

**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.

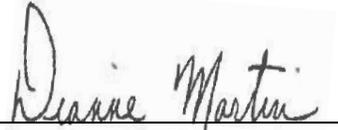
In conclusion, we find that Liberty has established that, based on both price and non-price factors, the contracted capacity represents the most viable, reasonably available alternative for Liberty to meet its current and forecasted customer requirements in an adequate and reliable manner. We note that 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.

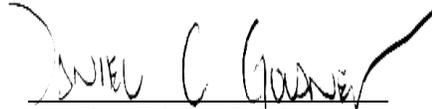
Based upon the foregoing, it is hereby

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.



Dianne Martin
Chairwoman



Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 21-008

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