

**BEFORE THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
Docket No. DG 21-008**

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

**Petition for Approval of a Firm Transportation Agreement
with Tennessee Gas Pipeline Company, LLC**

**CONSERVATION LAW FOUNDATION’S BRIEF
IN OPPOSITION TO LIBERTY’S PETITION**

NOW COMES the Conservation Law Foundation (“CLF”), an intervenor in this docket, and submits the following brief pursuant to N.H. Code Admin. Rule Puc 203.32. and the order of the New Hampshire Public Utilities Commission (“Commission”) dated October 1, 2021, granting CLF leave to submit a brief.

I. Background

In this matter, Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (“Liberty”) has filed a petition for approval of a firm transportation agreement with Tennessee Gas Pipeline Company, LLC (“TGP”) for 40,000 dekatherms of natural gas capacity. In the attachments filed with its petition, Liberty asserts that to optimize the increased capacity from the proposed TGP agreement, it must complete certain on-system distribution enhancement projects totaling approximately \$45 million. (Ex. 3, Francisco C. DaFonte and William Killeen Testimony, Docket No. DG 21-008, at Bates 24-26).

II. Liberty Has Failed to Meet its Burden of Proof

In its order of notice initiating this docket, the Commission held that Liberty’s petition raises issues related to whether the proposed agreement with TGP “is prudent, reasonable, and consistent with the public interest; and whether the testimony provided with the petition

addressing resource requirements, evaluation of resource alternatives, possible future capital investment to fully utilize the capacity, and TGP contract risks and risk mitigation, supports approval of the agreement.” (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021)). Further, as the Commission noted in its order, RSA 374:1, RSA 374:2, and RSA 378:7 require that all services furnished by public utilities—and that all charges and rates rendered for such services—be just and reasonable.

As the petitioner, Liberty has the burden of proving its petition by a preponderance of the evidence. Rule Puc 203.25. However, due to the failure of Liberty’s petition to comply with New Hampshire’s Least Cost Integrated Resource Planning (“LCIRP”) statutes, RSA 378:37-40, Liberty has not met its burden of proving that the proposed TGP agreement is “prudent, reasonable, and consistent with the public interest.” (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021)).

A. New Hampshire’s LCIRP Statutes Require Utilities to Conduct Certain Analyses

Pursuant to RSA 378:37, the New Hampshire General Court declared as follows:

it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.

Id. Further, under 378:38, a natural gas utility is required to file a least cost integrated plan at least every five years, and the plan “***shall include,***” *inter alia*:

- “A forecast of future demand for the utility’s service area”;
- “An assessment of demand-side energy management programs, including conservation, efficiency, and load management programs”;

- “An assessment of supply options including owned capacity, market procurements, renewable energy, and distributed energy resources”;
- “An assessment of plan integration and impact on state compliance with the Clean Air Act of 1990, as amended, and other environmental laws that may impact a utility’s assets or customers”; and
- “An assessment of the plan’s long- and short-term environmental, economic, and energy price and supply impact on the state.” *Id.* (emphasis added).

Additionally, RSA 378:39 requires that the Commission “review integrated least-cost resource plans in order to evaluate the consistency of each utility’s plan with [RSA 378:39], in an adjudicative proceeding.” *Id.* In deciding whether to approve the utility’s plan, the Commission must, as a matter of law, “consider potential environmental, economic, and health-related impacts of each proposed option,” and the Commission’s “approval of a utility’s plan shall not be deemed a pre-approval of any actions taken or proposed by the utility in implementing the plan.” *Id.* In instances where the Commission “determines the options have equivalent financial costs, equivalent reliability, and equivalent environmental, economic, and health-related impacts, the following order of energy policy priorities shall guide the commission’s evaluation: I. Energy efficiency and other demand-side management resources; II. Renewable energy sources; III. All other energy sources.” *Id.* Finally, RSA 378:40 provides as follows:

No rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and approved in accordance with the provisions of RSA 378:38 and RSA 378:39. However, nothing contained in this subdivision shall prevent the commission from approving a change, otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.

Id.

B. Liberty Has Failed to Update its LCIRP Filings to Reflect its New Proposal

Liberty's petition and associated filings in this docket violate New Hampshire's LCIRP statutes for a number of reasons. First, since initiating this docket nine months ago, Liberty has failed to update its 2017 LCIRP plan to reflect the TGP agreement and proposed on-system upgrades. In the 2017 LCIRP plan and supplemental filings in Docket No. DG 17-152, Liberty vaguely refers to a "Concord Lateral expansion" as an alternative to the now abandoned Granite Bridge project. *See, e.g.*, William R. Killeen Testimony, Docket No. DG 17-152, at Bates 13 (April 30, 2019).¹ However, based on Liberty's filings in the LCIRP docket, the "Concord Lateral expansion" appears to be different from the project that Liberty now proposes here.

While Liberty makes several references to the so-called "Concord Lateral expansion" throughout its LCIRP filings, Liberty's actual description of this alternative project demonstrates that this project is different than what is now proposed in the instant docket. For example, in Liberty's LCIRP filings, Liberty stated that the Concord Lateral is fully subscribed and that "[a]ny additional requests to increase capacity and deliverability will . . . require incremental facilities *on the Tennessee system.*" *Id.* at Bates 7 (emphasis added). Further, Liberty testified that "an alternative to the Granite Bridge Pipeline is an expansion of the Concord Lateral, which expansion *would be constructed by its owner TGP,*" and that this option would likely involve new sections of transmission pipeline and would likely require approval by New Hampshire's Site Evaluation Committee ("SEC") and the Federal Energy Regulatory Commission ("FERC"). (Sherrie Trefrey Testimony, Docket No. DG 17-152, at Bates 71 (June 28, 2019) (emphasis added)). Liberty also stated that "the estimated daily rate for constructing the proposed Granite

¹ Pursuant to N.H. Code Admin. Rule Puc 203.27, the Commission "shall take administrative notice when a party presents one or more of the following: (1) Any fact which could be judicially noticed in the courts of New Hampshire; [or] (2) *The relevant portion of the record of other proceedings before the commission . . .*" *Id.* (emphasis added).

Bridge Pipeline was significantly lower than the daily rates *provided by Tennessee for an expansion of the TGP Concord Lateral.*” (Francisco C. DaFonte, William R. Killeen, James M. Stephens, Kim N. Dao Rebuttal Testimony, Docket No. DG 17-152, at Bates 44 (October 25, 2019) (emphasis added)).

In contrast, here, Liberty’s preferred option would not involve TGP incurring capital costs to upgrade the Concord Lateral or require SEC or FERC approval; instead, it would involve Liberty completing “on-system distribution enhancement projects to optimize deliveries.” (Ex. 3, Francisco C. Dafonte, William R. Killeen Testimony, Docket No. 21-008, at Bates 24, 26). Thus, Liberty proposes a project in this docket that is different from the alternative options it proposed in its LCIRP plan. Liberty’s failure to include its proposed project in its LCIRP plan, thus, violates RSA 378:38, which requires Liberty to include “[a]n assessment of supply options including owned capacity” in the LCIRP.

C. Liberty’s Filings Fail to Comply with All Elements of the LCIRP Statutes

1. Liberty Has Failed to Comply with the Demand Side Management Requirements of the LCIRP Statutes

Neither Liberty’s filings in this docket nor its LCIRP filings comply with the required elements of the New Hampshire LCIRP statutes. Specifically, Liberty’s filings in both dockets fail to properly assess demand-side energy management programs, such as energy efficiency and/or load management programs, as alternatives to the proposed TGP agreement and on-system enhancements. Liberty has stated that when it conducted its demand forecasts, it did not analyze energy efficiency measures beyond what is included in the 2018-2020 NH Saves Triennial Plan and did not consider the possibility of demand response programs.² Similarly, in

² See Ex. 10, Liberty Responses to CLF Data Requests 1-6, 1-7 (April 23, 2021); Ex. 11, Liberty Response to CLF Data Request 2-1 (May 20, 2021); Ex. 13, Liberty Response to CLF Data Request 3-8 (September 9, 2021).

Liberty's LCIRP filings, Liberty did not analyze the possibility of enhanced energy efficiency savings beyond what is included in the 2018-2020 Triennial Plan when conducting its demand forecast. *See* Liberty Least Cost Integrated Resource Plan, Docket No. DG 17-152, at Bates 27 (October 2, 2017). However, mere inclusion of the savings gains from the 2018-2020 Triennial Plan in Liberty's demand forecasts does not assess the full extent to which ***all available energy efficiency options***, including programs that go beyond what is funded by the Energy Efficiency Resource Standard, could be least-cost pursuant to integrated resource planning.

Liberty's failure to analyze the potential for increased energy efficiency or other load management projects, including demand response programs, violates both the requirement of RSA 378:37 that least cost integrated resource planning "maximize the use of cost effective energy efficiency and other demand resources" and the mandate in RSA 378:38 that LCIRP plans include "an assessment of demand-side energy management programs, including conservation, efficiency, and load management programs."³ Further, Liberty's deficient filings vis-à-vis energy efficiency renders it impossible for the Commission to prioritize "energy efficiency and other demand side resources" over other energy solutions, as it is required to do under RSA 378:39.

In *Northern Utilities Inc. d/b/a Unitil*, Docket No. DG 15-033, Order No. 26,027 (June 19, 2017), the Commission recognized that the legislature had recently extended the LCIRP statutes to apply to natural gas utilities, including the requirement that an LCIRP include an assessment of demand-side energy management programs. *Id.* at 2-3. While the Commission

³ Liberty's filings are also deficient because they do not examine the possibility of strategic electrification as an alternative to the TGP contract proposal. RSA 378:37 states that it is the energy policy of New Hampshire to "provid[e] for the reliability and diversity of energy sources, and RSA 378:38 requires utilities to provide an "assessment of supply options including owned capacity, market procurements, renewable energy, and distributed energy resources."

granted Unitil a waiver from meeting all of the LCIRP requirements for that particular LCIRP, it nonetheless ordered Unitil to “comply with *all statutory provisions*” of the LCIRP statutes, including the requirement that its LCIRP contain an assessment of demand-side energy management programs, in its next LCIRP. *Id.* at 1, 5 (emphasis added). Similarly, nearly seven years ago in *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Docket No. DG 13-313, Order No. 25,762 (February 9, 2015), the Commission held that for Liberty’s 2017 LCIRP, *i.e.*, the current LCIRP, Liberty was required to “*address all of the statutory elements* of RSA 378:38 and RSA 378:39 in its plan development in a granular way, so that reviewing parties may track the correspondence of the plan with the relevant statutory standards.”) *Id.* (emphasis added). In fact, in its order of notice initiating this docket, the Commission recognized that its approval of the proposed TGP agreement was, in part, contingent on whether Liberty had sufficiently evaluated “resource alternatives.” (Commission Order of Notice, Docket No. DG 21-008).

Liberty has failed to analyze enhanced energy efficiency, load management, and/or demand response programs—beyond the programs included in the 2018-2020 Triennial Plan—as alternatives to the proposed TGP agreement, in either this docket or the LCIRP docket. This failure represents a clear violation of the LCIRP statutes and the Commission’s directives in Order Nos. 26,027 and 25,762, which necessitates that the Commission reject Liberty’s petition.

2. Liberty Has Failed to Analyze the Environmental and Health Related Impacts of the TGP Agreement

Just as Liberty’s filings are deficient because they fail to assess demand-side energy management programs, Liberty’s filings are also deficient because they lack any analysis whatsoever of the environmental and health impacts of the proposed TGP agreement and related on-system enhancements. In discovery, Liberty stated that it had not assessed the potential

environmental and public health impacts of the proposed TGP agreement, including the climate change impacts, because Liberty’s agreement with TGP uses existing TGP capacity.⁴ The lack of *any* analysis by Liberty of the environmental or public health impacts from the proposed TGP agreement contravenes the clear requirement in RSA 378:38 that least cost integrated resource plans include “[a]n assessment of the plan’s long- and short-term environmental, economic, and energy price and supply impact on the state” and precludes the Commission from considering “the potential environmental, economic, and health-related impacts of each proposed option,” as required by RSA 378:39. *See also Northern Utilities Inc. d/b/a Unutil*, Docket No. DG 15-033, Order No. 26,027, at 6 (June 19, 2017) (directing Unutil to provide “more detailed evidence of reliability, environmental, economic, and health related impacts” in its next LCIRP).

D. Liberty’s Filings in this Docket Must Align with its Filings in the LCIRP Docket

Liberty is likely to argue that the LCIRP statutes are either irrelevant to the Commission’s decision-making in this case and/or that its filings in this docket need not comply with the LCIRP statutes because Liberty’s LCIRP is not being considered in this particular docket. However, any such suggestion would make a mockery of the LCIRP planning requirements, would relegate the LCIRP to little more than a meaningless reporting form, and would be contrary to the Commission’s own past practices regarding consideration of utility infrastructure investments.

The Commission has made clear that the LCIRP “should not exist in a vacuum, and it should incorporate as much of a utility’s true business planning information as possible.” *Public Service Company of New Hampshire*, Docket No. DE 10-261, Order No. 25,459, at 18 (January 29, 2013). In *Public Service Company of New Hampshire*, the Commission expressed concern

⁴ *See* Liberty Responses to CLF Data Requests 1-23 (April 23, 2021).

“that the time and expense of producing an LCIRP as done in the past may no longer result in a document that has significant value to a utility, to the Commission or to ratepayers” and that it was “troubled” by PSNH’s view of its “LCIRP filing as a document tantamount to a reporting form, filed for compliance purposes, with its *‘real’ planning methodologies being implemented internally in parallel to the LCIRP process.*” *Id.* (emphasis added). Not surprisingly, the Commission directed PSNH to consider the LCIRP process “not as an arid regulatory compliance, but rather, as a component of and a reflection of its internal planning processes” and, “for the integrity and usefulness of the LCIRP process,” directed PSNH, in its next LCIRP filing to “demonstrate that it *synchronizes* (if even at a general level of detail) *the information provided in its LCIRP with its internal business planning.*” *Id.* (emphasis added).

Standing in stark contrast to the Commission’s decision in *Public Service Company of New Hampshire*, Order No. 25,459, here, Liberty attempts to gain Commission approval of the proposed TGP agreement without any consideration of the proposed TGP and associated on-system enhancements in the LCIRP filings, and without any assessment of demand-side management alternatives or environmental and public health impacts. The Commission’s directive that the LCIRP “should not exist in a vacuum” and that the LCIRP must incorporate a utility’s business planning, *id.*, demonstrates that proposed supply contracts and infrastructure investments cannot exist divorced from LCIRP planning.⁵

Under the LCIRP statutes and the Commission’s prior orders, Liberty’s filings in this docket must “synchronize” with its LCIRP filings. *Public Service Company of New Hampshire*,

⁵ The Commission more recently acknowledged that LCIRP planning cannot exist separate from a utility’s general investment decisions to the extent it required that the Granite Bridge docket and the Liberty LCIRP docket proceed under parallel schedules. *See* Sec. Letter Approving Procedural Schedule, Docket No. DG 17-198 (April 5, 2018). Further, the provision in RSA 378:39, stating that the Commission’s “approval of a utility’s [LCIRP] plan shall not be deemed a pre-approval *of any actions taken or proposed by the utility in implementing the plan.*” establishes that LCIRP plans and actions proposed by utilities in separate dockets are intrinsically related. *Id.* (emphasis added).

Order No. 25,459, at 18. Moreover, pursuant to RSA 378:39, the Commission may not approve a rate change unless a utility has filed a required plan in accordance with RSA 378:38. If the TGP agreement is approved, then Liberty will eventually seek a rate change in its cost of gas filing. Liberty should not be permitted to pull a potential energy solution out of its back pocket that is not envisioned in its LCIRP, nor skirt its responsibility to ensure that its TGP agreement proposal includes all of the statutorily required analyses under the LCIRP statutes.

The LCIRP statutes are the fundamental planning statutes for the New Hampshire utilities and the Commission cannot ensure that utility projects have been soundly selected and planned in the absence of compliance with these laws. Because the proposed TGP agreement does not comply with the LCIRP statutes and does not align with Liberty's LCIRP filings, the Commission must deny approval of Liberty's petition.

III. Conclusion

Liberty has not demonstrated that its petition complies with New Hampshire's LCIRP statutes or that it is aligned with its LCIRP filings in Docket No. DG 17-152. Thus, Liberty has not met its burden of demonstrating that the TGP agreement is prudent, reasonable, and consistent with the public interest or that it has evaluated resource alternatives, (Commission Order of Notice, Docket No. DG 21-008 (February 16, 2021)), and the Commission should deny Liberty's petition.

Respectfully submitted,

By: /s/Nicholas A. Krakoff
Nicholas A. Krakoff, Staff Attorney
Conservation Law Foundation
27 North Main Street
Concord, NH 03301
(603) 225-3060 x 3015
nkrakoff@clf.org

October 14, 2021

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Opposition to Liberty's Petition has, on this 14th day of October 2021, been sent by email to the service list in Docket No. DG 21-008

Respectfully submitted,

By: */s/Nicholas A. Krakoff*
Nicholas A. Krakoff, Staff Attorney
Conservation Law Foundation
27 North Main Street
Concord, NH 03301
(603) 225-3060 x 3015
nkrakoff@clf.org