal rights. (*Id.* at 27:07-17.)
- Granite Ridge is a "very large" customer and uses more gas than all of EnergyNorth's other customer's combined. (*Id.* at 29:07-24.)
- At Liberty's tariffed rates, Granite Ridge would pay Liberty $52,950,744 per year and Liberty understands that Granite Ridge would not pay that amount and would not be able to compete in the wholesale electric markets if it had to pay that amount. (*Id.* at 31:10 – 32:12.)

In addition, counsel for the DOE examined Liberty's witness during the hearing and confirmed on the record the accuracy of each of the facts recited in the Department's September 30, 2021 comments. (Tr. at 32:13 – 40:11.)

During the hearing, the DOE never expressed any concern with any provisions of the Transportation Agreement, including those that govern the term of the Agreement.

E. The Commission's Order.

The Commission issued its Order 26,671 on August 25, 2022. The "Commission Analysis" portion of the Order recites the legal standard applicable to special contracts provided by RSA 378:18. (Order at 6.) Consistent with that standard, the Commission agreed with the parties that "special circumstances exist which render such departure from the general schedules just and consistent with the public interest." (*Id.*) The Order goes on to find that:

> Granite Ridge's natural gas consumption capacity exceeds the rest of Liberty's distribution customers combined.
>
> The nature of the transportation service received by Granite Ridge is distinct from Liberty's other distribution customers, requiring higher pressures.
>
> The Londonderry Lateral has exclusively served Granite Ridge since 2001 [and that the] higher pressure may be utilized to back feed supply and pressure to Liberty's other distribution customers in south-central New Hampshire under the terms of this proposed special contract.

> [T]he contract price to serve Granite Ridge exceeds Liberty's projected costs based on Liberty's benefit cost analysis, . . . and that retention of Granite Ridge as a customer will keep Liberty's overall system costs lower than would be the case if Granite Ridge were to cease operations.
>
> [T]he business arrangement between Granite Ridge and Liberty is in the best interest of both parties by providing gas transportation service at an appropriate and reasonable cost to Granite Ridge and with a reasonable return on Liberty's 2.7-mile pipe to all other Liberty ratepayers.
>
> In addition, the updated terms of the proposed special contract, allowing Liberty to use the Londonderry Lateral for its own distribution purposes and make on system enhancements, should provide operational benefits to Liberty's other customers.

(Order at 6-7.)

Despite the many benefits of the Transportation Agreement that were identified on the record and the lack of any objection by the DOE or the OCA to full approval of the Agreement as presented, the Order interprets the Agreement as having a limited term through October 31, 2026, and requires new approvals for any renewal of the term:

> It is also apparent that the first special contract was not subject to further Commission review for 20 years due to its indefinite term. We are therefore troubled by the potentially indefinite term of this proposed special contract.[1] <u>The contract before us, which will end October 31, 2026, is just and consistent with the public interest. We, therefore, approve it. This approval, however, does not extend to any renewals of this contract as contemplated in Article III Section 3.01 of the contract. The Commission views any subsequent agreement after October 31, 2026, to be a separate and distinct agreement requiring separate Commission review and approval under RSA 378:18.</u> If and when the parties seek to exercise one of their extension options, they shall seek Commission approval. At that time, the Commission expects that the parties will support their petition with records consistent with the spreadsheet submitted as Exhibits 6a and 6b.
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>> [1]See Exh. 2 at Bates page 18, <u>describing a contract term of five years, with Granite Ridge benefiting from the option to renew the contract for up to two subsequent five year terms, and then the contract continuing on a year-to-year basis unless terminated by either Party on at least 12 months' prior written notice</u>.

(Order at 8; (emphasis added).)

ARGUMENT

A. The Standard of Review for Rehearing.

Pursuant to RSA 541:3:

> 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.

As a party to the Transportation Agreement, Granite Ridge is directly affected by the Commission's Order and has standing to seek rehearing. In addition, as discussed below, there is good reason for rehearing under the circumstances and rehearing should therefore be granted by the Commission consistent with this Motion.

B. The Commission Should Approve the Transportation Agreement as Presented, Without Any Requirement to Obtain Additional Commission Approvals Prior to Renewal of the Term.

Although the Commission's Order identifies many factors that support the overall finding that the Transportation Agreement is "just and consistent with the public interest," the Order interprets the Transportation Agreement as only having a single term of less than five years, through October 31, 2026, and grants approval only through that date. (Order at 8: "The Commission views any subsequent agreement after October 31, 2026, to be a separate and distinct agreement requiring separate Commission review and approval under RSA 378:18.") The Commission should grant rehearing and approve the Transportation Agreement as presented, without requiring additional Commission approvals. Doing so would be consistent with the clear unambiguous language of the

Transportation Agreement and would ensure that the Transport Agreement remains valuable to Granite Ridge, Liberty, Liberty's customers and the New England Region.

1. **The Order Misinterprets the Clear Language of the Transportation Agreement and Liberty's Customers Are Not At Risk of Subsidizing Granite Ridge's Operations.**

As the Commission has previously acknowledged:

> A tribunal interpreting a written contract is obliged to "give the language used by the parties its reasonable meaning, considering the circumstances and context in which the agreement was negotiated, when reading the document as a whole." *LaTarte v. West Side Development LLC*, 151 N.H. 291, [296], 855 A.2d. 505, 509 (2004) (citation omitted). "Absent ambiguity, the parties' intent will be determined from the plain meaning of the language used." *General Linen Services*[*v. Franconia Investment Associates*], 150 N.H. [595] at 597 [(2004)].

University of New Hampshire, Order No. 24,436 at 12 (Feb. 25, 2005).

Here, based on the clear and unambiguous language of Section 3.01 of the Transportation Agreement, Liberty and Granite Ridge deliberately negotiated and agreed that Granite Ridge would have the ability to renew the term of the agreement through at least October 31, 2036. Thereafter, either party could terminate the Agreement upon providing one year of written notice. Without citation to record evidence, the Order interprets the Transportation Agreement as expiring on October 31, 2026. (Order at 8.)

Interpreting the renewal term of the Transportation Agreement as intended by the parties is critical in these circumstances. It is imperative that the Commission recognize that the Transportation Agreement governs the transportation of natural gas from Tennessee Gas Pipeline's interstate pipeline system to the Granite Ridge generating station. The Granite Ridge facility is a natural gas-fired combined cycle 745 MW base load generating facility with current capacity and energy obligations to ISO New England.[4] As a part of the existing generation resource base for New England, the Granite Ridge facility contributes significantly to meeting the region's daily load requirements. Presently, Granite Ridge has no alternative means for the delivery of natural gas to the generating station, and the need to obtain additional regulatory approval for extensions of the term beyond October 31, 2026 imposes a significant business risk that Granite Ridge and the New England region can ill afford. Granite Ridge and Liberty carefully and deliberately negotiated the term of the Transportation Agreement to ensure that Granite Ridge would have sufficient access to natural gas across the Lateral at least through October 31, 2036, while at the same time providing additional benefits to Liberty's customers relative to the preexisting contract. Requiring future, additional, regulatory approvals from the Commission to secure access to natural gas beyond October 31, 2026 reduces that period by a decade and imposes a business risk to Granite Ridge that is difficult to overstate. *See Public Service Company of New Hampshire*, Order No. 25,184 at 13-14 (Dec. 22, 2010) (noting that Commission's interpretation of contract is consistent with the risks assumed by the parties as reflected in the unambiguous contract language).

Granite Ridge acknowledges that the Commission has an important responsibility imposed by RSA 378:18 to ensure that special contracts are just and consistent with the public interest. The Commission has, however, approved special contracts with lengthy

[4] Granite Ridge acknowledges that its Motion contains background information that may not be included in the administrative record. This additional background is not controversial and is supported by facts that are generally recognized and within the specialized knowledge of the Commission as a regulator of electric distribution utilities and rates for electric supply to consumers, which are greatly influenced by the cost of natural gas available to gas-fired generators in the New England region. As such, the Commission should take administrative notice of any background information that is not already contained in the record. Puc 203.27 (Administrative Notice). Alternatively, Granite Ridge respectfully requests an opportunity to supplement the record with the additional background information provided in this Motion.

terms under this standard. *See, e.g., Concord Steam Corp.*, Order No. 25,268 (Sept. 9, 2011) (approving special contract with initial 10-year term plus two five-year automatic renewals); *Pennichuck Water Works, Inc.* Order No. 24,122 (Feb. 6, 2003) (noting that original special contract approved by the Commission had a term of 15 years and approving new contract with an initial term of 20 years plus two 10-year extensions). Granite Ridge further acknowledges that when reviewing special contracts, the Commission has expressed an interest in protecting customers from "unduly" or "unreasonably" subsidizing a special contract customer. *E.g., Concord Steam Corp.*, Order No. 25,558 at 3 (Aug. 2, 2013) (considering whether other customers will "unduly subsidize" special contract customer); *Concord Steam Corp.*, Order No. 25,009 at 4 (Sept. 4, 2009) (noting Commission's interest in preventing "other customers from unreasonably subsidizing special contract holders").

Thus, under the typical special contract reviewed by the Commission, it is the customer with the special contract that may be subsidized by the utility's other customers. The contract is determined, nevertheless, to be just and consistent with the public interest because the special contract customer is a significant customer that provides benefits generally desirable to the utility's other customers. *Id.* Accordingly, some level of subsidization may be tolerable, provided it is not "unreasonable" or "undue." Here, the Transportation Agreement between Liberty and Granite Ridge is not a typical special contract. Under the Transportation Agreement, the Granite Ridge special contract subsidizes the cost of providing service to Liberty's other customers, not *vice versa*. And, as this record demonstrates, there is negligible risk that Liberty's other customers would <u>ever</u>

subsize the Granite Ridge Transportation Agreement during any renewal term. As discussed in the Background section of this Motion, the record indisputably proves that:

- Liberty's predecessor constructed the Lateral at a cost of approximately $7 million. (Tr. at a16:17-22.)
- Liberty has received more than $7 million in demand charges since the lateral was constructed and thus the Lateral has been paid for in full. (*Id.* at 17:05-07, 24:03-12.)
- The Lateral is not yet fully depreciated and Liberty has received "well in excess" of its revenue requirement associated with the Lateral "every year since it went into service." (*Id.* at 17:08-19.)
- The excess revenue that Liberty receives from Granite Ridge has the effect of lowering the rates for all other Liberty customers and the increase in the demand charge under the Transportation Agreement provides added benefits to Liberty's other customers. (*Id.* at 18:02-09.)
- No additional investments will be needed by Liberty to continue serving Granite Ridge under the Transportation Agreement. (*Id.* at 39:14 – 40:05.)
- Granite Ridge is a "very large" customer and uses more gas than all of EnergyNorth's other customer's combined. (*Id.* at 29:07-24.)
- At Liberty's tariffed rates, Granite Ridge would pay Liberty $52,950,744 per year and Liberty understands that Granite Ridge would not pay that amount and would not be able to compete in the wholesale electric markets if it had to pay that amount. (*Id.* at 31:10 – 32:12.)
- "[T]he contract price to serve Granite Ridge exceeds Liberty's projected costs based on Liberty's benefit cost analysis, . . . and the retention of Granite Ridge as a customer will keep Liberty's overall system costs lower than would be the case if Granite Ridge were to cease operations." (DOE Comments (Sept. 30, 2021).)
- "[T]he business arrangement between Granite Ridge and Liberty is in the best interest of both parties by providing gas transportation service at an appropriate and reasonable cost to Granite Ridge and with a reasonable return on Liberty's 2.7-mile pipe to all other Liberty ratepayers." (*Id.*)

Thus, Granite Ridge has historically subsidized the distribution service that Liberty provides to its other customers. And, given that Granite Ridge will pay higher demand charges under the new Transportation Agreement as compared to the agreement being replaced, it is difficult to imagine a set of circumstances where Liberty's other customers would <u>ever</u> subsidize Granite Ridge's operations during a renewal term. Accordingly, the

Commission should grant rehearing and approve the Transportation Agreement as presented by Liberty, including the provisions that allow Granite Ridge to renew the term of the Agreement.

2. Not Approving the Renewal Provisions of the Transportation Agreement Will Significantly Diminish its Value to Liberty, its Customers, and Granite Ridge.

The diminished value of the Transportation Agreement as approved by the Commission is clear: by eliminating the certainty of access to natural gas via the Lateral beyond October 31, 2026, Granite Ridge faces the possibility that it will not have a predictable and economically viable gas transportation option as of such date to ensure that it has reliable, long-term, access to fuel.

This uncertainty creates significant operational planning risks for Granite Ridge given the plant's participation in the regional markets administered by ISO New England. As a capacity resource, Granite Ridge must bid into the ISO's Forward Capacity Auction each year, the result of which determines the plant's Capacity Supply Obligation for the relevant period. For example, the next annual Forward Capacity Auction, in March 2023 (FCA 17), will determine capacity awards for the one-year period beginning June 1, 2026. Granite Ridge will face significant uncertainty, even as soon as the next Forward Capacity Auction, if there is any risk, whatsoever, that the Transportation Agreement may not be in place after October 31, 2026. This will have a direct impact on Granite Ridge's bidding strategy going into FCA 17 – the planning for which is already well underway. Without Commission rehearing on this issue, Granite Ridge immediately would be forced to consider a potential delist (*i.e.*, removing the plant from the capacity market). The urgency of this matter is heightened by the serious concerns regarding regional winter reliability and the relative "firmness" of a generating asset's fuel supply. In other words, Granite Ridge needs to know now (not years from now) whether it will be able to depend on the Transportation Agreement for the full term of the FCA 17 Commitment Period, which runs through May 31, 2027. Fuel supply is one of the most important considerations in an asset owner's evaluation of whether to accept the exposure to severe performance penalties that result from the award of a Capacity Supply Obligation. Assets that delist from the capacity market may continue to participate in the ISO NE day-ahead and real-time energy markets – on a purely voluntary basis – with no obligation to bid into those markets and no performance obligations that are subject to penalties for non-performance.

The renewal provisions of the Transportation Agreement were negotiated between Granite Ridge and Liberty to ensure that the plant would have predictable and reliable access to natural gas via the Lateral until at least October 31, 2036, while providing flexibility to both parties in the event there is any significant change in circumstance. By reducing that period by a full decade, the Commission's Order significantly alters the economic balance negotiated by the parties and creates undue operational planning risk for Granite Ridge that the parties sought to avoid.

Although Granite Ridge wants to continue to be a transport customer of Liberty under the Transportation Agreement as negotiated, the business risk it faces by the need for additional Commission approvals to exercise the renewal provisions is thus a significant concern. This is not unique to Granite Ridge: all generators need reliable access to their fuel source. Any generator would need to consider its available options, including a delist or construction of a pipeline alternative, if it were faced with the risk of needing periodic regulatory approvals to ensure reliable, long-term, access to fuel transportation services.

Although Granite Ridge has been willing to pay demand charges that far exceed Liberty's cost of providing transportation services to the plant in exchange for long-term access to fuel supply, Liberty's other customers would experience an increase in distribution rates if the economics of the Transportation Agreement were to become so imbalanced that it would render the plant uneconomic to operate. As Liberty explained during the hearing:

> Q So, we have a revenue requirement for the pipeline that requires X dollars a year. The Company has received well in excess of that amount every year since this went into service, is that correct?
> A Yes. That's my understanding.
>
> Q And, even though we have received more than the 7 million, we still have a number of years to depreciate. So, the Company will still be keeping, for lack of a better word, the revenue requirement into the future?
> A Yes.
>
> Q And the excess amount just goes to lower rates for all other customers, is that your understanding?
> A That is my understanding, yes.
>
> Q So, to the extent the pricing on the new contract is slightly higher, that's a net benefit to the customers as well, is that correct?
> A Yes.

(Tr. at 17:14 – 18:09.)

Again, Granite Ridge wants to continue to be a Liberty customer under the Transportation Agreement. If, however, Granite Ridge is compelled in the near future to take the drastic option of delisting its facility due to the unavailability of an economically viable transportation arrangement, there may, in fact, be no reason for Granite Ridge to have a firm contract beyond 2026 and Liberty's other customers will end up paying more in the future for the same service they receive today. The DOE recognized the significant benefits that Liberty's other customers will receive from the Transportation Agreement, including the renewal provisions, and urged the Commission to approve the Agreement as filed.[5] Based on the record evidence and the positions of the parties, the Commission should conclude that the Transportation Agreement, including the renewal provisions, is just and in the public interest and grant it full approval.

3. The Order Inadvertently Risks Exacerbating the Energy Challenges Facing New England.

Finally, it is important to recognize the risk that the Order potentially imposes on the New England region. As a 745 MW base load generating facility with current capacity and energy obligations to ISO New England, the Granite Ridge facility contributes significantly to meeting the region's daily load requirements. The Commission is well aware of the unprecedented energy challenges facing consumers in New Hampshire and the rest of the New England region, particularly during winter heating seasons, most of which are directly related to natural gas-fired generation being assured of reliable fuel supplies. The concerns are so acute that New Hampshire and the other New England states have recently requested assistance from the federal government to help mitigate the effects of the high energy costs.[6] Although it is difficult to accurately predict the state of New England's energy markets in 2026, creating unnecessary uncertainty as to whether Granite Ridge will have transportation rights across the Lateral after October 31, 2026 will certainly not improve the situation. Affording Granite Ridge reliable, long-term access to fuel supply via the Lateral pursuant to terms that are beneficial to Liberty's other customers will help to relieve upward pressure on electricity prices.

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[5] Presumably, the OCA reached a similar conclusion given its initial participation in the proceeding and lack of objection to the Transportation Agreement.

[6] See Letter from Governors of New Hampshire and other New England States to the Hon. Jennifer Granholm of U.S. Department of Energy, July 27, 2022. *Available at:* https://www.rtoinsider.com/ext/resources/2022/08/03/NPC_2022.08.04_3_NE_Govs_Letter-to-DOE.pdfs

C. The Commission Can Monitor Renewals of the Transportation Agreement Through a Compliance Filing Process, Subject to Additional Review if it is Reasonably Possible that Liberty's Other Customers Would Subsidize Granite Ridge's Operations During the Renewal Term.

Again, Granite Ridge appreciates that the Commission has a responsibility to ensure that Liberty's customers are not subsidizing the operations of Granite Ridge. As discussed above, based on this record, it is difficult to conceive of a set of future facts that could reasonably produce such a result. Nevertheless, if the Commission wants the opportunity to conduct additional process when the term of the Transportation Agreement is renewed, Granite Ridge suggests that the Commission approve the Transportation Agreement, including the renewal provisions, on the condition that Liberty's other customers would not be subsidizing Granite Ridge's operations during the renewal period. The Commission could also adopt a compliance filing process to review this analysis.[7] For example, the Commission could impose a requirement that Liberty make a compliance filing with the Commission after Granite Ridge notifies Liberty of its intent to renew the Agreement. Liberty's compliance filing could include, among other things, a statement confirming that the revenue produced by the Transportation Agreement during the renewal period is expected to exceed Liberty's cost of providing the transportation service to Granite Ridge, with supporting calculations. If Liberty concludes that the Granite Ridge revenue may be insufficient to cover the costs of providing service, then the Commission could investigate further to understand why the economics of the Transportation Agreement have changed and how to best respond under the circumstances. Again, however, given that the cost of

[7] The Commission has used a compliance procedure in other circumstances. *E.g., Unitil Energy Systems, Inc.*, Order No. 26,007 (April 20, 2017) (imposing obligation to make compliance filings for step adjustments to distribution rates).

the Lateral has been fully recovered and Liberty has historically received significantly more revenue from Granite Ridge than the cost to provide transport service, such circumstances are highly unlikely to occur. Yet, the compliance filing approach would allow the Commission to monitor the Agreement upon each renewal.

D. The Commission Should Expressly Approve the Amendment to the Transportation Agreement.

On August 27, 2021, Liberty filed in this proceeding both an amendment to the current transport agreement between Liberty and Granite Ridge and the Amendment to the Transportation Agreement to account for the time needed by the Commission to complete its adjudicatory process. The Commission's September 14, 2021 Order approved the amendment to the current transportation agreement. Presumably, the Commission intended to consider the Amendment in conjunction with its review of the Transportation Agreement. The Commission's Order approving the Transportation Agreement, however, does not expressly approve the Amendment. Accordingly, Granite Ridge respectfully requests that the Commission grant rehearing and expressly approve both the Transportation Agreement and the Amendment, as submitted by Liberty.

CONCLUSION

For all of the reasons stated above, Granite Ridge respectfully requests that the Commission grant rehearing of its August 25, 2022 Order issued in this proceeding. The Commission should approve the Transportation Agreement as filed by Liberty, without interpreting the Agreement as having a term that concludes on October 31, 2026. There is no dispute that the cost of the Lateral has been paid in full by Granite Ridge, the demand charges Liberty receives from Granite Ridge far exceed Liberty's cost of providing transport service to the plant, and there is no reasonable likelihood that circumstances will change in the future such that Liberty's customers would be subsidizing the operations of Granite Ridge during any renewal period. Indeed, Liberty's other customers pay lower rates as a direct result of the demand charges Granite Ridge pays for transportation service. Finally, neither the DOE nor the OCA expressed any objection or concern with the Commission approving the Transport Agreement as negotiated by the parties and presented by Liberty. Accordingly, the Commission should grant rehearing of the portions of the Order that would require Liberty to seek Commission approval prior to any pre-negotiated renewal of the term of the Agreement.

Moreover, if the Commission desires to monitor the renewal process to ensure that Liberty's other customers will not be subsidizing Granite Ridge's operations during any renewal period, the Commission could fashion a compliance procedure for Liberty to follow in conjunction with renewals of the Transportation Agreement. Such an approach will allow the Commission to monitor the economics of the Transportation Agreement without introducing regulatory risk that could be harmful to Liberty, its customers, Granite Ridge and the New England region.

Finally, the Order does not expressly approve the Amendment to the Transportation Agreement, which makes substantive modifications to the Agreement. On rehearing, the Commission should expressly approve both the Transportation Agreement and the Amendment, as filed by Liberty, and grant such other relief as the Commission deems just and equitable in the circumstances.

Dated: September 23, 2022

William D. Hewitt
Hewitt & Hewitt
500 US Route 1, Suite 107
Yarmouth, Maine 04096
(207) 846-8600
whewitt@HewittLegalAdvisors.com

Attorneys for Granite Ridge Energy, LLC

CERTIFICATE OF SERVICE

I, William D. Hewitt, certify that a copy of this filing has been served on the electronic service list for the above-captioned proceeding consistent with the Commission's March 17, 2020 Secretarial Letter.

Dated: September 23, 2022

William D. Hewitt