

## STATE OF NEW HAMPSHIRE

## PUBLIC UTILITIES COMMISSION

August 8, 2013 - 10:04 a.m.  
Concord, New Hampshire

NHPUC AUG23'13 PM 4:20

RE: DG 13-198  
ENERGYNORTH NATURAL GAS, INC.  
d/b/a LIBERTY UTILITIES:  
Investigation into Line Extension  
Policy Matters.  
(Prehearing conference)

PRESENT: Commissioner Michael D. Harrington, Presiding  
Commissioner Robert R. Scott

Clare Howard-Pike, Clerk

APPEARANCES: Reptg. EnergyNorth Natural Gas, Inc.  
d/b/a Liberty Utilities:  
Kevin M. Baum, Esq. (Devine, Millimet)

Reptg. National Grid USA:  
Patrick H. Taylor, Esq. (McLane, Graf...)

Reptg. Residential Ratepayers:  
Rorie E. P. Hollenberg, Esq.  
Office of Consumer Advocate

Reptg. PUC Staff:  
Alexander F. Speidel, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# I N D E X

## PAGE NO.

### STATEMENTS RE: NATIONAL GRID'S REQUEST BY:

Mr. Taylor	7
Mr. Baum	9
Ms. Hollenberg	9
Mr. Speidel	10

### QUESTIONS BY:

Cmsr. Scott	10
-------------	----

### STATEMENT RE: PARTIAL SETTLEMENT AGREEMENT BY:

Mr. Speidel	12
-------------	----

### WITNESS:                      STEPHEN P. FRINK

Direct examination by Mr. Speidel	13
Cross-examination by Ms. Hollenberg	17
Interrogatories by Cmsr. Scott	18
Interrogatories by Cmsr. Harrington	23

### STATEMENTS OF PRELIMINARY POSITION BY:

Mr. Baum	25
Mr. Taylor	28
Ms. Hollenberg	28
Mr. Speidel	29

JAN 13 1990

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE NO.
<i>Prehearing Conference Exhibit 1</i>	Partial Settlement regarding the 2013 Construction Season (08-07-13)	14

{DG 13-198} [Prehearing conference] {08-08-13}

**P R O C E E D I N G**

CMSR. HARRINGTON: Good morning. This morning we're here to open the docket on DG 13-198, EnergyNorth Natural Gas, Liberty facilities, and National Grid USA, Investigation into Line Extension Policy Matters. On June 20th, 2013, Staff filed a letter requesting the Commission to open an investigation pursuant to RSA 365:5 and 374:4 regarding potential irregularities in the tariff compliance by EnergyNorth Natural Gas, a public utility distributing natural gas in 28 cities and towns in southern and central New Hampshire, as well as the City of Berlin. Staff alleged that Liberty was not in compliance with provisions of Section 7 of Liberty's tariff governing service extensions. Staff alleged the currently approved line extension policy, which requires the development of contribution in aid of construction calculations under a 25 percent test is not being applied by Liberty. Instead, Liberty apparently has assessed a flat \$900 fee for residential customers.

In response to the Staff letter, Liberty filed a letter with the Commission disputing the Staff's conclusion regarding potential harm resulting from the assessment of a flat \$900 fee and its deviation from terms of Section 7 of Liberty's tariff.

1                   After review of this, the Commission  
2                   opened this docket. And, the Commission is aware that  
3                   ongoing line extension work is being undertaken by Liberty  
4                   for the 2013 construction season. We do not intend to  
5                   disrupt this work during the pendency of this  
6                   investigation, and encourages any effort by Liberty, the  
7                   Office of Consumer Advocate, the Staff, and other  
8                   interested parties to develop a remedy to clarify CIAC and  
9                   the construction-related matters during the pendency of  
10                  this investigation. And, for that note, I believe a  
11                  Partial Settlement Agreement has been reached, which we'll  
12                  deal with in a minute.

13                  The affidavit of publication we have a  
14                  copy of, it was published in the Union Leader on July 29th  
15                  of 2013 referencing this hearing -- this prehearing  
16                  conference here today.

17                  I guess, with that, we'll start on  
18                  appearances.

19                  MR. BAUM: Kevin Baum, for Devine,  
20                  Millimet & Branch, representing Liberty Utilities. With  
21                  me today are Bill Sherry, who's the Vice President of  
22                  Customer Care, and Jim Bonner, who's the acting Regulatory  
23                  Director.

24                  CMSR. HARRINGTON: Thank you.

1 MR. TAYLOR: Patrick Taylor, from the  
2 McLane law firm, here on behalf of National Grid U.S.A.

3 MS. HOLLENBERG: Good morning. Rorie  
4 Hollenberg, excuse me, here for the Office of Consumer  
5 Advocate.

6 CMSR. HARRINGTON: Good morning.

7 MR. SPEIDEL: Yes. Good morning,  
8 Commissioners. Alexander Speidel, on behalf of Staff.  
9 And, I have with me Steve Frink of the Gas and Water  
10 Division, Assistant Director. And, I also have with me  
11 Amanda Noonan, who is the Director of the Consumer Affairs  
12 Division.

13 CMSR. HARRINGTON: Thank you. As far  
14 as, this is a little unusual for a prehearing conference,  
15 because we have a couple of additional issues we wouldn't  
16 normally deal with, unless someone has a idea to the  
17 contrary, the way I was planning on doing this was to deal  
18 with the National Grid request, which was -- came in last  
19 evening, and then go onto the Partial Settlement  
20 Agreement. Does anyone object to that order?

21 MS. HOLLENBERG: No.

22 CMSR. HARRINGTON: Seeing none, we'll  
23 move onto the National Grid request. Let's start with, do  
24 all parties have a copy of the August 7th letter from

1       McLane, addressed to the Executive Director, Ms. Howland,  
2       of the PUC?

3                       (No verbal response)

4                       CMSR. HARRINGTON: Again, seeing no one  
5       -- everyone doesn't -- that no one objects, I assume  
6       everyone has one. So, on this, I guess we would take the  
7       positions of parties on that request, starting with  
8       National Grid.

9                       MR. TAYLOR: Thank you. So, National  
10      Grid is aware that it has been made a mandatory party to  
11      this investigation pursuant to the order of notice that  
12      was issued by the Commission in this case. It's our  
13      understanding that this investigation addresses the line  
14      extension policy of EnergyNorth Natural Gas, doing  
15      business as Liberty Utilities. I will note that the  
16      Company wasn't directly served in this case, isn't on the  
17      service list, and has been getting information through  
18      Liberty, but has stayed apprised of everything that's  
19      going on in the case.

20                      The Staff has already issued discovery  
21      in this case, and National Grid has provided assistance to  
22      Liberty in responding to those requests and in preparing  
23      for last week's technical session. There is a Transition  
24      Services Agreement that National Grid USA entered into

1 with EnergyNorth at the time that ownership of EnergyNorth  
2 was transferred from National Grid to Liberty last year.  
3 And, under that Transition Services Agreement, the Company  
4 is providing regulatory support to Liberty. National Grid  
5 has committed to providing the assistance that Liberty  
6 requests or that EnergyNorth requests in this case under  
7 the TSA.

8 As a jurisdictional matter, however,  
9 National Grid is not a public utility as defined in RSA  
10 362:2. It has no ownership interest in EnergyNorth. It  
11 exercises no operational or managerial control over  
12 EnergyNorth. And, the Commission's, respectfully, the  
13 Commission's supervisory power is limited to public  
14 utilities as defined in RSA 362:2. Its investigatory  
15 authority is also limited to public utilities under RSA  
16 365:5 and RSA 374:4.

17 And, so, in this case, the Company is --  
18 or, National Grid is providing assistance to Liberty. You  
19 know, it certainly is, again, it's committed to doing that  
20 under the Transition Service Agreement that exists, but  
21 that's a contractual agreement between EnergyNorth and  
22 Liberty and National Grid.

23 So, I think that the Company's, you  
24 know, jurisdictional issue notwithstanding, the Company is



1 certainly providing assistance in this case, its presence  
2 as a mandatory party isn't necessary. And, so, National  
3 Grid would request, respectfully -- well, it objects to  
4 being made a mandatory party, and respectfully requests  
5 that it be or that the scope of this docket be clarified  
6 to remove National Grid as a mandatory party and to remove  
7 it from the caption in this case.

8 CMSR. HARRINGTON: All right. Thank  
9 you. Liberty?

10 MR. BAUM: Liberty takes no position on  
11 National Grid's involvement.

12 CMSR. HARRINGTON: Office of the OCA?

13 MS. HOLLENBERG: Thank you. I tend to  
14 agree that the Commission's jurisdiction is limited to  
15 public utilities. And, at this point, National Grid is  
16 not a public utility serving customers in New Hampshire.  
17 That does not mean necessarily that customers to whom the  
18 contract or the tariff provision was not applied properly  
19 don't have a cause of action. I don't have an answer to  
20 that question. But I tend to agree that the Commission is  
21 limited in terms of its authority to make National Grid a  
22 mandatory party in this case. Thank you.

23 CMSR. HARRINGTON: Thank you. Staff's  
24 position?

1 MR. SPEIDEL: Yes. Thank you,  
2 Commissioner. Staff's position is that, in our initial  
3 submission of a recommendation to open an investigation on  
4 June the 20th of 2013, we had only contemplated the  
5 inclusion of Liberty, the utility, as a party to this  
6 investigation. And, the addition of National Grid USA,  
7 the service company entity that has entered into a  
8 Transition Services Agreement with Liberty, was done  
9 subsequently on the Commission's own motion.

10 However, though Staff has no position on  
11 the inclusion of National Grid as a mandatory party, we do  
12 expect and hope that all of the responsibilities of  
13 National Grid as part of the Transition Services Agreement  
14 to Liberty will be abided by, including the informational  
15 responsibilities that are alluded to in the letter  
16 submitted yesterday by National Grid. Thank you.

17 CMSR. HARRINGTON: Thank you.  
18 Commissioner Scott.

19 CMSR. SCOTT: Thank you. I guess a  
20 question for Attorney Taylor and Liberty. And, I'll  
21 preface this by saying this is hypothetical. So, I'm not  
22 trying to imply this is the case. My question is, is what  
23 happens, under the TSA, I suppose, in the instance where  
24 either -- any of the parties feel that the responses are

1 insufficient through, I suppose, National Grid's  
2 assistance, if that makes -- does the question make sense?

3 MR. TAYLOR: I think I understand the  
4 question. To the extent that -- well, as I had noted  
5 earlier, the relationship between Liberty and National  
6 Grid under the Transitional Services Agreement is a  
7 contractual one. I don't -- I don't have the entire  
8 agreement before me at this time. I do have the -- I've  
9 reviewed the section that covers regulatory support.

10 I think in this case, this is a discrete  
11 issue. This is something where the Company has -- or,  
12 when I say "the Company", I mean "National Grid", has  
13 endeavored to provide the requested information to  
14 Liberty. It's mindful that there is an agreement in  
15 place, and that it's, upon Liberty's request, required to  
16 provide support under that agreement. And, so, to the  
17 extent that Liberty requests that support, National Grid  
18 is going to provide it under that contract.

19 I don't know if that directly answers  
20 your question. You know, all I can say is that the  
21 Company is mindful that it has an obligation under the  
22 TSA, and it's going to abide by that obligation.

23 CMSR. SCOTT: Okay. Does Liberty have  
24 anything to add?

[WITNESS: Frink]

1 MR. BAUM: No. I mean, I would second  
2 Attorney Taylor's comments. The TSA does provide for the  
3 regulatory assistance, including direct, as I understand  
4 it, direct responses to requests. Although, it's not  
5 entirely clear to me how the logistics of that will work.

6 CMSR. SCOTT: Okay. Thank you.

7 CMSR. HARRINGTON: Anything else?

8 (No verbal response)

9 CMSR. HARRINGTON: Okay. With that, I  
10 guess we'll move onto the next issue, which is the Partial  
11 Settlement Agreement. And, the Partial Settlement  
12 Agreement submitted yesterday on a letter dated August 7th  
13 to Debra Howland, from Attorney Speidel. So, I guess I'd  
14 like to have Attorney Speidel start on that.

15 MR. SPEIDEL: Yes, Commissioners. I  
16 would request on behalf of Staff, with the concurrence of  
17 the OCA and Liberty, that the Commission accept this  
18 Settlement Agreement for its consideration, and waiver of  
19 the five-day rule, in light of the fact that this is  
20 designed to enable Liberty to continue its construction  
21 season activities, we're in the thick of it right now, at  
22 the height of summer, during the pendency of this  
23 investigation. In particular, we're most eager to have  
24 residential service line extensions continue to be engaged

[WITNESS: Frink]

1 in. And, the terms of this Settlement enable that to  
2 happen in a fair way and in a simple way.

3 I would like to request that I bring  
4 Mr. Frink to the stand to essentially go over the terms of  
5 the Settlement Agreement, in very general terms, and  
6 answer any questions that you might have about those  
7 terms?

8 CMSR. HARRINGTON: That's fine. Go  
9 ahead. Proceed.

10 MR. SPEIDEL: Well, I think --

11 (Whereupon **Stephen P. Frink** was duly  
12 sworn by the Court Reporter.)

13 **STEPHEN P. FRINK, SWORN**

14 **DIRECT EXAMINATION**

15 BY MR. SPEIDEL:

16 Q. Mr. Frink, could you please state your full name and  
17 position at the Commission.

18 A. It's Stephen P. Frink. I'm the Assistance Director of  
19 the Gas & Water Division.

20 Q. What are your general responsibilities in your position  
21 at the Commission?

22 A. I primarily oversee the gas side of the Gas & Water  
23 Division regulation.

24 Q. Excellent. Now, Mr. Frink, do you see this document

[WITNESS: Frink]

1       that has the date "August the 7th of 2013", a cover  
2       letter with my signature, and an appended document that  
3       begins "The State of New Hampshire before the Public  
4       Utilities Commission"?

5   A.   Yes, I do.

6   Q.   So, you do have a copy of that?

7   A.   I do.

8               MR. SPEIDEL: I would like to request  
9       that this filing be included as "Hearing Exhibit 1" or  
10      "Prehearing Conference Exhibit 1", depending on how the  
11      Commissioners would like to style it?

12              CMSR. HARRINGTON: I'll defer to your  
13      judgment on it. We'll call it "Prehearing Conference  
14      Exhibit 1".

15              MR. SPEIDEL: That will be wonderful.  
16      Thank you.

17              (The document, as described, was  
18      herewith marked as "**Prehearing**  
19      **Conference Exhibit 1**" for  
20      identification.)

21              MR. SPEIDEL: I believe that everyone in  
22      the room has a copy of this material? Mr. Taylor, okay.

23              (Atty. Speidel handing document to  
24      Atty. Taylor.)

[WITNESS: Frink]

1 BY MR. SPEIDEL:

2 Q. Mr. Frink, could you please give us a general overview  
3 of what this Settlement is designed to accomplish.

4 A. The Settlement is designed to enable residential  
5 customers to continue to have services installed, if  
6 they're on an existing main, with certainty as to what  
7 that -- the maximum price will be for those services.  
8 So, there are a number of residential customers that  
9 have signed contracts and made a deposit with the  
10 Company. Those customers will get those services  
11 installed at what was cited, the \$900.

12 There are other customers that, even  
13 prior to the Settlement, there was over 100 customers  
14 that had called and inquired about service and had been  
15 cited this 900 number. They hadn't filed contracts,  
16 but it's out there.

17 There are customers, since this came up,  
18 that have requested service, and that's -- there was  
19 some uncertainty as to what it might be. And, this  
20 allows customers to make a decision to go forward and  
21 to get service based on what the general practice has  
22 been for some time.

23 Q. And, in terms of the specific provisions of the  
24 Settlement, I suppose interested parties can examine

[WITNESS: Frink]

1       those on their own. Would you agree that they're  
2       fairly self-explanatory?

3   A.   They are.

4   Q.   Yes. But, in terms of what Staff and the Office of the  
5       Consumer Advocate have acceded to within this pendency  
6       period, specifically the settlement period that is  
7       defined at the beginning of the Settlement document, it  
8       is designed to assert and to confirm that no sanctions  
9       would be recommended by those two parties against the  
10      Company for such construction work performed along the  
11      lines of what the Settlement contemplates, is that  
12      correct?

13   A.   That is correct. We -- there's an issue going back as  
14       to whether they violated the tariff and what the  
15       appropriate remedy would be for that. So, certainly,  
16       fines and penalties are in play there. As far as for  
17       this construction season, to enable certainty, and for  
18       the Company as well as the customers, that they're not  
19       going to get penalties or fines if they honor those  
20       existing contracts and provide services under this  
21       agreement for this period, that this provides certainty  
22       to both the Company and customers. So, that's what  
23       this is designed to do, to allow request for services  
24       to be honored, for this -- for this period.



[WITNESS: Frink]

1 MR. SPEIDEL: Thank you very much,  
2 Mr. Frink. I would offer Mr. Frink for questioning by  
3 either other parties or the Commissioners themselves.

4 CMSR. HARRINGTON: Does Liberty have any  
5 questions?

6 MR. BAUM: No questions.

7 CMSR. HARRINGTON: National Grid?

8 MR. TAYLOR: No questions. Thank you.

9 CMSR. HARRINGTON: OCA?

10 MS. HOLLENBERG: I might ask a couple of  
11 questions.

12 **CROSS-EXAMINATION**

13 BY MS. HOLLENBERG:

14 Q. Would you agree, Mr. Frink, that at this point in time  
15 there's a lot of development or activity going on in  
16 the natural gas market?

17 A. There are a lot of inquiries due to the large  
18 discrepancy between gas prices and alternative energy  
19 sources. That, yes, there's a tremendous interest in  
20 people converting to natural gas. So, there is -- how  
21 much actual activity there is, I'm not sure. But  
22 there's certainly an interest and a lot of requests.

23 Q. That's a better way to put it, would be "interest".  
24 And, that that interest is occurring not only on the

[WITNESS: Frink]

1 state level, but also regionally, in the New England  
2 region. Do you agree with that?

3 A. Absolutely.

4 Q. And, that this Settlement Agreement, in a way,  
5 preserves the *status quo* for the Company and for  
6 customers, so that's there's not a significant  
7 disruption in that interest level until there's some  
8 certainty with regard to this investigation. Would you  
9 agree with that?

10 A. Yes, I do.

11 MS. HOLLENBERG: All right. Thank you.  
12 No other questions. Thank you.

13 CMSR. HARRINGTON: Thank you.  
14 Commissioner Scott.

15 CMSR. SCOTT: Thank you. A couple quick  
16 questions.

17 BY CMSR. SCOTT:

18 Q. And, I notice there's a time frame set for this,  
19 either, obviously, either the Commission final  
20 disposition of this docket or the end of the year,  
21 basically. I was curious, why the time frame?

22 A. Well, we're in the initial stages. And, what the  
23 magnitude of the problem is, what the actual policy  
24 should be, those are going to take some time to

[WITNESS: Frink]

1 resolve, but we're certainly going to expedite the  
2 process and try and reach a resolution before the next  
3 construction season. There is the concern that we  
4 don't know that \$900 is the right number. Maybe it  
5 should be higher, based on the Company's response to  
6 Staff's request for an investigation indicates that the  
7 \$900 is actually not recovering enough. So, whatever  
8 the proper number is and the proper policy, we don't  
9 want to carry this 900 forward any longer than we have  
10 to. And, we feel that setting it for just this period  
11 will allow continued growth in the gas area, and it  
12 gives us enough time to resolve the issue and find out  
13 just what the policy or the number should be going  
14 forward. So, that is why we've limited it to just this  
15 construction period. We should be able to reach a  
16 point where we'd have a better number going forward or  
17 a policy going forward for next construction season.

18 Q. Okay. And, for my edification, I assume the  
19 construction season is generally when the ground is  
20 thawed. And, so, if for some reason you're into  
21 January and February, that's not the construction  
22 period, is that correct?

23 A. Right. That doesn't mean you won't be getting  
24 inquiries. But the heaviest activity, obviously, is

[WITNESS: Frink]

1 before winter, when people are thinking of converting.  
2 And, once you -- once the ground freezes, in November  
3 or whenever it freezes, then they won't be putting in  
4 any more lines. So, even if there's an inquiry past  
5 December 31st, it still allows you some time to say  
6 "Okay, we've got your inquiry, and this is being  
7 addressed. And, we'll get back to you in time, so that  
8 those services could be installed in 2014 and beyond."

9 Q. Okay. Thank you. And, I see on Section (5) of the  
10 Settlement Agreement, it's not page numbered, but  
11 there's a provision for residential customers shall be  
12 refunded any over-assessment. I'm assuming that the  
13 mechanism of that is yet to be worked out?

14 A. Well, there's a -- under the 25 percent test, there is  
15 a requirement that the utility go back and calculate  
16 what the actual capital costs were and what the  
17 revenues were for that one-year period. Based on that,  
18 then there's a -- there could be a refund to customers  
19 or there could, the way the tariff is now, the Company  
20 is required to go back and get an additional  
21 contribution if the revenues didn't satisfy the actual  
22 cost.

23 So, under this provision, the utility is  
24 not going to go back and ask a customer that's paid

[WITNESS: Frink]

1       \$900, if it turns out that the revenues versus the  
2       capital costs were an additional contribution of  
3       another \$900 may be required, well, the Company is not  
4       going to go back to that customer and say "you owe us  
5       another \$900." On the other hand, it's asymmetrical.  
6       If they do the analysis and says "oh, this customer  
7       paid a \$900 contribution under the standard  
8       provisions", but the actual capital costs were exceeded  
9       by revenues, and the required contribution should have  
10      been \$700, then that customer would get a \$200 refund.

11   Q.   Okay. And, is there -- what's the mechanism for the  
12       refund, is my question?

13   A.   Oh, I thought you were just talking about the  
14       calculation. It would probably -- we haven't really  
15       discussed that. I assume it would be a credit on the  
16       customer's bill.

17               CMSR. SCOTT: Okay. Thank you.

18               MR. SPEIDEL: Mr. Frink, could you just  
19       identify for the record the page number on the upper  
20       left-hand corner that's marked there where you --

21               CMSR. SCOTT: I see it now.

22               WITNESS FRINK: Yes. It's Page 2 of 4.

23               CMSR. SCOTT: Thank you.

24               CMSR. HARRINGTON: Anything else?

[WITNESS: Frink]

1 CMSR. SCOTT: Yes.

2 BY CMSR. SCOTT:

3 Q. And, my last question may be properly directed to  
4 Liberty, but perhaps you can answer.

5 A. Sure.

6 Q. Until this Partial Settlement is approved, is there --  
7 what's happening to current work right now? I mean,  
8 obviously, in our order of notice we articulated our  
9 desire not to disrupt any work going on this season.

10 A. Well, we had a technical session on August 2nd, so,  
11 just last week. And, the Company has -- is continuing  
12 their construction work at this point, at this point in  
13 time. So, they haven't suspended their installations.

14 MR. SPEIDEL: And, if I may interject,  
15 Commissioner. We could give you more background  
16 information, but we don't want to necessarily implicate  
17 confidential settlement discussions, unless we were to go  
18 off the record. And, even then, obviously, there's  
19 issues.

20 CMSR. SCOTT: Okay. Thank you.

21 MR. BAUM: If I may, I'd like to just  
22 jump back to the prior set of -- the discussion about the  
23 rebate, just clarify. My understanding is that any rebate  
24 would be done by a separate check outside of billing.

[WITNESS: Frink]

1 CMSR. SCOTT: Okay. Thank you. That's  
2 all I have.

3 CMSR. HARRINGTON: Just maybe one or two  
4 questions.

5 BY CMSR. HARRINGTON:

6 Q. Mr. Frink, you mentioned that -- you used the -- maybe  
7 I misunderstood it, you talked about "existing  
8 contracts". But would the -- that the Settlement  
9 Agreement would also cover not yet signed contracts  
10 that were going to be -- that were executed during the  
11 time frame?

12 A. Yes, it does.

13 Q. Okay.

14 A. If there's, for instance, there were over 100 inquiries  
15 prior to this, Staff's request for an investigation.  
16 Those customers were told -- these residential  
17 customers on a main were told there's a \$900  
18 contribution. If a contract comes in for one of those  
19 customers with a \$900 check, they're going to get a  
20 service installed at that price this summer. Then,  
21 there are other customers that are continually calling  
22 in. And, I think there may have been a brief period  
23 where they said "well, we can't give you a number right  
24 now." But, now, I believe, yes, they're giving all

[WITNESS: Frink]

1 customers, based on our discussions in the Settlement,  
2 saying "you could have a service if you fill out --  
3 fill out the contract and make a \$900 contribution."

4 Q. Okay. So, if, for example, if the Commission were to  
5 approve the Partial Settlement Agreement effective  
6 September 1st, and somebody signed a contract on  
7 October 1st, that would be bound by these same terms?

8 A. Yes, it would.

9 CMSR. HARRINGTON: Okay. Thank you.  
10 That's all the questions I had for you. So, I guess you  
11 can just go ahead and get down. Unless somebody else --  
12 does anyone else have questions for Mr. Frink?

13 MR. SPEIDEL: No redirect for Mr. Frink.  
14 So, if you'd like to, we'd like to thank him for his time,  
15 and we may have the witness dismissed, yes.

16 CMSR. HARRINGTON: Okay. Thank you.

17 WITNESS FRINK: Thank you.

18 CMSR. HARRINGTON: Oh, I did have one  
19 question for Liberty. I just wanted to make sure, you  
20 know, we've been talking about not delaying anything on  
21 this. Is there a particular maybe I'll use the term  
22 "drop-dead date", for lack of a better term, where people  
23 say "if we don't hear from the Commission on the Partial  
24 Settlement Agreement by some date, then we'll stop, have



1 to stop going forward with taking on new construction  
2 orders"? Just to give us some idea of how critical that  
3 could be.

4 MR. BAUM: I don't believe so. Right  
5 now, our understanding, based on discussions with Staff,  
6 is that we -- the Company can move forward with the \$900  
7 fee at this point. And, it's doing so pending the final  
8 decision on the Settlement.

9 CMSR. HARRINGTON: Thank you. I just --  
10 I'm not saying we're not going to be expeditious in our  
11 approach to this, but I just wanted to make sure there  
12 wasn't any particular date that we had a target for,  
13 though. So, thank you. Okay.

14 Okay. Just moving onto other issues,  
15 everything but the Settlement Agreement or the National  
16 Grid request, positions of the parties on that? Liberty,  
17 would you like to start please?

18 MR. BAUM: Yes, if I may. I'll try to  
19 be brief. I think that Liberty's position is well stated  
20 in the July 8th letter. So, I won't try to reiterate it  
21 too much here.

22 But our understanding is that the Staff  
23 had raised primarily two concerns relative to the charging  
24 of a \$900 fee for line extensions for residential

1 customers located 100 feet or less from an existing main.  
2 One is that that \$900 fee, and I -- I'd like to be clear,  
3 that \$900 fee has only been applied historically prior to  
4 Liberty, by National Grid and Liberty, in those instances  
5 where it's a residential customer located 100 feet or less  
6 from a main. And, that that failed to comply with Section  
7 7 of the tariff. And, it essentially resolved in an  
8 overcharge.

9 Liberty's position on both is that, on  
10 the first, that the failure to comply with Section 7, our  
11 understanding, based on information we've received to date  
12 from National Grid, this was a carryover from the National  
13 Grid tariff, is that this fee -- \$900 fee, it applied an  
14 average that did -- that was intended to comply and does  
15 comply with the 25 percent test under Section 7 of the  
16 tariff.

17 Nevertheless, Liberty fully understands  
18 Staff's concern, and has indicated its willingness to  
19 reassess that policy and the application of this \$900 fee.  
20 That that process has already started internally. And, we  
21 fully expect we'll continue to work with Staff and OCA to  
22 develop potential alternatives for the \$900 charge and for  
23 the 25 percent test for these residential customers under  
24 100 feet or less.

1                   With respect to potential overcharge, as  
2     Liberty has indicated, again, our initial assessment, and  
3     I think this is borne out in some of the initial discovery  
4     that's occurred so far, is that the \$900 charge is much  
5     more likely an undercharge. The customer charges, in most  
6     municipalities, are in the -- are in the greater than  
7     \$3,000 range, at which is not a -- not a price that really  
8     has been -- would be palatable for most residential  
9     extensions. So, that's the Company's position on the  
10    Staff's investigation.

11                   I would like to respectfully request  
12    some clarity on scope. As we mentioned, this \$900 charge,  
13    again, has only been applied to residential customers  
14    located 100 feet or less from a main. I understand, in  
15    discussions with Staff, that there may be some question  
16    about that. But just like some clarification on scope  
17    that, notwithstanding any need to investigate whether it's  
18    been applied otherwise or to commercial or residential  
19    customers more than 100 feet from a main, that we really  
20    limit the scope of this investigation to that charge and  
21    to the Section 7 of the tariff, and avoid getting into an  
22    examination of costs that would be better addressed in a  
23    full rate case or a general line extension, natural gas  
24    line extension policy questions that would be, we feel,

1 better addressed as part of a generic utility-wide  
2 investigation or proceeding. And, that's the extent of  
3 the Company's position on this investigation.

4 We have, as I mentioned, Bill Sherry and  
5 Jim Bonner here as well, and we're happy to entertain any  
6 questions.

7 CMSR. HARRINGTON: Thank you. National  
8 Grid?

9 MR. TAYLOR: I have nothing to add to  
10 the position already stated at the beginning of this  
11 hearing. And, so, National Grid has no further position  
12 at this point.

13 CMSR. HARRINGTON: Thank you.

14 MR. TAYLOR: Thank you.

15 CMSR. HARRINGTON: Ms. Hollenberg.

16 MS. HOLLENBERG: Thank you. I guess, to  
17 start with, though, a clarification, to the extent that  
18 National Grid is not a party to the case, it probably  
19 shouldn't be participating in positions on the case, just  
20 an observation. And, I know he didn't, but I just wanted  
21 to make an observation for the future.

22 We don't yet have a position on the  
23 allegations or the focus of the investigation. I  
24 interpret the order of notice as, in terms of the scope of

1 the investigation, as being whether or not the \$900  
2 charge, which, in a sense is "was the Company not abiding  
3 by its tariff?" The question is, "was that not the  
4 correct application of the tariff that was in existence at  
5 the time?"

6 But I do believe that the Commission has  
7 the power to investigate whether or not the Company,  
8 during this period of time, was also applying its tariff  
9 correctly to other customers, not necessarily residential  
10 customers. So, and I do think that that's an appropriate  
11 issue to investigate within the context of this case, as  
12 opposed to having it to be in a general rate case. It's  
13 not a question of whether or not the tariff is the  
14 accurate line extension policy or the best line extension  
15 policy at the time. It's whether or not, during this  
16 period of time in question, the Company was applying its  
17 tariff properly.

18 And, that's the extent of my position  
19 statement at this time. I'll await the outcome of the  
20 investigation. Thank you.

21 CMSR. HARRINGTON: Thank you.

22 Mr. Speidel.

23 MR. SPEIDEL: Thank you, Commissioners.

24 In general terms, Staff strongly opposes any narrowing of

1 the scope of this investigation from what is noticed in  
2 the order of notice on Page 2. In particular, I believe  
3 the Commission was responding, in its efforts to have the  
4 scope developed, the Commission was responding to the July  
5 letter by Liberty that seemed to imply that the \$900 cost  
6 level for the line extensions was appropriate, in view of  
7 the Section 7 tariff provisions, or, in the alternative,  
8 that the likely cost structures for such extensions would  
9 be much higher than the \$900.

10 So, in the view of Staff, I think the  
11 Commission's original scope of investigation is  
12 appropriate, in that it applies to all of the Section 7  
13 calculation methodologies and all of the data that's fed  
14 into those methodologies, because the Company is asserting  
15 "we did no wrong by applying the \$900 flat fee." I think  
16 Staff's view, and we agree with OCA on this, is that we  
17 ought to kind of get a lay of the land, understand what's  
18 going on here, in terms of the correlation of the \$900 fee  
19 with the cost structure in light of the Section 7  
20 methodology, that's very specific in terms of how it  
21 prescribes development of line extension costs for CIAC  
22 figures that are charged to customers, residential,  
23 commercial and industrial.

24 We believe that this is an appropriate

1 scope to enable us to opine on the reasonableness of the  
2 Company's assertions, and to also independently determine  
3 as to whether any violations of the tariff have, in fact,  
4 occurred. So, it's early days yet. Staff is not  
5 confident in either direction. We're not able to say that  
6 it's 100 percent definitive that violations occurred, or,  
7 in the alternative, there's a zero percent chance that  
8 violations occurred. We want to get the facts. And, so,  
9 the scope as currently established in the order of notice  
10 does that for us. We want to have a full investigation.  
11 We want to have as much information as possible to assess  
12 this. And, this is not a rate case type development of  
13 prudence determinations. It's more "what are the figures  
14 and how do they relate to the actual tariff provisions  
15 that were in place and lawful at the time that the Company  
16 has taken over operations of this utility, and before,  
17 when National Grid was in full ownership and operation and  
18 control of the utility as well?"

19 So, that's Staff's position. We look  
20 forward to working with the parties in developing the  
21 record and in developing our report. We have proposed  
22 informally, just today, Staff is thinking about November  
23 the 15th as a good date for a report. That could be a  
24 joint report with OCA or OCA could prepare its own report

1 at the same time, that would go over all of our findings.  
2 We do hope to have another technical session after this  
3 one this afternoon for the week of September the 16th.  
4 We'll inform the Commission about that. And, there may be  
5 some other procedural features. We're not so sure about  
6 those specifics. More like along the lines of technical  
7 sessions versus anything else. But we would inform you  
8 all by letter, filed with the Executive Director, about  
9 the need for those. But, at the time, the time frame that  
10 we're looking at, November the 15th would probably be a  
11 good date for a Staff report. Thank you.

12 CMSR. HARRINGTON: Thank you.  
13 Commissioner Scott, do you have anything further?

14 CMSR. SCOTT: No.

15 CMSR. HARRINGTON: Okay. I probably  
16 should have added earlier that, other than the OCA, there  
17 are no intervenors, is that correct?

18 MS. HOLLENBERG: Not that I'm aware of.

19 CMSR. HARRINGTON: Okay. I'm seeing  
20 everyone shaking their heads, so, I'm going to take that  
21 as a "yes".

22 We do have one issue. Is there anyone  
23 who objects to striking the exhibit and making it a full  
24 exhibit?



1 MS. HOLLENBERG: No.

2 CMSR. HARRINGTON: Hearing none, we'll  
3 do so. My understanding is there will be a technical  
4 session immediately following this. And, that we will  
5 take under advisement the NRG [NGRID?] request, the  
6 Partial Settlement Agreement, including the request for a  
7 waiver, and all other issues that were raised in this  
8 docket.

9 And, with that, we're adjourned. Thank  
10 you.

11 (Whereupon the prehearing conference was  
12 adjourned at 10:44 a.m., and a technical  
13 session was held thereafter.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24