

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-198

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

**Petition to Approve Firm Supply and Transportation Agreements
and the Granite Bridge Project**

Order Denying Motion to Amend Petition

ORDER NO. 26,409

October 6, 2020

In this order, the Commission denies Liberty's motion to amend its petition, closes the docket, denies Calpine's petition to intervene as moot, and defers consideration of Liberty's motion for protective order.

I. PROCEDURAL HISTORY

On December 22, 2017, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a petition for (1) findings regarding the prudence of certain proposed investments, including a 27-mile in-state natural gas pipeline, and a 2 billion cubic foot on-system liquefied natural gas (LNG) facility, collectively, Granite Bridge, or the Granite Bridge Project, and (2) approval of certain related contractual arrangements, including a delivered supply contract with ENGIE Gas & LNG, LLC and a precedent agreement with Portland Natural Gas Transmission System for firm transportation capacity.

Following a prehearing conference held on March 9, 2018, numerous technical sessions and rounds of discovery, and several prior suspensions of procedural schedules in the ensuing two years, the procedural schedule in this docket was suspended on October 18, 2019.

On May 15, 2020, Liberty proposed a new procedural schedule and on July 31, Liberty filed a motion to amend its initial petition (Motion to Amend Petition) in this docket, with supplemental direct testimony of Francisco C. DaFonte and William R. Killeen, and a motion for confidential treatment of information included in its filing.

On August 7, 2020, Calpine Corporation (Calpine) filed a petition to intervene and a preliminary objection to the amendment of the petition. On August 10, the Conservation Law Foundation (CLF) and Commission Staff (Staff) each filed objections to Liberty's Motion to Amend Petition. On August 12, Staff filed a revised response to Liberty's Motion to Amend Petition. On August 19, Liberty filed a Motion for Leave to File Sur-Reply (Sur-Reply Motion) and a Sur-Reply to the Objections to Motion to Amend (Sur-Reply) filed by CLF and Staff, and the preliminary objection filed by Calpine.

Liberty's Motion to Amend Petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted at <https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-198.html>.

II. POSITIONS OF THE PARTIES AND STAFF

A. Liberty

Motion to Amend Petition

In its Motion to Amend Petition, Liberty requested that the Commission: (1) approve a contract Liberty has negotiated with Tennessee Gas Pipeline (TGP); (2) allow the Company to withdraw its request to approve the Granite Bridge Project in light of the TGP Contract; and (3) authorize EnergyNorth, Liberty's gas utility, to collect costs incurred on the Granite Bridge Project to date. Liberty requested approval of a 40,000 decatherm (Dth) per day (Dth/day) contract with TGP, which would entail on-system distribution investments of either

\$44.5 million (for the TGP Nashua/Manchester Alternative) or \$50.5 million (for the TGP Londonderry Alternative).

Liberty argued that the prudence of the Company's decision to enter the TGP Contract and the prudence of incurring costs to investigate, evaluate, and begin development of the Granite Bridge Project are closely related and that Liberty should be allowed to recover those costs in this proceeding. Liberty noted that the initial Order of Notice in this proceeding, Docket No. DG 17-198, stated that issues raised under the applicable statutes "embrace, but are not limited to, the question of whether Liberty reasonably investigated and analyzed its long-term supply requirements and the alternatives for satisfying those requirements." Motion to Amend Petition at 3, ¶ 7.

Liberty asked the Commission not to open a new docket to review the TGP Contract and the recovery of Granite Bridge Project costs, arguing that those issues fall within the scope of the original Order of Notice in this docket. According to Liberty, the costs accrued thus far throughout the investigation conducted in DG 17-198 were incurred "to investigate, analyze, and ultimately propose what was, through 2019, the least cost option to meet the Company's needs." *Id.* at 3-4, ¶9. Liberty stated that those costs fall within the question outlined in the Order of Notice as to whether "the Company 'investigated and analyzed its long term' needs" or requirements. *Id.* at 4, ¶¶ 9 and 11.

Motion to File Sur-Reply to Objections to Motion to Amend

In its Sur-Reply Motion, Liberty argued that the Company is entitled to a review on the merits in this docket of the issues raised in its Sur-Reply. Liberty argued that its request for an opportunity to present its case to the Commission will not cause any delays because the

procedural schedule for this matter was previously suspended, and the Motion seeks approval of a newly available, lower-cost solution to the Company's capacity needs.

According to Liberty, its new petition for approval of a supply contract with TGP is a "companion filing" to the Company's 2017 Least Cost Integrated Resource Plan (LCIRP) that seeks to meet a capacity need identified in the LCIRP. Liberty argued that the objections filed by Staff and CLF raise new issues of fact and law and/or contain false or misleading statements regarding the Company's proposals, and, therefore, the Company should be afforded an opportunity to file a sur-reply. Finally, Liberty asserted that this proceeding has included substantial efforts by the Company, Staff, and other parties to evaluate the Granite Bridge Project and alternatives, and that even if additional notice is necessary to ensure that interested parties are aware of this "change in circumstances" presented by its new petition, such additional notice would not require the opening of a new docket.

Liberty requested leave to submit its Sur-Reply and other relief as is just and equitable.

Sur-Reply to Objections to Motion to Amend

Liberty filed its Sur-Reply "to address new issues, factual assertions, and claims contained in objections" filed by Staff, CLF, and Calpine in response to its Motion to Amend Petition. Sur-Reply at 1. Liberty argued that Staff's position that the TGP Contract should be considered in a new docket would be "administratively inefficient and prejudice the Company's ability to demonstrate the legal and factual circumstances leading to the contract." Sur-Reply at 2. Liberty argued that Staff's position that the Commission should accept the Company's withdrawal of its petition for approval of the Granite Bridge Project "mischaracterizes the Company's amended request," and that Staff's argument to dismiss the Company's cost recovery proposal is a "*de facto* motion to dismiss consideration of a key element of the Company's

amended petition leading to the favorable TGP Contract.” *Id.* Liberty added that those costs were necessary to its efforts to find the best way to meet customers’ needs while balancing affordability, reliability, and resiliency.

According to Liberty, the amended petition “fits squarely within the scope of this docket.” *Id.* Liberty claimed the DG 17-198 proceeding “has always required consideration of a transportation agreement with TGP in the context of an alternatives analysis, and the TGP Contract has since emerged as the most cost-effective solution to meet customers’ needs.” *Id.* at 3. Liberty cited to the testimony in DG 17-198 of the Pipeline Awareness Network for the Northeast, Inc., (PLAN), which recommended “that the Company contract for transportation with TGP in lieu of moving forward with the Granite Bridge Project,” and Staff’s recommendation at the time that additional analysis of a TGP Option be considered. *Id.* at 6.

According to Liberty, “dismissal” of its Motion to Amend Petition “without further investigation would deprive the Company of its due process right to a determination on the merits of the amended petition.” Liberty claimed that “Staff’s objection relies on factual assertions that are incorrect and serves to highlight that the Motion [to Amend Petition] presents important information for the Commission to evaluate for its ultimate determination in this docket (*e.g.*, what is the right capacity option, including the associated costs, to meet the Company’s identified need).” *Id.* at 3.

Liberty argued that it is entitled to amend the Company’s petition pursuant to Commission rules, citing New Hampshire Code of Administrative Rules, Puc 203.10. *Id.* at 7. Liberty listed the criteria for amendment of a document under Puc 203.10, including:

- (a) Notice is provided to all parties on the service list;
- (b) The Commission determines that the amendment will encourage the just resolution of the proceeding and will not cause undue delay; and

- (c) The amendment does not have “the effect of broadening the scope of the proceeding unless it provides notice to those affected and an opportunity to comment prior to final commission action.” *Id.*

Liberty argued that it met each of the above requirements in the Company’s Motion to Amend Petition.

Liberty further argued that its Motion to Amend Petition will not deprive interested parties of adequate notice, claiming that the title of the docket included reference to approval of “Firm Supply and Transportation Agreements” and therefore does not preclude the Motion, contrary to CLF’s argument otherwise. *Id.* at 10. Liberty stated that nothing prohibits the Commission from “simply amending the title of this proceeding to include specific reference to the TGP Option” and that it is not opposed to an additional notice period. Liberty argued that CLF’s references to the impacts of the TGP Option to individuals and communities in the geographic area of the TGP Concord Lateral are not relevant, that “the TGP Contract requires no construction on the existing Concord Lateral, and thus there will be no subsequent proceeding.” *Id.* at 11.

Finally, Liberty argued that its request to recover costs associated with the development of the Granite Bridge Project is based on facts to be evaluated by the Commission and is not precluded by statute. Liberty asserted that “there is a strong policy argument in favor of granting EnergyNorth’s request because: (a) the costs were necessarily incurred and created leverage for the Company in negotiating a new contract with TGP on favorable terms; and (b) approval of this cost recovery will create a regulatory environment where companies are appropriately incentivized to pursue the least cost option for their customers.” *Id.* at 11.

Liberty argued that a “utility should be afforded cost recovery for termination costs (contract or development) when incurring such termination costs results in net benefits to

customers.” *Id* at 14. Liberty stated that “[r]ecovery of the costs is further warranted because the costs incurred to investigate the Granite Bridge Project are directly tied to the savings achieved through the TGP Option.” *Id.* at 14.

B. CLF

Motion to Amend Petition

CLF objected to Liberty’s Motion to Amend Petition. According to CLF, the granting of Liberty’s motion would contravene Commission rules and likely violate the due process rights of potential intervenors, and, therefore, the Commission should deny Liberty’s motion and require Liberty to withdraw its initial petition and file a separate petition under a new docket and permit robust discovery regarding the new proposal.

CLF strongly supported Liberty’s decision to withdraw its request for approval of the Granite Bridge Project, and asserted the new proposed expansion of the TGP-Concord Lateral is vastly different from the Granite Bridge Project and should be filed under a separate docket. CLF noted that throughout the proceedings in DG 17-198, Liberty’s testimony contained only minimal discussion of expansion of the TGP-Concord Lateral as an alternative to construction of the Granite Bridge Pipeline and associated LNG facility, with the bulk of its testimony focused on the benefits of and need for the Granite Bridge Project. CLF argued that the Company’s Motion to Amend Petition is the first time that Liberty has discussed in any detail the level or type of investments that would be required to enhance the TGP-Concord Lateral to provide additional capacity as an alternative to the Granite Bridge Project.

CLF argued that an amendment of Liberty’s initial petition in DG 17-198 is not permitted under Commission rules. In particular, CLF argued that Puc 203.10, defines a “proceeding” as a “docketed case commenced by the commission,” and a “petition” as the initial pleading filed

with the commission to commence a proceeding for the purpose of seeking commission action. CLF further argued that the amended petition broadens the scope of this proceeding and is therefore outside the scope of the instant proceeding. CLF noted that the Motion to Amend Petition proposes an entirely different project from the Granite Bridge Project and requests for the first time that the Commission approve a new contract with TGP that would involve substantial upgrades to the TGP Concord Lateral.

CLF argued amending the petition at this time would provide insufficient notice to those affected by the amendment. Puc 203.10 provides that the Commission shall not allow any amendment that has the effect of broadening the scope of the proceeding unless it provides notice to those affected. In addition, because Liberty has materially changed its proposal by now requesting approval for an upgrade to the TGP-Concord Lateral, rather than construction of the proposed Granite Bridge Pipeline and LNG facility, the amended petition seeks an entirely different “Commission action” than the initial petition, under Puc 102.12.

CLF argued that granting Liberty’s Motion to Amend Petition would likely violate due process rights of individuals and entities affected by the new proposal, because the new proposal implicates the property rights of individuals living in the vicinity of Liberty’s proposed upgrades to the TGP-Concord Lateral, rather than individuals located along the proposed Granite Bridge project.

Finally, CLF argued that the Commission should allow robust discovery regarding the new TGP Contract proposal. CLF maintained that additional expert testimony and data requests are necessary in order to discover more details about the proposed enhancements to the TGP Concord Lateral, Liberty’s depreciation schedule for the project, and Liberty’s revised natural gas growth projections.

C. Calpine

Calpine petitioned to intervene as a full party in DG 17-198 and objected preliminarily to Liberty's Motion to Amend Petition, requesting that it be permitted to file a more fulsome objection after the Commission rules on its intervention request.

Petition to Intervene

Calpine asserted that it meets the standards for intervention. First, Calpine stated that it has made a significant investment in the Granite Ridge Lateral, and therefore has a substantial interest in the Commission's approval of Liberty's proposed capacity contract with TGP and Liberty's intent to transport the 40,000 Dth/day of gas related to the capacity contract across the Granite Ridge Lateral, as well as other on-system enhancements described in Liberty's testimony.

Calpine argued that it has been the exclusive customer served by the 2.7 mile Granite Ridge Lateral since that pipeline was placed in service two decades ago. Calpine stated that it owns and operates the 745 MW natural gas-fired, combined cycle electric generating facility in Londonderry, known as "Granite Ridge." With respect to this power plant, Calpine has a Capacity Supply Obligation under the ISO New England Inc., tariff.

According to Calpine, on May 26, 1999, the New Hampshire Site Evaluation Committee (SEC) granted a Certificate of Site and Facility for the Granite Ridge generating facility and the lateral gas pipeline connection to the existing Tennessee Gas Pipeline, and owners of Granite Ridge have had exclusive access to the Granite Ridge Lateral for approximately 19 years; and the gas supplied from the lateral pipeline has allowed the plant owner to meet operational needs and Capacity Supply Obligations. Calpine noted that it and the predecessor owners of Granite Ridge purchased and managed the commodity gas supply for the plant, while Liberty and its

predecessors operated the lateral on behalf of Granite Ridge pursuant to a Gas Transportation Agreement, which established the terms and conditions of those services and was approved by the Commission in 2001.¹ According to Calpine, the sole purpose of the Granite Ridge Lateral was to transport natural gas reliably from Tennessee's system to Granite Ridge, and Granite Ridge has been the sole customer on the Granite Ridge Lateral for 19 years. Calpine further argued that it has no reasonable alternative to the Granite Ridge Lateral to transport natural gas from TGP or any other interstate pipeline.

Calpine represented that Liberty, not TGP, notified Calpine of the termination of the Gas Transportation Agreement as of September 14, 2021, knowing that Calpine has no other reasonable alternative to the Granite Ridge Lateral and without assurance or explanation as to how Liberty intends to continue providing transportation service at the level required to operate Granite Ridge safely, efficiently, and reliably.

Motion to Amend Petition

Calpine requested that the Commission defer ruling on Liberty's Motion to Amend Petition until 14 days after ruling on Calpine's Petition to Intervene, to enable Calpine to file a more substantive objection to Liberty's motion. Calpine argued that the Commission should deny Liberty's Motion to Amend Petition and open a new, properly noticed docket to adjudicate the proposed capacity contract.

¹ *In re EnergyNorth Natural Gas, Inc.*, Docket DG 00-207, Order No. 23,657 (March 22, 2001).

Staff

Staff supported Liberty's request to withdraw its 2017 petition in DG 17-198 regarding construction of the proposed Granite Bridge Project. Staff also supported the Company's decision to submit a new petition for approval of a firm transportation supply contract with TGP in place of the Granite Bridge Project. Staff objected, however, to Liberty's request to adjudicate its new petition regarding the TGP Contract in DG 17-198. Staff argued that the majority of testimony filed in DG 17-198 advocated for the rejection of the Granite Bridge Project as proposed,² that a transportation supply contract is a reasonable alternative to the Granite Bridge Project and warrants review in a new proceeding, and that Liberty's request to continue adjudicating in DG 17-198 in order to recoup from ratepayers the costs accrued in litigating the Granite Bridge proposal is not supported by law.

III. COMMISSION ANALYSIS

As a preliminary matter, we grant Liberty's motion for leave to submit a sur-reply. Liberty's Sur-Reply to the lengthy objections and comments filed by the parties provides a better understanding of Liberty's position and the reasoning behind its Motion to Amend Petition, which, in turn has assisted in our decision on that motion.

Liberty has made three separate requests to amend its petition: (1) to add a request for approval of a new contract with TGP; (2) to add a request for authority to recover Granite Bridge Project costs; and (3) to withdraw its request for approval of the Granite Bridge Project. Liberty has asked that the new issues be decided in the present docket.

² United Steelworkers Local 12012-03 filed testimony in support of the Granite Bridge Project.

TGP Contract and Cost Recovery

Liberty's amended petition requests approval of the new contract with TGP and approval to recover its costs of the Granite Bridge Project. Those proposed amendments do not satisfy the requirements of New Hampshire Administrative Rule Puc 203.10. As proposed, the Granite Bridge Project consisted of all new construction of a 27-mile long, 16-inch natural gas pipeline and a 2 billion cubic-foot LNG storage facility. The Granite Bridge pipeline was to run between Manchester and Stratham and would have provided connections to both TGP and PNGTS interstate pipelines. The LNG facility would have been constructed in Epping, and the Project would have afforded Liberty the opportunity to serve new franchise territory in Epping, Raymond, and Candia to help support the costs of the Project, which were forecast to be in the range of \$500 million. The TGP Contract, on the other hand, is a standard gas transportation agreement with industry-standard, FERC-tariffed terms and conditions. The gas would be supplied over existing pipeline with potential on-system distribution enhancements, totaling approximately \$50 million, and centered near Manchester and Nashua or Londonderry.

We find that the Granite Bridge Project and the TGP Contract are substantially different in nature, scope, probable cost, customers affected, and geographic location as well as potential for supportable expansion, economic waste, and effects on the Company's capitalization and risk to ratepayers. The TGP Contract bears no resemblance or relation to the Granite Bridge Project beyond generally proposing a solution to future customer demand and would, in our view, change the Commission action originally requested by Liberty and change the purpose of this proceeding. The two proposals are entirely different supply options requiring different types and levels of review.

With regard to Liberty's request for authority to recover the costs of the Granite Bridge Project, this docket was not noticed as, and was never intended to be, a cost recovery or rate-setting docket. Whatever level of approval Liberty expected of its Granite Bridge Project, that approval could not substitute for the prudence determination the Commission might make once the Project were in use, used and useful, and rate recovery were sought. Requests for authority to recover capital project and supply planning costs are appropriately reviewed in a full rate case.

Consequently, we reject Liberty's assertion that the new issues surrounding investigation of the TGP Contract and rate recovery for the Granite Bridge Project "comfortably fall within the scope of the original Order of Notice" and related arguments. We instead find that the amendments would have the effect of inappropriately broadening the proceeding by interjecting issues better decided in separate dockets. We therefore conclude that permitting these two amendments would not result in a just resolution of this proceeding.

Withdrawal of Request for Approval of the Granite Bridge Project

Liberty has asked permission to withdraw its request for approval of the Granite Bridge Project, in light of the newly concluded contract with TGP. The Commission's approval of the Granite Bridge Project was not required, and Liberty's decision to bring the Granite Bridge Project before the Commission for approval was voluntary. Consequently, the Commission recognizes Liberty's equally voluntary withdrawal of its request.

Our denial of Liberty's Motion to Amend Petition is without prejudice to Liberty seeking review of the TGP Contract, and without prejudice to Liberty seeking authority to recover its costs in rates.

Liberty argued that review of the TGP Contract in a new docket would be administratively inefficient and prejudice the Company's ability to demonstrate the legal and

factual circumstances leading to the contract. Liberty also argued that dismissing this docket would “preempt the Commission’s consideration of factual issues with respect to recovery of the Granite Bridge evaluation costs.” We disagree. We see nothing that would prevent Liberty, Staff, and potential intervenors from presenting any relevant evidence, argument, or policy justifications in newly opened dockets. In addition, to the extent necessary and appropriate, the Commission can take administrative notice of any facts developed in this proceeding in the new dockets. We therefore find no prejudice in proceeding in new dockets focused on the merits of the TGP Contract and on rate recovery, and we find no administrative efficiency in continuing in this docket.

Given our disposition of the issues in this docket, we deny Calpine’s request to intervene as moot, and will consider Liberty’s request for protective order, if requested, when Liberty files a new petition regarding the TGP Contract.

We note that the two contracts that Liberty sought approval for in this docket were discussed and approved in Liberty’s 2018 cost of gas docket, DG 18-137. Having denied Liberty’s Motion to Amend Petition, and recognizing that Liberty has withdrawn its request for approval of the Granite Bridge Project, there are no issues that remain, accordingly, we close this docket.

Based upon the foregoing, it is hereby

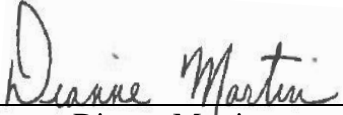
ORDERED, that Liberty’s motion for leave to file a sur-reply in this proceeding is **GRANTED**; and it is

FURTHER ORDERED, that Liberty’s request for review and approval of cost recovery associated with the Granite Bridge petition in Docket No. DG 17-198 is **DENIED**; and it is

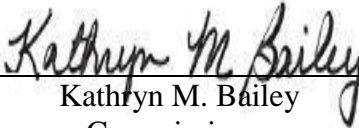
FURTHER ORDERED, that Liberty's request for review and approval of the transportation agreement with Tennessee Gas Pipeline, LLC in Docket No. DG 17-198 is DENIED; and it is

FURTHER ORDERED, that this docket No. DG 17-198, is CLOSED.

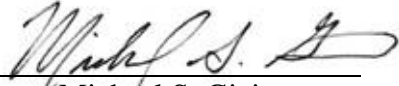
By order of the Public Utilities Commission of New Hampshire this sixth day of October, 2020.



Dianne Martin
Chairwoman

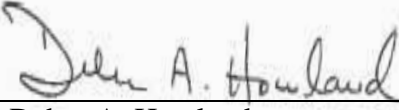


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



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Service List - Docket Related

Docket# : 17-198

Printed: 10/6/2020

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