STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

Distribution Service Rate Case

INITIAL BRIEF OF LIBERTY UTILITIES IN SUPPORT OF RECOVERY OF COSTS INCURRED IN RELATION TO THE GRANITE BRIDGE PROJECT

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty ("EnergyNorth" or the "Company") submits this initial brief to the New Hampshire Public Utilities Commission (the "Commission") in support of its request to recover a portion of the costs incurred to assess the feasibility of the Granite Bridge Project (the "Granite Bridge Project Costs"), as the least-cost solution to meet the long-term capacity requirements of EnergyNorth customers. This brief is submitted in accordance with the briefing schedule established by the Commission at the June 8, 2021 evidentiary hearing, and addresses the question of whether the Company's request for cost recovery is barred by R.S.A. 378:30-a, which is the so-called "anti-CWIP" statute.[1]

As demonstrated in this brief, there is clear direction from the New Hampshire Supreme Court (the "Court") construing the plain language of the statute, including the terminology "construction work in progress." The decision of the New Hampshire Supreme Court makes it clear that there is no categorical bar to the Company's recovery of the feasibility study costs. Moreover, the record is clear that the costs were necessarily incurred by the Company in the course

[1] The parties to this proceeding have reached a settlement agreement with respect to all other issues in the proceeding. The parties expect to file the settlement agreement with the Commission during the week of June 28, 2021. The settlement agreement is subject to Commission approval.

of fulfilling its core obligations as a natural gas distribution company to assure the delivery of safe and reliable natural gas service to customers, particularly on the coldest days of the winter season.

I. Overview of the Company's Request

This is a very important request for the Company. Although there may be differences of opinion among the parties regarding the recoverability of the Granite Bridge Project Costs, the record is clear that the costs arose from a process that the Company was earnestly conducting to try to find a solution for incremental peak day capacity, which, by all accounts, is needed to serve customers on the coldest days of the winter season. The issue is not whether the Granite Bridge Project would have been prudent if it had moved forward, but rather whether the Company should have the opportunity to recover the costs that it reasonably incurred in fulfilling its obligations as a gas utility responsible for assuring gas deliverability on the coldest days.

In this case, the Commission has authority to grant recovery of the costs in question under its general ratemaking authority. Conversely, there is no law or precedent that bars the Commission from allowing cost recovery. Staff and OCA rely on a provision of New Hampshire law that bars recovery of construction work in progress ("CWIP"), but a 1984 decision of the New Hampshire Supreme Court clarifies that the statute does not use the term "construction work in progress" in a technical accounting sense, and that the prohibition is limited to uncompleted physical plant or actual construction. Consequently, the statutory prohibition *does not apply* to the Granite Bridge project costs at issue here.

The reading put forth by Staff and OCA does not make sense because, taken to its logical conclusion, virtually any action undertaken by a gas or electric utility in advance of construction to assess project alternatives, could be considered construction work in progress and excluded from recovery if a project does not go forward. Aside from directly contradicting the New Hampshire

Supreme Court decision, this outcome would set a policy that would discourage gas and electric utilities from investigating and evaluating various resource options to address the needs of customers. In other words, such an outcome would send the signal that, if a project does not go forward, operating costs incurred to research, study and evaluate project alternatives could be barred in a ratemaking proceeding. Customers are not served by this type of policy, which would have the potential to impair the evaluation of project alternatives for all companies in the future. The anti-CWIP statute is not written nor intended to prevent the recovery of costs that are necessary, prudent, and reasonable in determining options to service customers reliably. In this case, the feasibility of the Granite Bridge Project as the least-cost solution to meet the long-term supply requirements of customers was an important – and fruitful -- endeavor for customers.

In addition to the legal issue regarding the applicability of the anti-CWIP statute, there are several key points to the Company's position. First, the Company has an undisputed need for design day capacity. Since 2013, the Company has identified a shortfall in the pipeline capacity it has under contract and the amount of gas resources it needs to deliver gas to customers reliably on the coldest days of the year. Staff testimony by Liberty Consulting, in Docket No. DG 17-198, confirmed this need clearly and succinctly. A contract with Tennessee Gas Pipeline Company, LLC ("TGP") is now pending before the Commission in Docket No. DG 21-008, which will likely be approved, because the capacity is needed to serve customers.

Second, the Company has an obligation to customers to do everything it reasonably can to meet that need. Under New Hampshire law, gas companies are required to file least-cost integrated resource plans no less frequently than every five years. In those filings, gas companies are required to show that they are adequately forecasting customer demand and compiling a portfolio of supply and capacity resources to deliver gas on the design day (i.e., the coldest day in its forecast). As a result, EnergyNorth is obligated to work diligently to address any resource shortfall so that the

needs of customers are met unfailingly on the coldest days. Staff argues that no costs should be allowed for recovery because the Company went forward with the Granite Bridge Project with incomplete analysis, but the Company had to move forward with the feasibility analysis in order *to achieve* a complete analysis. If the Company had waited to bring the potential Granite Bridge solution to the Commission only once it achieved the 70 percent design, the Company would never have been able to meet the peak needs of customers. The Company has stated repeatedly that these projects take years to build, and the Company could not, in good conscience, wait two to three years to put an alternative solution in front of the Commission.

Third, the Company has no other option to alleviate a capacity shortfall. TGP is the only interstate pipeline that reaches New Hampshire and is the sole provider to the Company. TGP is a savvy market player without any obligation to provide affordable resources to the Company's customers. TGP makes its money off of building infrastructure and was well aware that EnergyNorth has few or no alternatives with respect to capacity resources. This means that, unless EnergyNorth was able to come up with another option, the Company would have to rely solely and exclusively on TGP as it has since its existence.

The Northeast Energy Direct ("NED") project would have fulfilled the Company's incremental capacity needs. The upgrades offered by TGP in lieu of the NED project would also have fulfilled the Company's capacity needs. However, the cost of those upgrades was unreasonable for customers to bear. The cost was between [redacted] million and [redacted] million per year, or in the range of [redacted] over 20 years for the Company's customers. The TGP upgrades were complex, expensive replacements that carried the greater risk of building as compared to the Granite Bridge Project, given the pipeline's proximity to and through residential neighborhoods, schools and businesses.

In light of these facts, the Company had a firm obligation to search out other alternatives. Imagine if the Company *did not undertake the actions it did,* and the less expensive capacity did not become available. A very significant concern would exist at this point in time as to how New Hampshire customers could be served and no answer would be in sight. Therefore, disallowing the Granite Bridge Project Costs based on the anti-CWIP statute as proposed by Staff is not the right answer for many reasons, not the least of which is sending a clear message to utilities that costs for seeking and investigating delivery alternatives will not be recoverable unless a project is brought to fruition and constructed. This is a result that will be detrimental to both utilities and their customers in terms of seeking lowest-cost options.

Moreover, regardless of whether the Granite Bridge Project was popular with Staff or other participants in the DG 17-198 docket, the Company at all times acted in the best interest of customers. The Company was acutely aware that time was running out to meet the incremental need for design day capacity. The Company worked diligently to develop the cost and feasibility analyses needed to prove out an alternative solution to the Commission. Throughout the process, the Company acted solely in the best interest of customers to find the least-cost resource. This is demonstrated by the fact that as soon as a less expensive resource became available through TGP, in October 2019, the Company stopped its work on the Granite Bridge assessment and pursued the TGP alternative for customers, ultimately reducing TGP's revised cost of [redacted] million per year to just $2 million a year.

The capacity that became available at the significantly lower cost was existing capacity, not new or upgraded capacity. It was *not available* in 2013 when TGP proposed the NED project, and it was *not available* in 2016 when TGP canceled the NED project. There was no indication it would become available in the future. Until this low-cost resource became available, there were no options for the Company to reduce the cost of the TGP upgrades, other than a project developed

as a distribution and storage solution on the Company's own system (*i.e.,* the Granite Bridge Project).

Customers are the beneficiaries of the Company's efforts here. The Company worked very hard to identify the least-cost solution and limit rate impacts to its New Hampshire customers. The strong interest to minimize customer cost impacts is what compelled EnergyNorth to identify and pursue a solution to bring needed incremental capacity to its system at a substantially reduced cost than what was being originally sought by TGP. Although it will never be clear exactly what impact the Company's plans for Granite Bridge had on TGP's business decisions, the evidence is undisputed that EnergyNorth customers are now the beneficiaries of a proposed 20-year contract for incremental capacity that will total just $40 million over 20 years, in comparison to the cost of the original TGP proposed upgrades that would have cost customers between [redacted] and [redacted] over that same period. The Company expended just $9.1 million to try to figure out a way to meet customers' design day capacity and supply needs, while cutting down that substantial cost for all customers. Not only do the Granite Bridge Costs not fall within the definition of "construction work in progress" under the anti-CWIP statute, but the costs clearly and unequivocally produced a customer benefit. The end result should be the dispositive consideration in this case.

The Company is respectfully requesting the Commission to allow recovery of approximately $7.5 million of the $9.1 million incurred by the Company to undertake feasibility studies and engineering to develop an alternative solution to the high cost TGP capacity option. The Company recognizes that this is an unusual circumstance. However, the Company's request is reasonable and entirely consistent with law and sound public policy, given that the Company has an unabated obligation to assure the delivery of gas supply to customers on the coldest days of the year at the least possible cost.

II. Factual Background

As a public utility, EnergyNorth is obligated to procure appropriate resources to meet the capacity and supply needs of its customers. Since at least 2013, the Company has identified a capacity shortfall necessitating new resource options to meet its obligation to provide reliable service, including on its design days (i.e., the coldest day in its forecast). However, there are no alternatives to meet this need because the Company's system relies on a single feed from Tennessee Gas Pipeline Company, LLC ("TGP") for the delivery of gas supply to its service territory in southern and central New Hampshire (Exh. 14, at Bates 009). This means that any upstream gas supply option is limited to those that can access the TGP Concord Lateral (id. at Bates 013). As early as 2013, the Company began analyzing various options to meet this identified capacity need (Exh. 16, at Bates 009).

The Granite Bridge Project Costs were incurred between 2016 to 2019, following TGP's cancellation of the NED project, which eliminated a potential (and Commission approved[2]) capacity and supply option for the Company (Exh. 14, at Bates 009, citing TGP Notice of Withdrawal in FERC Docket No. CP15-21-000). This led the Company to initiate due diligence in relation to the two alternatives that did exist at the time, which were to: (1) procure a new contract with TGP for incremental capacity on the existing TGP Concord Lateral; or (2) explore the feasibility of a Company-sponsored supply and capacity project, which ultimately became the Granite Bridge Project (id.).[3] The Granite Bridge Project Costs were costs incurred by EnergyNorth beginning in 2016 to survey, study, and investigate the feasibility of Granite Bridge as the least-cost alternative compared to a new TGP contract. Over this timeframe, the TGP

[2] *See* Order No. 25,822 (Oct. 2, 2015).

[3] The Company's assessment focused on a project comprised of the Granite Bridge pipeline (to provide additional capacity and a second feed to the EnergyNorth service territory), and the Granite Bridge liquefied natural gas ("LNG") facility (the primary source of supply for the Granite Bridge Project) (Exh. 14, at Bates 010).

alternative was a resoundingly expensive alternative, and remained so throughout the time EnergyNorth assessed the feasibility of what became the Granite Bridge alternative and made progress through the associated regulatory process.[4]

As late as May 2019, the Granite Bridge Project was again demonstrated to be substantially less expensive than the TGP contract alternative (Exh. 14 at Bates 020). In October 2019, right after EnergyNorth announced that it had completed the 70 percent design evaluation of the Granite Bridge Pipeline and would be issuing a request for proposals based on that design to further refine its capital cost estimate, TGP for the first time offered a significantly lower pricing for incremental capacity (Exh. 14, at Bates 022-023). EnergyNorth immediately suspended further assessment (and cost incurrence) of the Granite Bridge Project and, through continued negotiations with TGP, executed a new agreement on July 14, 2020, for 40,000 Dth per day of capacity on the Concord Lateral (id. at Bates 028-029).[5]

Construction of the Granite Bridge Project would have required a siting permit from the New Hampshire Site Evaluation Committee.[6] The Company did not make a filing to request a siting permit, nor were any pre-construction or construction activities commenced for the Granite Bridge Project. The Granite Bridge Project Costs are limited to costs that were necessary to fulfill the Company's obligation to survey, study, and determine a least-cost alternative to meet deliverability obligations to customers. The project did not progress beyond a conceptual stage and did not include actual construction.

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[4] EnergyNorth requested Commission approval of the Granite Bridge Project as the least-cost option to meet its identified need in Docket No. DG 17-198, and the docket process resulted in continued analysis and refinement of the Company's cost estimates, which continued to show it as the least-cost resource as compared to a new contract with TGP. Through the course of that proceeding, the Company engaged in further feasibility analysis through the regulatory process (Exh. 14, at Bates 019).

[5] The contract is pending approval from the Commission in Docket No. DG 21-008.

[6] *See* RSA 162-H:5, I ("No person shall commence to construct any energy facility within the state unless it has obtained a certificate pursuant to this chapter").

III. The "Anti-CWIP" Statute and New Hampshire Precedent

The central legal question at issue in this proceeding is a matter of the statutory interpretation of RSA 378:30-a, which is referred to as the "Anti-CWIP" statute. The rules of statutory interpretation in New Hampshire are well settled. The Court has held that, "[i]n addressing the issues of statutory interpretation, we follow familiar principles. In seeking the intent of the legislature, we will consider the language and the structure of the statute." Appeal of Public Service Company of New Hampshire, 125 N.H. 46, at 52, 480 A.2d. 20 (1984) ("PSNH"); see State v. Flynn, 123 N.H. 457, 462, 464 A.2d 268, 271 (1983). The Court "will follow common and approved usage except where it is apparent that a technical term is used in a technical sense." PSNH, 125 N.H. at 52, *citing* RSA 21:2.

"If the statute is unambiguous when so viewed, there is no justification for judicial modification, State v. Flynn *supra*, and we will look to legislative history as a guide to meaning only if ambiguity requires choice." PSNH, 125 N.H. at 52; see Greenhalge v. Dunbarton, 122 N.H. 1038, 1040, 453 A.2d 1295, 1296 (1982). Recently, the Court stated that "when the language of a statute is unambiguous, we do not look beyond it for further indications of legislative intent." Rogers v. Rogers, 171 N.H. 738, 743; 203 A.3d 85, 89 (2019), citing In the Matter of McAndrews & Woodson, 171 N.H. 214, 219-220, 193 A.3d.834 (2018). The Court will interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id.

In PSNH, the Court construed the precise language of R.S.A. 378:30-a, which is at issue in this proceeding. R.S.A. 378:30-a precludes recovery of construction costs associated with projects that are not completed and/or projects that are abandoned without completion. The statute is specific to "construction" costs. It does not preclude recovery of costs a utility may incur to plan for and assess projects and resources needed to serve customers. The statute states as follows:

> Public utility rates or charges shall not in any manner be based on the cost of ***construction work in progress***. At no time shall any rates or charges be based upon any costs associated with ***construction work if said construction work is not completed***. All costs of ***construction work in progress***, including, but not limited to, any costs associated with ***constructing, owning, maintaining or financing construction work in progress***, shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to consumers.

R.S.A. 378:30-a (emphasis added).

The New Hampshire Supreme Court thoroughly addressed the application of this statute in PSNH. In that case, Public Service Company of New Hampshire petitioned the Commission to provide an appropriate ratemaking methodology to allow it to recover its investment in the Pilgrim 2 nuclear plant, which had commenced actual construction but was cancelled in 1981 prior to completion. The Court discussed the rate-setting process, and in particular the methodologies for allowing recovery of costs of plant in rate base versus the costs incurred "during the period of a plant's construction." PSNH, 125 N.H. at 50.

The Court observed that "[a]fter a plant has begun to operate, the commission allows the company to recover the cost of money invested in it by including the depreciated cost of the plant in the rate base, on which it allows the rate of return. *During the period of a plant's construction*, however, recovery of the cost of money invested in it is not dealt with so easily." 125 N.H. at 49-50. The Court stated the typical methodologies for recovery of costs during the period of a plant's construction were either to allow recovery, only after construction is complete, of the cost of funds used during construction (AFUDC), or to allow for recovery, during construction, of the costs of construction work in progress (CWIP). Id. at 50. The Court stated that CWIP "can have any one of three related meanings," which include "partially completed physical construction" or "in technical senses to refer to the cost of that construction, or finally to that cost after it has been

added to the rate base." Id. The Court stated that the Commission "defines a CWIP account as including 'the total of the balances of work orders for electric plant in process of construction,' provided that work orders 'shall be cleared from this account as soon as practicable after completion of the job.'" PSNH, 125 N.H. at 50-51 (citing N.H.P.U.C. Rule 307.04, adopting 18 C.F.R. Part 101 § 107A and B).

The issue before the Court in Public Service Company of New Hampshire was whether R.S.A. 378:30-a precluded recovery of "investment in plant abandoned before completion of construction." PSNH, 125 N.H. at 53. The Court held that the statute "does not use 'construction work in progress' in a technical accounting sense," which would mean "'balances of work orders for electric plant in process.'" Id. The Court explained:

> The text of the statute is simply inconsistent with this reading. If the statute used the term to mean a balance of work orders, its first and third sentences would forbid the basing of rates on the "cost" of the balance of work orders. A balance of work orders records or represents a cost, and it would be pointlessly redundant for the statute to speak of a cost of a cost. Still less would it make sense to speak, as the third sentence does, of the costs of CWIP as including the costs of "constructing" or "owning" construction work in progress. A company does not construct or own a balance of work orders. It constructs and owns physical plants, ***and uncompleted physical plants are what the statute must mean by "construction work in progress***."

Id. (emphasis added.)

The Court held that the statute uses "'construction work in progress' to refer to the physical plant" and "construction work" in its "common sense referring to a physical structure." Id. at 54. The reading of the statute thus would "fall beneath the customary presumption that the legislature does not waste words or enact redundant provisions." Id. (citing Appeal of Village Bank & Trust Co., 124 N.H. 492, ——, 471 A.2d 1187, 1188 (1984); Blue Mountain Forest Ass'n v. Town of Croydon, 117 N.H. 365, 373 A.2d 1313 (1977)).

PSNH is directly applicable to, and dispositive of, the issue presently before the Commission, which is that the Granite Bridge Project Costs were not construction costs and therefore not barred for recovery by R.S.A. 378:30-a. Because the Court has previously interpreted the specific application of R.S.A. 378:30-a, the Court would not apply a different interpretation as applied to the costs in question.

IV. The Granite Bridge Project Costs Are Not Construction Costs

The Granite Bridge Project Costs requested for recovery in this docket total $7,489,309 and are comprised of six categories of expenses: Engineering, Environmental, General Consulting, Commission Related, Internal Labor, and Land. (Exh. 9 at Bates 002). The large majority of these costs ($7,092,154) were booked to Account 183, which is entitled "Preliminary Survey and Investigation Charges." (Exh. 9 at Bates 004). Costs booked to this account are not "construction costs." The definition of "construction" is "the process, art, or manner of constructing something."[7] According to Merriam-Webster's Dictionary, the definition of "constructing" or "construct" is "to make or form by combining or arranging parts or elements: build."[8] Accordingly, whether focusing on the term "construct," "constructing," or "construction," all of the terms refer to a physical actions "make or form…parts or elements," or "to build."

Puc 507.08, titled "Uniform System of Accounts," requires gas utilities to maintain accounts in conformity with the "Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act" promulgated by the United States Federal Energy Regulatory Commission (FERC). (Exh. 10 at Bates 001). The FERC chart of accounts describes the purpose of Account 183 as follows:

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7 Https://www.merriam-webster.com/dictionary/construction

8 Https://www.merriam-webster.com/dictionary/construct#h1

183.2 Other preliminary survey and investigation charges.

A. This account shall be charged with all expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of utility projects under contemplation, other than the acquisition of land and land rights to provide a future supply of natural gas. If construction results, this account shall be credited and the appropriate utility plant account charged. If the work is abandoned, the charge shall be made to account 426.5, Other Deductions, or the appropriate operating expense account.

B. This account shall also include costs of studies and analyses mandated by regulatory bodies related to plant in service. If construction results from such studies, this account shall be credited and the appropriate utility plant account charged with an equitable portion of such study costs directly attributable to new construction. The portion of such study costs not attributable to new construction or the entire cost if construction does not result shall be charged to account 182.2, Unrecovered Plant and Regulatory Study Costs, or the appropriate operating expense account. The costs of such studies relative to plant under construction shall be included directly in account 107, Construction Work in Progress—Gas.

C. The records supporting the entries to this account shall be so kept that the utility can furnish complete information as to the nature and the purpose of the survey, plans, or investigations and the nature and amounts of the several charges.

None of the Granite Bridge Project Costs are construction costs based on either the accounting definition, which the Court held is irrelevant when interpreting the Anti-CWIP statute, or plain meaning of that term. As noted above, the word "construction" is defined as "the process, art, or manner of constructing something."[9] To "construct" is "to make or form by combining or arranging parts or elements."[10] With respect to Granite Bridge, the Company's work never progressed to the point of construction or pre-construction activities. Under these plain meaning definitions, the Company's feasibility assessments of the Granite Bridge Project did not serve to "construct" the project, and therefore are not encompassed by R.S.A. 378:30-a, as applied by the Court in Public Service Company of New Hampshire.

[9] https://www.merriam-webster.com/dictionary/construction

[10] https://www.merriam-webster.com/dictionary/constructing

A. The Company Limited its Request to Costs Directly Associated with its Feasibility Assessment of the Granite Bridge Project.

EnergyNorth is requesting approval to recover $7.5 million in costs related to the investigation of the Granite Bridge Project (Exh. 14, at Bates 012; see also Exhs. 9 and 13).[11] The Commission's Audit Staff did not find the costs to be unreasonable or imprudent, and based the conclusion that the costs should be disallowed solely on an incorrect reading of the Anti-CWIP statute (Exh. 9, at Bates 016-017).[12]

Prior to filing this request for recovery, the Company reviewed and screened the Granite Bridge Project Costs by applying the following four guiding principles (Exh. 14, at Bates 030): (1) costs were core expenditures to assess the viability and feasibility of the Granite Bridge Project as a least-cost resource alternative to meet the natural gas demand needs of EnergyNorth's customers; (2) the costs were directly incurred to develop the feasibility assessment with an appropriate level of detail to support the cost estimate for the Granite Bridge Project; (3) the costs were incurred during the identified period; and (4) the costs were reviewed, verified, and approved for payment by authorized personnel (Exh. 14, at Bates, 030-031). Supporting documents associated with the Granite Bridge Project Costs were reviewed and confirmed by the Company's accounting and auditing departments prior to submission for recovery in this proceeding (id. at 031). Based on these principles, the Company excluded from its request costs related to public

[11] The Company has incurred a total of $9.1 million in costs related to the Granite Bridge Project but is seeking recovery of only $7.5 million (Exh. 14, Bates 011-012). EnergyNorth removed Allowance for Funds Used During Construction, public outreach, and legal and miscellaneous costs related to the planned New Hampshire Site Evaluation Committee filing from its request for cost recovery (id. at Bates 012). The request for cost recovery does also not include carrying costs (id.). EnergyNorth's cost recovery is focused on the core costs associated with engineering design, environmental assessments, and other analysis to determine the feasibility of the Granite Bridge Project (id.).

[12] Exhibit 9 provides the Commission Audit Staff's review of the Granite Bridge Project Costs. Notably, the recommendation to disallow costs was based on an interpretation of accounting standard. The report does not contest that the costs were reasonable and prudently incurred.

outreach, legal work associated with a future filing at the New Hampshire Site Evaluation Committee, and AFUDC (id.).

B. There is No Statutory Prohibition to Cost Recovery.

Staff has argued that the Granite Bridge Project Costs are precluded by the "anti-CWIP" statute (see June 8, 2021, p.m. transcript at 13; see also Exh. 7, at 35). This is simply not accurate. The CWIP statute states that:

> Public utility rates or charges shall not in any manner be based on the cost of construction work in progress. At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed. All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress, shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to consumers.

R.S.A. 378:30-a.

Staff argues for a plain reading of the statute that would preclude cost recovery (see Exh. 7, at 37). However, Staff testified that, although Staff is aware of the Court's decision, the Court's decision was not considered in forming Staff's opinion (June 8, 2021, p.m. transcript at 111). Under the parameters established by the Court, there is no basis for a finding that the Company began any "construction" related to the Granite Bridge Project that would bring those costs within the scope of the statute (Exh. 16, at 2; Exh. 14, at Bates 049; see also Exh. 10, at 5 (stating that "Staff is unaware of any physical construction related to the Granite Bridge Project…"). Instead, the record clearly and unequivocally supports a finding that EnergyNorth performed the necessary and reasonable evaluation, inspection, and assessment of the Granite Bridge Project option (see Exhs. 7, at 3; 13, at 3-9). The Court has confirmed that the use of the term "construction" refers to "physical plant" and not to a technical accounting term. Appeal of Public Service Company of

New Hampshire, 125 N.H. 46, at 53, 480 A.2d. 20, at 24 (1984). The Granite Bridge Project Costs are not for "uncompleted physical plant" because the construction of the project never began. In fact, Staff testified that the costs had not been booked to construction work in progress: "Liberty agrees that these costs *would have* been booked as CWIP had Granite Bridge -- *had the Granite Bridge Project progressed further*" (emphasis added). Thus, it is illogical for Staff to argue that costs should be considered CWIP when Staff admits that the project had not reached a point where the costs would have been recorded as CWIP.

C. The Granite Bridge Project Costs were Reasonable and Necessary, and Recovery is Consistent with Commission Precedent.

The record also supports a determination that the Company ceased consideration of the Granite Bridge Project (and ceased incurring the associated costs) as soon as a lower-cost option was communicated to the Company by TGP (Exh. 14, at Bates 011, 025). Therefore, the record evidence supports a determination that EnergyNorth incurred the costs associated with Granite Bridge only to the extent Granite Bridge remained a potentially lower-cost option for customers.

The Commission has previously approved recovery of costs related to efforts to achieve a lower cost option for customers. In Docket No. DG 99-050, the Commission approved recovery of contract exit fees incurred by Northern Utilities, Inc. ("Northern Utilities") to essentially abandon a precedent agreement with Granite State Gas Transmission, Inc. ("Granite State") in order to pursue a more favorable peak supply contract with Distrigas of Massachusetts ("DOMAC") that became available after Northern Utilities signed the precedent agreement. See Order No. 23,362, at 3 (December 7, 1999). In support of its determination that early termination of the agreement with Granite State was in the best interests of customers, Northern Utilities provided a cost analysis that demonstrated a net savings for customers arising from the DOMAC contract. Id. at 6. The net savings were achieved due to the lower cost of the alternative supply

options with DOMAC that would be pursued in lieu of the agreement with Granite State, i.e., the alternative supply option was at a lower cost than the exit fees incurred by Northern Utilities to terminate its agreement with Granite State. Id. It is important to note that, similar to EnergyNorth's situation, the DOMAC option was not available as a least-cost option and thus Northern Utilities pursued the least cost alternative for its customer's, e.g. the LNG storage and vaporization service from the Wells LNG project proposed by its affiliate, Granite State.[13]

Here, the Company is similarly seeking to recover costs associated with its investigation of the Granite Bridge Project. EnergyNorth undertook an analysis that is virtually identical to that presented in Docket DG 99-050 by Northern Utilities, and pursuant to which customers will realize substantial savings from terminating the Granite Bridge Project in favor of entering contracts with TGP (Exh. 14, at Bates 037). Further, EnergyNorth is proposing to amortize the costs over a five-year period (id. at 036).

Although Staff conceded that Northern Utilities customers paid CWIP associated with its project through the Exit Fee (June 8, 2021, p.m. transcript, at 117), none of the costs in question in this proceeding were recorded to CWIP on the Company's books. Even if characterized as CWIP, however, the record remains clear that the only difference between the Company's request in this proceeding and customer payment of the Exit Fee in Docket DG 99-050 would be how the costs are *labelled*, i.e., "Exit Fee" instead of "Survey and Feasibility Costs."

The Company has presented uncontested evidence that the Granite Bridge Project was the least cost option, and provided substantial reliability benefits, during the time that EnergyNorth incurred the costs at issue here to determine its feasibility. The most recent Granite Bridge pipeline estimates would result in estimated annual costs of $18 million while the TGP pricing for its

[13] Northern's precedent agreement was approved by the Commission in Order 81 NHPUC 648 (August 26, 1996).

incremental capacity option through May 2019 were in excess of [redacted] million per year. These uncontested facts support a determination that EnergyNorth acted prudently by investigating Granite Bridge. Customers would have realized a substantial benefit from construction of Granite Bridge over the more expensive, and likely infeasible, TGP options to increase capacity on the Concord Lateral.

The after-the-fact emergence of the new TGP pricing as the lowest cost option ([redacted] million per year in October 2019, falling to $2 million per year in the signed 2021 contract) caused the Company to cease work on Granite Bridge. Although it will never be possible to know exactly how and to what extent the Granite Bridge alternative influenced TGP – it also cannot be concluded that it had no impact, particularly given that TGP's return to the negotiating table with a lower offer came only after the Company reached out and contacted TGP to indicate that it was nearing 70 percent completion of the feasibility work (June 8, 2021, a.m. transcript, at 12) – the Commission should find the costs were prudently incurred to investigate Granite Bridge because it was at all relevant times the least cost option to address the Company's needs. Allowing recovery of these costs is therefore warranted and consistent with the Commission precedent from Docket DG 99-050.[14]

It also should be noted that the $7.5 million requested for recovery by the Company represents over 50 percent of the Company's net income for 2020, *i.e.*, the costs are not insignificant (June 7, 2021, p.m. transcript, at 44). By contrast, amortizing these costs over a five-year period would result in a bill impact of only $6.65 annually for the average customer (June 7,

[14] It is also telling that the Commission did not deny cost recovery associated with the Granite Bridge Project in Docket DG 17-198 and instead determined that review of these costs was more appropriately considered in a full rate case. Order No. 26,409, at 13. If recovery of the Granite Bridge Project costs were so clearly precluded by the CWIP Statute, the Commission could have so indicated in its Order in Docket DG 17-198 in the interests of administrative efficiency.

2021, p.m. transcript, at 42). Denying recovery of Granite Bridge Costs would result in a particularly unbalanced outcome given the Company's clearly identified resource need and its obligation to reliably serve customers. In fact, given the financial impact, a decision to deny recovery of this amount is a *de facto* penalty, assessed despite the Company's diligent efforts to meet its obligations as a gas company by finding the least cost resource to meet customer demand. Further, a decision to deny recovery of these investigative and feasibility costs would, in effect, deter the Company from pursuing potential least cost alternatives and accept the only option offered by a pipeline to which it is a captive customer. This harsh result is unwarranted and inherently unfair given: (1) the costs were incurred in diligent and good faith pursuit of customer interests; and (2) there is no meaningful or legally valid reason put forth to warrant disallowance of cost reasonable and prudently incurred.

V. Conclusion

For the reasons stated above, EnergyNorth respectfully requests approval to recover the costs incurred related to the investigation, evaluation, and assessment of the Granite Bridge Project. These costs were necessarily incurred to find the solution to the Company's resource obligations and are consistent with prior Commission precedent and sound regulatory policy. Recovery of these costs is in the best interest of customers given the premier position that they now hold in relation to a least-cost, long-term capacity resource. EnergyNorth requests approval to recover these costs through a reconciling charge through its Local Distribution Adjustment Clause over a period of five years.

Date: June 25, 2021

Respectfully submitted,
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By its Attorney,

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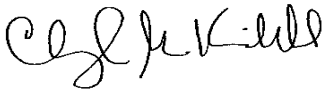

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Certificate of Service

I certify that on June 25, 2021, a copy of this Brief has been electronically forwarded to the service list.

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