

**STATE OF NEW HAMPSHIRE
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

Order Approving Special Contract

O R D E R N O. 26,671

August 25, 2022

This order approves a special contract for gas transmission service between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty and Granite Ridge, LLC.

I. PROCEDURAL HISTORY

On June 25, 2021, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty) filed a petition seeking approval of a gas transportation agreement with Granite Ridge, LLC (Granite Ridge) as a special contract pursuant to RSA 378:18. Accompanying its petition, Liberty filed a motion for confidential treatment of certain pricing terms, as well as the pre-filed direct testimony of William R. Killeen and attachments. Liberty and Granite Ridge operate under an existing gas transportation agreement approved by the Commission as a special contract in *EnergyNorth Natural Gas*, Order No. 23,657 (March 22, 2001).

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

On August 27, 2021, Liberty pre-filed supplemental direct testimony from Deborah M. Gilbertson. Based on this filing, the Commission issued Order No. 26,518 (September 14, 2021), authorizing the extension of an existing transportation

agreement previously authorized by Order No. 23,657 until issuance of a final order in this docket.

On September 30, 2021, the New Hampshire Department of Energy (DOE) filed a letter stating its support of approval of the special contract.

On November 9, 2021, the Commission issued a set of record requests and requests for specific answers, relating to the terms of the existing special contract and Liberty's position on the continuation of certain terms in the existing special contract.

On November 19, 2021, Liberty responded to the Commission's first set of record requests and requests for specific answers.

On March 23, 2022, Liberty filed a letter requesting that the Commission issue an order approving the Special Contract.

On March 30, 2022, the Commission issued an order commencing an adjudicative proceeding in this matter. In that order, the Commission stated that it had reviewed the record in this matter and determined additional investigation and a hearing to be necessary before issuing a final order and scheduled a hearing.

On April 8, 2022, the Commission issued Order No. 26,606, containing a second set of record requests or requests for specific answers.

On April 29, 2022, Liberty responded to the Commission's second set of record requests and requests for specific answers.

On July 26, 2022, the Commission held a duly noticed hearing on Liberty's petition.

Liberty's petition and all subsequent filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-127.html>.

II. SUMMARY OF FILINGS AND PARTY POSITIONS

a. Liberty

In its petition, Liberty identified that Granite Ridge (an electric energy generation facility) operates under an existing gas transportation agreement approved by the Commission as a special contract in *EnergyNorth Natural Gas* Order No. 23,657 (March 22, 2001). The gas transportation agreement provides for Liberty to transport gas to Granite Ridge's facility via a 2.7-mile pipeline owned by Liberty called the Londonderry Lateral. Liberty explained that it exercised an option to terminate the existing special contract to modify the terms of the transportation agreement, and that the new transportation agreement should be approved because special circumstances exist that render the new special contract just and reasonable and consistent with the public interest.

In support of its position that special circumstances exist, Liberty stated that:

1) Granite Ridge uses large quantities of gas with equipment that is not employed to serve other customers; 2) Granite Ridge places few burdens on Liberty's systems, such as gas procurement and customer service; 3) Liberty's tariffed rates would likely make Granite Ridge uncompetitive as an electric energy generation facility; and 4) Liberty's other customers benefit because the revenues from the special contract exceed Liberty's costs associated with serving Granite Ridge.

In support of its position that the proposed special contract is just and reasonable and consistent with the public interest, Liberty stated that: 1) Liberty will have a new right to connect new facilities to the Londonderry Lateral to optimize Liberty's gas capacity to provide additional resiliency and reliability to Liberty's customers served by its Nashua and Manchester distribution systems; 2) Liberty will receive revenues similar to the existing contract that exceed the cost to serve Granite

Ridge, with inflation-based increases; 3) Liberty will be able to better manage its supply deliveries; and 4) Granite Ridge will receive gas transportation service at reasonable rates to operate its facility.

At hearing, Liberty maintained that customers would benefit not only from the cash flows, but also from the on-system enhancements that Liberty will be able to undertake based on the new contractual terms, enhancing service capabilities and growth potential. In sum, Liberty argued that the proposed contract satisfies the requirements for a special contract and is in the public interest.

b. Department of Energy

On September 30, 2021, the DOE filed a position statement that supported approval of the special contract as filed based on several factors, including that: 1) the special contract continues a previously approved transportation contract; 2) the special contract provides Liberty with additional flexibility concerning its existing lateral gas line, including allowing Liberty to serve other customers; 3) Liberty states that it will use this flexibility to optimize use of recently contracted gas capacity; and 4) the charges Liberty will receive under the special contract will be adjusted upward annually for inflation. The DOE's position was premised on Liberty's statement that demand charges collected under the 2001 contract have exceeded the original cost of the Londonderry Lateral, revenues from the special contract will exceed Liberty's cost to provide service to Granite Ridge, and no new investments by Liberty will be needed to provide service to Granite Ridge under the special contract.

At the hearing on July 26, 2022, the DOE maintained its support for approval of the special contract as being consistent with the public interest because the special contract would provide a net benefit to customers. The DOE stated that it was not troubled by the termination of a small allocation of revenues to the environmental

surcharge in the interest of simplicity, given the relatively small size of those revenues, and because those revenues will still benefit Liberty's customers.

c. Responses to Commission Record Requests

In response to Commission questions regarding a requirement under the existing transportation agreement to apply 1.75 percent of revenues collected to a deferred account for environmental remediation of manufactured gas, Liberty accounted for its ongoing application of that requirement and stated there should not be a future requirement to contribute 1.75 percent of revenues for environmental remediation because all firm and transportation customers pay a share of environmental remediation of manufactured gas costs through the Local Distribution Adjustment Clause (LDAC). In response to the Commission's question on the same topic in the second set of record requests, Liberty acknowledged that Granite Ridge will not be assessed the LDAC and thus will not directly contribute toward a share of the environmental surcharge that is a component of the LDAC.

In response to Commission questions regarding language in the existing transportation agreement relating to serving new customers off the Londonderry Lateral, Liberty reported that it has not sought to attain Granite Ridge's consent to serve new customers because no new customers ever requested service and identified that transferring the meter operator status to Liberty will facilitate any on system enhancements or future requests for new services from the Londonderry Lateral.

In response to Commission questions about the historical Peaking Agreement, Liberty stated that the agreement expired prior to Liberty's purchase of EnergyNorth Natural Gas, Inc. from National Grid, and that it does not have access to the National Grid data that would allow an analysis of the Peaking Agreement.

Liberty also provided responses showing the status of the Londonderry Lateral as an asset on its books, including revenue requirement and depreciation schedules, additional details regarding the actual past charges and anticipated future charges based on the instant petition as if Granite Ridge were a tariffed rate customer, and confirmed that there would be no new costs associated with being designated as the meter operator.

d. Motion for Protective Order and Confidential Treatment

In its motion, Liberty requests confidential treatment of the pricing terms of the special contract, and to preserve confidential treatment of a reference to the pricing terms in the existing contract. Liberty based its request on RSA 91-A:5, IV's exemption for confidential, commercial or financial information, citing previous Commission orders keeping similar third-party pricing confidential against the public interests in disclosure.

III. COMMISSION ANALYSIS

a. Special Contract

Pursuant to RSA 378:18:

Nothing herein shall prevent a public utility from making a contract for service at rates other than those fixed by its schedules of general application, if special circumstances exist which render such departure from the general schedules just and consistent with the public interest and, except as provided in RSA 378:18-b, the commission shall by order allow such contract to take effect.

We agree that special circumstances exist which render such departure from the general schedules just and consistent with the public interest. Granite Ridge's natural gas consumption capacity exceeds the rest of Liberty's distribution customers combined. Hearing Transcript of July 26, 2022 at 29. The nature of the transportation service received by Granite Ridge is distinct from Liberty's other distribution customers, requiring higher pressures. *Id.* at 10. The Londonderry Lateral has

exclusively served Granite Ridge since 2001. *Id.* at 11. This 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. *Id.* at 44.

We accept that the contract price to serve Granite Ridge exceeds Liberty's projected costs based on Liberty's benefit cost analysis, *see* Exh. 6a, 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. Based on testimony by Liberty's witness at hearing, we find that the 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. Hearing Transcript of July 26, 2022 at 31–32. 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.

Despite these potential benefits, we are concerned by the lack of records that would show net benefits based on the financial modeling presented in Docket No. DG 00-145, as it is apparent that peaking benefits were never realized under the terms of the first special contract (or at least cannot be demonstrated as per Company testimony) but were a critical factor in the original financial model and the Commission's approval of the original special contract. 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 term¹ of this proposed special contract. 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. 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.

b. Motion for Protective Order and Confidential Treatment

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an “analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy.” *Union Leader Corp.v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). “Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public’s interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that it must be balanced against the public’s interest in disclosure.” *Id.* at 553 (citation omitted).

¹ See Exh. 2 at Bates page 18, 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.

In furtherance of the Right-to-Know law, the burden of proving that the information is confidential and private rests with the party seeking non-disclosure. See *Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002). RSA 91-A:5, IV expressly exempts from public disclosure requirements any “records pertaining to ... confidential, commercial or financial information” In determining whether commercial or financial information should be deemed confidential and private, we consider the three-step analysis applied by the Commission’s rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08. The rule is designed to facilitate the balancing test required by the relevant case law by requiring petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. See Puc 203.08(b).

We agree that the pricing terms of these special contracts are commercial or financial information. Disclosure of that information would reveal internal business decisions and financial data that could harm both Liberty and Granite Ridge and could result in a competitive disadvantage to both companies. Further, while disclosure of the information could inform the public about the workings of the Commission, in balancing the interests of Liberty and Granite Ridge in protecting information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public's interest in disclosure. Consistent with Puc 203.08(k), our grant of the motion for confidential treatment is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

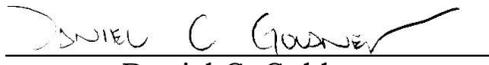
Based upon the foregoing, it is hereby

ORDERED, that the special contract between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty and Granite Ridge, LLC. is approved, subject to any and all conditions outlined in this order; and it is

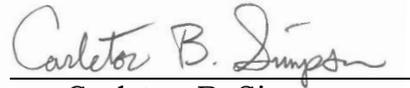
FURTHER ORDERED, that Liberty shall file a request for approval of all special contract extensions within 30 days of its receipt of a notification of election to extend by Granite Ridge, and subsequently 60 days in advance of each annual extension; and it is

FURTHER ORDERED, that Liberty's motion for confidential treatment is granted.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 21-127

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