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

DG 20-105
Distribution Service Rate Case

OCA Data Requests - Set 4

Date Request Received: 12/17/20 | Date of Response: 1/4/21
Request No. OCA 4-17 | Respondent: Francisco C. DaFonte
Steven Mullen

REQUEST:

Reference the Supplemental Direct Testimony filed by the Company on November 20, 2020 to recover Granite Bridge Project development costs and enter into a firm transportation contract with Tennessee for 40,000 Dth per day with a Dracut, MA receipt point:

a. Please provide a detailed breakdown of the $7.5 million in costs the Company is requesting recovery, also identify which cost would have been capitalized if the Granite Bridge Project was placed in service; and

b. In comparing the costs of the Granite Bridge Project and the Tennessee FT arrangement, what did the Company assume with respect to the supplier reservation/commodity costs that would be required under a gas supply arrangement with a Dracut receipt point? Include all analyses/workpaper supporting the Company's gas supply cost assumptions.

RESPONSE:

a. Please see Attachment OCA 4-17.a.xlsx. All costs would have been capitalized if the Granite Bridge Project was placed in service.

b. The Company did not make any comparison of gas supply purchases at Dracut under the TGP FT Agreement to gas supply purchases at the interconnect of the proposed Granite Bridge Pipeline with the Joint Facilities of Portland Natural Gas Transmission System and Maritimes and Northeast Pipeline (the "Joint Facilities"). This is because spot purchases at Dracut would effectively be priced the same as spot purchases into the proposed Granite Bridge Pipeline since both delivery points are at the terminus of the Joint Facilities and have access to the same upstream supply sources.

   The meaningful economic comparison is the annual fixed costs of the proposed Granite Bridge Pipeline and the TGP FT Agreement. While the estimated levelized annual cost for the proposed Granite Bridge Pipeline was approximately $17.6 million[1], the levelized annual cost of the TGP FT Agreement is approximately $2 million.

[1] See footnote 17 at Bates 21 in the Supplemental Direct Testimony of Francisco C. DaFonte, William R. Killeen, and Steven E. Mullen in the current docket.

DG 20-105
ATTACHMENT SPF-18

STAFF RESPONSE TO LIBERTY ARGUMENTS FOR RECOVERY OF GRANITE BRIDGE PROJECT COSTS

On November 20, 2020, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed Supplement Direct Testimony of Francisco C. DaFonte, William R. Killeen, and Steven E. Mullen seeking Commission approval for recovery of approximately $7.5 million of Granite Bridge Project costs. Liberty argues that Granite Bridge Project costs should be recovered from customers for several reasons.

According to Liberty:

> First, these costs were necessary to evaluate and demonstrate the feasibility of an alternative to the Company's sole delivery pipeline, the TGP Concord Lateral. From 2016 until late 2019, the rates offered by TGP for a new capacity contract were substantially higher than the expected costs of the Granite Bridge Project, making the Granite Bridge Project the clear lower cost alternative. Second, the work that gave rise to the Granite Bridge Project Costs strongly positioned the Company in its negotiations with TGP and other market participants, as it indicated EnergyNorth's ability and willingness to solve the Company's resource constraints through a means other than contracting with TGP. The pursuit of the Granite Bridge Project positioned the Company to continue the years-long discussions with TGP and benefit from the significantly lower pricing ultimately offered by TGP for capacity on the TGP Concord Lateral. EnergyNorth's work to investigate and analyze the viability and feasibility of the Granite Bridge Project was instrumental and critical in achieving the current, highly beneficial outcome for EnergyNorth's customers. Third, EnergyNorth's customers will receive the benefit associated with the Company's pursuit of the Company-sponsored development option, in that the customers are the direct and sole beneficiaries of the significant cost savings associated with the TGP Contract. As such, the Company should be allowed to recover the costs to achieve that benefit. Fourth, the Company's request to recover these necessary and prudently incurred costs is consistent with the payment of a termination or exit fee associated with a third-party precedent agreement for pipeline capacity, which have been allowed for recovery. Finally, allowing recovery of the Granite Bridge Project Costs will incentivize EnergyNorth and other utilities to continue seeking the least-cost option for customers regardless of whether that option is sponsored by the Company or a third-party.
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> Bates pages 13-14.

<u>Liberty's First Argument</u>

The costs were necessary to evaluate and demonstrate the feasibility of an alternative to the Company's sole delivery pipeline, the TGP Concord Lateral. From 2016 until late 2019, the rates offered by TGP for a new capacity contract were substantially higher than the expected costs of the Granite Bridge Project, making the Granite Bridge Project the clear lower cost alternative.

Staff Response:

Staff testimony in the Granite Bridge Project docket (DG 17-198) questioned Liberty's efforts to elicit a good faith offer from TGP before deciding on the Granite Bridge Project. Testimony of The Liberty Consulting Group (Bates p. 29-30):

> **Q.** In what ways do you consider management's analysis of Concord Lateral expansion insufficiently comprehensive?
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> **A.** *Based on the record, the circumstances surrounding Liberty Utilities' discussions and leading to its conclusions about expansion costs do not indicate that management gave the [TGP] pipeline owner a basis for believing that it faced a serious counterparty.* Moreover, management does not appear to have given substantial consideration to phased expansion of the Concord Lateral. A phased expansion, matched to Liberty Utilities' needs as and to the extent those needs continue to grow, appears to comprise a logical alternative. This approach, if otherwise sound and economical, could mitigate the risk that a single, larger expansion would eventually prove excessive, should demands not continue to grow at projected levels.
>
> At most, the information secured so far by the Company is far too preliminary for making a choice between the Concord Lateral and the Granite Bridge Pipeline as one-to-one alternatives.
>
> **Q.** What basis do you have for concern about the pipeline owner's sense of materiality in responding to Liberty Utilities' inquiries and discussions about Concord Lateral expansion?
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> **A.** *The Company made clear to TGP that its need for information was in case the NH PUC ruled against the Company's preferred option. That context indicates more a request for information to support a decision already made, not to support one yet to come following detailed data gathering, analysis, and reflection.* [Emphasis Added]

Intervenor testimony in the Granite Bridge Project docket (DG 17-198) also questioned Liberty's analysis comparing the Granite Bridge Project and TGP options. Testimony of John A. Rosenkranz on behalf of Pipeline Awareness Network for The Northeast, Inc. (Bates page 4):

> Instead of building the Granite Bridge Project, EnergyNorth should adopt a more flexible supply strategy that adds new gas supply resources as they are needed. One such strategy would be to contact for a smaller amount of new gas transportation from Tennessee Gas Pipeline ("TGP") to meet customers' near-term requirements, and defer

> the consideration of a new on-system LNG facility to a later date, with the size and timing of the facility tied to the actual growth of customer requirements.

Not only did Liberty's analysis fail to adequately and fairly analyze the various options that might be available with TGP, the cost estimate for the Granite Bridge Project in the initial filing based on conceptual engineering was grossly understated.[1] When Liberty updated project cost estimates, the estimated cost to build the pipeline increased by 47 percent and the cost to build the LNG facility increased by 22 percent. Testimony of The Liberty Consulting Group (Bates p. 29-30):

> Liberty Utilities considers expansion of the Concord Lateral as a less desirable alternative. However, in our view, the analyses leading to that conclusion have not been sufficiently comprehensive. Moreover, as is true of management's estimates of LNG facility costs, costs for its preferred alternative, the Granite Bridge Pipeline, have also dramatically increased. Mr. Lyon's December 22, 2017 testimony placed estimated Granite Bridge Pipeline costs at $110 million. They have increased since by 53 percent, based on the Company's more recent estimate of $167.7 million. This estimate remains based on a fairly low level of preliminary engineering, specifically, the 30 percent minimum required by the New Hampshire Department of Transportation for a Preliminary Conceptual Feasibility Study.

The costs Liberty incurred were costs necessary to acquire, or attempt to acquire, regulatory approvals needed to commence construction of such a major project.

In effect, Liberty appears to be arguing now, in retrospect through this current rate case docket, DG 20-105, after abandoning the Granite Bridge Project, that the costs incurred to promote and shepherd the Granite Bridge Project through the regulatory approval process were "necessary" in order to negotiate and reach agreement with TGP on an alternative supply option that would obviate the need for the Granite Bridge Project.

<u>Liberty's Second Argument</u>

The work that gave rise to the Granite Bridge Project costs strongly positioned the Company in its negotiations with TGP and other market participants, as it indicated EnergyNorth's ability and willingness to solve the Company's resource constraints thTerough a means other than contracting with TGP. The pursuit of the Granite Bridge Project positioned the Company to continue the years-long discussions with TGP and benefit from the significantly lower pricing ultimately offered by TGP for capacity on the TGP Concord Lateral. EnergyNorth's work to investigate and analyze the viability and feasibility of the Granite Bridge Project was instrumental and critical in achieving the current, highly beneficial outcome for EnergyNorth's customers.

[1] Direct Testimony of Susan L. Fleck and Francisco C. DaFonte filed in DG 17-198, states that Liberty had "received *conceptual* engineering and construction cost estimates for the Granite Bridge Pipeline and Granite Bridge LNG facility" (emphasis added).

Staff Response:

In Staff's estimation, the Granite Bridge Project proposal provided little, if any, advantage in negotiating a lower price for TGP capacity. The lower price is a direct result of the decision of a key customer of TGP to decide (according to Liberty) not to renew its existing long-term supply contract with TGP.

On December 22, 2017, Liberty filed a petition for findings regarding the prudence of the proposed Granite Bridge Project in Docket DG 17-198. Over the ensuing two years there were numerous technical sessions, rounds of discovery, multiple suspensions of the procedural schedule, and Staff, Office of Consumer Advocate, and intervenor testimonies overwhelmingly recommended that the Commission find the Granite Bridge Project to be imprudent. On that basis alone, TGP would have had little reason to expect that the Granite Bridge Project was a viable alternative for Liberty in lieu of a contract with TGP. Presumably, TGP would also have been aware that Liberty had not made a filing with the New Hampshire Site Evaluation Committee (SEC) for approval to build, a necessary precursor before construction of the Granite Bridge Project could begin.

Liberty was able to contract with TGP capacity at the price it did because another TGP customer company apparently did not renew its capacity contract with TGP and TGP approached Liberty as late as summer of 2020 with a proposal to contract for existing TGP capacity that had become available at that time. Liberty publicly acknowledged that fact when explaining why it was abandoning the Granite Bridge Project in a Manchester Union Leader article (August 1, 2020):

> "'When we originally filed Granite Bridge, the capacity was not available,' said Emily Burnett, a spokeswoman for Liberty Utilities. At the end of 2019, another company did not renew a contract to use a portion of the Concord Lateral pipeline."

Liberty – Third Argument

EnergyNorth's customers will receive the benefit associated with the Company's pursuit of the Company-sponsored development option, in that the customers are the direct and sole beneficiaries of the significant cost savings associated with the TGP Contract.

Staff Response:

As noted in Staff's response to Liberty's second argument, Liberty's pursuit of the Granite Bridge Project option was not the deciding factor that led to a contract with TGP. Furthermore, the real, significant cost savings in concluding a contract with TGP stem from the cancellation of the Granite Bridge Project and the extraordinarily high project cost projected for its construction (above and beyond the costs spent in preparing the Granite Bridge petition and litigating for approval of the project at the Commission during the course of approximately three years.)[2]

In addition, Liberty shareholders will see a benefit from entering into the TGP contract based on the Liberty's testimony filed in DG 21-008 for approval of the TGP contract. To optimize the new TGP capacity Liberty needs to complete certain on-system distribution enhancement projects, with capital costs estimates ranging from $39 to $45 million.[3] That capital spending, if deemed to be prudent, will earn a rate of return and benefit shareholders.

Staff finds the Company's argument concerning in that it implies that Liberty believe there exists a disincentive for Liberty to pursue projects or contracts from third parties that are for the sole benefit of ratepayers. The COG mechanism was designed to be a direct pass through of supply costs with no mark-up by the utility. Gas utilities were never intended to profit on transportation and supply costs. It is the utilities' statutory obligation and responsibility pursuant to RSA 378:38-39 to find the least/best cost supply portfolio in conformance with the State's energy policy under RSA 378:37 "to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost".

Liberty – Fourth Argument

According to Liberty, the Company's request to recover the "necessary and prudently incurred" costs is consistent with the payment of a termination or exit fee associated with a third-party precedent agreement for pipeline capacity, which have been allowed for recovery.

Staff Response:

The Company argument that the recovery of such costs in another docket is analogous is mistaken. See Supplemental Direct Testimony of DaFonte, Killeen and Mullen at BP 47-48 (referring to a settlement agreement between Northern Utilities, Inc. (Northern) and Granite State Gas Transmission (GSGT) to recover certain GSGT costs associate with terminating a contract for capacity associated with a GSGT proposed LNG facility. The circumstances were significantly and materially different.

In that case, the Commission had approved a precedent agreement between Northern and GSGT for capacity. The approved precedent agreement included the following contract provision, "If Northern desires to terminate the Contract prior to the end of the primary term, Northern shall be assessed an exit fee for stranded costs related to the recovery of capital costs and other costs associated with the facility." GSGT filed with, and received approval from, the FERC to construct and operate the proposed LNG tank. After GSGT receive FERC approval, Northern was able to acquire lower cost alternative supply and terminated the GSGT contract. Order 23,362 (December 7, 1999, in DG 99-

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[2] Revised Testimony of The Liberty Consulting Group filed September 20, 2019 in Docket DG 17-048: Bates page 17, "recent estimates places LNG costs at $246 million" & Bates pages 29-30, "more recent [Granite Bridge Pipeline] estimate of $167.7 million" Footnote: "Allowance for Funds Used During Construction (AFUDC) would bring this amount to $179.0 million."

[3] Testimony of DaFonte and Killeen filed January 20, 2021 in DG 21-008. Bates pages 25 & 26.

050) approved recovery of the exit fee required under the terms of the contract Northern had entered into with GSGT. The order did not provide for recovery of construction work in progress. Had the proposed LNG facility been a Northern project, Staff believes none of the project development costs could have been charged to their customers under the New Hampshire anti-CWIP law.

In this case there is no approved contract with a third party providing for cost recovery if the project is not placed into service. Thus, there is no contractual contingency at play for the recovery of stranded costs in the event the project is not completed and placed into service. Instead, Liberty has attempted to create a link between the Granite Bridge Project and its new supply contract with Tennessee to justify the recovery of costs related to its development and adjudication of the Granite Bridge Project through the regulatory approval process. However, such costs constitute construction work in progress – in clear violation of New Hampshire law. Specifically, the recovery of costs sunk in a project that is not in service is prohibited under RSA 378:30-a, New Hampshire's "anti-CWIP" or construction work in progress statute. Costs prohibited under that statute include "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"* unless and until the project is actually providing service to customers. Liberty has abandoned the Granite Bridge Project. The project has not been, and will not be, completed. And the Granite Bridge pipeline and LNG storage facility are not, and will not be, providing service to consumers.

Liberty – Fifth Argument

Liberty argues that allowing recovery of the Granite Bridge Project Costs will incentivize EnergyNorth and other utilities to continue seeking the least-cost option for customers regardless of whether that option is sponsored by the Company or a third-party.

As noted above, New Hampshire gas and electric utilities are required by statute to file Least Cost Integrated Resource Plans with the Commission. Pursuant to RSA 378:38 and :39, utilities are expected to select least/best cost options regardless of whether those options are sponsored by the utility itself or through a third-party.

The fact that Liberty petitioned the Commission to find the Granite Bridge Project to be prudent in advance of filing with the Site Evaluation Committee (SEC) for approval to build the project is a clear indication that Liberty understood the risks when deciding to pursue the project. Staff testimony in Docket DG 17-198 indicates why the Company may have been willing to accept that risk. *See* Testimony of Liberty Consulting Group, Page 25 of 41:

> **Q. How do you view the distribution of risk and reward in the Company's proposal?**
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> A. The Company's proposed distribution of risk and reward skews heavily toward Liberty Utilities, which will earn returns whether or not its cost estimates (albeit presumably subject to prudence review) or its growth forecasts prove accurate. Customers take installation cost and growth risk, in return for barely positive benefits

> even if those estimates and forecasts prove accurate. Customers might receive a benefit [REDACTED] of million in levelized costs, spread out over 20 years under those circumstances. That "return" for customers is far too low, uncertain, and subject to reversal to justify obliging them to carry the costs of an investment of some $260.5 million. In stark contrast, the Company's calculations show it receiving cumulative Net Income of [REDACTED] over the same period. Moreover, the very same cost growth that threatens even the marginal Company-forecasted customer economic benefits, further benefits the Company through higher returns recovered through customer rates.

In the DG 17-198 proceeding, Staff and intervenors testified that Liberty's analysis in support of its decision to go forward with the Granite Bridge Project was flawed, as seen in the Staff and intevenor testimony quoted above. The Granite Bridge Project would have doubled Liberty's currently capacity needs and cost well over $400 million with an expected service life in excess of fifty years, at a time when climate change concerns are accelerating efforts to reduce and/or eliminate the use of fossil fuels. Allowing recovery of Granite Bridge Project development costs would to serve as an incentive to other utilities to "aggressively pursue" utility sponsored projects, as Liberty suggests, would send the wrong incentive and reward Liberty for not performing a thorough and adequate assessments of alternative options and risks *prior to* expending money on litigation before the Commission; litigation that imposed significant costs on the Commission, as well as other parties and intervenors. Such a decision would be would set poor regulatory precedent and would be contrary to statutory law.