

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. 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**

Conservation Law Foundation's Objection to Liberty Utilities' Motion to Amend Petition

Conservation Law Foundation (CLF) submits the following objection in response to Liberty Utilities' (Liberty) July 31, 2020 Motion to Amend Petition (Motion to Amend). While CLF strongly supports Liberty's decision to withdraw its request for approval of the Granite Bridge Pipeline and Granite Bridge LNG Facility (collectively, Granite Bridge Project), because Liberty's proposed expansion of the Tennessee Gas Pipeline (TGP)-Concord Lateral is vastly different from the Granite Bridge Project, CLF objects to Liberty's Motion to Amend and urges the Public Utilities Commission (Commission) to deny the motion and require Liberty to file its new proposal under a separate docket.

I. Background

On December 22, 2017, Liberty initiated the proceedings in this docket by filing a petition entitled, "Petition to Approve Firm Supply and Transportation Agreements and the Granite Bridge Project" (Initiating Petition). The Initiating Petition sought approval for the following: (1) a delivered supply contract between Liberty and ENGIE Gas & LNG (ENGIE); (2) a precedent agreement between Liberty and Portland Natural Gas Transmission System (PNGTS) for firm transportation capacity; (3) construction of the Granite Bridge Pipeline; and (4) construction of an associated on-system LNG facility. The Initiating Petition did not discuss whether Liberty had

explored an expansion of its main distribution pipeline in New Hampshire, *i.e.*, the TGP-Concord Lateral, as an alternative to construction of the Granite Bridge Project. As originally proposed, the estimated cost to build the Granite Bridge Pipeline was \$110 million and the estimated cost to construct the LNG facility was \$201.7 million.¹ (Lyons Direct Testimony at 89R, 92R). Moreover, the Granite Bridge Pipeline would consist of 27 miles of pipeline, which would traverse several communities along Route 101 and connect to the TGP-Concord Lateral in Manchester, and the Granite Bridge LNG Facility would be located in Epping. (Fleck and Dafonte Direct Testimony at 14-15).

Throughout the proceedings, 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, *see, e.g.*, Killeen and Stephens Direct Testimony at 173R-177R, with the bulk of Liberty's testimony focused on the benefits of and need for the Granite Bridge Project. Now, two and a half years later, Liberty seeks approval of a completely different project. In particular, Liberty seeks approval of a 40,000 Dth/day contract with TGP, which would entail on-system distribution investments of either \$44.5 million (TGP Nashua/Manchester Alternative) or \$50.5 million (TGP Londonderry Alternative). (DaFonte and Killeen Second Supplemental Direct Testimony at 24-26). This is the first time under this docket 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.

¹ Liberty later revised these estimates, stating that it would cost \$168 million to build the Granite Bridge Pipeline and would cost \$246 million to construct the LNG facility. (Dafonte and Killeen Supplemental Direct Testimony at 30, 39).

II. Argument

A. Amendment of the Petition is Not Permitted under the Commission's Rules

Section 203.10 of the Commission's Rules provides, in relevant part, as follows:

(a) The commission shall permit the amendment of any document filed with the commission provided:

(1) The party requesting the amendment shall give notice of the request to all persons on the service list for the proceeding; and

(2) The commission determines that the amendment shall encourage the just resolution of the proceeding and will not cause undue delay.

(b) 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 and an opportunity to comment prior to final commission action.

N.H. Code Admin. R. PUC §203.10. The Rules define a "proceeding" as a "docketed case commenced by the [C]ommission" and a "petition" as "the initial pleading filed with the [C]ommission to commence a proceeding for the purpose of seeking [C]ommission action." N.H. Code Admin. R. PUC §§102.12, 102.16.

First, it is beyond question that the Amended Petition broadens the scope of this proceeding pursuant to N.H. Code Admin. R. PUC §203.10. The title of the docket, as established by the Initiating Petition, indicates that the Amended Petition is outside the scope of the instant proceeding. Specifically, the docket is entitled, "Petition to Approve Firm Supply and Transportation Agreements and the **Granite Bridge Project**." (Liberty Petition, December 21, 2017 (emphasis added)). However, Liberty's Amended Petition proposes an entirely different project from the Granite Bridge Project, requesting, for the first time, that the Commission approve a new contract with TGP and substantial upgrades to the TGP Concord-Lateral.

More importantly, the substance of the Amended Petition and its attached testimony, when compared to the Initiating Petition and its attached testimony, also demonstrate that the Amended Petition significantly broadens the scope of the proceedings. For example, in the Initiating Petition, Liberty sought Commission approval for the Granite Bridge Pipeline, Granite Bridge LNG Facility, and contracts with ENGIE and PNGTS. Moreover, the testimony illustrated that Liberty intended to build a 27-mile pipeline from Exeter to Manchester, parallel to Route 101, and an LNG facility in Epping, which would require investments totaling over \$400 million. Although the Initiating Petition and testimony cursorily discussed upgrades to the TGP-Concord Lateral, as an alternative to the Granite Bridge Project, such documents only provided limited discussion of what an enhancement of the TGP-Concord Lateral would entail.

Conversely, in the Amended Petition, Liberty seeks approval for an immensely different proposal, *i.e.*, a contract with TGP and investments centered around Nashua and Manchester totaling \$44.5 to \$50.5 million. Because the contract and investments requested in the Amended Petition diverge significantly from what was proposed in the Initiating Petition, the Amended Petition broadens the scope of the proceedings pursuant to N.H. Code Admin. R. PUC §203.10.

Second, Amending the Petition would provide insufficient notice to those affected. N.H. Code Admin. R. 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.” *Id.* Due to the nature of the Initiating Petition and the material changes proposed in the Amended Petition, even if the Commission required Liberty to provide supplemental notice, such a notice would be inadequate. This is because the docket and its caption refer to the Granite Bridge Project and publishing a supplemental notice in a newspaper of general circulation, as required by N.H. Code Admin. R. PUC §203.12, would only apprise entities that live in the communities near

the proposed Granite Bridge Pipeline route of changes to Liberty's proposal, without informing individuals living near either the TGP Manchester/Nashua Alternative or TGP Londonderry Alternative that their communities would be impacted by Liberty's new plan. In other words, because the Granite Bridge Project would have been constructed in a completely different geographic area than the newly proposed TGP alternatives, disseminating a notice under the Granite Bridge docket and caption would provide inadequate notice to communities impacted by Liberty's newly proposed alternative investments.

Additionally, publishing a supplemental notice in a newspaper that covers the Manchester, Nashua, and Londonderry areas, or in a statewide newspaper, would not remedy the problem because anyone who viewed a notice under the Granite Bridge docket number and caption would assume the notice only involves the areas affected by the Granite Bridge Project, rather than other areas. Nor would including a detailed description of Liberty's proposed investments in a supplemental notice serve to provide adequate notice of the new plan; because any such notice would be published under the Granite Bridge docket title and caption, interested individuals would likely not realize that they would be affected by Liberty's new plan. Accordingly, because a supplemental notice likely could not provide sufficient notice to those affected by Liberty's new proposal, the Amended Petition does not comply with N.H. Code Admin. R. PUC §203.10(b).

Finally, permitting the Amended Petition would not "encourage the just resolution of the proceeding." N.H. Code Admin. R. PUC §203.10(a). Because Liberty has materially changed its proposal by now requesting approval for an upgrade to the TGP-Concord Lateral, instead of construction of the Granite Bridge Pipeline and LNG facility, the Amended Petition seeks an entirely different "Commission action" than the Initiating Petition. N.H. Code Admin. R. PUC §102.12. Thus, the Amended Petition constitutes a new proceeding that does nothing to encourage

the just resolution of the original proceeding. In sum, because Liberty has not satisfied the criteria for amending its Initiating Petition pursuant to N.H. Code Admin. R. PUC §203.10, the Commission should reject Liberty's Motion to Amend.²

B. Granting Liberty's Motion Would Also Likely Violate the Due Process Rights of Individuals and Entities Affected by Liberty's New Proposal

In determining whether particular procedures satisfy the due process requirements of the United States and/or New Hampshire Constitutions, the New Hampshire Supreme Court typically employs a two-prong analysis. *In re Town of Bethlehem*, 911 A.2d 1, 12 (N.H. 2006). Initially, it must be "ascertain[ed] whether a legally protected interest has been implicated." *Id.* The next question is "whether the procedures provided afford appropriate safeguards against a wrongful deprivation of the protected interest." *Id.* A "successful due process claim must be based upon a protected liberty or property interest." *Id.* at 13 (emphasis omitted).

It is well-established that an "elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Dow v. Town of Effingham*, 803 A.2d 1059, 1067 (N.H. 2002); *see also City of Claremont v. Truell*, 489 A.2d 581, 585 (N.H. 1985) (same). A primary consideration of due process is "fundamental fairness." *Truell*, 489 A.2d at 586. "Central to this notion of fundamental fairness is **meaningful notice** of the government's action." *Id.* (emphasis in original). "While due process in administrative proceedings is a flexible standard" the Commission has important quasi-judicial duties and our Supreme Court requires "meticulous compliance with the constitutional mandate where the

² Similarly, Liberty's request to recover money spent on the development of the Granite Bridge Project seeks a different Commission action than mere approval of the Granite Bridge Project and its associated contracts. Consequently, this issue is inappropriate for the instant docket and should be considered in separate rate case.

[Commission] acts in its adjudicative capacity, implicating private rights.” *Appeal of Concord Steam Corp.*, 543 A.2d 905, 909 (N.H. 1988) (internal quotation marks omitted).

Here, the Amended Petition indisputably implicates the property rights of individuals living in the vicinity of Liberty’s proposed upgrades to the TGP-Concord Lateral. The Second Supplemental Direct Testimony of DaFonte and Killeen, filed with the Amended Petition, states that the TGP Londonderry Alternative would “avoid[] significant construction risk associated with work on the Nashua/Hudson Lateral, which **currently runs through several residential neighborhoods and closely past many houses.**” (DaFonte and Killeen Second Supplemental Direct Testimony at 27 (emphasis added)). This statement implies that, in contrast to the TGP Londonderry Alternative, the TGP Nashua/Manchester Alternative would result in significant construction risks to individuals living near the proposed investments.

Moreover, in Liberty’s Motion to Extend Date for Filing Rebuttal Testimony, filed in this docket on October 15, 2019, Liberty stated that it selected the Granite Bridge Pipeline over an expansion of the Concord Lateral, in part, because “the siting of **any upgrade** of the Concord Lateral is simply not feasible as it **travels through neighborhoods, beneath schools, and across environmentally sensitive areas.**” (Liberty Motion to Extend Date for Filing Rebuttal Testimony, October 15, 2019, at 3 (emphasis added)). Therefore, because, as acknowledged by Liberty, expansion of the TGP-Concord Lateral would significantly affect the property rights of individuals living close to the proposed upgrades, the Amended Petition implicates a protected interest.

Next, permitting Liberty to amend the Initiating Petition would not “afford appropriate safeguards against a wrongful deprivation of the protected interest” of individuals living near the proposed upgrades. *In re Town of Bethlehem*, 911 A.2d at 12.

Essentially, amending the petition would not provide “meaningful notice” of Liberty’s new proposal. *Truell*, 489 A.2d at 586.

While the Commission could potentially require Liberty to provide supplemental notice of its new proposal, such a notice could not be “reasonably calculated, **under all the circumstances**, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Dow*, 803 A.2d at 1067 (emphasis added). This is because, given the nature of the original proceedings, which sought approval of the Granite Bridge Pipeline and LNG Facility, a supplemental notice issued under the Granite Bridge title/caption and docket, would not, **under the circumstances**, be reasonably calculated to apprise interested parties of Liberty’s new proposed investments that are located in a different area than the Granite Bridge Project. More specifically, issuing a supplemental notice under the Granite Bridge caption and docket would confuse interested parties about the nature of Liberty’s new proposal and the geographic area of the proposal, because anyone who viewed such a notice would automatically assume that it only affects the areas near the proposed Granite Bridge Project, and would not think to further review the contents of the notice to determine whether it affects separate geographic areas.

The existence of the massive prior record and docket, as well as the likelihood that parties would cross-reference previous docket items, would also serve to confuse new interested parties. Therefore, any efficiencies gained from amending the docket are outweighed by the complications of merging two very different proposals.

In sum, the Amended Petition and any supplemental notice regarding Liberty’s new proposal would constitute inadequate notice to individuals whose property interests would be affected by the new proposal and would fail to satisfy basic due process requirements. Thus, the Commission should not permit amendment of the Initiating Petition.

C. The Commission Should Permit a Robust Discovery Schedule Regarding Liberty's New Proposal

Regardless of whether the Commission grants or denies Liberty's Motion to Amend Petition, the Commission should allow robust discovery regarding Liberty's new TGP contract proposal. 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. Further, the Commission should provide the parties sufficient time to conduct discovery on the new proposal.

III. Conclusion

Because granting Liberty's Motion to Amend Petition would contravene the Commission's Rules and would likely violate the due process rights of potential intervenors, the Commission should deny Liberty's motion and require Liberty to withdraw the Initiating Petition and file a separate petition under a new docket. The Commission should also permit robust discovery regarding Liberty's new proposal.

Respectfully submitted,

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August 10, 2020

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objection to the Motion to Amend Petition has, on this 10th day of August 2020, been sent by email to the service list in Docket No. 17-198.

Respectfully submitted,

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