

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 21-008**

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
D/B/A LIBERTY**

**Petition for Approval of a Firm Transportation Agreement with Tennessee Gas  
Pipeline Company, LLC**

**Order Approving Settlement Agreement and Firm Transportation Agreement**

**O R D E R N O. 26,551**

**November 12, 2021**

In this order, the Commission approves a \$40,880,000 capacity agreement between Liberty Utilities and Tennessee Gas Pipeline Company, a 20-year agreement at \$2,044,000 per year in exchange for firm transportation rights to 40,000 Dth of capacity for natural gas per day between Dracut MA and Londonderry, NH.

**I. PROCEDURAL HISTORY**

On January 20, 2021, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty) filed a Petition for Approval of a Firm Transportation Agreement (Petition) with Tennessee Gas Pipeline Company, LLC (TGP). The Firm Transportation Agreement (TGP Contract) is a 20-year contract for 40,000 Dth per day of fixed capacity the on the Concord Lateral Pipeline with a receipt point in Dracut, MA, a delivery point in Londonderry, NH, at the currently effective TGP tariff rate as approved by the Federal Energy Regulatory Commission (FERC), presently \$0.14 per Dth. The Petition requested approval of the TGP Contract, including a determination that the Company's decision to sign the TGP Contract was prudent.

On January 25, 2021, the Office of the Consumer Advocate (OCA) filed a letter of participation pursuant to RSA 363:28.

Conservation Law Foundation (CLF) and the Pipeline Awareness Network for the Northeast, Inc. (PLAN) filed petitions to intervene. The Commission granted the petitions for intervention on April 15, 2021.

On September 24, 2021, Liberty filed a Settlement Agreement (Settlement) on behalf of itself, Energy, and the OCA (Settling Parties). CLF and PLAN did not enter into the Settlement, and CLF appeared at hearing in opposition.

On September 28, 2021, CLF filed a motion requesting leave to submit a brief regarding whether Liberty has complied with the Least Cost Integrated Resource Planning statute and related legal issues. The Commission granted the motion on October 1. CLF filed a brief on October 14. Liberty filed a reply on October 25.

On October 6, the Commission held a merits hearing on the Settlement.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at: <https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-008.html>.

## **II. SUMMARY OF THE SETTLEMENT**

The Settling Parties agreed that the 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.

In addition to the Settling Parties' recommendation, the Settlement Agreement contains provisions relating to Liberty's future planning standards, notifications regarding retirements of Liberty's propane facilities, on-system enhancements, and cost recovery.

Relating to future planning standards, the Settlement Agreement requires Liberty to present design day analysis in its 2022 LCIRP based on 30 years of weather data, use that data in its 2022 LCIRP supply deficiency analysis filing, and file with

Energy an updated supply deficiency analysis before it extends or otherwise renews any of its other TGP contracts with a receipt point in Dracut, Ma. Relating to propane facilities, the Settlement Agreement requires Liberty to request Commission approval no less than 12 months prior to retiring any of its propane or Liquefied Natural Gas facilities, as well as provide Energy with certain notifications, reports, assessments, and studies.

The Settlement Agreement contains notification requirements for identified on-system enhancements and an express provision that the Settlement Agreement does not impute pre-approval by the Settling Parties of the prudence of any such on-system enhancements that may be undertaken in the future. Finally, the Settlement Agreement states that Liberty shall recover the costs associated with the TGP Contract through its Cost of Gas tariff.

### **III. SUMMARY OF LEGAL BRIEFS**

#### **A. CLF**

CLF argued that Liberty's petition does not comply with RSA 378:37 -:40, New Hampshire's Least Cost Integrated Resource Planning statute, therefore Liberty has not met its burden of proof that that the TGP Contract is prudent, reasonable, and consistent with the public interest.

According to CLF, because Liberty did not update its current LCIRP filing to reflect the TGP Contract and on-system enhancements as a resource proposal alternative to the resource options contained in its most recent LCIRP filing, Liberty is violating RSA 378:38, which requires an assessment of supply options, including owned capacity.

CLF went on to argue that Liberty failed to comply with all elements of the LCIRP Statute, including evaluation of Demand Side Management and analysis of

environmental and health related impacts of the TGP Contract. CLF argued that its filings in this docket must align with its LCIRP filings, noting RSA 378:39's restriction on rate increases unless the utility has filed a plan in accordance with RSA 378:38. CLF also noted that if this contract is approved then Liberty will eventually seek a rate change in its cost of gas filing

### **B. Liberty**

Liberty filed a reply to CLF's brief. According to Liberty, CLF mischaracterizes the legal standard applicable to the Commission's review of the proposed TGP Contract, raises claims that are wholly irrelevant to the Commission's consideration of the contract, and fails to support its assertion that Liberty did not meet its burden of proof. Liberty asserted that its capacity needs are a long standing issue dating back to at least 2015 when it initially sought and received Commission approval for a capacity contract on the Northeast Energy Direct project, which was subsequently cancelled by its developer. Liberty stated that since that time, Liberty filed a timely LCIRP in 2017 and pursued an owned capacity project (the Granite Bridge Project) until new capacity became available through TGP, resulting in the TGP Contract becoming the least cost option to its long standing and immediate capacity needs. Liberty stated that the TGP Contract is preferable to relying on alternatives such as LNG trucking and utilization of aging propane facilities in order to meet design day demand.

Liberty argued that the LCIRP process is a separate and distinct process that informs the Company's resource acquisitions, and that CLF offered no evidence that the capacity secured by the TGP Contract is unnecessary or unreasonable in cost. Liberty asserted that it demonstrated that it considered alternatives to the TGP Contract and determined it to be the least cost option to meet capacity needs.

Liberty supported its position that its LCIRP filing is not at issue in this matter, arguing that RSA 378:38 dictates when new LCIRP plans are required to be filed, and that it would be contrary to the public interest for the Commission to reject a least-cost capacity option because it was not available at the time its most recent LCIRP was filed.

Liberty also addressed CLF's claims relating to energy efficiency, demand response, environmental, and health matters. According to Liberty, these arguments do not refute its immediate need for additional capacity to meet design day requirements in a safe and adequate manner, and are not properly within the scope of this proceeding because they relate to LCIRP filings and evaluations.

#### **IV. PARTY POSITIONS**

##### **A. Settling Parties**

Consistent with the terms of the Settlement Agreement, the Settling Parties agreed that the 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.

##### **B. CLF**

CLF argued that Liberty did not meet its burden to show that the TGP Contract is prudent because it had not performed analysis relating to energy efficiency, demand response, and environmental and health impacts to demonstrate that the TGP Contract is least cost pursuant to RSA 378:37 -40, and therefore just, reasonable, and in the public interest. CLF pointed to the testimony of Mr. Hill relating to the integrated nature of these criteria and supply contracts, as well as to the drivers and assumptions behind Liberty's growth forecasts. CLF argued that Liberty's growth forecasts do not take into account how potential electrification, potential greenhouse

gas regulation, customer preferences for new technologies including heat pumps, and potential stranded costs stemming from on-system enhancements might impact cost, and that the TGP Contract is therefore not demonstrably least-cost or in the public interest. CLF recommended that the Commission reject Liberty's Petition.

## **V. COMMISSION ANALYSIS**

Our statutory review of the Precedent Agreement is limited to consideration of Liberty's prudence in entering into the Firm Transportation Agreement, and the reasonableness of the terms of the agreement. We must consider whether the Firm Transportation Agreement is prudent and reasonable. *See* 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).

Our review of the Settlement concerns whether the Settlement is just and reasonable and serves the public interest. *See* N.H. Code Admin. Rules Puc 203.20(b) (The commission shall approve a disposition of any contested case by stipulation [or] settlement ... if it determines that the result is just and reasonable and serves the public interest). We construe the public interest within the context of our overall authority including, in this case, the interests of Liberty's existing and future customers.

We find 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. We also find that Liberty's design day forecasting is adequate to justify its decision to seek out additional capacity resources. Examining the process that lead up to its entering the TGP Contract, we note that Liberty first pursued both contracted and owned capacity on the cancelled Northeast Energy Direct project and through the Granite

Bridge project, with an LCIRP filing intervening between those decisions. We do not agree with CLF that approval of the TGP contract is prohibited by the LCIRP statute. We note that the Settlement Agreement provides for Liberty to file its next LCIRP in 2022 in accordance with RSA 378:38's requirement that LCIRP filing occur no later than five years from a company's previous filing and we expect that filing to fully comply with the statutory requirements.

Apart from LCIRP, Liberty must meet all requirements under the prudence standard to manage its business and operations in a manner consistent with good utility practice, including the evaluation on alternatives in making business decisions. Engagement in the Granite Bridge project, though non-recoverable, demonstrates that the company continued to assess and evaluate alternatives, and that contracting for additional capacity with TGP was a prudent, lesser-cost option under the circumstances.

Turning to the terms of the TGP Contract, we next evaluate its cost, quantity and duration. We find the cost, because it is set at FERC tariffed rate, to be reasonable. With respect to quantity of capacity and duration, we note that as a part of a Liberty's portfolio of capacity contracts with TGP, we are convinced that the TGP Contract will meet near-term design day capacity needs over the course of the next five years, until Liberty's next TGP contract renewal option. See Hearing Transcript of October 6, 2021, a.m. session at 40; p.m. session at 12. This provides Liberty flexibility to meet its reliability and safety obligations under its design day scenarios for the next five years, while affording the flexibility to scale back capacity purchase obligations if demand does not increase, or even decreases, under various longer term scenarios. As such, we agree with the Settling Parties that terms of the Proposed TGP Contract are reasonable.

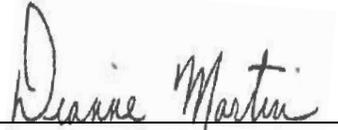
In conclusion, we find that Liberty has established that, based on both price and non-price factors, the contracted capacity represents the most viable, reasonably available alternative for Liberty to meet its current and forecasted customer requirements in an adequate and reliable manner. We note that the decision of whether to approve the proposed arrangement between Liberty and TGP is an important one involving a long-term commitment of substantial ratepayer dollars. Our finding is, however 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.

We find that the Settlement is just and reasonable, and consistent with the public interest. The Settlement secures commitments relating to Liberty's next LCIRP and advanced notification of certain on-system enhancements, which will benefit consumers and provide additional transparency. For all of the foregoing reasons, we approve the Settlement and find that Liberty's decision to enter into the TGP Contract was prudent.

**Based upon the foregoing, it is hereby**

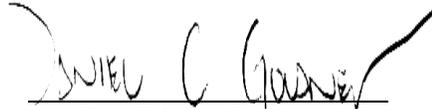
**ORDERED**, the Settlement Agreement is APPROVED and the Firm Transportation Agreement is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twelfth day  
of November, 2021.



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Dianne Martin  
Chairwoman



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Daniel C. Goldner  
Commissioner

## Service List - Docket Related

Docket# : 21-008

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**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 21-008**

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
d/b/a LIBERTY**

**Petition for Approval of a Firm Transportation Agreement with Tennessee Gas  
Pipeline Company, LLC**

**Order Denying Motion for Rehearing of Order No. 26,551**

**O R D E R N O. 26,564**

**January 10, 2022**

**I. Background**

In Order No. 26,551 (November 12, 2021) (Order 26,551), the Commission approved a capacity agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty) and Tennessee Gas Pipeline Company, a 20-year agreement at \$2,044,000 per year in exchange for firm transportation rights to 40,000 Dth of capacity for natural gas per day between Dracut, MA and Londonderry, NH.

On December 10, 2021, Conservation Law Foundation (CLF) filed a Motion for Rehearing of Order 26,551.

On December 16, 2021, the Office of the Consumer Advocate filed an objection to CLF's Motion for Motion for Rehearing of Order 26,551.

On December 17, 2021, both Liberty and the New Hampshire Department of Energy filed objections to CLF's Motion for Motion for Rehearing of Order 26,551.

Order 26,551, CLF's Motion for Rehearing of Order 26,551, the various objections, and related docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-008.html>.

## **II. Positions of the Parties**

### **a. Conservation Law Foundation**

CLF argued the Commission erred in approving the firm transportation agreement between Liberty and Tennessee Gas Pipeline Company and requested that the Commission rehear Order 26,551. In support of its position, CLF made four arguments: 1) that the Commission erred in finding that Liberty met its burden of proof demonstrating that the contract is prudent, reasonable, and consistent with the public interest because Liberty did not demonstrate that it considered increasing demand side alternatives such as energy efficiency; 2) that the Commission erred in approving cost recovery because, pursuant to RSA 378:40, no rate change is allowed due to lack of proceedings in the ordinary course in Liberty's open Least Cost Integrated Resource Plan docket; 3) that the approved contract does not align with contents of Liberty's Least Cost Integrated Resource Plan docket; and 4) that Liberty's Least Cost Integrated Resource Plan filing is deficient.

### **b. Office of Consumer Advocate**

The Office of the Consumer Advocate (OCA) objected to CLF's Motion for Rehearing of Order 26,551. In support of its objection, the OCA argued that CLF did not state good reason for rehearing because it did not make any new arguments, and specifically rebuffed the "ordinary course" argument.

### **c. Department of Energy**

The New Hampshire Department of Energy (Energy) objected to CLF's Motion for Rehearing of Order 26,551. In support of its objection, Energy argued that CLF did not state good reason for rehearing because Order 26,551 was not based on mistake or overlooked matters, and that the proper forum for CLF to raise its concerns with the

contents of Liberty's Least Cost Integrated Resource Plan is in a Least Cost Integrated Resource Plan docket.

**d. Liberty**

Liberty objected to CLF's Motion for Rehearing of Order 26,551. In support of its objection, Liberty argued that CLF did not state good reason for rehearing because: 1) the Commission did not overlook or mistakenly conceive any matters in Order 26,551; 2) CLF presented no new evidence that was unavailable prior to the issuance of Order 26,551; 3) CLF asked for a different outcome based on arguments the Commission previously considered and rejected; and 4) Order 26,551 is neither unlawful nor unreasonable.

**III. Commission Analysis**

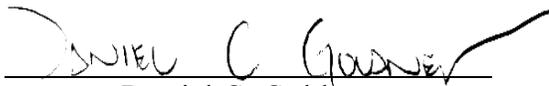
The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4-5 (December 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). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4-5 (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

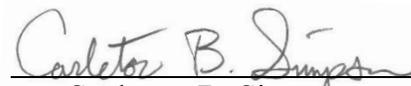
We do not agree that CLF stated good cause to grant rehearing because CLF did not present new evidence, nor did it establish that the Commission overlooked or misunderstood issues in connection with its approval of the capacity contract between Liberty and the Tennessee Gas Pipeline Company. In Order 26,551, the Commission reviewed CLF's various arguments relating to Least Cost Integrated Resource Planning and determined that approval of the contract was not prohibited by the LCIRP statute. It is apparent that the Commission heard and relied on historical context, determined that Liberty had a long-standing design day capacity shortfall, and approved the instant capacity contract under the appropriate legal standard, namely that the contract was prudently incurred, reasonable, and is consistent with the public interest. We do not agree that CLF stated good cause to rehear this determination.

**Based upon the foregoing, it is hereby**

**ORDERED**, the Conservation Law Foundation's Motion for Rehearing of Order 26,551 (November 12, 2021) is DENIED.

By order of the Public Utilities Commission of New Hampshire this tenth day of January, 2022.

  
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Daniel C. Goldner  
Chairman

  
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Carleton B. Simpson  
Commissioner

## Service List - Docket Related

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# TITLE XXXIV PUBLIC UTILITIES

## CHAPTER 378 RATES AND CHARGES

### Least Cost Energy Planning

#### Section 378:37

**378:37 New Hampshire Energy Policy.** – The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.

**Source.** 1990, 226:1, eff. Jan. 1, 1991. 2014, 129:1, eff. Aug. 15, 2014.

# TITLE XXXIV

## PUBLIC UTILITIES

### CHAPTER 378

#### RATES AND CHARGES

#### Least Cost Energy Planning

##### Section 378:38

###### **378:38 Submission of Plans to the Commission. –**

Pursuant to the policy established under RSA 378:37, each electric and natural gas utility, under RSA 362:2, shall file a least cost integrated resource plan with the commission within 2 years of the commission's final order regarding the utility's prior plan, and in all cases within 5 years of the filing date of the prior plan. Each such plan shall include, but not be limited to, the following, as applicable:

- I. A forecast of future demand for the utility's service area.
- II. An assessment of demand-side energy management programs, including conservation, efficiency, and load management programs.
- III. An assessment of supply options including owned capacity, market procurements, renewable energy, and distributed energy resources.
- IV. An assessment of distribution and transmission requirements, including an assessment of the benefits and costs of "smart grid" technologies, and the institution or extension of electric utility programs designed to ensure a more reliable and resilient grid to prevent or minimize power outages, including but not limited to, infrastructure automation and technologies.
- V. An assessment of plan integration and impact on state compliance with the Clean Air Act of 1990, as amended, and other environmental laws that may impact a utility's assets or customers.
- VI. An assessment of the plan's long- and short-term environmental, economic, and energy price and supply impact on the state.
- VII. An assessment of plan integration and consistency with the state energy strategy under RSA 12-P.

**Source.** 1990, 226:1. 1994, 362:4, eff. June 8, 1994. 2014, 129:1, eff. Aug. 15, 2014. 2015, 89:3, eff. Aug. 4, 2015. 2021, 91:202, eff. July 1, 2021.

# TITLE XXXIV PUBLIC UTILITIES

## CHAPTER 378 RATES AND CHARGES

### Least Cost Energy Planning

#### Section 378:38-a

**378:38-a Waiver by Commission.** – The commission, by order, may waive for good cause any requirement under RSA 378:38, upon written request by a utility.

**Source.** 1997, 298:14, eff. June 20, 1997. 2014, 129:1, eff. Aug. 15, 2014.

# TITLE XXXIV

## PUBLIC UTILITIES

### CHAPTER 378

#### RATES AND CHARGES

#### Least Cost Energy Planning

##### Section 378:39

###### **378:39 Commission Evaluation of Plans. –**

The commission shall review integrated least-cost resource plans in order to evaluate the consistency of each utility's plan with this subdivision, in an adjudicative proceeding. In deciding whether or not to approve the utility's plan, the commission shall consider potential environmental, economic, and health-related impacts of each proposed option. The commission is encouraged to consult with appropriate state and federal agencies, alternative and renewable fuel industries, and other organizations in evaluating such impacts. The commission's approval of a utility's plan shall not be deemed a pre-approval of any actions taken or proposed by the utility in implementing the plan. Where the commission determines the options have equivalent financial costs, equivalent reliability, and equivalent environmental, economic, and health-related impacts, the following order of energy policy priorities shall guide the commission's evaluation:

- I. Energy efficiency and other demand-side management resources;
- II. Renewable energy sources;
- III. All other energy sources.

**Source.** 1990, 226:1. 1994, 362:5, eff. June 8, 1994. 2014, 129:1, eff. Aug. 15, 2014.

# TITLE XXXIV PUBLIC UTILITIES

## CHAPTER 378 RATES AND CHARGES

### Least Cost Energy Planning

#### Section 378:40

**378:40 Plans Required.** – 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.

**Source.** 1994, 362:6, eff. June 8, 1994. 2014, 129:1, eff. Aug. 15, 2014.

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DOCKET NO. DG 21-\_\_\_\_

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
D/B/A LIBERTY

**Petition for Approval of a Firm Transportation Agreement  
with Tennessee Gas Pipeline Company, LLC**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty” or the “Company”) hereby petitions the New Hampshire Public Utilities Commission (the “Commission”) pursuant to RSA 374:1, 374:2, and 378:7 for approval of a firm transportation agreement with Tennessee Gas Pipeline Company, LLC (“TGP”), including a determination that the Company’s decision to enter into the agreement was prudent and reasonable.

In support of this petition, the Company states as follows:

**Introduction**

1. By this Petition and the accompanying pre-filed *Direct Testimony of Francisco C. DaFonte and William R. Killeen* (the “DaFonte-Killeen Testimony”), the Company seeks approval of a 20-year contract with TGP executed by the parties on July 14, 2020, by which the Company purchased, on a firm basis, 40,000 Dth per day of capacity on the TGP-owned Concord Lateral from the Dracut, Massachusetts, receipt point to the Londonderry, New Hampshire, delivery point (the “TGP Contract”). A copy of the TGP Contract is provided as Attachment FCD-WRK-1 to the DaFonte-Killeen Testimony.

2. The legal standard governing this request for approval is whether the TGP Contract is “reasonable and prudent.” The Commission has stated:

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).

3. As explained in the DaFonte-Killeen Testimony, the Company needs additional capacity to reliably meet existing and future customer load requirements in its service area, and the TGP Contract is prudent and reasonable because is the least cost resource to meet those capacity needs.

4. The Company seeks final Commission approval by September 1, 2021, which is prior to the TGP Contract’s effective date of November 1, 2021.<sup>1</sup>

#### Background

5. In its order approving the precedent agreement with TGP on the Northeast Energy Direct (“NED”) project, the Commission acknowledged Liberty’s need for additional pipeline capacity and thus approved a contract with up to 115,000 Dth/day of capacity (including 50,000 Dth/day that was intended to replace the Company’s existing capacity to Dracut, and 65,000 Dth/day as an

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<sup>1</sup> Liberty must exercise its “regulatory out” provision by July 31, 2022; this Revenue Reduction Option Provision is set forth in Exhibit B of the contract and allows the Company to reduce the contract total quantity (“TQ”) to zero for starting with the second year of the contract, allowing the Company to avoid financial responsibility for all but the first year of the contract. Should the Commission not approve the contract, a Commission order by September 1, 2021, would afford the Company time to determine how best to mitigate costs over the 2021-2022 winter period, during which time Liberty must take service prior to exercising its right to terminate the agreement before the 2022-2023 winter period.

incremental increase in the Company's portfolio).<sup>2</sup> Order No. 25,822. However, TGP cancelled the NED project in May 2016, leaving Liberty without a solution to its impending capacity shortfall.

6. After cancellation of the NED project, the Company evaluated the remaining capacity alternatives and identified two viable options. The first option was to enter into a contract with TGP for an expansion of the Concord Lateral, which is the TGP-owned transmission line that travels from Dracut, Massachusetts, to Concord, New Hampshire, and the only existing transmission line that can serve Liberty's distribution system. The Concord Lateral was fully subscribed at the time, and such a contract would have required TGP to build new facilities to serve the Company's capacity need. The second option was for Liberty to build its own pipeline to provide the additional capacity, and was the option pursued by the Company because initial estimates showed it to be the least cost alternative as compared to indicative pricing at the time from TGP to build the new facilities to serve the Company's capacity need (the "TGP indicative pricing"). This option became known as the Granite Bridge project.

7. Estimates for the Granite Bridge project remained lower than TGP's indicative pricing from the inception of the Granite Bridge project (in the 2016 – 2017 time period) and through several years of progressively more advanced planning (into mid-2019). Thus, the Company continued throughout that period to refine the Granite Bridge engineering and resulting price estimates. The Company also continued to engage with TGP.

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<sup>2</sup> The Commission Staff again acknowledged this circumstance in the Granite Bridge matter, Docket No. DG 17-198, stating: "[W]e 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 ....*" Revised Testimony of The Liberty Consulting Group on behalf of Staff, filed September 20, 2019, at Bates 010 (emphasis added).

8. In May 2019, TGP provided lower price estimates for capacity on the Concord Lateral that for the first time indicated that a contract with TGP may be achievable at a substantially lower cost. TGP's pricing suggested it was making existing capacity available to Liberty that had previously been held by another customer on the Concord Lateral. Thus, an agreement with TGP for additional capacity would no longer require TGP to construct new facilities, and therefore resulted in lower indicative pricing. The Company continued discussions with TGP to explore this option, although the Granite Bridge project continued to be the least cost alternative.

9. In October 2019, TGP provided further revised pricing that was significantly lower than prior estimates, and for the first time indicated that a capacity contract with TGP would be at a lower cost than the Granite Bridge project. The Company thus suspended Granite Bridge activities and focused on negotiating the lowest possible cost and best delivery terms for an agreement with TGP. These talks culminated in the TGP Contract that the Company now presents to the Commission for approval.

10. The additional 40,000 Dth/day in capacity under the TGP Contract will alleviate the pressure that the Company's customer growth has placed on the existing capacity portfolio. Due to the substantial load growth described in the DaFonte-Killeen Testimony, the Company currently must rely on extensive trucking of LNG and the full nameplate capability of its propane facilities in order to meet design day demand. Such reliance is not appropriate for the long term. The new capacity provided by the TGP Contract will allow for a more sustainable level of LNG trucking and a more reasonable measure of the quantity of propane that could be dispatched during a cold snap.

11. For the reasons set forth in this Petition and in the DaFonte-Killeen Testimony, the TGP Contract is reasonable and prudent and should be approved by the Commission.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Open a proceeding to conduct a review of this matter and determine that Liberty's decision to enter into the TGP Contract was reasonable and prudent, and that the TGP Contract is approved;
- B. Complete the review and issue a final order no later than September 1, 2021; and
- C. Grant such other relief as is just and reasonable and consistent with the public interest.

Respectfully submitted,  
Liberty Utilities (EnergyNorth Natural Gas) Corp.  
d/b/a Liberty  
By its Attorney,



Date: January 20, 2021

By: \_\_\_\_\_

Michael J. Sheehan, Esq. #6590  
116 North Main Street  
Concord, NH 03301  
Telephone (603) 724-2135  
Michael.Sheehan@libertyutilites.com



By: \_\_\_\_\_

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Keegan Werlin LLP  
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Boston, MA 02110  
(617) 951-1400  
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[jralston@keeganwerlin.com](mailto:jralston@keeganwerlin.com)

Certificate of Service

I certify that on January 20, 2021, a copy of this petition has been electronically forwarded to the Office of the Consumer Advocate.



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Michael J. Sheehan

GAS TRANSPORTATION AGREEMENT  
(For Use Under FT-A Rate Schedule)

THIS AGREEMENT is made and entered into as of the 1 day of November, 2021, by and between TENNESSEE GAS PIPELINE COMPANY, L.L.C., a Delaware limited liability company, hereinafter referred to as "Transporter" and LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP., a NEW HAMPSHIRE CORPORATION, hereinafter referred to as "Shipper." Transporter and Shipper shall collectively be referred to herein as the "Parties."

NOW THEREFORE, Transporter and Shipper agree as follows:

ARTICLE I

DEFINITIONS

- 1.1 TRANSPORTATION QUANTITY - shall mean the maximum daily quantity of gas which Transporter agrees to receive and transport on a firm basis, subject to Article II herein, for the account of Shipper hereunder on each day during the term hereof, as specified on Exhibit "A" attached hereto. Any limitations on the quantities to be received from each Point of Receipt and/or delivered to each Point of Delivery shall be as specified on Exhibit "A" attached hereto.
- 1.2 EQUIVALENT QUANTITY - shall be as defined in Article I of the General Terms and Conditions of Transporter's FERC Gas Tariff.
- 1.3 COMMENCEMENT DATE – shall mean November 1, 2021.

ARTICLE II

TRANSPORTATION

Commencing upon the Commencement Date, Transporter agrees to accept and receive daily on a firm basis, in accordance with Rate Schedule FT-A, at the Point(s) of Receipt from Shipper or for Shipper's account such quantity of gas as Shipper makes available up to the Transportation Quantity, and to deliver to or for the account of Shipper to the Point(s) of Delivery an Equivalent Quantity of gas.

ARTICLE III

POINT(S) OF RECEIPT AND DELIVERY

The Primary Point(s) of Receipt and Delivery shall be those points specified on Exhibit "A" attached hereto.

ARTICLE IV

FACILITIES

All facilities are in place to render the service provided for in this Agreement and Transporter shall have no obligation to build facilities to perform this service.

ARTICLE V

GAS TRANSPORTATION AGREEMENT (continued)  
(For Use Under FT-A Rate Schedule)

QUALITY SPECIFICATIONS AND STANDARDS FOR MEASUREMENT

For all gas received, transported and delivered hereunder the Parties agree to the Quality Specifications and Standards for Measurement as specified in the General Terms and Conditions of Transporter's FERC Gas Tariff. To the extent that no new measurement facilities are installed to provide service hereunder, measurement operations will continue in the manner in which they have previously been handled. In the event that such facilities are not operated by Transporter or a downstream pipeline, then responsibility for operations shall be deemed to be Shipper's.

ARTICLE VI

RATES AND CHARGES

- 6.1 TRANSPORTATION RATES - Commencing upon the Commencement Date, the rates, charges, and surcharges to be paid by Shipper to Transporter for the transportation service provided herein shall be in accordance with Transporter's Rate Schedule FT-A and the General Terms and Conditions of Transporter's FERC Gas Tariff.

Except as provided to the contrary in any written or electronic agreement(s) between Transporter and Shipper in effect during the term of this Agreement, Shipper shall pay Transporter the applicable maximum rate(s) and all other applicable charges and surcharges specified in the Summary of Rates and Charges in Transporter's FERC Gas Tariff and in Rate Schedule FT-A. Transporter and Shipper may mutually agree from time to time to discounted rates or Negotiated Rates for service provided hereunder in accordance with the provisions of Rate Schedule FT-A and the General Terms and Conditions of Transporter's FERC Gas Tariff.

Transporter and Shipper may agree that a specific discounted rate will apply only to certain volumes under the agreement. Transporter and Shipper may agree that a specified discounted rate will apply only to specified volumes (MDQ, TQ, commodity volumes, Extended Receipt and Delivery Service Volumes or Authorized Overrun volumes) under the Agreement; that a specified discounted rate will apply only if specified volumes are achieved (with the maximum rates applicable to volumes above the specified volumes or to all volumes if the specified volumes are never achieved); that a specified discounted rate will apply only during specified periods of the year or over a specifically defined period of time; that a specified discounted rate will apply only to specified points, zones, markets or other defined geographical area; and/or that a specified discounted rate will apply only to production or reserves committed or dedicated to Transporter. Transporter and Shipper may agree to a specified discounted rate pursuant to the provisions of this Section 6.1 provided that the discounted rate is between the applicable maximum and minimum rates for this service.

In addition, a discount agreement may include a provision that if one rate component which was at or below the applicable Maximum Rate at the time the discount agreement was executed subsequently exceeds the applicable Maximum Rate due to a change in Transporter's Maximum Rates so that such rate component must be adjusted downward to equal the new applicable Maximum Rate, then other rate components may be adjusted upward to achieve the agreed overall rate, as long as none of the resulting rate components exceed the Maximum Rate applicable to that rate component. Such

GAS TRANSPORTATION AGREEMENT (continued)  
(For Use Under FT-A Rate Schedule)

changes to rate components shall be applied prospectively, commencing with the date a Commission Order accepts revised tariff sheet rates. However, nothing contained herein shall be construed to alter a refund obligation under applicable law for any period during which rates that had been charged under a discount agreement exceeded rates which ultimately are found to be just and reasonable.

- 6.2 INCIDENTAL CHARGES - Shipper agrees to reimburse Transporter for any filing or similar fees, which have not been previously paid for by Shipper, which Transporter incurs in rendering service hereunder.
- 6.3 CHANGES IN RATES AND CHARGES - Shipper agrees that Transporter shall have the unilateral right to file with the appropriate regulatory authority and make effective changes in (a) the rates and charges applicable to service pursuant to Transporter's Rate Schedule FT-A or any successor rate schedule, (b) the rate schedule(s) pursuant to which service hereunder is rendered, and/or (c) any provision of the General Terms and Conditions of Transporter's FERC Gas Tariff applicable to those rate schedules or this Agreement. Transporter agrees that Shipper may protest or contest the aforementioned filings, and may seek authorization from duly constituted regulatory authorities for such adjustment of Transporter's existing FERC Gas Tariff as may be found necessary to assure Transporter just and reasonable rates.
- 6.4 [Not applicable.]

ARTICLE VII

BILLINGS AND PAYMENTS

Transporter shall bill and Shipper shall pay all rates and charges in accordance with Articles VII and VIII, respectively, of the General Terms and Conditions of Transporter's FERC Gas Tariff.

ARTICLE VIII

RATE SCHEDULE AND GENERAL TERMS AND CONDITIONS

This Agreement shall be subject to the effective provisions of Transporter's Rate Schedule FT-A and to the General Terms and Conditions of Transporter's FERC Gas Tariff incorporated therein, as the same may be changed or superseded from time to time in accordance with the rules and regulations of the FERC.

ARTICLE IX

REGULATION

- 9.1 This Agreement shall be subject to all applicable and lawful governmental statutes, orders, rules and regulations and is contingent upon the receipt and continuation of all necessary regulatory approvals or authorizations upon terms acceptable to Transporter. This Agreement shall be void and of no force and effect if any necessary regulatory approval is

GAS TRANSPORTATION AGREEMENT (continued)  
(For Use Under FT-A Rate Schedule)

not so obtained or continued. All Parties hereto shall cooperate to obtain or continue all necessary approvals or authorizations, but no Party shall be liable to any other Party for failure to obtain or continue such approvals or authorizations.

- 9.2 The transportation service described herein shall be provided subject to Subpart G, Part 284 of the FERC Regulations.

ARTICLE X

RESPONSIBILITY DURING TRANSPORTATION

Except as herein specified, the responsibility for gas during transportation shall be as stated in the General Terms and Conditions of Transporter's FERC Gas Tariff.

ARTICLE XI

WARRANTIES

- 11.1 In addition to the warranties set forth in Article XI of the General Terms and Conditions of Transporter's FERC Gas Tariff, Shipper warrants the following:
- (a) Shipper warrants that all upstream and downstream transportation arrangements are in place, or will be in place by the Commencement Date, and that it has advised the upstream and downstream transporters of the receipt and delivery points under this Agreement and any quantity limitations for each point as specified on Exhibit "A" attached hereto. Shipper agrees to indemnify and hold Transporter harmless for refusal to transport gas hereunder in the event any upstream or downstream transporter fails to receive or deliver gas as contemplated by this Agreement.
  - (b) [Not applicable.]
  - (c) Shipper agrees to indemnify and hold Transporter harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses (including reasonable attorneys fees) arising from or out of breach of any warranty by Shipper herein.
- 11.2 Transporter shall not be obligated to provide or continue service hereunder in the event of any breach of warranty.
- 11.3 [Not applicable.]

GAS TRANSPORTATION AGREEMENT (continued)  
(For Use Under FT-A Rate Schedule)

ARTICLE XII

TERM

- 12.1 This Agreement shall be effective as of the date hereof. Service hereunder shall commence on the Commencement Date, and shall continue in effect until October 31, 2041 ("Primary Term"), unless modified as per Exhibit "B". Any rights to Shipper's extension of this Agreement after the Primary Term shall be set forth in Exhibit "A" hereto; provided, however, if Exhibit "A" does not specify Shipper's extension rights under the Agreement, and if the Primary Term is one year or more, then any rights to Shipper's extension of this Agreement after the Primary Term shall be governed by Article V, Section 4 of the General Terms and Conditions of Transporter's FERC Gas Tariff; and provided further, that if the FERC or other governmental body having jurisdiction over the service rendered pursuant to this Agreement authorizes abandonment of such service, this Agreement shall terminate on the abandonment date permitted by the FERC or such other governmental body.
- 12.2 Any portions of this Agreement necessary to resolve or cash out imbalances under this Agreement as required by the General Terms and Conditions of Transporter's FERC Gas Tariff shall survive the other parts of this Agreement until such time as such balancing has been accomplished; provided, however, that Transporter notifies Shipper of such imbalance not later than twelve months after the termination of this Agreement.
- 12.3 This Agreement will terminate automatically upon written notice from Transporter in the event Shipper fails to pay all of the amount of any bill for service rendered by Transporter hereunder in accord with the terms and conditions of Article VIII of the General Terms and Conditions of Transporter's FERC Gas Tariff.

ARTICLE XIII

NOTICE

Except as otherwise provided in the General Terms and Conditions of Transporter's FERC Gas Tariff applicable to this Agreement, any notice under this Agreement shall be in writing and mailed to the address of the Party intended to receive the same, as follows:

TRANSPORTER: Tennessee Gas Pipeline Company, L.L.C.  
1001 Louisiana Street, Suite 1000  
Houston, Texas 77002

Attention: Director, Transportation Services

SHIPPER:

NOTICES: LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS)

CORP.

GAS TRANSPORTATION AGREEMENT (continued)  
(For Use Under FT-A Rate Schedule)

15 Buttrick Rd

Londonderry, NH 03053

Attention: KELLY ESPOSITO

BILLING: LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS)

CORP.

15 Buttrick Rd

Londonderry, NH 03053

Attention: ENERGY SUPPLY DEPARTMENT

or to such other address as either Party shall designate by formal written notice to the other.

ARTICLE XIV

ASSIGNMENTS

- 14.1 Either Party may assign or pledge this Agreement and all rights and obligations hereunder under the provisions of any mortgage, deed of trust, indenture, or other instrument which it has executed or may execute hereafter as security for indebtedness. Either Party may, without relieving itself of its obligation under this Agreement, assign any of its rights hereunder to a company with which it is affiliated. Otherwise, Shipper shall not assign this Agreement or any of its rights hereunder, except in accord with Article VI, Section 1 of the General Terms and Conditions of Transporter's FERC Gas Tariff.
- 14.2 Any person which shall succeed by purchase, merger, or consolidation to the properties, substantially as an entirety, of either Party hereto shall be entitled to the rights and shall be subject to the obligations of its predecessor in interest under this Agreement.

ARTICLE XV

MISCELLANEOUS

- 15.1 THE INTERPRETATION AND PERFORMANCE OF THIS CONTRACT SHALL BE IN ACCORDANCE WITH AND CONTROLLED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE DOCTRINES GOVERNING CHOICE OF LAW.
- 15.2 If any provision of this Agreement is declared null and void, or voidable, by a court of competent jurisdiction, then that provision will be considered severable at either Party's option; and if the severability option is exercised, the remaining provisions of the Agreement shall remain in full force and effect.

GAS TRANSPORTATION AGREEMENT (continued)  
(For Use Under FT-A Rate Schedule)

- 15.3 Unless otherwise expressly provided in this Agreement or Transporter's FERC Gas Tariff, no modification of or supplement to the terms and provisions stated in this Agreement shall be or become effective until Shipper has submitted a request for change through Transporter's Interactive Website and Shipper has been notified through Transporter's Interactive Website of Transporter's agreement to such change.
- 15.4 Exhibit "A" and, when applicable, Exhibit "B" attached hereto are incorporated herein by reference and made a part hereof for all purposes.
- 15.6 [Not applicable.]
- 15.7 [Not applicable.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first hereinabove written.

TENNESSEE GAS PIPELINE COMPANY, L.L.C.

BY:   
Agent and Attorney-in-Fact *TS*

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

GAS TRANSPORTATION AGREEMENT  
 (For Use Under FT-A Rate Schedule)

EXHIBIT A  
 AMENDMENT NO. 0  
 TO GAS TRANSPORTATION AGREEMENT  
 DATED November 1, 2021  
 BETWEEN  
 TENNESSEE GAS PIPELINE COMPANY, L.L.C.  
 AND  
 LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.

Amendment Effective Date: November 1, 2021

Service Package: 358905-FTATGP

Service Package TQ: 40000 Dth

Beginning Date	Ending Date	TQ
11/01/2021	10/31/2041	40,000

BEGINNING DATE	ENDING DATE	METER	METER NAME	INTERCONNECT PARTY NAME	COUNTY	ST	ZONE	R/D	LEG	METER-TQ
11/01/2021	10/31/2041	412538	MARITIME/TGP DRACUT MIDDLESEX	MARITIMES & N.E. P/L	MIDDLESEX	MA	06	R	200	40000
11/01/2021	10/31/2041	420931	CALPINE/TGP GRANITE RIDGE ROCKINGHA	CALPINE ENERGY SERVICES	ROCKINGHAM	NH	06	D	200	40000

Total Receipt TQ 40000  
 Total Delivery TQ 40000

Number of Receipt Points: 1  
 Number of Delivery Points: 1

044

GAS TRANSPORTATION AGREEMENT  
(For Use Under FT-A Rate Schedule)

“Other Provisions Permitted By Tariff Under the Applicable Rate Schedule and/or General Terms and Conditions and Pursuant to Article XXXVI of the General Terms and Conditions of Transporter’s FERC Gas Tariff:”

Note: Exhibit A is a reflection of the contract and all amendments as of the amendment effective date.

**EXHIBIT B**

TO GAS TRANSPORTATION AGREEMENT

DATED NOVEMBER 1, 2021

BETWEEN

TENNESSEE GAS PIPELINE COMPANY, L.L.C.

AND

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.

**REVENUE REDUCTION OPTION PROVISIONS\***

SERVICE PACKAGE: 358905

OPTION PERIOD(S): Shipper's revenue reduction option may be exercised on November 1, 2022

**OPTION DESCRIPTION:**

The parties recognize that Shipper is seeking approval of this Agreement from the New Hampshire Public Utilities Commission (NHPUC). Shipper shall have a one-time option to reduce the TQ of this Agreement to -0- Dth/d effective November 1, 2022.

Shipper must notify Transporter of its intent to exercise the option in writing at any time from the date of this Service Package to no later than July 31, 2022. Shipper's Reduction Option can only be exercised due to a rejection of this Pre-Arranged Deal from the NHPUC. Shipper's notice to Tennessee shall include written verification from the NHPUC of such rejection from the NHPUC.

**OPTION CONSIDERATION:**

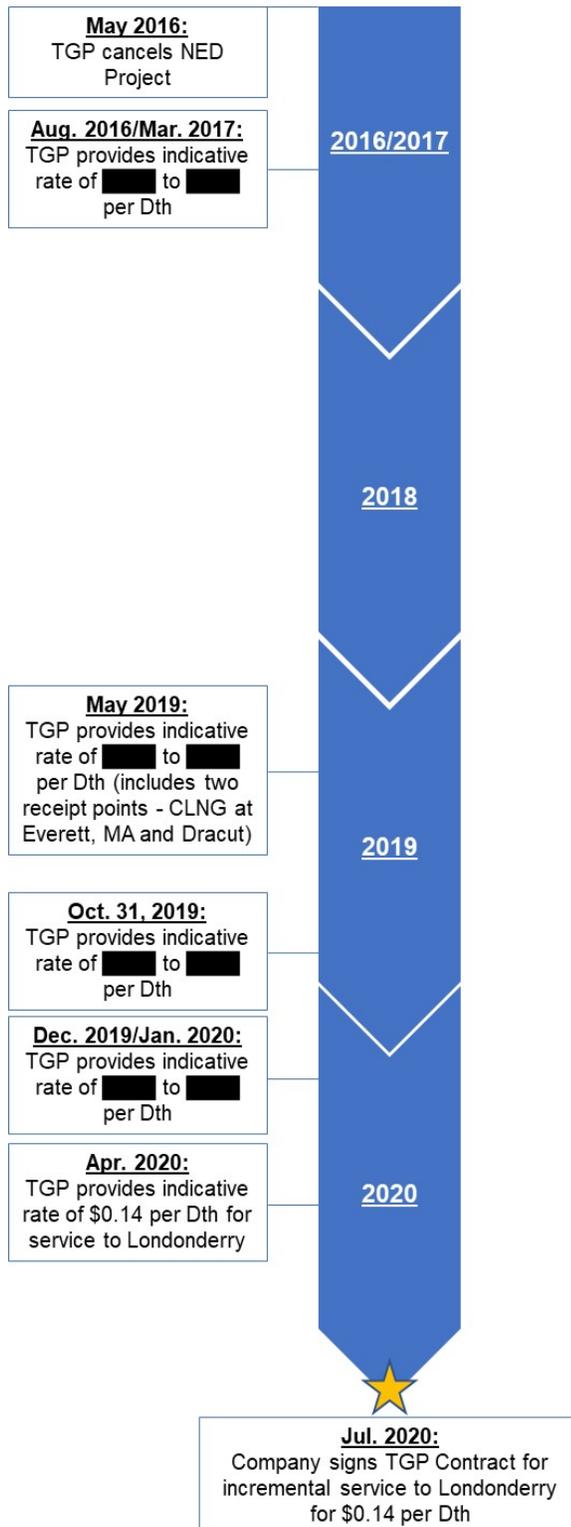
Shipper is granted this revenue reduction option in exchange for the terms agreed to in Service Package 358905.

**ANY LIMITATIONS ON THE EXERCISE OF THE REVENUE REDUCTION OPTION AS BID BY THE SHIPPER:**

Limitations described above in Option Description.

\*NOTICE MUST BE GIVEN AS PROVIDED FOR IN THE NET PRESENT VALUE STANDARD OF THE GENERAL TERMS AND CONDITIONS.

### Timeline of TGP Rates



02/16/21

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 21-008**

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
D/B/A LIBERTY UTILITIES**

**Petition for Approval of a Firm Transportation Agreement  
with Tennessee Gas Pipeline Company, LLC**

**ORDER OF NOTICE**

On January 20, 2021, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty, or the Company) filed a petition for approval of a firm transportation agreement with Tennessee Gas Pipeline Company, LLC (TGP) for gas supply. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/docketbk/2021/21-008.html>.

The filing raises, *inter alia*, issues related to whether the proposed firm transportation agreement is prudent, reasonable, and consistent with the public interest; and whether the testimony provided with the petition addressing resource requirements, evaluation of resource alternatives, possible future capital investment to fully utilize the capacity, and TGP contract risks and risk mitigation, supports approval of the agreement. Those issues relate to RSA 374:1 and 374:2 (public utilities to provide reasonably safe and adequate service at "just and reasonable" rates); RSA 374:4 (the Commission's duty to keep informed of the manner in which all public utilities in the state provide for safe and adequate service); RSA 374:7 (Commission authority to investigate and ascertain the methods employed by public utilities to "order all reasonable and just improvements and extensions in service or methods" to supply gas); and RSA 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable).

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The terms of the firm transportation agreement with TGP would permit Liberty to terminate the agreement on November 1, 2022, without liability if approvals have not been obtained from jurisdictional regulatory authorities that the Company determines are necessary in connection with the TGP Capacity contract. Under the terms of the agreement, notice of such termination must be provided to TGP no later than July 31, 2022. Liberty requests an expedited review of the agreement and issuance of an order by September 1, 2021, to enable the Company to provide timely notice of satisfaction of the agreement conditions precedent or lack thereof.

The petition also includes a motion for protective order and confidential treatment regarding the firm transportation agreement. Each party has the right to have an attorney represent the party at the party's own expense.

**Based upon the foregoing, it is hereby**

**ORDERED**, that, consistent with Governor Christopher T. Sununu's Emergency Order #12, the Commission will hold a web-enabled remote prehearing conference, pursuant to N.H. Admin. R., Puc 203.15, on March 24, 2021 at 1:30 pm, at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. R., Puc 203.15. Members of the public who wish to access the prehearing conference may do so [by clicking here](#). **If you have any difficulty obtaining access to this remote event, please notify the Commission by calling (603) 271-2431 as soon as possible.** Parties will be provided with additional instructions prior to the prehearing conference; and it is

**FURTHER ORDERED**, that, immediately following the prehearing conference, Liberty, the Staff of the Commission, and any intervenors hold a web-enabled remote technical session to review the petition; and it is

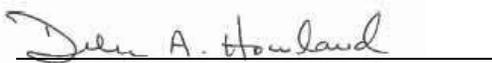
**FURTHER ORDERED**, that pursuant to N.H. Admin. R., Puc 203.12, Liberty shall notify all persons desiring to be heard at this hearing by publishing a copy of this order of notice on its website

no later than one business day after the date of issue. In addition, the Executive Director shall publish this order of notice on the Commission's website no later than one business day after the date of issue; and it is

**FURTHER ORDERED**, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any party seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to Liberty and the Office of the Consumer Advocate on or before March 19, 2021, such petition stating the facts demonstrating how its rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, any party seeking to intervene may elect to submit this filing in electronic form; and it is

**FURTHER ORDERED**, that any party objecting to a petition to intervene make said objection on or before March 24, 2021.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of February, 2021.



Debra A. Howland  
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

## Service List - Docket Related

Docket#: 21-008

Printed: 2/16/2021

Email Addresses

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STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty

Docket No. DG 21-008

**Petition for Approval of a Firm Transportation Agreement with Tennessee Gas Pipeline  
Company, LLC**

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into this 24th day of September 2021, by and among Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty” or the “Company”), the New Hampshire Department of Energy (“Energy”), and the Office of the Consumer Advocate (“OCA”) (the “Settling Parties”). This Settlement Agreement resolves all issues among the Settling Parties regarding the Company’s request for approval of a firm transportation agreement with Tennessee Gas Pipeline Company, LLC (“TGP”) dated July 14, 2020 (the “TGP Contract”).

**SECTION 1. INTRODUCTION AND PROCEDURAL HISTORY**

1.1 On January 20, 2021, Liberty filed with the New Hampshire Public Utilities Commission (“Commission”) a petition pursuant to RSA 374:1, RSA 374:2, and RSA 378:7 (the “Petition”) requesting approval of the TGP Contract, including a determination that the Company’s decision to sign the TGP Contract was prudent. The Petition was supported by testimony and attachments describing the key terms of the agreement and the reasons supporting the Company’s decision to sign the TGP Contract. As described in the Petition, the TGP Contract is for an initial term of 20 years and provides that the Company shall purchase, on a firm basis, 40,000 dekatherms (“Dth”) per day of capacity on the TGP-owned Concord Lateral from the Dracut, Massachusetts, receipt point to the Londonderry, New Hampshire, delivery point (also known as the Granite Ridge delivery point). The TGP Contract rate is the currently effective TGP tariff rate for Firm

Transportation Agreement (“FT-A”) service defined as Zone 6 to Zone 6. The in-service date for the TGP Contract is November 1, 2021. The Petition proposed that the capacity costs for the TGP Contract would be recovered from customers through Liberty’s cost of gas rate.

1.2 On January 25, 2021, the OCA filed a letter of participation pursuant to RSA 363:28.

1.3 The Commission issued an Order of Notice on February 16, 2021, which scheduled a prehearing conference and outlined the process for interested parties to request intervention. The Conservation Law Foundation (“CLF”) and the Pipeline Awareness Network for the Northeast, Inc. (“PLAN”) filed petitions to intervene.

1.4 On March 24, 2021, the Commission held a prehearing conference and the parties met in a technical session. By secretarial letter dated April 15, 2021, the Commission approved the parties’ proposed procedural schedule that provided for several rounds of discovery, technical sessions, settlement conferences, testimony deadlines, and an October 6, 2021, hearing date. The Secretarial letter also granted CLF’s and PLAN’s motions to intervene.

1.5 Based on discussions that occurred throughout the discovery process and at technical sessions, the Settling Parties have agreed to the terms of this Settlement Agreement, subject to Commission approval. The Settling Parties recommend and request that the Commission approve this Settlement Agreement without modification.

## **SECTION 2. AGREEMENT**

2.1 The Settling Parties agree that the Company’s decision to enter into the TGP Contract was prudent, that the costs to be incurred under the TGP Contract are reasonable, and thus recommend that the Commission approve the TGP Contract.

2.2 The Settling Parties condition their agreement to recommend approval of the TGP Contract on the terms contained in Sections 3 through 5 below.

### **SECTION 3. PLANNING STANDARDS**

3.1 In Liberty's next least cost integrated resource plan, which is due on or before October 2, 2022<sup>1</sup> ("2022 LCIRP"), the Company shall present its design day analysis for the 2022 LCIRP based on weather data from the 30 years immediately preceding the year of the LCIRP filing.

3.2 The Company shall use the design day standard set forth in Section 3.1 as an input to the Company's supply deficiency analysis to be included in the 2022 LCIRP.

3.3 No less than six months prior to the Company's decision on whether to exercise its right to extend any of the three TGP contracts that originate from Dracut, Massachusetts (which include the TGP Contract at issue in this docket and two similar contracts with TGP<sup>2</sup>), Liberty shall file with Energy an updated supply deficiency analysis using the planning standard in set forth in Section 3.1.

### **SECTION 4. PROPANE FACILITIES**

4.1 The Company shall request Commission approval no less than 12 months prior to retiring any of the Company's propane or LNG facilities.<sup>3</sup> The Company shall submit to Energy, within

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<sup>1</sup> RSA 378:38 states that "each electric and natural gas utility ... shall file a least cost integrated resource plan with the commission within 2 years of the commission's final order regarding the utility's prior plan, and in all cases within 5 years of the filing date of the prior plan." Liberty's prior LCIRP was filed on October 2, 2017. *See* Docket No. DG. 17-152.

<sup>2</sup> The two prior TGP contract numbers 42076 and 72694 provide for capacity of up to 20,000 Dth/day and 30,000 Dth/day, respectively, from Dracut, Massachusetts located in Zone 6 to the Company's city-gates, with expiration dates of October 31, 2025, and October 31, 2029, respectively.

<sup>3</sup> These conditions related to "propane facilities" shall exclude the Company's propane facility in Keene, which is subject to separate regulatory conditions.

30 days of completion, any assessments or studies conducted of such facilities, including the assessment of potential impacts on Company operations, maintenance, and emergency use with respect to periods of restrictions or interruption of traditional interstate pipelines, and with respect to periods of high demand and potential impacts on supply costs. Any future updates to such assessments shall be provided to Energy within 30 days of completion and within six months prior to any Company request for approval of the retirement of any propane or LNG facilities, and shall be included in future LCIRP filings.

4.2 The Company shall file with Energy annual reports of customer complaints received during the preceding winter related to the Company's use of propane as follows:

- a. The name of the customer making the complaint, and the address or location of the customer's end use appliances and, if available, a list of all appliances affected including make, model, and approximate age;
- b. The date and time of the complaint and when the Company became aware of the complaint;
- c. The nature of the complaint;
- d. The approximate distance between the relevant propane plant and the customer's location;
- e. The most current version of the following information: plant output by temperature, representative maps of computer models indicating where propane-air travels in the distribution system;
- f. The most current version of the models that show proposed gas quality for different mixes of propane-air blended with pipeline gas at the Liberty plant outlet as it goes into the distribution system;
- g. Once the Company implements proposed upgrades to the plant control systems, the Company will provide historical data for actual blend ratio, Wobbe and gas density to the SCADA system;

- h. The details of the Company’s propane injection (time, duration; quantity, BTU measurements); and
- i. A description of the Company’s actions to investigate and resolve the complaint.

These reports shall be filed by May 20 of each year, beginning with May 20, 2022.

## **SECTION 5. ON-SYSTEM ENHANCEMENTS**

5.1 The TGP Contract may require certain on-system enhancements, which may include construction of a distribution main that will run from the Granite Ridge transmission line in Londonderry to the end of the existing Nashua sub-transmission feeder near the Budweiser plant in Merrimack, known as the “Budweiser Line.”<sup>4</sup> No less than 90 days prior to commencing construction of the Budweiser Line, Liberty shall provide Energy with detailed engineering and construction plans and the Company’s most recent cost estimates for the Budweiser Line project. These on–system enhancements are not part of this Settlement Agreement and the Commission’s approval of the TGP Contract and this Settlement Agreement does not impute pre-approval by the Settling Parties of the prudence of any such system enhancements that may be undertaken in the future. Liberty may request recovery of such investments in a future rate case and nothing in this Settlement Agreement precludes any of the Settling Parties from opposing such a request.

## **SECTION 6: COST RECOVERY**

6.1 Liberty shall recover the costs associated with the TGP Contract through its Cost of Gas tariff.

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<sup>4</sup> See Direct Testimony of Francisco C. DaFonte and William R. Killeen Testimony at Bates 026, 028, 035.

## **SECTION 7: EFFECTIVE DATE**

7.1 This Settlement Agreement is subject to and shall become effective on the date of Commission approval.

## **SECTION 8. GENERAL PROVISIONS**

8.1 This Settlement Agreement is expressly conditioned on the Commission's acceptance of all provisions, without change or condition. If the Commission does not accept this Settlement Agreement in its entirety, without change or condition, or if the Commission makes any findings that go beyond the scope of this Settlement Agreement, and any of the Settling Parties notify the Commission within five business days of their disagreement with any such changes, conditions, or findings, the Settlement Agreement shall be deemed to be withdrawn, in which event it shall be null and void and without effect, shall not constitute any part of the record in this proceeding, and no party to this proceeding may rely on this agreement for any other purpose.

8.2 The Settling Parties agree that the Commission's approval of this Settlement Agreement shall not constitute continuing approval of, or precedent for, any particular principle or issue, but such acceptance does constitute a determination that the TGP Contract and associated settlement conditions are reasonable and consistent with the public interest.

8.3 This Settlement Agreement shall not be deemed an admission by any of the Settling Parties that any allegation or contention in this proceeding by any other party, other than those specifically agreed to here, is true and valid. This Settlement Agreement shall not be construed to represent any concession by any Settling Party regarding specific positions taken with respect to the Company's proposals in this docket, nor shall this Settlement Agreement be deemed to foreclose any Settling Party in the future from taking any position in any subsequent proceedings. The

conditions agreed to in this Settlement Agreement are settlement positions that reflect a compromise of all issues in this proceeding.

8.4 The pre-filed testimony and supporting documents previously filed in this proceeding are not expected to be subject to cross-examination by the Settling Parties, which would normally occur in a fully litigated case. The Settling Parties agree that the Commission should admit all pre-filed testimony and supporting documents as exhibits for the purpose of considering this Settlement Agreement and should give those exhibits whatever weight it deems appropriate. Consent by the Settling Parties to admit pre-filed testimony without challenge does not constitute agreement by any of the Settling Parties that the content of the pre-filed testimony is accurate or that the views of the witnesses should be assigned any particular weight by the Commission. The resolution of any specific issue in this Settlement Agreement does not indicate the Settling Parties' agreement to such resolution for purposes of any future proceedings, nor does the reference to any other document bind the Settling Parties to the contents of, or recommendations in, that document for purposes of any future proceeding. The Commission's approval of the recommendations in this Settlement Agreement shall not constitute a determination or precedent with regard to any TGP Contract terms, but rather shall constitute only a determination that the Company's decision to enter into the TGP Contract was prudent. The Settling Parties agree to forego cross-examining witnesses of the Settling Parties regarding their pre-filed testimony and, therefore, the admission into evidence of any such witness's testimony or supporting documents shall not be deemed in any respect to constitute an admission by any Settling Party that any allegation or contention in this proceeding is true or false, except that the sworn testimony of any such witness shall constitute an admission by such witness.

8.5 The rights granted to and the obligations imposed on the Settling Parties by this Settlement Agreement shall be binding on or inure to the benefit of any successors in interest as if such successor was a signatory party. The Settling Parties agree to cooperate in advocating that the Commission should approve this Settlement Agreement in its entirety and without modification.

8.6 The discussions that produced this Settlement Agreement were conducted with the understanding that all offers of settlement and settlement discussions relating to this docket shall be confidential, shall not be admissible as evidence in this proceeding, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise. The content of these negotiations, including any documents prepared during such negotiations for the purpose of reaching a settlement, shall be privileged and all offers of settlement shall be without prejudice to the position of any party presenting such offer.

8.7 This Settlement Agreement may be executed by facsimile, electronic signature, and in multiple counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one agreement binding on the Settling Parties.

## **SECTION 9. CONCLUSION**

9.1 The Settling Parties affirm that the proposed Settlement Agreement will result in a contract that is reasonable and prudent and should be approved by the Commission.

*[signature pages follow]*

Dated: September 24, 2021

Liberty Utilities (EnergyNorth Natural Gas) Corp.  
d/b/a Liberty



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By its Attorney, Michael J. Sheehan

Dated: September 24, 2021

New Hampshire Department of Energy

*/s/ Paul B. Dexter*

By its Attorney, Paul B. Dexter, Esq.  
Staff Attorney/Hearings Examiner

Dated: September \_\_, 2021

Office of the Consumer Advocate

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By the Consumer Advocate, Donald M. Kreis

Dated: September 24, 2021

Liberty Utilities (EnergyNorth Natural Gas) Corp.  
d/b/a Liberty

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By its Attorney, Michael J. Sheehan

Dated: September \_\_, 2021

New Hampshire Department of Energy

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By its Attorney, Paul B. Dexter

Dated: September 23, 2021

Office of the Consumer Advocate



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By the Consumer Advocate, Donald M. Kreis

**BEFORE THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION  
Docket No. DG 21-008**

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.,  
d/b/a LIBERTY UTILITIES**

**Petition for Approval of a Firm Transportation Agreement  
with Tennessee Gas Pipeline Company, LLC**

**CONSERVATION LAW FOUNDATION'S MOTION FOR  
REHEARING OF ORDER NO. 26,551**

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

**I. Background**

In this matter, Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (“Liberty”) filed a petition for approval of a firm transportation agreement with Tennessee Gas Pipeline Company, LLC (“TGP”) for 40,000 dekatherms of natural gas capacity. In the attachments filed with its petition, Liberty asserted that to optimize the increased capacity from the proposed TGP agreement, it must complete certain on-system distribution enhancement projects totaling approximately \$45 million.<sup>1</sup>

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

In its order of notice initiating this docket, the Commission held that Liberty’s petition raised issues related to whether the proposed agreement with TGP “is prudent, reasonable, and consistent with the public interest; and whether the testimony provided with the petition addressing resource requirements, evaluation of resource alternatives, possible future capital investment to fully utilize the capacity, and TGP contract risks and risk mitigation, supports approval of the agreement.” (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021)). Further, as the Commission noted in its order, RSA 374:1, RSA 374:2, and RSA 378:7 require that all services furnished by public utilities—and that all charges and rates rendered for such services—be just and reasonable. *Id.* As the petitioner, Liberty had the burden of proving by a preponderance of the evidence, *See* Rule Puc 203.25, that the proposed TGP agreement was “prudent, reasonable, and consistent with the public interest.” (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021)).

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

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

## II. Argument

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RSA 378:40 (emphasis added)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Id.*

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

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

### **III. Conclusion**

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

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

Respectfully submitted,

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December 10, 2021

**CERTIFICATE OF SERVICE**

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

Respectfully submitted,

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**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.<sup>1</sup> 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

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<sup>1</sup> 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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December 16, 2021

#### 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.

  
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Julianne Desmet, Esq.

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;”<sup>1</sup> (2) because of a “lack of proceedings on Liberty’s 2017 LCIRP;”<sup>2</sup> (3) because Liberty’s filings in this docket “do not align with its filings in the LCIRP docket;”<sup>3</sup> and (4) because Liberty’s filings “fail to comply with all elements of the LCIRP statutes.”<sup>4</sup> CLF raised the same arguments prior to the Order in its initial brief.<sup>5</sup> In fact, many sections of CLF’s motion are taken verbatim from its initial brief.<sup>6</sup>

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<sup>1</sup> Motion, at 3.

<sup>2</sup> Motion, at 6.

<sup>3</sup> Motion, at 11.

<sup>4</sup> Motion, at 14.

<sup>5</sup> 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).

<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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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<sup>7</sup> 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).

<sup>8</sup> 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 its 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 000007). 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,”<sup>9</sup> 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.<sup>10</sup> 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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<sup>9</sup> Motion, at 6.

<sup>10</sup> 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,”<sup>11</sup> 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.<sup>12</sup>

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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<sup>11</sup> Motion at 9.

<sup>12</sup> 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,

**Liberty Utilities (EnergyNorth Natural Gas) Corp.,  
d/b/a Liberty**

By its Attorney,



By: \_\_\_\_\_

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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.

A handwritten signature in black ink, appearing to read "M. A. ...", is written above a horizontal line.

COMMISSIONER  
Jared S. ChicoineDEPUTY COMMISSIONER  
Christopher J. Ellms, Jr.DEPARTMENT OF ENERGY  
21 S. Fruit St., Suite 10  
Concord, N.H. 03301-2429

December 17, 2021

Daniel C. Goldner, Chairman  
New Hampshire Public Utilities Commission  
21 South Fruit Street  
Concord, NH 03301-2429

Re: DG 21-008, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a/ Liberty Petition for Approval of Firm Transportation Contract with Tennessee Gas Pipeline Company, LLC; Department of Energy Objection to Motion for Rehearing by Conservation Law Foundation

Dear Chairman Goldner:

The New Hampshire Department of Energy, through this letter, objects to the Motion for Rehearing filed by the Conservation Law Foundation (CLF) on December 10, 2021 and recommends that the Commission deny CLF's Motion. The Commission's Order No 26,551, which approved a gas transportation contract between Liberty Utilities (EnergyNorth Natural Gas) Corp. (Liberty) and Tennessee Gas Pipeline Company, LLC (TGP), is sound, based on the complete record amassed in this docket and applies the appropriate legal standards for review. There exists no good reason for rehearing because the Order was not based on mistake or overlooked matters. *See RSA 541:3; Public Service Company of New Hampshire*, Order No. 25,239 at 8 (June 23, 2011).

Liberty demonstrated that the transportation contract would provide needed capacity using existing interstate pipeline capacity at a lower cost than identified alternatives, such as Granite Bridge, the vastly more expensive Liberty project that the TGP transportation contract replaced. Further, Liberty demonstrated that its capacity portfolio is flexible enough to shed unneeded capacity (and related costs) as time progresses and future gas demand becomes better known. Liberty's demand forecast used in its resource analysis reflected projected demand reductions from (then) approved energy efficiency (EE) programs. Liberty demonstrated that further demand reductions from then proposed (now rejected) expansions of EE programs would not offset the need for the TGP pipeline capacity.

CLF's concerns about the adequacy of Liberty's Least Cost Integrated Resource Plan (LCIRP) can be addressed in the ongoing LCIRP docket (DG 17-152), or perhaps more effectively in the LCIRP docket to be opened following Liberty's next plan filing, which, per RSA 378:38, will be made in 2022.

Accordingly, the Department of Energy respectfully requests that the Commission deny CLF's Motion and allow Order No, 26,551 approving this gas transportation capacity contract to stand.

Consistent with the Commission's *Temporary Changes in Filing Requirements* (March 17, 2020) this letter is being filed solely in electronic form.

Sincerely,

/s/ *Paul B. Dexter*

Paul B. Dexter  
Staff Attorney/Hearings Examiner

Cc: Service List (electronic only)