

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2015 TERM

DOCKET NO. \_\_\_\_\_

APPEAL OF PIPE LINE AWARENESS NETWORK FOR THE NORTHEAST, INC.

(New Hampshire Public Utilities Commission)

APPEAL BY PETITION PURSUANT TO RSA 541:6  
AND NEW HAMPSHIRE SUPREME COURT RULE 10

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01/21/15

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DG 14-380

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

Petition for Approval of Long-term Firm Transportation Agreement

ORDER OF NOTICE

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (EnergyNorth) is a public utility pursuant to RSA 362:2, that provides natural gas service to approximately 86,000 customers in southern and central New Hampshire and in Berlin. On December 31, 2014, EnergyNorth filed a Petition for Approval of a Firm Transportation Agreement (Precedent Agreement) with Tennessee Gas Pipeline Company, LLC (TGP) along with the confidential and redacted direct testimony of Francisco C. DaFonte, Vice President, Energy Procurement, Liberty Energy Utilities (New Hampshire) Corp. EnergyNorth also filed a motion for protective order and confidential treatment regarding the Precedent Agreement. EnergyNorth requests final Commission approval by July 1, 2015, which is the regulatory approval deadline established in the Precedent Agreement.

EnergyNorth seeks pre-approval of a twenty-year Precedent Agreement with TGP on the proposed Northeast Energy Delivery (NED) pipeline project. Although not mentioned in the filing, EnergyNorth's affiliate, Algonquin Power & Utilities Corp. ("APUC") announced on November 24, 2014, that it plans to invest in the development of the NED pipeline project through Liberty Utilities (Pipeline & Transmission) Corp., a wholly owned subsidiary of APUC and Kinder Morgan Operating L.P.

<http://investors.algonquinpower.com/file.aspx?IID=4142273&FID=26297428>

The terms of the Precedent Agreement would require EnergyNorth to purchase on a firm basis up to 115,000 Dth per day of capacity at a negotiated fixed rate for the twenty-year term. To provide the transportation service, TGP plans to construct a gas pipeline along the route depicted on Attachment FCD-1 to Mr. DaFonte's testimony. As part of the Commission's approval, EnergyNorth seeks a determination "that the Company's decision to enter into the agreement is prudent and consistent with the public interest." Petition at 1.

EnergyNorth avers that it needs the long-term firm transportation capacity from TGP "to reliably satisfy existing and future customer load requirements in its service area[,]" and the TGP contract is the "best cost resource" to meet those capacity needs. Petition at 1-2. EnergyNorth posits that the TGP contract will also "provide opportunities to expand natural gas distribution service to other parts of the state, and within the Company's existing franchise territory" and "will provide increased distribution system reliability via a secondary point of delivery on the west end of the Company's distribution system." Petition at 2.

EnergyNorth recently identified its need for additional firm capacity in its pending Least Cost Integrated Resource Plan (IRP) filing in DG 13-313. Petition at 2-3, citing *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, DG 13-313, Exhibit 1, pp. 66-67; Transcript of December 1, 2014 at 10-11. Since preparing that IRP filing, EnergyNorth has determined that it needs additional pipeline capacity "to effectuate additional deliveries of natural gas to its city gates in order to reliably serve its customers into the future." Petition at 3.

EnergyNorth negotiated the Precedent Agreement as part of a consortium of nine local natural gas distribution companies (LDCs). Petition at 3-4. Each of the nine LDCs entered Precedent Agreements with TGP, which are "nearly identical ... with some minor exceptions

such as the delivery points, which are unique to each [LDC], and individual [LDC] administrative information.” Petition at 4.

EnergyNorth’s filing raises, inter alia, issues related to RSA 374:1 and 374:2 (public utilities to provide reasonably safe and adequate service at “just and reasonable” rates); RSA 374:4 (Commission’s duty to keep informed of the manner in which all public utilities in the state provide for safe and adequate service); RSA 374:7 (Commission’s authority to investigate and ascertain the methods employed by public utilities to “order all reasonable and just improvements and extensions in service or methods” to supply gas); and 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable). These issues include whether EnergyNorth reasonably investigated and analyzed its long term supply requirements and the alternatives for satisfying those requirements, and whether EnergyNorth’s entry into the Precedent Agreement with TGP for additional pipeline capacity is prudent, reasonable and otherwise consistent with the public interest. In addition, in the event the Commission’s investigation is not completed before July 1, 2015 and EnergyNorth elects not to terminate the agreement before that date, the filing raises the issue of who bears the risk of an imprudence finding.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission’s website at: <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>.

Each party has the right to have an attorney represent the party at the party’s own expense.

**Based upon the foregoing, it is hereby**

**ORDERED**, that a Prehearing Conference, pursuant to N.H. Code Admin. Rules Puc 203.12, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on February 13, 2015, at 9:00 a.m. at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Code Admin. Rules Puc 203.15; and it is

**FURTHER ORDERED**, that, immediately following the Prehearing Conference, EnergyNorth, the Staff of the Commission and any intervenors shall hold a technical session to review the petition and allow EnergyNorth to provide any amendments or updates to their filing, after which the Staff and parties shall file a proposal for the remainder of the procedural schedule; and it is

**FURTHER ORDERED**, that a hearing on the merits of the petition be held before the Commission on May 20, 2015, at 9:00 a.m.; and it is

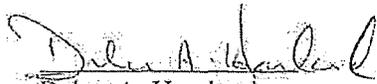
**FURTHER ORDERED**, pursuant to N.H. Code Admin. Rules Puc 203.12, EnergyNorth shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than January 26, 2015, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before February 11, 2015; and it is

**FURTHER ORDERED**, that consistent with N.H. Code Admin. Rules Puc 203.17 and Puc 203.02, any party' seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to EnergyNorth and the Office of the Consumer Advocate on or before February 11, 2015, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be

affected by the proceeding, as required by N.H. Code Admin. Rules Puc 203.17 and RSA 541-A:32, 1(b); and it is

**FURTHER ORDERED**, that any party objecting to a Petition to Intervene make said Objection on or before February 13, 2015.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of January, 2015.



Debra A. Howland  
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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1	STATE OF NEW HAMPSHIRE
2	PUBLIC UTILITIES COMMISSION
3	July 21, 2015 - 9:05 a.m. DAY 1 Concord, New Hampshire
4	
5	(REDACTED - for public use)
6	
7	RE: DG 14-380 LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY UTILITIES: Petition for Approval of a Firm Transportation Agreement with the Tennessee Gas Pipeline Company, LLC.
8	
9	
10	PRESENT: Chairman Martin P. Honigberg, Presiding Commissioner Robert R. Scott
11	
12	Sandy Deno, Clerk
13	APPEARANCES: Reptg. Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities: Sarah B. Knowlton, Esq. (Rath, Young...)
14	
15	Reptg. the Pipe Line Awareness Network for the Northeast, Inc. (PLAN): Richard A. Kanoff, Esq. (Burns & Levinson) Zachary R. Gates, Esq. (Burns & Levinson)
16	
17	Reptg. Residential Ratepayers: Susan Chamberlin, Esq., Consumer Advocate Dr. Pradip Chattopadhyay, Asst. Cons. Adv. Office of Consumer Advocate
18	
19	Reptg. PUC Staff: Rorie E. Patterson, Esq. Stephen P. Frink, Asst. Dir./Gas & Water Div. Melissa Whitten (LaCapra Associates)
20	
21	
22	
23	Court Reporter: Steven E. Patnaude, LCR No. 52
24	

1	EXHIBITS
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3	EXHIBIT NO. DESCRIPTION PAGE NO.
4	3 Filing of Liberty Utilities 28 (EnergyNorth Natural Gas) Corp., including Prefiled Direct Testimony of Francisco C. DaFonte (12-31-14) (CONFIDENTIAL)
5	
6	
7	4 Filing of Liberty Utilities 28 (EnergyNorth Natural Gas) Corp., including Prefiled Direct Testimony of Francisco C. DaFonte (12-31-14) (REDACTED - for public use)
8	
9	
10	5 Pages 31R - 33R of Testimony of 28 Francisco C. DaFonte (CONFIDENTIAL)
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12	6 Pages 31R - 33R of Testimony of 28 Francisco C. DaFonte (REDACTED - for public use)
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18	9 Rebuttal Testimony of Francisco C. 28 DaFonte (06-04-15) (CONFIDENTIAL)
19	
20	10 Bates Page No. 047R to the 28 Rebuttal Testimony of Francisco C. DaFonte (CONFIDENTIAL)
21	
22	11 Rebuttal Testimony of William J. 28 Clark (06-04-15)
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	{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1

2 EXHIBITS (continued)

3 EXHIBIT NO. DESCRIPTION PAGE NO.

4 21 Attachment PLAN 1-3 to Testimony 28  
of John A. Rosenkranz (05-14-15)  
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6 22 Attachment PLAN 1-3 to Testimony 28  
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21 32 Liberty/ENGI Response to Data 171  
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22

23 33 Liberty/ENGI Response to Data 206  
Request Staff Tech-46  
(Redacted - for public use)

24

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 CHAIRMAN HONIGBERG: Suzanne Gray.

2 MS. GRAY: Yes.

3 CHAIRMAN HONIGBERG: Thomas Young.

4 MR. YOUNG: Yes.

5 CHAIRMAN HONIGBERG: And Kaela Law, who

6 do not wish to speak. I have six who have signed up to

7 speak. We're going to take them in this order, so be

8 ready. Peggy Huard, John Kieley, --

9 MR. KIELEY: "Kieley".

10 CHAIRMAN HONIGBERG: "Kieley", okay.

11 Sorry about that. Karen Sullivan, James Rodger, --

12 MR. RODGER: Yes.

13 CHAIRMAN HONIGBERG: -- Douglas

14 Whitbeck, --

15 MR. WHITBECK: Yes.

16 CHAIRMAN HONIGBERG: -- and Richard

17 Husband.

18 MR. HUSBAND: Yes.

19 CHAIRMAN HONIGBERG: So, we have 30

20 minutes set aside, and we have six people. Try and keep

21 your comments to three-four minutes, and we'll get through

22 this pretty efficiently, and then we can start the

23 hearing.

24 So, Ms. Huard.

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 PROCEEDING

2 CHAIRMAN HONIGBERG: All right. As I

3 think everyone here knows, we're here this morning in

4 Docket DG 14-380, which is Liberty's filing for approval

5 of a Precedent Agreement with respect to the Kinder -- the

6 proposed Kinder Morgan pipeline called "Northeast Direct",

7 I think. We're going to go in two stages. The first

8 stage is going to be a public comment period. We've

9 received extensive public comments in writing, via e-mail,

10 if they still are coming in, I suspect. We've got 30

11 minutes set aside for that this morning. When that is

12 done, we will proceed with the consideration of a

13 Settlement Agreement submitted by a couple of Parties, and

14 the positions of the Parties who have not joined the

15 Settlement.

16 So, rather than take appearances,

17 because we haven't started the public -- the hearing on

18 the Settlement Agreement, we're going to start with the

19 public comment period. We have six people who have signed

20 up to speak, and another three or four who have signed in

21 and saying they don't wish to speak. I'll start with

22 those four and just make sure that I understand that. I

23 have Joan Geary.

24 MS. GEARY: Yes.

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 MS. HUARD: Yes. Good afternoon.

2 CHAIRMAN HONIGBERG: Actually, it's

3 still morning.

4 MS. HUARD: Oh, it's still morning.

5 CHAIRMAN HONIGBERG: We've got a ways to

6 go, but --

7 MS. HUARD: It's been a long morning.

8 Early morning for me.

9 Liberty Utilities claim in their

10 Petition to the New Hampshire Public Utilities Commission

11 in Docket DG 14-380 that this Agreement is "prudent and

12 for public interest". This is arguably furthest from the

13 truth. I refer you to the numerous comments, specifically

14 the one by my State Rep., Charlene Takesian, with numerous

15 questions that certainly need answers before this

16 agreement should be approved. I share many of the same

17 concerns and questions. There are many charts that need

18 to be considered accurately and interpreted by independent

19 parties.

20 It would seem to me that it would be

21 unethical and negligent for the New Hampshire Public

22 Utility Commission to consider this Petition before you

23 today without considering the criminally destructive and

24 corrupt pipeline projects needed to transport the increase

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 in natural gas indicated in this Petition.  
 2 Whether it be TGP/Kinder Morgan or  
 3 another pipeline company, like Spectra, I have found a  
 4 trail to a tremendous amount of public corruption that you  
 5 can look at in the public documents at the Federal  
 6 Election Commission. There are numerous energy companies,  
 7 numerous utility companies, including Richard Kinder,  
 8 including Duke Energy, that have paid millions of dollars  
 9 to public committee -- political committees.

10 I would also ask you to consider past  
 11 fraud involved with Enron and the energy crisis in 2001,  
 12 and the likelihood that many of the same fraudulent and  
 13 deceptive tactics still exist in the entire energy  
 14 industry today. It's important to be certain that the  
 15 claims made in this permit, this Petition, are, in fact,  
 16 founded in sound analysis, is obtained from several  
 17 independent sources, not biased, related sources.

18 As you may or may not know, the two  
 19 related projects in my area, in Hudson, New Hampshire, is  
 20 a power line project and a pipeline project, which are  
 21 proposed to collocate in the same location. I'm going to  
 22 spare you all the details of the pipeline, because you  
 23 can -- because time is limited. But you can reference the  
 24 details in FERC Docket PF-422.

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 numerous accidents, loss of life, and unnecessary  
 2 destruction to the environment.

3 Liberty Utilities is a subsidiary of a  
 4 Canadian company called "Algonquin Power & Utilities  
 5 Corporation". Both Kinder Morgan and Algonquin Power &  
 6 Utilities Corporation are publicly traded and very  
 7 profitable, turning millions dollar profits. The goal of  
 8 publicly traded companies, like Kinder Morgan and  
 9 Algonquin Power Utilities Corporation, is profit,  
 10 shareholder return, and pension contributions; not public  
 11 interest.

12 According to the public filing for  
 13 Algonquin Power & Utilities, both Liberty Utilities and  
 14 Kinder Morgan, parent of TGP, have formed a very  
 15 profitable agreement. Therefore, I feel that profit is  
 16 the sole motive for this Agreement sought today, not the  
 17 public benefit and interest. While you may feel that the  
 18 pending power line and pipeline projects need not be  
 19 considered in this hearing and your ultimate decision to  
 20 grant approval for the Agreement sought today, I feel they  
 21 are key factors in assessing the reliability of the facts  
 22 presented and the likelihood that the contract is not  
 23 prudent, nor for the public interest, but their own  
 24 greedy, profitable benefit.

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 Both of these projects pose  
 2 life-threatening, detrimental, irreversible effects to  
 3 both people and environment. I personally have summarized  
 4 these concerns in a letter to the Office of Consumer  
 5 Advocate and against this document -- docket, as well as  
 6 to FERC. I personally will be placed, it was called the  
 7 "blast zone", a thousand foot radius from the proposed  
 8 pipeline. There are numerous people throughout New  
 9 Hampshire, in addition to the environmental concerns, that  
 10 will be placed in this life-threatening position, without  
 11 any consideration financially or any restitution  
 12 whatsoever from TGP or Kinder Morgan.

13 Tennessee Gas Pipelines, based on my  
 14 research, and their own statements in their parent  
 15 company's filings at the -- with the Securities & Exchange  
 16 Commission, have questionable integrity  
 17 business/environmental practices. You can consider the  
 18 information and concerns that I previously relayed and  
 19 references I have made to their own public filing, to  
 20 Kinder Morgan, their parent company's own public filing.

21 TGP is a subsidiary of Kinder Morgan, a  
 22 company that evolved from executive shareholders of Enron  
 23 Corporation. The public filing obtained from SEC for  
 24 Kinder Morgan shows a pattern of negligence, causing

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 Please deny this request sought by  
 2 Liberty Utilities today. Thank you very much.  
 3 CHAIRMAN HONIGBERG: Thank you,  
 4 Ms. Huard.

5 MS. HUARD: Thank you.

6 CHAIRMAN HONIGBERG: Since you started  
 7 talking, we had two more -- three more people come in, two  
 8 of whom wish to speak. I will remind everyone that we've  
 9 only set aside 30 minutes for the public comment period.  
 10 So, I encourage you to keep your comments brief. If  
 11 someone has already said something you were planning on  
 12 saying, please feel free to say "I don't need to add  
 13 anything" or "I agree with so-and-so", that will keep  
 14 things moving. The two people who have come in and wish  
 15 to speak are Liz Fletcher and John Lewicke. So, I'm aware  
 16 of them. They are now on the list. And, a name, I'm  
 17 sorry, I cannot read, Anna, starts with an "F", is here,  
 18 does not wish to speak.

19 Mr. Kieley.

20 MR. KIELEY: Good morning. My name is  
 21 John Kieley. I'm a long-term selectman in the Town of  
 22 Temple. And, since my retirement from that position in  
 23 March, I have spent a good deal of time dealing with the  
 24 subject of the Pipeline. My comments this morning will be

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 addressed towards the Liberty application.  
 2 I'd like to start by saying that, in my  
 3 opinion, public policy should discourage utility contracts  
 4 that heavily impact New Hampshire's people, its economy,  
 5 its environment, particularly when there are alternatives  
 6 available to the proposal. This application is an attempt  
 7 to justify a huge construction project that would be  
 8 devastating to the residents of literally dozens of New  
 9 Hampshire towns. It's not just the towns on the pipeline,  
 10 with a pipeline running through it, but adjacent towns  
 11 like Temple.  
 12 In Temple's case, our elementary school  
 13 is not only within the inclination zone of the largest  
 14 compressor station ever proposed for this part of the  
 15 United States, but it's also within range of the massive  
 16 air pollution that is guaranteed to take place if this  
 17 pipeline is built and that compressor station is  
 18 constructed where Kinder Morgan says it will be now.  
 19 There is an extremely long list of toxins and carcinogens  
 20 that absolutely will be pumped out of that compressor  
 21 station into the air, exempt from the Clean Air Act. And,  
 22 our school children, in addition to our residents  
 23 at-large, will be breathing in those fumes.  
 24 I've spent a lot of time on this subject  
 (DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

1 outside of the Town of Temple, not only in adjoining  
 2 towns, but in a group called the "Pipeline Coalition",  
 3 which includes 14 of the towns that the pipe actually goes  
 4 through. There is no benefit to Liberty customers from  
 5 this proposal. The alternatives to the Kinder Morgan  
 6 project are less expensive, and equally as important to  
 7 New Hampshire residents, they'd be coming through existing  
 8 pipelines.  
 9 This project, the Liberty project or  
 10 contract, if approved, would not only have no cost/benefit  
 11 to Liberty's customers, but it would come at a huge price  
 12 to New Hampshire residents.  
 13 I encourage you to reject the utility's  
 14 application. Thank you very much.  
 15 CHAIRMAN HONIGBERG: Thank you,  
 16 Mr. Kieley. Ms. Sullivan.  
 17 MR. SULLIVAN: I am Karen Sullivan of  
 18 New Ipswich, New Hampshire. I am within the half-mile  
 19 blast zone of the largest proposed compressor station for  
 20 the Northeast. I think it's disingenuous that Liberty is  
 21 a subsidiary of Kinder Morgan and of the Tennessee Gas  
 22 Pipeline Company. I think it's disingenuous that they're  
 23 giving each other the okay to go ahead and do this,  
 24 keeping themselves in the money chain. I do not think it  
 (DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

1 is necessary. There are three other pipelines that are  
 2 not up to capacity, which would handle whatever's coming  
 3 through.  
 4 And, I urge - urge you to deny this  
 5 application. Thank you. I won't take any more time.  
 6 Thank you.  
 7 CHAIRMAN HONIGBERG: Thank you,  
 8 Ms. Sullivan. Mr. Rodger.  
 9 MR. RODGER: Good morning, Mr. Chairman  
 10 and everyone. My name is James Rodger. I'd like to  
 11 qualify myself. I'm a retired pipeline technician. I  
 12 worked on SCADA systems, Supervisory Control and Data  
 13 Acquisitions systems. So, I'm intimately associated with  
 14 pipelines and the knowledge of pipelines and how they  
 15 work. I worked on a 1,300 mile pipeline years ago, which  
 16 now I believe presently is owned by Kinder Morgan.  
 17 And, I just want to mention that  
 18 anywhere along this line, for the volume they're talking  
 19 about pumping or compressing, it takes an enormous amount  
 20 of horsepower to do that. And, it's just common sense  
 21 that you can't have a quiet compressor station. You're  
 22 going to have noise, you're going to have smell, you're  
 23 going to have light pollution.  
 24 And, the other issue is the very nature  
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1 of fracking gas releases absolutely everything that's  
 2 under the earth up into that stream. It's dirty gas, as  
 3 far as I'm concerned. There could be hydrogen sulphide,  
 4 there could be benzene in there, there could be radon gas.  
 5 How would you like to cook your evening meal on the stove  
 6 with radon gas, folks? I'd consider it.  
 7 Please deny the request, Mr. Chairman.  
 8 Thank you.  
 9 CHAIRMAN HONIGBERG: Thank you,  
 10 Mr. Rodger. Mr. Whitbeck.  
 11 MR. WHITBECK: Good morning. My name is  
 12 Doug Whitbeck. I'm a resident of Mason, New Hampshire.  
 13 Thank you for the opportunity to speak. I would like to  
 14 point out, last I checked, Kinder Morgan stocks were in  
 15 decline. And, that was even before the announcement that  
 16 they wish to downsize the pipeline, and before Liberty  
 17 announced that they really didn't need all the gas that  
 18 they initially had said they could use.  
 19 There is a study called "Drilling  
 20 Deeper", which suggests that the supply of natural gas, or  
 21 I say the word "natural", "natural" is a word that belongs  
 22 on a box of cereal, not on fracked gas, that the supply is  
 23 not infinite. And, that it could be, if we continue to  
 24 build pipelines and rush to export, we could exhaust the  
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1 Marcellus shale somewhere in ten to twenty years. So,  
2 this is a short-term solution, building all these  
3 pipelines up through the Northeast.

4 And, knowing what we know now, I would  
5 question if that's somewhere we really want to go, given  
6 the predictions of impending climate change.

7 So, this is talked about as being a  
8 "bridge fuel" and a "bridge technology". People, both  
9 individuals and municipalities, are making the change to  
10 renewables on their own. It is something, I would say, we  
11 should be encouraging, rather than investing in massive  
12 obsolete fossil fuel technology. We should be encouraging  
13 solar. We should be encouraging smart grids. We should  
14 be investing in our future and not our demise.

15 And, I request that you deny the  
16 pipeline permit. Thank you.

17 CHAIRMAN HONIGBERG: Thank you,  
18 Mr. Whitbeck. Mr. Husband.

19 MR. HUSBAND: Thank you very much. My  
20 name is Richard Husband. I'm a citizen of Litchfield.  
21 I'm here today with a group of protestors out front. Some  
22 of you may have seen them as you drove in, some of may --  
23 some of you may have avoided seeing them as you drove in.  
24 Whether you did see us or avoided seeing us, please don't  
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1 voice in this proceeding, other than the protestors out  
2 front and the letters we send in that are probably  
3 ignored, is the Consumer Advocate's Office, that is  
4 involved in this proceeding. And, I would urge the  
5 Commission to please follow the recommendations of the  
6 expert of the Consumer Advocacy Office, who has pointed  
7 out numerous reasons why this Petition for approval of the  
8 Liberty Utilities Agreement with Tennessee Gas and Kinder  
9 Morgan should be rejected.

10 We can go over all the reasons, they  
11 have been enumerated, but, basically, it's unnecessary.  
12 Three experts have laid it out in this case. You've seen  
13 it all in the newspapers. All we're talking about is  
14 something that's going to devastate our landscape, it's  
15 going to carve up our towns, it poses safety risks, it  
16 takes private property from individuals, and  
17 correspondingly ruins their lives.

18 A lot of people involved in this have  
19 nothing left but their homes. And, they're going to be  
20 taken from them, essentially, if you know what it would be  
21 like to have a pipeline run through your yard.

22 There is really no benefit to New  
23 Hampshire. As I understand it, somewhere between only  
24 five and ten percent, I believe Kinder Morgan says  
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1 forget us when you make your decision.

2 We are representative of a number of not  
3 only individuals, but towns, who have voted unanimously  
4 against the Kinder Morgan Pipeline project, the NED  
5 project. And, the Commission should not be fooled into  
6 thinking this proceeding today is just about approval of a  
7 specific piece of the gas going through that pipeline to  
8 Liberty Utilities. But for that pipeline, there would not  
9 be a hearing today. This proceeding is really all about  
10 validation of the NED Pipeline.

11 We are respectful out front. We're  
12 intentionally small, as not to be disruptive. We're being  
13 polite. But please do not leave this hearing today  
14 thinking that we are not angry. A lot of citizens in this  
15 state are angry, as has been said. A lot of citizens are  
16 being affected by this. I have seen estimates of 200,000  
17 or more New Hampshire citizens who are being negatively  
18 affected by this pipeline.

19 The corporations involved in this  
20 proceeding have money. So, they have a voice. The  
21 politicians and government involved in this proceeding  
22 have power. So, they have a voice. The individual  
23 citizens that are affected by this proceeding most have a  
24 little voice, if any. In fact, all we really have for a  
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1 ten percent, of what is going to run through that  
2 monstrous pipeline is actually going to go to New  
3 Hampshire residents. There is no benefit to our  
4 residents. There's no -- there's no projected expansion  
5 of Liberty Utilities' customer lines. This is a  
6 transmission line, it's not a servicing line. And,  
7 they're not promising anything, they just say "It presents  
8 the opportunity for expansion", but we need definite  
9 commitments before we commit to allowing the pipeline.

10 In terms of businesses, given the small  
11 percentage that's going through the pipeline, I don't see  
12 how they benefited. And, they can get the same gas from  
13 the Spectra Pipeline that is farther -- further advanced  
14 into the approval process and will be up and running in  
15 November 2018, than they can get through this Kinder  
16 Morgan Pipeline.

17 There are better alternatives. Please  
18 take a look at everything that has been submitted to you  
19 for comments, and the expert testimony in this matter, and  
20 reject the Petition before you. Thank you.

21 CHAIRMAN HONIGBERG: Thank you,  
22 Mr. Husband. Ms. Fletcher.

23 MS. FLETCHER: Good morning. I'm Liz  
24 Fletcher. I live in Mason, New Hampshire. And, I'm a  
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1 member of the Mason Conservation Commission. And, I would  
2 strongly urge Public Utilities to pay attention to your  
3 own Consumer Advocate and expert, which found that this  
4 contract would cost more to Liberty's utility customers  
5 than if they ordered a more reasonable amount of gas for  
6 the actual need that is in New Hampshire.

7 So, if this contract is approved, the  
8 Public Utilities will be committing or having a hand in  
9 committing excess cost to the economic core of New  
10 Hampshire, which are the large cities up and down the  
11 Merrimack Valley, who are the main Liberty Utility  
12 customers. So, please follow the advice of your own  
13 advocate and expert and reject this Pipeline.

14 It's a conflict of interest, in a way,  
15 to have Liberty Utilities, as a customer and an investor,  
16 and it is an investor through Algonquin. And, it seems a  
17 little bit of a coincidence, they asked for 115,000  
18 originally, now they're happy to get 100,000. That's like  
19 an 83 percent reduction. Whereas the pipeline just went  
20 from 36 inches to 30 inches. That's an 86 percent  
21 reduction. It goes in line with their investment. So,  
22 don't rubber stamp the investment of Liberty Utilities.  
23 Think of Liberty Utilities' customers and saving them from  
24 excess costs. Thank you.

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1 that year is because of the manipulated market. Thank  
2 you. That's all I have.

3 CHAIRMAN HONIGBERG: Thank you,  
4 Mr. Lewicke. Since we started, another member of the  
5 public came in, not wishing to speak, that would be  
6 Mr. Montgomery, who I think I saw come in, sitting in the  
7 back.

8 That is all of the people who signed in  
9 wishing to speak. Is there anyone who came in who wishes  
10 to speak? There is someone. Come on down.

11 CHAIRMAN HONIGBERG: Please identify  
12 yourself.

13 MS. MCGHEE: Good morning. Yes. I'm  
14 Kat McGhee. I'm from Hollis, New Hampshire. And, I was  
15 on the task force there to study the impact to Hollis when  
16 we were on the route before December. And, now, I'm a  
17 member of the Nashua Regional Planning Commission Energy  
18 Facility Advisory Committee. And, we've been doing  
19 research, and we've pulled together a white paper  
20 discussing the impact of the project on the Nashua  
21 Regional Planning Commission area. And, we had Liberty  
22 Utilities come in as part of our investigation. We've had  
23 Kinder Morgan come in, and Spectra, and Eversource,  
24 etcetera.

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1 CHAIRMAN HONIGBERG: Thank you,  
2 Ms. Fletcher. Mr. Lewicke.

3 MR. LEWICKE: Good morning, members of  
4 the Committee. I'm John Lewicke, from Mason. And, one  
5 thing I'd like to point out is that all of this is  
6 predicated on need. And, in the Winter of 2013/2014, that  
7 need was created artificially, when FERC and ISO-New  
8 England essentially forced the generators to use oil  
9 rather than gas. And, that we do not need additional  
10 pipeline capacity. We have many other possibilities for  
11 peak shaving and so forth, storage. There are small LNG  
12 compressor plants -- or, liquification plants available.  
13 And, it can be stored and can fill the need, and has  
14 filled the need for 40 years in New England.

15 And, the only reason we're here today is  
16 because FERC and ISO-New England artificially forced the  
17 generators not to use gas in that one winter. And,  
18 without that, we wouldn't even be talking about this. We  
19 certainly do not need enough pipeline capacity to feed  
20 every possible user every hour at every day of the year.  
21 There are many ways of dealing with that, including  
22 storage and moving LNG in for the peak use. And, that's  
23 what we've done, and it's worked every winter, except for  
24 one, for 40 years. And, the only reason it didn't work

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1 And, what I wanted to get into the  
2 record today or just make mention of is that the reason  
3 I'm here is that I think the approval of this contract  
4 will actually be used to justify the FERC approval at the  
5 higher level and justify the case for need. And, when  
6 Liberty came to speak with us, they did a slide  
7 presentation, which is on the NRPC website. And, they had  
8 a slide that showed the two major business projects that  
9 they thought they could expand if they had access to  
10 additional gas.

11 And, the slide, I don't remember the  
12 numbers exactly, I think they were 48,000, but it was  
13 "Dekatherms per year". And, all of the other slides we  
14 had seen were in capacities of "Dekatherms per day". And,  
15 so, someone in the group raised their hand and they said  
16 "is that right, "dekatherms per year"? That's kind of  
17 infinitesimal." And, they said "yes, that's right."

18 So, those were the two projects that  
19 were being used to support the idea that Liberty needed  
20 further access to large amounts of additional gas. And,  
21 then, there's the filing that went from 115 Dekatherms --  
22 115,000 Dekatherms per day, to a request for an adjustment  
23 down. And, when -- I'm on a committee on need and demand,  
24 so, we've been really researching the numbers. And, when

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1 we went and looked at the filings both in New Hampshire so  
2 far and in Massachusetts, the anchor shippers that have  
3 signed up for NED gas are signing up for a combination of  
4 both replacement and incremental gas. Incremental being  
5 new supply that's needed.

6 So, the actual application from Liberty  
7 Utilities is really only for 50,000 Dekatherms per day, if  
8 it's at the 100 Dekatherms per day level. Because 50,000  
9 of that supply that's being requested is replacement gas  
10 that they're already securing from someone else in the  
11 system at this point, so then that would be stranded  
12 somewhere else, that would be excess capacity.

13 So, I think, if you really do a look at  
14 the numbers, that the argument that people are making that  
15 this gas can be secured in other ways, and that this --  
16 this need by Liberty for access to additional gas is  
17 really not as large as they're trying to make it look, and  
18 that the pipeline is a massive overbuild in order to  
19 address that. So, I think that's one of the key things  
20 that a lot of us who are here wanted to get across today,  
21 is that this contract, if approved, is just another  
22 steppingstone, another checking box, you know, a checked  
23 box to get FERC approval, and then this massive  
24 infrastructure will come and there won't be any way to  
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1 folder, which I'm sure someone is going to explain.  
2 But, before we go any further, let's  
3 take appearances.

4 MS. KNOWLTON: Good morning,  
5 Commissioners. My name is Sarah Knowlton. And, I'm here  
6 today from Rath, Young & Pignatelli. And, I'm appearing  
7 on behalf of Liberty Utilities (EnergyNorth Natural Gas)  
8 Corp.

9 MS. CHAMBERLIN: Good morning. Susan  
10 Chamberlin, Consumer Advocate. And, with me today is  
11 Dr. Pradip Chattopadhyay.

12 CHAIRMAN HONIGBERG: I think there's  
13 somebody in the back of the room that needs to identify  
14 himself.

15 MR. KANOFF: Good morning. Richard  
16 Kanoff. I represent Pipe Line Awareness Network for the  
17 Northeast. And, with me is Zachary Gates, both from Burns  
18 & Levinson.

19 MS. PATTERSON: Good morning. Excuse  
20 me. Rorie Patterson, here on behalf of the Public  
21 Utilities Commission Staff. And, with me today is the  
22 Assistant Director of the Gas & Water Division, Stephen  
23 Frink, and our consultant, Melissa Whitten. Thank you.

24 CHAIRMAN HONIGBERG: So, who wants to  
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1 stop it. So, it's a very important linchpin.

2 And, understanding what we actually gain  
3 in the region, and what ratepayers will gain, we ask that  
4 you really look into this deeply, because I think we will  
5 lose monetarily and economically a lot more than we will  
6 gain. Thank you.

7 CHAIRMAN HONIGBERG: Thank you,  
8 Ms. McGhee. Is there anyone else who has come in who  
9 wishes to speak?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: All right. We're  
12 going to close the public comment portion of the morning.  
13 Thank you all for your cooperation in working through that  
14 as quickly as you did.

15 (Public comment portion of the hearing  
16 was closed at 9:33 a.m.)

17 (Hearing on the merits opened at  
18 9:34 a.m.)

19 CHAIRMAN HONIGBERG: All right. We're  
20 going to open the hearing in 14-380, a consideration of  
21 Liberty's proposed Precedent Agreement with the Pipeline.  
22 As I said, we do have a partial settlement. So, how are  
23 we going to proceed? I know we have an Exhibit List up  
24 here, which someone has placed up here, and we have a red  
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1 tell me about the Exhibit List that's up here?

2 MS. KNOWLTON: I'd be happy to. So, the  
3 Company has prepared an Exhibit List starting with Exhibit  
4 3. We had two exhibits that were marked as record  
5 requests from the prehearing conference, which is why  
6 we've proposed to start at "3". And, these are all  
7 documents that have already been filed with the  
8 Commission, with one exception, and that would be  
9 Exhibit 10. So, what we've done on the list is included  
10 the proposed exhibit number, the tab in the Commission's  
11 docketbook where the exhibit can be found, and then a  
12 description of the exhibit. The confidential materials  
13 are in the Commission's files, but redacted versions are  
14 up on the Commission's website.

15 I have circulated the list in advance to  
16 counsel for all the Parties. And, we are in agreement as  
17 where we would propose to begin today. Exhibit 10, which  
18 is not in the Commission's docketbook, is a correction to  
19 a confidential page of Mr. DaFonte's rebuttal testimony  
20 that he would make on the stand.

21 CHAIRMAN HONIGBERG: Okay.  
22 (The documents, as described on the  
23 provided Exhibit List, were herewith  
24 marked as Exhibit 3 through Exhibit 22,  
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1                               respectively, for identification.)  
 2                               CHAIRMAN HONIGBERG: With respect to  
 3 confidential treatment of materials, I understand that  
 4 there's still a pending motion on certain materials. I  
 5 don't remember, it must be your motion, right,  
 6 Ms. Knowlton?  
 7                               MS. KNOWLTON: That's correct.  
 8                               CHAIRMAN HONIGBERG: Is there any  
 9 objection to Ms. Knowlton's Motion for Confidential  
 10 Treatment?  
 11                               MS. PATTERSON: No objection.  
 12                               MS. CHAMBERLIN: No objection.  
 13                               MR. KANOFF: No objection.  
 14                               CHAIRMAN HONIGBERG: All right. That  
 15 motion is granted. We have up here lots of red folders.  
 16 The red folders signify that there's confidential  
 17 information somewhere in here. If someone is going to be  
 18 referring to what is confidential information, we need to  
 19 be careful. If it's possible to concentrate the  
 20 discussions of confidential information before or after  
 21 breaks, that will make things easier on everyone. We  
 22 understand it may not be possible. It may come up. But  
 23 I'd ask the counsel especially to pay attention to that as  
 24 we go forward.  
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1                               I understand that the Staff and Liberty  
 2 are going to be putting up a panel of witnesses to discuss  
 3 the Settlement, is that correct?  
 4                               MS. KNOWLTON: Yes, it is.  
 5                               MS. PATTERSON: Yes.  
 6                               CHAIRMAN HONIGBERG: And, then,  
 7 Mr. Kanoff, you have a witness you'd like to present after  
 8 they're done, is that correct?  
 9                               MR. KANOFF: We do. I believe that OCA  
 10 was going to go first, however.  
 11                               CHAIRMAN HONIGBERG: If that's what's  
 12 been agreed, that's fine. Ms. Chamberlin, your witness  
 13 will go first. And, then, Mr. Kanoff, your witness?  
 14                               MS. CHAMBERLIN: Yes.  
 15                               MR. KANOFF: That's correct.  
 16                               CHAIRMAN HONIGBERG: Okay. In terms of  
 17 examination of the panel of witnesses, I mean, typically,  
 18 Mr. Kanoff, we would expect you to go first. Although, do  
 19 you have an agreement on that as well with Ms. Chamberlin?  
 20                               MS. CHAMBERLIN: I had anticipated going  
 21 first, because of the other order. I don't know that we  
 22 discussed it.  
 23                               CHAIRMAN HONIGBERG: If you guys, if  
 24 that's how you want to do it, that's fine with us. It's  
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1                               just so everybody knows what we're going to do.  
 2                               MR. KANOFF: That's fine.  
 3                               CHAIRMAN HONIGBERG: Okay. Is there any  
 4 other business we need to take up, before we have the  
 5 witnesses take the stand?  
 6                               MS. KNOWLTON: There are two other  
 7 matters that the Company wanted to at least bring to the  
 8 Commission's attention. And, I don't know that it  
 9 requires that you do anything at the moment. But the  
 10 first is the availability of hearing transcripts. The  
 11 Company would request that the transcripts be made  
 12 available as quickly as Mr. Patnaude is able to do.  
 13                               CHAIRMAN HONIGBERG: Mr. Patnaude is, as  
 14 we know, a magician.  
 15                               MS. KNOWLTON: I agree.  
 16                               CHAIRMAN HONIGBERG: And, he will  
 17 conjure up whatever needs to be conjured, I'm sure.  
 18                               MS. KNOWLTON: The second is that the  
 19 Company, from the start of the case, has requested that  
 20 the Commission issue its order in time so that the 30-day  
 21 rehearing period could run in advance of the regulatory  
 22 approval deadline. This was something that we had raised  
 23 at the prehearing conference. I understand that this  
 24 hearing date has been moved a number of times. But,  
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1                               nonetheless, we still request that the Commission issue an  
 2 order so that the 30-day rehearing period can run in  
 3 advance of September 1st, which means that the Company is  
 4 requesting an order by the end of this month.  
 5                               CHAIRMAN HONIGBERG: Mr. Patnaude is not  
 6 the only magician in the room.  
 7                               Is there anything else we need to take  
 8 up, before we call the witnesses? Mr. Kanoff.  
 9                               MR. KANOFF: Yes.  
 10                               CHAIRMAN HONIGBERG: Just - off the  
 11 record.  
 12                               (Brief off-the-record discussion  
 13 ensued.)  
 14                               CHAIRMAN HONIGBERG: Go ahead.  
 15                               MR. KANOFF: We would like to request,  
 16 as part of the case, that time be allowed for briefing.  
 17 Which I know is not necessarily a part of every case.  
 18 But, in this case, with respect to the complexity and the  
 19 confidential information, the different experts that have  
 20 submitted information, it would seem to us that it would  
 21 be beneficial to the Commission to have briefs. And, we  
 22 would ask that that be allowed and a period of time be set  
 23 aside for that.  
 24                               CHAIRMAN HONIGBERG: I understand the  
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33

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 request. I think we'll see where we stand at the end of  
 2 the proceeding, whether that's today or tomorrow, and  
 3 we'll consider it at that time.

4 Anything else people want to raise  
 5 before we get started?

6 (No verbal response)

7 CHAIRMAN HONIGBERG: It would seem not.  
 8 Then, why don't we bring the witnesses up to the stand.

9 MS. KNOWLTON: The Company calls Mr.  
 10 DaFonte and Mr. Clark.

11 MS. PATTERSON: And, the Staff would  
 12 call Melissa Whitten to the stand please.

13 (Whereupon Francisco C. DaFonte,  
 14 William J. Clark, and Melissa Whitten  
 15 were duly sworn by the Court Reporter.)

16 CHAIRMAN HONIGBERG: Off the record.  
 17 (Brief off-the-record discussion  
 18 ensued.)

19 CHAIRMAN HONIGBERG: Ms. Knowlton.  
 20 MS. KNOWLTON: Thank you.  
 21 FRANCISCO C. DAFONTE, SWORN  
 22 WILLIAM J. CLARK, SWORN  
 23 MELISSA WHITTEN, SWORN  
 24 DIRECT EXAMINATION

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35

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 England utilities.

2 In addition, I oversaw the analysis in  
 3 the case, and provided direct and rebuttal testimony,  
 4 as well as sponsoring responses to various data  
 5 requests, too many to enumerate at this point.

6 Q. Do you have any prior experience in negotiating  
 7 precedent agreements before the -- other than the  
 8 Agreement that is before the Commission today?

9 A. (DaFonte) I do. I've been doing this for 30 years now,  
 10 with various utilities in New England. I have  
 11 negotiated more than a dozen precedent agreements for  
 12 long-term capacity on pipelines, including Spectra  
 13 Energy, Iroquois Gas Transportation, Vector Pipeline,  
 14 Tennessee Gas Pipeline, Portland Natural Gas  
 15 Transmission System, Texas Eastern Gas Transmission,  
 16 and others.

17 Q. Thank you. Mr. Clark, would you please state your full  
 18 name for the record.

19 A. (Clark) William J. Clark.

20 Q. By whom are you employed?

21 A. (Clark) Liberty Utilities Service Corp., representing  
 22 EnergyNorth.

23 Q. What is your -- what is the nature of your position  
 24 with that company?

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34

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 BY MS. KNOWLTON:

2 Q. Mr. DaFonte, I'll start with you. Would you please  
 3 state your full name for the record.

4 A. (DaFonte) Francisco C. DaFonte.

5 Q. By whom are you employed?

6 A. (DaFonte) I am employed by Liberty Utilities Service  
 7 Corp., representing EnergyNorth.

8 Q. Is Liberty Utilities a subsidiary of Kinder Morgan?

9 A. (DaFonte) No, it is not.

10 Q. What company is it a subsidiary of?

11 A. (DaFonte) It is a subsidiary of Liberty Utilities Co.,  
 12 which is a subsidiary of Algonquin Power & Utilities  
 13 Company.

14 Q. What are your responsibilities at the Company?

15 A. (DaFonte) I am responsible for the planning,  
 16 procurement, demand forecasting, retail choice  
 17 programs, and also for various other planning and  
 18 forecasting, contracting, and the like, for  
 19 EnergyNorth.

20 Q. What were your responsibilities with regard to this  
 21 docket?

22 A. (DaFonte) With regard to this docket, I was responsible  
 23 for negotiating the Precedent Agreement with Tennessee  
 24 Gas Pipeline as part of an LDC Consortium of New

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 A. (Clark) I am the Business Development Manager for New  
 2 Hampshire.

3 Q. Would you describe your job duties for the Commission.

4 A. (Clark) I am responsible for new growth initiatives,  
 5 tariff enhancements, and business opportunities.

6 Q. Would you identify your background in gas sales.

7 A. (Clark) Sure. I have 22 years in the gas market,  
 8 starting back with Boston Gas, and then exiting Boston  
 9 Gas to a start-up subsidiary for gas sales on the  
 10 unregulated side. And, then, the last five years in  
 11 New Hampshire, previously with National Grid, now with  
 12 Liberty on the Gas Sales team.

13 Q. Would you describe on a day-to-day basis what your  
 14 involvement in gas sales is now?

15 A. (Clark) On a day-to-day basis today, it is looking at  
 16 new franchise opportunities, new tariff enhancements to  
 17 aid in the growth and development of natural gas sales  
 18 through the state.

19 Q. Do you discuss the possibility of gas service for new  
 20 customers?

21 A. (Clark) I do. What we do now is, there are some new  
 22 tariff enhancements that we will be enacting hopefully  
 23 soon, and we've had some recent ones as well that aided  
 24 in that.

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[WITNESS PANEL: DaFonte-Clark-Whitten] 37  
1 Q. Do you meet with potential customers to talk about gas  
2 service?  
3 A. (Clark) Not at this point. In previous experience in  
4 New Hampshire, I did. Right now, we have a Gas Sales  
5 team in the state representing ten people that has an  
6 in-state sales manager.  
7 Q. Do you interact with them in your daily job duties?  
8 A. (Clark) I do. I do. What we do now is we have  
9 biweekly meetings with the Sales team, looking at new  
10 opportunities, new ways that business development can  
11 assist them in the growth of the natural gas market.  
12 MS. KNOWLTON: Thank you. At this  
13 point, I'll turn this over to Attorney Hollenberg  
14 [Patterson] to qualify her witness.  
15 MS. PATTERSON: Thank you.  
16 DIRECT EXAMINATION  
17 BY MS. PATTERSON:  
18 Q. Good morning, Ms. Whitten. Will you please state your  
19 name.  
20 A. (Whitten) My name is Melissa Whitten.  
21 Q. And, for whom do you work?  
22 A. (Whitten) I work for LaCapra Associates, Incorporated.  
23 Q. What type of work do you do for LaCapra?  
24 A. (Whitten) I'm an energy consultant at LaCapra,  
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1 specializing in natural gas issues.  
2 Q. And, how long have you done this type of work?  
3 A. (Whitten) As a consultant?  
4 Q. Yes.  
5 A. (Whitten) I've worked for LaCapra Associates since  
6 April of 2009.  
7 Q. Thank you. During this time, have you had an  
8 opportunity to testify as an expert witness and defend  
9 that testimony before a state agency that regulates  
10 public utilities?  
11 A. (Whitten) Yes, I have.  
12 Q. And, aside from your work with LaCapra, do you have any  
13 other natural gas/public utility related experience?  
14 A. (Whitten) Prior to working for LaCapra, I worked for  
15 Cascade Natural Gas Corporation, located in --  
16 headquartered in Seattle, Washington, but serving  
17 territories in both Washington and Oregon.  
18 Q. And, is your total experience, professional experience,  
19 included in and summarized in your testimony that was  
20 filed in this proceeding, which has now been marked as  
21 "Exhibits 12" and "13"?  
22 A. (Whitten) Yes, it is.  
23 MS. PATTERSON: And, if I might just  
24 approach the witness to have her identify the testimony  
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1 that's been admitted for identification purposes.  
2 (Atty. Patterson showing document to  
3 Witness Whitten.)  
4 BY MS. PATTERSON:  
5 Q. Do you recognize this document, which is a cover letter  
6 dated May 8th, 2015, to Director -- Executive Director  
7 Debra Howland, from me, and it encloses a copy of your  
8 confidential testimony? If you could just take a look  
9 and let me know if that's the same document?  
10 A. (Whitten) Yes, it is.  
11 Q. And that document is dated May 8th, 2015?  
12 A. (Whitten) Yes, it is.  
13 Q. Thank you. Does any of your experience include  
14 procuring capacity on behalf of gas LDCs, or local  
15 distribution companies?  
16 A. (Whitten) Yes. Although, it doesn't include precedent  
17 agreements, I was involved in shipper conferences to  
18 evaluate new pipeline capacity and changes to existing  
19 pipeline capacity agreements.  
20 Q. And, in your role as an expert witness for LaCapra on  
21 -- associated with LaCapra on behalf of other clients,  
22 do you have experience reviewing and analyzing  
23 precedent agreements for natural gas LDCs?  
24 A. (Whitten) Yes, I do.  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 40  
1 Q. And, on whose behalf are you testifying today?  
2 A. (Whitten) I'm testifying on behalf of the New Hampshire  
3 Public Utility Commission Staff.  
4 Q. Thank you. Do you have any corrections to make to your  
5 testimony?  
6 A. (Whitten) There's just a minor correction on the cover  
7 page. It has two -- a duplicate "the" in the title.  
8 Q. Okay. Thank you. And, if you were asked the questions  
9 in your testimony today, as filed, would your answers  
10 be the same?  
11 A. (Whitten) As filed, yes.  
12 Q. In addition to testifying on behalf of Staff today,  
13 what other activities have you been involved in during  
14 this docket?  
15 A. (Whitten) As a consultant for -- in another  
16 jurisdiction?  
17 Q. Within this docket today, what other activities,  
18 besides testifying today, have you participated in?  
19 A. (Whitten) I have been asked by Staff to participate in  
20 settlement discussions.  
21 Q. And, did you also participate, in assistance with  
22 Staff, in discovery to the Company and from the  
23 Company, and technical sessions?  
24 A. (Whitten) Yes, of course. I apologize. Including  
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1 reviewing the initial Precedent Agreement, my  
2 responsibilities included developing discovery, sets of  
3 discovery, and appearing and participating in two  
4 technical sessions.

5 Q. And, you also responded to discovery from the Company?  
6 A. (Whitten) We did respond to one set of discovery, yes.  
7 Q. And, you are familiar with -- in that case, you're  
8 familiar with the terms of the Settlement Agreement  
9 between the Commission Staff and the Company?  
10 A. (Whitten) Yes, I am.  
11 Q. And, are you also, because of that participation,  
12 familiar with the reasons that Staff entered into that  
13 Settlement Agreement?  
14 A. (Whitten) Yes, I am.  
15 BY MS. KNOWLTON:  
16 Q. Mr. DaFonte, you filed various pieces of testimony in  
17 this docket, correct?  
18 A. (DaFonte) That's correct.  
19 Q. Let's take them one by one. Starting with what's been  
20 marked for identification as "Exhibit 3", which was  
21 your direct testimony filed on December 31st, 2014, the  
22 confidential version, Bates numbers 001 through 296.  
23 Do you have that before you?  
24 A. (DaFonte) Yes, I do.  
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1 Q. And, do you have any -- well, let's just -- we've  
2 marked for identification as "Exhibit 4" the redacted  
3 version of that document. Do you have that before you  
4 as well?  
5 A. (DaFonte) Yes, I do.  
6 Q. Do you have any corrections to either the confidential  
7 or redacted versions of that testimony?  
8 A. (DaFonte) Not to the direct testimony.  
9 Q. If I were to ask you the questions that are contained  
10 in your testimony today, would the answers be the same?  
11 A. (DaFonte) Yes, they would.  
12 Q. Okay. If you would now look at what we've marked for  
13 identification as "Exhibit 5", which is confidential  
14 Pages 31R through 33R, and with a redacted version as  
15 "Exhibit 6". Are you familiar with these pages?  
16 A. (DaFonte) Yes, I am.  
17 Q. And, can you just identify for the Commission why those  
18 revised pages were filed?  
19 CHAIRMAN HONIGBERG: Ms. Knowlton, when  
20 you're looking for that, I'll note that neither  
21 Commissioner Scott nor I think we have what you're talking  
22 about.  
23 MS. KNOWLTON: Okay. Well, maybe we  
24 should, if we might take a brief recess then and make  
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1 copies for you. I apologize. I believed this was a tab  
2 that was in the Commission's docketbook, at Tab -- Tabs 5  
3 and 6. And, we can --  
4 CHAIRMAN HONIGBERG: Let's go off the  
5 record for a minute.  
6 (Brief off-the-record discussion  
7 ensued.)  
8 CHAIRMAN HONIGBERG: All right. So,  
9 let's take a five-minute break, you can locate that.  
10 MS. KNOWLTON: Okay.  
11 (Recess was taken at 9:55 a.m. and the  
12 hearing resumed at 10:05 a.m.)  
13 CHAIRMAN HONIGBERG: All right. So, we  
14 have things sorted out?  
15 MS. KNOWLTON: I believe we have things  
16 sorted out. So, Mr. DaFonte is prepared to explain  
17 Exhibit 5, which is the confidential version of Pages 31R  
18 through 33R. As well as Exhibit 6, which is the redacted  
19 version of those pages.  
20 BY MS. KNOWLTON:  
21 Q. So, Mr. DaFonte, if you would please explain why the  
22 Company filed the revised Pages 31R through 33R of your  
23 direct testimony.  
24 A. (DaFonte) Yes. The original filing had information  
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1 that was redacted, that later was made public. Whether  
2 it was related to a rate or just some of the wording  
3 that was redacted that shouldn't have been. So, with  
4 that, if we turn to Page 31 of my direct testimony,  
5 that's Bates Page 031, Line 19, at the bottom of the  
6 page, the word "approximately" was inadvertently  
7 redacted, and that is now public.  
8 On Page 32, Line 7, beginning with the  
9 word "as", and going through Line 11, ending with the  
10 abbreviation "Dth", that was also inadvertently  
11 redacted and is now public. And, also, at the bottom  
12 of Page 32, Line 21, the rate associated with PNGTS was  
13 subsequently made public by PNGTS, and, therefore, the  
14 Company is also making that public, no longer redacted.  
15 And, then, on Page 33, Line 2, beginning  
16 with the word "cannot", and going through Line 3,  
17 ending with the word "of", and then commencing again on  
18 Line 3, with the word "as", and going through Line 4,  
19 with the word "project", that was also made public and  
20 inadvertently redacted.  
21 Q. And, Mr. DaFonte, if I were to tell you that the  
22 redactions were done as the result of a Right to Know  
23 request filed by the Town of Dracut, would that refresh  
24 your recollection?  
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1 A. (DaFonte) That's correct. It was a result of that  
2 Right to Know request from the Town of Dracut.  
3 Q. If you would now turn to what's been marked for  
4 identification as "Exhibit 7", which is the Amendment  
5 to the Precedent Agreement, dated March 23rd, 2015.  
6 CHAIRMAN HONIGBERG: Ms. Knowlton,  
7 before you continue, I'll just note then, in Exhibits 5  
8 and 6, comparing that to the as-filed testimony, there's  
9 an additional section that was unredacted, on Page 32,  
10 Lines 5 and 6. But it's trivia, just you can go on.  
11 MS. KNOWLTON: Okay. Thank you.  
12 BY MS. KNOWLTON:  
13 Q. Mr. DaFonte, are you familiar with the Amendment to the  
14 Precedent Agreement?  
15 A. (DaFonte) Yes, I am.  
16 Q. And, would you explain why it was amended?  
17 A. (DaFonte) Yes. The Precedent Agreement was amended to  
18 accommodate the changes in the hearing date in this  
19 docket, such that the original regulatory approval date  
20 of July 31st was extended to September 1st. And, also,  
21 subsequent regulatory out clauses were extended, to  
22 again accommodate the timing of the hearing in this  
23 docket.  
24 Q. If you would turn next to your rebuttal testimony,  
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1 we've marked for identification as "Exhibit 8, the  
2 redacted version of your June 4th, 2015 testimony, as  
3 "Exhibit 9", the confidential version of that  
4 testimony, do you have that before you?  
5 A. (DaFonte) Yes, I do.  
6 Q. Was that testimony drafted by you or under your  
7 direction?  
8 A. (DaFonte) Yes, it was.  
9 Q. Do you have any corrections to that testimony today?  
10 A. (DaFonte) I do. We can start with Bates Page 005, Line  
11 4, Moody's was incorrectly shown as indication of  
12 "copyright", where it should have been as a registered  
13 trademark.  
14 Q. Okay. So, an "r" in the circle, instead of a "c" in  
15 the circle?  
16 A. (DaFonte) Yes. Thank you. On Bates 015, Line 7, the  
17 word "to" should be inserted between the words  
18 "exposed" and "the", and "to" is t-o. And, then,  
19 lastly, on Bates 047, Table 8, --  
20 Q. And, if I might interrupt you, Mr. DaFonte. We've  
21 marked for identification as "Exhibit 10" a revised  
22 Page 47R, to address the correction here, because it  
23 contains confidential information, and we didn't want  
24 Mr. DaFonte to read the number aloud in a public  
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1 hearing.  
2 A. (DaFonte) Correct.  
3 Q. But if you can explain the nature of the correction to  
4 the Commissioners?  
5 A. (DaFonte) Sure. As shown in Table 8, there is a  
6 calculation there that determines a breakeven price.  
7 That calculation for the total cost of Dracut purchases  
8 did not include the Tennessee demand charges that the  
9 Company currently pays for its capacity from Dracut up  
10 the Concord Lateral. So, adding those demand charges  
11 in there would increase the total Dracut purchases and  
12 result in a higher production area breakeven price.  
13 And, that calculation or that revised calculation is  
14 provided in the confidential version.  
15 Q. Subject to those corrections, if I were to ask you the  
16 questions contained in your rebuttal today, would the  
17 answers be the same?  
18 A. (DaFonte) Yes, they would.  
19 Q. Mr. Clark, do you have before you what's been marked  
20 for identification as "Exhibit 11"?  
21 A. (Clark) I do.  
22 Q. And, that is the rebuttal testimony that you filed in  
23 this docket?  
24 A. (Clark) It is.  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 Q. Was that testimony prepared by you or under your  
2 direction?  
3 A. (Clark) Yes. It was.  
4 Q. Do you have any corrections to that testimony?  
5 A. (Clark) No, I do not.  
6 Q. If I were to ask you the questions contained in your  
7 testimony today, would the answers be the same?  
8 A. (Clark) Yes.  
9 Q. Other than filing rebuttal testimony, did you  
10 participate in other ways in this docket?  
11 A. (Clark) I participated in tech -- in data requests, as  
12 well as settlement negotiations.  
13 Q. Thank you.  
14 CHAIRMAN HONIGBERG: Can I get a  
15 clarification on the correction Mr. DaFonte made on  
16 Page 47? The text that leads into that table has numbers  
17 on it, they're not shown as confidential on what I'm  
18 looking at, but they appear to be related to the numbers  
19 that are in the confidential box. And, they're -- it  
20 seems like some of the numbers that are in the text maybe  
21 should be changed to match what's in the corrected box,  
22 but I'm not sure.  
23 WITNESS DaFONTE: The numbers shown on  
24 Lines 6 and 7 are approximate values. The detailed  
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1 calculations are provided in the confidential table. I  
2 think the breakeven prices would not necessarily have to  
3 be redacted. It's more so the costs that led up to that  
4 calculation which are in that table. So, I think you're  
5 right, the Line 6 and 7 numbers are, again, approximations  
6 of the breakeven price that were calculated in the table.

7 CHAIRMAN HONIGBERG: Should they be  
8 corrected to reflect what appears to be changes in the  
9 calculations done in 8?

10 WITNESS DaFONTE: Yes. They would --  
11 that would also be a change that would have to take place,  
12 given the incorrect -- or, I should say that the lack of  
13 inclusion of the Tennessee demand charges in the total  
14 Dracut price.

15 CHAIRMAN HONIGBERG: Okay. I think we  
16 understand what's happened. So, I think, if you guys can  
17 just work out what should appear on those lines, you can  
18 deal with that as we go forward. It doesn't have to be  
19 done right now.

20 MS. KNOWLTON: Okay.  
21 MS. PATTERSON: Would you like to  
22 reserve a record request for that or --

23 CHAIRMAN HONIGBERG: No. That's not  
24 necessary. This is a matter of taking a pen and crossing  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 something out in a document, and just making sure that  
2 whatever appears in our file that can be accessed online  
3 is correct.

4 Go ahead, Ms. Knowlton.  
5 MS. KNOWLTON: Thank you.

6 BY MS. KNOWLTON:

7 Q. Mr. DaFonte, let's now turn to the Settlement Agreement  
8 that's before the Commission today, which has been  
9 marked for identification as "Exhibit 14". Do you have  
10 that?

11 A. (DaFonte) Yes, I do.

12 Q. And, you testified earlier that you participated in  
13 discussions that led to this Settlement?

14 A. (DaFonte) That's correct.

15 Q. What I'd like you to do is to start by addressing the  
16 substantive terms of the Settlement and what the  
17 Company has agreed to, beginning with the amount of  
18 capacity that the Settling Parties have agreed that the  
19 Company should purchase.

20 A. (DaFonte) The Parties have agreed to a contracted  
21 capacity volume of 115,000 Dekatherms per day, which is  
22 in line with what the Company's request was. Further  
23 to that, there is an option to reduce that 115,000  
24 Dekatherms per day down to 100,000 Dekatherms per day,  
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1 given certain requirements by the Company contained in  
2 the Settlement Agreement.

3 Q. Why don't you walk us through one-by-one what each of  
4 those circumstances are, starting with the design day  
5 capacity for iNATGAS firm sales?

6 A. (DaFonte) Sure. So, the way that the Agreement works,  
7 with respect to the ability to reduce the 115,000  
8 Dekatherms down to 100,000 Dekatherms, is tied to a  
9 combination of the design day requirements of the  
10 iNATGAS CNG, which just stands for "compressed natural  
11 gas", facility, as well as the returning  
12 capacity-exempt customers. These are customers that  
13 are on the Company's distribution system, but do not  
14 hold any capacity from the Company to receive their  
15 service. Therefore, they're contracting with a third  
16 party marketer for their supply and capacity service.

17 There has been a trend, in both  
18 EnergyNorth's service territory and throughout New  
19 England, of these capacity-exempt customers returning  
20 to sales service, and then ultimately going back to  
21 transportation service. The difference being that,  
22 once they return to sales service, they get a -- what I  
23 call a "slice" of the Company's portfolio. So, their  
24 proportionate share of all of the Company's assets.  
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1 Now, this is a recent trend that's  
2 developed as a result of the lack of capacity in the  
3 region and the high prices that are paid by these  
4 customers and others for market area supply. And, so,  
5 as these contracts roll off with their third party  
6 supplier, some of which may have been entered into  
7 three years ago, two years ago, when prices were muted,  
8 the repricing has caused these customers to rethink how  
9 they're going to manage their fuel procurement. And,  
10 so, we've had quite a few that have returned. And,  
11 like I said, there is also a trend within the New  
12 England region overall of these customers returning.  
13 So, we have to be prepared to serve these customers.

14 Q. Mr. DaFonte -- oh, I'm sorry. I was just going to say,  
15 since you filed your rebuttal testimony, have there  
16 been any other capacity-exempt customers that have  
17 returned?

18 A. (DaFonte) Yes. We've had two or three additional  
19 customers that have returned, with approximately about  
20 a 200 Dekatherm requirement on design day. But we do  
21 still have approximately 14,000 Dekatherms of design  
22 day capacity-exempt load out there. So, part of the  
23 Settlement is really tracking those customers as well,  
24 because they're essentially like a new customer,  
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1 because the Company has to serve them with capacity.  
 2 And, so, as those customers come back, that would  
 3 increase our design day requirements.  
 4 Q. Is there a process that a capacity-exempt customer  
 5 needs to follow, if it wants to come back to receive  
 6 capacity from the Company?  
 7 A. (DaFonte) Yes. There is a process. It's in the  
 8 tariff. And, basically, they notify us within ten  
 9 business days of the commencement of their new -- of  
 10 their cycle, beginning of their cycle, that they want  
 11 to return to sales service. So, there isn't a lot of  
 12 notification, prior notification. So, the Company has  
 13 to be ready and prepared to serve these customers,  
 14 particularly, in the winter period, where the Company  
 15 already plans for their supplies in advance. And, so,  
 16 customers returning during the winter -- during the  
 17 winter period will cause the Company to have to go out  
 18 and purchase spot supplies, for example, or, if there  
 19 is insufficient capacity, the Company would have to go  
 20 out and try to procure that capacity. Which, you know,  
 21 clearly, what we've put forth in this filing is a  
 22 long-term plan to ensure that there is sufficient  
 23 capacity to serve both new customers, existing  
 24 capacity-exempt customers, and ensure -- continue to  
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1 ensure reliability.  
 2 Q. And. There's a third category that -- in subpart (c)?  
 3 A. (DaFonte) Correct. The third component is a sort of  
 4 recent development, which is the Concord Steam  
 5 customers that have contacted the Company, and the  
 6 Company is working with, to move them to a direct  
 7 natural gas service from the Company. So, essentially,  
 8 it would be considered new customers from Concord  
 9 Steam.  
 10 And, so, when taken together in the  
 11 aggregate, beginning after July 1st, 2015, and going  
 12 through July -- or, April, I should say, April 1st of  
 13 2017, if the total design day requirements in aggregate  
 14 for these three groups is 10,000 Dekatherms or greater,  
 15 then the 115,000 Dekatherms of capacity stands. If  
 16 it's less than 10,000 Dekatherms, then the Company can  
 17 reduce the 115,000 Dekatherm commitment down to 100,000  
 18 Dekatherms.  
 19 In essence, what we have here is a  
 20 no-cost option for the Company and its customers. The  
 21 Company negotiated that arrangement with Tennessee, as  
 22 it falls within the range of 100,000 to 115,000  
 23 stipulated in the Precedent Agreement. And, so, it is  
 24 a benefit to customers. And, you know, as part of the  
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1 Settlement, it's an important distinction from what  
 2 was, you know, originally just a 115,000 Dekatherm  
 3 filing, or the potential for 100,000. This now has  
 4 specific milestones in place that would dictate whether  
 5 the 115 remains in place or the 100.  
 6 Q. And, Mr. DaFonte, if you would look at -- looking at  
 7 the Settlement Agreement, there is an Attachment A to  
 8 it, which is titled "Amendment Number 2 to Precedent  
 9 Agreement". Are you familiar with this attachment?  
 10 A. (DaFonte) Yes, I am.  
 11 Q. And, what is the intent of including this here?  
 12 A. (DaFonte) The intent is to basically provide a draft of  
 13 the -- what would be a precedent -- an Amendment to the  
 14 Precedent Agreement. Should the Commission approve the  
 15 Settlement Agreement, then the Company, within 30 days,  
 16 would file an executed Amendment to the Precedent  
 17 Agreement, essentially in the form provided here as  
 18 "Attachment A".  
 19 Q. And, is that amendment necessary, because, under the  
 20 Precedent Agreement that the Company has already  
 21 entered into with Tennessee, it doesn't have the  
 22 authority to drop the capacity purchase level down to  
 23 100,000 Dekatherms a day?  
 24 A. (DaFonte) That's correct. The Company is not, in and  
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1 of itself, able to reduce the 115,000 Dekatherms down  
 2 to 100. It would only be as a result of a Commission  
 3 order. In this case, there is now an option for the  
 4 Company to reduce it, as I mentioned, as part of this  
 5 Settlement, and specific milestones associated with the  
 6 Settlement.  
 7 Q. When the Company put together its forecast to determine  
 8 the amount of capacity it should purchase, did it  
 9 factor in the potential return of Concord Steam  
 10 customers?  
 11 A. (DaFonte) No, it did not. That is a recent  
 12 development.  
 13 Q. And, Mr. Clark, with regard to INATGAS, can you give  
 14 the Commission an update on the status of that project?  
 15 A. (Clark) Sure. Innovative Natural Gas and EnergyNorth  
 16 entered into a special contract last year, where  
 17 EnergyNorth would provide compressed natural gas to  
 18 their facility being constructed here in Concord. As  
 19 part of that, they have agreed to become a sales  
 20 customer for the first year of operation. Which, if  
 21 they leave sales service and return to -- go to  
 22 transportation service, they would take that capacity  
 23 charge with them. Right now, the facility is under  
 24 construction, on time for a commencement this fall,  
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1 will be in operation.

2 Q. Mr. DaFonte, do you have an opinion about whether

3 115,000 Dekatherms a day is still the appropriate

4 amount of capacity that the Company should purchase?

5 A. (DaFonte) Yes, I do. I do believe that 115,000 is the

6 appropriate level of capacity. It ensures long-term

7 reliability of supply. The 115,000 also provides the

8 flexibility to adjust the portfolio to changing market

9 conditions by being able to adjust the retirement or

10 inclusion of aging LP facilities, that is the Company

11 believes that its existing propane facilities are not a

12 viable long-term solution, and would not ultimately be

13 part of the Company's portfolio.

14 However, it doesn't make sense to make a

15 decision to retire those facilities at this point in

16 time, because we still have to determine whether the

17 Northeast Energy Delivery, or "NED", project is going

18 to get built. Even after it gets built, and we have

19 the 115,000 Dekatherms, we still have three or four

20 years of market development that will take place. We

21 have three or four years of growth on the Company's

22 system. As stipulated in the Settlement, there are

23 issues that have to be addressed with regard to INATGAS

24 and their volumes. There are, you know,

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1 capacity-exempt returning load customers that have to

2 be tracked. And, of course, the Concord Steam

3 customers, among other market dynamics that would

4 potentially impact the Company's customers. So, having

5 the 115 in place gives the Company some time and

6 ability to determine what it will do ultimately with

7 those propane facilities, and whether it retires one,

8 two, or all of those facilities at a given point in

9 time. Without it, the Company is essentially at the

10 mercy of the market, and going out and procuring or

11 having to procure either supply or capacity to meet

12 those requirements. And, they're not insignificant.

13 Those facilities provide approximately 34,600

14 Dekatherms of design day supply to the Company.

15 And, so, when we talk about the

16 "115,000", 50,000 really is replacement of existing

17 capacity that has a receipt point in Dracut, a very

18 illiquid market. 65,000 is really for growth, to meet

19 the requirements of these customers that I mention, the

20 INATGAS, the capacity-exempt, and the Concord Steam, as

21 well as the Company's other growth opportunities.

22 So, really, when taking the propane out

23 of the equation, you're left with essentially about

24 20,000 Dekatherms for growth, if you will. And, so,

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1 having that 115 really provides us with that

2 flexibility that we need. And, again, as I said, it's

3 a no-cost option. If the growth doesn't materialize,

4 then it would make sense to go with the 100,000 at that

5 point.

6 So, the Company is certainly --

7 certainly understands the issues with capacity and

8 having a reserve, and growing into that. And, as part

9 of the Settlement it is, you know, it's willing to

10 reduce that capacity, if needed.

11 Q. When you refer to the propane plants that are owned by

12 the Company, the Company, of course, now also includes

13 a system out in Keene, is that right?

14 A. (DaFonte) That is correct.

15 Q. But you're not referring to the propane/air system that

16 serves Keene customers, are you?

17 A. (DaFonte) No. No, I'm not. I want to make that clear

18 that, you know, Keene is sole sourced by propane. So,

19 the Keene customers would not be happy if we retired

20 that facility at any point in time before there was an

21 alternative. But that also brings out, you know,

22 another issue, which is that those Keene customers,

23 now, as a result of the NED project, may be able to be

24 served directly by natural gas in the future. And, of

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1 course, that load is not factored into the Company's

2 demand filing -- or, their demand requirements that

3 were in its Initial filing.

4 Q. So, there -- it sounds as though there are other events

5 that are occurring now, and the Company anticipates

6 occurring in the future, that could affect the amount

7 of capacity that it needs to serve customers into the

8 future?

9 A. (DaFonte) Correct. There are, certainly, there are

10 things that have changed since the Company made its

11 initial filing. And, those, you know, include

12 continuation of capacity-exempt customers returning to

13 sales service. You know, they include the possibility

14 of reaching other markets that weren't initially

15 available to the Company, as a result of the change in

16 the route by the Tennessee Company. And, so, those are

17 things that weren't initially included as part of the

18 Company's growing design day requirements. But,

19 certainly, they're there now as an opportunity and

20 another potential for growth.

21 You know, in addition, there's -- Kinder

22 Morgan has announced recently, I believe, on July 16th

23 that it was going to move forward with the NED project,

24 based on the commitments that it had in place. Of

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1 course, those commitments, much like ours, are, you  
2 know, are predicated on state commission approval of  
3 the contracts. But that was announced. Also, the  
4 Company had initially did a comparison of what it  
5 considered to be viable pipeline alternatives. One was  
6 the C2C --

7 CHAIRMAN HONIGBERG: Mr. DaFonte, do you  
8 remember what the question was?

9 MS. KNOWLTON: I have a new question for  
10 him.

11 CHAIRMAN HONIGBERG: Yes. I think we  
12 lost a thread there, so --

13 MS. KNOWLTON: Yes. I'm going to jump  
14 in and ask a couple of questions. Thank you.

15 BY MS. KNOWLTON:

16 Q. You referred to Dracut as being "illiquid". Would you  
17 explain what you mean by that?

18 A. (DaFonte) Well, "illiquid" typically refers to, you  
19 know, a lack of supply or a lack of suppliers. In the  
20 case of Dracut, it's both. We have declining supplies  
21 coming off of Atlantic Canada, Offshore Sable Island  
22 project and the Deep Panuke project. As explained in  
23 my rebuttal testimony, the producer or owner of the  
24 Deep Panuke production, Encana, that's E-n-c-a-n-a,  
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1 they recently announced back in February that they were  
2 reducing the proven reserves of that field by  
3 50 percent. There is also indications from several  
4 sources, including some independent consultants, that  
5 Deep Panuke and Sable Island volumes may be reduced,  
6 and, ultimately, you know, shut down within the next  
7 two to three years.

8 So, that is an important component of  
9 the supply that comes to Dracut. Additional supply  
10 comes in from PNGTS as well. And, some of that supply  
11 is now going north, into Canada, to serve some of the  
12 growing demand of the utilities up there. And, there  
13 is also LNG from the Canaport facility in New  
14 Brunswick. That is owned by Repsol. And, those  
15 volumes also make their way to Dracut.

16 But, with LNG, it's a global commodity.  
17 So, it won't necessarily come to the U.S., unless the  
18 price point is such that it's more cost-effective,  
19 there's more margin to be gained by delivering to the  
20 U.S. versus to Europe or to Asia or other countries  
21 that may require LNG as a sole source supply.

22 So, those all contribute to a lack of  
23 liquidity, and that accounts for a lot of the price  
24 spikes, particularly where demand continues to increase  
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1 in the region. That really hasn't, you know, that  
2 hasn't changed, it continues to increase, not just on  
3 the local distribution company side for thermal use,  
4 but also for gas-fired electric generation.

5 Q. If the Company receives supply at Dracut, is it  
6 dependent upon the availability of the Concord Lateral?

7 A. (DaFonte) Yes. You know, the existing capacity held by  
8 the Company is about 15,000 Dekatherms from Dracut.  
9 So, it can purchase and does purchase a good amount of  
10 capacity or a good amount of supply at Dracut. But,  
11 anything incremental to that would require an expansion  
12 of the Concord Lateral. And, that expansion cost, in  
13 my initial testimony, is much lower than what the  
14 revised cost estimate is from Tennessee, which I have  
15 provided in a data response. But that revised  
16 expansion cost is more than double what the initial  
17 estimate was. And, that initial estimate is really  
18 what the Company used throughout its analysis, its  
19 economic analysis. It has not gone back and redone the  
20 economic analysis. The Tennessee NED capacity was  
21 already the least cost, as compared to the other  
22 projects.

23 Q. And, Mr. DaFonte, if I could ask you about those other  
24 projects. Let's start with C2C. Is the C2C project  
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1 dependent upon expansion of the Concord Lateral?

2 A. (DaFonte) Yes, it is. The C2C project is only  
3 providing deliveries to Dracut, and nothing beyond  
4 Dracut.

5 Q. And, Atlantic Bridge, which is the other project that's  
6 been discussed in this docket, is that also dependent  
7 upon expansion of the Concord Lateral?

8 A. (DaFonte) Yes, it is. Similar to C2C, it only delivers  
9 to Dracut.

10 Q. Would both of those projects then, if considered as  
11 options, be subject to the further increase in the cost  
12 of expansion of the Concord Lateral for which the  
13 Company has received?

14 A. (DaFonte) Yes, they would.

15 Q. And, can you give the Commission a rough sense of those  
16 two alternatives, what the cost would be relative to  
17 purchasing 115,000 Dekatherms a day from Tennessee,  
18 just order of magnitude?

19 A. (DaFonte) Well, you know, with the -- with the  
20 additional costs, we're looking at, you know, a  
21 significant increase. I'm not sure that I can do the  
22 math at this point in time. But, like I said, it would  
23 be double of what was initially proposed, which would  
24 be in the, you know, approaching a billion dollars, in  
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1 terms of increased costs versus the NED project.

2 Q. Is the cost of the Concord -- the Concord Lateral

3 upgrade confidential, the actual dollar amount?

4 A. (DaFonte) Yes, it is.

5 MS. KNOWLTON: And, I think Mr. DaFonte

6 can, when we go on to a confidential record, we'd like to

7 circle back to that and have Mr. DaFonte address what the

8 actual upgrade cost would be.

9 CHAIRMAN HONIGBERG: Okay. And, I'll --

10 MS. KNOWLTON: We'll make a note.

11 CHAIRMAN HONIGBERG: Make a note of

12 that.

13 BY MS. KNOWLTON:

14 Q. Mr. DaFonte, your testimony has and the Precedent

15 Agreement itself also refers to what's called a "Supply

16 Path Agreement". Would you explain what that is.

17 A. (DaFonte) The Supply Path Agreement is a project that

18 is being proposed by Tennessee Gas Pipeline, that would

19 deliver supplies directly from Marcellus production

20 area to the Wright Interconnect with the NED Market

21 Path project. That provides access to the most

22 prolific production area within North America, provides

23 access to the lowest prices of natural gas in North

24 America, provides access to multiple storage

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1 facilities, which the Company currently has contracts

2 with, provides price stability, and also an ability to

3 optimize its storage capacity, as I mentioned.

4 In essence, what the Company would gain

5 through a contract with the Supply Path would be an

6 opportunity to go from purchasing gas at one of the

7 highest price points in North America, which is Dracut,

8 Massachusetts, to the absolute lowest price point in

9 North America, which is a -- was something that would

10 be inconceivable just a few years ago. But that's the

11 benefit of the supply portion of the Tennessee project.

12 The Company is in negotiations, is

13 finalizing negotiations with that Supply Path project,

14 and hopes to have a filing before the Commission within

15 the next month or so.

16 Q. Is approval of that Supply Path Agreement a contingency

17 in any way for approval of the Precedent Agreement

18 that's before the Commission today?

19 A. (DaFonte) No, it's not. The analysis that was

20 conducted in this docket stands alone. It was based on

21 a receipt point at Wright, and the analysis shows that

22 it was the -- the "NED project", I should say, is the

23 most cost-effective of the alternatives that was

24 identified by the Company.

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1 In addition, the Market Path project is

2 predicated on being -- on having some upstream

3 supplies, whether contracted directly by the Company on

4 other projects, such as Constitution Pipeline or the

5 NED Supply Path project, or simply buying at Wright

6 from suppliers on those projects. So, in other words,

7 the Company is not -- does not have to contract for NED

8 capacity if there is no supply source at Wright.

9 Q. If the Settlement Agreement is approved and the Company

10 proceeds with purchase of capacity from Tennessee under

11 the Precedent Agreement, are those capacity costs

12 incurred by the Company a pass-through to the Company's

13 customers?

14 A. (DaFonte) Yes, they are. Absolutely.

15 Q. There's no markup by the Company on the capacity?

16 A. (DaFonte) There's no markup. And, in addition, you

17 know, the Company has the obligation to minimize those

18 fixed costs through optimization of the portfolio.

19 Q. How does the Company do that?

20 A. (DaFonte) Well, the Company, over the years, has

21 entered into various optimization arrangements. We use

22 asset management arrangements, whereby the Company

23 assigns its capacity to a third party wholesale either

24 producer or marketer, and that entity provides the

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1 Company with a fee for the right to manage those

2 assets, because there are, you know, there are

3 significant values to different types of capacity that

4 the Company holds. And, so, those entities are much

5 more capable of optimizing that capacity, because of

6 their ability to enter into hedging, they're large

7 trading organizations, and their ability to combine

8 those assets with others that they currently hold. So,

9 that's one methodology.

10 Doing capacity releases as well, which

11 is, essentially, taking your existing capacity, and,

12 when you do not require it, you put it out into the

13 market, and it's bid on by those that need the

14 capacity. And, so, that becomes an offset to the fixed

15 costs. And, then, there's what we call "off-system

16 sales", and that is, essentially, bundling the capacity

17 with commodity and making a sale to a third party,

18 whether it's a, you know, industrial customer or a

19 gas-fired generator.

20 Q. To the extent that the Company were to undertake those

21 efforts and to sell any reserve capacity that it had

22 and generate revenues from that, would those revenues

23 flow through to the benefit of customers through the

24 Company's cost of gas proceeding?

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1 A. (DaFonte) Yes, dollar-for-dollar.

2 Q. If you would turn, Mr. DaFonte, back to the Settlement

3 Agreement itself, I'm looking at Page 3, the

4 calculation that you spoke of to determine whether or

5 not the Precedent Agreement will remain at 115,000

6 Dekatherms a day or whether it would be reduced down to

7 100,000 Dekatherms a day, does the Settlement Agreement

8 address, you know, where that is going to be made, in

9 terms of what kind of notice there would be to, you

10 know, the Commission and its Staff and the Consumer

11 Advocate and others, if they were interested in

12 following whether or not that reduction was going to be

13 made?

14 A. (DaFonte) Yes. The actual design day capacity will be

15 reported through its cost of gas filing. So, in

16 testimony within the cost of gas filing, the Company

17 will provide an update to the Commission, Staff, and

18 others, as to where the growth initiatives or the

19 standards that are provided for through iNATGAS,

20 capacity-exempt, and Concord Steam. Those will all be

21 updated within the Cost of Gas filing, as I mentioned.

22 Q. And, is it your understanding that the Company makes

23 two Cost of Gas filings every year, winter and summer?

24 A. (DaFonte) Correct. This would be a Winter Cost of Gas  
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1 filing.

2 Q. I think, if you look at the -- look back at the words

3 on Page 3, it actually doesn't limit it to winter. It

4 just refers to "Cost of Gas", is that right?

5 A. (DaFonte) Yes. That's correct. My apologies for that.

6 That is, both the Summer and Winter Cost of Gas filings

7 will be updated.

8 Q. Let's turn now to Page 4, which addresses a "Growth

9 Incentive" provision in the Settlement Agreement.

10 MS. PATTERSON: Excuse me for one moment,

11 please.

12 CHAIRMAN HONIGBERG: Go off the record.

13 (Atty. Patterson conferring with Atty.

14 Knowlton.)

15 CHAIRMAN HONIGBERG: Go ahead,

16 Ms. Knowlton.

17 MS. KNOWLTON: Thank you.

18 BY MS. KNOWLTON:

19 Q. Mr. Clark, I'll ask you to start with this provision

20 and provide the Commission with -- just start at the

21 high level first and explain what this provision is

22 intended to do, and then we'll get into the mechanics

23 of it.

24 A. (Clark) The growth incentive is a target metric that  
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1 the Company will have to meet or face a reduction in

2 their Cost of Gas filings. So, the target metrics will

3 be 2,000 customer additions per year, or 650,000 annual

4 Dekatherms per year in new growth. Those customers are

5 through all rate classifications, residential and

6 commercial, and the Dekatherm Target is also through

7 commercial and residential. The targets are

8 individually set. And, we would -- the Company would

9 only have to achieve one of those per year for the

10 incentive/disincentive to take place.

11 Q. So, in other words, if the Company met the Customer

12 Target, but it didn't meet the Dekatherm Target, then

13 the growth target would be considered achieved under

14 the Settlement Agreement?

15 A. (Clark) Correct.

16 Q. And, you know, again, is it the purpose of this

17 provision to give the Company an incentive to undertake

18 efforts to grow the number of customers and the amount

19 of volumes on its system?

20 A. (Clark) It is an incentive, not that we need the

21 incentive. We've been, since Liberty has taken over,

22 we've gone from an average of 600 customer additions

23 per year under National Grid's last two years of

24 ownership, to --  
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1 (Court reporter interruption.)

2 WITNESS CLARK: I'm sorry.

3 CONTINUED BY THE WITNESS:

4 A. (Clark) It went from 600 under National Grid, to 1,200

5 under Liberty Utilities.

6 BY MS. KNOWLTON:

7 Q. And, how did the Company achieve that growth?

8 A. (Clark) Well, in the past ownership, under National

9 Grid, the state was served basically by three instate

10 personnel, sales personnel, and a support staff based

11 in either New York or Massachusetts of another three

12 personnel. Since Liberty is taking over, we are now up

13 to nine instate personnel. It's all done out of the

14 Manchester Operations yard. And, we've also added

15 another Operations personnel that will assist with

16 sales and the identification of services and mains.

17 We've undertaken a tariff enhancement

18 that was almost two years old, that eliminated the \$900

19 contribution that was required by National Grid for a

20 residential service customer for 100 feet of service.

21 That has been eliminated. So, a new residential or

22 commercial -- residential, excuse me, residential

23 customer that's within 100 feet of the gas main will

24 receive a free gas service.  
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1 We've taken the commercial calculation  
 2 for contributions from four years to six years, and  
 3 we've eliminated the loadings from our calculations on  
 4 whether the CIAC is warranted or not.

5 Q. What kind of activities do the Sales team undertake to  
 6 solicit new leads for customers and, you know, see the  
 7 identification of a potential customer all the way  
 8 through the end of actually signing up the customer for  
 9 gas service?

10 A. (Clark) Uh-huh. Well, one of the first things we did  
 11 was identify what the market is in our territory. So,  
 12 we've taken those steps and have identified that we  
 13 have 14,000 customers that we consider "on main". And,  
 14 when we say "on main", that's within 100 feet of the  
 15 gas main currently. And, we've also identified 80,000  
 16 "off main" customers in our existing service  
 17 territories, that would require a main extension to  
 18 serve them.

19 From there, we've done some marketing  
 20 and outreach. Again, with the ten personnel in state,  
 21 we are now going out on the road, actively meeting with  
 22 engineers, town officials, and developers looking for  
 23 projects.

24 Q. Can you give us some examples of some growth projects  
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1 that the Company has completed --

2 A. (Clark) Sure.

3 Q. -- or has in the works now?

4 A. Sure. One of the very first projects that was a pretty  
 5 large-scale project that was enabled by that tariff  
 6 revision was the Bedford Expansion project. So, the  
 7 Bedford project was in two phases. Phase I is under  
 8 construction now; Phase II will begin in Summer of  
 9 2016, completed by the Fall of 2016. In total, that's  
 10 approximately three miles of gas main from the  
 11 intersection of Palomino and Whittemore, in Bedford,  
 12 ending at the intersection of 101 and Wallace Road.  
 13 That is probably, yes, I'm sorry, three miles of gas  
 14 main extensions. We will get the Bedford High School  
 15 as part of that expansion, going by the Copper Door  
 16 Restaurant, that area over in Bedford.

17 What we were able to do there with the  
 18 new tariff was, in the past, you would have to  
 19 individually calculate every customer's contribution  
 20 independently. And, it made the project very hard to  
 21 work and make it sellable, because you were constantly  
 22 going back and adjusting volumes. So, with this  
 23 portfolio analysis, we were able to sign up the three  
 24 large anchor tenants, and basically go under the new  
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1 tariff, that 60 percent of the remaining customers  
 2 along that route would take service. And, you could  
 3 use the calculations of their GPM against the  
 4 construction cost to make sure that the project was  
 5 viable.

6 What we did on that project was, got the  
 7 three anchor customers to sign Service Line Agreement  
 8 forms, calculated the remaining 60 percent of the GPM,  
 9 project was viable, and we moved forward. Since we  
 10 started putting pipe in the ground, we've signed up an  
 11 additional 13 customers. And, what was not included in  
 12 the calculation was these residential customers that  
 13 we'd be going by, we didn't market to them initially,  
 14 because we weren't sure which street we were going to  
 15 be going down to serve the anchors. Once that was  
 16 finalized, we identified 41 residential customers along  
 17 Seabee Ave., in Bedford. And, since my testimony, 21  
 18 of those have signed up to receive service.

19 We have many other projects similar to  
 20 that. The developer in the Bedford project is also  
 21 beginning a new undertaking up in Laconia with 96  
 22 residential units that we agreed to serve, along with  
 23 Lakes Region Community College, which is next door, we  
 24 kind of put them as a portfolio.  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

1 Q. Do you consider the growth targets, whether it's the  
 2 Dekatherm Target or the Customer Target in the  
 3 Settlement Agreement to be achievable by the Company?

4 A. (Clark) They are achievable. They are -- they will be  
 5 the biggest numbers that we've ever done, but they are  
 6 achievable. As I mentioned, last year was our best  
 7 year, at 1,200 customers.

8 Q. Are you able to give the Commission a sense, if you  
 9 express the targets in terms of a percentage increase  
 10 over what the Company is currently doing, what it would  
 11 be for let's start with the Customer Target?

12 A. (Clark) It would be on the order of a 65 percent  
 13 increase over what our best year was.

14 Q. And, what about the Dekatherm Target?

15 A. (Clark) The Dekatherm was a little closer to,  
 16 approximately 15 to 20 percent increase over our best  
 17 year.

18 Q. Okay. Mr. Clark, are there any opportunities that  
 19 you've identified to grow the Company's distribution  
 20 system outside of its current franchise area, if this  
 21 Precedent Agreement is approved and the Pipeline is  
 22 ultimately constructed?

23 A. (Clark) Yes, we have. We've been, since the NED  
 24 project's got rerouted north through New Hampshire,  
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1 we've identified 11 potential towns. And, the response  
2 to this is in Staff 1-11. There are some confidential  
3 information in there that we can get to later. But, on  
4 a high level, there's 11 potential towns that we've  
5 done some preliminary work on serving, and have come up  
6 with different estimates on what that load potential  
7 is. There's a couple different saturation rates that  
8 we're assuming. And, depending on which rate is used,  
9 the load for those towns is between 850,000 and  
10 1.2 million Dekatherms annually.

11 Q. Do those calculations include the potential of serving  
12 Keene?

13 A. (Clark) They do not.

14 Q. Mr. DaFonte, I'm interested to hear from you about this  
15 Growth Incentive provision that's in the Settlement  
16 Agreement. You testified earlier that you have been  
17 involved in about a dozen precedent agreements over the  
18 course of your 30 year career, is that correct?

19 A. (DaFonte) That's correct.

20 Q. Would you give the Commission a sense for this  
21 provision that's in the Settlement of whether this is  
22 something that you've seen before when you've  
23 negotiated other precedent agreements?

24 A. (DaFonte) I have never seen this type of provision in  
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1 80 percent, the Company would not be allowed to recover  
2 \$300,000 in its Cost of Gas filing for those costs  
3 associated with the NED Pipeline. If the percentage is  
4 between 90 percent -- I'm sorry, between 80 percent and  
5 90 percent, then the Company would not be allowed to  
6 recover \$225,000 in its Cost of Gas filing. And, then,  
7 lastly, if those targets are between 90 percent and  
8 less than 100 percent, then the cost recovery would be  
9 reduced by 150,000 Dekatherms -- I'm sorry, \$150,000 in  
10 its Cost of Gas filing.

11 Q. This growth target only applies if the NED Pipeline  
12 comes on line and the propane plants that you've  
13 previously described remain on line, correct?

14 A. (DaFonte) Correct. The propane plants, as I mentioned  
15 earlier, contribute to the design day supply that the  
16 Company requires to satisfy its customers. If, with  
17 the addition of the NED capacity, those plants are no  
18 longer required, then that effectively reduces the  
19 reserve capacity created by the addition of the NED  
20 contract. And, that's essentially what this is  
21 designed to do. It allows the Company, as I said  
22 earlier, to shape its portfolio in the future,  
23 depending on market conditions. And, some of those  
24 market conditions are related to growth within the

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1 the past. This is unique. Again, in my 30 years,  
2 never have I seen this. But, as part of an overall  
3 settlement, you know, the Company agreed to it. It  
4 also applies whether the Company has 115,000 Dekatherms  
5 or whether it has 100,000 Dekatherms. So, it truly is  
6 a, you know, growth incentive, regardless of the  
7 ultimate volume commitment by the Company.

8 Q. Is there a financial aspect to the incentive?

9 A. (DaFonte) Yes. Yes, there is. There are, you know,  
10 what I would consider maybe "disincentives", if we do  
11 not reach specific targets. Specifically, as we  
12 measure the actual Customer Growth Target and the  
13 actual Dekatherm Target, those averages, which are  
14 going to be tracked beginning in 2017, if those  
15 averages are below the established targets, which Mr.  
16 Clark spoke of, namely, the addition of 2,000 customers  
17 or the additional load, annual load of 650,000  
18 Dekatherms, then the Company would be disallowed -- or,  
19 would not be allowed to recover certain costs within  
20 its Cost of Gas filing.

21 There are tiers associated with that  
22 recovery. If, out of the two benchmarks, either the  
23 customer count or the volume addition, whichever one is  
24 closest to the target, that percentage, if less than

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1 Company's existing service territory and in other  
2 future service territories.

3 So, if that doesn't materialize, then  
4 the Company would look at retirement of these propane  
5 facilities. And, if it does retire those propane  
6 facilities, then it effectively has reduced its reserve  
7 capacity and would essentially be in a planning horizon  
8 of five to ten years or so before it needed additional  
9 capacity. So, that's the way in which the Company can  
10 sort of -- it can avoid some of these disallowances by  
11 reducing or retiring the propane facilities in the  
12 future.

13 Q. If you look at Page 6 of the Settlement, Section C,  
14 titled "Analysis to be Provided in the Next IRP  
15 Filing", which is "Integrated Resource Plan", does the  
16 Settlement provide for the filing of any analysis  
17 associated with potential retirement of those  
18 facilities?

19 A. (DaFonte) Yes, it does. The Company, in its next IRP  
20 filing, which is due February 9th of 2017, will provide  
21 an analysis that indicates whether the Company plans to  
22 retire any of its propane facilities within the five  
23 year planning horizon of the Integrated Resource Plan.  
24 And, it will include in that, as part of that analysis,

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1 the revenue requirement associated with each of the  
 2 plants over its remaining life, and any estimated  
 3 salvage value of the plant assets.

4 Q. Are there other facets to the IRP that the Company has  
 5 agreed to as part of this Settlement?

6 A. (DaFonte) Yes. The Company has agreed to conduct a  
 7 cost/benefit analysis associated with constructing a  
 8 lateral to serve the Keene Division, as compared to  
 9 other supply alternatives. It will also include a  
 10 forecast of load on a customer class basis in its next  
 11 IRP, and will continue with the impacts of energy  
 12 efficiency on the demand forecast long-term.

13 Q. And, is the intent of these provisions that require the  
 14 filing of the analysis of whether it's the retirement  
 15 of their propane facilities, the cost/benefit analysis  
 16 of constructing a lateral to serve Keene versus other  
 17 supply alternatives, is the intent behind these  
 18 provisions to give the Staff and the Consumer Advocate  
 19 and other participating parties a preview of what the  
 20 potential options are in regard to each of these  
 21 elements, before the Company goes ahead and makes a  
 22 decision about what to do?

23 A. (DaFonte) Yes, of course. The intent of the Integrated  
 24 Resource Plan is to provide the Company's plan to meet  
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1 Company to gain additional information with regard to  
 2 its growth initiatives, with regard to the changing  
 3 market conditions in the region. Certainly,  
 4 understanding that there are a lot of other things  
 5 going on with regard to looking at pipeline capacity,  
 6 even on the electric generation, gas-fired generation  
 7 side. So, all of those things are very unpredictable.  
 8 Having this capacity provides the Company with  
 9 additional flexibility to manage its portfolio, as I  
 10 mentioned, and tailor it to the customer needs.

11 We also, as part of this capacity, are  
 12 getting a much needed secondary feed into our  
 13 distribution system. Today, the Company is served  
 14 solely off of the Concord Lateral. And, putting all of  
 15 its requirements on one lateral is certainly not as  
 16 reliable as having a secondary delivery point off of a,  
 17 you know, a high pressure pipeline, and having the  
 18 ability to expand its distribution system because of  
 19 that, that new interconnect. As opposed to having to  
 20 expand the existing Concord Lateral, at, you know, a  
 21 rate that is significantly higher than the NED project  
 22 itself. So, you know, just the expansion of the  
 23 Concord Lateral, which only provides you access to  
 24 Dracut, is more expensive than the rate on the NED  
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1 its firm customer requirements over a five-year  
 2 planning horizon, or beyond, if, in fact, there is a  
 3 need beyond that five-year period. And, it also allows  
 4 for the inclusion of long-term energy efficiency  
 5 measures and the impact of those energy efficiency  
 6 measures on the Company's demand.

7 Q. Mr. DaFonte, do you have an opinion about whether this  
 8 Settlement Agreement is in the public interest?

9 A. (DaFonte) I do. I have a strong opinion. I think  
 10 it's -- it's an agreement that provides long-term  
 11 assurances of firm capacity to the Company's citygates,  
 12 and ultimately to satisfy growing customer demand. It  
 13 provides access to lower cost supplies. It does away  
 14 with the volatility that has been experienced by the  
 15 Company's customers over the last few years through  
 16 having to make market area purchases. It has access  
 17 now with a -- with the Supply Path Agreement to the  
 18 most prolific production in the country, in North  
 19 America, and the lowest price point in North America.

20 The Company also gains important  
 21 flexibility with regard to future capacity decisions,  
 22 by being able to essentially tailor its portfolio in  
 23 the future to meet what it has forecasted for customer  
 24 demand at this point in time. So, it allows the  
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1 project going all the way back to Wright.

2 Q. Mr. Clark, do you agree with Mr. DaFonte, that the  
 3 Settlement Agreement is in the public interest?

4 A. (Clark) I do. I believe it will allow the Company to  
 5 continue with its aggressive customer expansion, which  
 6 will allow access to the Company's core energy  
 7 efficiency programs, as well as adding fuel  
 8 diversification to parts of the state that are  
 9 currently served by two fuels.

10 Q. When you refer to "fuel diversification", you mean the  
 11 availability of natural gas to customers that currently  
 12 do not have -- well, to individuals or companies that  
 13 currently do not have access to it?

14 A. (Clark) Correct. Any individual or business that  
 15 currently has access to fuel oil or propane now could  
 16 have access to natural gases.

17 MS. KNOWLTON: The Company has nothing  
 18 further for its witnesses.

19 CHAIRMAN HONIGBERG: Except you're going  
 20 to want to circle back to the confidential.

21 MS. KNOWLTON: Correct. Thank you.  
 22 Once we reach that part of the hearing, I'll circle back.

23 CHAIRMAN HONIGBERG: I knew one of us  
 24 needed to make a note of that.  
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1 MS. KNOWLTON: I've got my list. There  
 2 are two items.  
 3 CHAIRMAN HONIGBERG: All right.  
 4 (Brief off-the-record discussion ensued  
 5 between the Chairman and Court  
 6 Reporter.)  
 7 CHAIRMAN HONIGBERG: Okay. All right.  
 8 Ms. Patterson, why don't you continue.  
 9 MS. PATTERSON: Thank you. Good  
 10 morning, Ms. Whitten.  
 11 WITNESS WHITTEN: Good morning.  
 12 BY MS. PATTERSON:  
 13 Q. Before I ask you some questions about the Settlement  
 14 Agreement on behalf of Staff, I'd like to ask you a few  
 15 questions about your testimony. And, specifically, if  
 16 we could turn to Bates 53 to 54 of your testimony.  
 17 And, if you could address the five concerns that are  
 18 listed there please.  
 19 A. (Whitten) Certainly. On Bates 53, I begin to list the  
 20 five concerns that I had after reviewing the initial  
 21 filing. They include that the Company indicates it can  
 22 continue to obtain citygate deliveries to meet design  
 23 day deficits in the near term, but does not indicate  
 24 that it cannot continue to do so to cover at least a  
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1 Dekatherms a day of excess capacity, otherwise referred  
 2 to by the Company as "reserve capacity".  
 3 BY MS. PATTERSON:  
 4 Q. And, in addition to those concerns, you had -- do you  
 5 agree that you had a concern that the forecast -- the  
 6 Precedent Agreement forecast was inconsistent with the  
 7 Company's last IRP forecast?  
 8 A. (Whitten) Yes, I did. The Company's latest IRP  
 9 forecast, which we reviewed, showed that residential  
 10 growth was expected to be flat, to perhaps even  
 11 negative. And, the Company was including in its  
 12 Precedent Agreement an updated forecast that showed  
 13 substantial increase in demand growth on a design day  
 14 for all customer classes. And, it was a concern to me  
 15 that those two facts were inconsistent.  
 16 Q. Rather than actually -- could we just address the  
 17 concerns that you've identified now, and we'll turn to  
 18 the other concerns, in terms of how the Settlement  
 19 Agreement responds to the concerns that you have? For  
 20 instance, the concern number (a), on Page 53, how is  
 21 that resolved by the Settlement Agreement, for the  
 22 purposes of Staff?  
 23 A. (Whitten) Well, the Company, in general, what -- can I  
 24 just address in general what I find comforting about  
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1 portion of the forecasted design day deficit beyond  
 2 that initial term.  
 3 Second, I say that the PA assumes -- the  
 4 Precedent Agreement assumes 115,000 Dekatherms a day of  
 5 capacity, only 50,000 of which will replace the  
 6 existing TGP Dracut contract, the existing contract,  
 7 leaving 65,000 dekatherms a day of incremental  
 8 capacity, that results, and this is the key point,  
 9 results in excess capacity in the first year of the NED  
 10 agreement.  
 11 CHAIRMAN HONIGBERG: Ms. Whitten, I'm  
 12 going to stop you. We don't need you to reread --  
 13 WITNESS WHITTEN: Okay.  
 14 CHAIRMAN HONIGBERG: -- or summarize  
 15 these, I think. I think Ms. Patterson wants to ask you  
 16 about them.  
 17 WITNESS WHITTEN: Okay.  
 18 CHAIRMAN HONIGBERG: Because we all have  
 19 them in front of us.  
 20 WITNESS WHITTEN: Okay.  
 21 CONTINUED BY THE WITNESS:  
 22 A. (Whitten) And, then, I was, just to sum up, I was  
 23 concerned that, at the end of the 20-year term of the  
 24 Precedent Agreement, there would be -- still be 2,000  
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1 the Settlement Agreement, is that the Company has an  
 2 obligation to show that it can achieve growth to meet  
 3 the needs of the -- to meet the design day demand  
 4 assumed under the Precedent Agreement. And, the  
 5 continuation of receiving citygate supply at Dracut is  
 6 a general concern recognized in the marketplace.  
 7 So, what I was concerned about is that  
 8 they address, in response to discovery, and I believe  
 9 also in follow-up, in rebuttal, that they have received  
 10 more recent information on the supply availability at  
 11 Dracut from the existing sources that suggest that  
 12 those supplies are in decline. And, to continue to  
 13 rely upon supply received at Dracut would mean that  
 14 they would be further subject to price volatility,  
 15 especially during the winter period, at the same time  
 16 that they expect to be adding residential and  
 17 commercial customers to their design day requirements.  
 18 And, as part of the review that we did,  
 19 we recognize that what the Company is supposed to  
 20 provide is a "least-cost" or "best-cost" alternative.  
 21 And, if there are options to reduce price volatility  
 22 over time, by looking at other sources of supply, then  
 23 they should consider those. Citygate supply, which is  
 24 a delivered gas supply, not relying upon this Company's  
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1 own pipeline capacity, but relying upon a third party  
2 to commit and deliver firm at that point, is less  
3 secure than having your own pipeline capacity, a  
4 Company having your own pipeline capacity under  
5 contract. So, reviewing the additional information on  
6 the reductions in supply expected to be delivered at  
7 Dracut over time address some of my concern about that.

8 Q. And, the next concern that you mention relates to  
9 "excess capacity". How has that concern been addressed  
10 by the Settlement Agreement?

11 A. (Whitten) Well, specifically by the Company doing two  
12 things. One is, assuming the risk that, if they don't  
13 achieve growth targets, on either number of customers  
14 or dekatherms per day, of new growth, new demand, over  
15 the timeframe specified in the Settlement Agreement,  
16 then they are at risk of paying a penalty associated  
17 with missing those targets.

18 Secondly, they have agreed in their next  
19 IRP to address how they forecast their growth by  
20 customer class, instead of using what they had used in  
21 the Precedent Agreement, which was an overall trend  
22 projection for total design day growth.

23 Q. And, you had mentioned a concern about the trend  
24 projection in your testimony.

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1 A. (Whitten) Yes, I did.

2 Q. And, that was in -- having them do it by class is to  
3 resolve that concern or to address that concern?

4 A. (Whitten) Right. Their testimony, the original  
5 testimony, said that they base their growth and design  
6 day requirements on an overall trend projection of I  
7 believe it was "1.46 percent". When we drill down into  
8 the IRP forecast on which the Precedent Agreement  
9 forecast was based, we could see that that was a trend  
10 forecast projection for C&I class only. And, it's a  
11 trend, in how they modeled it, it's basically an overall  
12 trend they saw in that particular customer class over  
13 time. But, if you looked at the same -- if you looked  
14 for a similar growth rate in the residential class  
15 equations included in their IRP, they did not show that  
16 level of growth.

17 So, to transition, in one year, from  
18 showing flat to maybe possibly even negative growth in  
19 the residential class, to assuming that all classes  
20 will grow at the same rate, was something that the  
21 Company needed to explain. And, as part of the process  
22 that I was involved in, reviewing discovery and meeting  
23 in tech sessions and hearing from the Company's  
24 witnesses in rebuttal, they provided a stronger basis

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 for how they're going to achieve those growth targets,  
2 especially in the residential section -- sector.

3 Q. And, your next concern, on Page 54, relates to the  
4 "aggressive and speculative forecast of growth". Do  
5 you agree that that is addressed by the requirements  
6 for reduction in capacity should demand not be realized  
7 at some point in the future?

8 A. (Whitten) Yes. It directly addresses that concern.

9 Q. And, the next concern that you mention, you talk about  
10 having confidence in their ability to achieve some cost  
11 mitigation of any capacity that's not being used by  
12 existing customers. How is that -- how are those  
13 concerns addressed?

14 A. (Whitten) The Company has indicated that it's currently  
15 a part of their responsibility, and will continue to be  
16 their responsibility, to market the excess capacity.  
17 And, they got, as Witness DaFonte mentioned earlier,  
18 three options, three main options, and one of them is  
19 to pursue asset management agreement with third party  
20 marketers, the other is to market directly to customers  
21 that are not taking supply service from them, but can  
22 be reached by their capacity. And, they can also put  
23 it out for bid on the Electronic Bulletin Board, which  
24 is an electronic marketplace for marketing your excess

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 capacity.

2 The Company has indicated that they have  
3 been successful in doing so and achieving a substantial  
4 percentage of the maximum rate that they will be paying  
5 for this capacity. And, the fact that it flows  
6 directly through dollar-for-dollar to the customers is  
7 a particular attractive feature of this, this  
8 obligation on their part to continue to do this.

9 Q. And, when you say "the Company has indicated their past  
10 experience with relation to cost mitigation", have you  
11 seen a response to at least one data request that  
12 quantified that value?

13 A. (Whitten) Yes. We've seen that they report this cost  
14 mitigation achieved in their cost of gas filings, which  
15 we asked for in discovery. And, we also saw that the  
16 OCA requested an analysis of assumed cost mitigation  
17 based on what they thought that they could achieve.  
18 And, that OCA discovery reflected an assumption that  
19 they could get, I'm sure Witness DaFonte will correct  
20 me if I'm wrong about this, but the assumption that  
21 they could get close to or 100 percent of the maximum  
22 negotiated rate for this capacity during the winter  
23 period, and then considerably less during the summer  
24 period, but, on average, they would achieve a very high

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1 percentage of cost recovery for this capacity.

2 Q. And, turning to the next concern, Item (e), on Line 11,

3 Bates Page 54, you mention your concern about the

4 peaking -- propane peaking capacity, and retaining that

5 after NED was in service to customers. Could you speak

6 to how the Settlement Agreement responds to that

7 concern please.

8 A. (Whitten) Yes. What the Settlement Agreement

9 specifically requires them to analyze the need for

10 retaining these peaking facilities going forward, to

11 show that they are still needed and cost-effective.

12 The reason that we wanted to -- that I wanted to see

13 that addressed from the very beginning of my review is

14 that, if you're -- the Company is getting the benefit

15 of a second citygate delivery point off of the pipeline

16 project that is going to be flowing gas at a very high

17 pressure, then -- higher than what they currently have

18 now, then that should provide them benefits downstream

19 that will allow them to receive gas at a higher

20 pressure, and therefore push more gas out to the

21 further reaches of their distribution system to allow

22 them to sign up new customers. So, if you have that

23 benefit as part of what you've negotiated, then you

24 shouldn't need as much system reinforcement or design

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1 peaking -- design day peaking supplemental capacity,

2 because you've now got the benefit of higher pressure

3 being delivered to a different side of your system.

4 And, that all should have been reflected in a lower

5 need for peaking services, but they retained the

6 peaking services in their initial filing. And, as part

7 of the Settlement Agreement, they have agreed to look

8 at the continued need for those resources.

9 Q. Thank you. Before we continue with the last concern,

10 you had mentioned the "trend growth rate" that was

11 applied after five years in the Company's initial

12 projections. Would you -- how would you characterize

13 the 1.4 trend growth rate? Is it conservative? Is

14 it -- how would you characterize it?

15 A. (Whitten) It's actually, for the C&I customer group

16 alone on which it was based, it's actually lower than

17 what they had been experiencing recently. So, in that

18 sense, it's not -- it's not excessive. It was

19 unsubstantiated, and that was what we were looking for,

20 was some additional substantiation.

21 Q. And, turning to the last issue that -- your last

22 concern that you talk about, starting at Line 18, on

23 Bates 54, could you please address how that has been

24 responded. It's a concern about a lack of information

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1 related to the Company's growth projections in its

2 initial filing.

3 A. (Whitten) Yes. I think that that's been addressed

4 directly by Rebuttal Testimony of Witness Clark. In

5 particular, where he details the efforts that are being

6 made to pursue the new customers in their existing

7 territory, and the additional towns or communities that

8 they think they can serve over time. I think that -- I

9 think that's something that was lacking in the initial

10 filing, and has been supplemented with the rebuttal

11 testimony.

12 Q. And, would you agree that, in addition to that

13 information, the Company provided information related

14 to the additional reverse migration of capacity-exempt

15 customers since its filing data?

16 A. (Whitten) Yes. They have actually mentioned that in

17 the interim, since the initial filing, through to

18 today, they have seen additional capacity-exempt

19 customers reverse migrate on their own.

20 Q. Okay. Thank you. One moment please. Do you agree

21 with the -- with Mr. DaFonte's testimony earlier about

22 the provision -- the "growth target" provision in the

23 Settlement Agreement that the Company need only meet

24 one of the two targets?

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1 A. (Whitten) Yes, I do.

2 Q. And, if the Commission were to approve the Settlement

3 Agreement, what questions will remain?

4 A. (Whitten) I think that we need to make sure that the

5 Company actually can secure supply that will provide --

6 that will meet the expected low cost of gas supply at

7 Dracut. They have indicated that they can do that.

8 But we'll need to see that they do that. We'll need to

9 see that they meet those growth targets. And, we'd

10 like to see that the propane/air -- the propane peaking

11 plants are evaluated and are determined to be needed or

12 not.

13 Q. Do you agree that, if the Company is successful in

14 negotiating a Supply Path Precedent Agreement with TGP,

15 that it will only serve to benefit the customers of

16 Liberty Utilities?

17 A. (Whitten) I agree that that's what's going to give them

18 the ability to do. They have to actually go out and

19 put supply behind that, to make sure that that is the

20 least-cost path for supply in their portfolio. But it

21 certainly puts them in a good position to do that.

22 Q. Earlier, Mr. DaFonte talked about the provision in the

23 Settlement Agreement that relates to the reduction of

24 the volume of capacity from 115,000 Dekatherms a day to

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1 100,000 Dekatherms a day. And, do you agree or would  
 2 you -- I believe he said words to the effect of "may  
 3 reduce". And, is it Staff's position that that's a  
 4 requirement, if those thresholds are not met, that the  
 5 Company shall reduce its volume?  
 6 A. (Whitten) It's my understanding that they're required  
 7 to reduce the volume from -- if they do not meet those  
 8 targets, from 115,000 to 100,000 a day, and that  
 9 100,000 a day would be the only amount that they could  
 10 flow through the cost of gas filing. If the Company  
 11 elects to take on the initial -- the incremental -- any  
 12 part of the incremental 15,000 a day at its own  
 13 shareholder expense, that's up to the Company, but it  
 14 would not be a burden for the customers to assume.  
 15 Q. And, speaking of "sharehold expense" -- "shareholder  
 16 expense", do you agree that any penalties or financial  
 17 consequences of failing to achieve the targets related  
 18 to growth are -- will be paid by the shareholders?  
 19 A. (Whitten) Yes. That's a key selling point of the  
 20 Settlement Agreement, from my perspective.  
 21 Q. One clarification for the record. We've mentioned the  
 22 "propane plants", and we have mentioned the  
 23 "propane/air plant in Keene", which this is not about.  
 24 Do you agree that the "propane plants" that we're  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 or oil, the only way to replace that generating  
 2 capacity is to fire using natural gas, which increases  
 3 the demand for natural gas, in an already constrained  
 4 market on a design peak day or during the design winter  
 5 peak day period, which contributes to the volatility in  
 6 prices in general.  
 7 So, if there's an opportunity to  
 8 consider incremental pipeline capacity to serve the  
 9 region, it would serve -- it could serve all customers,  
 10 potentially, including those customers that purchase  
 11 natural gas to fuel their generating facilities. And,  
 12 then, those customers pass through that cost, which may  
 13 be lower than what they're currently paying in the  
 14 price of electricity to electricity customers. So,  
 15 there's a general concern with whether or not that can  
 16 be achieved and how much benefit can be achieved.  
 17 Q. And, would you agree there's an issue with regards to  
 18 the amount of capacity that flows into New England at  
 19 this present time?  
 20 A. (Whitten) There's a concern about how limited it? Yes.  
 21 Q. And, that -- those concerns about electric generation  
 22 are not a part of this docket, is that correct?  
 23 A. (Whitten) They are not. I look at this docket as a  
 24 review of just the capacity to serve the natural gas  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 talking about with regard to the assessment that must  
 2 be done for the next IRP are the peaking plants?  
 3 A. (Whitten) Yes, I do.  
 4 Q. And, not propane -- any propane plant that is necessary  
 5 for pressure balancing?  
 6 A. (Whitten) Yes, I do. And, that's specified in my  
 7 conclusions in my testimony.  
 8 Q. And, Ms. Whitten, are you aware of the events in recent  
 9 time in the regional gas market?  
 10 A. (Whitten) Yes.  
 11 Q. And, are you aware of the issue with regards to -- or,  
 12 the issues with regards to gas-fired electric  
 13 generation?  
 14 A. (Whitten) I understand that there are dockets in both  
 15 Massachusetts and New Hampshire that are looking into  
 16 the impact on gas and electric prices from capacity,  
 17 yes.  
 18 Q. And, why is that?  
 19 A. (Whitten) Why am I aware of it?  
 20 Q. Why is it that there's a concern or there are issues  
 21 related to electric generation?  
 22 A. (Whitten) In general, the concern is that, with the  
 23 removing from service of existing generation plants in  
 24 New England that are fired by, you know, burning coal  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 utility, EnergyNorth.  
 2 Q. Do you agree with Mr. DaFonte that the amended  
 3 Precedent Agreement, with the retirement of the propane  
 4 plants, meets a five to ten planning -- five- to  
 5 ten-year planning horizon?  
 6 A. (Whitten) I believe I said in testimony that they have  
 7 sufficient amount of time to review the need for these  
 8 propane plants, peaking plants, prior to the NED  
 9 capacity coming on line, which is projected to be the  
 10 Winter of 2018/2019. So, that's roughly within a  
 11 five-year timeframe, yes.  
 12 Q. Thank you.  
 13 MS. PATTERSON: If I could just have one  
 14 moment please?  
 15 (Atty. Patterson conferring with Mr.  
 16 Frink.)  
 17 BY MS. PATTERSON:  
 18 Q. There is a provision in the Precedent Agreement that  
 19 gives the Company the right-of-first-refusal to extend  
 20 the term of the contract. Is it your position that the  
 21 Company would need to seek approval from the Commission  
 22 in order to do that?  
 23 A. (Whitten) Yes, it is my position. And, we verified  
 24 that and confirmed that in discovery.  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 101

1 Q. How are the costs of the propane peaking plants  
 2 recovered?  
 3 A. (Whitten) Some of the operating costs are recovered  
 4 through the cost of gas filings, and then some of the  
 5 costs are recovered through rates.  
 6 Q. So, if the propane -- if the Company's analysis in its  
 7 next IRP were to determine that the propane peaking  
 8 plants should be retired, because that's the most  
 9 cost-effective option for it, would that retirement  
 10 blunt the impact of the NED costs by lowering the cost  
 11 of gas with regards to that, those facilities?  
 12 A. (Whitten) It would offset the cost of the firm demand  
 13 charges associated with NED, yes, because those are  
 14 collected through the cost of gas filing as well.  
 15 Q. What is your position about the life -- accounting life  
 16 expectancy of the propane peaking plants?  
 17 A. (Whitten) Well, I believe that they're already on the  
 18 order of 40 plus years old. So, they're probably past  
 19 their useful accounting life. And, so, any -- even  
 20 without NED, the Company would probably be evaluating  
 21 whether or not they could continue using them.  
 22 Q. And, if the Company were to make system reinforcements  
 23 to those plants between now and the time they are  
 24 retired, is it at risk for recovery of those costs of  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 102

1 system upgrades, when it comes before the Commission in  
 2 a cost of gas proceeding?  
 3 A. (Whitten) Yes. I believe that would be the subject of  
 4 a prudence review.  
 5 Q. In your experience as an expert in natural gas utility  
 6 matters, as well as working for a gas LDC, have you  
 7 ever come across the resolution of a precedent  
 8 agreement that requires the shareholders of the LDC to  
 9 assume some risks with regards to the capacity they're  
 10 procuring?  
 11 A. (Whitten) No, I have not. And, in fact, I reviewed  
 12 incremental pipeline capacity additions in three  
 13 jurisdictions fairly recently, and none of them  
 14 required that the utilities take on this kind of risk  
 15 to shareholders.  
 16 Q. And, based on the information that you've reviewed in  
 17 this case, as well as your experience, is it your  
 18 opinion that the Settlement Agreement and the Precedent  
 19 Agreement, as modified by the Settlement Agreement, are  
 20 in the public interest and the best interests of the  
 21 Company's customers?  
 22 A. (Whitten) Yes, I do.  
 23 Q. And, do you agree that the Company would be prudent in  
 24 entering that contract for additional capacity at this  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 103

1 time?  
 2 A. (Whitten) Yes, I do, under the circumstances described  
 3 in the amended Precedent Agreement and the Settlement  
 4 Agreement.  
 5 MS. PATTERSON: Thank you. One moment  
 6 please.  
 7 (Atty. Patterson conferring with Mr.  
 8 Frink.)  
 9 MS. PATTERSON: No other questions.  
 10 Thank you.  
 11 CHAIRMAN HONIGBERG: All right. Would  
 12 now be an appropriate time, Ms. Knowlton, to circle back  
 13 to the confidential materials?  
 14 MS. KNOWLTON: Yes. I think we can do  
 15 that pretty quickly.  
 16 CHAIRMAN HONIGBERG: Are we talking  
 17 about five to ten minutes you think?  
 18 MS. KNOWLTON: Yes, no more than that.  
 19 CHAIRMAN HONIGBERG: All right. Let's  
 20 go off the record for a second.  
 21 (Brief off-the-record discussion  
 22 ensued.)  
 23 CHAIRMAN HONIGBERG: Okay. So, let's go  
 24 back on the record. We're about to enter into some  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 104

1 testimony regarding confidential information. So, the  
 2 public will be leaving. We're going to wrap that up  
 3 fairly quickly. I've asked the Parties to confirm that  
 4 it's okay for a couple of State employees, Director Bailey  
 5 from the PUC, Mr. Jortner from the OCA, who are not part  
 6 of this docket at this time, to remain in the room, and  
 7 everybody is okay with that.  
 8 (Public portion of the record suspended  
 9 and to be resumed following the  
 10 Confidential Session and the lunch  
 11 recess.)  
 12 (Pages 105 through 109 of the hearing  
 13 transcript is contained under separate  
 14 cover designated as "Confidential &  
 15 Proprietary" and is the reason that  
 16 Pages 105 through 109 contained herein  
 17 have been redacted and the pages are  
 18 intentionally left blank.)  
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 24 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

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{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

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{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

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{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 109  
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[DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 110  
1 *(Following the lunch recess, the Public*  
2 *Portion of the record resumed at*  
3 *1:05 p.m.)*  
4 CHAIRMAN HONIGBERG: Off the record.  
5 *(Brief off-the-record discussion*  
6 *confirming that either pronunciation of*  
7 *"precedent" is correct.)*  
8 CHAIRMAN HONIGBERG: All right. We're  
9 ready? I think we're ready for Ms. Chamberlin, are you  
10 picking up the questioning?  
11 MS. CHAMBERLIN: Yes. Thank you. I'd  
12 like to begin by marking for identification six responses  
13 to data requests. And, Mr. DaFonte is the sponsoring  
14 witness for each of these. So, my plan was to introduce  
15 them as a group. I mean, they each have their own exhibit  
16 number, but I thought I would do them all at the beginning  
17 to get them out of the way.  
18 CHAIRMAN HONIGBERG: They seem to have  
19 been marked, --  
20 MS. CHAMBERLIN: Yes.  
21 CHAIRMAN HONIGBERG: -- because I have a  
22 bunch here. So, --  
23 MS. CHAMBERLIN: They have been marked,  
24 and they are in front of you. And, I have --  
[DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 111  
1 MS. KNOWLTON: We haven't seen them yet.  
2 MS. CHAMBERLIN: All the parties --  
3 MS. KNOWLTON: So, once we know the  
4 numbers, I would like a chance to look at them.  
5 MS. CHAMBERLIN: Sure. I have copies  
6 for everyone. I know people had them, but now they have  
7 them like altogether.  
8 (Atty. Chamberlin distributing  
9 documents.)  
10 MS. CHAMBERLIN: And, 4-15 is "Exhibit  
11 23". "Exhibit 24" is Staff Tech-23(b).  
12 (Atty. Patterson distributing documents  
13 for Atty. Chamberlin as a courtesy.)  
14 MS. CHAMBERLIN: And, then, Staff 2-1  
15 has some confidential material in it. That's  
16 "Exhibit 25". And, "26" is 3-16.  
17 MS. KNOWLTON: Right. And, that's OCA  
18 3-16?  
19 MS. CHAMBERLIN: Yes. And, next is "27"  
20 is OCA 2-5 and "28" is OCA 3-25. And, OCA 2-5 is  
21 confidential, has confidential information.  
22 CHAIRMAN HONIGBERG: Ms. Chamberlin,  
23 just so the record is clear about what contains  
24 confidential information, it appears that what's been  
[DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 112  
1 marked as "Exhibit 25" and what's been marked as "Exhibit  
2 27" --  
3 MS. CHAMBERLIN: Yes.  
4 CHAIRMAN HONIGBERG: -- have  
5 confidential information.  
6 MS. CHAMBERLIN: Yes.  
7 (The documents, as described, were  
8 herewith marked as Exhibit 23 through  
9 Exhibit 28, respectively, for  
10 identification.)  
11 CHAIRMAN HONIGBERG: There is some  
12 shading in -- there's shading in Exhibit 26, but it  
13 doesn't look like that's confidential. That looks like  
14 it's shaded in the document, is that right?  
15 MS. CHAMBERLIN: That's my  
16 understanding. I would ask the Company to confirm that.  
17 CHAIRMAN HONIGBERG: Off the record.  
18 (Brief off-the-record discussion  
19 ensued.)  
20 CHAIRMAN HONIGBERG: On the record.  
21 Yes. We've confirmed that 26 does not contain  
22 confidential information.  
23 MS. KNOWLTON: And, the witnesses don't  
24 have -- do you guys have 27 and 28?  
[DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 113

1 CHAIRMAN HONIGBERG: Off the record.  
 2 (Brief off-the-record discussion  
 3 ensued.)  
 4 CHAIRMAN HONIGBERG: All right.  
 5 Ms. Chamberlin, you may proceed.  
 6 MS. CHAMBERLIN: Thank you. These  
 7 questions are for Mr. DaFonte.  
 8 CROSS-EXAMINATION  
 9 BY MS. CHAMBERLIN:  
 10 Q. EnergyNorth has about 85,000 natural gas customers,  
 11 correct?  
 12 A. (DaFonte) I would like to think it's closer to 90,000,  
 13 but --  
 14 Q. Well, if you look at your rebuttal testimony, on Page  
 15 15, I believe it's 85,000?  
 16 A. (DaFonte) Yes. That was -- that's an older number, but  
 17 it's probably up around 87, 88,000 right now.  
 18 Q. And, the Company currently has available resource  
 19 portfolio to serve these customers, correct?  
 20 A. (DaFonte) Yes, it does.  
 21 Q. And, the elements of that portfolio include long-haul  
 22 and short-haul transportation contracts?  
 23 A. (DaFonte) Correct.  
 24 Q. Underground storage?  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 114

1 A. (DaFonte) Yes.  
 2 Q. Gas supply contracts?  
 3 A. (DaFonte) Yes.  
 4 Q. Various supplemental resources?  
 5 A. (DaFonte) Yes.  
 6 Q. Market area supply purchases?  
 7 A. (DaFonte) Yes.  
 8 Q. And, demand-side management resources?  
 9 A. (DaFonte) Correct.  
 10 Q. And, currently, EnergyNorth is meeting the supply needs  
 11 of existing customers?  
 12 A. (DaFonte) That's correct.  
 13 Q. You are familiar with EnergyNorth's November 2013  
 14 Integrated Resource Plan filing, correct?  
 15 A. (DaFonte) Yes, I am.  
 16 Q. And, that was in Docket DG 13-313?  
 17 A. (DaFonte) Yes. That's correct.  
 18 Q. The IRP, and I'm referring to "Integrated Resource  
 19 Plan" as "IRP", the IRP forecast period was 2013/14 to  
 20 2017/18, correct?  
 21 A. (DaFonte) That's correct. But it was also run out 24  
 22 years to determine the cost-effectiveness of energy  
 23 efficiency implementation.  
 24 Q. The resource forecast was the five-year period  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 115

1 mentioned, 2013 to 2014 and to 2017 to 2018?  
 2 A. (DaFonte) Yes. That was the five-year resource  
 3 forecast that was used to determine what portfolio  
 4 changes would occur only in those five years. But, as  
 5 I said earlier, the Company modeled 24 years' worth of  
 6 demand, so that it could compare energy efficiency as a  
 7 supply-side resource to other alternatives.  
 8 Q. So, the Company added its energy efficiency projections  
 9 to its five-year IRP forecast?  
 10 A. (DaFonte) It did, and it extended it out 24 years to  
 11 see the impact of those energy efficiency measures.  
 12 Q. Just for clarity, I'm referring to your testimony in DG  
 13 13-313. It's Exhibit 1.  
 14 (Atty. Chamberlin showing document to  
 15 Witness DaFonte.)  
 16 BY MS. CHAMBERLIN:  
 17 Q. And, I just ask you to read this paragraph for me.  
 18 CHAIRMAN HONIGBERG: Ms. Chamberlin, has  
 19 counsel seen what you're showing the witness?  
 20 MS. CHAMBERLIN: Well, it's their  
 21 Petition and it's their filing. I'm happy to --  
 22 CHAIRMAN HONIGBERG: Are we talking --  
 23 I'm sorry. Are we talking about exhibit from this docket  
 24 or are you talking about the IRP docket?  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 116

1 MS. CHAMBERLIN: I'm talking about the  
 2 IRP docket. And, it's this witness's testimony, and I'm  
 3 asking to have him read it into the record.  
 4 CHAIRMAN HONIGBERG: Has counsel seen  
 5 what you are showing the witness?  
 6 MS. CHAMBERLIN: Not today, unless she  
 7 looked at it.  
 8 CHAIRMAN HONIGBERG: Then, counsel  
 9 should see what you are showing the witness.  
 10 MS. CHAMBERLIN: Okay.  
 11 (Atty. Chamberlin showing document to  
 12 Atty. Knowlton.)  
 13 MS. CHAMBERLIN: And, it's Exhibit 1.  
 14 MS. KNOWLTON: And, actually, let me  
 15 just state for the record. Ms. Chamberlin, I'm not sure  
 16 whether I heard you refer to it as "Mr. DaFonte's  
 17 testimony"? It's actually the Plan, is my understanding,  
 18 the Integrated Resource Plan that the Company filed.  
 19 MS. CHAMBERLIN: Yes.  
 20 MS. KNOWLTON: There's no testimony that  
 21 was filed in that docket.  
 22 MS. CHAMBERLIN: That's correct.  
 23 WITNESS DaFONTE: And, I would also  
 24 clarify that --  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 117

1 MS. CHAMBERLIN: Excuse me. I would  
2 just ask that you would read the testimony.  
3 WITNESS DaFONTE: I will read it. But  
4 this is not my testimony. This was information that was  
5 put together by National Grid, on behalf of the Company at  
6 that time. So, it is not my --  
7 MS. CHAMBERLIN: It's not your personal  
8 testimony?  
9 WITNESS DaFONTE: It's not my personal  
10 testimony. It's not my data. It's information that was  
11 pulled together by National Grid at the time, because they  
12 were doing the demand forecasting for EnergyNorth.  
13 CHAIRMAN HONIGBERG: I'm dying to know  
14 what it says.  
15 BY THE WITNESS:  
16 A. (DaFonte) Now I will read it: "Together,  
17 commercial/industrial demand (sales plus  
18 transportation) is forecast to increase by an average  
19 of 291,121 Dekatherms per year or 3.9 percent per year  
20 over the forecast period 2013/14 through 2017/18. The  
21 forecast results for the commercial/industrial class  
22 are presented in Chart III-B-1."  
23 BY MS. CHAMBERLIN:  
24 Q. Thank you. Now, in this IRP, the demand forecast is  
{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 118

1 based on both traditional and nontraditional market  
2 analysis, correct?  
3 A. (DaFonte) I believe it was.  
4 Q. And, in a traditional IRP analysis, the Company uses  
5 historic monthly customer billing data, correct?  
6 A. (DaFonte) Correct.  
7 Q. And, historic energy price data?  
8 A. (DaFonte) I'm not sure if it's historic energy price  
9 data. It might be Moody's econometric data.  
10 Q. And, what is the Moody's econometric data based upon?  
11 A. (DaFonte) It's a forecast provided by Moody's of  
12 various factors that may drive demand or may reduce  
13 demand over time, including, you know, housing starts,  
14 a, you know, sort of overall economic forecast of the  
15 region or the county, and that is used to derive some  
16 of the growth.  
17 Q. Can I just direct you to the IRP and have you read that  
18 sentence? That's it, yes.  
19 A. (DaFonte) "By using historical economic, demographic  
20 and energy price data listed in the table below as the  
21 independent variables, the Company estimated  
22 statistically valid econometric equations for each  
23 class." And, you want me to -- this is a chart from  
24 Moody's, I believe, for the historical.  
{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 119

1 Q. It's historical data that's listed in the IRP?  
2 A. (DaFonte) From Moody's, yes.  
3 Q. Right. Now, the Company also uses commercial natural  
4 gas price data? Well, let me rephrase that. In  
5 addition, the Company tests actual calendar heating  
6 degree day data, correct?  
7 A. (DaFonte) Yes.  
8 Q. And, to do that, it uses residential natural gas price  
9 data?  
10 A. (DaFonte) Subject to check, yes.  
11 Q. And, commercial and industrial natural gas price data?  
12 A. (DaFonte) Again, subject to check, yes.  
13 Q. And, the oil price data from Department of Energy?  
14 A. (DaFonte) Yes.  
15 Q. And, the gas/oil price ratio is also an element of the  
16 analysis?  
17 A. (DaFonte) Correct.  
18 Q. And, each year the Company employs the same process of  
19 preparing a five-year forward projection for its IRP?  
20 A. (DaFonte) The Company actually does it every other  
21 year.  
22 Q. Okay. And, when the Company refers to "nontraditional  
23 market analysis", that's for customers that do not have  
24 available econometric data?  
{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 120

1 A. (DaFonte) I'm not sure if that's what the  
2 "nontraditional" refers to. It may also refer to  
3 "nontraditional markets", like CNG, for example, you  
4 know, not your typical thermal load. I don't know, in  
5 the context that you're referencing, what  
6 "nontraditional" means.  
7 Q. Well, what would you say a "nontraditional source" --  
8 "market analysis" would include?  
9 A. (DaFonte) Well, my interpretation of "nontraditional"  
10 would be something other than traditional heating load,  
11 whether it be residential, commercial/industrial, it  
12 would be nontraditional, such as CNG facilities or a  
13 gas-fired generator, something along those lines, as  
14 sort of "nontraditional".  
15 Q. So, something that was not a residential or commercial  
16 and industrial customer?  
17 A. (DaFonte) Yes.  
18 Q. Now, in 2013, and if you need to take a look at this,  
19 I'm happy to provide it, EnergyNorth arrived at an  
20 average annual load addition of 322,000 Dekatherms a  
21 year. Does that sound familiar?  
22 A. (DaFonte) I would have to look at it to affirmatively  
23 say that it is.  
24 Q. Looking at it -- starting here with the comparison of  
{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 121

1 2010 and 2013 demand forecasts, could you just state  
 2 that estimate that I -- the 322,000 Dekatherms?  
 3 A. (DaFonte) Yes. It shows that the average annual load  
 4 additions in the current forecast of 322,000 Dekatherms  
 5 is 34,000 Dekatherms per year lower than the 356,000  
 6 Dekatherm value from the previous forecast.  
 7 Q. Okay. Thank you. And, the lower forecast was due to a  
 8 lower projection for residential customer additions at  
 9 that time?  
 10 A. (DaFonte) Again, I would have to look at the details on  
 11 it. I believe that Mr. Clark has already testified  
 12 today that National Grid's actual customer additions  
 13 were on the order of 600 customers or so. So, I assume  
 14 that is what you're referencing?  
 15 Q. Well, I'm looking at estimate for higher projected  
 16 average commercial and industrial SENDOUT, combined  
 17 with a lower projected average residential SENDOUT.  
 18 A. (DaFonte) Right.  
 19 MS. KNOWLTON: I'd ask that, actually,  
 20 that the question be clarified. When you say you're  
 21 "looking at", if counsel could identify -- or, I object to  
 22 the form of the question, to the extent that it doesn't  
 23 identify what she's looking at.  
 24 MS. CHAMBERLIN: Sure. I'm continuing  
 (DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

[WITNESS PANEL: DaFonte-Clark-Whitten] 122

1 to look at the IRP, on Page 30. I'm happy to bring it  
 2 back for up for your review.  
 3 MS. KNOWLTON: And, I'd ask that the  
 4 entire IRP be brought up for the witness for his review,  
 5 not just the one page.  
 6 MS. CHAMBERLIN: Sure. Here it is.  
 7 (Atty. Chamberlin showing document to  
 8 Witness DaFonte.)  
 9 BY MS. CHAMBERLIN:  
 10 Q. And, I was looking at this here [indicating].  
 11 A. (DaFonte) Yes. This is essentially what Ms. Whitten  
 12 had mentioned earlier, which was that, in the IRP, the  
 13 residential growth was lower. And, in fact, it was  
 14 either flat to negative. Whereas the  
 15 commercial/industrial segment was higher.  
 16 Q. Thank you. Now, in the 2013 IRP, the Company tested  
 17 the adequacy of its IRP resource portfolio against a  
 18 Low Case, a Base Case, and a High Case, is that  
 19 correct?  
 20 A. (DaFonte) That's correct.  
 21 Q. And, the conclusion in the 2013 IRP is that there was  
 22 no need for incremental capacity to meet the Low Case  
 23 design year, correct?  
 24 A. (DaFonte) Within the five-year period, that's correct.  
 (DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

[WITNESS PANEL: DaFonte-Clark-Whitten] 123

1 Q. Correct. And, the same is true for the Base Case,  
 2 there is no need for incremental capacity to meet the  
 3 Base Case in this IRP?  
 4 A. (DaFonte) Yes, within the five-year period.  
 5 Q. Correct. And, one of the ways the Company avoids the  
 6 need for new capacity is by using its storage capacity,  
 7 is that correct?  
 8 A. (DaFonte) The storage capacity is a part of the  
 9 Company's portfolio, which it would rely on if it was  
 10 economically, you know, viable to dispatch. But it is  
 11 part of -- one of the many resources that are part of  
 12 the portfolio.  
 13 Q. Well, it's one of the ways the Company has the ability  
 14 to meet winter season loads, while avoiding the expense  
 15 of adding 365 days of transportation capacity. Is that  
 16 a fair statement?  
 17 A. (DaFonte) It is, like I said, an existing resource  
 18 that satisfies a portion of the Company's load curve.  
 19 Q. In the 2013 IRP, the Company projected a need for  
 20 incremental long-term capacity for a high demand case.  
 21 Is that your reconciliation?  
 22 A. (DaFonte) Again, I'd have to look at it. You've  
 23 mentioned -- now you're saying "long-term capacity", I  
 24 don't know what that means. Is that five years,  
 (DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

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1 because the IRP is a five-year forecast?  
 2 Q. It's the same --  
 3 A. (DaFonte) Or is it long term --  
 4 Q. It's the same time period --  
 5 A. (DaFonte) I'm sorry.  
 6 Q. Excuse me. Go ahead.  
 7 A. (DaFonte) I was saying, I need to really understand the  
 8 context of from what you're reading.  
 9 Q. Sure.  
 10 A. (DaFonte) When you say "long term", typically, "long  
 11 term" is much more than five years. And, so, is it a  
 12 requirement within the five-year period that we need or  
 13 is it longer term?  
 14 Q. I'll show you the Company's 2013 IRP.  
 15 MS. CHAMBERLIN: Do you want me to bring  
 16 the whole thing up?  
 17 MS. KNOWLTON: Sure.  
 18 (Atty. Chamberlin showing document to  
 19 Witness DaFonte.)  
 20 MS. KNOWLTON: And, just let me know  
 21 what page you're referring to.  
 22 MS. CHAMBERLIN: Page 66. Okay.  
 23 BY MS. CHAMBERLIN:  
 24 Q. And, I'd ask you to look at, this is Page 66, the high  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 demand case. Would you read that sentence please.

2 A. (DaFonte) "The Company's Resource Plan shows that it

3 can meet high-demand design-year load requirements

4 throughput the forecast period, with the addition of

5 incremental long-term capacity resources and citygate

6 delivered supplies during the peak period. These

7 additional purchases are set forth in Appendix B.6:

8 High Case Design Year: Monthly Resources and

9 Requirements and are summarized as follows:"

10 Q. You don't have to read the chart. Thank you.

11 A. (DaFonte) And, I do just want to clarify that that is

12 just for the five-year period. It's not considered as

13 "long term".

14 Q. Correct. It's in the five-year IRP?

15 A. (DaFonte) Correct.

16 Q. Correct. In its IRP filing, the Company refers to the

17 "TGP-NEX project". Are you familiar with that acronym?

18 A. (DaFonte) Yes. I believe that stood for the "Northeast

19 Expansion project", which was the precursor to the

20 Northeast Energy Direct project.

21 Q. The major difference between the TGP-NEX and the N-E-D,

22 NED project, is that the first went through

23 Massachusetts and the second went through southern New

24 Hampshire, is that correct?

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 the model requires you to put in cost information for

2 that resource. It has to include the maximum daily

3 quantity for the resource, how many days of use of that

4 resource, any kind of restrictions on the use of that

5 resource, whether it's modeled as a pipeline, peaking

6 or underground storage resource. There are quite a few

7 assumptions and inputs that have to go into the model

8 to determine whether that resource is cost-effective or

9 not.

10 Q. So, SENDOUT can analyze the size of a contract and the

11 combination of contracts to find the combination that

12 results in the lowest total cost?

13 A. (DaFonte) Yes. It can be used for that, for

14 optimization.

15 Q. And, that type of optimization is referred to as

16 "resource mix optimization"?

17 A. (DaFonte) Yes. That's correct.

18 Q. Okay. And, another type of optimization is the

19 "standard optimization", correct?

20 A. (DaFonte) Yes. You can call it the "standard", yes.

21 Q. Okay. And, that analyzes resources based on variable

22 costs, assuming that demand charges are fixed?

23 A. (DaFonte) That's correct.

24 Q. Now, in the 2013 IRP, the Company uses the resource mix

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 A. (DaFonte) Yes. I believe the route had changed during

2 the -- when it was discussed in the IRP, I believe the

3 route may not even have been set yet. It was just --

4 it was, at that point, just a conceptual option for new

5 capacity.

6 Q. To analyze its data, its forecasting data, the Company

7 uses modeling software called "SENDOUT", correct?

8 A. (DaFonte) Correct.

9 Q. And, SENDOUT is used to determine the adequacy of the

10 existing portfolio and to identify any shortfalls

11 during the forecast period, correct?

12 A. (DaFonte) Correct.

13 Q. The SENDOUT model can be used in two different ways, is

14 that true?

15 A. (DaFonte) I think it can be used in a lot of different

16 ways.

17 Q. So, it can be used to determine the best use of an

18 existing portfolio to meet a specified demand, correct?

19 A. (DaFonte) Correct.

20 Q. And, it can also be used to determine the best

21 portfolio of resources to meet a given demand, so, an

22 unknown set of resources to meet a known demand. Is

23 that true?

24 A. (DaFonte) Well, it has to be a known resource, because

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 optimization method?

2 A. (DaFonte) I believe it did so for the determination of

3 the TGP-NEX contract.

4 Q. Correct. And, it used a SENDOUT model run of 90,000

5 Dekatherms a day of that new pipeline capacity,

6 correct?

7 A. (DaFonte) Yes. That's correct.

8 Q. And, the purpose of the 90,000 Dekatherms a day run is

9 to evaluate the cost/benefits of the TGP-NEX project

10 over the long-term planning horizon, correct?

11 A. (DaFonte) Correct.

12 Q. And, in that case, the long-term planning horizon is 25

13 years?

14 A. (DaFonte) That's correct.

15 Q. And, in the 90,000 Dekatherm a day SENDOUT run, there

16 were several assumptions made about different inputs.

17 I'm going to list a couple. One assumption is that the

18 pipeline capacity will replace 50,000 Dekatherms of

19 existing capacity from Dracut via the Concord Lateral,

20 is that correct?

21 A. (DaFonte) I believe so.

22 Q. And, another assumption is that 33,000 Dekatherms a day

23 would replace propane facilities at Manchester and

24 Nashua, correct?

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 A. (DaFonte) Yes. That was an assumption as well.

2 MS. KNOWLTON: Can counsel identify the

3 page of IRP she's referring to when you're referring to

4 the assumptions?

5 MS. CHAMBERLIN: Sure. It's IRP, at

6 Page 64.

7 BY MS. CHAMBERLIN:

8 Q. And, the third assumption is that 7,000 Dekatherms a

9 day would provide for long-term growth?

10 A. (DaFonte) That's correct.

11 Q. So, with these assumptions, EnergyNorth projected a

12 need for 90,000 Dekatherms of new pipeline capacity,

13 correct?

14 A. (DaFonte) Correct.

15 Q. Now, if one were to assume no propane facility

16 retirement, that would add back 33,000 Dekatherms a day

17 of capacity, correct, if you make that assumption?

18 A. (DaFonte) Yes. That would add it back into the

19 portfolio.

20 Q. So, with simple arithmetic, the projection of 90,000

21 Dekatherms a day becomes 57,000 Dekatherms of capacity

22 needed?

23 A. (DaFonte) Yes, in the context of the IRP.

24 Q. Yes.

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 CHAIRMAN HONIGBERG: FCD-3 appears to be

2 over 60 pages long.

3 MS. CHAMBERLIN: Correct.

4 CHAIRMAN HONIGBERG: Okay. Are you

5 directing us somewhere?

6 MS. CHAMBERLIN: Yes. I was waiting to

7 see that everybody got there.

8 BY MS. CHAMBERLIN:

9 Q. So, these are a computer SENDOUT run. And, I'm looking

10 at -- any page will do. Turn to the first page. And,

11 included in the SENDOUT run --

12 MS. PATTERSON: Bates Page please?

13 MS. CHAMBERLIN: You can do Bates Page

14 109.

15 MS. PATTERSON: Thank you.

16 BY MS. CHAMBERLIN:

17 Q. You have a cost estimate for supply, correct?

18 A. (DaFonte) If you can point me to that?

19 Q. Well, if you look at the top of the Cost and Flow

20 Summary, to the left column -- the first column, it

21 says "Supply Costs".

22 A. (DaFonte) You're on 108 now, not 109?

23 Q. I think it's the same for all of them, but --

24 A. (DaFonte) Mine says "108".

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 A. (DaFonte) Yes.

2 Q. Now, in the context of the Precedent Agreement,

3 EnergyNorth is projecting a need for 115,000 Dekatherms

4 of new pipeline capacity, correct?

5 A. (DaFonte) Yes. That's correct.

6 Q. And, the 115,000 Dekatherms a day does not include

7 retirement of the propane storage facility as you make

8 the proposal today, correct?

9 A. (DaFonte) It does not.

10 Q. For the Precedent Agreement analysis, the Company again

11 used the SENDOUT model computer runs, correct?

12 A. (DaFonte) Yes.

13 Q. Okay. And, looking at OCA 3-25, which I will give you.

14 (Atty. Chamberlin handing document to

15 Witness DaFonte.)

16 CHAIRMAN HONIGBERG: Ms. Chamberlin, is

17 that one of the exhibits that was marked?

18 MS. CHAMBERLIN: Yes. And, it was

19 marked as "Exhibit 28".

20 CHAIRMAN HONIGBERG: Okay.

21 BY MS. CHAMBERLIN:

22 Q. Now, if we take OCA 3-25, which is Exhibit 28, and we

23 compare it to your attachment to your -- I believe it's

24 your direct testimony, it's FCD-3.

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 CHAIRMAN HONIGBERG: Yes, 109 does not

2 have what you are asking about.

3 MS. CHAMBERLIN: Oh. Okay. All right.

4 All right.

5 CHAIRMAN HONIGBERG: 108 does.

6 MS. CHAMBERLIN: 108, yes. Thank you.

7 BY MS. CHAMBERLIN:

8 Q. So, on the left-hand column, it's a projection for -- a

9 cost estimate for supply, correct?

10 A. (DaFonte) Correct.

11 Q. And, then, the next column is a cost estimate for

12 storage costs, correct? Do you follow me, Mr. DaFonte?

13 A. (DaFonte) Yes. I'm looking at the -- you're looking

14 not at the "Average Costs", you're looking at the "Net

15 Supply Cost" and "Net Storage Cost"?

16 Q. Well, at the moment, I'm just looking at the titles.

17 I'm just trying to identify what is on each of these

18 pages.

19 A. (DaFonte) Okay. So, I see "storage costs", yes.

20 Q. Correct. And, then, the next column is the

21 "Transportation Cost"?

22 A. (DaFonte) Correct.

23 Q. And, in the SENDOUT runs, this data is called a "Cost

24 and Flow Summary", correct?

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1 A. (DaFonte) That's correct.

2 Q. Now, in FCD-3, the EnergyNorth SENDOUT run for the

3 Precedent Agreement, the transportation cost is a fixed

4 number, correct?

5 A. (DaFonte) Correct.

6 Q. And, the transportation cost number is an input

7 provided by the Company into the SENDOUT run, correct?

8 A. (DaFonte) It's a combination of all of the fixed

9 pipeline – pipeline transportation contracts.

10 Q. So, the NED Pipeline capacity number is included in the

11 transportation cost number?

12 A. (DaFonte) They would be included in there.

13 Q. Correct. Now, each SENDOUT run covers one year,

14 correct?

15 A. (DaFonte) Correct.

16 Q. And, in Data Request OCA 3-25, the OCA asked the

17 Company to do additional SENDOUT runs, correct?

18 A. (DaFonte) Correct.

19 Q. And, the OCA requested the Company run a SENDOUT model

20 run for 65,000 Dekatherms of NED capacity, plus 50,000

21 Dekatherms for market purchases at Dracut. Is that

22 correct?

23 A. (DaFonte) That's correct.

24 Q. And, that's described in (d) on the request page of the

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

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1 OCA 3-25, correct?

2 A. (DaFonte) Correct.

3 Q. And, then, the OCA also requests the SENDOUT data for

4 the Precedent Agreement, and that's also described

5 under Paragraph (d), correct?

6 A. (DaFonte) Correct.

7 Q. And, the Precedent Agreement scenario is 115,000

8 Dekatherms of NED Pipeline capacity?

9 A. (DaFonte) Yes.

10 Q. If you turn to Page 61 of OCA 3-25, and Page 61 shows

11 the total Cost and Flow Summary for November 2018

12 through October 2038, correct?

13 A. (DaFonte) That's correct.

14 Q. And, that's identified in the upper left-hand corner of

15 the page. So, looking at the first column, the "net

16 supply cost", can you identify the net supply cost

17 please?

18 A. (DaFonte) Would be "2,397,615".

19 Q. And, that would be 2,397,615,000, correct?

20 A. (DaFonte) That's correct.

21 Q. And, Exhibit FCD-3 shows the Precedent Agreement

22 SENDOUT runs. And, if we turn to Page 61 of FCD-3.

23 A. (DaFonte) Okay. I'm there.

24 CHAIRMAN HONIGBERG: Is that Bates 168?

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1 MS. CHAMBERLIN: I haven't gotten there

2 yet.

3 WITNESS DaFONTE: Yes. It is 168.

4 BY MS. CHAMBERLIN:

5 Q. The net supply cost for the same time period is

6 "2,230,346,000", is that correct?

7 A. (DaFonte) That's correct.

8 Q. Now, comparing those two scenarios, under the Precedent

9 Agreement, the net supply costs decrease by about \$167

10 million?

11 A. (DaFonte) Subject to check.

12 Q. Subject to check. So, comparing the supply costs, the

13 Precedent Agreement is less expensive under these,

14 comparing these two SENDOUT runs?

15 A. (DaFonte) Yes.

16 Q. Now, in the same two scenarios, we can look at the

17 "Transportation Costs". So, directing your attention

18 to the "Transportation Costs" of FCD-3, Page 61, can

19 you state the Precedent Agreement net transportation

20 costs please?

21 A. (DaFonte) In FCD-3, the net transportation cost is

22 "1,000,583,352".

23 Q. Thank you. And, looking at --

24 CHAIRMAN HONIGBERG: Can I stop you?

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[WITNESS PANEL: DaFonte-Clark-Whitten] 136

1 MS. CHAMBERLIN: Sure.

2 CHAIRMAN HONIGBERG: It was – you said

3 "583,000". If the first one is "billion", then the next

4 one is "million", right? It's 1,583,000,000.

5 WITNESS DaFONTE: I'm sorry. Yes,

6 "\$1,583,352,000".

7 CHAIRMAN HONIGBERG: Right. Go ahead,

8 Ms. Chamberlin.

9 MS. CHAMBERLIN: That's correct.

10 BY MS. CHAMBERLIN:

11 Q. So, turning to OCA 3-25 for the 65,000 Dekatherms of

12 NED Pipeline capacity run, the net transportation costs

13 are 1,111,915,000, is that correct?

14 A. (DaFonte) Yes. But that's reflective of capacity

15 release revenues.

16 Q. So, comparing those two transportation cost numbers,

17 the Precedent Agreement net transportation cost

18 increase is about \$471 million, correct, subject to

19 check?

20 A. (DaFonte) Well, you're comparing apples to oranges.

21 The net transportation costs in FCD-3 do not reflect

22 any capacity release revenues to offset the fixed cost.

23 In OCA 3-25, it does reflect capacity release revenues

24 as an offset to total fixed, to the total fixed cost.

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[WITNESS PANEL: DaFonte-Clark-Whitten] 137

1 Q. So, if you include a capacity release offset, what's  
2 the estimate?

3 A. (DaFonte) I don't have that right --

4 Q. Well, I'm looking at the "Transportation Costs", and  
5 the "Capital" -- right above "Net Transportation Cost"  
6 is a statement of "Capacity Release Revenue". I  
7 believe that's -- okay. Just using the numbers as is,  
8 without the calculation of the capacity release  
9 revenue, the difference between them is 471 million,  
10 which needs to be offset by the capacity release  
11 revenue?

12 A. (DaFonte) Yes, absolutely.

13 Q. Okay.

14 A. (DaFonte) That's something that I've already spoken  
15 about. That is a critical element of the day-to-day  
16 management of the portfolio. That all fixed costs are,  
17 you know, are mitigated, to the extent possible,  
18 through various optimization efforts, including asset  
19 management agreements, off-system sales, and capacity  
20 release via the Electronic Bulletin Boards on the  
21 pipelines.

22 Q. Now, turning to Bates 061-062 of your rebuttal  
23 testimony, you have a chart labeled "Table Staff  
24 Tech-23(b)".

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1 A. (DaFonte) Okay. I'm there.

2 Q. And, the column labeled "Design Day IRP" shows the  
3 Company's 2013 projections for its design day, correct?

4 A. (DaFonte) For the IRP, yes.

5 Q. And, the IRP projections assume the propane facility  
6 retirement of about 33,000 Dekatherms, correct?

7 A. (DaFonte) In Table Staff Tech-23(b), the "Design Day  
8 IRP" column just shows the demand forecast as it was  
9 determined in the 2013 IRP.

10 Q. Okay. Now, moving to the "Revised Total Updated Design  
11 Day", in the last column, it's "227,834" Dekatherms a  
12 day? Oh, on the last year?

13 A. (DaFonte) On Bates Page 062, --

14 Q. Right.

15 A. (DaFonte) -- the last year, which is "2037/38", the  
16 "Revised Total Updated Design Day" is "227,834"  
17 Dekatherms.

18 Q. And, the "Design Day IRP" column for the same year,  
19 "2037/38", the projection is for "211,683" Dekatherms a  
20 day, correct?

21 A. (DaFonte) That's correct.

22 Q. So, the difference between them is roughly 16,000  
23 Dekatherms a day?

24 A. (DaFonte) Yes.

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1 Q. Now, in EnergyNorth's projections for the Precedent  
2 Agreement, EnergyNorth makes assumptions about prices  
3 for the Dracut pricing point, correct?

4 A. (DaFonte) Yes, it does.

5 Q. And, the purpose of this assumption is to calculate the  
6 difference between the Dracut pricing point and the  
7 prices at Henry Hub, correct?

8 A. (DaFonte) Can you repeat that please?

9 Q. Sure. The reason for making assumptions about the  
10 Dracut pricing is to calculate the difference between  
11 the Dracut pricing point and the prices at Henry Hub?

12 A. (DaFonte) Yes. To calculate the basis differential,  
13 correct. Yes.

14 Q. Now, I'm turning to OCA 3-16, which was marked for  
15 identification as "Exhibit 26". Do you have a copy?

16 A. I believe I do. It's 3-16?

17 Q. Yes.

(Atty. Chamberlin handing a document to  
Witness DaFonte.)

20 BY MS. CHAMBERLIN:

21 Q. Are you ready?

22 A. (DaFonte) Yes.

23 Q. Okay. EnergyNorth used the actual daily pricing at  
24 Dracut for the past three winters for its Dracut data,

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1 correct?

2 A. (DaFonte) Correct.

3 Q. And, the Company compared it to the Henry Hub pricing  
4 for the same days?

5 A. (DaFonte) Yes.

6 Q. Now -- excuse me. The Company used the highest 10 day  
7 average basis for the past three winters, is that  
8 correct?

9 A. (DaFonte) Well, the Company did various calculations,  
10 one of which was the highest 10 day average. It also  
11 calculated the highest 20 day average; the highest 30  
12 day average; the second highest 30 day; the third  
13 highest 30 day; and the fourth highest 30 day.

14 Q. Well, yes, the Company did many different calculations.  
15 But, for its input into the SENDOUT model, it was the  
16 highest 10 day average basis for the last three years,  
17 is that correct?

18 A. (DaFonte) Which SENDOUT model are you referring to?

19 Q. Well, I am looking at attachment to OCA 3-16. And, the  
20 question is regarding Section (a), the SENDOUT runs  
21 from Data Request OCA 2-5. And, the question is  
22 "Please state what assumption did the Company make with  
23 respect to prices at the Dracut pricing point." And, I  
24 am looking to confirm that the answer, which is right

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 in front of you, is that the highest 10 day average  
2 basis for the last three winters is the three year  
3 average that you used running that SENDOUT?  
4 A. (DaFonte) Yes, I'm confused, because you're referencing  
5 OCA 2-5. And, I believe OCA 2-5 has, I believe, five  
6 SENDOUT runs associated with it.  
7 Q. I agree it's confusing. So, I will direct you to your  
8 response, (a), of OCA 3-16. And, if you could just  
9 read Paragraph (a).  
10 A. (DaFonte) "The Dracut basis assumptions were provided  
11 previously" --  
12 CHAIRMAN HONIGBERG: Slow down. Slow  
13 down. Mr. Patnaude's hands are only so quick.  
14 WITNESS DaFONTE: Sorry about that.  
15 BY THE WITNESS:  
16 A. (DaFonte) "The Dracut basis assumptions were provided  
17 previously in the Company's response to OCA Request OCA  
18 2-5. The data used to derive the basis numbers for  
19 Dracut was calculated using actual daily pricing at  
20 Dracut for the past three winter seasons as compared to  
21 Henry Hub pricing for the same days. Actual daily  
22 prices were used as there is no available forecast for  
23 future daily pricing. See Attachment OCA 3-16.xlsx for  
24 the detailed pricing and calculation of the basis  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 values."  
2 BY MS. CHAMBERLIN:  
3 Q. So, when I look at that attachment, there are several  
4 lines of the average basis calculation. And, I'm  
5 looking for confirmation that the Company used the  
6 highest 10 day average basis average, that's the first  
7 line, the three-year average is "\$28.24"?  
8 A. (DaFonte) Yes. But, again, I just want to reiterate  
9 that there are five -- or, I believe five different  
10 model runs associated with OCA 2-5, and they use  
11 different variants of the data that I've provided here  
12 in response to OCA 3-16. For example, November through  
13 March pricing was based on the highest 30 day average  
14 basis. The --  
15 Q. Excuse me, Mr. DaFonte, are you referring to the OCA  
16 SENDOUT run?  
17 A. (DaFonte) I'm referring to OCA 2-5, which is what  
18 you're referring to in OCA 3-16.  
19 Q. So, in making assumptions with respect to prices at the  
20 Dracut pricing point, you used a lot of different  
21 prices for different time periods throughout the  
22 SENDOUT run?  
23 A. (DaFonte) Well, I use different prices for different  
24 months. Because, during the colder months, prices are  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 generally higher, and, during the shoulder months,  
2 they're generally a little bit lower. So, in November  
3 and March, you're not likely to see as high a price at  
4 Dracut as you would in December and February, and you  
5 probably would see the highest prices in January.  
6 Those were the assumptions that were made. And, that's  
7 why the Company provided all of the data that it did  
8 here in response to the OCA's data request.  
9 Q. So that the highest price assumption that the Company  
10 used would be the highest 10 day average basis,  
11 correct?  
12 A. (DaFonte) Yes. It used that for the month of January.  
13 Q. Okay. And, then, looking down at the next row, the  
14 highest 20 day average would be used for shoulder  
15 months?  
16 A. (DaFonte) It would be used for December and February.  
17 Q. And, then, the highest 30 day average, when would that  
18 be used?  
19 A. (DaFonte) That was used for November and March.  
20 Q. And, the highest 30 day -- so, wait have we covered all  
21 the months yet? No. So, moving down to the second  
22 highest 30 day average, when was that used?  
23 A. (DaFonte) I don't believe we used that in the OCA 2-5  
24 model runs.  
{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 Q. So, if we use the first three rows, the highest 10 day,  
2 highest 20 day and highest 30 day, those are the ones  
3 that you used for the OCA run?  
4 A. (DaFonte) Yes. For 2-5, correct.  
5 Q. Now, the second highest 30 day average basis, that was  
6 not used for OCA 2-5?  
7 A. (DaFonte) I don't believe so.  
8 CHAIRMAN HONIGBERG: Ms. Chamberlin, can  
9 you give me a preview as to where you're going?  
10 MS. CHAMBERLIN: Well, the Company had  
11 used the highest peak prices for the past three years to  
12 run their projections for the next 24 years. So, it's  
13 taking the highest point and extending it out. So, it  
14 wasn't clear exactly what numbers had been used, because  
15 the answer here didn't identify which of these. There's a  
16 bunch of numbers, but it didn't identify which ones were  
17 part of the assumptions in the computer run.  
18 CHAIRMAN HONIGBERG: So, have you got  
19 the discovery you need to understand what he did with his  
20 runs? That he had the highest price in January, and they  
21 got lower as they got further away from January. Have we  
22 got that?  
23 MS. CHAMBERLIN: Yes.  
24 CHAIRMAN HONIGBERG: Okay.  
{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 145

1 MS. CHAMBERLIN: I do have that.

2 CHAIRMAN HONIGBERG: So, what's the

3 point you want to make about that? That the model's

4 overstated something?

5 MS. CHAMBERLIN: The model overstates

6 the prices, the basis -- the difference of the prices

7 between Dracut and Henry Hub.

8 CHAIRMAN HONIGBERG: Okay.

9 MS. CHAMBERLIN: Okay. So, we can move

10 on?

11 CHAIRMAN HONIGBERG: Well, you might

12 need to ask him some more questions to make sure that

13 you've got all the evidence from him that he agrees with

14 your assertion there. I understand that's your assertion.

15 I understand, I think, the basis for the assertion. I

16 have a sneaking suspicion he's going to disagree with the

17 conclusion. So, you might want to ask him a few more

18 questions.

19 MS. CHAMBERLIN: I will do that.

20 CHAIRMAN HONIGBERG: And, I'm not sure

21 you should ask him if he agrees with your conclusion,

22 because I think we already know the answer to that

23 question.

24 (Laughter.)

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 147

1 A. (DaFonte) Correct. But what we're trying to model is

2 the cost to the Company's customers when the gas is

3 needed. And, during the coldest periods is when the

4 Company needs the most gas, and, therefore, that's when

5 there's more demand, not just from the Company, but by

6 all other market participants. Thus, the run-up in gas

7 prices at a illiquid point, such as Dracut.

8 Q. So, in the Company's Precedent Agreement runs, you also

9 used a variety of inputs according to the month for the

10 basis?

11 A. (DaFonte) In the Company's Precedent Agreement run, it

12 does not have to buy gas at Dracut. That was the whole

13 point of going back to Wright, and, ultimately, to

14 Marcellus, so that it can avoid these price spikes, and

15 it can avoid having to try to forecast what the peak

16 prices might be on a 10 day, 20 day or 30 day average.

17 There's less --

18 Q. But to compare --

19 A. (DaFonte) There's less volatility in the Marcellus.

20 And, so, the Company has provided a better opportunity

21 to forecast where prices are going to be.

22 Q. So, to make the least-cost choice, between the

23 Company's proposal and purchasing on the market, that's

24 why you do this type of comparison, so you'll know how

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 146

1 MS. CHAMBERLIN: I understand.

2 CHAIRMAN HONIGBERG: But you might want

3 to take off some smaller bites there.

4 MS. CHAMBERLIN: Okay.

5 BY MS. CHAMBERLIN:

6 Q. Over the entire year, a basis differential, it varies

7 on different days, correct?

8 A. (DaFonte) That's correct.

9 Q. And, over the entire year, the basis between market

10 prices will vary across different months. That was

11 partially the point you were trying to make there,

12 correct?

13 A. (DaFonte) That is correct.

14 Q. So, for many days of the year, Dracut's basis over

15 Henry Hub prices is below \$4.00, is that correct?

16 A. (DaFonte) Yes.

17 Q. And, I refer you to the rest of the attachment on 3-16,

18 which shows the price comparisons. And, some days, the

19 Dracut basis over Henry Hub is actually a negative

20 number, is that correct?

21 A. (DaFonte) Yes. There's a few days in there. But, of

22 course, those are the days when nobody needs the gas.

23 Q. Correct. There's a wide variety of need according to

24 the season?

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 148

1 much each of them will cost?

2 MS. KNOWLTON: Objection to the

3 question, to the extent that it refers to the Company's

4 purchase through the Precedent Agreement not being at

5 market.

6 CHAIRMAN HONIGBERG: I'm not sure I

7 understood the question that way. Ms. Chamberlin, why

8 don't you repeat the question, because I am not sure I

9 understood it the way Ms. Knowlton did.

10 BY MS. CHAMBERLIN:

11 Q. The question is, the purpose of running the

12 differentials, compared to the Company's proposed

13 115,000 Dekatherms of pipeline capacity contract, is to

14 compare the two projected prices, so you can determine

15 what is least cost?

16 A. (DaFonte) Yes. It is to compare the two resources as

17 part of the total portfolio cost.

18 Q. Right. And, the Company did not use natural gas

19 forward prices in its projections, correct?

20 A. (DaFonte) It didn't use any for Dracut, because they

21 don't exist.

22 Q. And, the daily pricing for Dracut does not exist.

23 There are available forecasts for future monthly

24 prices, correct?

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 149  
1 A. (DaFonte) For Dracut? I haven't seen any for Dracut.  
2 Q. Are you familiar with SNL forward natural gas price  
3 database?  
4 A. (DaFonte) I am familiar with it.  
5 Q. And, SNL provides forward natural gas price projections  
6 for Dracut?  
7 A. (DaFonte) They may. I don't subscribe to it.  
8 Q. Well, let me show you. And, I hope you have good  
9 glasses.  
10 (Atty. Chamberlin handing document to  
11 Witness DaFonte.)  
12 BY MS. CHAMBERLIN:  
13 Q. You can look at the corner there *[indicating]*. It says  
14 "Natural Gas Forwards & Futures", is that correct?  
15 A. (DaFonte) Yes.  
16 MS. PATTERSON: May I have a copy?  
17 MS. CHAMBERLIN: Yes.  
18 MS. PATTERSON: Thank you.  
19 CHAIRMAN HONIGBERG: Mr. Kanoff, do you  
20 want a copy?  
21 MR. KANOFF: Yes. Thank you.  
22 (Atty. Chamberlin distributing  
23 documents.)  
24 CHAIRMAN HONIGBERG: Ms. Chamberlin, do  
(DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 151  
1 BY MS. CHAMBERLIN:  
2 Q. And, if you look at the dates, the forward natural gas  
3 price projections, the dates are the first column, are  
4 from "August 2015" to "July 2022", correct?  
5 A. (DaFonte) Yes. That's correct.  
6 Q. Now, to calculate the basis, it's simply a subtraction  
7 from the Dracut price and the Henry Hub price, correct?  
8 A. (DaFonte) Correct.  
9 MS. CHAMBERLIN: Excuse me a minute.  
10 (Atty. Chamberlin conferring with Mr.  
11 Chattopadhyay.)  
12 BY MS. CHAMBERLIN:  
13 Q. Now, looking down the column for -- strike that. On  
14 Bates 048 of your rebuttal testimony, there's a chart  
15 of natural gas prices. And, the chart covers New  
16 England gas prices for the last three winters, correct?  
17 A. (DaFonte) It's actually four winters.  
18 Q. It runs from November 2011 to May 2015?  
19 A. (DaFonte) Right.  
20 Q. And, in January 2012, there's a modest spike in winter  
21 prices to about \$10. Do you agree?  
22 A. (DaFonte) Yes.  
23 Q. Between January 2013 to March 2013, there's a bigger  
24 spike to about \$30, correct?  
(DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 150  
1 you want this marked?  
2 MS. CHAMBERLIN: Yes. I would mark it  
3 for identification as the next exhibit.  
4 CHAIRMAN HONIGBERG: So, why don't you  
5 bring one up here and it can get marked. This is "29".  
6 (The document, as described, was  
7 herewith marked as Exhibit 29 for  
8 identification.)  
9 BY MS. CHAMBERLIN:  
10 Q. So, SNL provides forward natural gas price projections  
11 for Henry Hub?  
12 A. (DaFonte) Yes, these are monthly prices?  
13 Q. Yes. These are monthly prices.  
14 A. (DaFonte) The data I provided is not monthly, it's  
15 daily.  
16 Q. Exactly. I'm just saying that they provide monthly  
17 prices.  
18 A. (DaFonte) Okay. But that doesn't really help me in  
19 determining what the daily price --  
20 CHAIRMAN HONIGBERG: Mr. DaFonte, I  
21 think all she wants to know is this is monthly, right?  
22 MS. CHAMBERLIN: That's correct.  
23 WITNESS DaFONTE: Yes. This is monthly,  
24 yes.  
(DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 152  
1 A. (DaFonte) Yes. It looks about \$30.  
2 Q. And, then, moving to the right, between January 2014 to  
3 March 2014, there's a very big spike to about \$80,  
4 correct?  
5 A. (DaFonte) Yes. That's correct.  
6 Q. And, then, in January 2015 to March 2015, there's a  
7 smaller spike to about \$20?  
8 A. (DaFonte) Yes. Somewhere in that vicinity, \$25, \$30.  
9 Q. Now, the very large peak in January 2014 to March 2014  
10 did not exist at any other time certainly reflected in  
11 this chart, correct?  
12 A. (DaFonte) I'm sorry, could you repeat that again?  
13 Q. The very large peak, from January 2014 to March 2014,  
14 did not exist at any earlier time, correct?  
15 A. (DaFonte) Not to that magnitude.  
16 Q. And, the very large peak was not repeated in Winter  
17 2015, correct?  
18 A. (DaFonte) Correct.  
19 Q. And, there were several factors that the lowering of  
20 the peak from 2014 to 2015 took place. One of those  
21 would be that available LNG resources helped reduce the  
22 price spike. Do you agree?  
23 A. (DaFonte) I agree that more LNG was brought into New  
24 England in the Winter of 2014/2015, on the heels of the  
(DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 153

1 high prices of 2013/14.

2 Q. And, there were greater gas injections into storage

3 before the Winter of 2015 -- 2015, which helped reduce

4 that winter's price spikes, correct?

5 A. (DaFonte) Subject to check. That I believe storage is

6 typically pretty well full, certainly, for EnergyNorth,

7 it's full going into the winter period, and I believe

8 for most, if not all, LDCs in the Northeast.

9 Q. So, subject to check, there was sufficient gas

10 injections into storage before the winter, which helped

11 keep prices moderated?

12 A. (DaFonte) Yes. But I'm saying that that's not out of

13 the ordinary. That utilities always have their storage

14 full or very close to full in preparation for the

15 winter period.

16 Q. And, continued investment in energy efficiency helped

17 reduce price spikes?

18 A. (DaFonte) I really can't say that that helped reduce

19 price spikes. It certainly helps to offset demand.

20 But I really can't correlate it to the impact on price

21 spikes.

22 Q. Would you say that reduction in demand helps moderate

23 price spikes? Reduction in demand on the peak would

24 help moderate a peak price spike?

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 155

1 So, what I'm saying is I really can't

2 isolate one or the other. I think it's a combination

3 of a lot of different variables for that particular

4 winter.

5 Q. Exactly. There are a lot of variables that play into

6 price spikes during the winter, correct?

7 A. (DaFonte) Exactly. And, that's why we're trying to

8 avoid all of those variables, by going back to a supply

9 source that has little to no volatility, and has

10 plentiful proven reserves.

11 Q. Now, you introduced, in the beginning of your

12 testimony, a corrected Page 47?

13 A. (DaFonte) Yes, that's correct.

14 Q. And that -- let me find my copy of it.

15 CHAIRMAN HONIGBERG: Ms. Chamberlin,

16 we're going to need to break fairly soon. How close are

17 you to the end of this or are you at a breaking point or

18 anything?

19 MS. CHAMBERLIN: We could break while I

20 look for that exhibit. You know, I have some more

21 questions. I also have some questions for the other

22 panelists. So, this is a good time to break.

23 CHAIRMAN HONIGBERG: Okay. Why don't we

24 take a break. We're going to break for 15 minutes, and

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 154

1 A. (DaFonte) Yes. It's a factor. But it's a balance of

2 supply and demand, and restrictions on the pipelines,

3 restrictions on LNG. So, what I'm saying is I really

4 can't quantify what it does. Clearly, the Company is

5 very proactive with energy efficiency, and has

6 reflected that in its forecasts. So, you know, it does

7 bring down the demand. That is the first order of

8 business for the Company is to reduce demand through

9 energy efficiency.

10 Q. And, the Company isn't saying that investments in

11 energy efficiency increase the prices at peak periods,

12 correct?

13 A. (DaFonte) No, it is not saying that.

14 Q. Okay. Would you agree that the ISO-New England Winter

15 Reliability Program played a role in reducing the 2015

16 Winter price spike?

17 A. (DaFonte) It may have played a role. I would imagine

18 that a lot of -- there were a lot of factors. And, the

19 fact that oil prices dropped had some impact. And, the

20 fact that LNG was brought in to take advantage of the

21 forward basis that came out of the 2013/14 Winter

22 Period was also a factor. And, certainly, just the,

23 you know, the different nature of the winter as well

24 plays a factor.

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 156

1 come back just before quarter to three.

2 (Recess taken at 2:27 p.m. and the

3 hearing resumed at 2:52 p.m.)

4 CHAIRMAN HONIGBERG: Ms. Chamberlin.

5 MS. CHAMBERLIN: Thank you.

6 BY MS. CHAMBERLIN:

7 Q. Turning to your revised page -- Bates Page 047. You

8 show a chart looking at the cost-effectiveness of the

9 NED project, Table 8, correct?

10 A. (DaFonte) Yes.

11 Q. And, the prices that you use are from the winter peak

12 periods of the 2013/14 and 2014/15 correct?

13 A. (DaFonte) Correct.

14 Q. And, without discussing the actual numbers, if the peak

15 prices of Winter 2014 are not repeated, the

16 cost/benefit ratio of the NED project changes, correct?

17 A. (DaFonte) "Not repeated" meaning you're not going to

18 get the same breakeven price or --

19 Q. Well, if that --

20 A. (DaFonte) -- the lower prices.

21 Q. If that price never occurs again in the next 20 years,

22 the actual breakeven price, the ratio will change.

23 This ratio is based on those prices contained within

24 the table?

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 157

1 A. (DaFonte) Yes. They're based on actual, those are  
 2 actual prices not forecast, just to be clear.  
 3 Q. Correct.  
 4 A. (DaFonte) Uh-huh.  
 5 Q. They're actual prices from the years given in the  
 6 table?  
 7 A. (DaFonte) Correct.  
 8 Q. And, if those years are outliers, if they don't happen  
 9 in the future, the actual cost/benefit ratio of the  
 10 project will change?  
 11 A. (DaFonte) Sure, if your assumption is that doesn't  
 12 happen in the future. But that's not our assumption.  
 13 Q. And, if you compare generally the two numbers, the  
 14 breakeven price is cut in half, when Winter 2014 is  
 15 compared to Winter 2015, correct? Approximately?  
 16 A. (DaFonte) Yes. Correct.  
 17 Q. Now, to get the original numbers in your rebuttal  
 18 testimony, before the correction, you called Tennessee  
 19 Gas Pipeline and asked them for a price estimate, is  
 20 that how that number was derived?  
 21 A. (DaFonte) No. These are all actual commodity purchases  
 22 and actual demand charges of either the NED project or  
 23 existing Tennessee capacity that the Company uses. So,  
 24 there are no estimates in here.  
 [DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 159

1 A. (DaFonte) I'm here. Sorry.  
 2 Q. And, EnergyNorth does not have information to support a  
 3 robust sales forecast for the iNATGAS customer,  
 4 correct?  
 5 A. (DaFonte) We have estimates from iNATGAS themselves.  
 6 Q. Because they're a new customer, you don't have a  
 7 history for them?  
 8 A. (DaFonte) Correct. We do not have historical.  
 9 Q. And, iNATGAS is obligated to remain on the EN system  
 10 for one year, correct?  
 11 A. (DaFonte) They're obligated to remain a sales customer  
 12 for one year. They would still be attached to  
 13 EnergyNorth's distribution system.  
 14 Q. And, in its forecast, the Company uses the design  
 15 capacity of the iNATGAS facility, correct?  
 16 A. (DaFonte) Yes. That design is based on iNATGAS  
 17 eventually getting up to their maximum prior to any  
 18 ramp-up, which they're also capable of doing. But it  
 19 does not -- the forecast does not reflect that  
 20 additional ramp-up, where they would be able to load  
 21 essentially double the number of trucks that the  
 22 current forecast suggests.  
 23 Q. And, that amount is 8,800 Dekatherms a day?  
 24 A. (DaFonte) That's correct.  
 [DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 158

1 Q. The Tennessee Gas Pipeline price, is that a tariff  
 2 page? I'm just wondering about the source of that  
 3 data?  
 4 A. (DaFonte) It's the tariff rate that we pay to Tennessee  
 5 for the capacity from Dracut to our citygate on the  
 6 Concord Lateral.  
 7 Q. And, the change in the price was due to a change in the  
 8 projection of how far the capacity expansion needed to  
 9 go? Is that a correct summary?  
 10 A. (DaFonte) No. The change in the price was just a  
 11 function of not including the Tennessee demand charges  
 12 of the existing capacity at Dracut in the overall cost  
 13 for the past two -- for the '13/14 and '14/15 winters  
 14 for the column that's labeled "Dracut Purchases". So,  
 15 there was a missing dollar amount. And, therefore,  
 16 when you do the comparison to the Tennessee demand  
 17 charges, it was a little bit less than what should have  
 18 been in there, in terms of total costs. Thus, the  
 19 breakeven point was lower than it should have been.  
 20 Q. For customer growth projections, you discuss iNATGAS  
 21 sales in your rebuttal testimony, correct?  
 22 A. (DaFonte) Myself or Mr. Clark?  
 23 Q. Well, just in general, if you turn to Page 28, you have  
 24 some general statements about it. Are you there?  
 [DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 160

1 Q. And, you also discuss briefly the possibility of adding  
 2 Keene customers to natural gas in the future?  
 3 A. (DaFonte) Yes. That is -- that's certainly a goal for  
 4 the Company, whether it's, you know, natural gas in  
 5 pipeline form or through some other means.  
 6 Q. And, if it's in pipeline form, additional  
 7 infrastructure investment would be required, correct?  
 8 A. (DaFonte) That's correct.  
 9 Q. And, you don't have a cost estimate for that investment  
 10 today, correct?  
 11 A. (DaFonte) We do not. But, certainly, as I testified to  
 12 earlier, as part of the Settlement Agreement, we are  
 13 required to provide a cost/benefit analysis to serve  
 14 Keene via pipeline in the next IRP filing.  
 15 Q. And, the Keene Division currently has 1,250 customers  
 16 about?  
 17 A. (DaFonte) Approximately, yes.  
 18 Q. Okay. And, you provide some testimony on the return of  
 19 capacity-exempt customers, correct?  
 20 A. (DaFonte) Yes.  
 21 Q. And, it's fair to state that it's difficult to project  
 22 with certainty what returning capacity-exempt load will  
 23 be over the forecast period, correct?  
 24 A. (DaFonte) Correct. And, that's why we didn't project  
 [DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

1 it.

2 Q. So, some of the factors that influence a decision would

3 be the market price of varying fuels, correct?

4 A. (DaFonte) Sure. It would be fuels. It would be just a

5 business plan change of some sort by the customer, or

6 something else.

7 Q. And, another factor would be the terms of a customer's

8 contract with its suppliers?

9 A. (DaFonte) Yes, absolutely. Yes.

10 Q. And, even variations in weather can affect a customer's

11 choice about returning?

12 A. (DaFonte) Yes, I would say so.

13 Q. So, in December of 2014, with the IRP, the Company

14 projected a relatively flat customer load over the 20

15 years, a returning customer load over the 20-year

16 period, is that correct?

17 A. (DaFonte) I think you said "December 2014 in the IRP".

18 Q. Those are inconsistent, aren't they? I think I made a

19 mistake. The estimate was less than a thousand

20 dekatherms per day on the design day, correct?

21 A. (DaFonte) In the Company's initial filing in this

22 docket, yes. It was about a thousand dekatherms per

23 day was the forecast.

24 Q. Right.

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 A. (DaFonte) Yes. It's a group of New England local

2 distribution companies that essentially have the same

3 needs as EnergyNorth does. And, the group got together

4 to leverage their volumes in aggregate and negotiate

5 the most favorable terms and conditions, including a

6 negotiated price, on the capacity in the NED project.

7 Q. Are you familiar with the planning horizons for the

8 LDCs located in Massachusetts?

9 A. (DaFonte) I'm somewhat familiar.

10 Q. Boston Gas uses a 10-year planning horizon in its NED

11 petition. Is that your recollection?

12 A. (DaFonte) I don't --

13 MS. KNOWLTON: Objection. The witness

14 has not indicated that he is familiar with the NED

15 petitions of other companies.

16 CHAIRMAN HONIGBERG: Sustained. I think

17 he was about to say the same thing.

18 MS. CHAMBERLIN: I asked him if he was

19 familiar with their planning horizons, and he answered

20 "yes".

21 CHAIRMAN HONIGBERG: No, I think you

22 then asked him if he recalled what Boston Gas had said,

23 and I think he was about to say "no", because he didn't

24 know, when Ms. Knowlton interjected. Perhaps I'm wrong.

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 A. (DaFonte) But that was based on actuals.

2 Q. And, then, between February 2014 and January 2015, the

3 actual capacity for returned -- the actual capacity for

4 returned capacity-exempt customers increased to about

5 3,000 Dekatherms?

6 A. (DaFonte) Yes. That's approximately the right number.

7 Q. And, that coin -- the 2014/2015 time period coincides

8 with the highest natural gas price spike on the chart

9 that was part of your testimony?

10 A. (DaFonte) That was 2013/14.

11 Q. Correct. And, this is the data used for the design day

12 estimate for returned capacity-exempt load, correct?

13 A. (DaFonte) I'm not sure I follow the question. Could

14 you repeat it.

15 Q. Well, the actual number for returned capacity-exempt

16 customers was about 3,000 Dekatherms, and that was

17 between February 2014 and January 2015. And, that's

18 the number the Company is using in its forecast?

19 A. (DaFonte) Yes. That's correct. And, that number has

20 also gone up to 3,629 Dekatherms, I believe, as of

21 June 1st.

22 Q. This Precedent Agreement is entered into with a group

23 of companies that's called the "LDC Consortium",

24 correct?

{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 But the objection was sustained. So, why don't you ask

2 him if he knows what Boston Gas put in its petition.

3 BY MS. CHAMBERLIN:

4 Q. Would you agree or do you know what Boston Gas uses for

5 its planning horizon in its NED petition?

6 A. I don't, I don't know that. I haven't reviewed their

7 petition.

8 Q. All right. I will -- now, if the Commission approves

9 the Precedent Agreement, existing customers -- existing

10 EnergyNorth customers will pay the costs of the

11 Precedent Agreement until new customers are added, is

12 that correct?

13 A. (DaFonte) Yes. It's basically what has happened ever

14 since capacity was -- or, any time capacity is added to

15 the portfolio.

16 Q. So, if EnergyNorth does not add new customers, the

17 existing customers will continue to pay the costs of

18 the Precedent Agreement?

19 A. (DaFonte) Yes. That would be the case. But that's not

20 what's in the Settlement Agreement. There is,

21 obviously, an incentive within the Settlement Agreement

22 to add customers. And, even without that incentive, it

23 is in the Company's best interest to add, you know,

24 revenue-producing customers.

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[WITNESS PANEL: DaFonte-Clark-Whitten] 165

1 Q. The Company does not have the ability to cancel the  
2 contract for capacity in five years, if it turns out  
3 that the new customers aren't there as projected?

4 A. (DaFonte) No. The Company would not have the  
5 unilateral right to terminate the contract. But, as I  
6 stated earlier, the contract provides the Company with  
7 the flexibility to make other adjustments to the  
8 portfolio. Such as reducing the -- or, retiring the  
9 propane facilities or even reducing the contracts on  
10 other capacity as it comes up for renewal, if that  
11 should be the case.

12 Q. I just have a few more questions. Mr. Clark, you  
13 provided some testimony about the customer -- new  
14 customer projections, correct?

15 A. (Clark) Yes.

16 Q. And, in 2013, the Company added about a thousand new  
17 customers?

18 A. (Clark) We added approximately 1,100 new customers in  
19 2013.

20 Q. And, in 2014, you added about 1,200 new customers?

21 A. (Clark) Correct.

22 Q. To support this Precedent Agreement, you're projecting  
23 the addition of 2,000 new customers each year, correct?

24 A. (Clark) I don't believe the "2,000" was used to support  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 166

1 this Precedent Agreement.

2 Q. Under the terms of the Settlement Agreement, the  
3 Company has projected it will add 2,000 new customers a  
4 year, correct?

5 A. (DaFonte) The Settlement Agreement is an incentive for  
6 the Company to add as many customers as possible to  
7 minimize any reserve capacity. The 2,000 customer  
8 additions were not reflected in any forecast provided  
9 by the Company. So, if the Company does reach the  
10 2,000, it will actually get to a higher design day much  
11 sooner than what is forecast in the filing, where I  
12 believe our estimate was somewhere in the 600 to 800  
13 customer adds per year.

14 Q. So, if the Company essentially doubles its new  
15 customers, moves from about a thousand to about 2,000,  
16 the amount of excess capacity in the NED Precedent  
17 Agreement gets reduced sooner?

18 A. (DaFonte) Yes.

19 A. (Clark) Correct.

20 A. (DaFonte) Exactly.

21 Q. And, Mr. Clark, would you agree with Mr. DaFonte that  
22 existing customers will bear the costs of the Precedent  
23 Agreement until new customers are added?

24 A. (Clark) Yes.  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 167

1 CHAIRMAN HONIGBERG: Won't existing  
2 customers bear the costs even after new customers are  
3 added?

4 WITNESS CLARK: Yes.

5 WITNESS DaFONTE: Yes. They will bear a  
6 smaller portion of the cost.

7 CHAIRMAN HONIGBERG: Right.

8 WITNESS DaFONTE: But they will bear the  
9 cost.

10 CHAIRMAN HONIGBERG: Okay.

11 BY MS. CHAMBERLIN:

12 Q. Existing customers are not in need of new capacity  
13 right now. The Company is serving its existing load,  
14 correct? I think to Mr. Clark, but you're --

15 A. (DaFonte) Yes. No, I'll answer it. You know, as part  
16 of prudent planning is that you can't plan from a -- on  
17 a day-to-day basis. You have to look out long term,  
18 with the expectation that you're adding customers.  
19 And, so, when you're looking at contracting for a new  
20 resource, you have to consider what your expected  
21 growth is going to be so that you can serve those  
22 customers in a reliable fashion. And, so, really  
23 that's, you know, that's the process. That, when you  
24 add capacity, customers that are served today, even  
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1 though they don't need the capacity, it's really future  
2 customers that it's meant to serve. And, as those  
3 customers come on line, those customers reduce the  
4 overall cost, the overall unit cost of that fixed  
5 capacity charge. That's how the utility has grown over  
6 time, is by adding customers and ensuring the ability  
7 to serve those customers by contracting for capacity on  
8 a long-term, in most cases, basis, especially where it  
9 deals with new capacity or a capacity expansion on the  
10 pipeline.

11 Q. Mr. Clark, your testimony had some additional  
12 information about iNATGAS. Your understanding is that  
13 iNATGAS is negotiating with companies to add to its  
14 customer base?

15 A. (Clark) That's correct. They will be the only open  
16 access firm CNG facility in New England.

17 Q. And, one of the purposes of that type of facility is to  
18 provide peaking supplies, is that a fair --

19 A. (Clark) No. That facility will provide CNG capacity to  
20 other CNG providers that have their own private access  
21 station, as well as end-use customers or any marketer  
22 that wants to enter the CNG business.

23 Q. So, there's a variety of customers interested --

24 A. (Clark) Correct.  
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[WITNESS PANEL: DaFonte~Clark~Whitten] 169

1 Q. -- in that type of facility?

2 A. (Clark) Uh-huh.

3 Q. And, today, you don't know the results of their

4 negotiations, is that true?

5 A. (Clark) Just that they're ongoing.

6 Q. And, I have a couple questions for Ms. Whitten. The

7 Company's projected growth for design day demand is

8 primarily from the C&I sector, is that true?

9 A. (Whitten) In their original filing, yes.

10 Q. And, the Company does not propose allocating costs of

11 the Precedent Agreement differently between the

12 customer classes, is that correct?

13 A. (Whitten) Differently from what?

14 Q. Well, different -- is there a different allocation of

15 PA costs for residential customers?

16 A. (Whitten) My understanding is it would be allocated the

17 same way existing pipeline capacity is allocated in the

18 cost of gas filing, which is based on the customers --

19 the respective customer classes' design peak day

20 requirement.

21 Q. So, under the PA projections, the Company did not do a

22 range of demand forecast scenarios, is that correct?

23 A. (Whitten) They did a trend forecast. Yes, because it

24 was a design peak day.

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[WITNESS PANEL: DaFonte~Clark~Whitten] 170

1 Q. Well, your testimony, on Page 17, which I assume you

2 have in front of you?

3 A. (Whitten) Yes.

4 Q. Let me know when you're there.

5 A. (Whitten) I'm there.

6 Q. And, the question is, "Did the Company evaluate the PA

7 under a range of demand forecast scenarios?" And, the

8 answer on Line 3, would you just read the first

9 sentence.

10 A. (Whitten) Sure. "No. The Company only updated its key

11 variables in its Base Case IRP forecast (filed in

12 2013), for application to the

13 November 2014/October 2015 to

14 November 2018/October 2019 period, and extended the

15 forecast value for the last year by an annual growth

16 factor" --

17 Q. That's --

18 A. (Whitten) -- "for an additional 21 years."

19 Q. That's fine.

20 A. (Whitten) I think that's what I just said earlier, but

21 please correct me, if I'm mistaken.

22 Q. Well, it's your testimony. So, you would know.

23 A. (Whitten) No. I'm saying, I think that's what I

24 answered the first when you asked me. So, I'm just

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1 saying that I think I'm saying the same thing two

2 different ways.

3 Q. Okay. On Page 37, you discuss the "out-of-model

4 capacity-exempt customers return". And, you state that

5 the "Capacity Exempt reverse migration accounts for

6 between 30 percent and 50 percent of the difference

7 between the Total Updated Design Day demand and the

8 original IRP forecast." Did I read that correctly?

9 A. (Whitten) Yes.

10 Q. And, that is still your testimony today?

11 A. (Whitten) Yes.

12 MS. CHAMBERLIN: I have nothing further.

13 CHAIRMAN HONIGBERG: Mr. Kanoff.

14 MR. KANOFF: Good afternoon.

15 WITNESS DaFONTE: Good afternoon.

16 MR. KANOFF: I want to mark a few

17 exhibits for identification.

18 CHAIRMAN HONIGBERG: Go ahead.

19 (Atty. Kanoff distributing documents.)

20 (Whereupon documents, to be described,

21 were herewith marked as Exhibit 30,

22 Exhibit 31, and Exhibit 32,

23 respectively, for identification.)

24 CHAIRMAN HONIGBERG: We're off the

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1 record right now.

2 (Brief off-the-record discussion

3 ensued.)

4 CHAIRMAN HONIGBERG: Mr. Kanoff, you may

5 proceed.

6 MR. KANOFF: Thank you. To the panel,

7 good afternoon.

8 WITNESS WHITTEN: Good afternoon.

9 WITNESS CLARK: Good afternoon.

10 WITNESS DaFONTE: Good afternoon.

11 BY MR. KANOFF:

12 Q. I want to start with the first question on supply

13 planning principles. I think it could go to any of the

14 witnesses. Should a supply plan be based on an

15 evaluation of the reasonable alternatives?

16 A. (DaFonte) Yes. The Company's process --

17 Q. This is just a general question. It's not the

18 Company's process necessarily.

19 A. (DaFonte) The Company believes that a comparison of all

20 available alternatives is appropriate and prudent

21 long-term planning.

22 Q. And, should that include a range of alternatives

23 reasonably available to the Company?

24 A. (DaFonte) It should include a range of alternatives

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 that are viable alternatives and available to the  
 2 Company.  
 3 Q. So, you would not disagree with "reasonably available"?  
 4 A. (DaFonte) Well, if it's an interruptible supply, I  
 5 guess that would be "reasonably available", but it  
 6 wouldn't be viable for long-term planning purposes.  
 7 Q. But it could be a reasonable alternative for short-term  
 8 purposes, for peaking purposes, for other purposes?  
 9 A. (DaFonte) An interruptible supply, no.  
 10 Q. So, should a supply plan be robust over a range of  
 11 potential market demand and price scenarios?  
 12 A. (DaFonte) Yes, I would agree.  
 13 Q. And, as a general principle of portfolio management,  
 14 diversification reduces risk?  
 15 A. (DaFonte) I would agree with that as well.  
 16 Q. Now, the NED project, the Market Path project, as you  
 17 have presented it, both in your testimony and in --  
 18 this is for Mr. DaFonte -- and in the Settlement, would  
 19 you agree that it eliminates relatively low cost,  
 20 short-haul Tennessee capacity service from Dracut at  
 21 50,000 Dekatherms a day?  
 22 A. (DaFonte) Yes. It replaces the 50,000 Dekatherms per  
 23 day that the Company currently has contracted for.  
 24 Q. And, would you also agree that it provides enough  
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1 in the portfolio. But also discussed its analysis of  
 2 those, of the long-term viability of the plants, and  
 3 whether those, in fact, would be retired and when.  
 4 MR. KANOFF: I want to approach the  
 5 witness with some marked exhibits.  
 6 CHAIRMAN HONIGBERG: Uh-huh.  
 7 MS. PATTERSON: Could I have a copy  
 8 please?  
 9 MR. KANOFF: Sure.  
 10 (Atty. Kanoff distributing documents.)  
 11 MS. PATTERSON: Mr. Chairman, at this  
 12 point, I would just like to note that the rules do require  
 13 the participants in a case to bring copies of items that  
 14 are not included in the Commission's docketbook. And, we  
 15 did discuss this amongst counsel. At this point, we  
 16 haven't been provided with every copy of every exhibit  
 17 that's been -- or, every item that's been used as an  
 18 exhibit on cross-examination.  
 19 And, I guess, if people could prepare to  
 20 do that tomorrow, I would appreciate it.  
 21 CHAIRMAN HONIGBERG: I don't -- well, I  
 22 mean -- off the record.  
 23 (Brief off-the-record discussion  
 24 ensued.)  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 additional pipeline capacity from Wright to meet  
 2 projected design day requirements through at least  
 3 2034/35 at 65,000 Dekatherms a day?  
 4 A. (DaFonte) That depends on the Company's decisions with  
 5 regard to retirement of its propane plants, and as well  
 6 as the additional growth assumptions that have  
 7 transpired since the original filing.  
 8 Q. At the time you filed it, and in your rebuttal,  
 9 wouldn't you agree that it provides enough pipeline  
 10 capacity from Wright to meet projected design day  
 11 requirements through at least 2034/35, just as a true  
 12 statement?  
 13 A. (DaFonte) Again, it would, if the Company retained its  
 14 propane plants. But, throughout its testimony, it has  
 15 said that it will evaluate the reasonableness of  
 16 retaining those propane plants. And, in fact, it has  
 17 said that and demonstrated that those propane plants  
 18 are not long-term, viable supply alternatives within  
 19 the portfolio.  
 20 Q. And, in your original filing, didn't you assume that  
 21 you're going to retain the propane facilities? Wasn't  
 22 that part of your forecast?  
 23 A. (DaFonte) The Company assumed, as part of the total  
 24 portfolio available, that the propane plants would be  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 CHAIRMAN HONIGBERG: All right. We're  
 2 on the record.  
 3 MS. PATTERSON: Excuse me. May I ask a  
 4 question before we proceed?  
 5 CHAIRMAN HONIGBERG: Are you on  
 6 the record? Do you want -- you're on the record?  
 7 MS. PATTERSON: It's just about the  
 8 numbering.  
 9 CHAIRMAN HONIGBERG: Let's go off the  
 10 record, if it's about numbering.  
 11 (Brief off-the-record discussion  
 12 ensued.)  
 13 CHAIRMAN HONIGBERG: Okay. We're back  
 14 on.  
 15 BY MR. KANOFF:  
 16 Q. Mr. DaFonte, I just gave you three exhibits that were  
 17 marked for identification. If you could look at  
 18 Exhibit 32, which is a record -- sorry, which is a Data  
 19 Request OCA 1-12. Do you have that in front of you?  
 20 A. (DaFonte) I do.  
 21 Q. And, in that record request -- sorry, that data request  
 22 response, in the second line, there's a sentence that  
 23 begins "the Company".  
 24 A. (DaFonte) Yes.  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 177

1 Q. You see that? Can you read that?

2 A. (DaFonte) "The Company believes the NED project to be a

3 unique opportunity that may not be available again, and

4 that the capacity commitment level is needed to

5 economically meet the growing needs of EnergyNorth's

6 customers and to facilitate economic expansion of

7 EnergyNorth's service territory."

8 Q. Is that the response to OCA 1-12?

9 A. (DaFonte) Yes.

10 Q. Thank you. Do you agree, Mr. DaFonte, that the size of

11 the NED commitment is a significant undertaking for

12 EnergyNorth and EnergyNorth's customers?

13 A. (DaFonte) Yes. It's an opportunity to ensure long-term

14 supply reliability and security at a least-cost price.

15 Q. And, Liberty assumed 115 Dekatherms a day in its

16 decision -- its determination to contract with

17 Tennessee under the Precedent Agreement, is that

18 correct?

19 A. (DaFonte) Yes, 115,000 a day. Correct.

20 Q. And, you decided, in doing that, you actually made one

21 scenario, is that right?

22 A. (DaFonte) Could you repeat the question?

23 Q. You made one scenario in making that decision?

24 A. (DaFonte) We made a determination as to need, and made  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 179

1 Did the Company ever ask Tennessee Gas

2 Pipeline whether you could have gotten another shipper,

3 other terms at a lower contract capacity?

4 A. (DaFonte) The Company undertook negotiations with its

5 fellow LDCs to achieve the greatest benefit for its

6 customers at the lowest possible price.

7 Q. So, the question is, did you ever ask Tennessee Gas

8 Pipeline, either individually or through the collective

9 collaboration of the other LDCs, whether you could have

10 gotten terms at a lower contract quantity? That's the

11 question.

12 MS. KNOWLTON: Objection. The

13 Commission, in an order on a Motion to Compel Response to

14 Discovery Requests about the negotiation process, issued a

15 ruling in Order Number 25,789, that the Commission

16 wouldn't compel discovery of information to shed light on

17 the thinking of parties in their negotiation

18 phase/pre-execution phase of the contract.

19 So, to the extent that counsel for PLAN

20 is inquiring about that pre-negotiate -- that negotiation

21 phase of the contract, I would object to the question.

22 CHAIRMAN HONIGBERG: Mr. Kanoff.

23 MR. KANOFF: It's a relatively simple

24 question. I'm not asking that at all. What I'm asking is  
 {DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 178

1 a -- with that determination, found 115,000 to be a

2 volume that would be sufficient to ensure continued

3 reliability of service to customers, with the

4 understanding that the Company would make additional

5 decisions with respect to its propane facilities during

6 the period that this contract is in effect.

7 Q. You did not evaluate scenarios of less than 115,000

8 Dekatherms a day, did you?

9 A. (DaFonte) When you say "evaluate", are you specifically

10 talking about a model or just a consideration by the

11 Company?

12 Q. Please refer to OCA 1-11. Read the first sentence of

13 that response.

14 A. (DaFonte) "The Company did not evaluate scenarios with

15 capacity other than 115,000 Dekatherms per day

16 requested in the Company's filing."

17 Q. Thank you.

18 A. (DaFonte) But I believe that references another

19 response, which is "Staff 2-14". I just wasn't sure if

20 Staff 2-14 was a SENDOUT question or was it some other

21 type of scenario? That was the confusion I had.

22 Q. My question was, "did the Company evaluate scenarios of

23 less than 115,000?" And, thank you for your response

24 to that question as you just read.  
 {DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 180

1 whether Liberty, either on its own or in some other way,

2 ever asked Tennessee Gas Pipeline whether it could have

3 gotten a deal at a lower contract quantity?

4 CHAIRMAN HONIGBERG: How is that not a

5 question about what happened in negotiations or what they

6 considered in negotiations? Isn't that exactly what it

7 is?

8 I mean, I guess I'm -- I'm getting set

9 to sustain the objection. But I'm trying to see what

10 distinction you're making.

11 MR. KANOFF: I think the distinction is

12 the objection had to do, and the prohibition, the concern

13 of the Commission had to do with the LDC Consortium, and

14 getting behind the curtain as to whether that group --

15 (Court reporter interruption.)

16 MR. KANOFF: -- the LDC Consortium, and

17 how that group functioned in negotiations undertaken by

18 that group. When I asked the Company the question

19 initially, I asked it directly, I asked to Liberty. The

20 witness brought in the Consortium, so, I went to that.

21 But now I'm happy to go back to just ask

22 the Company whether it, on its own, ever inquired as to

23 Tennessee Gas Pipeline whether it could have gotten a

24 Precedent Agreement at a lower contract quantity?  
 {DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 CHAIRMAN HONIGBERG: I am certain that  
2 the precedents that we cited -- I'm sorry to use that  
3 word -- that the decisions that we cited supporting the  
4 grant -- the ruling that we made are broad enough to  
5 include an individual company's negotiations, not just the  
6 Consortium's. So, I think we're going to sustain the  
7 objection.

8 MR. KANOFF: Understood.

9 BY MR. KANOFF:

10 Q. Now, we talked about this earlier, I didn't, but you  
11 had conversations with OCA. And, as part of your  
12 discussion of the proposed Settlement, that,  
13 fundamentally here, the Precedent Agreement is seeking  
14 approval for transportation capacity on the Market Path  
15 Pipeline segment, is that correct?

16 A. (DaFonte) Yes. This particular PA is just for the  
17 Market Path segment.

18 Q. And, the Market Path segment goes from Wright, New  
19 York, to Dracut, Mass., through Massachusetts, into New  
20 Hampshire, and back again into Massachusetts,  
21 terminating in Dracut?

22 A. (DaFonte) I believe that's the path. But, from a  
23 utility perspective, we're contracting from Point A to  
24 Point B. So, as far as where the pipe goes, that's not

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1 built and approved that will take gas from  
2 Marcellus/Utica to Wright?

3 A. (DaFonte) That was the assumption for the --

4 Q. That assumption --

5 A. (DaFonte) -- for the analysis, yes.

6 Q. Yes. So, that's the assumption?

7 A. (DaFonte) It's the assumption, but it's also a  
8 requirement in the PA, that a infrastructure to  
9 transport gas from the Marcellus/Utica shale to Wright  
10 has to be built.

11 Q. So, if infrastructure from Marcellus to Wright is not  
12 built, can Tennessee -- is Tennessee Gas Pipeline  
13 entitled/allowed to terminate the PA?

14 A. (DaFonte) Well, actually, the Company is allowed to  
15 terminate the PA.

16 Q. How about Tennessee Gas Pipeline? They could terminate  
17 it as well, isn't that right?

18 A. (DaFonte) Yes, they could terminate it.

19 Q. Is it your understanding that, if the pipeline from  
20 Marcellus to Wright is not built and constructed, that  
21 this Precedent Agreement will, in fact, be terminated?

22 A. (DaFonte) Well, obviously, if there is no  
23 infrastructure, then we would certainly look to  
24 terminate this agreement.

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1 really something that we can control. So, it's just  
2 really Point A to Point B. That's all we're  
3 contracting for.

4 Q. Right. But, in terms of how I just described it, was  
5 there anything inaccurate about that?

6 A. (DaFonte) At this point in time, I believe that's the  
7 path. But, you know, again, it has changed, from my  
8 understanding, so --

9 Q. Assuming it doesn't change, that's the path?

10 A. (DaFonte) But I believe that's how it would work, if it  
11 does not change.

12 Q. And, Liberty assumes that it will procure gas from  
13 Marcellus and Utica, at Wright, to the Market Path  
14 project, and that new pipelines will be approved and  
15 built to transport the gas to Wright. Isn't that  
16 correct?

17 A. (DaFonte) Well, as part of this particular filing, the  
18 analysis was done simply from Wright purchase point to  
19 the Company's citygates for delivery. Assumptions were  
20 made as to what the basis pricing would be at Wright,  
21 and the contract itself, the PA, provides that a  
22 project, a supply project, must be built to Wright, in  
23 order for the Market Path commitment to take effect.

24 Q. So, you do assume that additional pipelines will get  
{DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

1 Q. So, the --

2 A. (DaFonte) But, as I've stated earlier, we have been in  
3 negotiations with Tennessee to ensure that there is  
4 volume at Wright through their Supply Path project.

5 Q. But the question is, hypothetically, no volume at  
6 Wright, if those negotiations are not successful,  
7 and/or a pipeline does not get constructed from  
8 Marcellus to Wright, is it your understanding that the  
9 Precedent Agreement will be terminated? That's the  
10 question.

11 A. (DaFonte) We would likely terminate that, if no supply  
12 comes in at Wright.

13 Q. Now, currently, there's a number of pipelines under  
14 consideration, are there not, going from Marcellus to  
15 Wright?

16 A. (DaFonte) Repeat that again. I'm sorry.

17 Q. Yes. There are a number of pipelines currently under  
18 consideration for approval that will take gas from  
19 Marcellus to Wright?

20 A. (DaFonte) Yes. I'm aware of the Constitution Pipeline.  
21 And, I believe there's also a Dominion project, as well  
22 as the Tennessee Supply Path project that I spoke of  
23 earlier.

24 Q. And, with respect to Constitution, or have you had any  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 discussions with them about the possibility of

2 procuring gas from Marcellus to Wright?

3 A. (DaFonte) Yes. We've had negotiations with Williams,

4 who's one of the responders of the Constitution

5 project, about an expansion of the Constitution

6 Pipeline to Wright. We've also had some discussions

7 with suppliers as well.

8 Q. And, at this point, you have not entered into any

9 agreement for firm supply at Wright, have you, from

10 Constitution?

11 A. (DaFonte) No, we have not.

12 Q. Are those negotiations still underway?

13 A. (DaFonte) The only negotiations that are currently

14 active are negotiations with Tennessee for the Supply

15 Path project, which accesses Marcellus/Utica shale

16 directly.

17 Q. So, no more -- no ongoing discussions with

18 Constitution, but active discussions with respect to

19 Supply Path, is that right?

20 A. (DaFonte) Correct.

21 Q. And, just for the record, is it your understanding that

22 Constitution, appreciating your answer, that is that

23 fully subscribed right now, do you know?

24 A. (DaFonte) My understanding is that it's fully  
 {DG 14-380} [REDACTED - for public use] {07-21-15/Day 1}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 Energy, which are the subscribers to the Constitution

2 project. There's also, as I mentioned, the Dominion

3 project that is proposed to be built to interconnect

4 with Iroquois Pipeline, which is -- which interconnects

5 with Wright. And, of course, there may be suppliers or

6 producers that will contract with Tennessee on the

7 Supply Path portion of their project as well.

8 BY MR. KANOFF:

9 Q. So, you're going to -- essentially, is the plan then

10 that, for some part of the 115,000 Dekatherm a day

11 quantity under discussion here, you're going to get

12 some of that from the Supply Path, and you're going to

13 seek other suppliers for the remainder?

14 A. (DaFonte) Correct.

15 Q. And, some of those other suppliers are essentially the

16 Constellation -- sorry, Constitution producers,

17 Southwestern and Cabot that you just mentioned?

18 A. (DaFonte) Yes. It could be those. Or, as I said, it

19 could be shippers on the Supply Path itself.

20 Q. But you're not having any discussions with any of those

21 other entities in the moment. You're just having

22 discussions with Tennessee?

23 A. (DaFonte) Correct.

24 Q. How much are you looking for from Tennessee with  
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1 subscribed by the two producers that hold all the

2 capacity on the project.

3 Q. With respect to your discussions with Tennessee

4 regarding the Supply Path project, are you negotiating

5 with them for the same quantity as you have requested

6 approval here under the Market Path segment, 115,000

7 Dekatherms a day?

8 A. (DaFonte) It's likely to be less than that.

9 Q. And, the difference between what you're negotiating and

10 what you're seeking approval for here is going to be

11 obtained from where?

12 A. (DaFonte) It would be purchased -- purchases at Wright.

13 It simply is to diversify the portfolio, through the

14 purchases in the Marcellus, as well as purchases

15 further downstream at Wright.

16 Q. And, what suppliers are going to be available to

17 provide that additional capacity that is not available

18 in the Supply Path segment at Wright, who's going to be

19 providing that gas?

20 A. (DaFonte) Suppliers at Wright would include the

21 South --

22 (Court reporter interruption.)

23 CONTINUED BY THE WITNESS:

24 A. (DaFonte) I'm sorry. Southwestern Energy and Cabot  
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1 respect to the Supply Path segment? What quantity?

2 A. (DaFonte) We haven't determined the exact amount. But

3 it's going to be probably somewhere between 70,000 and,

4 you know, probably 80,000, somewhere in that

5 neighborhood. But, more than likely, about 70,000.

6 Q. When is that -- there was some discussion earlier about

7 the need to wrap up those discussions and your desire

8 to submit a filing, I believe you mentioned here, for a

9 Precedent Agreement on the Supply Path side. And,

10 given your response that you're still having

11 discussions, can you perhaps give us a little bit more

12 detail about the timing of that?

13 A. (DaFonte) You know, I would say, within the next month

14 or so, we should have a final PA executed and ready to

15 be filed.

16 Q. And, are you, and "you" I mean "is Liberty",

17 negotiating that individually with Tennessee Gas

18 Pipeline or is it part of the LDC Consortium?

19 A. (DaFonte) It is, once again, part of the LDC Consortium

20 negotiations.

21 Q. And, is part of those discussions -- or strike that.

22 Are you aware as to whether any of those other

23 utilities in the LDC Consortium are also going to need

24 approval of precedent agreements before their  
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1 regulators?  
2 MS. KNOWLTON: Objection to the  
3 relevance of the question.  
4 CHAIRMAN HONIGBERG: Mr. Kanoff.  
5 MR. KANOFF: I'm just trying to  
6 establish what the regulatory requirements are, which is  
7 relevant to the timelines that may be in play here with  
8 respect to this pipeline request, Market Path versus --  
9 CHAIRMAN HONIGBERG: Overruled. Mr.  
10 DaFonte, you can answer.  
11 BY THE WITNESS:  
12 A. (DaFonte) Well, they're -- the other utilities are  
13 subject to some of the, you know, similar state  
14 regulatory requirements. So, I suspect that they would  
15 be filing for approval of their portion of the Supply  
16 Path capacity.  
17 BY MR. KANOFF:  
18 Q. And, is it your understanding as well that their  
19 precedent agreements -- strike that. One of the things  
20 that still is somewhat confusing, why are you not  
21 requesting the full amount of your NED quantity in the  
22 Supply Path contract? Why is there -- why is less  
23 contracted for or under discussion to be contracted  
24 for? Why not go for 115,000, as opposed to 70 or 60 or  
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1 some other number?  
2 A. (DaFonte) Well, it's, basically, a diversity decision  
3 in that regard, just like we try to diversify our  
4 supply points, always looking for liquid points for  
5 sure. But there is some, you know, there's still some  
6 uncertainty as to what the, you know, future prices  
7 will be at various locations. What we do know is that  
8 there is substantial production in Marcellus. We, at  
9 the very least, want to gain access to that supply, and  
10 then, as the market develops at Wright, we would  
11 diversify by purchasing -- making some of our purchases  
12 at Wright.  
13 Q. Has the Company done any analysis with respect to the  
14 benefits of one supply source at Wright versus another  
15 supply source at Wright? When you talk about  
16 diversification, uncertainties of future prices, is  
17 there any analysis that you've done with respect to any  
18 of those elements, diversity, prices, that will inform  
19 your decision in the Supply Path portion?  
20 MS. KNOWLTON: Objection. I understand  
21 the relevance to some extent of inquiry about Supply Path.  
22 But the Company has indicated that it will be filing a  
23 docket here at the Commission to seek approval of that  
24 Supply Path agreement. And, at that time, parties to that  
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1 proceeding can undertake questioning about the analysis  
2 that the Company pursued or undertook when it considered  
3 that agreement. I feel like we've sort of crossed that  
4 line of the relevance to this proceeding.  
5 CHAIRMAN HONIGBERG: Mr. Kanoff.  
6 MR. KANOFF: In response to my question,  
7 he noted that they were undertaking considerations of  
8 diversity and price. And, I just asked a follow-up  
9 question to that. The relevance here is that, in some  
10 way, the gas that is going to be obtained over Supply Path  
11 and/or other sources is going to connect into NED. And,  
12 as part of your judgment in making a decision on this  
13 Precedent Agreement, it would be helpful to appreciate the  
14 pricing risks and the supply risk associated with what's  
15 going to connect to NED. And, that's the other part of  
16 this.  
17 CHAIRMAN HONIGBERG: Yes, I think that's  
18 where you're going. And, I think that's okay. Although,  
19 I'm not sure how much further you can or should take that.  
20 MR. KANOFF: Not much.  
21 CHAIRMAN HONIGBERG: So, you can answer  
22 the question, if you remember it. It might be helpful for  
23 you to restate the question.  
24 MR. KANOFF: Could I just have it read  
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1 back?  
2 CHAIRMAN HONIGBERG: I'm not sure -- off  
3 the record.  
4 (Brief off-the-record discussion  
5 ensued.)  
6 BY MR. KANOFF:  
7 Q. Has the Company done any analysis with respect to  
8 supply choices available on the Supply Path segment,  
9 with respect to price or diversity, diversification?  
10 A. (DaFonte) We have done analysis, and we'll be  
11 presenting that when we make our filing here in the  
12 next month or so. But what's before the Commission  
13 here is a -- it's a stand-alone Precedent Agreement,  
14 which analysis was performed based on purchases at  
15 Wright.  
16 Q. So, what we've heard so far is that the Precedent  
17 Agreement under consideration here is linked to the  
18 Supply Path segment, also under -- under future  
19 consideration. And, the question that presents itself  
20 from that is, why should the Commission not consider  
21 the two proposals together?  
22 A. (DaFonte) The Commission has before it a capacity  
23 contract that the Company believes has demonstrated is  
24 required to meet the Company's customers' firm  
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1 requirements on a long-term basis, absent any contract  
2 upstream for additional capacity. So, this effectively  
3 is a -- it's a stand-alone contract. It does, as I  
4 mentioned earlier, provide us with flexibility to  
5 access other supply sources. But those will be  
6 presented at a future date, and the merits of that  
7 decision will be -- will be explored at that time. But  
8 this is the contract that's before the Commission right  
9 now. And, you know, we have a Settlement in place that  
10 supports the decision for the 115,000, with incentives  
11 and requirements that --

12 CHAIRMAN HONIGBERG: Mr. DaFonte, stop.  
13 You've answered the question.  
14 BY MR. KANOFF:  
15 Q. One of the assumptions in your testimony is the market  
16 at Wright, as a general observation. Will the Supply  
17 Path project utilize the Wright facilities and create a  
18 market at Wright? Or, will it just -- I'll leave it at  
19 that. Go ahead.  
20 A. (DaFonte) Well, certainly, the Supply Path is designed  
21 to bring Marcellus supplies to Wright; as is the  
22 Constitution project, as is the Dominion project. So,  
23 together, they're all looking to converge on a single  
24 point to provide supply into the region. The Company,  
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1 as mentioned, is exploring and has done analysis on the  
2 best options for its customers with regard to the  
3 Supply Path at this time.  
4 Q. Is it correct to assume that, as a hypothetical, if  
5 Supply Path is built, that gas could flow directly from  
6 Marcellus, into NED, to Dracut, without any activity in  
7 Wright?  
8 A. (DaFonte) Well, Wright is essentially a pooling point.  
9 So, it accepts supplies -- it would accept supplies  
10 from multiple pipelines, conceivably. And, then,  
11 anyone holding capacity on the NED Market Path project  
12 would procure supplies at Wright.  
13 Q. Well, couldn't shippers, as a hypothetical, if a Supply  
14 Path was being built was real, couldn't shippers just  
15 by gas at Marcellus, and they would be -- not have to  
16 deal with the market at Wright, couldn't they do that?  
17 A. (DaFonte) Sure. They could do that.  
18 Q. So, it's an option?  
19 A. (DaFonte) Right. It's an option, yes.  
20 Q. Does EnergyNorth have any termination rights under the  
21 Precedent Agreement as proposed?  
22 A. (DaFonte) The Company can terminate the Agreement if it  
23 does not receive regulatory approval for the contract,  
24 as proposed in the Precedent Agreement, which is  
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1 115,000, or, in the alternative, 100,000.  
2 Q. Is there any opportunity for the Company to terminate  
3 on the basis of schedule delays?  
4 A. (DaFonte) Yes. There's a provision in the Agreement  
5 related to construction schedule. So, that if it is --  
6 if construction has not begun by a date certain, then  
7 the Company would have the ability to terminate the  
8 Agreement as well.  
9 Q. And, under the -- is it also true, under the Precedent  
10 Agreement, that there's some provisions in there  
11 specifically about the schedule for the project, that  
12 it could take as long as \_\_\_\_\_, is that correct?  
13 A. (DaFonte) I'm sorry. I'm just looking to see if that  
14 information is confidential.  
15 Q. Yes, that's a good -- check out Bates 065.  
16 A. (DaFonte) And that is confidential.  
17 CHAIRMAN HONIGBERG: I'm going to stop  
18 you just for a second, Mr. Kanoff. I said "we could stay  
19 until 5:00". I actually want to make sure that that's  
20 true. So, we're going to take a four or five minute break  
21 for Commissioner Scott and me to go upstairs and make sure  
22 that we're good till 5:00. We'll be right back.  
23 {Recess taken at 4:08 p.m. and the  
24 hearing resumed at 4:18 p.m.}  
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1 CHAIRMAN HONIGBERG: All right. Mr.  
2 Kanoff.  
3 BY MR. KANOFF:  
4 Q. In your analysis in the SENDOUT model -- in your  
5 analysis in the SENDOUT model, you assumed a price for  
6 gas from Wright, is that right?  
7 A. (DaFonte) That's correct.  
8 Q. And, at the present time, there's no market index that  
9 provides that price there, is there?  
10 A. (DaFonte) No, there isn't.  
11 Q. And, so, we have to assume a value for that gas, in  
12 lieu of a market data point, is that fair?  
13 A. (DaFonte) Yes. Correct.  
14 Q. And, you assumed a rate associated with Wright as shown  
15 in PLAN 1-3, which is an exhibit to Mr. Rosenkranz's  
16 testimony, JAR-14? It's JAR-5, PLAN 1-3.  
17 MS. PATTERSON: Could I have the Bates  
18 Page please?  
19 CHAIRMAN HONIGBERG: Mr. Kanoff, you  
20 made a reference to the "Rosenkranz testimony", an exhibit  
21 thereto. Can you make sure we have all got there? The  
22 Bates Page from the Rosenkranz testimony that you're  
23 referring to is what? Or, was it -- again, is it --  
24 MR. KANOFF: It's Exhibit JAR-5 of the  
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1 Rosenkranz testimony. We can provide, if you give me a  
2 moment, we can provide the page numbers as well.  
3 CHAIRMAN HONIGBERG: How about 44?  
4 How's that work? Good? All right. Go ahead.  
5 MR. KANOFF: Okay.  
6 WITNESS DaFONTE: I'm sorry. I don't  
7 think I have it.  
8 MS. KNOWLTON: If I may approach the  
9 witness?  
10 CHAIRMAN HONIGBERG: Go ahead,  
11 Ms. Knowlton.  
12 (Atty. Knowlton handing document to  
13 Witness DaFonte.)  
14 WITNESS DaFONTE: Okay. I'm there.  
15 BY MR. KANOFF:  
16 Q. So, the question was, the assumed rate associated with  
17 Wright is as shown in PLAN 1-3, which is JAR-5, is that  
18 right?  
19 A. (DaFonte) That's correct.  
20 Q. And, the pricing assumptions for Wright were provided  
21 by the Consortium of ten utilities that were discussed  
22 earlier, is that correct?  
23 A. (DaFonte) Yes, that's correct.  
24 Q. And, they were based upon approximations as determined  
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1 by that group, is that right?  
2 A. (DaFonte) Yes.  
3 Q. And, is it also correct that the values won't be known  
4 until there's a market at Wright?  
5 A. (DaFonte) Well, no values will be known until, you  
6 know, the gas actually begins to flow. But there is  
7 some reasonable approximations. There's indices for  
8 gas flowing into Iroquois, which would be at  
9 Waddington. So, it's an index that's into Iroquois.  
10 So, there is some data there. But, because we're  
11 talking about an impact of new projects being built to  
12 bring gas from Marcellus directly to Wright, you really  
13 don't have a robust forecast available for those  
14 purchases.  
15 Q. Right. And, so, to say -- to sum up then, Waddington  
16 can be a proxy for Wright, but the number that was used  
17 in your analysis was provided by the Consortium of ten  
18 utilities, based upon approximations as determined by  
19 that Consortium. Did I get it right?  
20 A. (DaFonte) That's correct.  
21 Q. Okay. And, it is also true that there's no supporting  
22 materials provided, like if I refer you to PLAN 2-13,  
23 which is JAR-6?  
24 A. (DaFonte) Okay.  
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1 Q. Is that correct? There's no supporting materials?  
2 A. (DaFonte) Well, the Company did provide Attachment  
3 PLAN-1-3.xlsx, which was the support for the  
4 calculation of the basis.  
5 Q. But there's no -- I guess the question is, and  
6 apologies if it's confusing, the question is, there's  
7 no supporting materials provided that detail the  
8 approximations made by the Consortium, is that correct?  
9 A. (DaFonte) Well, I believe that in that attachment that  
10 there is data supporting how the Consortium arrived at  
11 the basis calculation.  
12 CHAIRMAN HONIGBERG: Mr. Kanoff, I'm  
13 almost certain that you and the witness are literally not  
14 on the same page. So, why don't you try again. See if  
15 you can get him to the right data request and response.  
16 MR. KANOFF: I will do that.  
17 CHAIRMAN HONIGBERG: Which data request  
18 are you trying to pull back there?  
19 MR. KANOFF: We actually were just  
20 pulling PLAN 2-13.  
21 CHAIRMAN HONIGBERG: 2-13, if I'm not  
22 mistaken, is one of the JAR exhibits on Bates Page 047 in  
23 Mr. Rosenkranz's testimony, is that right?  
24 MR. GATES: I believe that is correct,  
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1 your Honor.  
2 CHAIRMAN HONIGBERG: All right. Who  
3 gave me a promotion?  
4 MR. GATES: Force of habit.  
5 CHAIRMAN HONIGBERG: So, I think that's  
6 the page you want him to get to. I think, Ms. Knowlton,  
7 you gave him -- you gave the witness a book that has those  
8 exhibits in it, did you not?  
9 MS. KNOWLTON: Yes, I did.  
10 CHAIRMAN HONIGBERG: All right. So, I  
11 think, if go to Bates Page 047 from Mr. Rosenkranz's  
12 testimony, I think you'll be looking at the data request  
13 that Mr. Kanoff wants to ask you about.  
14 BY MR. KANOFF:  
15 Q. So, what I'm just trying to understand is whether you  
16 received, in looking at 2-13, whether you received any  
17 supporting materials about the pricing assumptions  
18 developed by the Consortium?  
19 A. (DaFonte) Yes. And, those were provided in Attachment  
20 PLAN 1-3, which is referenced in your data request.  
21 Q. And, 1-3 references "2-13", does it not?  
22 A. (DaFonte) No, because Set 2 wouldn't have been asked  
23 yet. So, there's an attachment in the Company's  
24 response to PLAN 1-3. In that attachment, there is  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 documentation supporting the analysis by the LDC  
 2 Consortium. In PLAN 2-13, PLAN references "Attachment  
 3 PLAN 1-3". So, I've already provided it.

4 Q. So, I think where we are, and I'm just going to move  
 5 on, but I think the takeaway is, to the extent there is  
 6 supporting material, it's an attachment to 1-3?

7 A. (DaFonte) Correct. Yes.

8 Q. Okay. Did the Company independently create any assumed  
 9 gas price used in the SENDOUT model for Wright?

10 A. (DaFonte) Now, with regard to SENDOUT, the Company used  
 11 the basis assumptions contained in Attachment PLAN 1-3  
 12 as inputs so that it could run the SENDOUT model.

13 Q. Now, even with NED, is it correct that a majority of  
 14 the Liberty market will depend upon the Concord  
 15 Lateral?

16 A. (DaFonte) Yes. NED will provide a new interconnect at  
 17 the western end of the Company's distribution system,  
 18 in and around West Nashua. That is anticipated to be  
 19 able to provide approximately 65,000 Dekatherms of  
 20 design day capacity. Based on the total requirements  
 21 of the Company of, you know, approximately 150,000, all  
 22 the way up to the 217 or so thousand that is in the  
 23 forecast, that difference early on will be flowing up  
 24 the Concord Lateral. So, it's really about 65,000 to  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 begin with will serve Nashua, and then Concord would be  
 2 served the remainder of it, until there's a, you know,  
 3 another, you know, either an expansion of the Company's  
 4 distribution system or a potential expansion of the  
 5 Concord Lateral, if required.

6 Q. So, if I'm hearing that right, the Concord Lateral  
 7 serves about 60-65 percent of the Company's  
 8 requirements, after NED or even with NED?

9 A. (DaFonte) Well, I guess it depends on the actual year  
 10 that you're looking at. We -- because it depends on  
 11 the design day. And, so, if you want to pick a year,  
 12 we can do the calculations. But just know that,  
 13 initially, about 65,000 would be coming through that  
 14 new interconnect on the west end of the Company's  
 15 distribution system. So, the difference between that  
 16 and the design day that the Company has forecast would  
 17 be served through the Concord Lateral. That's probably  
 18 the easiest way to explain it.

19 Q. And, there's no physical connection from NED to  
 20 Manchester or Concord, is there?

21 A. (DaFonte) Not -- it's not being proposed in this PA.

22 Q. And, is it something that's going to be proposed at  
 23 some point?

24 A. (DaFonte) Well, you know, again, the flexibility  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 afforded by NED will allow the Company to, you know,  
 2 add customers over time, and look at the most  
 3 cost-effective way to bring additional capacity, if  
 4 needed, to Manchester and other parts of its  
 5 distribution system. Now, ideally, the way the Company  
 6 would approach that is to add new customers, and serve  
 7 those customers through an enhancement or upgrade of  
 8 its distribution backbone system through Nashua, and  
 9 then ultimately up to Manchester.

10 Q. Now, if you needed to expand the Concord Lateral, as a  
 11 hypothetical, would that be a matter of cost, not  
 12 feasibility? Am I hearing that right?

13 A. (DaFonte) Yes, it would be a matter of cost. And, I  
 14 would also throw in reliability and flexibility as  
 15 well. Ideally, the Company would love to continue to  
 16 develop, essentially, a parallel backbone system on the  
 17 west end of its system, so that it then has feeds from  
 18 both the Concord Lateral and this other interconnect or  
 19 potentially interconnects with the NED project. That  
 20 ideally is the way you would want to set up your  
 21 distribution system, for redundancy and reliability  
 22 purposes.

23 Q. So, is there -- is the Company considering then  
 24 expanding the Concord Lateral, even with NED? I'm just  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 trying to understand what you just said.

2 A. (DaFonte) No, the Company is not considering that.  
 3 What I'm saying is that, in long term, when we have to  
 4 make decisions with regard to our propane plants and  
 5 with regard to growth on our system, the Company will  
 6 explore all alternatives. That is increasing the  
 7 amount of supply that comes in from the new  
 8 interconnect with NED, expanding its distribution  
 9 system or enhancing its distribution system, so that  
 10 more of that gas can flow up to Manchester and other  
 11 parts of the system, or, if need be, we will look at  
 12 the Concord Lateral in the future. But that's not  
 13 forecast to happen in the next, you know, 10-15 years.

14 Q. So, just to be clear, if the Concord Lateral is  
 15 supplying gas to 60 percent, and I'm using that number  
 16 because it's referenced in PLAN 4-17, which I can make  
 17 an exhibit for identification, and the rest of it's  
 18 coming from NED, and NED is not connected to the  
 19 Concord Lateral, and the 60 percent expands, how are  
 20 you going to serve that 60 percent, if you don't expand  
 21 the Concord Lateral?

22 A. (DaFonte) Well, as I said, there's additional volumes  
 23 that can come up through NED at the West Nashua  
 24 interconnect. So, it's a question of how those volumes  
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1 get into the distribution system or whether they can  
 2 displace volumes, not just at the Nashua gate station,  
 3 but further north.  
 4 Q. Has that been analyzed by the Company in any specific  
 5 way?  
 6 A. (DaFonte) Not at this time.  
 7 Q. So, it's something that you think you could do, but it  
 8 hasn't been evaluated specifically?  
 9 A. (DaFonte) It's not - it's not needed at this point in  
 10 time. But the Company, as it does with all of its  
 11 system enhancements, will continue to do its  
 12 engineering studies and evaluate the best-cost  
 13 alternative to continuing to serve its customers,  
 14 whether it's through an expansion of the new facilities  
 15 or existing facilities.  
 16 Q. Now, you had mentioned this earlier, the cost to expand  
 17 the Concord Lateral was an important part of your  
 18 decision to invest in NED, isn't that right?  
 19 A. (DaFonte) Yes. The comparison of the cost of the  
 20 expansion of the Concord Lateral, to the cost to  
 21 contract for capacity on NED, led us to decide that the  
 22 NED volumes were the most cost-effective, and, in  
 23 addition, provided additional flexibility and  
 24 reliability for the Company and its customers.  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 207

1 is that correct?  
 2 A. (DaFonte) That's correct.  
 3 Q. And, then, about a week later, you got a response back,  
 4 is that correct?  
 5 A. (DaFonte) That's correct.  
 6 Q. And, then, in June, you received the third estimate, is  
 7 that right?  
 8 A. (DaFonte) Correct.  
 9 Q. And, so, you have three different numbers for the  
 10 Concord Lateral. As part of -- and the first one was  
 11 October 8th, correct?  
 12 A. (DaFonte) Correct.  
 13 Q. Now, as part of your consideration of NED and Liberty's  
 14 decision to proceed with the investment, you mentioned  
 15 that you at some point were involved in the LDC group,  
 16 is that right?  
 17 A. (DaFonte) Yes. That's correct.  
 18 Q. Was that before or after you participated in the Open  
 19 Season?  
 20 A. (DaFonte) Well, we began discussions with Tennessee  
 21 back in 2013, as I mentioned earlier in a response. We  
 22 had, at that time, modeled 90,000 Dekatherms of what  
 23 was then called the "Northeast Expansion project" from  
 24 Tennessee, and we modeled that in our IRP, that 2013  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 206

1 Q. Now, is it accurate that you first inquired to  
 2 Tennessee, with respect to the cost of expanding the  
 3 Concord Lateral, on October 8th, you made an oral  
 4 request to them? It's in Staff Tech-46(a). Is that  
 5 right?  
 6 A. (DaFonte) Yes. That's correct.  
 7 (Atty. Kanoff distributing documents.)  
 8 CHAIRMAN HONIGBERG: This is  
 9 "Exhibit 33" that's being marked right now.  
 10 (The document, as described, was  
 11 herewith marked as Exhibit 33 for  
 12 identification.)  
 13 BY MR. KANOFF:  
 14 Q. So, you have the exhibit in front of you now, it's been  
 15 marked for identification "Exhibit 33". And, the  
 16 question was, you first inquired to Tennessee about the  
 17 cost of expanding the Concord Lateral on October 8th is  
 18 an oral request, is that right?  
 19 CHAIRMAN HONIGBERG: He already answered  
 20 that question "Yes".  
 21 MR. KANOFF: Thank you.  
 22 BY MR. KANOFF:  
 23 Q. And, you followed that up with another request to  
 24 Tennessee in December, that's Staff 46(a) confidential,  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 208

1 IRP. So, we began at that time having discussions with  
 2 Tennessee. And, then, subsequently, as other utilities  
 3 became interested in the project, we developed the LDC  
 4 Consortium.  
 5 Q. And, the timeframe for the LDC Consortium, was that  
 6 before or after the Open Season?  
 7 A. (DaFonte) I believe that was after the Open Season.  
 8 Q. And, you participated -- Liberty participated in the  
 9 Open Season, would that be in March of 2014?  
 10 A. (DaFonte) I believe, subject to check, that was right.  
 11 Q. And, at that time, did you sign up for 115 Dekatherms a  
 12 day?  
 13 A. (DaFonte) I believe what we signed up for was 100,000,  
 14 plus 15,000 additional, to deal with returning  
 15 capacity-exempt customers. Yes.  
 16 Q. So, --  
 17 A. (DaFonte) So, 115,000 is what we ultimately signed up  
 18 for.  
 19 Q. And, in order to do that, did you get internal company  
 20 approvals? Was the Board of Directors involved?  
 21 A. (DaFonte) Not at that time, not for a non-binding Open  
 22 Season, no.  
 23 Q. And, when did they get involved?  
 24 A. (DaFonte) The only time that they were involved was  
 (DG 14-380) [REDACTED - for public use] {07-21-15/Day 1}

[WITNESS PANEL: DaFonte-Clark-Whitten] 209

1 when the contract or the Precedent Agreement needed to  
2 be executed.

3 Q. So, they were involved sometime before October 24th, is  
4 that right?

5 A. (DaFonte) October 24th of what year?

6 Q. 2014. And, I use that -- I don't mean to get ahead of  
7 you. The Precedent Agreement was effective on  
8 October 24th, take that subject to check?

9 A. (Witness DaFonte nodding in the affirmative).

10 Q. So, just extrapolate from what you said, the Board  
11 considers this before that, in that timeframe?

12 A. (DaFonte) Yes.

13 Q. Would have been in September?

14 A. (DaFonte) Would have been around that time period.

15 Q. So, by September, it's pretty far along, internally,  
16 for 115,000?

17 A. (DaFonte) Right. My analysis by that time was pretty  
18 far along, and the 115 had, as I said, had been  
19 submitted as part of the Open Season from Tennessee.

20 Q. And, then, you filed the case December 31st here. So,  
21 the progression was, you got internal company approval,  
22 Open Season 2014, at about 115,000 Dekatherms a day,  
23 then internal company approval sometime after that,  
24 September/October we'll call it for this discussion.

(DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

[WITNESS PANEL: DaFonte-Clark-Whitten] 210

1 You executed the PA October 2014. And, you filed the  
2 case December 31st, 2014. Do I have it right?

3 A. (DaFonte) That's correct.

4 Q. Okay. So, if we think about that timeline, you really  
5 didn't know about the price associated with expanding  
6 the Concord Lateral when you first signed up for this  
7 and got Board approvals, did you?

8 A. (DaFonte) The Concord Lateral, the initial ballpark  
9 estimate for expansion of the Concord Lateral was  
10 actually discussed back in 2013. As part of the  
11 attachment to Staff Tech-46(a), there's an e-mail from  
12 April 22nd, 2013 asking for a rate for a volume or an  
13 expansion on the Concord Lateral at that time of 35,000  
14 Dekatherms. So, that was sort of the initial  
15 understanding of where the expansion costs may end up.  
16 But, given that we were looking at a greater volume, we  
17 went back to Tennessee and asked them to recalculate  
18 what that expansion cost would be. And, that was in --  
19 you know, that was subsequently requested.

20 Q. But, in terms of -- so, your testimony is, in terms of  
21 making a specific judgment for Open Season, making a  
22 specific judgment that went to the Board, making a  
23 specific investment on the NED case as proposed here,  
24 that at the time you did all that in 2014, you were

(DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

[WITNESS PANEL: DaFonte-Clark-Whitten] 211

1 relying on a 2013 estimate that you did not update? Is  
2 that what you're saying?

3 A. (DaFonte) No. I'm saying that the ballpark, we  
4 essentially relied on the 2013 estimate as, you know,  
5 an indication of what the cost may be. Given that  
6 cost, and given the alternatives, the NED project was  
7 clearly the superior option. In order to present the  
8 most updated information, with regard to that Concord  
9 Lateral expansion, the Company then went back to  
10 Tennessee with more specific requirements, the 50,000,  
11 for example, and the request on October 2nd that was  
12 provided to us, and then, subsequently, the additional  
13 volume.

14 Q. Well, didn't you say, in your correspondence with  
15 Tennessee, as part of your involving in the filing in  
16 this case, that you needed the information specifically  
17 for the expansion of the Concord Lateral, wasn't that  
18 part of one of your e-mails?

19 A. (DaFonte) We needed the cost estimate, correct.

20 Q. For this case. And, so, you weren't going to rely and  
21 didn't rely on the 2013 estimate, did you, for here,  
22 for this judgment?

23 A. (DaFonte) Not for the submission of the final analysis,  
24 we needed the most up-to-date numbers.

(DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

[WITNESS PANEL: DaFonte-Clark-Whitten] 212

1 Q. And, so, why didn't you get it earlier?

2 A. (DaFonte) Well, at the time, the Tennessee/NED project,  
3 even without the Concord Lateral expansion, was more  
4 cost-effective than the alternatives.

5 Q. I guess the question is, in order to make a judgment on  
6 the alternatives, you needed to have a firm price  
7 associated with the Concord Lateral. And, the question  
8 is, why didn't you get that estimate before October of  
9 2014?

10 A. (DaFonte) Well, in order to make the decision, we had  
11 run analysis with the ballpark estimates from what we  
12 originally had in 2013, okay? Just to give us an idea  
13 of what our, you know, what the comparison was to the  
14 other projects, even though, on their face, based on  
15 their higher -- on their demand charges, they were  
16 going to be more -- they were going to be more costly  
17 than Tennessee. That was the determination of, you  
18 know, our intent to go with the NED project. Getting  
19 the updated expansion cost was a matter of ensuring  
20 that our assumptions were correct, and showing -- and  
21 being able to show what that exact differential was,  
22 based on the most updated numbers.

23 Q. Was the number that you actually got from Tennessee in  
24 2014 higher or lower than what you had seen in 2013?

(DG 14-380) [REDACTED - for public use] (07-21-15/Day 1)

1 A. (DaFonte) I believe it was -- it was higher.  
 2 Q. And, the --  
 3 A. (DaFonte) But -- go ahead.  
 4 Q. And, the estimate for -- that you requested in 2013 was  
 5 for a much lower volume than you had requested  
 6 Tennessee evaluate on the Concord Lateral, isn't that  
 7 right?  
 8 A. (DaFonte) Correct.  
 9 Q. And, so, in 2014, you were asking them to evaluate an  
 10 additional 65,000 Dekatherms a day on the Concord  
 11 Lateral, and, in the 2013 estimate, you asked for their  
 12 evaluation of 35,000, is that right?  
 13 A. (DaFonte) Yes. That's correct. That was the volume.  
 14 But, again, you know, but, with any expansion, it's a  
 15 function of the cost and the billing determinants. So,  
 16 I'm assuming that, with Tennessee's numbers, based on  
 17 the 35,000, there were fixed costs associated with the  
 18 construction, and the billing determinants were only  
 19 35,000. When we subsequently asked for the 50,000,  
 20 they came back with a rate. And, when we subsequently  
 21 asked for the 65,000, that rate didn't change, because  
 22 the incremental construction and incremental upgrade  
 23 that they would have to put in was offset by the  
 24 additional billing determinants. So, going from 50,000  
 [DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

1 fixed demand charges, to pay for the cost, the  
 2 investment cost, and the associated return on that  
 3 investment. So, the costs can be lower. But, if the  
 4 volume is lower, then the rate's going to either be  
 5 higher or about the same. So, it's two -- two factors  
 6 that have to be looked at.

7 MR. KANOFF: I think this is a good --  
 8 your Honor, I think this is a good stopping point.

9 CHAIRMAN HONIGBERG: I think I agree  
 10 with you. So, we will break now. We will reconvene at  
 11 two o'clock tomorrow afternoon, I hope. So, we will see  
 12 you tomorrow.

13 (Whereupon the hearing was adjourned at  
 14 5:00 p.m., and the hearing to reconvene  
 15 on July 22, 2015, scheduled to commence  
 16 at 2:00 p.m.)  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

[DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

1 to 65,000, it essentially left the rate where it was at  
 2 the end of -- well, December I think is when that last  
 3 estimate came in.  
 4 Q. And, you're aware in the case that different witnesses  
 5 have indicated in testimony that different levels of  
 6 capacity on the Concord Lateral will result in  
 7 different cost estimates? Say it another way, lower  
 8 capacity on the Concord Lateral will reduce the cost of  
 9 the upgrade?  
 10 A. (DaFonte) I'm not sure if I follow what you're saying,  
 11 that the "lower" -- you're saying "lower capacity" --  
 12 Q. If you lower the amount on the Concord Lateral, it may  
 13 decrease the amount, I think you just said this,  
 14 decrease the amount of upgrade costs?  
 15 A. (DaFonte) Right. It could, it would decrease the  
 16 amount of upgrade costs. But there's also fewer  
 17 billing determinants. So, the rate that the pipeline  
 18 needs to recover their, you know, their investment  
 19 would have to be higher. So, it's a function -- you  
 20 have to look at both sides of it. It's not just a  
 21 lower investment, you know, lower construction cost,  
 22 it's also what it -- what's the contract volume.  
 23 Because, in order for the pipeline to recover its  
 24 investment, it needs contracts, long-term contracts, at  
 [DG 14-380] [REDACTED - for public use] {07-21-15/Day 1}

1

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

July 22, 2015 - 2:31 p.m. DAY 2  
Concord, New Hampshire

(REDACTED - for public use)

RE: DG 14-380  
LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY UTILITIES;  
Petition for Approval of a Firm Transportation Agreement with the Tennessee Gas Pipeline Company, LLC.

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott  
Sandy Deno, Clerk (until 4:03 p.m.)  
Clare Howard-Pike, Clerk (after 4:03 p.m.)

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities:  
Sarah B. Knowlton, Esq. (Rath, Young...)  
Reptg. the Pipe Line Awareness Network for the Northeast, Inc. (PLAN):  
Richard A. Kanoff, Esq. (Burns & Levinson)  
Zachary R. Gates, Esq. (Burns & Levinson)  
Reptg. Residential Ratepayers:  
Susan Chamberlin, Esq., Consumer Advocate  
Dr. Pradip Chattopadhyay, Asst. Cons. Adv.  
Office of Consumer Advocate  
Reptg. PUC Staff:  
Rorie E. Patterson, Esq.  
Stephen P. Frink, Asst. Dir./Gas & Water Div.  
Al-Azad Iqbal, Gas & Water Division  
Melissa Whitten (LaCapra Associates)

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

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EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE NO.
34	Liberty/EnergyNorth Response to Data Request PLAN 4-18 (CONFIDENTIAL)	premarked
35	Liberty/EnergyNorth Response to Data Request PLAN 4-18 (Redacted)	premarked
36	Liberty/EnergyNorth Response to Data Request Staff 1-19	premarked
37	Liberty/EnergyNorth Response to Data Request PLAN 2-8 Supplemental	premarked
38	Algonquin Power & Utilities Corp. Q1 2015	premarked
39	Liberty/EnergyNorth Response to Data Request PLAN 1-16	premarked
40	Liberty/EnergyNorth Response to Data Request PLAN 2-38	premarked
41	Tennessee Gas Pipeline Company, LLC Docket No. PF14-22-000 Supplemental Filing (12-08-14)	premarked
42	Liberty/EnergyNorth Response to Data Request PLAN 2-27 Supplemental	premarked
43	Boston Globe article - West Roxbury pipeline approved by federal regulators	premarked
44	Kinder Morgan Northeast Energy Direct Project report	premarked

(DG 14-380) [REDACTED - for public use] (07-22-15/Day 2)

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4	WITNESS PANEL:	FRANCISCO C. DaFONTE WILLIAM J. CLARK MELISSA WHITTEN
7	Cross-examination resumed by Mr. Kanoff	8, 98
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EXHIBITS (continued)

EXHIBIT NO.	DESCRIPTION	PAGE NO.
45	Liberty/EnergyNorth Response to Data Request PLAN 1-7	premarked
46	Liberty/EnergyNorth Response to Data Request PLAN 1-25	premarked
47	Liberty/EnergyNorth Response to Data Request Staff 2-1 (CONFIDENTIAL)	premarked
48	Liberty/EnergyNorth Response to Data Request Staff 2-1 (Redacted)	premarked
49	Liberty/EnergyNorth Response to Data Request Staff Tech-17	premarked
50	Liberty/EnergyNorth Response to Data Request PLAN 2-23	premarked
51	Liberty/EnergyNorth Response to Data Request PLAN 1-4	premarked
52	Liberty Utilities Northeast LNG Project report	premarked
53	Page 45 of 56 to the Rebuttal Testimony of Francisco C. DaFonte, identified with Bates No. "047R2" (CONFIDENTIAL)	106
54	Page 45 of 56 to the Rebuttal Testimony of Francisco C. DaFonte, identified with Bates No. "047R2" (Redacted)	106
55	Liberty/EnergyNorth Response to Data Request Staff Tech-46 (CONFIDENTIAL)	108

(DG 14-380) [REDACTED - for public use] (07-22-15/Day 2)

1 PROCEEDING

2 CHAIRMAN HONIGBERG: Good afternoon.

3 We're going to continue the hearing in DG 14-380. Mr.

4 Kanoff, you will have the floor momentarily. We have a

5 whole slew of exhibits that looks like were premarked.

6 We're going to go as long as we can here today and hope we

7 can finish. As we get to the end of the day, we'll see

8 what needs to be done.

9 Is there anything we need to do before

10 we start?

11 MS. KNOWLTON: I wanted to let the

12 Commissioners know that the Company does have a revised

13 version of Exhibit 10, which is Page 47R of Mr. DaFonte's

14 testimony. We can do that at any time, but we do have it

15 with us, and wanted to let you know that.

16 CHAIRMAN HONIGBERG: Okay. We can deal

17 with that, really, anytime. Because all you're doing is

18 changing some numbers in the text to match up with what is

19 in the table, is that right?

20 MS. KNOWLTON: That's right. We also

21 lifted the "confidential" designation on some parts of the

22 table, so there's more information now that would be

23 public. So, those are the nature of the two changes.

24 CHAIRMAN HONIGBERG: All right. Thank  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 you. Anything else?

2 (No verbal response)

3 CHAIRMAN HONIGBERG: Mr. Kanoff, you may

4 proceed.

5 MR. KANOFF: Thank you. I want to just

6 distribute the exhibits that got premarked to the rest of

7 the group.

8 CHAIRMAN HONIGBERG: I think they will

9 be thrilled to receive them.

10 MR. KANOFF: I'm sure they will.

11 (Atty. Kanoff distributing documents.)

12 MR. KANOFF: As Exhibit for

13 identification, we have the data request response to PLAN

14 4-18, that's been marked as "34". And, that's the

15 confidential version. I'll distribute it to counsel.

16 As "Exhibit 35", we've marked for

17 identification the redacted version of that same data

18 request. I'll distribute that as well.

19 As "Exhibit 36", we have the -- for

20 identification, we have the Data Request Staff 1-19.

21 CHAIRMAN HONIGBERG: Mr. Kanoff, there

22 are something like 19 exhibits that were premarked before

23 we came in. Are you going to be doing each one of them

24 individually? Is there any way you could have your  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 associate do that while we get started with questioning?

2 MR. KANOFF: Yes, there is. And, I was

3 just thinking, as you asked that, at some point the

4 questioning will catch up to the exhibits, but not right

5 away. Let me just distribute a couple more?

6 CHAIRMAN HONIGBERG: Okay.

7 MR. KANOFF: And, then, I think that's

8 it. I agree, that's a great way to do it. We tried to

9 get started as quickly as possible with this, but it is

10 what it is.

11 And, as exhibit for identification "37",

12 we have data request response to PLAN 2-28.

13 MS. PATTERSON: Thank you.

14 CHAIRMAN HONIGBERG: While Mr. Kanoff is

15 doing that, I will note that we received some more public

16 comment, in the form of a few letters and e-mails. So,

17 the pile continues to grow.

18 MR. KANOFF: And, as "Exhibit 38", for

19 identification, we have Algonquin Power Utilities Corp.

20 Quarter 1 2015, specific pages to that, marked for

21 identification.

22 MS. PATTERSON: Thank you.

23 MR. KANOFF: Mr. Chairman?

24 CHAIRMAN HONIGBERG: Yes.  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 MR. KANOFF: If you give me one more

2 moment, I'll coordinate now with my colleague, and then

3 we'll have that happening as questions go on.

4 (Atty. Kanoff conferring with Atty.

5 Gates.)

6 MR. KANOFF: We are ready to proceed

7 here, and having those additional exhibits collated. Good

8 morning -- or, good afternoon.

9 WITNESS DaFONTE: Good afternoon.

10 WITNESS CLARK: Good afternoon.

11 FRANCISCO C. DaFONTE, previously sworn

12 WILLIAM J. CLARK, previously sworn

13 MELISSA WHITTEN, previously sworn

14 CROSS-EXAMINATION (continued)

15 BY MR. KANOFF:

16 Q. I just wanted to follow up on one question that we

17 discussed yesterday. And, this has to do with the

18 Concord Lateral expansion cost estimates. And, I just

19 wanted to clarify that the original cost estimate for

20 expansion of the Concord Lateral was for expansion from

21 Nashua, is that right?

22 A. (DaFonte) Yes. It was just an expansion to the

23 existing Nashua gate station.

24 Q. And, that number has not changed, is that correct?  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

9

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 A. (DaFonte) No. That estimate is still the same.

2 Q. Okay. And, then, you also provided another estimate of

3 expansion of the Concord Lateral from -- to, excuse me,

4 to Nashua, but also split to Manchester and Concord, is

5 that right?

6 A. (DaFonte) That's correct.

7 Q. Okay. And, those are different estimates based upon

8 different assumptions, is that right?

9 A. (DaFonte) Yes. There is different estimates based on

10 where the gas is ultimately to be delivered.

11 Q. Thank you.

12 MR. KANOFF: Apologies for the delay.

13 We just got out of sequence here. We're ready.

14 BY MR. KANOFF:

15 Q. The questions I want to ask you now have a little bit

16 to do with Algonquin Power. That's your parent

17 company, is it not?

18 A. (DaFonte) That's the parent company of Liberty

19 Utilities Co., yes.

20 Q. And, you listed the entities involved in the

21 relationship between parent companies and Liberty

22 Utilities in what's been marked now as "Exhibit 36" for

23 identification, is that correct?

24 A. (DaFonte) Yes.

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

10

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 Q. And, if I'm reading that correctly, is EnergyNorth is a

2 wholly owned sub of Algonquin Power, is that correct?

3 A. (DaFonte) Can you repeat the question? And, where are

4 you looking on the exhibit? What page?

5 Q. I was looking on the exhibit two things. I was looking

6 at Chart A, going into Chart B. And, then, I was also

7 basing perhaps some of the question on, not only the

8 charts, but your information about the relationship

9 between EnergyNorth, the utility, and Algonquin Power.

10 So, the question was, EnergyNorth is a wholly owned sub

11 of Algonquin Power, is that right?

12 A. (DaFonte) I'm not -- I didn't put the information

13 together. So, I'm not sure if it -- where it lies, in

14 terms of "wholly owned". But it is certainly a

15 subsidiary of Algonquin Power & Utilities Corp.

16 Q. Is there any reason or would you just subject to check

17 that it's a wholly owned sub of Algonquin?

18 A. (DaFonte) Sure.

19 Q. Okay. So, Algonquin is a 4.5 billion company, based in

20 Canada, with diversified assets all over North America?

21 Is that your understanding of the parent, more or less?

22 A. (DaFonte) More or less, yes.

23 Q. It's big. And, Algonquin Power is also the parent to

24 Liberty Utilities and Liberty Utility (Pipeline &

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

11

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 Transmission) Company, is that right? It's also in

2 Exhibit 36?

3 A. (DaFonte) Yes.

4 Q. And, APUC, or Algonquin Power, is an investor-owner, is

5 it not, on the Kinder Morgan Pipeline, through its

6 affiliate Pipeline & Transmission Corp. --

7 (Court reporter interruption.)

8 BY MR. KANOFF:

9 Q. -- Utilities (Pipeline & Transmission) Corp.

10 A. (DaFonte) I'm sorry. The question again?

11 Q. Algonquin Power is an investor-owner in the Kinder

12 Morgan Pipeline through its affiliate Liberty Utilities

13 (Pipeline & Transmission) Corp., is that right?

14 A. (DaFonte) I guess I'd ask for a clarification on

15 what -- which Kinder Morgan Pipeline?

16 Q. The NED project that's at issue here. And, the --

17 well, let's start with that. It's part owner of the

18 NED project that's at issue here, is it not?

19 A. (DaFonte) I'm not familiar with how it's all

20 constructed. But the NED -- the NED Pipeline project

21 is a Tennessee-sponsored project.

22 Q. Is what, sorry?

23 A. (DaFonte) It's a Tennessee Gas Pipeline-sponsored

24 project. So, our PA is with Tennessee Gas Pipeline,

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

12

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 which is the sponsor of the Northeast Energy Direct

2 project.

3 Q. I was just trying to establish it, and look at

4 Exhibit 38. This isn't a trick question. I was just

5 trying to establish the reality that APUC, in some form

6 or another, I believe it is through the Pipeline &

7 Transmission Corp., is, in fact, an owner of -- in

8 partnership with Kinder Morgan in the development of

9 the project at issue here today, among other projects.

10 It might be slip as well.

11 CHAIRMAN HONIGBERG: Mr. Kanoff, are you

12 looking at Exhibit 36?

13 MR. KANOFF: I'm looking at Exhibit

14 36 -- I'm looking at exhibit now, just to get to the nub

15 of this --

16 CHAIRMAN HONIGBERG: It's 36. And, it's

17 the multipage corporate organization chart that you're

18 trying to refer to, isn't it?

19 MR. KANOFF: Well, it's 38 as well. I

20 had referred to -- I had referred to Exhibit for

21 identification --

22 CHAIRMAN HONIGBERG: Yes, I missed the

23 transition to 38. Mr. DaFonte, are you familiar with the

24 corporate structure and the family relationships of

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 13

1 Algonquin and Liberty and NED and Tennessee? Is that  
2 something you're familiar with?

3 WITNESS DaFONTE: Only with respect to  
4 how it appears here on this form.

5 CHAIRMAN HONIGBERG: Ms. Knowlton, can  
6 you help us out and maybe streamline this somewhat?  
7 Because I don't think this is controversial, I just want  
8 to make sure that he's asking a witness who knows.

9 MS. KNOWLTON: Yes. I think, without  
10 becoming a testifying witness myself, I think Mr. DaFonte  
11 can speak to the structure of the contracts that are on  
12 Page 4 of 4 of Staff 1-19, which depicts the entity that  
13 owns the pipeline, the lessor of the rights on the  
14 pipeline, and those relationships. I mean, subject to,  
15 obviously, his testimony, I believe that he could answer  
16 those questions.

17 CHAIRMAN HONIGBERG: It's just I know  
18 that he's not the witness who responded on -- to that data  
19 request. And, so, I'm concerned that he's not really  
20 familiar with that structure. But I see -- I'm a lawyer.

21 MS. KNOWLTON: Right.

22 CHAIRMAN HONIGBERG: I can see what this  
23 structure looks like, and I know what Mr. Kanoff wants to  
24 do. This shouldn't be as complicated --  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 14

1 MS. KNOWLTON: Right.

2 CHAIRMAN HONIGBERG: -- as I'm fearing  
3 that it's going to be.

4 MS. KNOWLTON: Agreed. And, Mr. DaFonte  
5 can, you know, take a stab at answering the questions.

6 MR. KANOFF: Well, I have a suggestion?

7 CHAIRMAN HONIGBERG: Go ahead.

8 MR. KANOFF: Yes.

9 MS. KNOWLTON: I mean, we can also  
10 stipulate. I mean, I'll stipulate. Why don't we do that.  
11 I'll stipulate, now we're talking, I'll stipulate to --  
12 or, the Company will stipulate to the fact that an  
13 Algonquin subsidiary is -- has a membership interest in  
14 Northeast Expansion, LLC. How that's?

15 MR. KANOFF: Well, why don't you just  
16 stipulate that the answers, in what's been marked for  
17 identification "Exhibit 36", on Page 1, is correct?

18 MS. KNOWLTON: Because I don't remember  
19 what the question is. I'm sorry.

20 (Laughter.)

21 MR. KANOFF: Well, I just gave you the  
22 answer.

23 MS. KNOWLTON: I know you did. But I'm  
24 telling you what I'm willing to stipulate to, which I  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 15

1 think moves it along pretty quickly. What else do you  
2 want to stipulate to? We can make this real quick today.

3 MR. KANOFF: Sure. I want to stipulate  
4 that APUC is an investor-owner --  
(Court reporter interruption.)

6 MR. KANOFF: I want to stipulate that  
7 APUC is an investor-owner in the Kinder Morgan Pipeline  
8 through one of its affiliates, Liberty Utilities (Pipeline  
9 & Transmission) Corp. And, basically, to stipulate also,  
10 as part of that, the answer on Page 1 of Exhibit for  
11 identification 36 is correct.

12 MS. KNOWLTON: Take the first piece, and  
13 I want to be accurate, and not use the term "Kinder Morgan  
14 Pipeline". So, as depicted on Page 4 of 4, Chart C, Staff  
15 1-19, that's been marked for identification as "Exhibit  
16 36", the owner of the pipeline in question is Northeast  
17 Expansion, LLC, which is partly owned by Kinder Morgan  
18 Operating, LP "A" and Liberty Utilities (Pipeline &  
19 Transmission) Corp. Liberty Utilities (Pipeline &  
20 Transmission) Corp. is an affiliate of Liberty Utilities  
21 (EnergyNorth Natural Gas) Corp., which is the Petitioner  
22 in this proceeding.

23 CHAIRMAN HONIGBERG: Do they -- is the  
24 Petitioner in this proceeding and Liberty Utilities  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 16

1 "Pipeline & Transmission" Corp., they share a common  
2 owner?

3 MS. KNOWLTON: Correct.

4 CHAIRMAN HONIGBERG: Is the ownership  
5 throughout this chart 100 percent --

6 MS. KNOWLTON: Well, are held by -- they  
7 have a common holding company.

8 CHAIRMAN HONIGBERG: Okay. Is the  
9 holding basically 100 percent throughout this  
10 organizational chart?

11 MS. KNOWLTON: Yes. So, if you go back  
12 and you look at, and, again, I'll stipulate to this, if  
13 you go a page, both Liberty Utilities (Pipeline &  
14 Transmission) Corp. and Liberty Utilities (EnergyNorth  
15 Natural Gas) Corp. share a common parent of Liberty  
16 Utilities Co. There's an intervening parent for Liberty  
17 Utilities (EnergyNorth Natural Gas) Corp., which is  
18 Liberty Energy Utilities (New Hampshire) Corp. But they  
19 both are ultimately owned by Liberty Utilities Co.

20 CHAIRMAN HONIGBERG: Mr. Kanoff, that's  
21 what you need, right? For the first step of what you're  
22 trying to do, correct?

23 MR. KANOFF: That's right.

24 CHAIRMAN HONIGBERG: Good. All right.  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 17

1 MR. KANOFF: Thanks.

2 BY MR. KANOFF:

3 Q. And, then, Liberty Utilities Co. is, in fact, owned by

4 Algonquin, is that correct?

5 MS. KNOWLTON: I'll stipulate to that as

6 well. How's that?

7 CHAIRMAN HONIGBERG: Thank you. Off the

8 record.

9 (Brief off-the-record discussion

10 ensued.)

11 CHAIRMAN HONIGBERG: All right. Go

12 ahead.

13 BY MR. KANOFF:

14 Q. And, isn't -- if you take a look at Exhibit for

15 identification 38, Page 20.

16 MR. KANOFF: I first want to just -- if

17 I could approach the witness?

18 CHAIRMAN HONIGBERG: Go ahead.

19 MR. KANOFF: I just first want to show

20 counsel. I'm just going to have him --

21 (Atty. Kanoff showing a document to

22 Witness DaFonte.)

23 BY MR. KANOFF:

24 Q. Take a look at this. Is this a familiar document to

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 19

1 the Transmission Group, which is part of Algonquin, has

2 is as stated here, "2.5 percent", do you see that?

3 A. (DaFonte) Yes. I see that, yes.

4 Q. And, the investment can increase up to "10 percent".

5 Do you see that?

6 A. (DaFonte) Yes.

7 Q. And, the value of that investment for APUC, doesn't say

8 for "Transmission Group" or "Northeast Expansion LLC",

9 it says for "APUC", does it not, to be up to

10 400 million?

11 A. (DaFonte) That's what it says here, yes.

12 Q. Okay. Thank you. Now, it says -- I'm sorry, we talked

13 yesterday about shareholders. Does EnergyNorth have

14 any shareholders?

15 A. (DaFonte) I don't know.

16 Q. Is that something that you can answer subject to check,

17 and perhaps confirm one way or another during a break?

18 And, the subject to check would be, subject to check,

19 EnergyNorth itself does not have any shareholders?

20 CHAIRMAN HONIGBERG: Why don't you ask

21 him to assume that that's true, because I don't know that

22 he knows what the structure is. And, unless you want to,

23 again, stipulate with counsel something you may well be

24 able to stipulate, and perhaps could have stipulated

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[WITNESS PANEL: DaFonte-Clark-Whitten] 18

1 you? It's Algonquin's Quarterly Report?

2 A. (DaFonte) I have not read it.

3 Q. Have you seen it?

4 A. (DaFonte) Just now, yes.

5 Q. Is it something that Liberty Utilities (EnergyNorth)

6 contributes to?

7 A. (DaFonte) I believe so. But I am not an individual

8 contributor to that.

9 Q. Would you have any reason to believe that information

10 in here is not correct?

11 A. (DaFonte) I do not have any reason to believe that it's

12 not correct.

13 Q. I want to refer you to Page 20. And, it talks about

14 the Transmission Business Group.

15 A. (DaFonte) Okay.

16 Q. And, I believe we talked about this group. So, this

17 group is, according to that paragraph, has a

18 partnership with Kinder Morgan, is that correct?

19 A. (DaFonte) I think counsel for EnergyNorth has already

20 stipulated that the agreement is -- or, with a

21 partnership with Kinder Morgan, Northeast Expansion

22 LLC. And, that's what it says on Page 20 of

23 Exhibit 38.

24 Q. Okay. And, the interest that, according to this, that

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 20

1 before we entered the room today, about the structure --

2 actually, why don't I stop right here.

3 Why don't you give us a preview of what

4 it is you want to establish. Not necessarily an offer of

5 proof, but maybe, I mean, I have a sense of where you're

6 going with this. And, it may -- I suspect the first 19

7 steps of it are probably not that controversial.

8 MR. KANOFF: That's what I was thinking.

9 CHAIRMAN HONIGBERG: So, why don't we --

10 why don't you --

11 MR. KANOFF: And, I'm surprised that

12 we're even stuck on this level. But here we are.

13 CHAIRMAN HONIGBERG: I think the problem

14 is that you have a witness -- the only witness you have

15 available to you doesn't actually know the answers to some

16 of the questions you're asking. And, you know, that's

17 kind of what discovery is for, and you've got a whole

18 bunch of answers that the Company signed off on, that I

19 don't think they're going to be able to walk away from if

20 you assert them as facts.

21 And, so, I think counsel knows how to

22 object, if she thinks you're doing something that's

23 unfair. But you're asking this witness questions it is

24 apparent that he doesn't know the answer to.

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 MR. KANOFF: One of the reasons, just to  
2 clarify, about the, for example, the shareholder question,  
3 they talked about shareholders yesterday, and EnergyNorth  
4 shareholders. But, to answer your question specifically  
5 about where this is going, it's essentially establishing,  
6 and we'll establish fairly quickly, the link between  
7 EnergyNorth utility and APUC as owner, the interest that  
8 APUC has in NED independent from the interests that  
9 EnergyNorth has, the common link of the owners and  
10 directors and so forth. And, just the opportunity in that  
11 relationship and those interactions, especially at the  
12 board and officer level, for bias.

13 And, it's really quick. It doesn't take  
14 a lot. The information is right here in the information  
15 request responses. And, if we could just get through some  
16 of the preliminaries, we'll be there.

17 CHAIRMAN HONIGBERG: And, "this is a  
18 response that the Company submitted. And, this is right,  
19 isn't it?" "Yup, that one's right." And, then, you can  
20 argue whatever you want off of that document, right?

21 MR. KANOFF: I'm there.

22 CHAIRMAN HONIGBERG: Go. Go for it.

23 MR. KANOFF: Okay. Let's do it.

24 BY MR. KANOFF:

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 Leehr is President, is that right?

2 A. (DaFonte) Correct.

3 Q. And, for EnergyNorth, your company, we have Greg  
4 Sorenson, Board of Directors; Ian Robertson, Board of  
5 Directors; and Richard Leehr, Board of Directors, is  
6 that right?

7 A. (DaFonte) That's correct.

8 Q. And, Richard Leehr is the individual who submitted that  
9 information request response we talked about a few  
10 minutes ago, is that correct?

11 A. (DaFonte) Yes.

12 Q. He's the President. Okay. Sorry, he's Board of  
13 Directors. So, wouldn't you agree, as a general  
14 proposition, that the Board of Director -- well, as a  
15 general proposition, Board of Directors are charged  
16 with setting goals and direction of the company, and  
17 the officers are charged with carrying out those goals?  
18 Is that generally right?

19 A. (DaFonte) I can't attest to that in all cases.

20 Q. Okay. All right. But, basically, we have the same  
21 individuals as both members of the Board of Liberty as  
22 utility and shipper, and as officers and Board members  
23 of the Pipeline & Transmission Company, is that right?

24 A. (DaFonte) Yes.

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 Q. I want to refer you to Exhibit for identification 37.

2 MR. KANOFF: Mr. Chairman, just one  
3 moment. There seems to just be, in my copy, a page  
4 missing. And, I just need to reference that really  
5 quickly with my colleague.

6 (Atty. Kanoff conferring with Atty.  
7 Gates.)

8 BY MR. KANOFF:

9 Q. Take a look at Exhibit 37.

10 A. (DaFonte) I have it.

11 Q. Okay. And, this lists the management and Board of  
12 Directors, does it not -- management and Board of  
13 Directors, does it not, for Liberty's Utility and  
14 Transmission Company?

15 A. (DaFonte) Yes. I see that.

16 Q. You see that?

17 A. (DaFonte) I do.

18 Q. Okay. And, for -- if we go through that list for  
19 Algonquin Power, we have Ian Robertson is CEO and on  
20 the Board of Directors, is that right?

21 A. (DaFonte) Correct.

22 Q. And, for Liberty Utilities (Pipeline & Transmission),  
23 we have Ian Robertson is on the Board of Directors,  
24 Greg Sorenson is on the Board of Directors, and Richard

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 Q. The same folks? Yes?

2 A. (DaFonte) Yes.

3 Q. And, we already talked about the investment involved  
4 here for APUC is up to \$400 million. Do you recollect  
5 that?

6 A. (DaFonte) Yes, I do.

7 Q. So, that would be a significant investment, would it  
8 not?

9 A. (DaFonte) I don't know. I don't get involved in the  
10 investment side of the business. I got involved in  
11 negotiating the PA. If you want to ask me about the  
12 PA, I think I could do a better job answering the  
13 questions.

14 Q. That's fine. Do you know how much at all, were you  
15 involved at the time that Algonquin Power purchased  
16 Liberty Utilities?

17 A. (DaFonte) I wasn't involved at the time of the  
18 purchase. I was hired after the purchase.

19 Q. Is it your understanding that -- strike that. Was the  
20 Liberty Utilities' Board of Directors aware of the  
21 filings and activities that were made with respect to  
22 the Kinder Morgan investment?

23 MS. KNOWLTON: I'd ask that, to the  
24 extent Mr. Kanoff refers to Liberty Utilities, that you

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 clarify which entity you're referring to.  
 2 BY MR. KANOFF:  
 3 Q. We talked about it yesterday. There was discussions  
 4 between EnergyNorth management and its Board in this  
 5 proceeding. I believe you mentioned at some point that  
 6 the Board was taking a look and did evaluate the  
 7 transaction, Market Path transaction, before the  
 8 Precedent Agreement was signed, as one example of that,  
 9 is that correct?  
 10 A. (DaFonte) I don't recall any statement to the effect  
 11 that "the Board evaluated the Market Path commitment".  
 12 Q. It did evaluate whether you should sign and did provide  
 13 guidance, did it not, on whether you should sign the  
 14 Precedent Agreement?  
 15 A. (DaFonte) I'm only aware that the Board took a vote to  
 16 grant the President of EnergyNorth the signature  
 17 authority for the Precedent Agreement, which he then  
 18 signed.  
 19 Q. So, they did take a look at that? The Board took a  
 20 look at whether you should sign the Precedent  
 21 Agreement?  
 22 A. (DaFonte) Well, I can't say exactly what the Board did.  
 23 They gave authorization to the President of EnergyNorth  
 24 to sign the Agreement.  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 filed for approval of this application with this  
 2 Commission, the Board of Directors of EnergyNorth?  
 3 A. (DaFonte) I would assume that some of them are.  
 4 Q. Is Richard Leehr aware of it? He filed an information  
 5 request response.  
 6 A. (DaFonte) He would have to be, yes.  
 7 Q. Correct. And, he's on the Board of Directors, is he  
 8 not?  
 9 A. (DaFonte) Correct.  
 10 Q. So, at least one member of the Board of Directors is  
 11 aware of it?  
 12 A. (DaFonte) Correct.  
 13 Q. And, would Richard Leehr be aware that, as part of  
 14 that, that Liberty North was requesting approval for  
 15 115,000 Dekatherms a day?  
 16 A. (DaFonte) I think you meant "EnergyNorth"?  
 17 Q. EnergyNorth, yes.  
 18 A. (DaFonte) Yes. He would have been part of the Board  
 19 that gave the approval for signature authority.  
 20 Q. And, it's possible some of the other Board members  
 21 would know as well?  
 22 A. (DaFonte) Yes, I would think so.  
 23 Q. And, similarly, is Richard Leehr and the other Board  
 24 members, would they be aware of your proposal to have  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 Q. So, do you know whether the Board of Directors was  
 2 aware of any of the filings that were related to the  
 3 Precedent Agreement?  
 4 MS. KNOWLTON: Objection. The question  
 5 is vague. It doesn't specify which filings counsel's  
 6 referring to.  
 7 BY MR. KANOFF:  
 8 Q. Filings in this case?  
 9 CHAIRMAN HONIGBERG: So, the question  
 10 is, "is the Board of Directors of the Company that made  
 11 these filings in this case, this docket, aware of the  
 12 filings that were made in this docket?"  
 13 MR. KANOFF: That is correct.  
 14 CHAIRMAN HONIGBERG: Okay.  
 15 BY THE WITNESS:  
 16 A. (DaFonte) My understanding is that the Board of  
 17 Directors was aware of the Precedent Agreement,  
 18 because, clearly, they had to grant signature authority  
 19 to the president. As to their awareness of any filings  
 20 in the case, I can't say that they were aware of that  
 21 at all.  
 22 BY MR. KANOFF:  
 23 Q. Are they aware that this proceeding is ongoing here  
 24 today -- not "here today", but are they aware that you  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 the Settlement Agreement approved?  
 2 A. (DaFonte) Not that I'm aware of, no.  
 3 Q. So, Richard Leehr does not know, as a Board -- he knows  
 4 everything else we just talked about, but he doesn't  
 5 know that you requested this matter be settled?  
 6 A. (DaFonte) He would only know based on public  
 7 information that's available.  
 8 Q. Well, who's going to -- who's going to sign the  
 9 Settlement Agreement for the Company? Is he going to  
 10 then -- is he going to be surprised when you go and say  
 11 "hey, we got this approval"? I don't understand this.  
 12 A. (DaFonte) Well, he doesn't sign -- he would not sign  
 13 the Agreement.  
 14 Q. But he would have to approve it as one member of the  
 15 Board, would he not?  
 16 A. (DaFonte) I'm not sure that he -- well, I don't know if  
 17 he would need Board approval to sign the Settlement  
 18 Agreement. I just know that the authorization to sign  
 19 the Precedent Agreement was required, Board approval  
 20 was required for that. As to the Settlement Agreement,  
 21 I'm not sure how that process would work.  
 22 Q. Would Board approval then be --  
 23 MS. KNOWLTON: I think that, for the  
 24 record, it's clear who signed the Settlement Agreement in  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 this case, which was me. Counsel for the Company signed  
 2 the Settlement Agreement, as did counsel for Staff.  
 3 BY MR. KANOFF:  
 4 Q. The question has to do with what the management knows  
 5 about the Settlement Agreement as -- and, I think the  
 6 question has to do with the information at the Board  
 7 level for the Settlement Agreement. There's a draft  
 8 modification Amendment to the Precedent Agreement  
 9 submitted as part of the Settlement, is that right?  
 10 A. (DaFonte) Yes.  
 11 Q. And, wouldn't the Company, as part of the execution of  
 12 that document, need Board approval?  
 13 A. (DaFonte) I'm not sure. It's a draft at this point in  
 14 time.  
 15 Q. If it were to be approved, if it were to be granted by  
 16 this Commission, would the Board have to approve it?  
 17 A. (DaFonte) I don't know. I can't really answer that.  
 18 Q. Do you know whether the Board of Directors had any  
 19 discussion with management, that would be anybody in  
 20 your management group, about how much capacity  
 21 EnergyNorth should contract for in the NED project?  
 22 A. (DaFonte) No. The negotiations were conducted by  
 23 myself, solely.  
 24 Q. Did you ever make any presentations or provide any  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 your position that entering into the Settlement Agreement,  
 2 that the Company is entering into the Settlement  
 3 Agreement, is already within the authority that the  
 4 Company had been given by the Board? That you didn't need  
 5 to go back to the Board for further authority?  
 6 WITNESS DaFONTE: I believe so, because  
 7 we -- I did not go back to the Board.  
 8 CHAIRMAN HONIGBERG: Mr. Kanoff, the  
 9 broad theory here is that you've got one, essentially, one  
 10 board making decisions for both companies. And, then,  
 11 it's in the broad corporate interests of the parent to  
 12 have the sub subscribe, and I think, under your theory,  
 13 oversubscribe, to this other Investment they have. That's  
 14 the theory, right?  
 15 MR. KANOFF: Yes. That's correct. Yes.  
 16 CHAIRMAN HONIGBERG: And, I think you  
 17 are asking this witness obliquely for evidence that they  
 18 were communicating about it. How much more do you want to  
 19 get from him that he doesn't know? And, do you have any  
 20 other -- any other way of establishing that they were  
 21 directing the activities of all of them, clearly, the  
 22 Board of Directors, we got that. I mean, that's pretty  
 23 good for you. You like that.  
 24 So, the notion of "bias", which is the  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 information to anyone in your management structure, who  
 2 would then forward that information to the Board of  
 3 Directors of EnergyNorth?  
 4 A. (DaFonte) I don't believe so, in terms of directly to  
 5 the Board.  
 6 Q. So, what I'm struggling with is, and I'll try to make  
 7 this a question, but what I'm struggling with is the  
 8 idea that a significant investment of \$400 million here  
 9 to APUC, with -- through a sub that has members of the  
 10 Board of Directors that are of the same -- the same  
 11 folks at EnergyNorth, and that there's no  
 12 communication, according to your testimony, between  
 13 EnergyNorth management and the Board about this case,  
 14 which involves that significant investment. Is that  
 15 your testimony?  
 16 MS. KNOWLTON: I'm going to object to  
 17 the form of the question, because I think Mr. DaFonte has  
 18 already testified that he does not know whether or not  
 19 there were communications among Board members of  
 20 EnergyNorth. All he knows about, which he's testified to  
 21 repeatedly, is that the Board took a vote authorizing the  
 22 Company to enter into the Precedent Agreement that's  
 23 before the Commission today.  
 24 CHAIRMAN HONIGBERG: Mr. DaFonte, is it  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 word you used before, is an interesting one, because, of  
 2 course, they're biased. They want to make money. And,  
 3 they want all of their corporate family to make money.  
 4 That's their bias. So, they're going to do what they  
 5 believe is in their financial best interest. We're all  
 6 with you on that one.  
 7 This becomes a problem for them, if the  
 8 management of EnergyNorth is doing things that are not in  
 9 EnergyNorth's best interests, right?  
 10 MR. KANOFF: That's correct. Right.  
 11 CHAIRMAN HONIGBERG: Okay. What have  
 12 you got, besides the general structure, and that  
 13 circumstance that may well get you all that you need, but  
 14 do you have anything? Because I know we had a discovery  
 15 dispute about this, so --  
 16 MR. KANOFF: We did. We did,  
 17 Commissioner -- Chairman. And, the fact that there was a  
 18 discovery dispute stopped a lot of the information about  
 19 this. It was delayed for a little bit. And, the  
 20 communication that was asked for in one of the discovery  
 21 responses that had to do with in a -- not necessarily this  
 22 part, but communication among the Board, was not -- there  
 23 wasn't any communication. What would be -- so, short  
 24 answer, there's nothing we've been able to get from the  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 Company, other than the reality, as you are correct with,  
2 is that APUC is incentivized to go with the biggest number  
3 it can get, because it's going to make the biggest amount  
4 of money. It's incentivized to go with having this  
5 project succeed. The building blocks to get there had to  
6 start with "what's the communication back and forth from  
7 the Board?" We weren't able to get that. And, if we  
8 could ask for a record request to confirm.

9 MS. KNOWLTON: We answered this  
10 question. So, this was a subject of a Motion to Compel.  
11 It was the Motion to Compel on PLAN 2-28, among other  
12 questions. And, if I recall, in the Commission's order on  
13 the Motion to Compel, the Company was required to answer  
14 the question to the extent that it -- the question sought  
15 documents, to the extent that it had any documents between  
16 EnergyNorth and the various entities that were named in  
17 PLAN 2-28(c) regarding the Precedent Agreement, and the  
18 terms and conditions of the Precedent Agreement. And, the  
19 Company answered in a supplemental data response on  
20 June 9th, 2015 that it had no documents memorializing one  
21 or more obligations of EnergyNorth to any of the entities  
22 in PLAN 2-28 concerning the Precedent Agreement. So, in  
23 essence, there were no documents between EnergyNorth and  
24 its affiliates regarding the Precedent Agreement. So,  
(DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

1 separate and apart from why it's unreasonable. The "why"  
2 may help explain what happened, but it doesn't establish  
3 in and of itself that it's unreasonable. A fair amount of  
4 the questioning yesterday directed at the witnesses who  
5 were up there tried to get at whether this was a  
6 reasonable amount.

7 Isn't that ultimately more significant  
8 than the "whys" of how they did it? Because, if it's  
9 unreasonable, it's reasonable, and we shouldn't approve  
10 it. If it's reasonable, even it was done for some really  
11 ugly, unpleasant, internal corporate reasons, we should  
12 approve it.

13 MR. KANOFF: Well, I think -- I think  
14 that, whether it's reasonable or not is sometimes a  
15 function of the back-and-forth that occurred by management  
16 and the Board. But I get your point. I do. And, I  
17 think, as far as this hearing is concerned right now, I'm  
18 just going to wrap it one with maybe three questions, then  
19 we can move onto another area.

20 CHAIRMAN HONIGBERG: Okay.  
21 MR. KANOFF: I don't know, given the  
22 testimony and the witness and so forth, other than going  
23 through another round of record requests, how we get to  
24 that. And, if, in fact, the trier of fact is looking at  
(DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

1 we've answered that.

2 There was another round of discovery  
3 that came in on June the 10th, 2015. We didn't receive  
4 any further questions on this subject matter. So, I'm not  
5 sure what there's left to inquire on.

6 CHAIRMAN HONIGBERG: What is there  
7 left -- what is there left to inquire on then?

8 MR. KANOFF: In the absence, you know,  
9 I'll answer the question directly, in the absence of any  
10 confirmation from the Company that, in fact, there were  
11 discussions between EnergyNorth's management and  
12 EnergyNorth's Board back and forth as to this project,  
13 and, therefore, between -- possibly between EnergyNorth's  
14 Board and Transmission Company Board, because they're the  
15 same people, it's almost, you know, as a factual problem,  
16 it's a factual barrier to try to make a link. And, I get  
17 that.

18 CHAIRMAN HONIGBERG: But, ultimately --  
19 but, ultimately, if the amount -- if the level of  
20 subscription that EnergyNorth has bought -- has signed on  
21 to here is reasonable, then it really doesn't matter.

22 MR. KANOFF: Well, that's --

23 CHAIRMAN HONIGBERG: And, if it's  
24 unreasonable, it's got a separate problem, a problem  
(DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

1 this the way you just described, that it's either  
2 unreasonable or it's not, and bias is something that is  
3 not essential to that determination, we're good with that.

4 CHAIRMAN HONIGBERG: Well, I mean,  
5 understand that, if they have done something for -- to  
6 benefit an entity other than the one we regulate, if  
7 they're -- I think this is apparent from our order on the  
8 discovery dispute. If there's evidence that someone up  
9 the corporate chain is directing the regulated subsidiary,  
10 the one we can -- we have control over, to do something  
11 that's not in its best interest or its ratepayers best  
12 interests, we want to know about that.

13 MR. KANOFF: And, I think, you know, I  
14 think we're right at that line, and we can't get an  
15 answer. Because it could will be, and I'm just going to  
16 give a hypothetical, it could well be that up the food  
17 chain, at APUC, a \$4.5 billion company, they're investing  
18 in this pipeline, and they're, and we don't have this,  
19 it's behind the curtain, but they're, in some ways,  
20 directing, and it may not be overt, but they're directing  
21 this Company to take as big a chunk as it can that it  
22 thinks it can get approved.

23 And, that is really an explanation  
24 that's as plausible as any other explanation, if you  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 believe that they're oversubscribed here. So, --

2 CHAIRMAN HONIGBERG: And, underlying

3 that is the essential question, "what's a reasonable

4 amount for this Company to subscribe to?"

5 And, Ms. Knowlton, do you want to say

6 something? You look like you wanted to say something.

7 MS. KNOWLTON: Yes, I do. I mean, --

8 CHAIRMAN HONIGBERG: And, understand,

9 all Mr. Kanoff was doing was spinning out a hypothetical

10 theory. He was not making any accusations.

11 MR. KANOFF: And, I'm not a witness.

12 MS. KNOWLTON: Correct. And, I'm not a

13 witness either, but Mr. DaFonte is. And, Mr. DaFonte has

14 testified that he solely negotiated this Agreement on

15 behalf of EnergyNorth. That his negotiations, I believe

16 he testified to this yesterday, that his negotiations on

17 this agreement started I think at least a year in advance

18 of the existence of Liberty Utilities (Pipeline &

19 Transmission) Corp. That the Company has responded to a

20 discovery request that it has no documents between

21 EnergyNorth and any of the affiliate entities regarding

22 this Agreement. So, again, people can spin theories, but

23 I don't really know what there is here. Other than the

24 fact that Algonquin has an investment interest in the  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 entity that owns the pipeline, you know, that Tennessee is

2 the lessor of, which we stipulated to, I believe, or, if

3 not, I'll stipulate to that. That's not in question here.

4 So, as to this issue of "bias", and, you

5 know, Mr. DaFonte can testify further about the timing of

6 things. But I think it is clear that the negotiation of

7 this was by him alone, and well prior to any investment or

8 an entity -- the existence of an entity that made an

9 investment.

10 CHAIRMAN HONIGBERG: I understand where you

11 are, Ms. Knowlton.

12 Mr. Kanoff, I understand you have a few

13 more questions you want to ask, and then we're going to

14 move onto another topic.

15 MR. KANOFF: Yes.

16 CHAIRMAN HONIGBERG: So, why don't you

17 give that a whirl.

18 MR. KANOFF: That's correct.

19 BY MR. KANOFF:

20 Q. Would you, just for the record, tell us who your boss

21 is. Who do you report to?

22 A. (DaFonte) I currently report to David Pasieka.

23 Q. And, who does he report to?

24 A. (DaFonte) David reports to Ian Robertson.  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 Q. And, Ian Robertson is, as we discussed, is CEO of APUC?

2 A. (DaFonte) Correct.

3 Q. If Liberty were to withdraw, as a hypothetical, from

4 their Consortium, or not have this contract approved,

5 or it were to reduce its obligation under the Precedent

6 Agreement, would that have an impact on the chances of

7 success of this project?

8 A. (DaFonte) You mean EnergyNorth?

9 Q. Yes.

10 A. (DaFonte) The Precedent Agreement stipulates that the

11 volume that is, you know, at Issue here is 115,000

12 Dekatherms. That, with Commission order, can be

13 reduced to 100,000 Dekatherms. That was in the filing.

14 Any deviation from that essentially requires a

15 renegotiation of all terms and conditions with

16 Tennessee Gas Pipeline. That's essentially what would

17 have to happen. There are no provisions for a volume

18 less than 100,000 Dekatherms.

19 Q. And, is it your understanding that reducing then the

20 level and having additional negotiations with Tennessee

21 Gas Pipeline would diminish the chances of success of

22 this project?

23 CHAIRMAN HONIGBERG: What is "this

24 project"? Because I'm not sure he has the same notion of  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 what "this project" is, the last two words of your

2 question.

3 BY MR. KANOFF:

4 Q. It would be the NED project.

5 A. (DaFonte) I can't speak for the business plan and the

6 strategy associated with Kinder Morgan's decisions with

7 regard to the Tennessee project.

8 Q. You suggest -- just four more questions here and we'll

9 be done. You suggest that the Pipeline is in the best

10 interest of customers and represents the least-cost or

11 the best-cost option, is that right?

12 A. (DaFonte) Absolutely.

13 Q. Okay. Is it also in APUC's interest to have this

14 Pipeline be approved and built? They have a

15 \$400 million investment?

16 A. (DaFonte) I would assume it would be good for the

17 Company.

18 Q. Good for APUC?

19 A. (DaFonte) Good for APUC.

20 Q. And, isn't it in APUC's interest to have Liberty invest

21 in its Pipeline, as compared to other alternatives?

22 A. (DaFonte) It may be for them. But, again, I only know

23 what I know through the negotiation of the PA. I don't

24 know what they're doing at the corporate level with  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 regard to their investments.

2 Q. And, you don't know any -- the conversations between

3 Mr. Ianson [sic] and Mr. Pareck -- Parecki [sic], is

4 that your boss?

5 A. (DaFonte) Ian Robertson is the CEO, and David Pasioka.

6 Q. "Pasioka".

7 A. (DaFonte) Right.

8 Q. You don't have any information about their

9 conversations?

10 A. (DaFonte) No. I don't.

11 Q. And, isn't it in APUC's interest, given those -- given

12 that relationship, that EnergyNorth do everything it

13 can, from a commercial and regulatory perspective, to

14 ensure that -- to ensure the success of the NED

15 project?

16 A. (DaFonte) I don't know what kind of influence they have

17 over the NED project. And, I just note, they have a

18 2.5 percent interest in a LLC that is leasing capacity

19 to Tennessee Gas Pipeline. I'm not sure, you know,

20 what kind of control they have, in terms of their

21 directing the strategy with regard to NED.

22 Q. But are you -- strike that.

23 MR. KANOFF: I'm going to move onto

24 another area.  
(DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

1 through southern New Hampshire?

2 A. (DaFonte) That's my understanding of the route at this

3 particular time.

4 Q. And, is it your understanding that that is going to be

5 part of an existing right-of-way in some fashion?

6 A. (DaFonte) I mean, I'm not familiar with the

7 right-of-way and any kind of negotiations --

8 Q. But -- and that's what it says in, I believe,

9 Exhibit 39, that you're not aware of whether NED

10 requested route has been approved with respect to

11 right-of-way access. And, my question to you is, did

12 you ask NED about that? In 1-16(d), you said "the

13 Company is not involved". When you got this data

14 request, did you reach out to Kinder Morgan/Tennessee

15 Gas Pipeline and ask them for any additional

16 information about the status of this right-of-way

17 access?

18 A. (DaFonte) No, we did not. I think I testified

19 yesterday, our negotiations with Tennessee center on

20 various terms and conditions related to getting gas

21 from Point A, in this case, Wright, New York, to our

22 citygates. The actual path of the pipeline is really

23 nothing that we can control or have any influence over.

24 Q. But you are involved in taking advantage of the  
(DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

1 CHAIRMAN HONIGBERG: Okay.

2 (Atty. Kanoff conferring with Atty.

3 Gates.)

4 BY MR. KANOFF:

5 Q. I want to refer you to Exhibit 39 for identification

6 and Exhibit 40 for identification. And, also note your

7 testimony that this Pipeline, the NED Pipeline, will

8 transverse existing rights-of-way through southern New

9 Hampshire, is that correct?

10 A. (DaFonte) What's your reference? You said

11 "Exhibit 39"?

12 Q. Thirty-nine (39), which is PLAN 1-16, and 40, which

13 is --

14 A. (DaFonte) I don't believe you gave those to me.

15 Q. -- PLAN 2-38.

16 A. (DaFonte) I have 39 in front of me.

17 Q. And 40?

18 A. (DaFonte) I do not have 40.

19 Q. We're getting -- we're getting it to you. Sorry.

20 (Atty. Gates handing document to Witness

21 DaFonte.)

22 BY MR. KANOFF:

23 Q. Now, is it fair to say that, based upon these exhibits

24 and your testimony, that the Pipeline will transverse  
(DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

1 commercial opportunities that may be presented to the

2 Company, given its route. We talked about that

3 yesterday, isn't that correct?

4 A. (DaFonte) Correct. But, as I said, we have no

5 influence over the pipeline route. My testimony

6 yesterday was stating that, based on the current route,

7 there are commercial opportunities that we would take

8 advantage of, in order to utilize as much of that

9 pipeline capacity as quickly as possible.

10 Q. So, you're paying attention somewhat to the route,

11 because of the possible opportunities it presents from

12 a commercial perspective, but you're not necessarily

13 paying attention, getting information about the way

14 that route is going to use rights-of-way?

15 A. (DaFonte) That's correct.

16 Q. You could have asked about that information, though, is

17 that right?

18 A. (DaFonte) I suppose so. But that wasn't something that

19 was part of the PA.

20 Q. You chose to -- do you know whether this project will

21 transverse, and I suspect -- I just need to ask this, so

22 bear with me, do you know whether this project will

23 transverse or be parallel to an existing right-of-way or

24 not?  
(DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

1 A. (DaFonte) It's a long project. I'm not sure which  
 2 particular portion you're talking about. I am familiar  
 3 somewhat with the fact that the pipeline will run  
 4 through some existing right-of-way. It will traverse  
 5 probably some right-of-way. I don't know the exact  
 6 details of where it's going to traverse, whether it's  
 7 going to be in the right-of-way, outside of the  
 8 right-of-way. I don't know those details behind the  
 9 project.  
 10 Q. So, in making a judgment about whether this is a good  
 11 project for ratepayers, at least-cost or best-cost, you  
 12 did not factor in at all the impact of the Pipeline  
 13 with respect to how it was going to be placed and any  
 14 effects it might have on communities along the way?  
 15 A. (DaFonte) That is not what my job is as the Vice  
 16 President of Energy Procurement.  
 17 Q. So, you did not, is that correct?  
 18 A. (DaFonte) Correct.  
 19 Q. Are you aware, in December, that Kinder Morgan moved  
 20 this pipeline from Massachusetts to New Hampshire, so  
 21 it could use the existing utility corridors? Is any of  
 22 that familiar to you?  
 23 A. (DaFonte) I believe that there was some public  
 24 information with regard to that, yes.  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 Tennessee Gas Pipeline moved this to New Hampshire was  
 2 to use existing utility corridors?  
 3 A. (DaFonte) It would appear that way.  
 4 Q. And, you haven't done -- as you said, you haven't done  
 5 any analysis of environmental impacts and associated  
 6 costs and risks of those impacts to this project, have  
 7 you?  
 8 A. (DaFonte) No. I'm not constructing the Pipeline. I'm  
 9 just signing up for capacity.  
 10 CHAIRMAN HONIGBERG: Along those lines,  
 11 Mr. Kanoff, where are we going with this?  
 12 BY MR. KANOFF:  
 13 Q. Well, the next question was, you are aware that  
 14 environmental costs are included as part of the  
 15 Precedent Agreement pricing?  
 16 A. (DaFonte) I don't have any information with regard to  
 17 the individual costs associated with the construction  
 18 of the Pipeline. All I do have is the rate that we  
 19 were able to negotiate on behalf of EnergyNorth  
 20 customers with Tennessee Gas Pipeline. Their costs are  
 21 their costs. And, I don't know what role they play in  
 22 the rate that was negotiated.  
 23 Q. Would you take subject to check that some measure of  
 24 environmental impacts may be included in the costs that  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 Q. And, if you want to look at Exhibit 41.  
 2 A. (DaFonte) Which I don't have.  
 3 (Atty. Gates handing documents to  
 4 Witness DaFonte.)  
 5 WITNESS DaFONTE: Okay. I have 41 here.  
 6 BY MR. KANOFF:  
 7 Q. Okay. And, have you seen this letter before? It's a  
 8 letter from Kinder Morgan, dated December 8th, 2014, to  
 9 FERC, with respect to the change in route from  
 10 Massachusetts to New Hampshire?  
 11 A. (DaFonte) I may have seen it.  
 12 Q. Okay. And, on the top of Page 2 and 3, it basically  
 13 explains one of the reasons for that change in route.  
 14 And, it says that a change, and I'm paraphrasing here,  
 15 you can look at the bottom of Page 2, the change in  
 16 route "will enable a very substantial portion of the  
 17 proposed new pipeline construction to be located  
 18 adjacent to, and parallel with, existing corridors in  
 19 the states of New York, New Hampshire," -- sorry, "New  
 20 York, Massachusetts and New Hampshire." Do you see  
 21 that?  
 22 A. (DaFonte) Yes.  
 23 Q. Okay. And, so, would you agree that, at least as far  
 24 as this letter is concerned, one of the reasons  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 you ultimately would pay?  
 2 MS. KNOWLTON: Objection. The witness  
 3 has stated that he doesn't have any knowledge as to the  
 4 costs with regard to the construction of the Pipeline.  
 5 CHAIRMAN HONIGBERG: Mr. Kanoff, you  
 6 want to know -- he negotiated the Agreement. The  
 7 Agreement contains some provisions that are relevant to  
 8 where you're going. That's what you want to ask him  
 9 about, right?  
 10 MR. KANOFF: Right.  
 11 CHAIRMAN HONIGBERG: The provisions that  
 12 are in the contract that he negotiated.  
 13 MR. KANOFF: That's right. And, so, the  
 14 question had to do with, is he -- I was just trying to get  
 15 at --  
 16 CHAIRMAN HONIGBERG: No, I think you're  
 17 good. Go ahead.  
 18 MR. KANOFF: Okay. Fine.  
 19 BY MR. KANOFF:  
 20 Q. And, if I could refer you to Bates 098.  
 21 CHAIRMAN HONIGBERG: Of what?  
 22 MR. KANOFF: The DaFonte testimony.  
 23 WITNESS DaFONTE: May I just mention  
 24 that that's all confidential.  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 49

1 MR. KANOFF: Right. And, I think I may  
 2 have taken it as far as I can take it. But I want to at  
 3 least reference that's the link.  
 4 BY THE WITNESS:  
 5 A. (DaFonte) Okay. But I don't know the specific costs  
 6 associated with any of those items listed there.  
 7 BY MR. KANOFF:  
 8 Q. I want you to look at Exhibit 42. And, take a look at  
 9 Exhibit for Identification 42, 43, and 44. And,  
 10 cutting to the chase here, in response to the  
 11 Supplemental Exhibit 42 response, you submitted what is  
 12 marked for identification "43" and "44", is that right?  
 13 A. (DaFonte) Correct.  
 14 Q. And, first question, with respect to Exhibit 43, do you  
 15 know anything more about the project, the "AIM project"  
 16 reference in this document and what is referenced in  
 17 the exhibit? Do you have any information beyond what's  
 18 here?  
 19 A. (DaFonte) I do not.  
 20 Q. Okay. And, look at Exhibit 44. Do you recognize this  
 21 document?  
 22 A. (DaFonte) I do.  
 23 Q. And, this was a response that you provided to us as  
 24 part of an information request response, is that right?  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 51

1 just want to, with my questions, say, are you aware  
 2 that there's other pipelines, Spectra, Access  
 3 Northeast, Portland Natural Gas Transmission pipelines,  
 4 that will do the same things as some of the elements  
 5 listed on this page, to "provide direct access to  
 6 Marcellus", isn't that correct?  
 7 A. (DaFonte) I believe, as part of my testimony and the  
 8 analysis that I conducted in this case, I've identified  
 9 the available alternatives at the time that we were  
 10 analyzing the benefits of the NED project. So, I have  
 11 listed -- we have conducted analysis on the PNGTS/C2C  
 12 project, as well as the Spectra/Atlantic Bridge  
 13 project. Which, at this point, I might as well add  
 14 that those two projects now have run their course, in  
 15 terms of their Open Seasons, and are fully subscribed.  
 16 Q. I'll talk about alternatives later. That's the last  
 17 element I have. We don't have to get into it now then.  
 18 Let's look at Page 7. And, that shows a map of the  
 19 change in route from Massachusetts to New Hampshire,  
 20 does it not?  
 21 A. (DaFonte) Yes. That's correct.  
 22 Q. And, on Page 7, it also says, as a comment, "we  
 23 listened". Do you see that?  
 24 A. (DaFonte) I do see that. Yes.  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 50

1 It's a NESCOE presentation, the New England States  
 2 Committee on Energy, if I got that right, by Kinder  
 3 Morgan, in December 2014, is that right?  
 4 A. (DaFonte) Correct. We provided the link to the  
 5 document.  
 6 Q. Right. And, this is the document.  
 7 A. (DaFonte) Correct.  
 8 Q. From that link. And, this is the same time when Kinder  
 9 Morgan decided, Tennessee Gas decided to move this  
 10 project from Mass. to New Hampshire, is that right?  
 11 A. (DaFonte) Approximately.  
 12 Q. Yes. And, this is one of the first presentations they  
 13 made, at least publicly, announcing that decision?  
 14 A. (DaFonte) I can't confirm that.  
 15 Q. It would seem about the same timeline, given December  
 16 8th?  
 17 A. (DaFonte) I said it's "approximately", yes.  
 18 Q. Okay. Fine. And, if you look on Page 3, this  
 19 referenced some of the reasons why at least Kinder  
 20 Morgan believes that the NED project makes sense for  
 21 New England. You talked about some of these in the  
 22 statements you made yesterday in support of the  
 23 Settlement, although you said, as part of that, after  
 24 making the statements, they're not part of the case. I  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 52

1 CHAIRMAN HONIGBERG: Where are we going,  
 2 Mr. Kanoff? We're talking right now about the pipeline  
 3 route and the change. So, tell me where we're going.  
 4 MR. KANOFF: What I want to show is  
 5 that, at the time that the route changed, which was just  
 6 about the time that the Precedent Agreement was executed,  
 7 December and December, and after the time that the  
 8 Precedent Agreement had been approved and signed off by  
 9 the Liberty Board, that the assumptions with respect to  
 10 Liberty were all Massachusetts-based. So, by that, I mean  
 11 there was no -- at that point, there was no opportunity --  
 12 this wasn't going through the areas of southern New  
 13 Hampshire, it wasn't going to provide for the kind of  
 14 growth that they state now exists from the changed route.  
 15 And, therefore, all those additional after-the-fact  
 16 justifications for why they need the 115,000 Dekatherms a  
 17 day did not exist at the time that this was originally  
 18 proposed.  
 19 CHAIRMAN HONIGBERG: Do you want him to  
 20 testify that "it's even better than he thought it was"?  
 21 MR. KANOFF: Well, it depends where we  
 22 stop the clock, Chairman. You know, there's always  
 23 opportunities to grow after the fact. It depends how  
 24 we're going to look at ratemaking, I guess, or how we're  
 {DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 going to look at gas supply.  
2 So, at some point you say, they made a  
3 bet, and the bet was "it's 115, based on these facts."  
4 And, now, we're allowing in other information about why  
5 it's better or it may be further justification for the  
6 facts originally assumed. But we could add other facts,  
7 just as hypothetically, other pipelines, other realities,  
8 that make it less economic than they have assumed. At  
9 some point, we have to just say "they made a bet at this  
10 point in time", and we have to understand that and stick  
11 with it.

12 WITNESS DaFONTE: I don't mind

13 answering, --

14 CHAIRMAN HONIGBERG: Go ahead.

15 WITNESS DaFONTE: -- if you --

16 CHAIRMAN HONIGBERG: Go ahead.

17 BY THE WITNESS:

18 A. (DaFonte) Sure. The original testimony, and the  
19 analysis that was conducted, did not include any growth  
20 with regard to the changed pipeline route. It had no  
21 Keene in there. There was no load associated with any  
22 potential communities along the new pipeline route.  
23 There wasn't even any more than about a thousand or so  
24 dekatherms associated with returning capacity-exempt  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 Q. And the route at the time essentially was as filed, and  
2 the reaction of three experts in this case to that  
3 filing was that the Company did not undertake adequate  
4 analysis of that route at that amount. Isn't that  
5 right?

6 A. (DaFonte) I don't believe so, no. In my opinion?

7 MS. PATTERSON: And, actually, at this  
8 point, I would just object and say that the testimony  
9 speaks for itself, as far as the Staff testimony goes.

10 BY MR. KANOFF:

11 Q. And, to the extent that the testimony does speak for  
12 itself, and does suggest in some way that the Company's  
13 analysis, as filed, was deficient, then wouldn't it be  
14 a logical link to suggest that adding on additional  
15 possibilities to that foundation is even more  
16 speculative, more problematic than the original filing?

17 MS. KNOWLTON: Objection. I'd ask that  
18 the witness be shown particular portions of specific  
19 testimony, if he's going to be asked a question based on  
20 that testimony.

21 CHAIRMAN HONIGBERG: Mr. Kanoff.

22 MR. KANOFF: We'll let the testimony  
23 speak for itself at this point. I think that the question  
24 can be answered with another question, I'd just as soon go  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 customers. So, the Company, when it filed for the  
2 115,000, that 115,000 was supported by the original  
3 route and the market activity at the time, again,  
4 mentioning the capacity-exempt customers. And, by the  
5 way, those customers, once they do return, they stay  
6 with us for good. That means they have to pay for that  
7 capacity long-term. So, those now have to be factored  
8 into our future planning. And, as I testified  
9 yesterday, those have increased to approximately 3,600  
10 Dekatherms per day.

11 So, the change in the route, that really  
12 has led to an even greater need for capacity. And, I  
13 think, as part of the Settlement, you know, that  
14 Settlement kind of takes that into consideration, and  
15 says "okay, sure, you know, 115, but you got to meet  
16 some of these targets that were negotiated. And, if  
17 you don't, then it goes down to 100. And, oh, by the  
18 way, whether it's 115 or 100, you got to hit certain  
19 growth targets, or else there is a disallowance of  
20 costs through the cost of gas."

21 So, I don't know if that's where you're  
22 going. But the initial filing was premised on the  
23 route at the time, and no additional growth was  
24 factored in.

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

1 in that direction.

2 CHAIRMAN HONIGBERG: Okay.

3 MR. KANOFF: All right.

4 BY MR. KANOFF:

5 Q. The question is, in December of 2014, and as part of  
6 your submittal in this case, you undertook an analysis  
7 that was based upon and presented analysis that was  
8 based primarily or almost totally on a Massachusetts  
9 route, is that right?

10 A. (DaFonte) The analysis was not based on the route  
11 itself. The analysis was based on the terms of the  
12 Agreement, and specifically the negotiated rate in the  
13 Agreement, as it related to the alternatives that were  
14 available at that time.

15 Q. And, the amount of alternatives that you relied on at  
16 that time were based upon a Massachusetts route that  
17 would serve EnergyNorth by a little spur called the  
18 "West Nashua Lateral", isn't that right?

19 A. (DaFonte) I believe that it was a lateral that would be  
20 coming from Massachusetts, but the terms and conditions  
21 were the same. And, I keep going back to this, but  
22 what I'm negotiating is a rate that our customers will  
23 ultimately pay, and the benefits associated with the  
24 contract that will accrue to our customers as well.

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[WITNESS PANEL: DaFonte-Clark-Whitten] 57

1 The route is not in our control. And, as I've just  
 2 said a little while ago, to the extent that that route  
 3 changed and it provided other commercial opportunities  
 4 to bring natural gas service to other communities,  
 5 then, of course, we would want to take advantage of  
 6 that.

7 Q. Let me ask two questions on this, and then I'll move  
 8 on. Is the way a company looks at analysis that it  
 9 establishes a -- based upon what the amount of  
 10 customers are, how much gas it needs, or does it  
 11 determine that it has a certain amount of gas and then  
 12 evaluates how much customer it needs? Which is the  
 13 best approach?

14 A. (DaFonte) Well, the Company first conducts a demand  
 15 forecast, based on assumed growth and, you know, market  
 16 trends. And, then, it compares that demand forecast to  
 17 its available resources. And, any deficiency in those  
 18 resources would have to be addressed through a capacity  
 19 or supply procurement.

20 Q. And, is that what this is? Is this -- is the NED  
 21 project, the Precedent Agreement, is that a capacity or  
 22 supply procurement, as you just described?

23 A. (DaFonte) Yes. It's a capacity contract.

24 CHAIRMAN HONIGBERG: Are we at a  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 58

1 breaking point, because I know Mr. Patnaude is going to  
 2 need a break?

3 MR. KANOFF: This would be a great place  
 4 to break.

5 CHAIRMAN HONIGBERG: Okay. We'll break  
 6 for ten minutes, come back at quarter after four.  
 7 (Recess taken at 4:03 p.m. and the  
 8 hearing resumed at 4:20 p.m.)  
 9 CHAIRMAN HONIGBERG: Mr. Kanoff.  
 10 MR. KANOFF: Thank you. I have to turn  
 11 it on.  
 12 CHAIRMAN HONIGBERG: Yes, it helps if  
 13 it's on.  
 14 MR. KANOFF: Okay.

15 BY MR. KANOFF:  
 16 Q. Mr. DaFonte, is it still possible that the route for  
 17 the NED project will change?  
 18 MS. KNOWLTON: Objection as to the  
 19 relevance of the question.  
 20 CHAIRMAN HONIGBERG: Sustained.

21 BY MR. KANOFF:  
 22 Q. I want to refer you to exhibits for identification 45,  
 23 46, 47 confidential, 48 redacted, 49, 50, 51, and 52.  
 24 Do you have those in front of you?  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 59

1 A. (DaFonte) I have all of them, yes.

2 Q. Now, you referenced in your testimony, and also  
 3 referenced in some of those information request  
 4 responses that are now exhibits for identification,  
 5 that you looked at Atlantic Bridge and C2C, is that  
 6 right?

7 A. (DaFonte) That's correct.

8 Q. And, for each option, for those two projects, you  
 9 assumed 115,000 Dekatherms a day long-haul  
 10 transportation, from either Wright or Ramapo, New York  
 11 beginning in 2018, is that right?

12 A. (DaFonte) That's correct.

13 Q. And, did you take any negotiation -- do you undertake  
 14 any negotiations with Atlantic Bridge or C2C for any  
 15 amounts less than 115,000 Dekatherms a day?

16 A. (DaFonte) No, we did not. It was on an  
 17 apples-to-apples basis, based on the needs that the  
 18 Company identified in its filing.

19 Q. And, did you assess either one of those alternatives at  
 20 any other timetable, other than the timetable that you  
 21 used for NED and which would be service beginning  
 22 November 2018?

23 A. (DaFonte) No. We evaluated the project on a long-term  
 24 cost analysis basis.  
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[WITNESS PANEL: DaFonte-Clark-Whitten] 60

1 Q. And, to be clear, both those facilities go to Dracut,  
 2 is that right? Let me say it a different way. Both  
 3 those possible options, they both go to Dracut?

4 A. (DaFonte) Well, the PNGTS project would go to Dracut,  
 5 because it has existing capacity to Dracut. The  
 6 Atlantic Bridge project is not proposed to go to Dracut  
 7 specifically.

8 Q. If the Precedent Agreement or the Settlement is not  
 9 approved for any reason, what would EnergyNorth propose  
 10 to do?

11 A. (DaFonte) Well, EnergyNorth would immediately begin  
 12 exploring other alternatives that are out there. There  
 13 are other projects that are being proposed that would  
 14 be considered. It would certainly have to look at an  
 15 expansion of the Concord Lateral, as probably the first  
 16 order of business.

17 Q. Is it a fair -- is it a fair statement that other  
 18 options are emerging beyond the two options that you  
 19 looked at as part of your proposal in this case?

20 A. (DaFonte) I'm only aware of one other pipeline option  
 21 that has been announced at this point in time.

22 Q. Which one would that be?

23 A. (DaFonte) It would be the Access Northeast project.

24 Q. Are you aware of any opportunities with respect to the  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 PNGTS system/TransCanada connections that would also  
 2 provide availability to Dracut?

3 A. (DaFonte) I have not seen any announcements with regard  
 4 to PNGTS, other than what was provided in the C2C Open  
 5 Season.

6 Q. Are you familiar at all with the filing that PNGTS made  
 7 in the regulatory proceedings with respect to LDCs in  
 8 the Consortium, regarding its ability to serve and  
 9 provide gas to Dracut from Marcellus/Utica?

10 A. (DaFonte) No, I'm not familiar with that.

11 Q. And, as a hypothetical, just one last question on this,  
 12 the options available, if for some reason the Precedent  
 13 Agreement was not approved or the project was not  
 14 built. Is Spectra/Access Northeast, the Access  
 15 Northeast project, would that be an option for the  
 16 Company? Would you look at that?

17 A. (DaFonte) The Company would have to look into the  
 18 project. What I know of it is it's a project that's  
 19 been at least marketed to electric distribution  
 20 companies. In fact, electric distribution companies  
 21 are partial owners of the project.

22 Q. Are you also aware that LDCs are signing up for that as  
 23 well?

24 A. (DaFonte) I am not aware of that, no.  
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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 clearly would not allow the plants to function even as  
 2 they function today.

3 Q. And, those regulations, I believe in one of your  
 4 information responses, were enacted this year, is that  
 5 your testimony?

6 A. (DaFonte) No. I don't believe they were enacted this  
 7 year. They have been around for awhile now.

8 Q. Do you know when they went into effect?

9 A. (DaFonte) I do not.

10 Q. In 2007, as part of the Company's testimony in seeking  
 11 approval of the Concord Lateral, it proposed to expand  
 12 its existing propane facilities significantly. It was  
 13 a alternative to expanding the Concord Lateral. And,  
 14 so, the question is, really, what changed from 2007,  
 15 from a regulatory perspective, that would make that  
 16 option not available now as it was then?

17 A. (DaFonte) I wasn't with the Company at that time.  
 18 Liberty Utilities did not own EnergyNorth at that time.

19 Q. I understand.

20 A. (DaFonte) So, I don't know.

21 Q. But I guess the confusion is, I'm trying to get a  
 22 timeline on this reg., and I believe one of my  
 23 colleagues is looking it up as we speak, but, if the  
 24 regulation would not have prevented Grid from  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 Q. Now, you did not consider LNG as part of your  
 2 assessment of NED, is that right? Expansion of LNG  
 3 peaking?

4 A. (DaFonte) Yes. The Company did not consider the  
 5 expansion of its existing LNG peaking facilities,  
 6 because it does not have the ability under federal  
 7 regulation to expand those facilities.

8 Q. Can you enlighten us as to what that federal regulation  
 9 that you're referring to is?

10 A. (DaFonte) Sure. It's NFPA 59A, "NFPA" being the  
 11 National Fire Prevention Association. And, in that  
 12 rule, NFPA 59A --

13 Q. I'm sorry. I'm sorry to interrupt you. Could you say  
 14 that again? I didn't get the entire reference. It's  
 15 "NFPA 59" --

16 A. (DaFonte) A. And, it's -- "NFPA" stands for the  
 17 "National Fire Protection Association". And, that  
 18 basically has specific requirements around vapor  
 19 dispersion of LNG facilities and thermal radiation  
 20 zones. The existing facilities, LNG facilities of the  
 21 company, are in, for the most part, densely populated  
 22 areas, and are grandfathered because of the fact that  
 23 they're, you know, 30-40 years old. Any expansion  
 24 would bring them under the new regulations, which  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 expanding, in fact, they made a proposal here to do  
 2 that, then the question is, how it would prohibit you  
 3 from doing the same thing?

4 A. (DaFonte) You're making an assumption that I can't  
 5 answer.

6 Q. Now, with respect to the expansion of LNG, you say two  
 7 things. One was that there was a regulation that was  
 8 challenging, and you just referenced that regulation.  
 9 You also indicate that, with respect to LNG, that  
 10 you're not aware of any new sites that would work.  
 11 Could you talk about that a little bit.

12 A. (DaFonte) Can you point me to the data request or the  
 13 exhibit that you're referencing?

14 Q. Sure. It's in Exhibit 49(b), last sentence. "The  
 15 Company is not aware of any potential LNG sites that  
 16 would be able to comply with all federal codes." So,  
 17 you talked about "current facilities", and you also  
 18 talked about "potential LNG sites". So, I'm asking now  
 19 about potential LNG sites?

20 A. (DaFonte) My answer would be the same.

21 Q. So, are you -- is your testimony then, with potential  
 22 sites, that there are no sites that would meet the --  
 23 satisfy the prohibitions or the regulations of NFPA 59A  
 24 anywhere in New Hampshire? I'm just trying to  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 65

1 understand the context, your response that there's "no  
 2 sites".

3 A. (DaFonte) No, I'm just suggesting -- I'm saying that  
 4 we're not aware of sites within the Company's service  
 5 territory that would be able to provide that level of  
 6 service and satisfy the NFPA 59A requirements.

7 Q. So, it's just within your service territory?

8 A. (DaFonte) Yes. That's the only way we could get  
 9 service.

10 Q. And, so, there's no -- strike that. So, what have you  
 11 done to actually evaluate possible sites? I mean, how  
 12 do you know that there's no sites? Your service  
 13 territory encompasses a large area, presumably, and a  
 14 lot of it is not as urban as your existing sites. What  
 15 have you done to evaluate that there's no sites  
 16 available in your service territory?

17 A. (DaFonte) Well, the site has to be somewhere near where  
 18 the Company's largest consuming part of its service  
 19 territory is, because there has to be takeaway  
 20 capacity, in a sense. So, for example, you couldn't  
 21 put it on the extremities of the distribution system,  
 22 because there would be no demand out in those  
 23 locations. So, it has to be closer to the urban, if  
 24 you will, urban setting. And, it would certainly have  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 67

1 capacity source to serve peak demand, and wouldn't that  
 2 reduce the amount of supply necessary otherwise under  
 3 long-haul transportation?

4 A. (DaFonte) Yes. I believe that's what I was saying.  
 5 It's a supply-side resource. So, if that were the  
 6 solution, and, again, comparing apples to apples, we  
 7 would be looking at 115,000 a day, which is what we're  
 8 looking at for -- what we've put forth in our testimony  
 9 as being the appropriate amount of capacity required to  
 10 satisfy long-term customer demand.

11 Q. Just a few more questions. Are you aware that Northern  
 12 Utilities is considering at least one site in New  
 13 Hampshire for an LNG facility?

14 A. (DaFonte) Well, I probably would turn to Mr. Clark with  
 15 regard to anything related to any LNG facilities to  
 16 serve customers elsewhere. I'm assuming it's Keene  
 17 or --

18 Q. I don't know. I'm asking you.

19 A. (DaFonte) That's the only one I'm aware of that there's  
 20 been discussion of being able to provide service to --  
 21 MS. KNOWLTON: Mr. Kanoff can --  
 22 objection. I believe the question was as to "Northern  
 23 Utilities".  
 24 MR. KANOFF: And, I believe they're  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 66

1 to be a large facility or multiple facilities to  
 2 provide the same 115,000 Dekatherms per day of  
 3 capacity.

4 Q. Well, it doesn't have to provide 115,000 Dekatherms a  
 5 day, does it? It just has to provide some measure of  
 6 peak demand.

7 A. (DaFonte) Well, to satisfy the long-term requirements,  
 8 that's what we --

9 Q. Well, the LNG would not be a long-term requirement  
 10 option, but it would be a peaking solution?

11 A. (DaFonte) Yes. But it would be a solution to satisfy  
 12 our long-term design day requirements.

13 Q. It would reduce your design day long-term requirements,  
 14 would it not, if it was available to you? That's what  
 15 Grid said.

16 MS. KNOWLTON: Objection. I would ask,  
 17 to the extent that Mr. Kanoff is referring to what Grid  
 18 said, to show Mr. DaFonte National Grid's testimony, so he  
 19 could review that, that specific reference to that  
 20 testimony page, *et cetera*.

21 BY MR. KANOFF:  
 22 Q. Well, why don't I just modify the question and say,  
 23 would not LNG, if it were employed, available,  
 24 constructed by the Company, reduce peak -- I mean, be a  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 68

1 answering the question.

2 WITNESS DaFONTE: Oh, I'm sorry. I  
 3 misunderstood. I didn't realize it was Northern, Northern  
 4 Utilities. So, I apologize for that.

5 CHAIRMAN HONIGBERG: Okay. Let's start  
 6 again.

7 MR. KANOFF: Start again. Question.

8 BY MR. KANOFF:  
 9 Q. Are you aware that Northern Utilities is considering at  
 10 least one site in New Hampshire for an LNG peaking  
 11 facility?

12 A. (DaFonte) No, I'm not.

13 Q. And, I just want to refer you to Exhibit 48. And,  
 14 Liberty itself -- do you have that in front of you?

15 A. (DaFonte) Yes. I have 48.

16 Q. And, Liberty itself has established a joint venture to  
 17 develop LNG liquification and storage to support LNG  
 18 peaking use --  
 19 (Court reporter interruption.)

20 BY THE WITNESS:  
 21 A. (DaFonte) I'm confused. It's not 48, right?

22 BY MR. KANOFF:  
 23 Q. Sorry. Fifty-two, 52 is the exhibit number for  
 24 identification.  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 A. (DaFonte) Okay. I have that in front of me.

2 Q. Okay. And, Liberty established a joint venture to

3 develop LNG liquification and storage to support LNG

4 peaking use in the region, is that correct?

5 A. (DaFonte) Yes. I'm aware of that.

6 Q. Okay. Is any of that going to be available to Liberty

7 (EnergyNorth)?

8 A. (DaFonte) Yes. It could be, in the form of liquid, to

9 replenish the existing LNG facilities that we have.

10 Q. And, would you agree that LNG is a significant and

11 important resource available to gas companies/LDCs

12 generally to support your peaking requirements?

13 A. (DaFonte) Yes. That's why it's part of our diversified

14 portfolio.

15 Q. And, that's why you're really looking to build that

16 business through the joint venture, is that right?

17 A. (DaFonte) I don't know about the business venture. But

18 I just know from the contracting side, and exploring

19 all alternatives for LNG in liquid form, as we do every

20 year, to replenish our facility storage.

21 MR. KANOFF: Mr. Chairman, that's

22 really, that's all I have. I just want to note that, from

23 yesterday, there was one confidential area. So, if we go

24 into a confidential section -- discussion at any point,

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 there's really one question possible, and I'll relook at

2 that to see if it's even necessary.

3 CHAIRMAN HONIGBERG: Okay. Then, we'll

4 circle back to you after you've had a chance to do that.

5 Commissioner Scott, do you have

6 questions for the witnesses?

7 COMMISSIONER SCOTT: I do. Thank you.

8 And, good afternoon.

9 WITNESS DaFONTE: Good afternoon.

10 WITNESS CLARK: Good afternoon.

11 BY COMMISSIONER SCOTT:

12 Q. Let me start with the Settlement. I just want to

13 understand a little bit better. So, as I read it, it's

14 conditional. And, when I look on Page 3, and you

15 probably don't need to go there, because I know you

16 know the Settlement pretty well anyways. But I just

17 want to make sure I understand some of the dynamics

18 here. So, if it ends up that more than 10,000

19 Dekatherms a day are needed for expansion, if you will,

20 then the trigger is the amount of pipeline

21 transportation purchase stays at 115, correct?

22 A. (DaFonte) That's correct.

23 Q. But if it's 9,999, it reverts to 100, correct?

24 A. (DaFonte) That's correct.

(DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. Right. So, that increment there, is there something

2 special with that increment? Help me out how that

3 happens. I'm just trying to understand the mechanics

4 again.

5 A. (DaFonte) Yes. So, it's based on, essentially, three

6 factors. The design day requirements of INATGAS, which

7 is the CNG facility being built in Concord. It's the

8 design day capacity of any existing capacity-exempt

9 customers. And, those are the customers that have

10 their own capacity, essentially, upstream to supply

11 themselves through a marketer. And, as those customers

12 come back, they, as I mentioned earlier, they are

13 entitled to our capacity, and then must pay for that

14 capacity in perpetuity. But they are allowed to go

15 back to transportation service. So, essentially, they

16 take the capacity on a *pro rata* share. So, their *pro*

17 *rata* share of all of our resources. And, they can

18 assign those to their marketer, and then their marketer

19 goes out and procures supply accordingly. And, so,

20 they can continue to be a transportation customer. It

21 does not prohibit them from going back. But they do

22 have to pay 100 percent of the fixed costs associated

23 with all of our resources. So, that's the second

24 piece. The other one is, which is more recent, is the

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 fact that the Company has been talking to customers of

2 Concord Steam who wish to switch to natural gas direct

3 service from EnergyNorth.

4 Q. So, am I correct to paraphrase, you know, I was making

5 it extreme, 9,999 you don't need that extra increment,

6 that one more you do. But it's really directional, am

7 I correct? Meaning, if you're able to demonstrate that

8 these are needed, then there's a good understanding

9 that you'd need the full 115. Is that kind of the

10 thinking? Is that correct?

11 A. (DaFonte) Yes. Yes, exactly right.

12 Q. Did I hear correctly, so, if that is triggered, so

13 it's -- the purchase amount is 100,000, not 115, that

14 you do not require to renegotiate the Precedent

15 Agreement? Did I hear that correctly?

16 A. (DaFonte) That's correct. The Tennessee has agreed

17 that, under the terms of the PA, which essentially

18 established a 100 or 115 type threshold, that this

19 still falls within that threshold. So, they are

20 amenable to an amendment.

21 Q. And, the pricing would be the same regardless?

22 A. (DaFonte) Right. And, as I had stated, that's really

23 one of the benefits that comes out of the Settlement.

24 That is that it is, essentially, a no-cost option to be

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[WITNESS PANEL: DaFonte-Clark-Whitten] 73  
1 able to lower the commitment on the NED project.  
2 Q. Okay. Thank you. Is there -- obviously, you've, as  
3 you stated in your testimony, you've worked with a  
4 consortium. And, my understanding is that is to kind  
5 of leverage buying power, is that correct?  
6 A. (DaFonte) Yes. Absolutely. And, as part of that, all  
7 the Consortium members receive the same benefits, if  
8 you will.  
9 Q. So, what I'm interested in is that, that increment.  
10 So, is there a magic number related to the Precedent  
11 Agreement with the 100,000, is that -- do you have to  
12 buy in lots, if you will, or chunks? Or is that -- is  
13 there a number that you need to do in order to be part  
14 of this, I guess?  
15 A. (DaFonte) Well, the number is, you know, the number is  
16 really based on what our requirements were. And, you  
17 know, each utility within the Consortium has their own  
18 specific requirements. So, because it's a 20-year  
19 contract, we looked out 20 years to see what our demand  
20 would look like. And, based off of that, that 115  
21 number was appropriate, given that we have decisions to  
22 make within that time period on the retirement of our  
23 propane facilities. So, the planning horizon really  
24 isn't 20 years, it's more in the five to ten year  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 74  
1 range, because of the 34,600 of propane capacity that  
2 we have on the system that would -- we would expect  
3 would eventually go away. So that was the basis for  
4 our commitment, and then each LDC had their own basis  
5 for commitment of a particular volume.  
6 Q. So, if I understood you right, you didn't have a  
7 particular amount you had to purchase in order for this  
8 to go forward. Is it not correct, though, that the  
9 pipeline developer, in general, needs a certain  
10 critical mass before they move forward or nobody gets  
11 anything?  
12 A. (DaFonte) Right. Exactly. And, that's, as part of the  
13 Consortium, because we were able to, you know, look at  
14 our individual needs, pool them together, and go to the  
15 pipeline, we were able to go to them with a particular  
16 volume. And, the pipeline agreed that, under, you  
17 know, with that volume in mind, we would provide you  
18 with a certain rate under those conditions. And, then,  
19 they would make a determination, that being, you know,  
20 Tennessee Gas Pipeline, would make a determination  
21 based on the additional participants in the project  
22 whether they would go forward with it. And, as I  
23 mentioned, they did announce, on July 16th, that they  
24 would go forward with the current volumes, if, in fact,  
{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte-Clark-Whitten] 75  
1 they're approved by their representative state  
2 commissions.  
3 Q. So, you mentioned the price. When does that actually  
4 get locked in? When do you have a firm price?  
5 A. (DaFonte) Well, the negotiated rate gets locked in  
6 immediately, once -- upon approval of the Precedent  
7 Agreement, that gets locked in. And, then, there are  
8 adjustments that I believe are confidential in nature,  
9 but there are some adjustments that could -- that could  
10 cause the price to go up and adjustments that could  
11 cause the price to go down as well.  
12 Q. And, you went to my next question. So, to the extent  
13 there are cost overruns, how is that handled? We're  
14 being asked to approve a certain thing. Would the  
15 utility come back to us? Or, what's the -- what are  
16 you envisioning if there's cost overruns?  
17 A. (DaFonte) Well, the PA includes provisions associated  
18 with the cost overrun, as well as the cost underrun.  
19 So that there's a -- well, it's confidential. But we  
20 can -- the provisions are in the PA, but they are  
21 confidential. And, so, I don't want to divulge those  
22 at this point in time.  
23 CHAIRMAN HONIGBERG: So, Commissioner  
24 Scott, do you want to finish other aspects of your  
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1 questioning, then circle back to that issue, and then, at  
2 that point, maybe Mr. Kanoff will also be able to ask his  
3 questions?  
4 COMMISSIONER SCOTT: That would be fine.  
5 BY COMMISSIONER SCOTT:  
6 Q. And, what I'm really trying to ask, I don't know if you  
7 need to go into the confidential side, is, to the  
8 extent there are cost overruns triggered in the PA, is  
9 it your assumption that those will be absorbed, if we  
10 approve the Precedent Agreement, are we also approving  
11 to that limit of whatever the cost overruns are?  
12 A. (DaFonte) Yes. Yes.  
13 Q. Okay.  
14 CHAIRMAN HONIGBERG: Let me ask you  
15 this, Mr. DaFonte. Do you want to circle back to the  
16 confidential information and providing an answer to the  
17 question Commissioner Scott asked you just before that  
18 last one?  
19 WITNESS DaFONTE: If it's helpful, I  
20 would, yes. I would do that.  
21 CHAIRMAN HONIGBERG: All right. So,  
22 when Commissioner Scott is done, and maybe when I'm done,  
23 we'll circle back to that question, and that will also be  
24 Mr. Kanoff's opportunity to do what he needs to do, before  
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1 we then bring back everybody else and let Ms. Knowlton  
 2 redirect. So, that's how we're going to go.  
 3 COMMISSIONER SCOTT: Thank you.  
 4 BY COMMISSIONER SCOTT:  
 5 Q. So, moving, in my view anyways, to the other end of the  
 6 equation, my view is a lot of your cost/benefit  
 7 analysis assumes a certain liquidity at Wright, is that  
 8 correct?  
 9 A. (DaFonte) Yes.  
 10 Q. And, if I think I heard yesterday in your testimony,  
 11 there was some talk about, if certain conditions aren't  
 12 met, the Precedent Agreement wouldn't take into effect.  
 13 Is liquidity one of those?  
 14 A. (DaFonte) You know, again, that's a -- that's another  
 15 confidential issue that we could certainly discuss.  
 16 But there are provisions in the PA that would, in a  
 17 sense, ensure that there is some liquidity there at  
 18 Wright.  
 19 Q. Sounds like I'm developing a list of confidential  
 20 items.  
 21 MS. KNOWLTON: If I may interject? I  
 22 mean, Mr. DaFonte, on the public record, could point the  
 23 Commissioners to the particular page of the PA in  
 24 question, and at least provide some information that way  
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1 now, if that's helpful. And, then, if there's a need to  
 2 get into the particulars, could do that on the  
 3 confidential record.  
 4 COMMISSIONER SCOTT: Fine. I'll do  
 5 that. But, if you think it's more helpful to talk in the  
 6 confidential side anyways, I'm fine with waiting till  
 7 then, too.  
 8 WITNESS DaFONTE: Sure. I can do that.  
 9 BY THE WITNESS:  
 10 A. (DaFonte) I can elaborate a little bit with respect to  
 11 liquidity, and the way in which we try to determine  
 12 what the costs will be at Wright. But, essentially,  
 13 our approach we used was sort of a "wellhead plus"  
 14 approach. What that means is that we looked at the  
 15 project that we know has been approved by the FERC,  
 16 which is the Constitution Pipeline project, which is  
 17 designed to go from, essentially, Marcellus to Wright.  
 18 It's designed to bring about 650,000 Dekatherms a day  
 19 to Wright. And, so, we looked at the rate associated  
 20 with that project, which, at the time when we looked at  
 21 it, we assumed a 75 cent rate. And, in actuality, it's  
 22 about a 65 cent rate.  
 23 But our assumption was that the  
 24 shippers, which are two producers, on that project  
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1 would want to recover those demand charges, those fixed  
 2 costs, in the winter period, when there's typically  
 3 more demand. So, we took the 365 days of demand  
 4 charges, and assumed that they would all be recovered  
 5 in the winter period. And, then, what we did is we  
 6 took that demand charge and sculpted it based on the  
 7 months with the highest demand, and that became the  
 8 basis for Wright. And, so, that's how we developed  
 9 that, that pricing assumption.  
 10 And, with respect to that liquidity, in  
 11 addition to Constitution, I think I mentioned that  
 12 Dominion has a project that is being built to  
 13 interconnect with Iroquois Gas Transmission, which is  
 14 where Wright is located, right off of Iroquois. In  
 15 addition, I mentioned as well, that we are in  
 16 negotiations with Tennessee Supply Path, which would  
 17 bring another Bcf or so of supply to Wright. And, so,  
 18 that's really the liquidity piece that we would be  
 19 looking for. And, not just at Wright, but then  
 20 diversifying, going all the way back to Marcellus as  
 21 well through that Supply Path piece.  
 22 BY COMMISSIONER SCOTT:  
 23 Q. So, when we go to the confidential side, if it is  
 24 needed, what I'm interested in is where are the  
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1 bookends for liquidity that we're approving, that,  
 2 again, you did some analysis with what you understand  
 3 is going to happen at Wright, I believe. All of that  
 4 is somewhat -- and, I agree, the Constitution has been  
 5 approved by FERC, but, you know, they're somewhat  
 6 speculative, it's not there right now. So, where are  
 7 the bookends of what we're being asked to approve,  
 8 vis-a-vis how liquid it -- obviously, if Wright becomes  
 9 less liquid, then, we have -- you know, it's a whole  
 10 other calculation, correct?  
 11 A. (DaFonte) Right. Agreed. And, that's why we're in  
 12 negotiations with Tennessee as well, to make sure that  
 13 we are looking at a fully diversified portfolio. But,  
 14 as I said, with regard to Wright, there are projects  
 15 that are being proposed to be built there, and that  
 16 there are some protections, if certain things don't  
 17 happen.  
 18 Q. And, those protections are what I would like to  
 19 discuss.  
 20 A. (DaFonte) Exactly.  
 21 Q. Or, I'm not saying we'd do this, but, with those  
 22 protections, would we do a conditional approval, where,  
 23 assuming these things happen, this is how the approval  
 24 is, that type of thing.  
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1 Okay. Moving on for me, on the  
2 Settlement, the growth incentives. So, again, if  
3 certain triggers, my word, aren't used -- aren't met,  
4 the cost of gas reconciliation are reduced by certain  
5 amounts, correct?  
6 A. (Clark) Correct.  
7 Q. So, who bears those costs, if you will, or that lack of  
8 recovery, who bears that?  
9 A. (Clark) That would be shareholders.  
10 Q. Okay. So, help me out. An earlier discussion was that  
11 "EnergyNorth had no stakeholders", did I hear that  
12 correctly?  
13 A. (DaFonte) Yes, the shareholder issue?  
14 Q. Yes, "shareholders".  
15 A. (DaFonte) I mean, ultimately, it's the parent that  
16 bears the cost, which is APUC.  
17 Q. Okay. And, in no case would it be the ratepayers,  
18 correct?  
19 A. (DaFonte) No, absolutely not. They would actually be,  
20 you know, paying less.  
21 Q. Okay.  
22 MS. KNOWLTON: If I might, maybe one  
23 more thing I'll stipulate to, so there's no question.  
24 EnergyNorth does have a shareholder. It's wholly owned by  
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1 natural gas, storage, I understood your comments about  
2 within your service territory. Did you look at --  
3 well, let me back up. For one of your -- one of your  
4 rationale, if I understood right, for not using --  
5 pulling gas from Dracut in the future, if this is  
6 approved, is that the cost -- the price point at  
7 Dracut?  
8 A. (DaFonte) That's correct. There is declining supply in  
9 Atlantic Canada. There's been quite a few articles out  
10 there and statements from one of the producers that the  
11 proven reserves have decreased by 50 percent. And, so,  
12 some of that, whether directly or indirectly, makes its  
13 way to Dracut or is consumed up in the, you know, the  
14 Atlantic provinces of Nova Scotia, New Brunswick, and  
15 so forth. And, so, as that supply begins to  
16 essentially shut down, those LDCs up there are going to  
17 require capacity. And, I believe some have already  
18 signed up for capacity on some of the new projects.  
19 Q. So, on that end, have you -- did you look at use of  
20 other LNG facilities, Distrigas, Canaport, as a --  
21 maybe a way to right size the amount of pipeline  
22 capacity you need?  
23 A. (DaFonte) Certainly, we looked at alternatives that  
24 would get the gas to us directly. So, you know, the  
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1 Liberty Energy Utilities (New Hampshire) Corp., which is  
2 then wholly owned by the next entity up the chain. So,  
3 there is a shareholder involved.  
4 CHAIRMAN HONIGBERG: A more general or  
5 generic way of talking about this is that the owners of  
6 the Company bear the risk when in a circumstance where  
7 it's not able to recover costs. That's -- whoever owns  
8 it. Whether that's called "shareholders", "investors",  
9 "partners", whatever, it's the owners who bear that risk,  
10 right?  
11 WITNESS CLARK: Correct.  
12 CHAIRMAN HONIGBERG: Okay.  
13 WITNESS DaFONTE: Yes.  
14 COMMISSIONER SCOTT: Thank you.  
15 BY COMMISSIONER SCOTT:  
16 Q. Again, the prior questioning went down the line of  
17 ownership, ownership change, if you will, for  
18 Algonquin. And, I guess I'd like to ask the question  
19 directly. Mr. DaFonte, you obviously negotiated the  
20 Precedent Agreement. Were you pressured by anybody  
21 above you in your chain of command, if you will, for a  
22 particular outcome for that negotiations?  
23 A. (DaFonte) No, I was not.  
24 Q. Okay. Also, on the discussion for LNG, liquified  
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1 comparable projects, being the PNGTS/C2C project and  
2 the Spectra/Atlantic Bridge project, could get gas to  
3 Dracut. But none of those projects, nor any LNG  
4 option, from Repsol or from GDF Suez, could get that  
5 gas from Dracut, up to us on the Concord Lateral. So,  
6 you would still need a Concord Lateral expansion. And,  
7 that's an expensive proposition. As we mentioned, the  
8 initial estimate was what it was. It's confidential.  
9 But it was rather, you know, it's rather high. With  
10 the updated cost estimate, that would bring gas to all  
11 of our citygates, not just Nashua, that price now  
12 begins to dwarf the NED project, which goes all the way  
13 back to Marcellus. So, you're essentially, you know,  
14 paying more for transportation from Dracut to your  
15 citygates, than you would be by going all the way back  
16 to Marcellus.  
17 Q. Thank you. And, along the lines of ownership, just to  
18 clarify, Attorney Kanoff brought up Exhibit 43, which  
19 talked about the AIM project, Algonquin Incremental  
20 Market project. Am I correct, that has no relationship  
21 to the Algonquin that's in your ownership chain, is  
22 that correct?  
23 A. (DaFonte) That's correct.  
24 Q. Despite the name?  
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1 A. (DaFonte) Yes. Exactly.

2 Q. And, before we go to confidential, so, obviously, we've

3 heard a lot from the public on the route to be taken.

4 Have you got any feedback from your customers on the

5 project?

6 A. (DaFonte) I haven't specifically.

7 Q. Or are you aware of any?

8 A. (DaFonte) I mean, there's -- we've had, I mean, letters

9 have been sent in --

10 A. (Clark) Right.

11 A. (DaFonte) -- that I know of from customers that would

12 like to see the project built. That these are large --

13 some of the largest employers and energy users in the

14 state, and they have had to deal with very volatile

15 pricing and very high pricing over the last couple

16 years. And, so, as it relates to their business and

17 their ability to compete in their specific marketplace,

18 they have certainly sent letters of encouragement to

19 the Commission to approve the contract.

20 And, of course, as I mentioned, we've

21 had capacity-exempt customers that are coming back to

22 our system. So, they're looking for price stability

23 and supply security by getting our capacity. And, so,

24 that is akin to, you know, adding new customers to the

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1 system.

2 And, you know, again, more recently, the

3 fact that the Concord Steam customers are looking at

4 taking gas directly from EnergyNorth, it's just another

5 indicator of what some of these larger consumers are

6 looking for, and which is the low-cost natural gas

7 option.

8 Q. And, Mr. Clark, I didn't mean to cut you off. Did

9 you --

10 A. (Clark) No. I'm aware of the letters that were sent in

11 in support from some of our larger industrial

12 customers, as well as some labor and trades groups.

13 Q. And, probably for Mr. Clark. So, is it your

14 understanding that, for the existing customers, if this

15 project were to go through and be approved as

16 envisioned, that's a benefit?

17 A. (Clark) I do agree.

18 Q. For Ms. Whitten, you haven't got a lot of questions, I

19 don't want to miss you. In your experience with

20 utilities or LDCs, related to the amount of reserve

21 capacity being projected for this project for this LDC,

22 how does that compare with other similarly situated

23 LDCs that you're aware of? Is this a lot more or

24 similar? Or, is it just not comparable?

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1 A. Are you referring to the 15,000 [sic]? I'm aware of

2 the Precedent Agreement -- the petitions to approve

3 precedent agreements for NED in Massachusetts. And,

4 all three of those Massachusetts LDCs have requested a

5 similar, I believe Witness DaFonte referred to it as a

6 "regulatory out" that would allow them to reduce their

7 volumes without paying a penalty.

8 The magnitude actually is higher for two

9 of them, because they're larger utilities, and about

10 the same for the smallest utility, Berkshire. And,

11 that's as much as I can say without going into a

12 confidential session. But I'd be happy to talk more

13 about it confidentially.

14 Q. Thank you. And, I think my final non-confidential

15 question is regarding the Consortium. The Consortium

16 members, are they also subsidiaries of your parent?

17 A. (DaFonte) No. None of them are.

18 Q. And, obviously, they're moving ahead also in other

19 jurisdictions to have a precedent agreement approved,

20 is that correct?

21 A. (DaFonte) Yes. As Ms. Whitten just mentioned, the

22 three in Massachusetts, and I believe there's another

23 one in Connecticut.

24 COMMISSIONER SCOTT: Thank you.

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1 CHAIRMAN HONIGBERG: I don't think I'm

2 going to be doing anything that requires confidential. I

3 may change my mind in the middle, but I'm not planning on

4 it.

5 BY CHAIRMAN HONIGBERG:

6 Q. Mr. DaFonte, I want to find out a little bit more from

7 you about how you do what you do, and how you get

8 authority to do what you do, and how -- what happens

9 when you feel like you're on the edge of the authority

10 you've been given by your superiors. Talk to me a

11 little bit about how that works for you.

12 A. (DaFonte) Well, basically, you know, my responsibility

13 is to all of the gas and electric utilities that are

14 under the purview of APUC. So, all the regulated

15 utilities. So, I provide these same services to our

16 utilities in Massachusetts, Georgia, Illinois, Iowa,

17 Missouri, and California. And, basically, we determine

18 needs, we make purchases to satisfy those needs. We

19 look out long term, based on each individual state's

20 requirements. In New Hampshire, we have a five-year

21 Least Cost Integrated Resource Plan which we file. In

22 Massachusetts, we have a similar plan, but they call it

23 a "Forecast and Supply Plan". Most of the other

24 jurisdictions are essentially year-to-year. But it's

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1 those longer term plans where we really look at our  
2 long-term requirements of our customers.  
3 And, so, as the Company looked into --  
4 or, put together its 2013 IRP, at that time it started  
5 to identify the need for an incremental resource beyond  
6 even the five years. And, so, that's when we first  
7 began to look at what at that time was the Northeast  
8 Expansion project, or an opportunity to contract for  
9 that.  
10 So, once that was identified as a need,  
11 then we would begin to look at alternatives that were  
12 out there, refine the forecast, get the most recent  
13 demand, actual usage by our customers and so forth, and  
14 then explore alternatives as they came up.  
15 And, so, once we've done that, I look at  
16 the contract. I compare it to other alternatives. I  
17 make a determination as to what's the, you know, the  
18 best-cost alternative. And, when it comes time for  
19 signing off, I basically provide a summary of the  
20 agreement to corporate and ask for their approval of  
21 the agreement. And, so, that's pretty much how it  
22 works. They don't get involved in day-to-day  
23 transactions, even smaller transactions, such as  
24 contract renewals that come up almost on an annual  
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1 basis. They -- I have complete authority to renew  
2 those contracts.  
3 Q. But this is a larger deal than one of those?  
4 A. (DaFonte) Exactly. So, something of this magnitude,  
5 that's where I have to put together, you know, some  
6 summary to my boss, for example. And, then, that gets,  
7 you know, passed on up the, you know, the hierarchy in  
8 the organization. But I basically bring it to my boss  
9 with a summary of the terms and conditions of the  
10 agreement.  
11 Q. How many of that type, the larger type, of transactions  
12 you think you negotiate in a year?  
13 A. (DaFonte) Not many. There aren't a lot of  
14 opportunities that come up. You know, the last  
15 greenfield pipeline, essentially, that was built here  
16 in New England was in 2000 -- or, 1999 really. And,  
17 so, those opportunities don't come up very often. But,  
18 as a result, certainly, of the high energy prices that  
19 customers have experienced over the last couple winters  
20 in particular, that has certainly encouraged the  
21 development of new projects, given, you know, what most  
22 people would recognize as a lack of sufficient pipeline  
23 infrastructure into the region. So, that sort of  
24 kicked it off, and that's why there are alternatives  
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1 out there. And, that's why we identified those as  
2 competing projects.  
3 Q. And, so, the Agreement was signed roughly December, I  
4 think, is what we --  
5 A. (DaFonte) It was October.  
6 Q. It was October? Okay. Maybe it was filed in December,  
7 I don't remember the details. But, if it was finalized  
8 in roughly October, at what point did you bring the  
9 people above you into the loop and let them know "this  
10 is what we have in mind here"?  
11 A. (DaFonte) Well, you know, when we file the Integrated  
12 Resource Plan, that is, you know, for me, it's one of  
13 my key goals, and when we do make that filing, I  
14 generally communicate, you know, sort of the results of  
15 that filing and what it is that we're sort of  
16 providing. And, at that time, you know, there was  
17 that, the commencement of a discussion with Tennessee  
18 on the Northeast Expansion project.  
19 Q. And when was that IRP?  
20 A. (DaFonte) That was in 2013.  
21 Q. Okay. All right. Thank you. Ms. Whitten, I haven't  
22 forgotten you either. Your testimony, do you have  
23 that?  
24 A. (Whitten) Yes, I do.  
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1 Q. At the end, and I think Ms. Patterson probably did some  
2 of this with you, but it really was a long time ago and  
3 I have forgotten. On Page 56, you talk somewhat about  
4 what your recommendation to the Commission is. And, it  
5 was essentially to deny or require changes?  
6 A. (Whitten) Correct.  
7 Q. How much of what you put on Page 56 is reflected in the  
8 Settlement Agreement, in your view?  
9 A. (Whitten) Well, all of it, basically, because it's  
10 embedded in the Settlement Agreement. What we were  
11 looking for, based on our review of the filing as  
12 originally filed, was not just a trend assumption for  
13 growth, but the backup that shows the cost/benefit of  
14 the assumed growth. And, in addition to that, you  
15 know, we wanted to see a little more discussion of the  
16 alternatives. But the primary concern was the growth  
17 assumption, that was based on a trend analysis, rather  
18 than the normal -- the typical econometric-driven  
19 analysis type of equations that would forecast growth.  
20 And, in addition, we were concerned  
21 about the fact that, as originally filed, after 20  
22 years, the Company would have at least 2,000 a day, by  
23 its own admission, of excess capacity. And, it seemed  
24 as though, after 20 years, with an assumption of  
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1 growth, there shouldn't be that much excess capacity.  
 2 I'm sure Witness DaFonte would disagree with me,  
 3 because he refers to that as "necessary reserve". But  
 4 I think of it as, over time, that much time, it  
 5 shouldn't be there. So, we --  
 6 Q. He says "Precedent" [sic], you say "Precedent". You  
 7 decide.  
 8 A. (Whitten) And, the other thing we were concerned about  
 9 was the assumption that -- the apparent assumption that  
 10 they would retain the propane/air plants. Now, I  
 11 realize that in Witness DaFonte's -- and I recognize  
 12 that in Witness DaFonte's testimony, he said that the  
 13 Company would "look at that". But, from my  
 14 perspective, "looking at it" is not the same thing as  
 15 agreeing to evaluate it and present the evidence that  
 16 shows that they should be retained or not. And, so --  
 17 but what I wanted to do with this set of  
 18 recommendations was to lay down a marker to the Company  
 19 that they needed to -- that they had deficiencies in  
 20 their original filing, and that they needed to address  
 21 those deficiencies.  
 22 Q. Is it -- I'm not sure I had really understood this  
 23 before, but is it fair to say that your original  
 24 position on the application or on the Petition wasn't  
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1 that "this couldn't be a good deal", but that "the  
 2 Company hadn't demonstrated that it was a good deal"?  
 3 A. (Whitten) Essentially, yes. Yes. I mean, as filed,  
 4 with no changes, you have to have a position on that,  
 5 assuming they refused to make any changes. But, in  
 6 fact, they did come forth with responses through  
 7 rebuttal and through other venues, technical sessions  
 8 and discovery, with additional information.  
 9 Q. You probably don't know this, but this pile of public  
 10 comments that we've had printed out, I'm guessing  
 11 there's somewhere between 80 and 100 public comments,  
 12 all but a handful are negative. And, all but a handful  
 13 of those negative ones quote you. They quote your  
 14 testimony.  
 15 A. (Whitten) They do, yes.  
 16 Q. They quoted -- many of them quote the same passages.  
 17 But I think that, well, I guess I would say, what would  
 18 you say to the people who looked at your original  
 19 testimony and said "she thinks this a bad idea." How  
 20 would you respond to them today?  
 21 A. (Whitten) I would say that the recommendations that I  
 22 made were conditional on the opportunity for the  
 23 Company to improve their filing. That they were tied  
 24 specifically to the assumptions for growth. I've had  
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1 some experience running a LDC portfolio, a supply and  
 2 transportation and capacity portfolio. And, I was not  
 3 in a position to overbuy capacity or supply either.  
 4 Our approach was to grow responsibly. So, we couldn't  
 5 go out and sign on customers that weren't  
 6 cost-effective for us to serve.  
 7 So, my metric in analyzing this filing  
 8 was a cost-based filing. It was not related to any  
 9 other issues that might be associated with other  
 10 potential customers for this project. It was strictly  
 11 this filing. And, we do a data-driven type of  
 12 analysis, where we start with the demand forecast, as  
 13 Witness DaFonte said they start with, and we found  
 14 concerns with that. Now, I could imagine that they  
 15 were addressable, if the Company wanted to come forward  
 16 with more information. So, I embedded that in my  
 17 recommendations.  
 18 I think what the -- with respect, I  
 19 understand that these people who have filed comments  
 20 are entitled to file those comments, and they do have  
 21 their concerns, but they quoted one part of my  
 22 testimony and not all of it.  
 23 CHAIRMAN HONIGBERG: Thank you very  
 24 much. I think that's all I have. I know that  
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1 Commissioner Scott wants to do confidential, I know Mr.  
 2 Kanoff may. Do you, by the way, Mr. Kanoff?  
 3 MR. KANOFF: If we're going to go to --  
 4 if we're going to go to a confidential session, I will ask  
 5 a question. I would not necessarily compel that.  
 6 CHAIRMAN HONIGBERG: Commissioner Scott  
 7 wants to. So, you're going to get --  
 8 MR. KANOFF: Then, I will ask --  
 9 CHAIRMAN HONIGBERG: You're going to get  
 10 a chance.  
 11 MR. KANOFF: I will ask a question.  
 12 CHAIRMAN HONIGBERG: So, here's what --  
 13 let's go off the record.  
 14 (Brief off-the-record discussion  
 15 ensued.)  
 16 (Public portion of the record suspended)  
 17 (Pages 97 through 108 of the hearing  
 18 transcript is contained under separate  
 19 cover designated as "Confidential &  
 20 Proprietary". Accordingly, Pages 97  
 21 through 108 herein have been  
 22 intentionally left blank.)  
 23  
 24 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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109

[WITNESS PANEL: DaFonte-Clark-Whitten]

1 (The Public Portion of the record  
 2 resumes.)  
 3 CHAIRMAN HONIGBERG: Ms. Knowlton, do  
 4 you have redirect for these witnesses?  
 5 MS. KNOWLTON: Very limited.  
 6 CHAIRMAN HONIGBERG: I should have asked  
 7 Ms. Patterson. Do you have any redirect for your witness?  
 8 MS. PATTERSON: No thank you.  
 9 CHAIRMAN HONIGBERG: Okay. Why don't  
 10 you go ahead, Ms. Knowlton.  
 11 REDIRECT EXAMINATION  
 12 BY MS. KNOWLTON:  
 13 Q. Mr. Clark, on cross-examination you were asked about  
 14 the number of customers served by the Company's system  
 15 in Keene, and you answered that there were "about 1,250  
 16 customers" in Keene. If there were natural gas in  
 17 Keene, would there be opportunities to serve more than  
 18 1,250 customers?  
 19 A. (Clark) Yes, there would. Keene is a very unique  
 20 system. It's a low-pressure propane/air system. We've  
 21 identified four or five very large commercial  
 22 customers, that would require 5 to 15 pounds of  
 23 operating pressure, which that system can't supply.  
 24 So, by converting it to natural gas, and extending the  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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[WITNESS PANEL: DaFonte-Clark-Whitten]

1 gas lines to those larger commercial customers, we  
 2 would also be going through some residential  
 3 neighborhoods to offer service to those customers at  
 4 well -- as well.  
 5 Those four customers that we've  
 6 identified would more than triple the throughput of the  
 7 existing system. So, significant.  
 8 Q. Mr. DaFonte, if additional capacity was brought into  
 9 the Company's distribution system in West Nashua, would  
 10 there be opportunities to ultimately tie together the  
 11 Company's Nashua system into its Manchester system from  
 12 Bedford?  
 13 A. (DaFonte) Yes. There are a couple opportunities.  
 14 There's about one mile that could be built to connect  
 15 the Manchester and Nashua systems in Merrimack. That  
 16 would just be a -- excuse me -- that would just be a  
 17 simple laying of new pipe. Alternatively, as the  
 18 Company continues to grow that portion of its service  
 19 territory, it could eventually grow that out so that it  
 20 goes through several towns and connects up through,  
 21 that we talked about the Bedford expansion already, and  
 22 we would continue with that expansion, moving onto  
 23 Amherst and the Milford area, and to provide sort of  
 24 organic growth, you could also tie in the two systems.  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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1 MS. KNOWLTON: I have nothing further  
 2 for the Company witnesses.  
 3 CHAIRMAN HONIGBERG: All right. I think  
 4 we are done with these witnesses. Been a long slog. You  
 5 can return to your seats.  
 6 MS. PATTERSON: May I ask a question?  
 7 May Ms. Whitten be excused from participating, if we do  
 8 have to go on longer than today?  
 9 CHAIRMAN HONIGBERG: I don't see why  
 10 not.  
 11 MS. PATTERSON: Okay.  
 12 CHAIRMAN HONIGBERG: She's there mainly  
 13 as your witness. So, if you feel like you don't need her  
 14 to be there with you any further, then it's certainly up  
 15 to you.  
 16 MS. PATTERSON: Okay.  
 17 CHAIRMAN HONIGBERG: It's quarter to  
 18 six. Let's go off the record for a minute and talk about  
 19 what we can do.  
 20 (Off-the-record discussion ensued.)  
 21 CHAIRMAN HONIGBERG: All right. So,  
 22 we're going to go back on the record. We've had a  
 23 discussion off the record about scheduling and how we're  
 24 going to wrap this proceeding up. The plan is that we  
 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

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1 will return on Thursday, August 6, in the morning. We  
 2 will probably be looking to start at 9:00, and try to  
 3 finish. I'm optimistic that we will.  
 4 The Parties would like an opportunity to  
 5 submit post hearing memoranda. There will be a 20-page  
 6 page limit, and those will be due close of business  
 7 Friday, the 7th.  
 8 Is there any other business we need to  
 9 transact?  
 10 (No verbal response)  
 11 CHAIRMAN HONIGBERG: Good. Thank you  
 12 all very much. We will see you in a couple of weeks.  
 13 (Whereupon the hearing was adjourned at  
 14 6:02 p.m. The hearing is scheduled to  
 15 resume on August 6, 2015, commencing at  
 16 9:00 a.m.)  
 17  
 18  
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 24 (DG 14-380) [REDACTED - for public use] {07-22-15/Day 2}

1

1 STATE OF NEW HAMPSHIRE  
 2 PUBLIC UTILITIES COMMISSION  
 3 August 6, 2015 - 9:06 a.m. DAY 3  
 4 Concord, New Hampshire  
 5  
 6 (REDACTED - for public use)  
 7  
 8 RE: DG 14-380  
 9 LIBERTY UTILITIES (ENERGY NORTH NATURAL  
 10 GAS) CORP. d/b/a LIBERTY UTILITIES;  
 11 Petition for Approval of a Firm  
 12 Transportation Agreement with the  
 13 Tennessee Gas Pipeline Company, LLC.  
 14  
 15 PRESENT: Chairman Martin P. Honigberg, Presiding  
 16 Commissioner Robert R. Scott  
 17 Commissioner Kathryn M. Bailey  
 18 Sandy Deno, Clerk  
 19  
 20 APPEARANCES: Reptg. Liberty Utilities (Energy North  
 21 Natural Gas) Corp. d/b/a Liberty Utilities;  
 22 Sarah B. Knowlton, Esq. (Rath, Young...)  
 23  
 24 Reptg. the Pipe Line Awareness Network  
 for the Northeast, Inc. (PLAN):  
 Richard A. Kanoff, Esq. (Burns & Levinson)  
 Zachary R. Gates, Esq. (Burns & Levinson)  
 Reptg. Residential Ratepayers:  
 Susan Chamberlin, Esq., Consumer Advocate  
 Dr. Pradip Chattopadhyay, Asst. Cons. Adv.  
 Office of Consumer Advocate  
 Reptg. PUC Staff:  
 Rorie E. Patterson, Esq.  
 Stephen P. Frink, Asst. Dir./Gas & Water Div.  
 Al-Azad Iqbal, Gas & Water Division  
 Court Reporter: Steven E. Patnaude, LCR No. 52

3

1 EXHIBITS  
 2  
 3 EXHIBIT NO. DESCRIPTION PAGE NO.  
 4 56 Article from the Chronicle Herald 96  
 5 entitled "Water woes imperil Deep  
 Panuke output"  
 6 57 State of New Hampshire Application 100  
 7 for Registration of a Foreign  
 8 Nonprofit Corporation, Form FNP-1,  
 regarding Pipe Line Awareness  
 Network for the Northeast, Inc.  
 9 58 Page 1 only of the printout from 105  
 10 the NH Pipeline Awareness.org website,  
 11 entitled "Stop the excessive  
 12 construction of fossil fuel  
 infrastructure", Page 1 of 4  
 (07-22-15)  
 13 59 Printout from the National Energy 120  
 14 Board website (08-06-15)  
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 (DG 14-380) [REDACTED - for public use] {08-06-15/Day 3}

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 (DG 14-380) [REDACTED - for public use] {08-06-15/Day 3}

4

1 PROCEEDING  
 2 CHAIRMAN HONIGBERG: We're here this  
 3 morning to resume and finish the hearing in 14-380, which  
 4 is Liberty's Precedent Agreement with Northeast Direct.  
 5 We have lots of paper up here. So, bear  
 6 with us for just a second. Off the record.  
 7 (Brief off-the-record discussion  
 8 ensued.)  
 9 CHAIRMAN HONIGBERG: Back on the record.  
 10 I think we're going to be picking up with the OCA's  
 11 witness, is that right, Ms. Chamberlin?  
 12 MS. CHAMBERLIN: That's correct.  
 13 CHAIRMAN HONIGBERG: Is there any other  
 14 business we need to transact from the last time we were  
 15 all together? Mr. Kanoff.  
 16 MR. KANOFF: I have a procedural inquiry  
 17 and request.  
 18 CHAIRMAN HONIGBERG: Fire away.  
 19 MR. KANOFF: The brief, the initial  
 20 brief, the brief is due tomorrow, close of business.  
 21 CHAIRMAN HONIGBERG: Uh-huh.  
 22 MR. KANOFF: And, our procedural request  
 23 is to ask for a waiver of the filing of the paper copy  
 24 only until Monday morning. We would file electronically  
 (DG 14-380) [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 5

1 tomorrow, per the deadline. And, as per procedures, this  
2 would allow us not to have to find a transport for the  
3 paper tomorrow, on Friday traffic. I've done that before.  
4 I don't believe there's any prejudice to the Commission or  
5 to the Parties.

6 CHAIRMAN HONIGBERG: Anybody have any  
7 problem with that?  
8 (No verbal response)

9 CHAIRMAN HONIGBERG: That's fine. We'll  
10 do that. And, the other parties can do that as well, the  
11 ones who aren't physically in the building already.

12 MR. KANOFF: Thank you.

13 CHAIRMAN HONIGBERG: Anything else we  
14 need to deal with?  
15 (No verbal response)

16 CHAIRMAN HONIGBERG: All right.  
17 Ms. Chamberlin.

18 MS. CHAMBERLIN: Thank you. I'd like to  
19 call Dr. Pradip Chattopadhyay to the stand please.  
20 (Whereupon Pradip K. Chattopadhyay was  
21 duly sworn by the Court Reporter.)  
22 PRADIP K. CHATTOPADHYAY, SWORN  
23 DIRECT EXAMINATION  
24 BY MS. CHAMBERLIN:  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 6

1 Q. Please state your name for the record.  
2 A. My name is Pradip Kumar Chattopadhyay.  
3 Q. Did you file testimony on behalf of the New Hampshire  
4 Office of the Consumer Advocate in this proceeding?  
5 A. Yes, I did.  
6 Q. Is the testimony filed true and correct to the best of  
7 your knowledge?  
8 A. Yes.  
9 Q. Are there any changes or corrections you wish to make?  
10 A. No.

11 MS. CHAMBERLIN: The testimony of  
12 Dr. Pradip Chattopadhyay is already marked for  
13 identification as "Exhibit 15", the confidential version,  
14 and "Exhibit 16", the redacted version. I conferred with  
15 the Parties, and everyone has a copy. So, my  
16 understanding is that I would provide one copy to the  
17 court reporter, and then that would be sufficient?  
18 CHAIRMAN HONIGBERG: Go ahead.  
19 MS. CHAMBERLIN: For anyone who wants  
20 it, these are a couple extra of the redacted version.  
21 BY MS. CHAMBERLIN:  
22 Q. Dr. Chattopadhyay, did you analyze EnergyNorth's  
23 Petition for approval of 115,000 Dekatherms of capacity  
24 on the proposed Northeast Direct Pipeline?  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 7

1 A. Yes, I did.  
2 Q. And, what was your -- what did your review involve?  
3 A. I essentially looked at the reasonability of the  
4 contract amount. And, my analysis involved looking at  
5 whether the 115,000 Dth per day amount was reasonable,  
6 as far as the contract amount is concerned, or not.

7 MS. KNOWLTON: Chairman Honigberg, I'm  
8 going to object. My understanding, to this line of  
9 questioning, my understanding was is that the witnesses  
10 were going to be free today to address the Settlement  
11 Agreement and the testimony as to the Settlement  
12 Agreement, but that this was not going to be a restatement  
13 of either OCA or PLAN's direct testimony.

14 CHAIRMAN HONIGBERG: I don't expect  
15 that's where she's going. I suspect she's just setting  
16 the scene for how he formed his initial opinion, and how  
17 his opinion may or may not have changed based on the  
18 Settlement. I assume you're not going to go any further  
19 than that, right?  
20 MS. CHAMBERLIN: That is correct.  
21 CHAIRMAN HONIGBERG: All right. Why  
22 don't you proceed then.  
23 BY MS. CHAMBERLIN:  
24 Q. In your opinion, has the Company undertaken an adequate  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 8

1 portfolio optimization process?  
2 A. No.  
3 Q. Did you request additional analysis of the capacity  
4 amounts?  
5 A. Yes. In the data requests, I had requested the Company  
6 to analyze the NED capacity at 105,000 Dth per day, and  
7 then I also did like 95,000 Dth per day, 85,000 Dth per  
8 day, and 75,000 Dth per day, as well as 65,000 Dth per  
9 day. This was essentially just to give me a better  
10 understanding of how the contract levels might affect  
11 the cost of procurement.  
12 Q. And, as a result of those runs, what do you conclude  
13 from that information?  
14 A. In response to my data requests, which was laid out in  
15 terms of the way I just described, "please provide  
16 analysis of those contract levels, and make necessary  
17 assumptions you want to make in terms of anything else  
18 that you want to consider in the analysis." The  
19 Company ended up going through an analysis of, for  
20 example, with respect to 105,000 Dth per day, they used  
21 that amount for the NED capacity, and the difference  
22 between 115,000 Dth and 105,000 Dth as being from the  
23 Dracut, the Concord Lateral capacity.  
24 So -- and, then, they did that for each  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 9

1 of the quantities that I had requested analysis for,  
2 all the way down to 65,000 Dth, again assuming that the  
3 difference between 115,000 and 65,000 Dth was captured  
4 through the Dracut/Concord Lateral capacity.

5 Q. And, did you draw any conclusions from that information  
6 about the amount being requested in the Precedent  
7 Agreement?

8 A. Yes. Purely based on the analysis that the Company had  
9 provided, it indicated that the combination of 65,000  
10 Dth per day for NED and 50,000 Dth per day for the  
11 Concord Lateral had the least cost. But, because this  
12 was just a series of questions to get a sense of how  
13 the numbers play out, I would be careful in stating  
14 again that those were the numbers that were looked at.  
15 And, as far as the last one, which is 65,000 Dth per  
16 day for NED, combined with 50,000 Dth per day for  
17 Dracut, for the Concord Lateral, that -- that doesn't  
18 necessarily mean that the amount, the right amount, as  
19 far as cost minimization is concerned, is going to be  
20 that combination, because I didn't look at the other  
21 numbers. But it certainly told me that the cost was  
22 going down as we moved from 115,000, all the way to  
23 65,000 Dth per day.

24 Q. Thank you. And, did you analyze the partial Settlement  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 10

1 Agreement, which has been proposed?

2 A. Yes. I have come to the conclusion that it's not  
3 reasonable, based on several views that I conducted  
4 myself. First of all, one needs to understand that the  
5 Company ran an analysis of only one amount, which is  
6 115,000 Dth per day. It's, when you talk about "what  
7 is the optimum contract level?", it's important to look  
8 at other contract levels, assuming everything else  
9 being held constant. So, the Company did not do that.  
10 It just looked at 115,000 Dth per day. And, even when  
11 I asked them the questions, they used other assumptions  
12 to kind of bring in the Dracut capacity to still give  
13 you, in total, 115,000 Dth per day.

14 So, one of the observations I have is  
15 that it's important to know what the costs are, purely,  
16 when you're looking at NED, what different contract  
17 levels will give you in terms of cost. And, as I was  
18 examining the IRP that the Company expert witness  
19 referred to in the testimony, I find that, during the  
20 IRP analysis, the Company had used something called a  
21 "resource mix optimization". And, SENDOUT sort of does  
22 two kinds of optimization; resource mix optimization  
23 and standard optimization.

24 The standard optimization is what the  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 11

1 Company essentially did for the 115,000 Dth per day  
2 analysis, the NED scenario, the PA scenario. The  
3 importance is -- of this is that the standard  
4 optimization only looks at the variable costs and tries  
5 to look for the minimum cost in terms of the variable  
6 costs. So, you're already assuming that project is  
7 there, whatever fixed costs you're incurring, including  
8 the demand charges, are all given. You're not trying  
9 to figure out what contract level it would be. And,  
10 that is done through the resource mix optimization.

11 What the resource mix optimization does  
12 is that it says, you know, "You have a new resource out  
13 there. Let's see what contract level would actually  
14 lead to the least cost." So, it let's the analysis  
15 pick the right contract amount, and therefore what the  
16 implications are for the demand charges. And, you're  
17 doing it because you have the luxury to figure out what  
18 that contract level should be ideally.

19 And, you can run that scenario, along  
20 with also with an informed understanding of what other  
21 optional resources are out there that can also be  
22 subjected to resource mix optimization. And, the IRP  
23 essentially did that.

24 And, it kind of concluded that the  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 12

1 optimum amount was 90,000 Dth per day for the NEX  
2 project, which has very similar attributes to the NED  
3 project. The "NEX" is the "Northeast Extension", if  
4 I'm correct. I think it's called that. And, so, the  
5 assumptions for both of those projects are very  
6 similar. And, it came up with a number of 90,000 Dth  
7 per day, under the assumption, which is very important,  
8 that the propane facilities in Manchester and Nashua  
9 weren't there. And, they amounted to roughly 33,000  
10 Dth per day.

11 So, essentially, if that is the starting  
12 point, that you sort of counted the propane facilities  
13 out, and then ran the resource mix optimization, you  
14 got an answer of 90,000 Dth per day, when you ran the  
15 IRP, which happened, I believe, more than a year ago.  
16 So, technically, in my mind, if you counted those  
17 propane facilities, then the answer is really, roughly  
18 speaking, 90,000, less 33,000. So, around 57,000 is  
19 the right answer.

20 Now, given that, over the years, things  
21 have changed. And, the Company has updated its --

22 Q. Excuse me, Dr. Chattopadhyay. If I could just direct  
23 you to the partial Settlement Agreement, given all the  
24 data that you just described, does the partial  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

13

[WITNESS: Chattopadhyay]

1 Settlement Agreement address your concerns?

2 A. No. I'm actually -- I'm going there, because, like I

3 said, I had three views, or roughly, in fact, one of --

4 the optimization piece I've already talked about. The

5 second, I'm talking about what the IRP told me. And,

6 the third piece would be about, you know, what is sort

7 of reasonable to do. And, I'll talk about it in a

8 moment.

9 But the point I'm trying to make is,

10 with the IRP, I can infer, and, roughly speaking, it's

11 57,000. But, then, you need to adjust for the update

12 that the Company did on the design day requirement.

13 And, even if I'm very generous and I go for the last

14 year's adjustment, which was 16,000 Dth, compared to

15 what the IRP had predicted, the amount is close to

16 around 70,000 Dth per day. That's the first point.

17 The second point -- I'm sorry. The

18 other point that I wanted to talk about was, like I

19 said in my testimony, it may be reasonable to look at a

20 planning horizon of, say, five to ten years. So, even

21 if I go ten years down into the future, based on what

22 the Company had analyzed in its rebuttal testimony, if

23 you assume that the 34,600 meg -- I'm sorry -- Dth per

24 day off the propane facilities are there, then one can

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14

[WITNESS: Chattopadhyay]

1 come to the conclusion that, even, say, down into

2 2024/25, with the assumptions of 115,000 Dth per day

3 being there for NED, there's an excess of 29,000 Dth

4 per day of capacity. With 100,000 Dth per day, if

5 that's an alternative, the excess is still about 16,000

6 Dth per day. So -- roughly speaking, sorry, 14,000 Dth

7 per day.

8 And, so, to me, when I look at the

9 Settlement terms, I'm comparing, really, a number that

10 should be around somewhere from 75,000 to 90,000 Dth,

11 roughly speaking. And, these numbers are already

12 accounting for the iNATGAS being at 8,800 Dth per day.

13 It is already accounting for the capacity-exempt

14 customers returning and the assumptions that the

15 Company had made about it. It is already accounting

16 for the Keene's capacity. So, to me, when we are

17 talking about terms that say that we're going to go

18 from 100 to 115,000 under those, when the additions of

19 those three points are 10,000 Dth, if you look at the

20 Settlement proposal, to me, we are not even there. I

21 mean, it's, to me, the numbers that I'm talking about

22 are somewhere in the range of reasonably 75,000 to

23 90,000 Dth per day. And, that's just a rough estimate.

24 CHAIRMAN HONIGBERG: Dr. Chattopadhyay,

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15

[WITNESS: Chattopadhyay]

1 I've lost the question. I'm not sure if you remember the

2 question. But maybe it would be helpful if Ms. Chamberlin

3 got you back on track.

4 MS. CHAMBERLIN: Okay.

5 BY MS. CHAMBERLIN:

6 Q. The partial Settlement Agreement made some changes to

7 the original Petition. In your view, is that enough to

8 make the Agreement in the public interest?

9 A. No. And, if I wasn't very clear, I was essentially

10 talking about the terms, where it says, you know, the

11 amount would be 115,000, and unless something happened

12 it's going to be 100,000. That's the point I'm talking

13 about. And, I'm trying to say my analysis shows that

14 the amounts are well below those. That's the relevance

15 of the discussion that I was having.

16 And, with the other condition, which is

17 about growth incentives, I have no issues with it. I

18 mean, it's helpful. But I would point out that that is

19 not enough to let me conclude that we have a reasonable

20 amount that's being purchased. So, that's where I'm --

21 where I am.

22 Q. Thank you. And, the Company makes some projections

23 about mitigation revenues. Without using any

24 confidential numbers, do you believe the mitigation

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[WITNESS: Chattopadhyay]

1 revenues will adequately compensate ratepayers for any

2 excess capacity?

3 A. The analysis that the Company did has assumed some

4 mitigation revenues. And, there are some assumptions

5 behind it. And, those are just that, those are

6 assumptions. To the extent that there is more teeth to

7 it, so, in terms of the Company saying "okay, we

8 actually are going to be abiding by or we're going to

9 put serious effort to make sure that the mitigation

10 revenues are enough to help the ratepayers to be not

11 faced with excess costs", that can help the process.

12 But, I mean, really, at the end of the

13 day, this is about, for me, "what is the reasonable

14 amount, under the conditions that are already out there

15 in the Settlement terms?"

16 So, I'm not -- I cannot really speak to

17 exactly how one can implement some sort of approach

18 where the mitigation revenues that are being assumed

19 are -- are actually adhered to. And, so, right now, in

20 my mind, this is really about the "what is the

21 reasonable amount that the Company should be allowed to

22 purchase?"

23 Q. And, in your view, does the partial Settlement address

24 any cost disparity between current ratepayers and

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[WITNESS: Chattopadhyay] 17

1 future ratepayers?

2 A. No, it doesn't.

3 Q. And, can you describe why you believe that?

4 A. Whenever you are buying excess capacity, that is not

5 reasonable. You have to keep in mind, the excesses are

6 actually about, generally speaking, the current

7 ratepayers. You can always buy whatever amount you

8 want, at some point in time in the future it's going to

9 meet the customers' requirements. But, point is, if

10 you're going to buy excessive amounts at this point in

11 time, the rates that the current ratepayers are going

12 to pay, it's going to be, in terms of present value

13 terms, actually higher than the customers way into the

14 future, and yet they are not the ones who are

15 causing -- who are the ones who triggered the design

16 day requirement that is being addressed in the -- in

17 the excessive capacity procurement.

18 So -- and, that is something I've

19 discussed in my testimony.

20 Q. In terms of the partial Settlement Agreement, what is

21 your recommendation to the Commission?

22 A. I'm going to take a slight leeway here. First, to

23 point out what is, I think, would be the best in terms

24 of what should be done. In my opinion, the Company

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[WITNESS: Chattopadhyay] 19

1 Commission is going to only think about 115,000 to

2 100,000, there's no reason why we should be going over

3 100,000 at all. And, that's not my recommendation.

4 I'm just saying if that's where the Commission ends up

5 going to.

6 MS. CHAMBERLIN: Thank you. The witness

7 is available for cross-examination.

8 CHAIRMAN HONIGBERG: Mr. Kanoff, do you

9 have any questions for Dr. Chattopadhyay?

10 MR. KANOFF: Just one question.

11 CROSS-EXAMINATION

12 BY MR. KANOFF:

13 Q. Your last comment about possible ways to reduce the

14 burden on current ratepayers, is there any way that you

15 can think of where that would be the case, sitting here

16 today?

17 A. Not under the terms I see in the Settlement, or based

18 on what's there in the requirement. There's --

19 obviously, I can surmise as how things might play out,

20 but that's -- I don't think it's going to help at this

21 point, because I'm looking at it in a broad sense.

22 And, I'm saying that, to the extent there are enough

23 protections for current ratepayers, essentially, the

24 current ratepayers are buying more capacity right now

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[WITNESS: Chattopadhyay] 18

1 should be required to do a resource mix optimization,

2 and give us a good sense of what's that cost-minimizing

3 amount. And, then, we can have a discussion about the

4 reasonability of the number around that. That's number

5 one. So, I would recommend to the Commission that that

6 is something that the Commission requires the Company

7 to do.

8 In terms of the Settlement terms, like I

9 described, I am so far away from the that band of 100

10 and 115,000 that, for me, I cannot support that, those

11 terms. For me, however, if you're going to talk in

12 terms of, okay, what about it's 100,000 Dth per day?

13 Again, there isn't enough in the Settlement to give me

14 any comfort that that's a reasonable amount.

15 But, to the extent that the Company goes

16 ahead and actually undertakes cost-effective

17 retirements of propane facilities, and also looks at

18 ways to reduce the burden on the current ratepayers, if

19 there is such a process, then one might be able to

20 consider 100,000 Dth per day. But I, based on what I

21 have seen in the record, I cannot go there.

22 I'm going to be strongly advocating that

23 the Company is asked to do the analysis properly.

24 Number two, I mean, it clearly shows me that, if the

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[WITNESS: Chattopadhyay] 20

1 than they need. And, the analysis shows that we are

2 procuring way more than what is sort of optimum.

3 There could be a space where we can

4 discuss, you know, "what are the protections for the

5 current ratepayers?" And, I can't really speak more

6 than that.

7 Q. And, so, it's a possibility, but you don't have a

8 specific notion right now?

9 A. No, I don't.

10 MR. KANOFF: No other questions.

11 CHAIRMAN HONIGBERG: Ms. Patterson, do

12 you have any questions?

13 MS. PATTERSON: Yes. Thank you. Good

14 morning.

15 WITNESS CHATTOPADHYAY: Good morning.

16 BY MS. PATTERSON:

17 Q. Could you clarify the 75,000 to 90,000 Dth per day

18 range, and tell me whether or not that includes the

19 Company keeping the propane peaking plants?

20 A. I'll respond to the last part first. It does keep the

21 propane facilities. And, I'm talking about the 34,600

22 Dth per day capacity. Okay. And, you want me to

23 clarify --

24 Q. That was what I wanted you to do.

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21

[WITNESS: Chattopadhyay]

1 A. Oh, okay. I'm sorry. That's fine.

2 Q. No, thank you. Could you tell us what the range would

3 be without the propane plants?

4 A. Again, depends on what do you mean by "without the

5 propane facilities"? As far as --

6 Q. I mean the 34,600 Dth per day.

7 A. So, just add that amount to both -- to both ends. So,

8 it's going to get -- get to that amount, roughly

9 speaking.

10 Q. Is that roughly 100,000 to 115,000?

11 A. Under the assumption, without the propane facilities,

12 that is roughly correct. But, since you're asking that

13 question, I will clarify. Even my question about

14 whether those facilities should be retired or not, the

15 analysis that the Company did, first of all, I'll say

16 it's not viable, we cannot get rid of them.

17 Number two, the Company also did an

18 analysis, because I asked for it. And, it's not

19 exactly clear what that analysis shows, but for sure it

20 shows that, when they counted the propane facilities

21 out, the total cost was greater than the NED cost.

22 Q. Do you have the Settlement Agreement in front of you?

23 A. No, I don't.

24 MS. PATTERSON: May I approach the  
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22

[WITNESS: Chattopadhyay]

1 witness please?

2 (Atty. Patterson handing document to the

3 witness.)

4 BY MS. PATTERSON:

5 Q. Just a quick question. Do you agree -- did you

6 participate in the discussions that led to the

7 Settlement Agreement?

8 A. Yes, I did.

9 MS. CHAMBERLIN: Your Honor, I object to

10 any discussion of the Settlement. Those discussions are

11 confidential.

12 CHAIRMAN HONIGBERG: That was a "yes" or

13 "no" question, didn't call for any description of what

14 took place. But I'm listening.

15 MS. PATTERSON: Thank you.

16 BY MS. PATTERSON:

17 Q. And, would you -- so, and as the OCA witness, you're

18 familiar with the terms and conditions of the

19 Settlement Agreement?

20 A. To the extent I was involved, I am. Yes.

21 Q. You reviewed it, though, as it's been filed?

22 A. Yes.

23 Q. Okay. And, do you agree that the Settlement requires

24 the Company to perform an analysis of the propane  
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23

[WITNESS: Chattopadhyay]

1 plants, other than those facilities in Keene, within

2 the next IRP?

3 A. Yes. But it also says -- can I?

4 Q. Yes.

5 A. That it would look at the next five-year planning

6 horizon of the IRP, just to clarify. So, it's not --

7 if you're talking about the analysis to be done right

8 away, no. It will take a future look at it.

9 Q. In the next IRP?

10 A. Yes.

11 Q. Do you know when that IRP is due?

12 A. I don't know exactly, but in a year or two.

13 Q. Would you agree, subject to check, that it's due in

14 February 2017?

15 A. Subject to check, sure.

16 Q. Thank you. One last question. Do you agree that, if

17 the Settlement were approved by the Commission, and in

18 doing so the Company would be required to present an

19 analysis of the existing or remaining life of the

20 propane peaking plants, in the context of that docket,

21 would you agree that, by procuring the NED capacity,

22 that the Company would have more flexibility with

23 regards to the retirement of those plants at that time?

24 A. Any time you have more capacity, given everything else,  
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24

[WITNESS: Chattopadhyay]

1 you will have greater flexibility. So -- but you can't

2 be aware of the cost implications, you cannot just do

3 this in a vacuum.

4 MS. PATTERSON: I don't have any other

5 questions. Thank you.

6 CHAIRMAN HONIGBERG: Ms. Knowlton.

7 MS. KNOWLTON: Thank you.

8 BY MS. KNOWLTON:

9 Q. Dr. Chattopadhyay, can you point to the model run that

10 excluded propane?

11 A. It's the response to, if I'm remembering correctly, OCA

12 3 -- either 3-10 or 3-11.

13 Q. All right. While we look for that, I'm just going to

14 go on with some other questions. I may circle back to

15 that. In your opinion, would it be prudent for the

16 Company to rely on the propane systems for the long

17 term?

18 A. Based on your own -- the Company's testimony, I mean,

19 at this point, it's not viable to get rid of it. In

20 the long term, I haven't -- again, it all depends on

21 what further information you're going to provide. At

22 this point, I'm not able to conclude to what you just

23 asked, saying that "In the long term, you know, it's

24 going to be best for the Company to get rid of it." I  
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1 don't know.

2 Q. Are you aware that the propane plants are approximately

3 40 years or older?

4 A. Yes. I'm not exactly aware that they are 40 years or

5 older, but I am aware that they are very old. But that

6 does not necessarily mean to me that, you know, just

7 because something is old, that we have to get rid of

8 it. If it's cost-effective to keep, hold on to, then

9 that should be part of the mix.

10 And, I'm not -- I'm not suggesting that

11 you should not consider them being taken out in the

12 long run. But there's analysis needed for it to

13 conclude that.

14 Q. Have you ever conducted planning for a utility?

15 A. No, I haven't.

16 Q. And, are you aware that a utility's obligation is to be

17 able to supply its customers 24 hours a day, seven days

18 a week, 365 days a year?

19 A. Sort of, yes.

20 Q. "Sort of" or "yes"?

21 A. Okay, yes. The reason I'm --

22 CHAIRMAN HONIGBERG: There's no pending

23 question.

24 WITNESS CHATTOPADHYAY: Okay.

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1 BY MS. KNOWLTON:

2 Q. You're aware that the contract that's before the

3 Commission doesn't contemplate volumes less than

4 100,000, correct?

5 A. As far as the PA contract is concerned right now, yes.

6 Q. And, Tennessee, under that contract, has no obligation

7 to contract with the Company for any lesser amount?

8 A. Under that contract, yes.

9 Q. And, your position in this case is that the Commission

10 should reject the contract, but not concern itself with

11 whether it's even possible for the Company to get

12 another contract with Tennessee for something less than

13 100?

14 A. My position is that you cannot simply look at the --

15 what the contractual terms are and limit yourself to

16 what that contract level should be. Cost is a big

17 factor, and one cannot ignore cost-effective

18 procurement. And, if that analysis shows that the

19 contract itself is not reasonable, then, in my opinion,

20 the Commission should consider amounts other than the

21 ones in the contract.

22 Q. But my understanding of your testimony was, is that the

23 Commission shouldn't consider whether or not the

24 Company is able to go back and negotiate another

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[WITNESS: Chattopadhyay] 27

1 contract with Tennessee in making its decision?

2 A. Correct, if the cost-effective amount is different from

3 the ones that are in the contract.

4 Q. And, that's a position that takes some risk, doesn't it

5 take risk?

6 A. That is why it is important to look at the numbers

7 reasonably. And, what I'm saying is that, if I cannot

8 conclude that the band from 100,000 Dth per day to

9 115,000 Dth per day is reasonable, then it is my

10 recommendation that amounts that, obviously, are lower

11 than that, because that's what my analysis shows it's

12 likely to be, we should consider those amounts.

13 Q. As I heard your testimony today, you consider

14 "reasonable" a range of procurement up to 90,000, and

15 that does not include the retirement of the propane

16 facilities. And, with the retirement of the propane

17 facilities, that gets you to 100,000 and over. Yet, at

18 the same time, you're saying the Commission should

19 reject the Settlement and take a risk that the Company

20 can't enter into another precedent agreement with

21 Tennessee to procure a different amount of capacity.

22 Isn't there some inconsistency in that position?

23 A. I don't think so. The Company did not analyze the

24 situation, as far as retiring the propane facilities is

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1 concerned. And, it's -- so, and it sort of says that

2 that is not a viable option. So, to me, there's no

3 reason for me to prematurely assume that those should

4 be considered to be retired in figuring out what the

5 right amount is.

6 Q. Is it possible that Tennessee could walk away from the

7 deal entirely, if the Company went back and tried to

8 renegotiate a new deal?

9 A. That I cannot, you know, surmise on. But, again, if

10 it's not clear, what I'm saying is --

11 Q. That actually answers my question. And, my next

12 question is, is it possible that Tennessee could agree

13 with the Company to contract, but at a higher cost?

14 A. Yes, it's possible. But, when you say "higher

15 cost", --

16 Q. Then compared to the --

17 MS. CHAMBERLIN: Objection. Could you

18 let the witness please answer.

19 CHAIRMAN HONIGBERG: I think -- I think

20 he's actually doing fine, taking care of himself on this.

21 I think I'm going to -- I'm not really sure what happened

22 there. Who stopped whom? Dr. Chattopadhyay, did you have

23 something else you wanted to say in response to that last

24 question that you could do quickly?

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1 WITNESS CHATTOPADHYAY: Yes. Can you  
 2 repeat the question?  
 3 CHAIRMAN HONIGBERG: There we go.  
 4 BY MS. KNOWLTON:  
 5 Q. What I was trying to get at is, is that would it be --  
 6 if the Company and Tennessee were to enter into  
 7 subsequent contract negotiations, is it possible that  
 8 Tennessee would only agree to a rate that's higher than  
 9 the rate that's in the current Precedent Agreement?  
 10 A. It is possible. But what is important, the rate being  
 11 higher doesn't mean the total cost is going to be  
 12 higher as well. There are other things that are  
 13 moving. And, it's possible that the rate is higher  
 14 than that's being blessed in the contract right now.  
 15 And, it may be higher, but that still doesn't mean that  
 16 the total cost cannot be lower.  
 17 Q. You do agree, don't you, that among the pipeline  
 18 choices that the Company had, between NED, C2C, and  
 19 Atlantic Bridge, that NED is the more cost-effective  
 20 option?  
 21 A. Based on my look of the Company's analysis, correct.  
 22 Q. Are you aware that the other two pipeline options,  
 23 Atlantic Bridge and C2C, are now fully subscribed?  
 24 A. I think I heard that in the first day of the hearing in  
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[WITNESS: Chattopadhyay] 31

1 your testimony?  
 2 A. Correct.  
 3 Q. And, what you consider a "burden" is really no  
 4 different than the circumstance surrounding any other  
 5 infrastructure project paid for by a large group of  
 6 individuals, like the cost to build a bridge or to  
 7 widen a highway, like I-93, to accommodate more  
 8 traffic. Would you agree with that?  
 9 A. If done prudently, yes. So, if I clarify, I didn't say  
 10 that, if you get to the reasonable amount, for example,  
 11 I talked about it in my testimony, that one could  
 12 target the -- let's say the tenth year planning horizon  
 13 and see what the design day might be, and then go for  
 14 the contract level based on that. There, the reality  
 15 that I talked about still holds, but I'm less concerned  
 16 about it. I'm not going to -- so, I agree with you.  
 17 For most infrastructure projects, that is how things  
 18 play out. But, if you're going to overprocure, and  
 19 that's what's happening here, the concern that I raise  
 20 becomes relevant. And, --  
 21 Q. But you -- I'm sorry.  
 22 A. And, it's to point out, the other members of the LDC  
 23 Consortium, they have all planned their design day  
 24 roughly around 2023/24. So, for them, that concern is  
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[WITNESS: Chattopadhyay] 30

1 this docket.  
 2 Q. Okay.  
 3 A. Or, maybe the second day, I don't remember.  
 4 Q. Would you take that subject to check?  
 5 A. Sure.  
 6 Q. If the Commission rejected the Precedent Agreement, and  
 7 the Company had to go back to Tennessee to renegotiate,  
 8 do you think the fact that C2C and Atlantic Bridge are  
 9 fully subscribed could affect the Company's negotiating  
 10 power with Tennessee?  
 11 A. I cannot, again, this is all about guessing what might  
 12 be, what might not be.  
 13 CHAIRMAN HONIGBERG: But it's certainly  
 14 possible, isn't it? I think that was the question she  
 15 asked you, isn't it?  
 16 WITNESS CHATTOPADHYAY: Yeah. It's  
 17 possible.  
 18 BY MS. KNOWLTON:  
 19 Q. Another reason why you want the Commission to reject  
 20 the Precedent Agreement is your concern that current  
 21 customers will "unnecessarily bear a significantly  
 22 greater burden compared to ratepayers in the future,  
 23 when the supply and reliability needs are predominantly  
 24 being caused by ratepayers in the future." Is that  
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[WITNESS: Chattopadhyay] 32

1 not a bigger concern. For me, it's a bigger concern  
 2 here, because you're planning for 2037/38 design day  
 3 requirement, at least based on the direct testimony, of  
 4 the Company's direct testimony.  
 5 MS. KNOWLTON: I'm going to move to  
 6 strike Dr. Chattopadhyay's testimony, to the extent that  
 7 he refers to the procurement by other LDCs. I don't  
 8 believe that that is relevant for the Commission's  
 9 determination of whether or not the Agreement that's  
 10 before it should be approved.  
 11 MS. CHAMBERLIN: And, I object. The  
 12 counsel asked the question, she raised the issue.  
 13 CHAIRMAN HONIGBERG: I heard a  
 14 completely different question than that part of the answer  
 15 was responsive to. The question she was asking had to do  
 16 with the comparison to other infrastructure projects. The  
 17 point he's making is that other LDCs did this differently.  
 18 That's responsive to a completely different question. So,  
 19 it is nonresponsive.  
 20 However, you're going to get a crack at  
 21 asking him more questions in just a second, aren't you?  
 22 MS. CHAMBERLIN: I am.  
 23 CHAIRMAN HONIGBERG: Yes. So, I'm going  
 24 to strike the testimony after the response related to the  
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[WITNESS: Chattopadhyay]

1 effect on ratepayers being similar to the effect on  
2 everybody else for every other infrastructure structure  
3 project when done prudently.  
4 But I have a sneaking suspicion we're  
5 going to hear it again in a few minutes.  
6 BY MS. KNOWLTON:  
7 Q. Dr. Chattopadhyay, the forecast that you just referred  
8 to, that included the propane plants, correct?  
9 A. Which forecast? I mean, can you --  
10 Q. Well, you were telling us about how you felt that the  
11 planning horizon out to 2024 -- I'm sorry, 2036, you  
12 know, was imprudent, in terms of the amount of capacity  
13 that the Company is seeking to procure. And, my  
14 question to you is, didn't that forecast that the  
15 Company relied upon include the propane plants?  
16 A. Yes. I already said that initially.  
17 Q. Okay.  
18 A. That's what it is.  
19 Q. All right. And, back to this concept of "developing  
20 infrastructure for the future", isn't it typical that,  
21 when these types of projects are built, that people  
22 today are paying for the cost of the bridge or the cost  
23 of the highway that benefits others in the future?  
24 A. I already agreed to that. But I was trying to qualify  
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[WITNESS: Chattopadhyay]

1 the response by saying that you need to look at the  
2 prudence. So, if you're going to be overprocuring  
3 relative to what the prudent amount is, then, the  
4 concern that I raise becomes relevant. That's the  
5 point I'm trying to make.  
6 Q. Okay. And, this is not something that's unfamiliar to  
7 the Commission. I'll give you an example. I know, in  
8 the past, the Commission has approved cost recovery  
9 from current customers for the cost of constructing a  
10 water treatment plant that was sized to meet the needs  
11 of customers, not only at that time, but well into the  
12 future.  
13 CHAIRMAN HONIGBERG: Is that a question?  
14 BY MS. KNOWLTON:  
15 Q. Well, my question is, are you familiar with the  
16 Commission's undertaking of that type approval in the  
17 past?  
18 A. I haven't worked on water cases directly. But I would  
19 say that that is -- I expect that to be true.  
20 Q. Right. And, that's because --  
21 A. And -- sorry. But here we are talking about a contract  
22 level. It's not like you're putting in something into  
23 place yourself.  
24 Q. Well, I mean, if the Company -- I think your suggestion  
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[WITNESS: Chattopadhyay]

1 then is that the Company procure some capacity now, and  
2 then wait and get more in the future?  
3 A. I'm saying it procures an amount that is prudent. And,  
4 that is not driven by the twentieth year into the  
5 horizon. It's driven more likely way sooner. And, I'm  
6 saying that the reasonable sort of cutoff would be ten  
7 years.  
8 Q. Okay. But, if the Company retired the propane plants  
9 earlier than the 2036, wouldn't the shortfall in  
10 capacity happen sooner?  
11 A. It's not like you don't have the ability to go out  
12 there and look for other resources based on what you  
13 expect the design year requirements are going to be in  
14 the future. Right now, all I'm saying, at this point  
15 it is not prudent to think way beyond the tenth year.  
16 And, that is actually a pretty -- in my opinion, pretty  
17 generous. It's looking at ten years down into the  
18 future.  
19 Q. Are you aware that back in 2008 the Commission approved  
20 an expansion of the Concord Lateral that resulted in  
21 the procurement of more capacity than was needed at the  
22 time that the contract was entered into, because it was  
23 seeking to accommodate the need for capacity in the  
24 future?  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

36

[WITNESS: Chattopadhyay]

1 A. I need to understand, when you say "more capacity than  
2 needed", what is "needed"? I mean, what -- you can  
3 point out is what design day was it targeting? And, at  
4 this point, I don't know what that -- what design day  
5 you were talking, which years. So, I can't really  
6 respond to that.  
7 Q. Do you know when the last project was constructed that  
8 reflected new capacity that was built to interconnect  
9 with the Company's distribution system?  
10 A. I don't know precisely. But, subject to check, I  
11 remember there was discussions about it somewhere, in  
12 the data responses I think. So, it could be fifteen,  
13 fifteen years or twenty years ago.  
14 Q. All right. Setting aside the amount of capacity that  
15 the Company purchases, --  
16 A. Say that again. Sorry.  
17 Q. Setting aside the amount of capacity that the Company  
18 purchases, would you agree that the NED Pipeline has  
19 some benefits that have nothing to do with price or,  
20 for that matter, you know, the amount of capacity that  
21 is procured? And "benefits" I mean to the Company and  
22 its customers.  
23 A. Yes, I do.  
24 Q. What are those benefits?  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

1 A. I've sort of already mentioned, whenever you  
 2 overprocure, there is greater flexibility. So, I'm not  
 3 discounting that. And, I've already indicated that.  
 4 But this isn't about just looking at what the Company  
 5 wants. It's also about what the ratepayers are going  
 6 to be subject to. And, one cannot ignore the realities  
 7 that this, even in terms of planning for projects that  
 8 take a while to be in the ground, there's a reasonable  
 9 planning horizon. I mean, to me, that's the crux here.  
 10 Q. But can you explain, when you were referred to one of  
 11 the benefits that you see of this project to the  
 12 Company, when you said "greater flexibility", can you  
 13 explain what you mean by that?  
 14 A. Leaving aside the issue of cost, for example, we have  
 15 already discussed it. So, to the extent that you are  
 16 able to figure out that such and such propane  
 17 facilities can be cost-effectively retired, the reality  
 18 that you have excess capacity from other sources, it  
 19 helps you to implement that sooner.  
 20 Q. Do you see any benefit to the Company of having a  
 21 second delivery point into its system?  
 22 A. Yes, I do.  
 23 Q. That would be another benefit of this project?  
 24 A. Yes.

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

1 MS. KNOWLTON: I don't believe it is in  
 2 the record. Mr. DaFonte was asked about that when he was  
 3 on the stand. And, you might recall that there was -- he  
 4 was questioned about his knowledge of those dockets in  
 5 Massachusetts and the planning horizon that was used.  
 6 And, I believe --  
 7 CHAIRMAN HONIGBERG: Mr. Kanoff has  
 8 something on this, I think.  
 9 MS. KNOWLTON: -- that he said that he  
 10 "didn't have knowledge of it". So, --  
 11 CHAIRMAN HONIGBERG: Mr. Kanoff.  
 12 MR. KANOFF: Yes. It's in  
 13 Mr. Rosenkranz's testimony, on Page 20.  
 14 CHAIRMAN HONIGBERG: All right. If it  
 15 is -- if that is testimony that's already on the record,  
 16 Ms. Knowlton, I'm going to encourage you to ask whatever  
 17 questions you feel you need to of this witness with  
 18 respect to that aspect of his answer.  
 19 Ms. Chamberlin, I'm going to then  
 20 reconsider the ruling on the motion to strike, which was  
 21 Ms. Knowlton's. I granted the motion, I'm now overruling  
 22 my own -- I'm reversing my own order on that. So, the  
 23 testimony is going to come in. You won't have to ask  
 24 about it again.

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

1 CHAIRMAN HONIGBERG: Ms. Knowlton, we're  
 2 going to need to break anyway. So, this -- why don't we  
 3 take our break, 10:00 break, because it is exactly 10:00.  
 4 And, we'll come back on the record in 15 minutes, at  
 5 10:15. Off the record.  
 6 (Recess taken at 10:00 a.m. and the  
 7 hearing resumed at 10:21 a.m.)  
 8 CHAIRMAN HONIGBERG: Ms. Knowlton,  
 9 before you get started, I want to go back to the motion to  
 10 strike the testimony and the exchange that I had with you  
 11 and Ms. Chamberlin about that.  
 12 The answer that the witness wanted to  
 13 give you, in response to the question about "isn't this  
 14 just like every other infrastructure project that people  
 15 have to pay for?", was "Yes, but you have to be prudent  
 16 about it." And, then, he wanted to continue, and did  
 17 continue and say "other utilities" -- "one of the ways we  
 18 might look at prudence is what other similar utilities  
 19 do." And, his point is that "other utilities looked at a  
 20 much shorter horizon for making the decision about this."  
 21 I think I understand that. The question  
 22 that I have is, is that anywhere in the record already or  
 23 is he introducing that fact for the first time in response  
 24 to that question? Does anybody know?

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

1 But, because it's going to come in, and  
 2 Ms. Knowlton won't have another crack at this witness, she  
 3 should ask whatever questions she has with this witness  
 4 about that while she's doing this now.  
 5 Does everybody understand what I've just  
 6 done?  
 7 MS. CHAMBERLIN: Yes.  
 8 CHAIRMAN HONIGBERG: All right. Thank  
 9 you. Ms. Knowlton, you can continue.  
 10 MS. KNOWLTON: Thank you.  
 11 BY MS. KNOWLTON:  
 12 Q. Dr. Chattopadhyay, I want to walk through some numbers  
 13 based on the testimony that you've given today, to make  
 14 sure that I understand correctly what you're saying.  
 15 So, what I understood you to say earlier this morning  
 16 is that the Company's last approved IRP came up with  
 17 90,000 Dekatherms a day of capacity that was needed.  
 18 And, that you were in agreement with that number. Is  
 19 that correct?  
 20 A. I did not participate in that IRP docket representing  
 21 OCA. So, I'm not sure I can say whether I agree or  
 22 disagree. But I'm saying that IRP filing shows --  
 23 actually works through the analysis of what's the  
 24 resource mix level of maximum daily quantity for NEX,

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 41

1 which has very similar attributes to NED. And, the  
2 number there was 90,000. But the model was based on  
3 the assumption that 32,600 Dth per day for the  
4 Manchester and Nashua facilities were not there.  
5 Q. Right. So, then, the propane facilities were assumed  
6 to be retired for those purposes?  
7 A. For those two cities.  
8 Q. Okay. So, let's -- so, the 90 -- let's start with the  
9 90,000 from the IRP. And, would you agree that it is  
10 appropriate to include some additional amount for  
11 capacity-exempt customers that have returned?  
12 A. I already discussed that. I said "yes".  
13 Q. Okay. And, how much would you include for those  
14 customers?  
15 A. Again, for me, it's not about how much I would include.  
16 I'm saying the Company has projected what those  
17 inclusions are going to be, and I was basing my  
18 analysis on those numbers.  
19 Q. All right. So, I would like to -- do you have Mr.  
20 DaFonte's rebuttal testimony in front of you?  
21 A. No, I don't. Yes, I do, actually. Yes.  
22 MS. KNOWLTON: I actually have -- my  
23 next question is confidential. I apologize. I need to go  
24 through this to --  
(DG 14-380) [REDACTED - for public use] (08-06-15/Day 3)

[WITNESS: Chattopadhyay] 42

1 CHAIRMAN HONIGBERG: Okay. All right.  
2 So, Mr. Frink, can you do me a favor please? So, the  
3 people who are not allowed to hear the confidential part  
4 of the record will go with Mr. Frink for just a few  
5 minutes. Thank you.  
6 (Public portion of the record  
7 suspended.)  
8 (Pages 43 through 51 of the hearing  
9 transcript is contained under separate  
10 cover designated as "Confidential &  
11 Proprietary" and is the reason that  
12 Pages 43 through 51 contained herein  
13 have been redacted and the pages are  
14 intentionally left blank.)  
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(DG 14-380) [REDACTED - for public use] (08-06-15/Day 3)

[WITNESS: Chattopadhyay] 43

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(DG 14-380) [REDACTED - for public use] (08-06-15/Day 3)

[WITNESS: Chattopadhyay] 44

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(DG 14-380) [REDACTED - for public use] (08-06-15/Day 3)

[WITNESS: Chattopadhyay] 45

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{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 47

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{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 46

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{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 48

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{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 49

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{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 51

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{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 50

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{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 52

1 (Hearing resumes on the PUBLIC portion  
2 of the record.)  
3 CHAIRMAN HONIGBERG: All right. Go  
4 ahead, Ms. Knowlton.  
5 MS. KNOWLTON: Thank you.  
6 BY MS. KNOWLTON:  
7 Q. Dr. Chattopadhyay, looking -- I'm looking at that Table  
8 Staff Tech-23(b) that we were looking at. This is  
9 Bates Page 01 of Mr. DaFonte's rebuttal testimony.  
10 A. Yes.  
11 Q. If you would take the difference from -- if you take  
12 the difference between the year "2024/25 Design Day  
13 Updated", and compare that to -- tell me the difference  
14 between that and the year "2014/2015 Design Day  
15 Updated", what that figure is?  
16 A. Repeat that. The last one was "2014/2015"?  
17 Q. Yes, 2014/2015.  
18 A. It's about 42, 43,000, roughly.  
19 Q. I'm getting "26,329". I'm doing 171,513, less 145,184.  
20 A. Can I -- I'm a little confused. Can I ask, you're  
21 asking me to compare 2014/15 with 2024/25, and you're  
22 looking at "Total Updated Design Day"?  
23 Q. Yes. That's what I'm looking at.  
24 A. So, it's "148,547" to "191,000".

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 53

1 Q. I'm looking just at the "Design Day Updated" column.  
2 CHAIRMAN HONIGBERG: The second column.  
3 BY MS. KNOWLTON:  
4 Q. The second column on the table.  
5 A. Yes. This is correct. Okay.  
6 Q. And, would you agree that it's -- the difference  
7 between the two is the 26,329 Dekatherms a day?  
8 A. Yes.  
9 Q. And, that would reflect the amount of growth that the  
10 Company has projected from the IRP forecast?  
11 A. The "Design Day Updated" is part of the NED filing.  
12 It's not the IRP filing.  
13 Q. But the Company -- so, the first column is --  
14 A. Correct.  
15 Q. -- was the Company's Design Day based on the last  
16 Commission-approved IRP, right?  
17 A. Right.  
18 Q. And, then, the Company did an update to that forecast  
19 that included its projected growth?  
20 A. Yes.  
21 Q. And, that's that next column, "Design Day Updated",  
22 right?  
23 A. Correct.  
24 Q. So, I'm just trying to get some reasonable proxy for  
(DG 14-380) [REDACTED - for public use] (08-06-15/Day 3)

[WITNESS: Chattopadhyay] 54

1 the amount of growth that we can add in to our figure.  
2 And, so, I was just trying to get this difference  
3 between the years 2024/25 and 2014/2015, which I get  
4 "26,329 Dekatherms a day". Do you get that same math?  
5 A. I mean, you're just going through that math. Yes,  
6 that's correct.  
7 Q. So, if I add that to our previous total of the amount  
8 of dekatherms a day that the IRP found was necessary to  
9 serve customers in the future, adding in the  
10 capacity-exempt, adding in the INATGAS, and adding in  
11 that 26,329 in growth, we get a number that's over  
12 115,000 Dekatherms a day, correct?  
13 A. Can you --  
14 Q. And, don't say the number out loud, because that number  
15 may be confidential please.  
16 A. This is assuming that you -- I'm not following exactly  
17 what you're saying. Can you repeat it?  
18 Q. So, this is assuming --  
19 (Court reporter interruption.)  
20 BY MS. KNOWLTON:  
21 Q. The 90,000 assumes that the propane was retire, that's  
22 that IRP figure. And, I can write this down on a piece  
23 of paper, if that's easier, and hand it to you, if you  
24 want to look at that?  
(DG 14-380) [REDACTED - for public use] (08-06-15/Day 3)

[WITNESS: Chattopadhyay] 55

1 A. I'm not really following what you're saying. The  
2 design day is there's a design day requirement. It's  
3 not the resources. That's what's confusing me. It's  
4 just the requirement that you're trying to meet. And,  
5 if it's helpful, what I have done is simply, in talking  
6 about the ten years projection, I took the numbers that  
7 the Company had provided, which is -- which leads to --  
8 well, I don't know.  
9 MS. KNOWLTON: Actually, I think I can  
10 make this really simple, if I might. Can I approach the  
11 bench with a piece of paper and just write the numbers  
12 down and show them to the witness?  
13 CHAIRMAN HONIGBERG: You're going to  
14 show them to other counsel, too?  
15 MS. KNOWLTON: I can show it to counsel  
16 first.  
17 CHAIRMAN HONIGBERG: And, the reason  
18 she's doing this, for the people in the back, is there's  
19 at least one confidential number that's in the calculation  
20 that she wants to show the witness. So, we're trying to  
21 avoid making you leave again. And, I'll ask  
22 Dr. Chattopadhyay to focus on the total, understand how  
23 she got there, but not talk about the interim numbers,  
24 okay?  
(DG 14-380) [REDACTED - for public use] (08-06-15/Day 3)

[WITNESS: Chattopadhyay] 56

1 WITNESS CHATTOPADHYAY: Okay.  
2 CHAIRMAN HONIGBERG: Actually, let me  
3 correct that. It's not to name the total, it's the  
4 quality she's asking for, of more or less than.  
5 (Short pause.)  
6 CHAIRMAN HONIGBERG: Off the record.  
7 (Brief off-the-record discussion  
8 ensued.)  
9 MS. KNOWLTON: May I approach the  
10 witness?  
11 CHAIRMAN HONIGBERG: Sure.  
12 BY MS. KNOWLTON:  
13 Q. Dr. Chattopadhyay, I'm going to show you a piece of  
14 paper that I've written on that has --  
15 (Court reporter interruption.)  
16 BY MS. KNOWLTON:  
17 Q. -- which shows the 90,000 Dekatherms a day from the  
18 last approved IRP, DG 13-313, the confidential  
19 capacity-exempt figure, the INATGAS figure, and then I  
20 show a total. And, you've already agreed that we did  
21 the math right. And, then, the next thing I show is  
22 "plus growth". And, I would just ask that you write in  
23 whatever number you think, you know, put in the lowest  
24 number that you think is reasonable for the Company to  
(DG 14-380) [REDACTED - for public use] (08-06-15/Day 3)

[WITNESS: Chattopadhyay] 57

1 assume for growth on the system over the next ten  
 2 years, and then add that up for me.  
 3 (Short pause.)  
 4 BY THE WITNESS:  
 5 A. Again, I'm struggling a little bit. Because, in my  
 6 calculations, and I keep going back to what I had said,  
 7 was that the IRP worked through what that amount should  
 8 be, which is the resource mix optimization or the NEX  
 9 capacity should be, which is 90,000 Dth per day. But  
 10 that is not what is the level that is necessarily  
 11 needed in the very first year. It's based on a  
 12 projection and cost attributes and figuring out that is  
 13 the amount that we should be targeting.  
 14 Now, having figured that out, all I was  
 15 saying was that calculation contains the 32,600 Dth per  
 16 day for the propane facilities calculated in it. So,  
 17 if you just subtract that amount, you really roughly  
 18 need 57,000 Dth per day to account for, you know, what  
 19 you need into the future based on that optimization.  
 20 Having said that, I then actually used a  
 21 capacity-exempt number of --  
 22 BY MS. KNOWLTON:  
 23 Q. Just don't say it out loud.  
 24 A. What -- which is in your -- which is associated with  
 {DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 58

1 20,000 -- sorry, 2037/38, okay? And, I went with the  
 2 others as well, that is what the Company had provided.  
 3 So, that calculation has already taken account of, let  
 4 me see, it's in that table, which is 23(b). Okay? And  
 5 that, when I talked about that number overall, you add  
 6 that number to 57,000, that's how you get close to.  
 7 Anyway, that's what I did.  
 8 Q. So, do you think it should be zero?  
 9 A. What?  
 10 Q. I mean, just put down whatever you think it should be.  
 11 Zero, question mark. I mean, do you --  
 12 A. I need to, first of all, in the calculations that's  
 13 there in the table, there's also Keene, okay? So,  
 14 really, I'm struggling to give you -- what do you mean  
 15 by "growth"? Just --  
 16 Q. Define it -- here's what I'm trying to get at. And,  
 17 I'm really not trying to make it complicated. What I'm  
 18 asking you to do is to write down whatever figure, in  
 19 your professional judgment, best approximates what  
 20 growth the Company should plan for for the next ten  
 21 years.  
 22 A. Overall --  
 23 Q. And, if you think it's zero, put zero. You know, put  
 24 whatever you think is appropriate.  
 {DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 59

1 MS. CHAMBERLIN: Your Honor, I think the  
 2 question has been asked and answered. He's given the  
 3 answer.  
 4 CHAIRMAN HONIGBERG: I have not -- no, I  
 5 have not heard an answer. But I think it may be because  
 6 they're talking about two different things.  
 7 MS. CHAMBERLIN: Yes.  
 8 CHAIRMAN HONIGBERG: But I definitely  
 9 haven't heard an answer to that question. There's no  
 10 doubt in my mind.  
 11 MS. CHAMBERLIN: He's explaining what he  
 12 did. She's asking what he did.  
 13 CHAIRMAN HONIGBERG: No. She's not  
 14 asking what he did. She's trying to develop another  
 15 calculation.  
 16 MS. PATTERSON: Yes.  
 17 CHAIRMAN HONIGBERG: And, she's trying  
 18 to ask him "how much, if any, should be included for  
 19 growth on the system, on the existing system?" And, his  
 20 answer about what he already did isn't an answer to that  
 21 question.  
 22 MS. CHAMBERLIN: It isn't. He is saying  
 23 that the 90,000 Dekatherms already includes growth.  
 24 CHAIRMAN HONIGBERG: Ah. That's what I  
 {DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 60

1 think he's saying, too, but he hasn't said it yet.  
 2 MS. KNOWLTON: Then, he should write a  
 3 zero.  
 4 BY THE WITNESS:  
 5 A. Again, we are -- we are talking -- this is really  
 6 confusing me. First of all, when I talk about "75,000  
 7 to 90,000", that has nothing to do with your number  
 8 here, 90,000 Dth. Okay.  
 9 BY MS. KNOWLTON:  
 10 Q. I know that.  
 11 A. That's --  
 12 Q. And, we're going to get to that in a minute.  
 13 CHAIRMAN HONIGBERG: Only one at a time,  
 14 Ms. Knowlton.  
 15 BY THE WITNESS:  
 16 A. That's helpful. So, if you're talking about this  
 17 number, I've already talked about today, I'm saying I'm  
 18 adding 16,000 to it --  
 19 BY MS. KNOWLTON:  
 20 Q. Okay.  
 21 A. -- to get the total.  
 22 Q. Thank you. So, add -- write down "16,000" on that  
 23 piece of paper, where I have a blank for growth.  
 24 A. Yes. Not -- because I'm saying "total". So, it's  
 {DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 61  
1 really, your numbers already here --  
2 (Court reporter interruption.)  
3 CHAIRMAN HONIGBERG: Please don't read  
4 the numbers on that piece of paper.  
5 WITNESS CHATTOPADHYAY: Okay.  
6 (Court reporter indicating he didn't get  
7 the numbers.)  
8 CHAIRMAN HONIGBERG: That's a good  
9 thing. It's not on the record. It didn't get in there.  
10 Please don't read the numbers.  
11 WITNESS CHATTOPADHYAY: Okay.  
12 CONTINUED BY THE WITNESS:  
13 A. I'm saying, including the numbers that you've already  
14 provided, the number that -- that number is 16,000 over  
15 90,000.  
16 BY MS. KNOWLTON:  
17 Q. Okay. So, can you write down, where it says "customer  
18 growth", and where the blank is, write down whatever  
19 number you think should be there.  
20 A. Okay. I will also --  
21 Q. Just write the number down.  
22 A. I will. I will. I will. I'm also qualifying, these  
23 are your numbers. Okay?  
24 Q. That's okay.  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Chattopadhyay] 62  
1 A. So, I'm starting off with these numbers and putting a  
2 number there, that -- which I arrived using my look at  
3 your -- the Company's table. So, the number that I  
4 have here from you is, to start with, different for the  
5 capacity-exempt than what I had assumed.  
6 But, anyway, I'm going to do this  
7 calculation --  
8 Q. Dr. Chattopadhyay, actually, I asked you, when you put  
9 down the capacity-exempt number, I asked you what was  
10 your number, and you said "I accept the Company's  
11 number." I showed you Mr. DaFonte's testimony.  
12 A. No, I --  
13 Q. If you think it's a different number, all I want you to  
14 do is to cross out and put down the number that, in  
15 your professional opinion, you believe represents the  
16 correct number --  
17 A. When you --  
18 Q. -- that the Company should be planning for.  
19 A. When you showed me the table, you asked me whether that  
20 number was \_\_\_\_\_ or whatever.  
21 MS. CHAMBERLIN: Eh!  
22 WITNESS CHATTOPADHYAY: So -- sorry. I  
23 just said that's what's written there.  
24 MS. KNOWLTON: Okay.  
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[WITNESS: Chattopadhyay] 63  
1 WITNESS CHATTOPADHYAY: Okay? And, I'm  
2 more than happy to give you the calculation here.  
3 BY MS. KNOWLTON:  
4 Q. I want to be clear, though, for purposes of this  
5 calculation, I want this to reflect what you believe is  
6 appropriate. And, I want to start over, if you think  
7 what's written down so far isn't appropriate. Because  
8 you've told us that you agree with the IRP methodology,  
9 and you didn't dispute the 90,000. So, -- and it was  
10 approved by the Commission. So, I want to add to the  
11 90,000 the capacity-exempt number. Do you want to  
12 change what's on that piece of paper?  
13 A. What I would like to do is I would like to add a number  
14 to the 90,000, overall, okay? Without getting into a  
15 debate about capacity-exempt, iNATGAS, and all of that.  
16 So, --  
17 Q. But can we agree what -- okay, if you want to load it  
18 all up into one figure, I'm okay with that. But can  
19 you tell me what's in that figure? Is it  
20 capacity-exempt, is it IRP, and is it growth on the  
21 system? And iNATGAS?  
22 A. As assumed by you, as well as Keene.  
23 Q. Add in -- I'm asking you, add in all those things that  
24 should be added, that you think should be added, and  
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[WITNESS: Chattopadhyay] 64  
1 just give me -- give me a total.  
2 A. It's not about what "should be added". I'm saying  
3 what's there in your table. And, I'm saying, that  
4 total, I've already talked about it, it's 90,000, and  
5 beyond that 16,000.  
6 CHAIRMAN HONIGBERG: Wait. Doctor,  
7 wait. Wait, wait, wait, wait, wait. Wait.  
8 WITNESS CHATTOPADHYAY: Okay.  
9 CHAIRMAN HONIGBERG: She is asking you  
10 "what, in your professional judgment, having looked at the  
11 situation, the numbers should be?" If there are some on  
12 which you have no opinion, and are just going to accept  
13 the Company's numbers, that's fine.  
14 WITNESS CHATTOPADHYAY: Yes.  
15 CHAIRMAN HONIGBERG: If there are  
16 numbers about which you do have an opinion, those are the  
17 ones she wants. She wants both.  
18 WITNESS CHATTOPADHYAY: Okay.  
19 CHAIRMAN HONIGBERG: She wants to know  
20 what they are.  
21 BY THE WITNESS:  
22 A. I accepted the Company's number. And, you know, I  
23 don't have any opinions on them, as far as the overall  
24 calculation is concerned, for the purpose of my  
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[WITNESS: Chattopadhyay] 65

1 testimony -- for the testimony that I provided today.

2 So, what I'm saying is, I've already done the

3 calculations. And, those calculations account for

4 capacity-exempt numbers, they account for iNATGAS, and

5 which I hadn't even mentioned what that amount was, and

6 I account for whatever the Company provided here,

7 including the Keene new expansion numbers. Okay?

8 Q. So, what's the total here?

9 A. So, I'm saying, from 90, you add roughly 16,000.

10 Q. Okay. And, what's that total?

11 A. So, it comes to 106,000.

12 Q. Dekatherms a day?

13 A. Yup.

14 Q. Okay. Now, let's go to your -- you also testified

15 about a range of "75,000 to 90,000" this morning. Is

16 that correct?

17 A. Correct.

18 Q. And, that range included the propane plants, right?

19 A. That included the propane plants.

20 Q. Okay. And, the Company is going to file its next IRP

21 analysis or next IRP that includes an analysis of those

22 propane plants no later than February 2017, correct?

23 A. Subject to check, that's my understanding.

24 Q. And, the NED Pipeline is scheduled to be in service as  
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[WITNESS: Chattopadhyay] 67

1 A. That will get us 124,600 Dth per day.

2 MS. KNOWLTON: The Company has nothing

3 further for the witness.

4 CHAIRMAN HONIGBERG: Commissioner Scott.

5 COMMISSIONER SCOTT: Good morning.

6 BY COMMISSIONER SCOTT:

7 Q. Most of my questions have been answered, but I just

8 wanted to get -- delve a little bit deeper in your

9 testimony from the Bench and your written testimony,

10 you discuss this "current customer versus future

11 customer equity issue". So, what I'm curious about is,

12 and I think Attorney -- the attorney from Liberty

13 mentioned, is your presumption that, by looking at

14 these smaller increments of time, whether it's ten

15 years or something else, and this balancing of current

16 customers and future customers, is there a presumption

17 that there's a ready supply of pipeline capacity to be

18 purchased in the future? Meaning, you limit your

19 increment today, because, in ten years from now or

20 twenty years from now, if there's a need for future

21 growth, you just buy some more. Is that an

22 appropriate -- is that your assumption?

23 A. The look at the different levels is purely to do a

24 search analysis of where you get the least cost. So,  
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[WITNESS: Chattopadhyay] 66

1 of November 2018, right?

2 A. That is my understanding, yes.

3 Q. So, I would next ask you to take the lower end of your

4 range, the 75,000, and then to assume that the propane

5 is retired, and to add in the amount of capacity that

6 the propane facilities represents and tell me that

7 total?

8 A. I have -- again, these are all rough numbers. So, the

9 75,000, I'm saying, for both numbers, you can add

10 34,600, roughly.

11 Q. Okay. So, what does that get to?

12 A. One hundred and --

13 CHAIRMAN HONIGBERG: I hope it's

14 109,600.

15 BY THE WITNESS:

16 A. 109,600.

17 CHAIRMAN HONIGBERG: Good.

18 BY MS. KNOWLTON:

19 Q. Okay. And, then, so that's the lower end of the range,

20 assuming a propane retirement. And, then, what would

21 be the upper end of your range, again, assuming

22 retirement of those propane facilities?

23 A. I would add another 15,000 to it.

24 Q. And, that would get us to what?  
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[WITNESS: Chattopadhyay] 68

1 it's not tied to me suggesting that those are the --

2 that is how it should be procured. There is an amount

3 associated with the contract that is going to give you

4 the least cost, if you're going to run the resource

5 mix, or the way I was approaching it is very similar,

6 keep everything else same, go through the different

7 numbers, then get a good sense of where the costs will

8 be in the lower range, okay? That's what I was doing

9 there.

10 Now, having said that, it's -- it is

11 also my position that you can look into the future, for

12 example, five to ten years, and choose a design day,

13 and work on it, and figure out what's the capacity that

14 we need. That would be more in line with the approach

15 that I just described. And, it would, even though it's

16 very likely to give you a higher cost than what a least

17 cost optimization would do, that would still be in the

18 reasonable range.

19 But to go all the way to twenty years is

20 not reasonable, in my opinion. You have to consider

21 the fact that markets work in their own ways. And, as

22 customers, we should be more than comfortable in having

23 to deal with a design day that's going to happen twenty

24 years down in the future, sometime in the future, not  
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[WITNESS: Chattopadhyay]

1 right now. That's my --

2 Q. Well, I guess my question is, is inherent in that

3 discussion that we should go ten years, not twenty

4 years, but if a twenty year projection shows there

5 should be a need for more capacity to be purchased,

6 that would imply there would be a second purchase

7 closer to that date. Is that correct?

8 A. Provided it plays out exactly that way. So, what you

9 have -- the reality is that you have to deal with the

10 uncertainties. And, as ratepayers right now, who are

11 going to be paying for this, it is very fair that they

12 are not required to pay for these, for a proceed

13 procurement level that is meant for a design day so

14 much into the future. That's the point I'm trying to

15 make. And, it's -- there's a balance there you need to

16 strike, and I was suggesting five to ten years horizon

17 is a reasonable approach.

18 Q. And, back to my question is, so, is it safe to assume,

19 you think a second procurement, assuming the twenty

20 year projection is correct, that there would be a need

21 for an even further purchase compared to what your

22 levels you're suggesting are, is a second procurement,

23 is that realistic?

24 A. It's very possible. Yes.

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[WITNESS: Chattopadhyay]

1 Q. Okay. So, in the 30th year, would the price, if they

2 had to renegotiate a contract, be higher or lower than

3 the price that they negotiated today, you think?

4 A. The way the demand charges work, to the best of my

5 understanding, they are recovering the embedded costs

6 of the project, okay? So, there's, generally speaking,

7 those costs are all recovered in a 20-year, roughly

8 speaking, 20-year timeline. And, then, that doesn't

9 mean there are going to be -- there won't be other

10 costs associated with procuring transportation, even on

11 the same pipeline, for example. So, for me, it's very

12 hard to predict what those numbers are going to be into

13 the future, because of inflation, there are other

14 factors involved.

15 But, generally speaking, because the

16 embedded costs are recovered when a project is proposed

17 and it's put in place, my understanding is it's not --

18 the embedded costs are recovered over, say, let's say,

19 in this case, maybe twenty years.

20 Q. Okay. So, if they're recovered over twenty years, and

21 they have a contract for ten years, are the embedded --

22 A. Beyond that?

23 Q. Just assume that they had negotiated a contract for ten

24 years, because that's what you think would be more

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[WITNESS: Chattopadhyay]

1 COMMISSIONER SCOTT: Okay. Thank you.

2 CHAIRMAN HONIGBERG: Commissioner

3 Bailey.

4 COMMISSIONER BAILEY: I'm new at this.

5 So, I'm trying to --

6 WITNESS CHATTOPADHYAY: Okay.

7 COMMISSIONER BAILEY: -- ask you for

8 some information.

9 BY COMMISSIONER BAILEY:

10 Q. Can you tell me, does the price of firm transportation

11 service increase or decrease over the life of the

12 pipeline? So, like if --

13 A. Can you repeat? Sorry. I don't --

14 Q. If we know what the price of transportation service is

15 today, that they have agreed to in the PA, and they

16 have agreed to it for 20 years, if they -- say they

17 only agree to it for ten years. And, so, the contract

18 was for ten years. First of all, how long does a

19 pipeline last, do you know?

20 A. You know, I don't -- I'm not -- I really don't. But I

21 know they're long, they last -- they're long, well

22 beyond 20 years, in some cases.

23 Q. Okay. So, maybe 40 years or --

24 A. Yes.

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[WITNESS: Chattopadhyay]

1 appropriate.

2 A. Yes.

3 Q. Okay. So, and assume they got the same price.

4 A. I'm not saying the contract should be for ten years.

5 Q. Okay.

6 A. The contract is still twenty years. I'm just talking

7 about the contract level.

8 Q. Okay. I get the difference.

9 A. Yes.

10 Q. Okay. I'll leave it there. Do you believe that

11 there's any possibility, that it's possible that

12 there's a limitation in the supply that would be

13 available in Dracut in the future?

14 A. Can you just repeat the first part again? I missed --

15 Q. Is it possible that the supply in Dracut could be

16 limited, so that there isn't enough supply coming from

17 Dracut?

18 A. You're talking about the Dracut/Concord Lateral?

19 Q. Yes.

20 A. That is assumed in the analysis by, you know, by the

21 Company. And, my discussion about the numbers here

22 today was assuming that those 50,000 -- the 50,000

23 capacity from Dracut is being taken over by the NED

24 capacity.

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[WITNESS: Chattopadhyay]

1 But, if you're asking me whether, in the  
2 future, there could be issues with the Dracut/Concord,  
3 you know, Concord Lateral, which is still there? Yes.  
4 I mean, it's possible. But my calculations here  
5 already -- the NED capacity that I'm talking about is  
6 replacing for those 50,000 Dth per day contract for the  
7 Concord Lateral, the two pieces that the Company has.  
8 Q. But your testimony I thought was "it would be more  
9 cost-effective to keep the 50,000 on the Concord  
10 Lateral and only buy 65,000 on the NED Pipeline." Or,  
11 assuming that 65,000 was necessary, but you think  
12 that's too high.  
13 A. The analysis shows that 65,000/50,000 Dth combination  
14 for NED and Concord Lateral is less costly than going  
15 just to NED. And, that assumes a lot of things about  
16 the prices already. So, the constraints are being  
17 modeled by the Company already, okay?  
18 And, if the question is that, whether we  
19 should keep going down further, it's about the cost.  
20 And, it's entirely possible that you may have a,  
21 relatively speaking, a very illiquid situation in  
22 Dracut. But, in the overall scheme of things, paying a  
23 very high energy price at any point in time may be a  
24 better option than trying to procure additional  
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[WITNESS: Rosenkranz]

1 capacity, contract for demand charges, for which you  
2 pay throughout twenty years. So, that's, you know,  
3 that's a possibility.  
4 Q. So, do you think that securing capacity on this NED  
5 Pipeline would improve reliability?  
6 A. I'm not an engineer. But, based on my look at it, I  
7 would expect that it has reliability values.  
8 COMMISSIONER BAILEY: Okay. Thank you.  
9 CHAIRMAN HONIGBERG: I have no questions  
10 for Dr. Chattopadhyay. Ms. Chamberlin.  
11 MS. CHAMBERLIN: Your Honor, as long as  
12 your -- the original motion to strike has been overruled,  
13 and that testimony stays in, I have no questions.  
14 CHAIRMAN HONIGBERG: All right. Thank  
15 you very much. Thank you, Dr. Chattopadhyay. You can  
16 return to your seat.  
17 WITNESS CHATTOPADHYAY: Thank you.  
18 CHAIRMAN HONIGBERG: We're going to take  
19 a five-minute break for Mr. Patnaude, and then we'll come  
20 back for what I think is the last witness. So, we'll  
21 break until, we'll say, 20 after.  
22 (Recess taken at 11:12 a.m. and the  
23 hearing resumed at 11:23 a.m.)  
24 CHAIRMAN HONIGBERG: Mr. Kanoff.  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

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[WITNESS: Rosenkranz]

1 MR. KANOFF: I'd like to have  
2 Mr. Rosenkranz take the stand.  
3 (Whereupon John A. Rosenkranz was duly  
4 sworn by the Court Reporter.)  
5 MR. KANOFF: Good morning, Mr.  
6 Rosenkranz.  
7 WITNESS ROSENKRANZ: Good morning.  
8 JOHN A. ROSENKRANZ, SWORN  
9 DIRECT EXAMINATION  
10 BY MR. KANOFF:  
11 Q. Will you state your full name for the record.  
12 A. John Rosenkranz.  
13 Q. And, for whom do you work?  
14 A. I'm a self-employed consultant. My company is North  
15 Side Energy, LLC.  
16 Q. And, what type of work do you do there?  
17 A. I do gas supply planning and regulatory consulting for  
18 a number of clients.  
19 Q. And, how long have you done this type of consulting  
20 work?  
21 A. I've had my own firm since 2006. But, previously, in  
22 my career, I have done other gas supply-related  
23 consulting.  
24 Q. Have you had an opportunity to testify as an expert  
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[WITNESS: Rosenkranz]

1 witness and defend that testimony before a governmental  
2 agency that regulates public utilities?  
3 A. Yes, I have. I've been doing quite a bit of work for  
4 the Maine Public Advocate's Office. So, I've done some  
5 testimony in Maine. I do -- I've been involved in a  
6 number of cases in Ontario, before the Ontario Energy  
7 Board. I've done a case in Arizona, and a couple other  
8 states.  
9 Q. And, aside from your present consulting work, do you  
10 have any other natural gas/public utility-related  
11 experience?  
12 A. Yes. As I said previously, I was doing consulting in  
13 the gas supply planning area. I worked for a firm that  
14 provided gas supply planning software to gas  
15 distribution companies, was involved in helping those  
16 companies do different types of gas supply planning  
17 studies. Something similar to what's now used as the  
18 SENDOUT software, this would be the precursor, and, at  
19 that time, was a competitor to SENDOUT.  
20 I've also, in my background, been  
21 involved in pipeline development projects, storage  
22 development projects. So, I've worked on a number  
23 of -- a range of different things in the gas supply  
24 area.  
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[WITNESS: Rosenkranz] 77

1 CHAIRMAN HONIGBERG: Mr. Kanoff, I'll  
2 note we do have Mr. Rosenkranz's résumés. It was attached  
3 to his testimony. So, we're familiar with his background.  
4 MR. KANOFF: Thank you.  
5 BY MR. KANOFF:  
6 Q. The testimony and exhibits you prepared are in the file  
7 in this case and have been marked as "Exhibits 17"  
8 through "22" for identification. Is that your  
9 understanding?  
10 A. Yes.  
11 MR. KANOFF: And, I believe we have all  
12 agreed that they may be entered as exhibits for  
13 identification as marked.  
14 CHAIRMAN HONIGBERG: Just have him adopt  
15 it as his testimony.  
16 BY MR. KANOFF:  
17 Q. Do you adopt the Exhibits 17 through 22 as your  
18 testimony?  
19 A. Yes, I do.  
20 CHAIRMAN HONIGBERG: Do you have any  
21 corrections or changes that need to be made to it?  
22 WITNESS ROSENKRANZ: There is one minor  
23 correction I can point out. On Page 6 of my testimony,  
24 there's a "Table 1". And, just above Table -- well, in  
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[WITNESS: Rosenkranz] 78

1 Table 1, the third column, the second column of numbers,  
2 it says "Proposed 2017-2018", that should be "2018-2019".  
3 And, just above that, the last sentence of the paragraph  
4 above refers to "2017-2018", it should be "2018-2019". It  
5 doesn't change any substance. It's more a labeling issue.  
6 BY MR. KANOFF:  
7 Q. If we were to ask you the questions in your testimony  
8 today as filed, would your answers be the same?  
9 A. Yes, they would be.  
10 Q. Did you also participate in -- and who are you  
11 testifying on behalf of today?  
12 A. I am testifying on behalf of the Pipe Line Awareness  
13 Network for the Northeast, Inc.  
14 Q. And, did you, as part of your testimony, participate in  
15 assisting PLAN in discovery?  
16 A. Yes, I did.  
17 Q. And in responding to discovery?  
18 A. Yes, I did.  
19 Q. And, did you participate in technical conferences?  
20 A. Yes, I did.  
21 Q. Is there any other activities that you presented --  
22 that you participated in?  
23 A. Other than participating in this hearing, that's it.  
24 Q. And, have you had an opportunity to review the terms of  
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[WITNESS: Rosenkranz] 79

1 the Settlement Agreement between Commission Staff and  
2 the Company?  
3 A. Yes, I did.  
4 Q. In discussions of the Settlement Agreement on Day 1,  
5 there was some discussion, if you may recall, between  
6 Ms. Knowlton and Mr. DaFonte, with respect to Dracut as  
7 being "illiquid". Do you remember that?  
8 A. Yes.  
9 Q. And, I believe that Mr. DaFonte indicated that "Dracut  
10 had a lack of supply and suppliers". Do you recollect  
11 that as well?  
12 A. Yes. I know that that's been an issue.  
13 Q. And, specifically, Mr. DaFonte said that "Dracut was  
14 illiquid", that was his conclusion?  
15 A. I believe that's what he said, yes.  
16 Q. And, there was also, as part of that, discussions about  
17 "declining supplies", specifically "off of Atlantic  
18 Canada, Sable Island, Deep Panuke". And, that  
19 volumes -- and "those sources may be reduced". Do you  
20 recollect that?  
21 A. Yes.  
22 Q. And, he also mentioned supply from "Portland Natural  
23 Gas Transmission System" and the availability of "LNG",  
24 correct?  
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[WITNESS: Rosenkranz] 80

1 A. I believe he did include those as other sources of gas  
2 at Dracut, yes.  
3 Q. And, is it also part of his testimony that "the lack of  
4 liquidity at Dracut accounts for price spikes"? Do you  
5 recollect that?  
6 MS. PATTERSON: I'm going to object at  
7 this point. Only because it was my understanding that the  
8 testimony of these witnesses would consist of a brief  
9 introduction of their points in testimony, and then a  
10 response to the Settlement Agreement. And, I don't, while  
11 I could see that there could be a relation of these  
12 questions to the Settlement Agreement, I don't think  
13 there's been a foundation laid by the -- by the  
14 questioner.  
15 CHAIRMAN HONIGBERG: That's overruled.  
16 Go ahead.  
17 WITNESS ROSENKRANZ: I'm sorry. Could  
18 you repeat the question?  
19 MR. KANOFF: Sure.  
20 BY MR. KANOFF:  
21 Q. I was just asking about whether the lack of liquidity  
22 at Dracut would account for, in Mr. DaFonte's  
23 testimony, "price spikes"?  
24 A. My understanding of Mr. DaFonte's testimony in this  
(DG 14-380) [REDACTED - for public use] {08-06-15/Day 3}

[WITNESS: Rosenkranz] 81

1 case is that there are price spikes generally in the  
 2 New England market. Dracut is one of those points.  
 3 But he does point out the fact that the overall  
 4 Tennessee 200 line index, which is a broader index  
 5 capturing more of the New England market, is a fair  
 6 proxy for the pricing at Dracut. So, I think that his  
 7 point is certainly well taken that there's been a great  
 8 deal of price volatility in New England the last  
 9 several winters. How much of that is related to  
 10 specifically Dracut and other things, I think is a  
 11 matter of -- I'm not sure it's directly tied to Dracut.

12 CHAIRMAN HONIGBERG: So, Ms. Patterson,  
 13 he just buttressed Mr. DaFonte's testimony. Mr. Kanoff,  
 14 where are you going with this?

15 BY MR. KANOFF:

16 Q. Last is, to bring it home, do you agree with  
 17 Mr. DaFonte about "illiquidity at Dracut" and "a lack  
 18 of supply and suppliers"?

19 A. No. I think we've got a different view on Dracut, that  
 20 Dracut point. As I said, I think that, as opposed to  
 21 focusing on Dracut, it's more the New England market  
 22 has been the concern. The Dracut point itself, there's  
 23 been a change of the supplies, supply and suppliers  
 24 coming into that market. But, as I point out in my  
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[WITNESS: Rosenkranz] 83

1 my experience dealing with pipeline expansion projects,  
 2 as a -- procuring gas supply for large generators, and  
 3 working with pipelines on coming up with estimates for  
 4 connecting and getting firm transportation. These are  
 5 numbers that very much depend, particularly at the very  
 6 early planning stages, their estimates depend very much  
 7 on the quantity involved, exactly where the gas is  
 8 coming from and exactly where the gas is going to.

9 So, in this case, there has been put on  
 10 the record confidentially an estimate that the Company  
 11 has received from Tennessee Gas Pipeline of an  
 12 expansion cost that they used in their -- that they  
 13 used that number in their analysis. There was some  
 14 questions about that cost, and we determined that that  
 15 is a cost for, I believe I can say, 65,000 a day of  
 16 expansion, which is a large -- relatively large  
 17 expansion, but also to a specific point, it was just to  
 18 the Nashua meter.

19 The Company then, very late in the game,  
 20 came up with a -- or, provided another estimate. In my  
 21 mind, that's not an update to their previous estimate,  
 22 it's a different estimate. It's based on the 65,000,  
 23 but going to a different set of points. And, at this  
 24 point, we don't know exactly what the assumptions are  
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[WITNESS: Rosenkranz] 82

1 testimony, the market has been developing new supplies,  
 2 in terms of additional gas coming in through the PNGTS  
 3 system, the PNGTS system, in addition to the C2C  
 4 expansion that's been announced, has also made clear  
 5 that they're available to expand by several hundred  
 6 thousand a day, dekatherms a day, in future years,  
 7 beginning as early as 2018. And, I believe that going  
 8 forward the LNG supply from the Canaport facility will  
 9 continue to be there.

10 I think that the issue with supply at  
 11 Dracut, in particular, and New England more generally,  
 12 is largely an issue of price, as opposed to the supply  
 13 just won't be there.

14 Q. Do you recollect a discussion between Ms. Knowlton and  
 15 Mr. DaFonte with respect to the Concord Lateral?

16 A. Yes. There's been discussion on terms of the pricing  
 17 of incremental capacity on the Concord Lateral, yes.

18 Q. And, do you recollect the discussion in the  
 19 confidential session with respect to changes in the  
 20 initial cost estimate?

21 A. Yes.

22 Q. Without restating what those numbers are, can you give  
 23 us an opinion about the Company's new estimates?

24 A. I know that -- yes, I can give you my opinion, based on  
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1 behind those numbers.

2 My point here is that the Concord  
 3 Lateral expansion is a cost that you assume going  
 4 forward is an important part of any economic analysis  
 5 you're doing for the alternatives to NED. But we don't  
 6 have in front of us a full, I would say, a reasonable  
 7 range of estimates for different projects, particularly  
 8 for the different sizes, for the parties that are  
 9 recommending that the number be less than 65, 65,000.  
 10 So, I think that needs to be kept in mind.

11 Q. Would it have been helpful for EnergyNorth to request  
 12 and provide a cost estimate then for a more reasonably  
 13 sized expansion, such as 25,000 to 35,000 Dekatherms a  
 14 day?

15 A. Well, it certainly would have been helpful, I think, to  
 16 the Commissioners, to understand what those numbers  
 17 mean and what the range of costs could be going  
 18 forward.

19 Q. And, just -- I have two more areas very briefly. Do  
 20 you recall discussions between Ms. Knowlton and Mr.  
 21 DaFonte with respect to corrections to Table 8 of Mr.  
 22 DaFonte's testimony that would have been corrected  
 23 version 53 -- corrected Exhibit, I'm sorry, 53?

24 MS. PATTERSON: May I --  
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[WITNESS: Rosenkranz]

1 MR. KANOFF: Yes.

2 MS. PATTERSON: May I just interject?

3 Excuse me please. And offer an objection for you to rule

4 as you wish. Which is that this whole testimony is

5 sounding to mean like rebuttal of this witness, because

6 he's responding to testimony from today's hearing. And,

7 I'm just looking for clarification as to whether or not

8 there will be an opportunity to offer surrebuttal to that

9 witness's testimony?

10 CHAIRMAN HONIGBERG: Well, I think

11 you've got the procedural posture we're in a little

12 backwards. Rebuttal testimony would be coming from the

13 parties sponsoring the Settlement. This is testimony of

14 those who are opposed to it. And, it seems perfectly

15 reasonable to me to have the witness respond to the points

16 that were made in favor of the Settlement, that are beyond

17 what is in his prefiled testimony. Am I missing

18 something?

19 (No verbal response)

20 CHAIRMAN HONIGBERG: I don't think so.

21 All right. So, I will overrule the objection that was

22 offered.

23 MS. PATTERSON: Thank you.

24 BY MR. KANOFF:

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[WITNESS: Rosenkranz]

1 Q. Do you recollect that discussion?

2 A. Yes.

3 Q. And, as part of that discussion, Mr. DaFonte corrected

4 that exhibit, which would be Table 8 to his rebuttal,

5 as corrected in Exhibit for identification 53, is that

6 correct?

7 A. Yes.

8 Q. And, what does Table 8, in Mr. DaFonte's testimony

9 marked as "Exhibit 9" for identification show?

10 A. My understanding of Table 8 is that it's responsive to

11 the testimony that I filed, with regard to the 50,000 a

12 day recommendation to -- the recommendation of the

13 Company to take 50,000 a day of capacity that's now

14 from Dracut and move that receipt point to Wright. The

15 question -- the analysis I did showed that, based on

16 forward-looking prices, and, actually, prices taken

17 from the record provided by the Company, that that

18 didn't save costs for ratepayers. It actually

19 increased costs.

20 This table takes -- does a similar

21 analysis, uses historical numbers from the last -- just

22 the last two winters, and calculates what would the

23 price at Wright, New York had to have been, if the

24 price at Wright, New York had been below the

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1 breakeven number, then you would have saved money by

2 buying gas at Wright, instead of buying gas at Dracut.

3 So, that's -- instead of calculating a difference in

4 cost, he went through and calculated a breakeven

5 number.

6 Q. And, do you have an opinion on the exhibit and

7 Mr. DaFonte's corrections?

8 A. My opinion on his table is that it doesn't rebut my

9 testimony. He's using different numbers from a

10 different time period. And, particularly, in the

11 Winter of 2014/2015, he calculates a breakeven number.

12 It's -- I guess it's public now, it's \$8.08. But he

13 doesn't then say, during this past winter, what was the

14 price at Wright. Was it actually below \$8.08 or was it

15 above \$8.08?

16 We did ask for him to provide some

17 historical daily numbers for Wright, New York. As it's

18 already been discussed in this case, Wright, New York

19 is not a liquid point right now, in terms of having a

20 published price index. But I think there's been an

21 agreement that the Waddington point on Iroquois, which

22 is just north of there, is a liquid point, it's the

23 Canadian border import point. There is trading, quite

24 a bit of trading there. So, there is a daily price

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[WITNESS: Rosenkranz]

1 index.

2 Right now, Wright trades above that,

3 because gas is flowing from Waddington to Wright. So,

4 there's a small premium. But I think it's reasonable

5 that that would be a proxy for this type of analysis.

6 The daily Waddington price, during the

7 months of January and February, when most of this gas

8 was being purchased at Dracut, my calculation is that

9 that price was \$8.76. So, based on his own analysis,

10 it's not exactly -- he didn't provide exactly the

11 number that you would want, which was, if you took all

12 the days he bought at Dracut, and looked at the price

13 at Wright, or Waddington as the proxy, and came up with

14 an average, what would that average be?

15 I don't have the numbers in terms of

16 which days, which quantities were purchased. But we do

17 know from other sources that it was primarily taken in

18 those coldest January and February days.

19 Mr. DaFonte didn't provide the analysis.

20 And, when I tried to do the analysis, it looks like

21 it's actually proving my point, which is that it's

22 likely that that's going to be an increase in cost, not

23 a decrease in cost.

24 Q. And, you testified that you reviewed the Settlement, is

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1 that right?

2 A. Yes.

3 Q. And, what's your opinion on the Settlement?

4 A. My opinion of the Settlement, it doesn't address the

5 concerns that were expressed in my testimony, which is

6 that the -- any number of 100,000 Dekatherms a day or

7 115,000 Dekatherms a day is not in the public interest,

8 because it is, you know, for one -- the one reason

9 includes the 50,000 that's not new supply, it's just

10 this conversion of an existing contract. That

11 doesn't -- that doesn't appear, even in the near-term,

12 but particularly in the long-term, that that's going to

13 save money, if you factor in the supplies that are

14 going to be new supplies that are going to be coming

15 into New England, and the fact that there's likely to

16 be, when new pipeline capacity is built, a narrowing of

17 that price differential between Wright, New York and

18 eastern Massachusetts or Dracut, Massachusetts.

19 And, then, the other issue is that it

20 also includes a higher growth number than you need to

21 meet the expected growth in demand over the next ten

22 years or so.

23 Q. Is there any other points that you wish to discuss

24 about the Settlement?

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1 for cross-examination.

2 CHAIRMAN HONIGBERG: Ms. Chamberlin, do

3 you have any questions for Mr. Rosenkranz?

4 MS. CHAMBERLIN: I have a few. Thank

5 you.

6 CROSS-EXAMINATION

7 BY MS. CHAMBERLIN:

8 Q. In your opinion, what is an appropriate planning

9 horizon for pipeline capacity acquisitions?

10 A. I'm going to answer this carefully, because I think

11 there's been some different use of the word "planning

12 horizon" in some of the discovery that's gone back and

13 forth. But, if the question -- the way I understand

14 the question is, is it reasonable, when making a

15 decision about a long-term contract today, to look at

16 what the expected requirement is going to be twenty

17 years from the start of that contract? Which is, you

18 know, again now this actually is 24 years out. There

19 is so much uncertainty in terms of what requirements

20 are going to be that far in the future, and the fact

21 that you -- it does involve a serious amount of

22 overcontracting in the near-term, I don't think that

23 that's justified. I think that something like a

24 10-year horizon from today to get the amount of growth

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1 A. I would just say that the terms of the Settlement

2 appear to be a little bit more ambiguous than I

3 probably would have wanted to see, if I had been

4 involved in the drafting. In particular, on Page 3,

5 when talking about the amount of capacity for this

6 threshold of whether you stay at the 115 or go to the

7 100,000, it refers to "design day capacity", doesn't

8 say "design day capacity in which year". I'm presuming

9 that, since it's measured as of April 2017, it's

10 referring to design day capacity of -- estimated for

11 the next year 2017/2018, but that's not clear from the

12 wording.

13 And, particularly with respect to the

14 iNATGAS firm sales, which is probably going to be the

15 bigger -- one of the bigger, if not the biggest, piece

16 of that sum that's going to be calculated. It refers

17 to the "design day capacity", again, not knowing which

18 year, but for "iNATGAS firm sales". Well, iNATGAS is

19 not going to be a sales customer -- is not required to

20 be a sales customer for more than one year. So, by the

21 2017, it could be a transportation customer. It

22 doesn't say how you deal with the iNATGAS load in that

23 case.

24 MR. KANOFF: Mr. Rosenkranz is available

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1 that you should contract for today is reasonable.

2 I believe that's both on the basis of

3 the uncertainty in terms of your growth forecast, but

4 also I do feel that there will be opportunities to

5 contract for additional capacity, if it's determined to

6 be needed, to have it there in time for the possibility

7 that ten years from now you will need more capacity.

8 Q. Are you familiar with petitions filed by members of the

9 LDC in Massachusetts for NED Pipeline capacity?

10 A. Yes, I did review those.

11 Q. And, --

12 CHAIRMAN HONIGBERG: And filed prefiled

13 testimony about it. Are you going to ask to go something

14 beyond what's in the prefiled testimony?

15 MS. CHAMBERLIN: I'm going to ask him

16 what the planning horizons are for those --

17 CHAIRMAN HONIGBERG: And, I assume he's

18 going to testify consistently with how he testified on

19 Page 20 of his prefiled testimony. Is that a fair guess,

20 Mr. Rosenkranz?

21 WITNESS ROSENKRANZ: That is a very fair

22 guess.

23 CHAIRMAN HONIGBERG: Okay.

24 BY MS. CHAMBERLIN:

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[WITNESS: Rosenkranz]

1 Q. So, refresh my recollection, what are the planning  
 2 horizons?

3 A. Again, working -- I'm getting leery of the word  
 4 "planning horizon", but my reading of those filings was  
 5 that they looked at their requirement ten years out, in  
 6 terms of determining what's a reasonable quantity to  
 7 contract for in for growth.

8 Q. And, that's for Boston Gas?

9 A. The National Grid, Columbia of Massachusetts, and  
 10 Berkshire Gas all had similar.

11 Q. All three had similar --

12 A. Similar ten-year look-aheads, in terms of deciding what  
 13 to contract for on the NED system.

14 MS. CHAMBERLIN: Thank you.

15 CHAIRMAN HONIGBERG: Ms. Patterson.

16 MS. PATTERSON: I have no questions.

17 Thank you.

18 CHAIRMAN HONIGBERG: Ms. Knowlton.

19 BY MS. KNOWLTON:

20 Q. Mr. Rosenkranz, can you tell me how much capacity is  
 21 being built to Wright?

22 A. In terms of "being built", I would say that the  
 23 Constitution Pipeline, which I understand to be 600,000  
 24 a day, is approved by the Federal Energy Regulatory  
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[WITNESS: Rosenkranz]

1 Commission, but has not yet started construction. So,  
 2 I'm aware of that project.

3 Q. Would you take subject to check that it's 650,000, as  
 4 opposed to 600?

5 A. Yes, I will take that.

6 Q. And, are there any other pipelines that are being  
 7 proposed to Wright?

8 A. Correct. There are other pipelines being proposed to  
 9 Wright, including the Supply Path portion of the  
 10 Northeast Energy Direct project.

11 Q. Do you know how much capacity that represents?

12 A. That's a number I don't have at my fingertips.

13 Q. Would you take subject to check that it's between 600  
 14 and a million Dekatherms?

15 A. In terms of numbers that have been proposed by  
 16 Tennessee Gas Pipeline, I will accept that they have  
 17 been discussing those types of numbers.

18 Q. Do you know how much capacity is being built to Dracut?

19 A. I believe that there is a substantial amount of  
 20 capacity to Dracut right now, and that there are  
 21 projects in the works that would increase the capacity  
 22 from different sources to fill that capacity.

23 Q. Do you have any sense or just rough estimate of what  
 24 that amount of capacity is?  
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[WITNESS: Rosenkranz]

1 A. As I referenced, I know, from reviewing the cases in  
 2 Massachusetts, that the PNGTS, or Portland Natural Gas  
 3 Transmission System, has said that they are able to add  
 4 several hundred thousand a day of capacity beginning as  
 5 soon as 2018. I also know that the Atlantic Bridge  
 6 project will affect the supply that's available on the  
 7 joint facilities pipeline that terminates in Beverly,  
 8 Massachusetts and Dracut, to allow gas to flow from the  
 9 Algonquin system, through Boston Harbor, through  
 10 Beverly, and would become physically -- supply  
 11 physically available at Dracut.

12 Q. You testified about your opinion about the availability  
 13 of gas from Canadian sources, such as Deep Panuke and  
 14 Sable Island, is that correct?

15 A. Yes. That's included in my testimony.

16 Q. And, you, I think in your testimony, your live  
 17 testimony here, you indicated that you felt that it was  
 18 more an issue of the price, not the availability of  
 19 that gas, is that right?

20 A. I wasn't referring specifically to the Deep Panuke or  
 21 Sable Island production.

22 Q. What production were you referring to?

23 A. I was referring to the aggregate supply from all the  
 24 different sources that would be available in the  
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[WITNESS: Rosenkranz]

1 eastern Massachusetts market, including the one at  
 2 Dracut.

3 Q. But that would include supply from Canada?

4 A. Yes.

5 Q. Okay.

6 A. From a few different sources.

7 MS. KNOWLTON: I'd like to propose to  
 8 mark for identification as "Exhibit 56" an article  
 9 regarding the availability of production of gas from  
 10 Canada.  
 11 (Atty. Knowlton distributing documents.)  
 12 (The document, as described, was  
 13 herewith marked as Exhibit 56 for  
 14 identification.)

15 BY CHAIRMAN HONIGBERG:

16 Q. Mr. Rosenkranz, do you have that before you?

17 A. Yes, I do.

18 Q. Would you read the highlighted text please.

19 A. This references the Deep Panuke project. So, the  
 20 highlighted text: "The Deep Panuke project in Nova  
 21 Scotia's offshore is now expected to produce roughly --  
 22 CHAIRMAN HONIGBERG: Slow down. Slow  
 23 down, so Mr. Patnaude can get it.  
 24 CONTINUED BY THE WITNESS:  
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1 A. -- is now expected to produce roughly 50 percent less  
 2 natural gas than forecast because of water problems" --  
 3 excuse me -- "because of its water problems. Encana  
 4 Corp., the gas field's Calgary-based owner, said  
 5 Wednesday it has slashed the field's reserve estimate  
 6 by about 200 billion cubic feet."  
 7 Then, there's a marked part later,  
 8 further down: "Averill", A-v-e-r-i-l-l, "said the  
 9 company can't predict how long Deep Panuke will operate  
 10 because the timeline depends on such factors as well  
 11 and reservoir performance and how production is  
 12 managed."  
 13 Further down, it's marked passage:  
 14 "Despite the water issue, Deep Panuke is producing at  
 15 its target level of 180 to 200 million cubic feet per  
 16 day so far this year, he said. Deep Panuke was  
 17 originally expected to flow 300 million cubic feet per  
 18 day. Meanwhile, word that Deep Panuke likely won't  
 19 operate for as long as expected was a surprise to the  
 20 province and energy industry." That's --  
 21 BY MS. KNOWLTON:  
 22 Q. If you flip it over, I think there's a little bit more,  
 23 if you don't mind.  
 24 A. Oh. Sorry. "A Halifax natural gas consultant and  
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1 again.  
 2 BY THE WITNESS:  
 3 A. I think I'm going to have to. I thank you for the  
 4 opportunity. What I meant to say was that, if the  
 5 production is lower from Deep Panuke, the prices will  
 6 be higher -- is that where I tripped up? -- in the  
 7 marketplace than if the supply was not removed. I then  
 8 went on to observe that the market is likely to respond  
 9 to that change in supply. And, I pointed out that  
 10 there are other -- there are projects in the works to  
 11 increase capacity to replace that from other -- from  
 12 other sources.  
 13 BY MS. KNOWLTON:  
 14 Q. You indicated that you're here testifying today on  
 15 behalf of PLAN, is that right?  
 16 A. Yes.  
 17 Q. And, PLAN is a Massachusetts corporation?  
 18 A. I will take that.  
 19 Q. Okay. And, would you accept, subject to check, that it  
 20 has officers and directors?  
 21 A. I will take that subject to check, sure.  
 22 Q. Okay. Do you know who they are?  
 23 A. No, I do not.  
 24 (Atty. Knowlton distributing documents.)  
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1 broker said it sounds like the field could run out some  
 2 time in 2016 after three years of production."  
 3 Q. Sorry.  
 4 A. One more. "Deep Panuke is one of two producing  
 5 fields" -- "gas fields off the province's coast. The  
 6 other is Sable, where output has been dwindling for  
 7 years. An industry think-tank, the Atlantica Center  
 8 for Energy in Saint John has predicted that Sable will  
 9 run out of gas by 2017."  
 10 Q. Based on what you read, is it possible that this  
 11 decline in supplies, could it affect the price in  
 12 Dracut?  
 13 A. The price in Dracut and the price in New England  
 14 generally will be lower without those supplies, than it  
 15 would be if they had those supplies, presumably.  
 16 That's a short-term impact. Again, if the reduction in  
 17 supply from those sources spurs development of  
 18 additional pipeline capacity from central Canada or the  
 19 TransCanada system, through the PNGTS system, that  
 20 supply will be replaced and there may be little or no  
 21 price impact, in the longer term.  
 22 Q. You said "lower", did you mean "higher"?  
 23 A. Did I say that --  
 24 CHAIRMAN HONIGBERG: Why don't we start  
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1 CHAIRMAN HONIGBERG: This is going to be  
 2 "Exhibit 57".  
 3 (The document, as described, was  
 4 herewith marked as Exhibit 57 for  
 5 identification.)  
 6 BY MS. KNOWLTON:  
 7 Q. Mr. Rosenkranz, if you would take a look at this  
 8 document, which is from the New Hampshire Secretary of  
 9 State's Office. And, I'll represent to you that this  
 10 is Pipe Line Awareness Network for the Northeast,  
 11 Inc.'s Application to Register as a Foreign Nonprofit  
 12 Corporation here in New Hampshire. If you would --  
 13 MS. KNOWLTON: Whoops. Just noticing  
 14 that my copies here didn't copy double-sided.  
 15 CHAIRMAN HONIGBERG: I see the same  
 16 thing.  
 17 MS. KNOWLTON: Yes.  
 18 CHAIRMAN HONIGBERG: Do you have a full  
 19 copy of --  
 20 MS. KNOWLTON: I do. Somebody here has  
 21 a full copy, I apologize.  
 22 CHAIRMAN HONIGBERG: Off the record.  
 23 (Brief off-the-record discussion  
 24 ensued.)  
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1 (Short pause to make copies of  
2 Exhibit 57 and distribute copies.)  
3 BY MS. KNOWLTON:  
4 Q. Mr. Rosenkranz, do you have before you the second page  
5 of the exhibit?  
6 A. Yes, I do.  
7 Q. And, do you see the names listed of the officers and  
8 directors of PLAN?  
9 A. Yes, I do.  
10 Q. And, are there any from the State of New Hampshire?  
11 MR. KANOFF: I object to this line of  
12 testimony. And, it's on the basis of relevance. And,  
13 also just to note that Mr. Rosenkranz is a witness here,  
14 not the organization.  
15 CHAIRMAN HONIGBERG: Ms. Knowlton.  
16 MS. KNOWLTON: Mr. Rosenkranz is here  
17 speaking for the organization. And, I can pretty quickly  
18 get to my questions about the organization's position,  
19 which is what he's here representing. And, this is  
20 foundational to that. So, I believe that the line of  
21 inquiry is appropriate.  
22 CHAIRMAN HONIGBERG: Go ahead. You may  
23 proceed.  
24 MS. KNOWLTON: Thank you.  
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1 BY MS. KNOWLTON:  
2 Q. So, Mr. Rosenkranz, are there any officers or directors  
3 that reside in New Hampshire, based on this document?  
4 A. Based on this document, I see one director with a  
5 "Hollis, New Hampshire" address.  
6 Q. And, that's Mr. Moloney?  
7 A. Yes. That's the one I see.  
8 Q. Would you -- do you know whether Mr. Moloney is a  
9 customer of the Company?  
10 A. I don't have that information.  
11 Q. Would you accept subject to check that the Company  
12 doesn't serve the street in Hollis on which Mr. Moloney  
13 resides?  
14 MR. KANOFF: Continued objection.  
15 CHAIRMAN HONIGBERG: Understood. You're  
16 preserved as to this line of questions.  
17 MR. KANOFF: Thank you.  
18 BY CHAIRMAN HONIGBERG:  
19 Q. Have you met or spoke with any members of PLAN in New  
20 Hampshire about this docket?  
21 A. Have I spoken with any --  
22 Q. Members of PLAN.  
23 A. -- of PLAN?  
24 Q. New Hampshire members of PLAN --  
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1 A. Oh. Okay.  
2 Q. -- about this docket that you're here testifying about  
3 today?  
4 A. No. I have spoken to one of the members of PLAN here  
5 in New Hampshire about this docket, but that was  
6 Mr. Hartlage, who is here attending.  
7 Q. Okay.  
8 A. So, I answered a different question. I apologize.  
9 Q. So, he's a member of PLAN, a New Hampshire member of  
10 PLAN? No?  
11 CHAIRMAN HONIGBERG: No. What he said  
12 is he spoke to a Mass. --  
13 BY THE WITNESS:  
14 A. No. I --  
15 CHAIRMAN HONIGBERG: -- the full answer  
16 to the question that you didn't ask that he gave was he  
17 "spoke to one Massachusetts member of PLAN" --  
18 MS. KNOWLTON: Okay.  
19 CHAIRMAN HONIGBERG: -- "while he's been  
20 here in New Hampshire."  
21 MS. KNOWLTON: All right.  
22 WITNESS ROSENKRANZ: I answered the  
23 question as I first heard it.  
24 MS. KNOWLTON: Okay.  
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1 WITNESS ROSENKRANZ: And, it was  
2 unnecessary.  
3 BY MS. KNOWLTON:  
4 Q. So, how did you -- how did you ascertain what PLAN's  
5 position would be in this docket, if you have never  
6 spoken to any of their New Hampshire members?  
7 A. I was retained by the attorney representing PLAN, and  
8 was made very clear what the ground rules for PLAN's  
9 participation and what my role would be, based on the  
10 decision that was made by the Commission that limited  
11 their participation to the interest of EnergyNorth  
12 customers with respect to the prudence, justness, and  
13 reasonableness of the Precedent Agreement and its  
14 associated costs.  
15 Q. You haven't spoken to any of those customers, have you?  
16 A. I spoke -- I was retained, as I said, through their  
17 attorney. And, that was the basis on which I was  
18 retained and that was the basis under which I did the  
19 work.  
20 Q. But PLAN's position is that the NED project should not  
21 be built, correct?  
22 MR. KANOFF: Objection.  
23 CHAIRMAN HONIGBERG: Grounds?  
24 MR. KANOFF: Again, the witness has  
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1 testified as to the basis for his testimony here. PLAN's  
 2 position, for or against, is not relevant to that  
 3 testimony.

4 CHAIRMAN HONIGBERG: I think, if he  
 5 knows the answer to the question, he can answer it.

6 BY THE WITNESS:

7 A. My understanding is that the members of PLAN are not in  
 8 favor of the construction of the NED project. My  
 9 engagement was based on the fact that I would be  
 10 looking at the economics of the project. And, the  
 11 conclusion that I reached had to do with the  
 12 requirements and relative costs of the alternatives  
 13 available to the Company. I did not say, one way or  
 14 the other, in my testimony that -- or, put it this way,  
 15 I did not say that "the NED project was not a potential  
 16 option for the Company." My testimony is that it  
 17 was -- it's at anything close to the level that they  
 18 propose and contained in the Precedent Agreement is not  
 19 in the public interest.

20 (Atty. Knowlton distributing documents.)  
 21 CHAIRMAN HONIGBERG: This is going to be  
 22 "Exhibit 58".  
 23 (The document, as described, was  
 24 herewith marked as Exhibit 58 for  
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1 of the Northeast Energy Direct natural gas pipeline  
 2 (NED) that Kinder Morgan/Tennessee Gas Pipeline seeks  
 3 to build in New England, New York, and Pennsylvania."  
 4 Do you see that?

5 A. Yes.

6 Q. Based on that position, is there any basis whatsoever  
 7 that PLAN would have done anything other than object to  
 8 the Precedent Agreement that is before the Commission?  
 9 MR. KANOFF: I object to the question.  
 10 There's been no foundation laid that the New Hampshire  
 11 PipelineAwareness.org organization is related in any way  
 12 other than a website reference to the Pipeline Awareness  
 13 Network for the Northeast. And, he's being asked to  
 14 testify based upon a publication from another  
 15 organization. And, I don't believe that that's relevant?

16 CHAIRMAN HONIGBERG: Let's me see if I  
 17 can shortcut this. Mr. Kanoff, is there any dispute that  
 18 the organization you represent and that Mr. Rosenkranz is  
 19 testifying on behalf of is opposed to the building of the  
 20 pipeline? Is there any dispute about that?  
 21 MR. KANOFF: There's no doubt about it.  
 22 CHAIRMAN HONIGBERG: And, you'd  
 23 stipulate to that, correct?  
 24 MR. KANOFF: I would stipulate to that.  
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1 identification.)

2 BY MS. KNOWLTON:

3 Q. Mr. Rosenkranz, I've given you what's been marked for  
 4 identification as "Exhibit 58", which I'll represent to  
 5 you is a printout as of July 22nd 2,015 from PLAN's New  
 6 Hampshire website.

7 CHAIRMAN HONIGBERG: And, it appears to  
 8 be every other page.

9 MS. KNOWLTON: Are you kidding?  
 10 CHAIRMAN HONIGBERG: Off the record.  
 11 (Brief off-the-record discussion  
 12 ensued.)  
 13 CHAIRMAN HONIGBERG: We're going to go  
 14 back on the record. So, Exhibit 58 is just going to be  
 15 Page 1 of what was handed out a minute ago. And, off the  
 16 record.  
 17 (Brief off-the-record discussion  
 18 ensued.)  
 19 CHAIRMAN HONIGBERG: Go ahead,  
 20 Ms. Knowlton.

21 BY MS. KNOWLTON:

22 Q. Mr. Rosenkranz, if you can look to about the middle of  
 23 the page, there's a paragraph that reads  
 24 "NHPipelineAwareness.org strongly opposes construction  
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1 But that's not to say, just to be clear, that's not to say  
 2 that there are other alternatives that they would support.

3 CHAIRMAN HONIGBERG: No, I understand.  
 4 I get that. But that's not the point she wants to make.  
 5 She's -- we all know where she's going with this. And, I  
 6 think the witness understands it as well. But there's  
 7 really -- I mean, it's not a secret. PLAN, the  
 8 organization you represent, is opposed to the pipeline.  
 9 We understand that up here. I think Ms. Knowlton  
 10 understands it. I think everybody understands it.  
 11 So, I don't think -- I mean, what else  
 12 do you need to do with that, Ms. Knowlton?

13 BY MS. KNOWLTON:

14 Q. I could just rephrase it, and say, based on your  
 15 understanding that PLAN opposes the construction of the  
 16 NED, is there any basis upon which PLAN would have done  
 17 anything other than object to the Precedent Agreement  
 18 that is before the Commission?  
 19 A. My opinion is based on my analysis. I was not given  
 20 direction, in terms of what position I should take on  
 21 the Precedent Agreement.

22 Q. Okay. And, you -- it sounds to me, based on your  
 23 testimony, that you do have some knowledge of other  
 24 natural gas pipelines?  
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1 A. Yes.

2 Q. Are you familiar with Granite State Gas Transmission  
3 Pipeline?

4 A. Very much so, yes.

5 Q. Do you know who owns Granite State Gas Transmission  
6 Pipeline?

7 A. Granite State Gas Transmission is owned by Unitil  
8 Corporation.

9 Q. And, does Unitil Corporation have a subsidiary that is  
10 a local distribution company?

11 A. Yes. They operate Northern Utilities in New Hampshire  
12 and Maine, and they also have Fitchburg Gas & Electric.

13 Q. And, does Northern Utilities purchase capacity on that  
14 pipeline?

15 A. Northern Utilities holds capacity on the Granite State  
16 Pipeline, yes.

17 Q. Do you know what percentage of capacity Northern takes  
18 off Granite State Gas Transmission?

19 A. The question is, "of the capacity of the Granite State  
20 Gas Transmission Pipeline, what percentage is held by  
21 Northern Utilities?"

22 Q. Correct.

23 A. I would say it's approximately 80 percent.

24 MS. KNOWLTON: I have nothing further  
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1 using that point as a receipt point for firm capacity,  
2 that you have some way of getting gas to Wright, New  
3 York, because there is not a lot of -- there's no gas  
4 producers right at Wright. And, there's limited  
5 pipeline capacity right now into that market. And,  
6 most of that pipeline capacity is already going to  
7 markets in Long Island and New York City and  
8 Connecticut.

9 So, you know, I think there's a  
10 difference of opinion. And, as I've said, I reviewed  
11 the filings of the New York -- of the Massachusetts  
12 companies that have committed to NED capacity. There  
13 are some that's saying "we're going to contract from  
14 Wright". There's some that are saying "even with the  
15 pipeline capacity that's available, we feel it's  
16 necessary to contract on either Constitution or on the  
17 Supply portion, to go back further from Wright, because  
18 we're not confident we'll have enough supply."

19 So, I think that the takeaway or the  
20 conclusion I've come to with respect to Wright is, it's  
21 not known. It's uncertain. You're taking some sort of  
22 risk that, if you're just on the Market Path capacity  
23 here, that, I mean, there have been some assumptions  
24 made in terms of what the price of gas at Wright is  
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1 for the witness.

2 CHAIRMAN HONIGBERG: Commissioner Scott  
3 COMMISSIONER SCOTT: Thank you. Good  
4 afternoon.

5 BY COMMISSIONER SCOTT:

6 Q. Earlier discussions, we, collectively "we", I guess,  
7 have talked about the liquidity in the future at  
8 Wright. And, the first day, you may remember from the  
9 first day of our hearing, I inquired regarding the  
10 Precedent Agreement, had some language about  
11 "triggers", which would -- I assume, were to ensure  
12 liquidity. Are you familiar with what I'm referring  
13 to?

14 A. Yes. I know that there's something in the Precedent  
15 Agreement that refers to the availability of new  
16 pipeline capacity into the Wright, New York point.

17 Q. I was curious your opinion on that, is the figures in  
18 that Precedent Agreement, those triggers, are those  
19 sufficient, in your opinion, to prompt liquidity, if  
20 you will, compared to where Wright is now?

21 A. "Liquidity" is a slippery word, and I'm struggling with  
22 that, and partly is that you don't -- you're not  
23 illiquid and perfectly liquid, it's a range. So, I  
24 will agree that it's important that there -- if you're  
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1 going to be relative to the Marcellus, which is based  
2 on -- definitely will require some amount of new  
3 capacity. I don't know how much new capacity and when  
4 it will be required to make those numbers correct, or  
5 make that a reasonable forecast. That's why I think it  
6 would be important to look at a range of different  
7 forecasts for that, for Wright, or to factor in that  
8 you really can't approve the Market Path until you know  
9 how the gas is going to get there.

10 So, yes, I am concerned for a number of  
11 reasons with liquidity at Wright, and don't have a  
12 strong -- don't have a firm answer for you, other than  
13 I'm worried about it.

14 Q. Thank you. So, I'll go to a -- with that, and that's a  
15 fair assessment, I think. Earlier, I asked the OCA's  
16 witness about opportunities in the future, if there's a  
17 smaller increment to be purchased on the gas system now  
18 for transportation, based on a 10-year horizon, but the  
19 Company sees, in 20 years, will have a further need.  
20 And, I think you answered, for somebody else, you  
21 answered my question earlier, that you felt comfortable  
22 that there would be a potential to purchase more  
23 capacity. Can you elaborate on that?

24 A. Certainly. We don't know what's going to happen with  
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1 the NED project. And, there's still some uncertainty  
2 about whether that's going to be built. So, that's one  
3 point of uncertainty. There is clearly a demand for  
4 more natural gas into New England, and largely because  
5 of what's going on with the offshore Nova Scotia  
6 production, a demand to take gas through New England  
7 and get into the Maritimes provinces.

8 So, there appears to be good reason for  
9 pipelines that are in the business of providing  
10 capacity to markets that need new gas supplies to be --  
11 continue for the next several years to be coming up  
12 with opportunities to contract for capacity, and that  
13 would be through the incremental expansions of the  
14 Algonquin and Maritimes systems, something like the  
15 Atlantic Bridge project, which has been mentioned is  
16 going forward. There's a follow-up Access Northeast  
17 project that is offering additional capacity. And,  
18 this is one of a number of different -- a series of  
19 incremental expansions on the Algonquin system. I  
20 think we'll now see some expansion on the PNGTS system,  
21 because you can access Marcellus gas through that  
22 route.

23 So, I see pipeline alternatives. Also,  
24 In the case of an LDC, you're also going to look at  
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1 "are there on-system alternatives, upgrading  
2 LNG/peaking facilities on-site?" So, there's that  
3 part.

4 Now, recognizing the position of my  
5 client, if the NED project goes forward, you're in a  
6 situation where you clearly have a pipeline that would  
7 be into expansion economics mode, where it's being  
8 constructed with relatively little compression.  
9 There's a term in the gas industry about "cheap  
10 expansibility". Of, once you build a pipeline, you  
11 then have a period of time when it's actually fairly  
12 inexpensive to add compression to an existing pipeline  
13 to get a good amount of capacity. So, that would be  
14 another outcome, if EnergyNorth contracted for a  
15 smaller amount there. I believe there are other  
16 projects that are available. And, certainly, if the  
17 NED project is built, there would be capacity available  
18 through expansions on that pipeline.

19 COMMISSIONER SCOTT: Thank you.  
20 CHAIRMAN HONIGBERG: Commissioner  
21 Bailey.  
22 BY COMMISSIONER BAILEY:  
23 Q. Can you explain to me of the basis for your statement  
24 about that you "expect a narrowing of the price  
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1 difference between Dracut and Wright"? Is that just  
2 because people are going to have more supply in there?  
3 A. It's because right now you have a pipeline bottleneck  
4 situation, essentially along the New York, eastern New  
5 York border. What's happened over the last 15 years is  
6 New England has grown its demand for pipeline, for gas,  
7 and that's been served primarily from the east. It's  
8 from -- you have the Sable Island production, you then  
9 had the LNG development. You had the PNGTS system  
10 built to bring gas in. You had expansion of, going  
11 back 20 years, expansion of the Distrigas facility.  
12 You had the new offshore receiving terminals built.  
13 So, there was a lot of gas that was coming from that  
14 side.

15 There's now been pressure to bring gas  
16 from the west. And, there's just not -- there hasn't  
17 been pipeline capacity built from west to east. So,  
18 there's no opportunity to arbitrage those two markets  
19 during the winter. The capacity is just not there.  
20 And, there are a number of projects in the works.  
21 Unfortunately, it's taken awhile for them to come on  
22 line. But the expectation would be, once you've got  
23 things like the AIM project that's coming on line in  
24 2016, you've got the Spectra/Atlantic Bridge, and  
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1 potentially something from Tennessee coming on later,  
2 that that will narrow -- that will eliminate that  
3 bottleneck. So, you'll have something that looks more  
4 like the historical relationship between the New  
5 York/New Jersey market and New England market, where  
6 gas is flowing west to east, but it's reflecting more  
7 variable cost differences and, you know, not the fact  
8 that you just have a bottleneck that's keeping gas from  
9 flowing as it wants to flow.

10 Q. So, if NED is built, wouldn't that have the same  
11 effect?  
12 A. If NED was built, that would -- that would certainly  
13 add on to that effect in a big way. And, I believe  
14 that that's part of their marketing materials, is that  
15 it's going to bring down the gas in New England. So,  
16 to me, it seems inconsistent to see those projects  
17 happening, which are due to very obvious market forces  
18 but then assume that over the next 25 years you're  
19 going to have an \$8.00 difference in price between  
20 those two markets every winter for, you know, over the  
21 planning -- over the planning horizon, which is what  
22 the economic analysis that EnergyNorth has done has  
23 embedded in their numbers.  
24 COMMISSIONER BAILEY: Okay. Thank you.  
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1 BY CHAIRMAN HONIGBERG:

2 Q. Mr. Rosenkranz, you read the testimony from

3 Dr. Chattopadhyay and heard him testify this morning.

4 Do you have any comments or opinions on his testimony?

5 A. I thought that his approach of looking at different

6 volumes of capacity was a good way to approach this.

7 And, I agree with his opinion that too much NED is not

8 necessarily a good thing, particularly from a cost

9 standpoint. I approach -- my, you know, my opinion on

10 his work was, and why I approach things differently,

11 based on my experience with gas models, running the

12 different scenarios is important, but also

13 understanding the numbers that went into it is

14 important. So, that's why we spent so much time on

15 that type of discovery, to understand, for example, how

16 they were pricing gas at Dracut in their model.

17 Q. No, I understand. The two of you were doing something

18 different. But I am certain that, as you were reading

19 his testimony and listening to him testify, you had to

20 have been thinking to yourself "do I agree with the

21 positions that he's taking?" And, my sense is that you

22 do, generally, is that right?

23 A. Directionally, certainly. Based on his discussions

24 this morning, I have to say I don't think I agree with

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1 ntgrtd" --

2 COMMISSIONER BAILEY: Too fast.

3 CHAIRMAN HONIGBERG: As long as

4 Mr. Patnaude is getting it, don't worry about it,

5 everybody.

6 (Comment off the record by the Court

7 Reporter.)

8 CHAIRMAN HONIGBERG: Are you having

9 trouble keeping up? No, he can keep up. He's good at

10 this.

11 MR. GATES: Okay. Where did you leave

12 off, Mr. Patnaude? Okay. I believe we were at "l" after

13 "d", and then it goes "mrkt" --

14 MS. KNOWLTON: Can we get a -- I prefer

15 a copy.

16 MR. GATES: We're almost done.

17 "snpsht/2015/07-04dppnk-eng.html".

18 [www.neb-one.gc.ca/nrg/ntgrtd/mrkt/snpsht/2015/07-04dppnk-

19 eng.html]

20 I can e-mail it to you.

21 CHAIRMAN HONIGBERG: Yes. Why don't you

22 e-mail it.

23 MR. KANOFF: Right now.

24 CHAIRMAN HONIGBERG: Off the record.

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1 the numbers. I got lost there for a while. But I

2 think my testimony shows how I got to the numbers.

3 And, the biggest difference is that 50,000, that's not

4 new supply, it's a shifting of receipt point.

5 CHAIRMAN HONIGBERG: Thank you. I have

6 no other questions.

7 Mr. Kanoff, do you have any further

8 questions for your witness?

9 MR. KANOFF: Very limited. If I could

10 approach, if I could approach the witness with a website

11 update involving Deep Panuke that he can read in about two

12 seconds, and then I could ask him a question?

13 CHAIRMAN HONIGBERG: Bring it on. So,

14 off the record.

15 (Brief off-the-record discussion

16 ensued.)

17 CHAIRMAN HONIGBERG: So, back on the

18 record.

19 MR. KANOFF: Zack will give the website.

20 MR. GATES: Mr. Chairman, I'll give the

21 website. And, so, there's no ambiguity on the record,

22 I'll use the military alphabet and it will help you

23 understand.

24 So, it's "www.neb-one.gc.ca/nrg/

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1 (Off-the-record discussion ensued.)

2 MR. KANOFF: I'm going to mark this.

3 CHAIRMAN HONIGBERG: It's going to be

4 "59".

5 (The document, as described, was

6 herewith marked as Exhibit 59 for

7 identification.)

8 (Off the record.)

9 (Atty. Kanoff distributing documents.)

10 CHAIRMAN HONIGBERG: Are we ready to go?

11 Mr. Kanoff, you may proceed.

12 MR. KANOFF: Thank you.

13 BY MR. KANOFF:

14 Q. Do you have what's been marked as an exhibit for

15 identification "59" in front of you?

16 A. Yes, I do.

17 Q. And, does this exhibit for identification reference the

18 Deep Panuke project that was discussed earlier with

19 Ms. Knowlton?

20 A. Yes. It does discuss Deep Panuke.

21 Q. And, have you had a chance to read this exhibit?

22 A. Yes.

23 Q. And, would you discuss whether in any way the strategy

24 that is referenced here of "lowering" -- sorry, "moving

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1 to seasonal production" would affect the availability  
2 of supply and price impact on this project at all?  
3 A. Well, certainly, it will help in the near term a  
4 company such as EnergyNorth, which are purchasing gas  
5 at the end of the Maritimes pipeline primarily during  
6 the winter. So, that will add to the available supply.  
7 I would just say that, in the long term, it's not a  
8 surprise that the Deep Panuke project was going to be a  
9 relatively short-lived source of natural gas. It  
10 always -- before it was developed, it showed a  
11 production curve that went to 300,000 Dekatherms a day  
12 or MCF per day for a couple of years, and then fell off  
13 quite -- quite quickly thereafter.  
14 So, from a big picture standpoint, I  
15 think the Deep Panuke project has some short-term  
16 impacts. Certainly, it turned out to be -- to fizzle  
17 off quicker than people had expected, but it was always  
18 expected that that was not going to be the principal  
19 source of supply for the Maritimes or the New England  
20 market.  
21 Q. Thank you. And, one last question. With respect to  
22 Constitution and Supply Path projects that were  
23 discussed earlier, is there a risk, in your opinion,  
24 that those projects will not get built?  
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1 A. There's always a risk that a project won't get built.  
2 I mean, I think there -- it's likely that something  
3 will be built on that path, but there's no way of  
4 knowing at this point how much gas will flow through  
5 that path, versus other path out of the Marcellus area.  
6 MR. KANOFF: I have no other questions.  
7 CHAIRMAN HONIGBERG: Thank you,  
8 Mr. Rosenkranz. You can return to your seat. That is the  
9 last witness, if I'm not mistaken, correct?  
10 MS. KNOWLTON: Correct.  
11 MS. PATTERSON: Correct.  
12 CHAIRMAN HONIGBERG: All right.  
13 Exhibits, all these exhibits that have been marked for  
14 identification. Are there exhibits that the parties want  
15 to object to becoming full exhibits? I see Ms. Patterson  
16 jumping on her microphone, yes?  
17 MS. PATTERSON: My objection would be  
18 framed in that I object to any exhibits that were entered  
19 for identification that were not used by the party  
20 entering them for identification. To the extent that the  
21 exhibits were only marked for identification and not used,  
22 I would object to those being admitted.  
23 CHAIRMAN HONIGBERG: That is a very  
24 sound objection. Do you know what numbers are  
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1 incorporated, because I do recall that there were some?  
2 MS. PATTERSON: I don't surely know what  
3 numbers they are. But I do recall that there were --  
4 there was at least one.  
5 CHAIRMAN HONIGBERG: I think we're going  
6 to need to know what that one was.  
7 Are there other objections, while  
8 Ms. Patterson flips through the exhibits? Ms. Knowlton.  
9 Oh, I'm sorry.  
10 MS. KNOWLTON: I have none, other than I  
11 would support her position.  
12 CHAIRMAN HONIGBERG: Ms. Chamberlin, Mr.  
13 Kanoff, do you have any objections to exhibits or do you  
14 have any response to Ms. Patterson's objection to the  
15 exhibits that were marked but not used?  
16 MS. CHAMBERLIN: I'd have to wait and  
17 see which ones she's referring to.  
18 CHAIRMAN HONIGBERG: Okay.  
19 MS. CHAMBERLIN: And, I don't have  
20 objections to the other exhibits.  
21 CHAIRMAN HONIGBERG: Mr. Kanoff, do you  
22 have objections to any of the exhibits?  
23 MR. KANOFF: No.  
24 CHAIRMAN HONIGBERG: Okay.  
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1 MS. PATTERSON: I know for sure that --  
2 well, my understanding is that 23 was not used.  
3 MS. CHAMBERLIN: And, could you refresh  
4 our recollection as to what 23 is?  
5 MS. PATTERSON: Sure. It was one of  
6 your exhibits. It was Staff 4-15.  
7 MS. CHAMBERLIN: No. That was clearly  
8 used. I'd have to go back and look at the transcript.  
9 But, you know, we used it.  
10 CHAIRMAN HONIGBERG: I know there was at  
11 least one that was not used.  
12 MS. CHAMBERLIN: Your Honor, --  
13 MS. KNOWLTON: May I make a suggestion?  
14 Would it be possible that, concurrent with the submission  
15 of our briefs tomorrow, that to the extent that any party  
16 believes that there were exhibits that were marked for  
17 identification, but not used, that we submit that list to  
18 the Commission? And, if -- it sounds like everybody is in  
19 agreement that anything that wasn't used shouldn't be  
20 admitted. Hopefully, our lists will match, or, you know,  
21 we could put together a list and circulate it among  
22 counsel and see if we all agree?  
23 CHAIRMAN HONIGBERG: Yes. I think that  
24 that's a good suggestion. The last one in particular,  
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1 start that way. I would remind everybody, this is not a  
2 new procedure. This is pretty much how we wrap these  
3 hearings up. So, we can keep track of some, and certainly  
4 a lot easier when we do one day, three or four hour  
5 hearings.

6 So, in the future, I would -- I think we  
7 would expect the parties to be prepared to address which  
8 exhibits they might have objections to at the close of the  
9 testimony.

10 But I think Ms. Knowlton's suggestion is  
11 a good one. If counsel could work together, figure out if  
12 there's an agreed upon entire list. If there are  
13 objections to one or two or three, they can be identified  
14 and they can be addressed in your post-hearing filings,  
15 and we can deal with it that way. Ms. Chamberlin.

16 MS. CHAMBERLIN: Your Honor, with all  
17 due respect to the suggestion, I would suggest it goes to  
18 the weight of the evidence. If it wasn't used, then  
19 nobody is going to look at it. The amount of time it's  
20 going to take me to go through the transcript, and check  
21 which ones were actually referenced, and where it was  
22 referenced, and check the testimony, is, I think, more  
23 time than it's worth, honestly.

24 CHAIRMAN HONIGBERG: But that's what's  
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1 going to happen, because we're not going to clutter up the  
2 record. We have a plenty-cluttered record here. We're  
3 not going to clutter it up further with exhibits that were  
4 not used. We're just not going to do it.

5 MS. CHAMBERLIN: Can you define what  
6 "used" means?

7 CHAIRMAN HONIGBERG: "Marked, but then  
8 never referenced again."

9 MS. CHAMBERLIN: Okay.

10 CHAIRMAN HONIGBERG: And, I know there  
11 was one.

12 Are there any other matters we can take  
13 up, before the parties sum up really briefly, because  
14 you're all going to get a chance to make post-hearing  
15 filings? Ms. Chamberlin, yes.

16 MS. CHAMBERLIN: I have one other. I  
17 would ask that the Commission take administrative notice  
18 of the IRP petition, it's Exhibit 1 in DG 13-313. I'm not  
19 even sure that's necessary, because it's a Commission  
20 proceeding. But I wanted to be sure that people can look  
21 at that, and it's available to everyone. So, I'd ask that  
22 you take administrative notice of it.

23 CHAIRMAN HONIGBERG: Ms. Knowlton.

24 MS. KNOWLTON: I'm checking, but I don't  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

1 believe that -- let me just check. One minute.

2 (Short pause.)

3 MS. KNOWLTON: There was no petition  
4 that was filed in the IRP docket. It's the Company  
5 submits it's plan.

6 MS. CHAMBERLIN: Your Honor, it's  
7 Exhibit 1.

8 CHAIRMAN HONIGBERG: Yes. I think she's  
9 referring to the document that initiates that docket,  
10 which is the plan, that becomes Exhibit 1 during the  
11 proceeding, right?

12 MS. CHAMBERLIN: Correct.

13 CHAIRMAN HONIGBERG: No one's going to  
14 have any objection to that. I don't -- and, I agree with  
15 you, I actually don't think it's necessary, since it's a  
16 document that is an exhibit in another docket. People can  
17 reference it, people can find it, we're aware of it. If  
18 people want to make reference to it, they can. Fair  
19 enough?

20 Any other matters, before the parties  
21 sum up briefly?

22 MS. KNOWLTON: I'm going to waive a  
23 summation. I don't need to do that, with the submission  
24 of a written brief.

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

1 CHAIRMAN HONIGBERG: Everybody else  
2 agree with that?

3 MS. PATTERSON: Yes.

4 CHAIRMAN HONIGBERG: No? Okay.

5 Ms. Chamberlin, you want to say something?

6 MS. CHAMBERLIN: I do.

7 CHAIRMAN HONIGBERG: Okay. How about  
8 you, Mr. Kanoff, are you going to want to say something  
9 orally?

10 MR. KANOFF: I'll make a short -- very  
11 short comment.

12 CHAIRMAN HONIGBERG: All right. Then,  
13 Ms. Chamberlin, I'll let you go first.

14 MS. CHAMBERLIN: Thank you. This is a  
15 case that calls out for regulatory intervention. The  
16 ratepayers in New Hampshire have learned time and time  
17 again that predicting long-term growth over twenty years  
18 is very risky. Committing large, expensive projects --  
19 committing to large, expensive projects, without fully  
20 understanding and investigating the cost impact over  
21 twenty years does not turn out well for ratepayers. Once  
22 ratepayer funds are committed and a project is built, it  
23 is extremely difficult to go back and capture savings or  
24 protections for ratepayers. The time for prudent action  
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1 is now.

2 This Precedent Agreement is not in  
3 ratepayers' interests. There is insufficient evidence to  
4 support the 115,000 Dekatherm capacity purchase. The  
5 Company must be held to reasonable projections of customer  
6 growth, based on rigorous economic analysis. The  
7 testimony is that they did one SENDOUT analysis; that is  
8 simply not enough. The SENDOUT computer runs cannot  
9 analyze the optimum level of new capacity needed, unless  
10 different capacity levels are entered into the model.

11 The Company has not met its burden of  
12 proof. And, therefore, the Commission should reject the  
13 partial Settlement Agreement and the Precedent Agreement  
14 as filed. Thank you.

15 CHAIRMAN HONIGBERG: Mr. Kanoff.  
16 MR. KANOFF: We would support what OCA  
17 just said. The one thing I do want to add is that there  
18 is a option, should this particular project be approved,  
19 to not change the receipt point at Wright, and to continue  
20 the 50,000 Dekatherms that are currently under contract at  
21 Dracut.

22 And, I just want to emphasize in closing  
23 that, as part of your consideration of different types of  
24 opportunities, that that should remain in your minds as  
{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

1 you look at this.

2 The other thing I want to also stress is  
3 that we can all speculate, and it's pure speculation, as  
4 to what Kinder Morgan/Tennessee Gas would do, if this  
5 Commission were to require, as we suggest it should, that  
6 the Company revisit its proposal for NED at these levels,  
7 if at all. There is certainly a need for Tennessee for  
8 shippers. And, there's every indication that they would  
9 work with any regulatory agency to make sure that any  
10 opportunity for an additional shipper or a reduced amount  
11 from a current shipper is considered. Thank you.

12 CHAIRMAN HONIGBERG: Does anyone have  
13 anything further they need to raise with us before we  
14 adjourn?

15 (No verbal response)

16 CHAIRMAN HONIGBERG: All right. Seeing  
17 nothing, thank you all very much. We will adjourn.

18 (Whereupon the hearing was adjourned at  
19 12:53 p.m.)  
20  
21  
22  
23  
24

{DG 14-380} [REDACTED - for public use] {08-06-15/Day 3}

Redacted

BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Re: Liberty Utilities (EnergyNorth Natural Gas) Corp.

Docket DG 14-380

POST-HEARING BRIEF OF  
PIPE LINE AWARENESS NETWORK FOR THE NORTHEAST, INC.

Pursuant to Puc 203.32(a), Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”) respectfully submits this brief in opposition to the Precedent Agreement<sup>1</sup> and Settlement Agreement<sup>2</sup> under review in this Proceeding.

## I. INTRODUCTION

On December 31, 2014, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”) filed a Petition for Approval of a Firm Transportation Agreement (“Liberty Petition”) with Tennessee Gas Pipeline Company, LLC (“Tennessee”), seeking the Commission’s approval of the Company’s precedent agreement (“Precedent Agreement”) for a twenty-year transportation contract with Tennessee.<sup>3</sup> The terms of the Precedent Agreement provide for transportation service on a proposed interstate pipeline extending from Wright, New York (“Wright”) to Dracut, Massachusetts (“Dracut”); the market path of Tennessee’s Northeast Energy Direct Project (“NED Project”). As provided for in the Precedent Agreement, the Company has contracted for 115,000 dekatherms (“Dth”) per day of firm transportation capacity on the NED Project with an expected in-service date of November 1, 2018.<sup>4</sup>

In terms of its scope, the NED Project is the largest pipeline project ever built in the Northeast. Exhibit 41 at 2. In New Hampshire alone it would traverse over 70 miles (not including laterals) through numerous communities in southern New Hampshire Id.; Exhibit 12 at 65. The Precedent Agreement/Settlement, if approved, will require

<sup>1</sup> See Exhibits 3 & 7.

<sup>2</sup> See Exhibit 14 (“Settlement”).

<sup>3</sup> See Exhibit 3 at 1-3. The Company’s forecast actually extends over a 24 year planning period. Id.

<sup>4</sup> Id. at 046; for purposes of this brief, PLAN assumes the originally proposed 100,000-115,000 Dth/day as referenced in the Precedent Agreement. The Settlement does not materially change the calculations or conclusions herein.

consumers in New Hampshire to pay at least **BEGIN CONFIDENTIAL**  
**END CONFIDENTIAL** in additional fixed pipeline demand charges over 20 years.<sup>5</sup>

## II. STANDARD OF REVIEW

On January 21, 2015, the Commission issued its Order of Notice (Tab 4). The Order stated specifically that the Commission would evaluate “whether EnergyNorth reasonably investigated and analyzed its long term supply requirements and the alternatives for satisfying those requirements, and whether EnergyNorth’s entry into the Precedent Agreement for additional pipeline capacity is prudent, reasonable and otherwise consistent with the public interest.” Order at 3. In assessing the Settlement, the Commission undertakes a similar public interest review to determine whether “*the result* is just and reasonable and serves the public interest.” Puc 203.20(b) (emphasis added). Under those standards, among other things, the Company has the burden to demonstrate, based upon a rigorous analysis, that its proposed capacity resource addition is necessary, at least cost, and reasonable given alternatives.

Accordingly, in order to justify granting EnergyNorth’s Petition and accept the Settlement, the Commission must determine that:

- The Company’s analysis is a credible and detailed evaluation consistent with prudent utility practice and Commission requirements.
- The Company’s proposal to terminate 50,000 Dth/day of relatively low-cost market-area transportation service and contract for an additional 50,000 Dth/d on the NED Project is prudent and in the public interest.

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<sup>5</sup> This is the additional cost of replacing EnergyNorth’s existing Tennessee contracts from Dracut with 50,000 Dth/d of NED transportation service from Wright, which is **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** million per year, plus the cost of 65,000 Dth/d of incremental NED service, which is **BEGIN CONFIDENTIAL** \$ **END CONFIDENTIAL** per year. **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** million per year over the 20-year initial term of the NED service is **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**. Exhibit 15 at 5.

- The Company's proposed procurement of an additional 65,000 Dth/day from the NED Project is prudent and in the public interest.
- The Company's analysis of available alternatives, including LNG, and its assessment of costs to upgrade the Concord Lateral is reasonable.
- The Settlement is a reasonable plan that serves the public interest.

### III. THE COMMISSION SHOULD REJECT THE SETTLEMENT AND DENY ENERGNORTH'S PETITION

#### A. EnergyNorth Failed to Reasonably Investigate its Long Term Supply Requirements

All three non-Company witnesses that filed testimony in the case<sup>6</sup> determined that EnergyNorth failed to undertake the detailed evaluation and review required for a 20-year commitment of this scope, size and cost. This rigorous review is particularly important here, where the "contract results in excess capacity," exposes ratepayers to increased risks and costs, requires strict economic review of various mitigation strategies, and runs counter to the IRP goal of minimizing long-term cost of gas. Exhibit 12 at 15-16.

A prudent utility evaluating a significant capacity addition such as this should use econometric models that quantify changes in customers, evaluate efficiency implications, demographics, and macroeconomic variables by rate class and heating and non-heating customers. Exhibit 13 at 13. A resource portfolio under review must have sufficient flexibility to meet obligations to service firm customers on a design peak day, over a design winter, in a least cost manner. *Id.* at 14. The company must select a resource portfolio that minimizes the long-term cost of gas supply without increasing risk. *Id.*

EnergyNorth agrees that a supply plan should (1) be based on an evaluation of the reasonable alternatives, (2) consider whether the resource compares favorably to the

<sup>6</sup> See Exhibit 12, Confidential Testimony of Melissa Whitten for Staff; Exhibit 15, Confidential Testimony of Dr. Pradip K. Chattopadhyay for the Office of Consumer Counsel ("OCA"); Exhibit 17, Confidential Testimony of John A. Rosenkranz for PLAN.

range of alternatives reasonably available to the Company, and (3) be “robust” over a range of potential market demand and price scenarios, with a diverse portfolio to reduce risks. Day 1 Tr. at 172-173. Consequently, the Commission should determine “whether the information presented by EnergyNorth in this Filing supports its conclusion that the ‘FT NED’ capacity agreement is necessary to meet existing and future customer load requirements *and* will do so in a reliable and least-cost manner.” Exhibit 12 at 5 (emphasis added).

The record clearly shows that the Company did not undertake even a rudimentary evaluation of whether the Precedent Agreement represented a least cost choice, given alternatives, and is in the public interest. Instead, the Company determined to undertake one analysis of one scenario assuming 115,000 Dth/day of gas transportation capacity without any further consideration of customer requirements. Day 1 Tr. at 178. It did not use a range of forecast scenarios; it simply used the Integrated Resource Planning (“IRP”) process base case and inaccurately extended the annual growth factor of 1.46 percent. Exhibit 12 at 17. It did not use any econometric models in the years beyond the first five years. *Id.* “Instead of providing an analysis based on industry best practices rooted in the IRP process, the company has effectively presented a procurement effort in lieu of a plan.” *Id.*, at 55. In short, EnergyNorth utterly failed to apply the sound principles that this Commission has required in evaluations of similar capacity resource determinations, requirements that are part of any reasonable and appropriate determination of need. *See, e.g., EnergyNorth Natural Gas, Inc.*, Order No. 24,825 at 19.

These significant deficiencies, both in the methodology and assumptions are identified in the record as follows:

- Failure to estimate least cost and needs, revise its demand forecast, assess additional resource options, reevaluate its NED analysis with a lower quantity, and develop additional information regarding the cost of the Concord Lateral upgrade. Exhibit 12 at 46-50.
- Failure to undertake a cost benefit analysis to determine the value of excess capacity at any given level of risk (Exhibit 12 at 49) and to provide a fully quantified cost benefit analysis to support contracting for NED Project capacity, instead using a SENDOUT dispatch model and inconclusive subjective factors. Exhibit 12, at 50-51; Day 1 Tr. at 130-142, 196.
- Failure to specifically evaluate how a second western interconnection will generate new customers and allow for distribution system expansion and provide a fully developed plan estimating the costs to obtain targeted levels of growth and the associated levels of required investment to serve those customers. Exhibit 12 at 54.
- Failure to undertake a scenario analysis with respect to whether the supply risk at Wright (e.g., the unavailability of pipelines to provide service to Wright) would increase costs and as a result reduce the assumed benefits associated with the NED Project compared to both the Atlantic Bridge and C2C projects. Exhibit 12 at 52-53.
- Failure, notwithstanding the significant environmental impacts of this project in New Hampshire and the associated risks and costs to ratepayers, to understand and evaluate the significant challenges associated with the construction and operation of NED Project. Day 2 Tr. at 45-49.

Similarly, with respect to key assumptions, the Company:

- assumed an unwarranted, excessive maximum capacity usage by iNATGAS of 8,800 Dth/d after rampup (Exhibit 12 at 33);
- overestimated the level of assumed capacity exempt reverse migration (Exhibit 12 at 35, n. 28 (citing DG 13-313 IRP, Appendix A at 75-77); *id.* at 37-38);
- ignored historical trends and overestimated growth in both the residential and Commercial and Industrial (“C&I”) sectors (Exhibit 12 at 38 & 68-69);
- limited its evaluation of the Atlantic Bridge and C2C projects as the only options for the NED and failed to undertake a more robust evaluation of alternatives and consider other options (Exhibit 12 at 42-43);
- neither considered nor negotiated a lower maximum daily quantity with Tennessee and produced no evidence that such a request, if made, would have been rejected (Exhibit 12 at 44));

- failed to assess cost impacts on the market of the excess capacity associated with the NED Project that would result from other utilities, e.g., utilities in the LDC Consortium group, executing precedent agreements (Exhibit 12 at 45); and
- failed to develop a plan to mitigate cost associated with excess capacity (Exhibit 12 at 54).

These failures undermine the Company's assertion that it reasonably investigated its long-term supply requirements as required. Not only was the Company's use of a single demand forecast methodology deficient, but the end result, if accepted, would also leave the company with excessive reserve/excess supply capacity.<sup>7</sup> "Justification for the PA is based upon aggressive single scenario demand forecast that would leave the Company with significant excess capacity that it could not completely absorb or grow into over the life of the contract." Exhibit 12 at 55. This results in excessive costs and risks to the Company's ratepayers. *Id.* at 10.

Accordingly, PLAN requests that the Commission reject the Company's deficient proposal as filed. Its filing lacks an adequately developed cost-benefit analysis<sup>8</sup> of the Company's need for the Precedent Agreement and any meaningful evaluation that the Precedent Agreement is a least-cost, or even a best cost option for ratepayers. Exhibit 12 at 11. These deficiencies are not remedied in the Settlement, as set forth in Section E, *infra*.

B. The Company Does Not Require Replacement Capacity on NED

The Company proposes to replace two existing contracts for 50,000 Dth/day from Dracut with transportation service from Wright. Exhibit 17 at 5. EnergyNorth typically

<sup>7</sup> EnergyNorth's forecast predicts excessive reserve/excess capacity with a design day as high as 55,507 Dth in first year of the NED Agreement (2018/2019) and 2,514 after 20 years. Exhibit 12 at 54.

<sup>8</sup> Any further consideration of the Precedent Agreement by the Company should be directed toward developing a complete cost benefit analysis to include a fully developed demand forecast, quantification of cost, and benefits and ranges of supply configurations. Exhibit 12 at 56.

utilizes transportation service from Dracut mainly for winter supply. Exhibit 17 at 6. EnergyNorth's proposal to change the receipt point for existing Tennessee transportation service is based upon overblown concerns and incorrect assumptions with respect to the availability of gas at Dracut. Id. at 7.

With respect to supply, there was much discussion in the case about illiquidity at Dracut. There is no reason to believe that Dracut supply will not be available in the future. Even if winter gas prices at Dracut are relatively high, EnergyNorth could continue to meet its design day requirements by purchasing a portion of its gas supply at Dracut at less cost than replacing the capacity on NED. Exhibit 12 at 53; Day 3 Tr. at \_\_\_\_\_. Both Portland Natural Gas Transmission System ("PNGTS") and Maritimes & Northeast ("M&N") deliver gas into Tennessee at Dracut.<sup>9</sup> Despite the long-anticipated declines in offshore gas production in Nova Scotia, winter gas deliveries at Dracut have remained relatively constant and gas supplies from TransCanada Pipelines ("TCPL") through PNGTS and vaporized LNG from the Canaport terminal in New Brunswick continue to be available.

It is likely that future projects will increase the quantities of gas deliverable at Dracut, but there is no indication that EnergyNorth undertook any evaluation of these additional gas supply resources. Day 3 Tr. at \_\_\_\_; Exhibit 17 at 9-10. These projects include the FERC-approved Algonquin Incremental Market ("AIM") project that will allow additional gas supplies that are currently delivered by M&N at Beverly to be redirected to Dracut. Id. at 10. Further, the proposed Atlantic Bridge project will allow additional physical sources of gas supply deliverable to Dracut. Id. at 10-15. In addition,

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<sup>9</sup> PNGTS controls up to 210,000 Dth/d of capacity into Dracut; M&N can deliver up to 440,000 Dth/d into Tennessee at Dracut. Exhibit 17 at 4-14.

the expansion of the receipt capacity from TCPL would also increase the supply of gas at Dracut. Id. at 10. Moreover, the NED Project itself, if constructed, will create additional capacity at Dracut (whether or not EnergyNorth participates). In short, there is no basis to assume any lack of supply at Dracut.

With respect to prices, Dracut pricing reflects New England market pricing and Dracut, like other New England supply points, is priced off of Tennessee Zone 6-200 leg index. Exhibit 17 at 7-8; Day 3 Tr. at \_\_\_\_\_. It is very unlikely that the extraordinarily high prices relative to other Northeast markets that have been experienced in New England during the past three winters will persist for another 15-20 years, but the Company's analysis of the NED Project relies on this assumption. Id. at 11. It is more reasonable to expect that projects to expand pipeline capacity into New England and increase deliverability from LNG Storage and peaking facilities within the region will act to narrow the difference between New England prices and prices in New York and New Jersey. Id.; Exhibit 12 at 45 (gas supplies in the region will increase with new pipelines and the Company's assumptions with respect to pricing are questionable). Moreover, forward curves showing basis prices for the New England market have moderated considerably as the market has responded to high gas prices. Exhibit 17 at 12, Table 3.

In fact, it is very likely that the proposed shift of Tennessee transportation service from Dracut to Wright will cause EnergyNorth's ratepayers' gas costs to increase. Exhibit 15, Table 5.<sup>10</sup> Mr. Rosenkranz evaluated the net costs that would result from changing the receipt point for the 50,000 Dth/day of existing Tennessee transportation service from Dracut to Wright and moving the capacity that EnergyNorth actually

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<sup>10</sup> EnergyNorth has simply failed to evaluate the impact of substituting fixed transportation service from Dracut to Wright given its load factor, e.g., the relationship between actual utilization and maximum capacity. Id.

purchased in the New England market during the 2014-2015 winter season to Wright.

Exhibit 17 at 13-14. EnergyNorth's customers will pay more than **BEGIN**

**CONFIDENTIAL** **END CONFIDENTIAL** per year with the unnecessary shift in supply to Wright, with a reasonable certainty that the cost will be much higher in the future. Id. at 15.

Moreover, the Company's assumptions of the costs and benefits of moving the receipt point to Wright from Dracut are inaccurate and distort the results. EnergyNorth used assumptions developed by the LDC Consortium to determine the forward basis numbers for Wright. Day 1 Tr. at 196, 201. These numbers do not account for the possibility that limits on pipeline capacity between the Marcellus region and Wright could cause the gap between the gas prices in Pennsylvania and gas prices at Wright to remain wider than the LDC Consortium has assumed. Exhibit 17 at 16.

On the other hand, EnergyNorth developed its own basis projections for Dracut based on the highest levels of daily gas prices for the last three winters. Exhibit 17 at 16. The use of relatively high historical price basis for Dracut and a relatively low price basis for Wright based on forward curves for the Marcellus producing area and an assumed future relationship between Marcellus prices and prices at Wright biased the EnergyNorth analysis in favor of transportation service from Wright. Exhibit 17 at 17.

Accordingly, the Commission should reject the Company's request to replace its existing gas supply at Dracut with capacity on the NED Project.

C. The Company Has Not Demonstrated Any Need For the Level of Incremental Capacity Proposed

EnergyNorth's proposal to contract for an additional 65,000 Dth/day of long haul transportation capacity at Wright does not benefit ratepayers and results in significant

excess supply. EnergyNorth's proposal would meet its projected design day requirements for a 24-year planning horizon and results in a 2018-2019 design day reserve margin of 42 percent. Exhibit 17 at 18. The Company does not require the proposed incremental capacity to meet its peak design day requirements. Exhibit 12 at 54; Exhibit 15 at 11-13.

There are numerous fundamental flaws in EnergyNorth's evaluation of its need for NED Project capacity. In addition to the flaws referenced in Section III.A, EnergyNorth used a very extended 20-year planning horizon starting in 2018, instead of a projected 10-year requirement that is more appropriate for pipeline capacity contracting decisions and is used by other LDC's to evaluate their need for NED capacity. Exhibit 17 at 19-20; Exhibit 15 at 19-20; Day 3 Tr. at \_\_\_\_\_. Moreover, even assuming that EnergyNorth's long range forecasts are correct (and as noted in Section III.A, there is no evidence in the record to support this assumption), contracting for firm transportation capacity based upon projected design day requirements in 2037-38 would give EnergyNorth an unprecedented, unnecessary and unreasonable surplus design day capacity over the entire 20-year term of the proposed transportation contract. Exhibit 17 at 19; Exhibit 12 at 54.

There is a significant cost to ratepayers from this unnecessary incremental pipeline capacity. This capacity has a fixed demand cost of **BEGIN CONFIDENTIAL**  
**END CONFIDENTIAL** per year for 20 years and with no guarantee that any benefit from the excess capacity will accrue to ratepayers. Exhibit 17 at 5. Overall, the proposed agreement would cause EnergyNorth's total transportation demand costs to triple from 23.3 million per year to 76.5 million per year. Id.

It would be more reasonable for EnergyNorth to contract for additional firm gas supply resources today based upon its projected requirements over the next ten years and contract at a later day for supply resources to meet any requirements beginning in 2025 or later. Based upon the projected design day shortfall of 27, 388 Dth/day for the 2024 planning year, as shown on Table 7<sup>11</sup>, and considering the uncertainty associated with any long term requirements forecast, EnergyNorth should consider (as part of a revised least cost analysis) an additional long-term firm supply between 25,000 Dth/day and 30,000 Dth/day. This need could more appropriately be met with long haul firm transportation service or a combination of new pipeline capacity, including various projects listed in Table 8, and other supply resources. Exhibit 17 at 21.

Accordingly, the Commission should deny EnergyNorth's request for incremental capacity on NED Project and require a further evaluation of available supply source options based on projected requirements over a 10-year planning horizon.

D. The Company Failed to Adequately Evaluate Alternatives to the NED Project

EnergyNorth compared Tennessee's NED Project to only two other pipeline transportation paths—Atlantic Bridge and the PNGTS/C2C projects, both of which would require expansion of the Concord Lateral. See Day 1 Tr. at 63-64; Day 2 Tr. at 51. For each option, EnergyNorth assumed that 115,000 Dth/day is added from either Wright or Ramapo, NY beginning November 1, 2018. Exhibit 17 at 22.

For each of those two alternatives, EnergyNorth only assumed one scenario, i.e., 115,000 Dekatherms a day long-haul transportation without any evaluation of a reduced quantity or timetable, as "an apples-to-apples" comparison. Day 2 Tr. at 59.

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<sup>11</sup> Exhibit 17 at 18.

Accordingly, EnergyNorth failed to evaluate a range of alternatives as required by prudent utility planning, and instead arbitrarily limited its review to a subset of options that it deemed “viable for long-term planning purposes.” Id. at 172-173. EnergyNorth rejected out of hand any supply option that would not, by itself, provide 115,000 Dth/day of additional supply.

The witnesses take issue with the Company’s limited review and its failure to consider other quantities and scenarios from these and other capacity options. Mr. Rosenkranz notes the abundance of supply options that would be available to the Company for its consideration on the same time frame, including the recently proposed Access Northeast Project and PNGTS’ recently announced expansion. Exhibit 17 at 19-23. Ms. Whitten noted that the Company’s cost comparison of the NED Project as compared to other alternatives does not conform to industry practices or evaluate least cost because it does not consider all feasible resource configurations using NED capacity or include a reasonable range of demand forecasts. Exhibit 12 at 43-44.

Moreover, EnergyNorth analysis does not consider LNG as a viable alternative to NED. Exhibits 49 & 51. EnergyNorth acknowledges that LNG is a significant and important resource available to gas companies/LDCs generally to support peaking requirements. See Day 2 Tr. at 69. However, EnergyNorth “did not consider the expansion of its existing LNG peaking facilities as an alternative, because it does not have the ability under federal regulation to expand those facilities”; EnergyNorth’s witness identified the federal regulation to which he was referring as “NFPA 59A.” See Day 2 Tr. at 62-63.

NFSA 59A will not necessarily prevent EnergyNorth (or anyone else) from developing or expanding an LNG facility in New Hampshire. The regulation as it existed in 2007 remained the same until 2010, when it simply added select references to the portions of NFPA 59A (2006 edition, approved Aug. 18, 2005) “pertaining to the seismic design of stationary LNG storage tanks” and “for the ultrasonic examination of LNG tank welds for storage tanks.” See 75 FR 48593, 48599, 48604 (Aug. 11, 2010). The standards regarding “vapor dispersion” and “thermal radiation zones” – referenced specifically by Mr. DaFonte (see id. at 62) – are set forth at 49 C.F.R. §§ 193.2057 & 193.2059, and neither one has been materially amended regarding the portions referencing NFPA 59A.

EnergyNorth was unable to provide any reason on the record, beyond NFPA 59A, as to why it did not and could not consider LNG as a more cost effective option for NED. See Day 2 Tr. at 63-64. EnergyNorth should have considered LNG as a feasible supply option. See DG 07-101.<sup>12</sup>

In its assessment of alternatives, EnergyNorth placed great emphasis on the prohibitive cost of expanding the Concord Lateral. See, e.g., Day 3 Tr. at \_\_\_\_\_. EnergyNorth asserts that alternatives requiring a Concord Lateral expansion from Dracut are uneconomic given the high cost associated with expanding the Concord Lateral.

The Commission should not accept at face value EnergyNorth’s estimates regarding the cost to expand the lateral. The Company has not provided any information regarding the availability of alternatives and the associated cost of upgrading the Concord Lateral at levels below the 115,000 Dth/d proposed in this case. Day 1 Tr. at 213-215;

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<sup>12</sup> EnergyNorth’s predecessor, National Grid, indicated that up to 25,000 Dth/day was feasible from an expansion of existing LNG facilities.

Day 2 Tr. pp. 59-61; Exhibit 12 at 38-53; Exhibit 15 at 6-7; Exhibit 17 at 22-25. The record confirms that capacity levels below 115,000 Dth/d will reduce costs to upgrade the lateral, and combined with other supply choices, may be least cost as compared to other capacity choices. See Day 1 Tr. at 214.

In addition, the numbers produced were “ballpark” and do not support a technical conclusion that the cost to upgrade the Concord Lateral would be as high as proposed in this case at this time. The Company used an estimate requested in 2013 for a totally unrelated purpose to justify its decision to sign up for NED’s Open Season. Exh. 55 at 5 (April 22, 2013 email). See Day 1 Tr. at 210-212. This gave EnergyNorth only “the initial understanding of where the expansion costs may end up.” Id. at 210. On the basis of that initial estimate, EnergyNorth agreed to its 115,000 Dth/day contract with Tennessee and ultimately executed the Precedent Agreement with that limited information. EnergyNorth’s subsequent estimates of Concord Lateral cost estimates were procured after the Precedent Agreement was executed and were *post hoc* justifications for its decision not to pursue what otherwise could have been valid alternatives.

EnergyNorth’s numbers show the need for more definitive information of cost associated with upgrading the Concord Lateral. On the record, for different purposes, amounts, locations and assumptions the cost to upgrade the Concord Lateral ranged from **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** in 2013 to more than double at **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** in 2015 as the latest estimate in the case. Given the admittedly significant implications surrounding the

costs associated with the Concord Lateral,<sup>13</sup> the Company was obligated to use a detailed and accurate analysis of upgrade costs from the outset in its comparative assessment of NED and alternatives. It had ample opportunity beginning in April, 2013, to request detailed information from Tennessee and evaluate different scenarios with varying levels demand and distinct locations.<sup>14</sup> The Company's ballpark, indicative analysis of the upgrade costs of Concord Lateral, based upon one scenario should not be accepted by the Commission in support of any approval, Settlement or otherwise, of the Precedent Agreement. The Company should be required to undertake another analysis using more refined, independently supportable information incorporating additional scenarios of Concord Lateral upgrade costs as part of any evaluation of the Precedent Agreement.

E. The Settlement Does Not Remedy the Deficiencies in the Company's Proposal

The Commission should reject the Settlement and accept Ms. Whitten's testimony as filed in the case and her recommendations in that May 8, 2015 testimony. Ms. Whitten's change in position (and consequently the Settlement) is unavailing for the following reasons:

1. Firm City Gate Deliveries

Ms. Whitten previously indicated that EnergyNorth could continue to meet design day deficits through citygate deliveries. Exhibit 12 at 53. Yet during her testimony at the hearing, Ms. Whitten averred that "the continuation of receiving citygate supply at Dracut is a general concern recognized in the marketplace" and that "relying upon a third party

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<sup>13</sup> Its last estimate increased the estimates associated with the Concord Lateral by an incremental BEGIN CONFIDENTIAL END CONFIDENTIAL over its initial estimate. Day 1 CONFIDENTIAL Tr. at 3.

<sup>14</sup> The numbers produced by EnergyNorth were requested from Tennessee and it is clear that Tennessee was aware that this information would be used in this regulatory proceeding. Tennessee had every incentive to provide as high a number as possible.

to commit and deliver firm at that point, is less secure than having your own pipeline capacity.” See Day 1 Tr. at 88-89. The record as set forth in Section B above does not support these statements—supplies will be available at Dracut at competitive pricing as compared to Wright.

## 2. Excess Capacity

Ms. Whitten previously was concerned by EnergyNorth’s “65,000 Dth/d of incremental capacity that results in excess capacity of as much as 55,000 Dth/d in the first year of the FT-NED agreement.” Exhibit 12 at 53-54. This is not addressed by the Settlement, which if adopted will still result in significant excess capacity for an extended period. This is not addressed by compelling the Company (1) to bear the cost (i.e., by being “at risk of paying a penalty associated with missing those targets”) of over-contracting; and (2) to explain in the next IRP how customer growth by class was forecast, do not address the real actual risk to ratepayers of overcapacity. See Day 1 Tr. at 89. The penalty payment under the Settlement has not been shown to compensate ratepayers for the cost of excess capacity.

## 3. Customer Growth

Ms. Whitten characterized EnergyNorth’s forecast of growth in Design Day Demand as “very aggressive and speculative,” and still insufficient to consume all the excess capacity even after 20 years. Exhibit 12 at 54. She now posits that the required reduction in capacity should demand not be realized at some point in the future “directly addresses that concern,” (see Day 1 Tr. at 91) but in reality, it does not. It may eliminate some portion of the excess capacity, but it still does not explain – or correct – the “very aggressive and speculative” growth figures Ms. Whitten previously identified. Indeed,

the customer growth target metric in the Settlement Agreement is 2,000 customer additions per year, which according to Mr. Clarke “will be the biggest number that we’ve ever done” and “would be on the order of a 65 percent increase of what [EnergyNorth’s] best year was” and seems to be as aggressive and speculative as Ms. Whitten claimed the original forecast to be. Day 1 Tr. at 71 & 76. The bottom line doesn’t change—whether or not EnergyNorth adds new customers, all of its customers will continue to pay the costs of the Precedent Agreement long before it creates any benefits. *Id.* at 164, 166.

#### 4. Cost Mitigation Measures

Ms. Whitten previously concluded that “in order to make sure that the PA represents the least-cost, or even just the best-cost alternative, the Company *would have* to be certain that it could recoup a significant percentage of the total costs of the excess capacity through cost-mitigation measures. However, this would require an even more speculative assumption about the future value of excess pipeline capacity in the secondary market.” Exhibit 12 at 54. But EnergyNorth’s recovery of such a “significant percentage of the total costs” is not at all “certain.” EnergyNorth considers “a critical element of the day-to-day management of the portfolio” “[t]hat all fixed costs are . . . mitigated, to the extent possible, through various optimization efforts, including asset management agreements, off-systems sales, and capacity release via the Electronic Bulletin Boards on the pipelines.” Day 1 Tr. at 137. EnergyNorth may claim to do its best in order to justify the Settlement, but there is no plan or certainty in the record that provides any assurance that ratepayers will reap any substantial benefits from cost mitigation measures.

## 5. Second High-Pressure Interconnect

Ms. Whitten challenged EnergyNorth's argument for a second high-pressure interconnect on the west side of the EnergyNorth system, because (1) the cost would be borne by all firm ratepayers, even though EnergyNorth would retain all of its propane peaking capacity (the cost of which ratepayers also bear), and (2) EnergyNorth had not provided "any details about its growth expectations or a fully-developed plan estimating the cost to obtain targeted levels of new customer growth and the required investment in distribution system expansion to serve these customers." Exhibit 12 at 54-55.

EnergyNorth's agreement to undertake a study falls short of any definitive solution and adds no value to what EnergyNorth should undertake in any case—review its propane requirements before or in conjunction with review of additional capacity resources. Similarly, EnergyNorth still has not provided any definitive plan – only aspirations at this point -- to grow into its admitted excessive capacity and the Settlement does not address the lack of any specific proposal as discussed by Mr. Clarke, Day 1 Tr. at 72-76.

Accordingly, the Settlement does not cure the significant deficiencies in the Company's proposal as filed. The Settlement, like Company's Petition, is "speculative, not "least cost"", "not supported", and based, not upon "industry standards" but instead upon an "aggressive single-scenario demand forecast." Exhibit 12 at 54- 56. Accordingly, the Settlement should not be approved by the Commission.

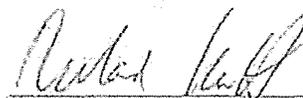
IV. CONCLUSION

PLAN respectfully requests, for all the reasons set forth herein, that the Commission reject the Company's Petition for Approval of a Firm Transportation Agreement and the associated Settlement.

RESPECTFULLY SUBMITTED,

PIPE LINE AWARENESS  
NETWORK FOR THE  
NORTHEAST, INC.

By its attorneys,

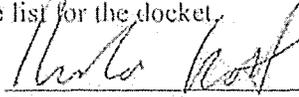


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Dated: August 7, 2015

Certificate of Service

I hereby certify that on August 7, 2015, pursuant to Puc 203.02 & 203.11, I served an electronic copy of this Brief on each person identified on the Commission's service list for this docket and with the Office of the Consumer Advocate, by delivering it to the email address specified on the commission's service list for the docket.



Richard Kanoff

4832-5561-1942.1

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DG 14-380

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

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

Order Approving Stipulation and Settlement Agreement and Precedent Agreement

ORDER NO. 25,822

October 2, 2015

**APPEARANCES:** Sarah B. Knowlton, Esq., of Rath, Young and Pignatelli, for Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; Richard A. Kanoff, Esq., and Zachary R. Gates, Esq., of Burns & Levinson, LLP, for Pipe Line Awareness Network for the Northeast, Inc.; Susan W. Chamberlin, Esq., of the Office of Consumer Advocate, on behalf of residential ratepayers; and Rorie E. Patterson, Esq., for the Staff of the Public Utilities Commission.

In this order, we approve the Stipulation and Settlement Agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities and the Commission Staff, and approve a 20-year contract for long-term, firm natural gas pipeline capacity on the proposed Northeast Energy Direct pipeline. We find that the Stipulation and Settlement Agreement is just, reasonable and consistent with the public interest, and that the capacity contract is prudent and reasonable.

**I. PROCEDURAL HISTORY**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth”) is a public utility pursuant to RSA 362:2, that provides natural gas service to approximately 88,000 customers in southern and central New Hampshire and in Berlin. On December 31, 2014, EnergyNorth filed a Petition for Approval of a Firm Transportation

Agreement (“Precedent Agreement”) with Tennessee Gas Pipeline Company, LLC (“TGP”), along with the confidential and redacted direct testimony of Francisco C. DaFonte, Vice President, Energy Procurement, Liberty Energy Utilities (New Hampshire) Corp. The Precedent Agreement, as described further below, requires TGP to construct and operate a pipeline to provide firm, natural gas transportation service (“capacity”) and EnergyNorth to pay for such capacity. EnergyNorth also filed a motion for protective order and confidential treatment regarding the Precedent Agreement. EnergyNorth seeks Commission approval of the Precedent Agreement as well as a determination that its decision to enter into the Precedent Agreement is prudent and consistent with the public interest. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, may be found on the Commission’s website at:

<http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-380.html>.

The Office of the Consumer Advocate (OCA) notified the Commission of its participation on behalf of residential ratepayers pursuant to RSA 363:28. The Commission received requests to intervene from Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”), and from the Town of Dracut, Massachusetts. PLAN is a Massachusetts nonprofit corporation concerned with the environmental and economic impacts associated with fossil-fuel infrastructure, including gas pipelines. EnergyNorth objected to both requests for intervention.

A prehearing conference was held on February 13, 2015, during which Commission Staff (“Staff”) objected to the Town of Dracut’s motion to intervene and asked the Commission to require additional information from PLAN. The Hearings Examiner denied the Town’s motion on the grounds that it failed to meet the standards for intervention. *See* RSA 541-A:32. The Hearings Examiner reserved a record request for PLAN to provide more information to support

its intervention and a record request for Staff and parties to respond to PLAN's record request. The Hearings Examiner also granted EnergyNorth's motion for confidential treatment filed with its petition. PLAN, Staff, and the Company filed timely responses to the record requests.

On March 6, 2015, the Commission issued Order No. 25,767, granting the intervention of PLAN for its members who are EnergyNorth customers, denying the intervention of PLAN for its members who are not EnergyNorth customers, and limiting PLAN's participation to issues related to the interests of customers in the "prudence, justness, and reasonableness of the [Precedent Agreement]."

The parties and Staff engaged in discovery, and the procedural schedule was revised at points to give PLAN and Staff additional time. On April 1, 2015, EnergyNorth filed a fully executed Amendment to the Precedent Agreement, which extended the deadline for obtaining regulatory approval from July 1 to September 1, 2015.

On May 8, 2015, Staff filed the direct testimony of Melissa Whitten of La Capra Associates, Inc. The OCA filed the direct testimony of Pradip Chattopadhyay, Ph.D., Assistant Consumer Advocate. PLAN filed the direct testimony of John A. Rosenkranz, a principal with North Side Energy, LLC. Following a period of discovery, on June 4, 2015, EnergyNorth filed the rebuttal testimony of Mr. DaFonte and William J. Clark.

On June 26, 2015, Staff filed a motion to accept a late-filed settlement agreement or to reschedule the hearing, together with a Stipulation and Settlement Agreement ("Settlement") between EnergyNorth and Staff. PLAN and the OCA opposed the Settlement, but supported rescheduling the hearing. EnergyNorth favored proceeding with the hearing as scheduled so as not to interfere with the Precedent Agreement's "rcgulatory-out" deadline. The Commission, by

Secretarial Letter dated June 29, 2015, accepted the late-filed Settlement for consideration and rescheduled the hearing to July 21 and July 22, 2015.

The hearing took place as scheduled and continued for an additional day, on August 6, 2015. Staff and parties filed briefs on August 7, 2015.

## **II. PRECEDENT AGREEMENT AND ENERGYNORTH'S POSITION**

### **A. Terms of the Precedent Agreement**

The Precedent Agreement is a 20-year contract between EnergyNorth and TGP. The terms include up to 115,000 dekatherms (“Dth”) per day of firm capacity, at a fixed rate on the proposed Northeast Energy Direct Market Path pipeline project (“NED Pipeline”).<sup>1</sup> Service is expected to commence on November 1, 2018, unless certain delays occur or certain preconditions are not met.

Of the total 115,000 Dth per day of capacity contracted for in the Precedent Agreement, 50,000 Dth per day is replacement of existing TGP capacity and 65,000 Dth per day is new or incremental capacity. The existing 50,000 Dth per day has a receipt point at Dracut, Massachusetts, and delivery points on the Concord Lateral. The Concord Lateral is TGP's northernmost branch pipeline originating in Dracut, which carries natural gas to primary delivery points at city gate<sup>2</sup> meters in Nashua, Manchester, and Concord (the city gate meter in Concord is referred to as the Laconia meter), for delivery to EnergyNorth's customers in New Hampshire.

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<sup>1</sup> NED plans to develop two separate projects, described as the “Supply Path” and the “Market Path.” The NED Supply Path will transport gas from the Marcellus Shale production area in northeastern Pennsylvania to a natural gas market center location, or price point, in Wright, New York, which is the receipt point for the NED Market Path. The NED Pipeline, which is the subject of the Precedent Agreement, and is sometimes referred to by NED as the Market Path project, will transport natural gas from Wright, New York, to the market center location serving New England Markets, in Dracut, Massachusetts.

<sup>2</sup> A city gate is a transition point between the interstate natural gas pipeline and the distribution company system.

The Precedent Agreement provides firm capacity from the primary receipt point at Wright, New York, to EnergyNorth's existing delivery points in New Hampshire, as well as a new delivery point in West Nashua. The NED Pipeline route traverses approximately 70 miles in Southern New Hampshire. Portions of the route are new "greenfield" rights-of-way, and portions run through existing electric transmission rights-of-way.

The rate in the Precedent Agreement is capped to limit customer exposure to cost overruns; TGP may not charge EnergyNorth more than that maximum rate. The Precedent Agreement secures other benefits, including those associated with EnergyNorth's "anchor shipper" status. EnergyNorth may extend the term of the Precedent Agreement following the initial 20-year term with the approval of the Commission. To take effect, the Federal Energy Regulatory Commission (FERC) must approve the NED Pipeline. FERC's review is ongoing.

EnergyNorth avers that it needs the Precedent Agreement's capacity to reliably satisfy existing and future customer load requirements in its service area. EnergyNorth identified its need for additional, firm capacity in its last approved Least Cost Integrated Resource Plan (IRP) (DG 13-313), and EnergyNorth's capacity needs have increased since then. The Precedent Agreement will provide EnergyNorth with opportunities to expand the reach of its distribution service and to increase distribution system reliability via West Nashua, which will be a new delivery point on the west end of EnergyNorth's distribution system. The Precedent Agreement does not dictate the route of the NED Pipeline; it is a point-to-point contract for capacity from Wright to EnergyNorth's New Hampshire city gates. EnergyNorth contends that the capacity contracted for in the Precedent Agreement is the least cost reliable resource to provide the capacity needed to serve customer demand.

EnergyNorth provided an updated design day demand forecast, which it described as consistent with the approved IRP forecast methodology. EnergyNorth used a 24-year demand forecast. The short-term encompasses the 4-year period commencing with the 2014-2015 winter period and runs through the 2017-2018 winter period. The long-term period encompasses the 20-year period commencing with the 2018-2019 winter period, when the NED Pipeline is scheduled to go into service, and runs through the 2037-2038 winter period. The forecast included projected demand for iNATGAS, a new, long-term special contract customer; and for increases in reverse migration to sales service of EnergyNorth's capacity-exempt transportation customers.<sup>3</sup> EnergyNorth's demand forecast did not include potential distribution system expansion along the NED Pipeline in New Hampshire.

EnergyNorth negotiated the Precedent Agreement as part of a consortium of anchor shippers comprised of New England local natural gas distribution companies (LDCs). Each consortium member, however, requested an amount of capacity suited for its needs. The capacity provided to EnergyNorth through the Precedent Agreement is solely for the benefit of its New Hampshire customers. EnergyNorth contends that negotiating as part of a consortium allowed it and the other participating LDCs to leverage their aggregate capacity needs to negotiate a better discounted anchor shipper rate and other favorable terms that would not have been possible if EnergyNorth had negotiated on its own.

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<sup>3</sup> A capacity-exempt customer is a customer for whom EnergyNorth does not procure capacity; typically, the capacity-exempt customer procures and pays for its capacity in the market. Once a capacity-exempt customer returns to sales service, however, it pays its *pro rata* share of EnergyNorth's capacity costs so long as it remains a customer of EnergyNorth.

### **B. EnergyNorth's Consideration of Alternatives**

EnergyNorth analyzed the NED Pipeline against two alternative pipeline projects, TransCanada/PNGTS's C2C project and Spectra's Atlantic Bridge project. EnergyNorth assumed 115,000 Dth of capacity at the projected maximum rate for each pipeline project for 20 years. EnergyNorth used SENDOUT® (an analytical software tool used for portfolio design) to calculate the total portfolio cost for each project, from November 1, 2018, through October 31, 2038. The SENDOUT® runs showed that the cost of the alternative projects exceeded the NED Pipeline cost. Those results led to EnergyNorth's conclusion that the capacity contracted for in the Precedent Agreement is an appropriate part of a best-cost resource portfolio to meet its present and future capacity needs. EnergyNorth defined a "best-cost resource portfolio" as one that appropriately balances lower costs with other important non-cost criteria such as reliability and flexibility. DaFonte Prefiled Testimony (Dec. 31, 2014) p. 28 ln. 7-8.

The C2C and Atlantic Bridge projects, if constructed, will bring additional supply to Dracut. EnergyNorth's access to the capacity of either of those projects, however, would require upgrades to the TGP Concord Lateral. The costs of the Concord Lateral upgrades are not required for the NED Pipeline and would be an addition to the costs associated with the C2C and Atlantic Bridge projects.

EnergyNorth used estimates provided by TGP for the Concord Lateral upgrade costs that would be required for the C2C and Atlantic Bridge projects. The original estimate assumed one delivery point, at EnergyNorth's existing Nashua city gate. Subsequently, TGP provided EnergyNorth an updated estimate for the Concord Lateral upgrade, with assumptions for multiple delivery points. The updated estimate doubled the cost of the upgrade and further widened the spread between the already-higher costs of the alternative projects' capacity and the

lower cost of the capacity contracted for in the Precedent Agreement. The updated estimate produced capacity costs for the Concord lateral upgrade that, alone, exceeded the combined total cost of the NED Pipeline and the supply project back to Marcellus.<sup>4</sup> Transcript (“Tr.”) Day 2 p. 84 ln. 9-13.

EnergyNorth did not consider expansion of its Liquid Natural Gas (LNG) facilities as an alternative to the capacity contracted for in the Precedent Agreement. EnergyNorth contends that federal law would prevent expansion of existing facilities, because the plants are located in or near densely populated areas. Federal law requires set-backs for vapor dispersion and thermal radiation zones that would make such expansion impractical. Tr. Day 2 p. 62 ln. 16-20. Also, EnergyNorth is not aware of any new sites within its franchise that would work for a new LNG facility with capacity comparable to 115,000 Dth per day. EnergyNorth’s affiliate is participating in a joint venture with Northstar Industries, LLC, and Sampson Energy Company, LLC, to develop LNG liquefaction and storage in Massachusetts. The purpose of that project, however, is to back up EnergyNorth’s existing LNG resources.

EnergyNorth believes that the high energy prices experienced in New England in the last three winters prompted the development of new projects, including the NED Pipeline. EnergyNorth views this project as a rare opportunity to secure capacity needed for the coming years and believes the Precedent Agreement secures such capacity on terms consistent with EnergyNorth’s “best-cost” portfolio philosophy.

### **C. The Role of EnergyNorth’s Affiliates**

EnergyNorth denied that its relationship with a pipeline affiliate, Liberty Utilities (Pipeline and Transmission) Corp. (“Liberty Pipeline”) influenced its decisions to contract for

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<sup>4</sup> See footnote 1 for a description of the NED Pipeline and the NED Supply Path project.

capacity with TGP or to contract for a volume of 115,000 Dth per day. *See* Tr. Day 2 p. 29, ln. 18-23. Algonquin Power & Utilities Corp. (“APUC”) owns both Liberty Pipeline and EnergyNorth. Liberty Pipeline and Kinder Morgan, Inc. (Kinder Morgan), jointly own Northeast Expansion LLC which in turn owns the proposed NED Pipeline. Liberty Pipeline’s interest in Northeast Expansion is 2.5 percent but could increase to 10 percent. The value of Liberty Pipeline’s investment is up to \$400 million. Liberty Pipeline, through Northeast Expansion, has leased its rights to capacity on the NED Pipeline to TGP, which is wholly owned by Kinder Morgan. Hearing Exh. 36. TGP will operate the NED Pipeline. On July 16, 2015, TGP announced that it would proceed with the NED Pipeline if the contracts with the LDCs, including the Precedent Agreement, are approved by the utilities’ regulators.

The Precedent Agreement secures EnergyNorth’s long-term use of some of the capacity available on the proposed NED Pipeline from TGP, not from an affiliate of EnergyNorth. EnergyNorth denied receiving any direction from its Board of Directors about the terms of the Precedent Agreement. *See* Transcript Day 2 page 29, lines 18-23 (Board did not discuss with management how much capacity EnergyNorth should contract for on the NED Pipeline); and Exhibit 37 (no documents exist memorializing obligations of EnergyNorth concerning the terms and conditions of the Precedent Agreement to entities involved with establishing or funding the NED Pipeline); *see also* Transcript Day 1 p. 208 ln. 8-22 (Board of Directors was not yet involved when EnergyNorth responded to the NED Pipeline open season, seeking 115,000 Dth per day).

#### **D. Limitations on EnergyNorth’s Ability to Renegotiate Terms**

EnergyNorth responded to suggestions that it could renegotiate the amount of capacity in the Precedent Agreement, by stating that given the terms of the Precedent Agreement, TGP has

no obligation to contract with EnergyNorth for any amount less than 100,000 Dth per day. EnergyNorth contended that any renegotiation of the capacity amount would require the renegotiation of all the Precedent Agreement's terms and conditions. EnergyNorth asserted that renegotiation would put customers at risk, particularly now that the C2C and Atlantic Bridge projects are fully subscribed. Risks to customers could include paying more than the fixed rate already secured by the Precedent Agreement or losing other benefits contained therein.

### **III. INITIAL POSITIONS**

#### **A. Staff**

Staff, through its expert, opposed the Precedent Agreement as originally proposed. Staff agreed that EnergyNorth demonstrated the need for incremental capacity and that the NED Pipeline was the least-cost alternative among those considered by EnergyNorth. Staff, however, took the position that EnergyNorth had not supported, (1) the proposed amount of 115,000 Dth per day, (2) certain of its growth assumptions, and (3) retention of its propane peaking capacity, leading to Staff's initial conclusion that the Precedent Agreement may contain excess capacity to the detriment of ratepayers. Staff recommended that the Commission deny approval of the Precedent Agreement or, in the alternative, require EnergyNorth to file additional data, and exclude recovery through rates of EnergyNorth's propane peaking costs.

Staff's position has changed. Staff is now a party to the Settlement and its position on the Settlement is set forth in detail later in this Order.

#### **B. OCA**

The OCA asks the Commission to reject the Precedent Agreement, arguing it is not in the public interest, it fails to protect residential ratepayers from unreasonably high financial risks of

excess capacity, and it does not balance the needs of the customers with those of EnergyNorth's owner. OCA's position is set forth in greater detail below.

### **C. PLAN**

PLAN urges the Commission to deny EnergyNorth's petition. PLAN asserts that EnergyNorth did not reasonably investigate its long-term capacity requirements or the reasonable alternatives available to meet that demand. PLAN contends that the proposal is speculative, not least cost, and not supported. PLAN's position is set forth in greater detail below.

## **IV. SETTLEMENT BETWEEN ENERGYNORTH AND STAFF**

The Settlement requires a second amendment to the Precedent Agreement and imposes other regulatory requirements on EnergyNorth. EnergyNorth and Staff ask the Commission to approve the Settlement as filed, arguing that it resolves all of the outstanding issues in this proceeding, produces a just and reasonable result, and is consistent with the public interest.

EnergyNorth's and Staff's witnesses ("Settlement Panel") explained the terms of the Settlement and the ways in which the Settlement shifts risk from customers to EnergyNorth's owner. The Settlement Panel also described the Settlement's benefits to customers and how the Settlement addressed the concerns raised by other parties and Staff.

### **A. Excess Capacity**

The Settlement initially sets the contracted amount of capacity under the Precedent Agreement at 115,000 Dth per day. Generally, the capacity-reduction requirement in the Settlement requires growth in design day capacity related to certain Commercial and Industrial (C&I) customers: iNATGAS, a new compressed natural gas distributor; capacity-exempt transportation customers switching to capacity-assigned service; and Concord Steam customers converting to natural gas. If growth in design day demand for those customers does not meet or

exceed 10,000 Dth during the period of July 1, 2015, through April 1, 2017, EnergyNorth will reduce the amount of capacity under the Precedent Agreement from 115,000 Dth per day to 100,000 Dth per day. To effectuate this provision of the Settlement, EnergyNorth agreed to file a further amended Precedent Agreement and to report increases in design day capacity for the C&I customers identified above in Cost of Gas (“COG”) filings.

As a baseline for EnergyNorth’s projected capacity needs, the Settlement Panel discussed EnergyNorth’s 2013 IRP, approved by the Commission in DG 13-313. In the 2013 IRP, EnergyNorth used a “resource mix optimization” model and projected a need for 90,000 Dth per day of long-term pipeline capacity, on the precursor pipeline project. The 90,000 Dth per day planned to be provided using the precursor project capacity assumed replacement of the same 50,000 Dth per day that will be replaced by some of the capacity contracted for in the Precedent Agreement. The remaining 40,000 Dth per day represented replacement of propane capacity and growth. Tr. Day 1, p 127-129.

Since then, EnergyNorth experienced significant growth and reverse migration of large capacity-exempt customers. In this docket, EnergyNorth provided updated data on capacity-exempt reverse migration in rebuttal testimony. The demand resulting from the additional reverse migration offset a portion of the capacity that Staff originally considered excess.

The required 10,000 Dth per day increase in design-day demand is more than EnergyNorth’s forecasted demand from iNATGAS, reverse-migrating capacity-exempt customers, and Concord Steam customers, through April 2017. In that respect, the capacity-reduction requirement in the Settlement calls for EnergyNorth to exceed its projections of demand needed to serve these customers. Such an increase in design-day demand, if realized, will reduce excess capacity. The panel explained that TGP has agreed to amend the Precedent

Agreement to permit EnergyNorth to comply with the capacity-reduction requirement. According to the Settlement Panel, the capacity reduction requirement protects customers by reducing the likelihood that customers would pay for excess capacity. The Settlement Panel discussed EnergyNorth's obligation to mitigate excess capacity costs. Historic and projected mitigation data provided by EnergyNorth show that it successfully mitigates unused capacity costs through asset management arrangements, capacity release through the spot market, and off-system sales directly to third parties. All of those strategies seek to maximize cost recovery to offset fixed capacity costs. EnergyNorth estimated recovery of close to 100 percent of the maximum negotiated rate for the capacity contracted for in the Precedent Agreement during the winter period and a lesser percent during the summer. All of the mitigation revenue recovered will be credited to customers in gas rates.

#### **B. Growth Incentive**

The Settlement includes a growth incentive to offset the potential impact of excess capacity on current customers. EnergyNorth must meet one of two annual growth targets, either a Customer Target or a Sales Target. The Customer Target requires an addition of 2,000 customers a year, while the Sales Target requires a 650,000 Dth increase in annual sales. If EnergyNorth fails to meet both targets, it will be required to forgo recovery of up to \$300,000 in winter gas costs. The amount of cost recovery depends on how closely EnergyNorth comes to achieving either of the two targets. The recovery amount is deducted from EnergyNorth's winter gas costs collected from ratepayers. Any deduction reduces shareholder return and benefits customers. The growth rates will be determined beginning with calendar year 2017.

The growth incentive applies so long as certain of EnergyNorth's propane plants remain in service or until the average growth rate exceeds a specified amount over a consecutive three-

year period. With respect to propane plants, by the time the growth incentive applies beginning in 2017, EnergyNorth will have begun an analysis for its next IRP of any remaining propane plants' revenue requirement, as discussed below. The growth incentive will cease to apply if EnergyNorth retires all non-pressure-support propane facilities.<sup>5</sup> To the extent that fewer than all of those plants are retired, the Settlement provides for proportionate reductions to the financial penalties.

With respect to customer growth, the growth incentive will cease to apply if EnergyNorth adds 7,200 customers or increases sales by 2,340,000 Dth over a three-year period. EnergyNorth will report information related to the growth incentive mechanism in its summer COG filings.

The growth targets in the Settlement Agreement are consistent with EnergyNorth's internal growth targets, Clark Prefiled Testimony (June 4, 2015) p. 12 ln. 2-7, and are two to three times higher than the growth included in EnergyNorth's projections in its filing of 600 to 800 customers per year. EnergyNorth Brief page 8 (citing Tr. Day 2 p. 166 ln. 9-13). The incentive growth target also exceeds EnergyNorth's forecasted demand from C&I customers made in support of the Precedent Agreement. In addition, both growth targets are higher than EnergyNorth's highest growth year levels, by 65 percent for customer growth and by 15 to 20 percent for demand growth. Like the capacity-reduction requirement, the growth targets incent EnergyNorth to put its capacity to use and reduce excess capacity sooner than originally projected.

The Settlement Panel discussed EnergyNorth's recent growth successes and potential. For instance, an expansion project under construction in Bedford will bring natural gas service to 11 new commercial customers and has the potential of reaching more than 40 new residential

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<sup>5</sup>Propane plants in Nashua, Manchester, and Tilton, and propane storage in Amherst, to the extent the storage is not used to serve Keene, or used for pressure support.

customers. Tr. Day 1 p. 74 ln. 4 through p. 75 ln. 18. EnergyNorth attributed its increased growth to the addition of local sales personnel and recent changes to its line-extension tariff; an indication of its commitment to growth. EnergyNorth's growth focus includes projects within EnergyNorth's existing franchise territory and outside of it, and customers along and "off" the existing distribution system.

Potential areas of growth should Liberty have access to more capacity if the Precedent Agreement is approved include Keene, Bedford, Laconia, and the eleven communities along the route of the NED Pipeline. EnergyNorth estimated that the demand in Keene and along the NED Pipeline in New Hampshire could increase demand by up to 2.3 million Dth per year, depending on saturation rates. Other growth could occur in conjunction with reliability and redundancy investments such as a lateral off the new West Nashua city gate, running north to connect to the distribution system in Manchester. EnergyNorth referred to the new lateral as a "parallel backbone" for its system. EnergyNorth's projections in this proceeding did not include any growth in those potential areas. Consequently, if this and other growth occurs, any excess capacity resulting from approval of the Precedent Agreement may be reduced much sooner than originally projected by EnergyNorth and the costs of this new capacity will be shared among a greater number of customers.

### **C. Additional Settlement Requirements**

The Settlement requires EnergyNorth to provide certain data and analysis in its next IRP filing. Specifically, the Settlement requires a cost/benefit analysis of a lateral to serve the Keene Division off of the NED Pipeline; a forecast of load on a customer-class basis; an analysis of the impact of energy efficiency in the demand forecast; and an analysis of the potential retirement,

and the revenue requirements, of each of its propane facilities. EnergyNorth's next IRP is due in February 2017.

The Settlement Panel reviewed the Settlement's IRP requirements. EnergyNorth will use the additional IRP data to analyze the cost-effectiveness of all of its capacity resources including specifically the propane peaking facilities. The capacity analysis will include the capacity contracted for in the Precedent Agreement if the Commission approves the Settlement. At that point in time, however, the costs of such capacity will not be included in EnergyNorth's rates. By February 2017, EnergyNorth will also have additional market and growth experience and data to consider in its analysis. Ultimately, if any of EnergyNorth's existing capacity is not cost-effective, EnergyNorth will plan to reduce that capacity, and the associated cost.

Pre-existing capacity includes the Company's propane plants that are more than 40 years old and are at or beyond their useful accounting life. EnergyNorth acknowledged that they are not long-term viable supply alternatives and retiring the propane capacity will offset capacity costs contracted for in the Precedent Agreement. EnergyNorth estimated that propane plant retirements, along with the increased demand and growth required by the Settlement, will eliminate excess capacity in less than 10 years.

#### **D. Benefits of the Precedent Agreement as Amended by the Settlement**

The Settlement Panel discussed the benefit of switching the receipt point for the Dracut 50,000 Dth/day to Wright. While the rate for Dracut capacity is less than the capacity rate from Wright, the Dracut supply market has experienced significant gas price and capacity instability in recent years, and EnergyNorth's gas rates from Dracut have included premiums due to demand exceeding supply. Forces contributing to the Dracut market instability have included reduced production of and high global demand for LNG, as well as high demand for capacity within New

England. In recent years, Dracut gas supply has been the highest-priced gas in the United States. Avoiding the continued exposure to Dracut's price volatility and the insecurity associated with Dracut supply are goals of the Precedent Agreement and the Settlement.

The Settlement Panel referred to Wright as a developing supply market. The Constitution, Dominion, and NED Supply Path<sup>6</sup> pipeline projects are proposed to bring supply in the next few years from the Marcellus natural gas production area to Wright. Marcellus supply is abundant and the lowest priced gas in the United States. Consequently, EnergyNorth expects the Wright supply market to be sufficiently liquid by the time the NED Pipeline comes online. EnergyNorth also expects the total cost for supply and capacity at Wright to be lower than the total cost of the existing supply and capacity from Dracut. EnergyNorth estimated capacity costs from Marcellus to Wright based on the Constitution project, which has been approved by the FERC.

To protect customers from the consequences of insufficient supply at Wright, the Precedent Agreement is not effective unless a certain volume of supply is available when the NED Pipeline project goes into service. The initial capacity projected for the Constitution pipeline could satisfy that liquidity need. In addition, EnergyNorth may entertain the purchase of supply transported to Wright on the Constitution pipeline. Contracting for long-term capacity on the NED Supply Path is another possible way to get supply from Marcellus to Wright, and into the Precedent Agreement's proposed NED Pipeline capacity. EnergyNorth expects the NED Supply Path to bring approximately the equivalent of a million Dths a day of supply to Wright.

EnergyNorth, as part of the LDC Consortium, is negotiating with TGP for long-term capacity on the NED Supply Path. EnergyNorth states that the Supply Path capacity would

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<sup>6</sup> See earlier footnote 4 for a description of the NED Supply Path project.

secure lowest-cost supply at Marcellus and would provide opportunities for EnergyNorth to optimize its use of storage capacity in that market area to the benefit of customers. Direct access to Marcellus supply would give EnergyNorth the ability to purchase lower-priced gas and the ability to forecast prices more accurately, due to reduced volatility of prices. Also, as an anchor shipper on the NED Supply Path, EnergyNorth and its customers would enjoy other benefits similar to those in the Precedent Agreement.<sup>7</sup>

The Settlement Panel discussed the value to customers of the new West Nashua delivery point in terms of reliability. EnergyNorth expects the new delivery point to add redundancy and improve distribution system reliability as well as to aid in growth. A new lateral from West Nashua would relieve EnergyNorth's sole reliance on the Concord Lateral, and opportunities for growth along the route may exist. The Settlement Panel discussed the value to customers of the high pressure flow capacity contracted for in the Precedent Agreement. EnergyNorth will be able to deliver higher pressure gas to customers, also supporting system expansion and customer growth. In addition, the higher pressure capacity may reduce the need for the propane plants' peaking services.

## V. POSITIONS OF NON-SETTLING PARTIES

### A. OCA

The OCA argues the Settlement Agreement is not in the public interest and should not be approved. The OCA agrees that EnergyNorth needs some incremental, long-term pipeline capacity, but disagrees with the amount of capacity secured by the Precedent Agreement. The OCA contends that EnergyNorth should have evaluated retaining its existing Dracut 50,000 Dth

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<sup>7</sup> EnergyNorth expects to seek Commission approval of another precedent agreement with TGP, for NED Supply Path capacity soon.

per day instead of replacing it entirely with new capacity and recommends that the Commission hold its decision on the Precedent Agreement until EnergyNorth provides additional analysis of customer demand and the alternatives available to meet it. The essence of the OCA's position is that EnergyNorth did not estimate demand appropriately and assumed unreasonably high growth for iNATGAS sales, capacity-exempt returning customers, and new franchise territories.

The OCA believes that instead of 24 years, EnergyNorth should have used a five- to ten-year planning horizon. The OCA claims that planning beyond ten years results in excess capacity procurements by EnergyNorth. The OCA suggests that a range of 75,000 to 90,000 Dth per day of capacity would be more appropriate, assuming EnergyNorth retains its propane capacity.

The OCA's witness, Dr. Chattopadhyay, acknowledged that the 2013 IRP analysis, which EnergyNorth used as a starting point for its Precedent Agreement analysis, employed a resource mix optimization methodology and included 90,000 Dth per day of pipeline capacity. On cross-examination, Dr. Chattopadhyay agreed that, assuming retirement of EnergyNorth's propane capacity and using EnergyNorth's projected numbers for the demand associated with iNATGAS and reverse-migrating capacity exempt customers, the capacity amount needed for 10 years is above 100,000 to 115,000 Dth per day. Transcript Day 3 page 64 line 22 to page 65 line 13; page 66 lines 3 to 16; and page 66 line 19 to page 67 line 1.

The OCA argues EnergyNorth's analysis overstated the price of supply at Dracut and used overly-optimistic projections for excess capacity mitigation. That is a problem, according to the OCA, because the Settlement does not require EnergyNorth to realize any particular level of capacity mitigation revenue and, in that way, leaves customers at risk for excess capacity costs.

The OCA agrees that, apart from the amount of capacity, the NED Pipeline has benefits for EnergyNorth and its customers, including the flexibility to retire the propane plants if doing so is cost effective, and the increased reliability from a second delivery point on EnergyNorth's system. The OCA also views the growth incentive in the Settlement as helpful, but argues that the related financial penalty is not meaningful. APUC is a \$4.5 billion company with diversified assets all over North America; a loss of \$300,000, the maximum possible penalty if the growth incentives are not met, will have no noticeable impact on shareholder revenues.

#### **B. PLAN**

PLAN argues that the Settlement does not resolve the deficiencies in the Precedent Agreement. PLAN also challenges EnergyNorth's ability to mitigate excess capacity costs, meet the Settlement's growth requirements, and realize the value of the new West Nashua interconnect.

Like the OCA, PLAN agrees that EnergyNorth needs some amount of incremental capacity, but disagrees with the amount of capacity secured by the Precedent Agreement. PLAN contends that the additional 65,000 Dth per day of new capacity results in significant excess capacity and that EnergyNorth should have undertaken additional analyses of the different projects, using lower amounts of new capacity, such as an additional 25,000 to 30,000 Dth per day.

Also similar to the OCA, PLAN contends that procuring capacity using a 10-year planning horizon is more appropriate than the longer periods used by EnergyNorth, because PLAN is confident that there will be opportunities to contract for additional capacity after ten years. PLAN also suggests that additional capacity could become available on the NED Pipeline if compression is added in the future.

PLAN is very critical of EnergyNorth's decision to replace 50,000 Dth per day of existing Dracut capacity, arguing that it will increase ratepayers' costs. PLAN contends that EnergyNorth based its decision to replace the existing Dracut capacity on exaggerated concerns and incorrect assumptions with respect to the availability and price of gas at Dracut. PLAN acknowledges that there has been a great deal of price volatility in New England during the last several winters, but disagrees with EnergyNorth that Dracut is illiquid or at risk of lacking sufficient supply and suppliers. According to PLAN, new pipeline capacity into New England from the west will produce competitive pricing and opportunities to arbitrage the Wright and Dracut markets during the winter. In addition, PLAN asserts that LNG supply will also continue to be reliably available at Dracut. PLAN contends that the additional capacity at Dracut will keep prices from rising as high as EnergyNorth has assumed in its analysis.

Regarding alternatives, PLAN asserts that EnergyNorth should have evaluated capacity options other than the C2C and Atlantic Bridge projects. PLAN suggests specifically that EnergyNorth should have evaluated expansion of its LNG facilities as an alternative to meet its long-term capacity needs.

On the analyses of alternatives performed by EnergyNorth, PLAN questions the Concord Lateral estimates and volumes used by EnergyNorth to compare the C2C and Atlantic Bridge projects to the NED Pipeline project. PLAN also questions the "breakeven" price that EnergyNorth assumed for supply purchases at Wright, arguing that the Consortium's price projections for Wright do not reflect the possibility of limits on pipeline capacity between Marcellus and Wright and any associated price increases.

PLAN contends specifically that the Waddington point on the Iroquois pipeline, which is north of Wright, is a liquid market and a reasonable proxy for prices at Wright. According to

PLAN, during the months of January and February, the daily Waddington supply price exceeded EnergyNorth's breakeven price before including the costs for transportation from Waddington to Wright.

Although it is PLAN's position that the several hundred thousand Dth per day of additional capacity planned for Dracut will keep prices down, PLAN acknowledges that there is approximately 650,000 to 1.6 million Dth per day of new capacity planned for Wright. PLAN concedes that if concerns about the dwindling supply of off-shore production come to fruition, the prices at Dracut will increase unless and until additional pipeline capacity is developed.

PLAN criticizes EnergyNorth for not including in its estimate of the NED Pipeline costs, any of the impact of the project on communities along its route. PLAN contends that EnergyNorth should have analyzed the environmental impacts of the NED Pipeline and the associated costs and risks of those impacts, because environmental cost overruns will raise the Precedent Agreement's rate.

PLAN contends that EnergyNorth's ultimate parent, APUC, influenced EnergyNorth's decisions to enter into, and agree to the terms of, the Precedent Agreement. PLAN notes that the same individuals serve as members of the Boards of Directors and Officers for both entities, as well as Liberty Pipeline. PLAN also notes that the same individuals who decided to invest in the NED Pipeline authorized EnergyNorth to enter into the Precedent Agreement. In PLAN's view, essentially one board made both decisions, and those decisions resulted in EnergyNorth's oversubscription of capacity, for the benefit of APUC.

PLAN argues the terms of the Settlement are ambiguous. PLAN notes that the demand thresholds associated with the reduction of capacity from 115,000 to 100,000 Dth per day do not specify in which year they apply. PLAN also observes that the iNATGAS threshold refers to

design day capacity for firm sales, and that EnergyNorth's contract only requires iNATGAS to be a firm sales customer for one year. By the time EnergyNorth needs to calculate its demand, iNATGAS could be a transportation customer.

Regarding its own motivations, PLAN acknowledges that none of its officers or directors is a customer of EnergyNorth, and that its members oppose construction of the NED Pipeline. PLAN, however, denies that its opposition to the NED Pipeline factored into its economic analysis of the Precedent Agreement and the Settlement.

## **VI. PUBLIC COMMENTS**

Before the hearing, the Commission received many written comments from the public, with the overwhelming majority advocating against the approval, construction, and siting of the NED Pipeline. Many if not all of the opposing comments were tendered by residents or representatives of the communities along the route of the NED Pipeline. Many of the opposing comments cited Staff's prefiled testimony as a basis for rejecting the Precedent Agreement and the Settlement. Some of the comments questioned the Precedent Agreement on the basis that EnergyNorth's affiliate has invested in the NED Pipeline.

Two large C&I customers of the Company filed written comments supporting the Commission's approval of the Precedent Agreement. BAE Systems and Velcro USA, Inc., are among the largest employers and energy users in the state and have recently experienced volatile and high prices when using EnergyNorth's existing capacity resources. Adding the proposed capacity to the company's portfolio is expected to alleviate price volatility. Capacity-exempt customers migrating back to firm sales service are also looking for price stability and supply security. The inquiries of Concord Steam customers also indicate that they are seeking price stability and lower cost.

The Commission opened the hearing by receiving additional comments from the public. Those comments were consistent with the focus, content, and tenor of the written comments. Comments at hearing were primarily directed at the advisability of the NED Pipeline and not the terms of the Precedent Agreement or the interests of EnergyNorth's customers.

After the hearing, the Commission continued to receive written comments opposing approval of the Precedent Agreement for reasons related to the impact of the NED Pipeline on the communities and citizens along the proposed pipeline route. Some of the post-hearing comments requested that the Commission reopen the hearing to receive additional evidence on the impact of the NED Pipeline on individuals who are not EnergyNorth's customers, or on interests that are not EnergyNorth customer interests.

## **VII. COMMISSION ANALYSIS**

### **A. Scope and Standard of Review**

Our statutory review of the Precedent Agreement is limited to consideration of EnergyNorth's prudence in entering into the Precedent Agreement, and the reasonableness of the terms of the agreement. We do not undertake any review of the merits or the siting of the NED Pipeline. The Precedent Agreement is not effective unless the NED Pipeline is approved, constructed, and providing service.

At this time, the NED Pipeline is still under review by the FERC. The important issues raised in the public comments, including the impact of the NED Pipeline on the communities through which the pipeline will run, are solely within the province of FERC.<sup>8</sup> Consequently, we do not consider those siting issues in our review of the Precedent Agreement.

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<sup>8</sup> The siting of the NED Pipeline may also come before the New Hampshire Site Evaluation Committee under RSA ch. 162-H.

We must consider whether the Precedent Agreement is prudent and reasonable.

RSA 374:1 and 374:2 (public utilities shall provide reasonably safe and adequate service at “just and reasonable” rates), and 378:7 (rates collected by a public utility for services rendered or to be rendered must be just and reasonable). Because EnergyNorth and Staff reached a Settlement that varies the terms of the Precedent Agreement, we must review both agreements in this docket.

Our review of the Settlement concerns whether the Settlement is just and reasonable and serves the public interest. N.H. Code Admin. Rules Puc 203.20(b) (“The commission shall approve a disposition of any contested case by stipulation [or] settlement ... if it determines that the result is just and reasonable and serves the public interest”). We construe the public interest within the context of our overall authority including, in this case, the interests of EnergyNorth’s existing and future customers.

For the reasons set forth below, we find that the Precedent Agreement as modified by the Settlement satisfies these standards, and we therefore approve the Settlement. Typically, we determine prudence and reasonableness within the context of a full rate proceeding, after EnergyNorth has incurred the costs. Due to the magnitude of the costs and the long-term commitment associated with the Precedent Agreement, EnergyNorth requested preapproval of prudence and reasonableness. We last pre-approved a long-term capacity contract for EnergyNorth in DG 07-101. *EnergyNorth Natural Gas, Inc. d/b/a Keyspan Energy Delivery*, Order No. 24,825 (February 29, 2008).

#### **B. Capacity Requirements**

In the Settlement, Staff secured commitments from EnergyNorth to reduce excess capacity arising from the Precedent Agreement and to expand service to unserved or underserved areas of New Hampshire. Pipeline capacity is not always available in increments that match

precisely with an LDC's load growth. Consequently, it is prudent and reasonable for an LDC, when entering into a capacity agreement, to acquire the capacity necessary to serve not only current load but also potential future load.

The amount of capacity provided by the Precedent Agreement, as modified by the Settlement, is consistent with EnergyNorth's last approved IRP. EnergyNorth used appropriate methodology in the 2013 IRP to project 90,000 Dth of pipeline capacity, and EnergyNorth's analysis supporting the Precedent Agreement built upon the IRP result to reflect growth in demand since the IRP. EnergyNorth appropriately included as post-IRP demand growth the demand associated with large capacity-exempt customers who have migrated from transportation-only service to sales service. No party disputed EnergyNorth's obligation to procure capacity for those customers, or the possibility that EnergyNorth's remaining capacity-exempt load could also migrate back to firm sales. Accelerated reverse migration has occurred for several years now and is likely to continue based on volatile natural gas pricing arising from constrained pipeline capacity in New England. Exhibit 8, bates 26, lines 2-6, and fn. 33.

PLAN criticized EnergyNorth for including capacity for iNATGAS in its projections because iNATGAS is only obligated to take firm sales service for one year. According to PLAN, iNATGAS could be a transportation customer by the time the capacity contracted for in the Precedent Agreement is available to EnergyNorth. PLAN's argument, however, fails to recognize that EnergyNorth is obligated to continue to supply capacity to iNATGAS if it becomes a transportation customer. The amount of such capacity would be based on iNATGAS's design day for the twelve months preceding its departure from firm sales service.

EnergyNorth's revised analysis in rebuttal shows that excess capacity will likely be depleted within the 10-year planning horizon advocated by PLAN and the OCA. EnergyNorth's

analysis was conservative in that it did not include possible growth along the NED Pipeline route in New Hampshire or in Keene. The demand associated with that possible growth was not necessary to support the capacity commitment, but, together with other projected demand growth, could well exceed the total capacity procured by the Precedent Agreement. Although EnergyNorth did not propose immediate retirement of most of its propane capacity outside of Keene, the Settlement and EnergyNorth's testimony reflect that this is a potential outcome of the next IRP. Retirement of the propane plants would require up to 34,600 Dth per day of additional capacity. This amount of capacity was included in the 90,000 Dth per day forecasted by the 2013 IRP. The Settlement addresses the possibility of excess capacity if EnergyNorth does not meet growth requirements, which if not satisfied will require a reduction in capacity purchased under the Precedent Agreement or a financial penalty to benefit customers.

### C. Dracut vs. Wright

The capacity cost associated with replacing the existing 50,000 Dth per day at Dracut is outweighed by the benefits associated with the capacity contracted for in the Precedent Agreement. Of the three firm capacity options analyzed, only the NED project avoids supply purchases at Dracut, which has proven to be one of the highest priced purchase points in the country over the past few years due to a lack of supply. Only the capacity contracted for in the Precedent Agreement increases the reliability of EnergyNorth's distribution system by adding increased guaranteed delivery pressure at existing delivery points and at a new point of delivery in West Nashua. Reliability benefits of the capacity contracted for in the Precedent Agreement also include new nomination flexibility<sup>9</sup> for EnergyNorth's existing capacity contracts with TGP

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<sup>9</sup> *Nomination* is a term used in the natural gas pipeline industry where a pipeline capacity holder (shipper) initiates a scheduling transaction with the pipeline operator to deliver gas supply from point A to Point B. In this example, on most days throughout the year, EnergyNorth will have the *flexibility* to be able to *nominate* what is expected to be its

and the opportunity to develop, off of the West Nashua delivery point, an alternative lateral to the Concord Lateral to deliver gas to its distribution system.

The capacity contracted for in the Precedent Agreement, compared with the alternative projects, avoids immediate and costly upgrades to the Concord Lateral. The NED Pipeline will provide opportunities for significant economic expansion of EnergyNorth's distribution system and service both in and outside EnergyNorth's existing franchise territory.

We appreciate the Wright market's uncertainty, but we are reassured by the Precedent Agreement's requirement that a certain level of liquidity must exist at Wright before EnergyNorth's customers are required to purchase the capacity contracted for in the Precedent Agreement. We also find promising the development of multiple pipeline projects to bring Marcellus gas to Wright; the new capacity back to Marcellus would provide EnergyNorth with direct access to the lowest-priced gas supply in the United States in place of access to the highest priced gas in the United States, at Dracut.

EnergyNorth appropriately considered alternatives to the capacity it contracted for in the Precedent Agreement, based on price and non-price factors. The projected capacity costs associated with the C2C and Atlantic Bridge projects exceed the Precedent Agreement's capacity costs, without needed upgrades to the Concord Lateral, and the capacity contracted for in the Precedent Agreement will provide greater benefits. Although the NED Pipeline is in the development stage and has yet to be approved by FERC, neither of the alternative projects is any further along in that process.

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least cost (Marcellus gas supply) alternative from Wright, NY, using its contracted NED pipeline capacity, effectively displacing higher average cost underground storage gas from its inventory or other purchased supply alternatives sourced at higher price points.

#### **D. Use of LNG**

We disagree with PLAN that EnergyNorth should have considered expansion of its LNG capacity to meet projected growth. The LNG global market is unstable and may compromise the reliability of EnergyNorth's service to customers at the least cost, particularly on a design day or during a design-season.<sup>10</sup> In addition, expansion of EnergyNorth's existing LNG facilities is not possible due to setback requirements in federal law.

#### **E. Demand and Customer Growth Requirements**

The Settlement's requirements for demand and customer growth further incent EnergyNorth to reduce excess capacity following the project's in-service date. The Settlement requires a reduction to cost recovery by EnergyNorth if certain levels of growth are not achieved. While the maximum disallowance of \$300,000 is small in comparison to annual gas costs, earnings are determined on delivery costs and revenues, and the potential disallowance could have a significant impact on EnergyNorth's earnings: \$300,000 represents 5.6 percent of EnergyNorth's 2014 net income.<sup>11</sup> Hence, the Company's commitment to an earnings reduction is a serious and, as testified by the experts, unusual undertaking for a Precedent Agreement. The cost recovery reduction only applies while the "Company's propane facilities that are not used for pressure support remain in service (excluding facilities serving the Keene Division)."<sup>12</sup>

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<sup>10</sup> Utility resource portfolios maintain sufficient supply deliverability to meet customer requirements on the coldest planning day (design day) and maintains sufficient supplies under contract and in storage to meet customer requirements over the coldest planning season (design season).

<sup>11</sup> Net Income of \$5,361,232, per Liberty Annual Report to the NHPUC for year ended December 31, 2014, p. 12, line 76.

<sup>12</sup> For clarity, the referenced propane facilities are EnergyNorth's plants in Nashua, Manchester, and Tilton, and propane storage in Amherst, to the extent the storage is not used to serve Keene, or any other propane plants used for pressure support. The percentage reduction will be determined by dividing the rate base of the retired propane facilities, excluding Keene and the portion of the Amherst storage facility used to serve Keene or propane plants necessary for pressure support, by the total rate base of the three propane plants and adjusted rate base of the Amherst facility.

Settlement at 5. Potential retirement of the propane plants further justifies the contracted capacity is reasonable over a 10-year planning horizon.

EnergyNorth continues to be obligated in the regular course of business to mitigate excess capacity through asset management arrangements, capacity release through the spot market, and off-system sales directly to third parties. EnergyNorth's satisfaction of those requirements will further reduce customers' exposure to excess capacity costs and align EnergyNorth's demand and supply requirements within the 10-year period for which PLAN and the OCA advocated. Increased growth will also reduce the per-customer cost of the capacity contracted for in the Precedent Agreement, along with all other fixed costs, and will result in lower overall rates.

**F. EnergyNorth Affiliate Relationships**

We do not take a position on whether EnergyNorth's relationship with affiliates biased EnergyNorth to act contrary to the best interests of customers by oversubscribing to capacity contracted for in the Precedent Agreement or whether PLAN's opposition to the Precedent Agreement is motivated by its opposition to the NED Pipeline. Our decision is based on facts in the record that demonstrate that the Precedent Agreement and Settlement satisfy the standard of review as set forth above.

**G. Environmental Cost Risks**

We also disagree with PLAN that the Precedent Agreement unreasonably or imprudently exposes EnergyNorth to environmental cost over-runs associated with the NED Pipeline. Although the Precedent Agreement contains terms related to environmental cost overruns and

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underruns, we are satisfied that it protects customers from cost over-runs with a rate cap. TGP may not charge EnergyNorth more than that maximum rate.

#### VIII. CONCLUSION

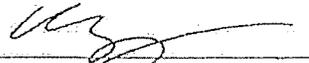
In conclusion, we find that EnergyNorth's proposed acquisition of the capacity contracted for in the Precedent Agreement is prudent and reasonable. EnergyNorth has established that, based on both price and non-price factors, the contracted capacity represents the most viable, reasonably available alternative for EnergyNorth to meet its current and forecasted customer requirements in a least-cost, and reliable manner. We note that the decision of whether to approve the proposed arrangement between EnergyNorth and TGP is an important one involving a long-term commitment of substantial ratepayer dollars. Therefore, we believe it is reasonable to review the prudence of the Company's proposal in advance of the final decision to enter into the proposed arrangement. Our finding that the contracted capacity is prudent, however, assumes that EnergyNorth manages its business and operates in a manner consistent with good utility practice and its plans outlined in this filing.

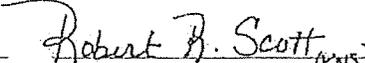
We also find that the Settlement is just and reasonable, and consistent with the public interest of its existing and future customers. The Settlement secures commitments for growth, which will benefit existing customers as well as potential customers. The Precedent Agreement, as modified by the Settlement, will enable EnergyNorth to meet existing and future demand in a safe and reliable manner at a just and reasonable cost. For all of the foregoing reasons, we approve the Settlement and the Precedent Agreement as modified by the Settlement.

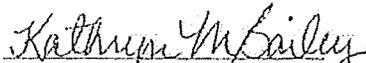
**Based upon the foregoing, it is hereby**

**ORDERED**, the Settlement and the Precedent Agreement as modified by the Settlement are approved.

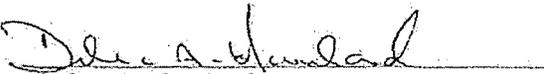
By order of the Public Utilities Commission of New Hampshire this second day of  
October 2015.

  
Martin P. Honigberg  
Chairman

  
Robert R. Scott (RNS)  
Commissioner

  
Kathryn M. Bailey  
Commissioner

Attested by:

  
Debra A. Howland  
Executive Director

BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Re: Liberty Utilities (EnergyNorth Natural Gas) Corp.  
D/B/A Liberty Utilities

Docket DG 14-380

MOTION FOR REHEARING, RECONSIDERATION, AND CLARIFICATION

Pursuant to RSA 541:3, Puc 203.33, and RSA 365:28, Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”) hereby moves the New Hampshire Public Utilities Commission (“Commission” or “PUC”) to rehear, reconsider, and clarify Order No. 25,822 (Oct. 2, 2015) (the “Order”), which approved the settlement (the “Settlement”) between Commission staff and Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”) and the precedent agreement (the “Precedent Agreement”) between EnergyNorth and Tennessee Gas Pipeline Company, LLC (“TGP”) as modified by the Settlement.<sup>1</sup>

As set forth below, the Commission erred in its Order with respect to its findings relating to: (i) burden of proof; (ii) the replacement of Dracut transportation capacity; (iii) liquefied natural gas (“LNG”) as a supply alternative; (iv) the expansion of the Concord Lateral; (v) the affiliate connection between Algonquin and EnergyNorth; (vi) negotiations with the LDC Consortium; and (vii) other important implications relating to excess capacity and speculative growth, propane and segmentation.

In support of this Motion, PLAN provides the following memorandum of law and facts.

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<sup>1</sup> As a matter of law, a state administrative agency must provide reasons for its decision. RSA 541-A:35. In addition, the Commission has specific statutory provisions governing its conduct, RSA 363:17-B, III, which requires a final order on all matters presented to it that includes “a decision on each issue including the reasoning behind the decision.” The Commission failed to do so here. Instead, the Commission either adopted without substantive analyses the Company’s position or it unreasonably ignored record evidence to the contrary.

## **I. Standard Of Review**

“The procedure for rehearing and appeals shall be that prescribed by RSA 541, except as herein otherwise provided.” RSA 365:21. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief and demonstrates that a decision is unlawful or unreasonable. *See Rural Telephone Companies*, Order No, 25,291 (November 21, 2011) at 9. “Good reason” (as referenced in RSA 541:3) “may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were ‘overlooked or mistakenly conceived’ by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978).” *Pub. Serv. Co. of N.H.*, N.H. PUC Order No. 25,239, 2011 N.H. PUC LEXIS 40, \*13 (June 23, 2011). *See also Holiday Acres Water & Wastewater Servs.*, Order No. 23, 766, 2001 N.H. PUC LEXIS 157, \*4 (Aug. 24, 2001) (explaining “good reason” standard). In this case, among other things, we have specific matters that were unreasonably overlooked, mistakenly conceived or unlawfully determined as well as new evidence that the Commission should consider.

## **II. EnergyNorth Did Not Carry Its Burden Of Proof, Both As A Matter Of Fact And As A Matter Of Law**

### **a. EnergyNorth Did Not Meet Its Burden of Proof**

The issues to be addressed by EnergyNorth’s filings were set forth in the Order of Notice. *See Puc 203.12(a) (4)* (notice shall contain, *inter alia*, “[a] short and plain statement of the issues presented”). The issues to be evaluated “include[d] whether EnergyNorth reasonably investigated and analyzed its long term supply requirements and the alternatives for satisfying those requirements, and whether EnergyNorth’s entry into the Precedent Agreement with TGP for additional pipeline capacity is prudent, reasonable and otherwise consistent with the public

interest.” See Order of Notice, p. 5. For all these issues, EnergyNorth, as the petitioner, has “the burden of proving the truth of any factual proposition by a preponderance of the evidence.” Puc 203.25.<sup>2</sup>

EnergyNorth failed to meet its burden of proof. All experts in the case agreed that EnergyNorth failed to reasonably investigate its long-term supply requirements and undertake the rigorous review required for a commitment of this scope and size. PLAN Brief at 4-8. Its filing, based upon a “best-cost resource portfolio”, was critically short on detailed and required factual support and failed to present the type of least-cost analysis that this Commission requires in cases for approval of such significant transportation capacity contracts.<sup>3</sup> The need for a very detailed and complete filing is particularly necessary in this case, where EnergyNorth has requested (and the Commission pre-approved) the prudence and reasonableness of a very expensive and long-term contract. Accordingly, the Commission should reconsider its determination to accept the Company’s deficient filing and reject the filing as submitted. Simply stated, the filing lacks an adequately developed cost-benefit analysis of the Company’s need for the Precedent Agreement and does not provide for any meaningful evaluation that the Precedent Agreement is a least-cost, or even best-cost, option for ratepayers.

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<sup>2</sup> EnergyNorth has “[t]he burden of showing the reasonableness of . . . participation in” a supply agreement. *Appeal of Sinclair Mach. Prods.*, 126 N.H. 822, 834 (1985). “[I]t is a generally accepted principle of administrative law that petitioners bear the burden of proving their allegations in a contested administrative proceeding. See, e.g., B. Schwartz, *Administrative Law* (1976), § 121 at 121 (noting that the term “burden of proof” encompasses both duty of going forward with evidence and burden of persuasion).” *Pub. Serv. Co. of N.H.*, Order No. 24,070, 2002 N.H. PUC LEXIS 155, \*10 (Oct. 24, 2002). EnergyNorth made no such showing in this case and the Commission’s acceptance of its case in the Order was unreasonable.

<sup>3</sup> The specific significant shortcomings of the Company’s analysis are highlighted in PLAN’s Brief and are incorporated by reference herein. See PLAN Brief at 4-8. Most notably, the Company failed, among other things (and as referenced by Staff’s own witness) to estimate least cost and needs, revise its demand forecast, assess additional resource options, reevaluate its NED analysis with a lower quantity, develop additional information regarding the cost of the Concord Lateral upgrade, specifically evaluate how a second western interconnection will generate new customers, and undertake a scenario analysis with respect to the supply risks at Wright. PLAN Brief at 5-6.

**b. The Commission Erred In Its Consideration Of The Company's Filing As A Prudence Review**

The Company requested pre-approval of prudence and reasonableness. Order at 25.

Given the fundamental deficiencies in the filing, the Commission erred in approving the Precedent Agreement and Settlement Agreement as a matter of law and in pre-approving the prudence and reasonableness of the contract. Among other things, traditional ratemaking criteria in prudence cases involve a detailed assessment of least-cost procurement and prudence.

"[P]rudence judges an investment or expenditure in the light of what due care required at the time an investment or expenditure was planned or made," and includes determining whether certain costs should have been foreseen as wasteful. *Appeal of Conserv. Law Found.*, 127 N.H. 606, 637-638 (1986). In determining whether an agreement or decision is prudent, "only those facts known or knowable at the time of the decision can be considered," which limitation is "consistent with the prudence standard that this Commission and the courts have traditionally applied." *Pub. Serv. Co. of N.H.*, Order No. 23,549, 2000 N.H. PUC LEXIS 184, \*54, 57 (Sept. 8, 2000).

This case wholly failed to comply with the level of review required as part of any prudence determination. In contrast to the comprehensive review undertaken in DG 07-101, (referenced in the Order as a precedent for the Commission's pre-approval of the long-term contract in this case), this case was woefully inadequate as set forth in Section II.a above. It failed to reasonably evaluate multiple alternatives, including LNG as a resource, and instead relied upon, among other things, undocumented assurances of future growth and future activities, e.g., expansion into Keene and the Southwest New Hampshire communities, future activities assumed to reduce excess capacity, and the closure of the propane facilities. The Commission's determination of prudence (an intentionally high legal standard), should be based upon known

facts and a complete record, but as it stands it is not supported in this case as a matter of law given the inadequacies of the Company's filing and reliance upon future activities.<sup>4</sup>

Accordingly, the Commission should reconsider its determination that "the proposed acquisition of capacity contracted for in the Precedent Agreement is prudent and reasonable" and deny EnergyNorth any pre-approval with respect to the prudence of the Precedent Agreement.

### **III. The Commission Unreasonably Determined to Replace Dracut Transportation Capacity**

The Commission erroneously determined that the "capacity cost associated with replacing the existing 50,000 Dth per day at Dracut is outweighed by the benefits associated with the capacity contracted for in the Precedent Agreement." Order at 27. In support of its conclusion, the Commission asserts that the NED project (i) avoids the supply-constrained purchase point at Dracut; (ii) will increase reliability of EnergyNorth's distribution system by adding increased guaranteed delivery pressure at existing delivery points and at a new point of delivery in West Nashua; (iii) provides the opportunity to develop off of the West Nashua delivery point an alternative lateral; and (iv) avoids immediate and costly upgrades to the Concord Lateral. Order at 27-28. In making its determination, the Commission concludes that an acceptable level of liquidity will exist at Wright. *Id.* In addition, the Commission found that

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<sup>4</sup> As one notable example, in DG 07-101, there was a detailed evaluation of alternatives and the Commission Staff experts undertook a rigorous evaluation of the Company's assumptions as presented and filed a detailed report in support of the Settlement as submitted. In that proceeding, the Company devoted over 70 pages of analysis to its assessment of alternatives with numerous evaluations of the different amounts, costs and options available, and Staff's independent experts in turn were able to successfully review and challenge both the figures and methodologies employed by the Company. Unlike the present case, in which the Commission accepted the Company's disconcertingly limited discussion of alternatives related to one core scenario (115,000 Dth/d of demand without any further consideration of customer requirements), Staff and the Commission did not rely on the as-filed base case submitted by the Company. The magnitude of the costs alone at issue here should have compelled at least the same effort by the Company, Staff and the Commission, and the failure to do so makes any determination of prudence unreasonable and unlawful.

“EnergyNorth appropriately considered alternatives to the capacity contracted for in the Precedent Agreement.” *Id.*

The record indicates otherwise, and the Company and the Commission unreasonably failed to evaluate the specific benefit to ratepayers of continuing to utilize existing gas transportation service with Dracut as a primary receipt point as compared to replacing it with NED capacity. The reasons identified by the Commission as justifications for replacement of Dracut by Wright are primarily generic benefits that *arguendo* may be provided by the NED project whether or not the existing transportation service from Dracut is removed from EnergyNorth’s supply portfolio. The important question then, which EnergyNorth and the Commission did not specifically address, is (and should be) whether the Company should replace its existing 50,000 Dth/day contract with Tennessee at Dracut with a similar capacity on NED. The Company simply did not present any evidence of comparative benefit or cost to ratepayers of terminating its 50,000 Dth/day of relatively low cost market area transportation service and replacing that service with an additional 50,000 Dth/d on the NED project. The significant failure of proof by itself warrants reconsideration and denial of the Petition and the Settlement Agreement.

In order to reach its incorrect conclusion with respect to Dracut capacity, the Commission necessarily and unreasonably overlooked expert testimony that demonstrated that EnergyNorth’s customers will pay substantially more per year with the unnecessary shift in supply from the New England market area to Wright. Exhibit 17 at 15; PLAN Brief at 9. The Commission did not consider record evidence that delivered costs will be higher from NED, even assuming current prices and with EnergyNorth’s current level of market area purchasers at Dracut. In addition, the Commission ignored the Company’s failure to undertake any specific analysis that

evaluated the net cost to ratepayers that would result from changing the receipt point for 50,000 Dth/day of existing Tennessee transportation service from Dracut to Wright.

Had the Commission analyzed the clear evidence to the contrary and recognized the Company's blatant failure to analyze the comparative benefits of retaining (or not) the existing Tennessee contract, it would have reached a different conclusion. As noted, there is no evidence that the capacity costs associated with replacing Dracut gas are outweighed by the benefits of the Precedent Agreement as the Commission suggests.<sup>5</sup> Order at 27. Moreover, the Commission's analysis of other factors is flawed:

- The Commission incorrectly accepts the notion that Dracut gas "is one of the highest priced purchase points in the country over the past few years due to a lack of supply" as the basis to replace Dracut. It reached this conclusion without any consideration that EnergyNorth could continue to meet its design day requirements by purchasing a portion of its gas supply at Dracut at less cost than replacing 50,000 Dth/d of Dracut capacity with NED. PLAN Brief at 8, Exhibit 12 at 53; Day 3 Tr. at p. 73, ll. 13-15 ("The analysis shows that 65,000/50,000 Dth/day combination for NED and Concord Lateral is less costly than going just to NED."). There is no evidence that EnergyNorth has been, or will be, unable to obtain gas using its Dracut transportation capacity because of lack of gas supply.
- There is no evidence that any purported reliability benefit, referenced in the Order at 27, will be lost if the Dracut contract is retained. The Commission erred by considering the potential benefits of constructing a "parallel backbone" system from West Nashua to other distribution areas. This possibility was not raised before the hearing, and was not supported by any evidence.
- The Concord Lateral, notwithstanding the Company's assertion to the contrary in this case, will continue to provide a source of least-cost supply to the Company's customers in the future. For example, in a recently filed case, the Company relies upon the Concord Lateral and an expanded interconnection as a central component of its proposed expanded franchise in Windham and Pelham. The Company is not concerned in that case, as it is here, with fundamental assumptions with respect to rates, availability or reliability associated with the Concord Lateral. See DG-15-362, Petition at 2 (customers would be served off the Concord Lateral and Tennessee Gas Pipeline would construct an

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<sup>5</sup> It was not the Commission's place to fill in the gaps with its own belief as to what the evidence *might* be. "As fact finder, the Commission must weigh the evidence in the record before it to determine whether factual propositions have been proved." *Comcast Phone of N.H.*, Order No. 24,938, 2009 N.H. PUC LEXIS 9, \*29 (Feb. 6, 2009) (emphasis added).

interconnection). Given this new information, the Commission should reopen the hearings for a further assessment of assumptions with respect to the Concord Lateral.

- Maintaining the existing transportation service from Dracut will not require any upgrades of the Concord Lateral.
- There will continue to be opportunities to expand EnergyNorth's distribution system, with or without NED and even assuming that service is retained on the Concord Lateral. *See* DG-15-362; *see also* DG 15-289 and DG 15-442 (where EnergyNorth seeks to expand its service territory (with or without) NED by using the Concord Lateral and (as noted below) by expanding its use of LNG).
- The Commission (and the Company) failed to consider the implications of continued availability of supply at Dracut—both Portland Natural Gas Transmission System and Maritimes and Northeast currently deliver gas to Dracut from multiple sources and the Spectra Atlantic Bridge project will allow gas to be delivered to Dracut from Algonquin Gas Transmission.<sup>6</sup> PLAN Brief at 8-9; Day 3 Tr. at p. 81, l. 16; p. 82, l. 13; p. 94, l. 18; p. 96, l. 6. Similarly, the Commission's conclusions with respect to EnergyNorth's consideration of alternatives (Order at 28) ignores the obvious flaws in the Company's consideration of alternatives—the Company did not present and the Commission did not analyze whether any alternative was least cost at levels below the 115,000 Dth/d assumed as required for NED. Similarly, as discussed below, there was no analysis of the ratepayer benefits of the more modest upgrades to the Concord Lateral that would be the case if the 50,000 Dth/d of existing transportation service from Dracut to points on the Concord Lateral was retained and the Concord Lateral was expanded to meet the projected demand growth over a 10-year planning horizon.
- The Company's comparison of natural gas prices in New England and Wright relies upon unreviewable information from the LDC Consortium and uses the highest historical gas prices in New England over the previous three winters. Exhibit 17 at 16. PLAN Brief at 10. The Commission ignored the positive price impact that ongoing pipeline expansions, in advanced stages of market development (Atlantic Bridge, C2C) or in construction (AIM) will have on New England market pricing.<sup>7</sup>

Respectfully, the Commission erred in its determination that Dracut capacity should be replaced by NED and should reconsider its ruling on this point.

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<sup>6</sup> The Commission notes EnergyNorth's assertion that renegotiating the Precedent Agreement may put customers at risk because the alternatives that EnergyNorth considered are "fully subscribed". Order at 10. The Commission fails to consider other recent and proposed pipeline projects and, specifically, that Spectra, the Atlantic Bridge sponsor, and TransCanada, the C2C sponsor, are offering transportation capacity in other projects that would commence in 2018. *See*, Exhibit 17 at 19-20. These are viable alternatives to NED that warrant detailed consideration in rehearing.

<sup>7</sup> Algonquin Gas Transmission and Maritimes and Northeast filed a joint certificate application for the Atlantic Bridge project on October 22, 2015. *See*, Federal Energy Regulatory Commission, Docket No. CP 16-09.

#### **IV. The Commission Erred In Its Determinations Regarding LNG**

EnergyNorth did not consider the option of adding LNG storage and vaporization at any new site to replace propane or meet a portion of its anticipated growth requirement. LNG should have been evaluated as a least-cost alternative to obtaining transportation capacity through a Precedent Agreement concerning NED. The Company's failure to undertake any evaluation of LNG, based upon a flawed (and misleading) interpretation of law distorted its analysis and undermined its conclusions. Moreover, there is new evidence from recently filed franchise cases that the Company intends to rely on LNG and expand its LNG facilities in its franchise area. As noted below, the Commission's reliance upon the Company's position was unreasonable.

##### **a. There Is No Evidence, Or Insufficient Evidence Of Record, To Conclude That LNG Is Not A Viable Alternative To NED**

Inexplicably, the Commission failed to require EnergyNorth to evaluate and consider LNG capacity as a possible cost effective option (as compared to NED) to meet projected growth that EnergyNorth forecasts may be needed over the next five to 10 years. Order at 8, 29.<sup>8</sup> The Commission determined without analysis that the LNG global market is unstable and "may compromise the reliability of EnergyNorth's service to customers at least-cost." *Id.* at 29. However, Mr. DaFonte did note that LNG was an important resource when testifying that one factor in the reduction in the 2015 Winter price spike was "the fact that LNG was brought in to take advantage of the forward basis that came out of the 2013/2014 Winter Period." Day 1 Tr., p. 154, ll. 19-22. Mr. DaFonte further testified that "LNG is a significant and important resource available to gas companies/LDCs generally to support [EnergyNorth's] peaking requirements," and added: "That's why it's part of our diversified portfolio." Day 2 Tr., p. 69, ll. 10-14. In

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<sup>8</sup> The Commission referenced that EnergyNorth is unaware of any new sites in its franchise territory that would accommodate an LNG peaking facility with 115,000 Dth/d (*id.*); the Company failed to evaluate the availability of LNG at any site, in any amount and cost.

fact, EnergyNorth “every year” “explor[es] all alternatives for LNG in liquid form . . . to replenish [its] facility storage.” Day 2 Tr., p. 69, ll. 19-20.

If LNG truly was not a cost-effective option, then why does EnergyNorth nonetheless continue to treat it as part of its diversified portfolio every year? The answer is simple: LNG is not prohibited by federal regulations, and is available, both as a standalone source of supply and as an alternative to NED. EnergyNorth’s claims to the contrary are contradicted by the law and its filings in other docket cases. The Commission’s reliance on EnergyNorth’s conclusions with respect to LNG is unreasonable.

**b. The Commission Erred In Its Conclusion That Federal Regulations Prohibit Expansion Or Construction Of LNG Facilities In New Hampshire**

The Commission unreasonably relied upon Company testimony and determined that expansion is not possible due to setback requirements in federal law. The Commission apparently accepted (without question), and was seemingly misled by EnergyNorth’s, unequivocal (and apparently false) representation that NFSA 59A prohibits EnergyNorth (or anyone else) from developing or expanding an LNG facility in New Hampshire.

The regulation as it existed in 2007 remained the same until 2010, when it simply added select references to the portions of NFPA 59A (2006 edition, approved Aug. 18, 2005) "pertaining to the seismic design of stationary LNG storage tanks" and "for the ultrasonic examination of LNG tank welds for storage tanks." See 75 FR 48593, 48599, 48604 (Aug. 11, 2010). The standards regarding "vapor dispersion" and "thermal radiation zones" – referenced specifically by Mr. DaFonte in testimony (*see id.* at 62) - are set forth at 49 C.F.R. §§ 193.2057 & 193.2059, and neither one has been materially amended regarding the portions referencing NFPA 59A. NFPA 59A will not preclude the development or expansion of LNG in New Hampshire. PLAN Brief at 13-14.

**c. EnergyNorth Promoted LNG In Other Proceedings**

The Commission has required a consideration of LNG in virtually all other cases involving any assessment of least-cost options. For example, EnergyNorth's predecessor, National Grid, indicated in the DG 07-101 proceeding that up to 25,000 Dth/day was feasible from an expansion of existing LNG facilities. In addition, as noted above, LNG is an instrumental component of the Company's Integrated Resource Plan. In its most recent IPR filing on November 1, 2013 in DG 13-313, EnergyNorth explained its continued use and pursuit of LNG as a supply portfolio component. *See* IRP, pp. 10, 18, 54-55, 57-58. Moreover, at a December 2, 2014 hearing, Mr. DaFonte testified: "[W]e did develop a LDC consortium to look at various LNG projects. We have not made any decision with regard to that. At this point in time, we're still negotiating with a couple of the projects. And, we should have some decision on that probably within the next probably three to six months or so." Tr., p. 37, ll. 1-7. There was no reference, as in the instant case, to any federal regulations that would impact LNG availability.

Significantly as well, in a recent filing, offered herein as new evidence, the Company submitted that it is evaluating LNG as an alternative to NED as part of its franchise expansion plans in Jaffrey, Rindge, Swanzey and Winchester and as key component to conversion of its Keene division propane facilities. *See*, DG 15-442, Direct Testimony of William J. Clark, ll 6-10, at Bates 007 (EnergyNorth is currently evaluating a conversion of the Keene Division to natural gas utilizing LNG and CNG in advance of NED as well as a stand-alone option should the NED pipeline not be constructed); *see, also* Clark testimony, ll 18-19, at 8, and ll 1-8 at 9 (with respect to Southwestern towns "[i]n the event the NED Pipeline is not constructed,

EnergyNorth will evaluate the possibility of serving these communities by utilizing liquefied natural gas (LNG) and compressed natural gas (CNG))”.

Similarly, EnergyNorth also has pending before the Commission in Docket No. DG 15-289 a request to serve Lebanon and Hanover through an LNG and CNG facility. EnergyNorth plans to analyze the possibility of converting the Keene system to LNG/CNG and extending service south to Swanzey and Winchester. EnergyNorth would also evaluate the possibility of serving Rindge and Jaffrey with LNG and CNG. Moreover, the Company notes that the State Energy Strategy recognizes the importance of LNG and, in stark contrast to its testimony in the instant case, lauds LNG as a viable alternative promoting diversity and reliability. DG 15-289 at Bates 29- 30. Echoing the testimony of PLAN’s witness in this case, the Company acknowledges the viability of Canaport and Distrigas terminal supply, multiple proposals for new LNG facilities at various stages of development in the region, as well as additional compressed natural gas facilities. *Id.* at 30, ll 1-19. EnergyNorth concludes, again in apparent contradiction of its testimony in this case, that “these varied options certainly constitute a diverse supply chain option that EnergyNorth could tap...” *Id.* at 30, ll 9-12.

These filings wholly contradict EnergyNorth’s testimony in this case: either LNG is available to serve customers as claimed in the above dockets or it is not available as claimed in the instant case. In short, the Company’s and the Commission’s failure to evaluate LNG as a viable option is incompatible with Commission precedents, not precluded by governing federal regulations, and inconsistent with the Company’s own testimony in other dockets appreciating the benefits of LNG as a key, reliable and least-cost source of supply. The Company’s willful failure in this case to analyze LNG as an alternative source of supply is a fatal flaw in its submittal. The Commission should reconsider its decision, determine that LNG should be

evaluated as a viable option, reject the filing, and require the Company to file a new petition and present a full analysis (as was the case in DG 07-101) of LNG.

**V. The Commission Erred In Its Assessment Of The Cost To Expand The Concord Lateral**

The Commission addresses the alleged cost of the Concord Lateral noting that the capacity contracted for in the Precedent Agreement “avoids immediate and costly upgrades to the Concord Lateral.” Order at 28. The Commission’s statement underscores the importance of Concord Lateral—the purported cost of the upgrade of the Concord Lateral is a significant factor driving the Company’s conclusion that NED is the best option. The Commission unreasonably accepted and relied upon the estimates as provided by TGP to EnergyNorth as filed.

Specifically, the Commission incorrectly interpreted the cost estimate included in the June 22, 2015 response to PLAN Data Request 4-18 (*see* Hearing Exhibit No. 34) as an “update” that replaced the earlier estimate. This estimate presented an entirely different route with significantly expanded (and unspecified) assumptions. This self-serving, late “update” was not requested by PLAN and was not shown to have any specific relationship to the case as originally filed or to anything specifically in the record regarding the Company’s expansion plans.

In addition, EnergyNorth has not provided any information regarding the availability of alternatives and the costs of upgrading the Concord Lateral at levels below the 65,000 Dth/d proposed in the case, even though capacity levels below 65,000 Dth/d will reduce the total costs to upgrade the lateral and when combined with other supply choices may very well provide the desired least cost alternative. PLAN Brief at 14-15; Day 1 TR. at 213-215.

Further, EnergyNorth did not provide any estimates from an independent source. Instead, the Company submitted “ballpark” estimates, without work papers or any supporting information to document its extremely high cost estimates. PLAN Brief at 14-15; Day 1 TR. at 213-215.

Moreover, in reviewing the estimates, the Commission did not consider TGP's ongoing awareness of these proceedings and its incentive to provide high "indicative" estimates for Concord Lateral expansion to support the Company's commitment to the NED project.

Given the shortcomings in the Company's analysis, the Commission should reconsider its decision, reject the filing as submitted, and require the Company to file a new petition and present a specific analysis of Concord Lateral expansion options undertaken by an independent source that considers an expansion of the lateral at levels below 65,000 Dth/day.

#### **VI. The Commission Failed To Properly Examine The Relationship Between Algonquin and EnergyNorth**

In its decision, the Commission declined to take a position on whether EnergyNorth's affiliates biased EnergyNorth to act contrary to the best interests of customer by oversubscribing to capacity contracted for in the Precedent Agreement. Order at 30.

This relationship requires further consideration in rehearing. As Commission Staff noted in its Report on Investigation into Potential Approaches to Mitigate Wholesale Electric Prices ("Report") in Docket IR 15-124 (September 15, 2105), affiliate relationships pose a real risk of undermining the competitive process, and, in particular, it "will be difficult if not impossible [for utility companies] to make a convincing case that pipeline open seasons qualify as fair, open and transparent competitive processes." Report at 46. Indeed, it is well recognized that transactions between affiliate or parent and subsidiary companies are not arm's length and may not be just and reasonable.<sup>9</sup> Staff has it right in the report—the affiliate relationships may irreparably taint the process.

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<sup>9</sup> "RSA 366 exists because collusion between a public utility and an affiliate in the absence of arm's length dealings can harm ratepayers' legitimate interests and unjustifiably benefit others such as shareholders." *Verizon N.H.*, Order No. 24,345, 2004 N.H. PUC LEXIS 73, \*216 n. 122 (Jul. 9, 2004). *Cf. Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822, 835 (1985) (allegations related to the parent/subsidiary relationship existing between Central Vermont and CVEC "reflect[ed] upon the prudence of CVEC in incurring wholesale power costs"). *See generally*

In this case, the common management and the significant investment (over \$400 million) of the parent entity in the NED project are a cause for concern. The testimony elicited from Mr. DaFonte should give the Commission pause, and prompt reconsideration and rehearing. *See* Day 2 Tr., p. 9, l. 15 – p. 41, l. 21. In other cases, the Commission has seen fit to exercise its authority (under RSA 366:5) to examine affiliate relationships, and it should undertake the same review in this case as part of a rehearing.<sup>10</sup>

**VII. The Commission Erred In Refusing To Allow Evidence Developed by the LDC Consortium To Be Reviewed**

Numerous references were made in Mr. DaFonte's pre-filed testimony to a consortium of New England Local Distribution Companies of which EnergyNorth is a part. *See* DaFonte Testimony, p. 19, ll.6-15; p. 23, ll. 1-3. Mr. DaFonte explained that "[t]he terms and conditions of the PA were negotiated *within the context of* a broad consortium of New England Local Distribution Companies (LDCs)," which LDCs "together made up the anchor shippers on the NED project." *Id.*, p. 19, ll. 6-7, 9 (emphasis added). According to Mr. DaFonte, "[t]his *consortium approach allowed* the LDCs to leverage their aggregate capacity commitment in the NED project *to negotiate a deeply discounted anchor shipper rate* as well as other key terms and conditions discussed later in [his] testimony." *Id.*, p. 19, ll. 9-12 (emphasis added). In addition, the Consortium's analysis was a fundamental element of the Company's analyses of the comparative benefits of Wright versus Dracut as accepted by the Commission in this decision. By including this information in Mr. DaFonte's testimony, EnergyNorth represented that those are either "facts relied upon," "other relevant facts," or "policy arguments in support of the result

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*Pub. Serv. Co. of N.H. v. New Hampton*, 101 N.H. 142, 152 (1957) (rejecting utility company's assertion that net book cost was the proper measure of valuation based on prior sales of electric utility property in New Hampshire; "it was findable on the record that many of these sales were between affiliates or parent and subsidiary companies and were not actual arms-length transactions").

<sup>10</sup> *See, e.g., Lakes Region Water Co., Inc.*, Order No. 25,391, 2012 N.H. PUC LEXIS 76, \*28-30 (Jul. 13, 2012); *Lakeland Mgmt. Co., Inc.*, Order No. 25,357, 2012 N.H. PUC LEXIS 42, \*18-19 (May 1, 2012).

sought,” and therefore should have been treated as relevant areas for further inquiry. Puc 203.06(d)(2).<sup>11</sup> Yet, when Mr. DaFonte reiterated the role of the Consortium during his testimony at the hearing, further examination, upon objection, was not allowed. *See* Day 1 Tr., p. 179, l. 4 – p. 181, l. 7.

The Commission’s refusal to allow examination of EnergyNorth about the work of the Consortium and its communications with EnergyNorth is unreasonable, particularly considering that material and substantive information derived from those discussions was allowed into the case. The Commission should reconsider its decision and allow rehearing in order to provide for further consideration of this issue.<sup>12</sup>

#### **VIII. Other Errors**

There are other findings, or lack of findings, in the Order that warrant reconsideration and/or rehearing.

##### **a. Excess Capacity And Speculative Growth**

As approved, the NED contract will burden EnergyNorth’s ratepayers with excess pipeline transportation capacity and related costs for over 20 years. In an attempt to justify such a burdensome and unprecedented result, the Company proposed and the Commission accepted speculative commitments to (i) reduce excess capacity arising from the Precedent Agreement; and (ii) expand service to unserved and underserved areas of New Hampshire. Order at 11-13.

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<sup>11</sup> PLAN is aware of the Commission’s Order in *Pub. Serv. Co. of N.H.*, Order No. 25,174, which merely adopted the conclusion of an earlier decision (89 N.H. PUC 226, 230 (2004)) that “[i]n contrast to the results of any such negotiations, we can conceive of no circumstances in which we would deem information about the negotiations themselves admissible.” Order No. 25,174, at 18. Respectfully, PLAN contends that the Commission’s adoption of this rule, both in the general context of “public interest” determinations by the Commission, and in the specific circumstances of this case, is an error of law.

<sup>12</sup> The Commission has stated that “the process leading up to a proposed settlement is a relevant factor in determining whether the settlement should be approved.” *EnergyNorth Nat. Gas Inc.*, Order No. 25,202, 2011 N.H. PUC LEXIS 5, \*29 (Mar. 10, 2011). If the Commission believes that the “process leading up to” a proposed settlement is relevant in assessing whether a settlement agreement is in the public interest, the Commission equally should be interested in the negotiations that led to relevant facts in the Company’s analysis as filed.

The Order accepts EnergyNorth's unreasonable assumptions that it will grow into this excess capacity because of (i) growth in iNATGAS requirements; (ii) capacity-exempt customers transportation customers switching to capacity assigned service; and (iii) Concord Steam customers converting to natural gas. Order at 11. The Order assumes that growth in these areas will exceed 10,000 Dth/d over the next two years beginning July, 2015, an amount that exceeds EnergyNorth's projections of demand. *Id.* Thus, EnergyNorth's growth must exceed its own projections in order for it justify its (as filed) request of 115,000 Dth/d; if growth is less than assumed, EnergyNorth will reduce the amount of capacity under the Precedent Agreement from 115,000 Dth/d to 100,000 Dth/d. *Id.*

The Order essentially allows EnergyNorth to grow into the full amount of its originally proposed capacity requirement. As a further incentive, the Company has a growth incentive which provides a penalty if it fails to grow its customer base or its annual sales. *Id.* In addition, the penalty will no longer be applicable if the Company retires all non-pressure support propane facilities or meet other target related to customer growth. *Id.* at 14. The Commission also points to possible growth in other areas—projects in existing franchise areas and expanded territory including Keene, Bedford and Southwest New Hampshire communities along the route of the NED pipeline, as well as potential growth from a new lateral off the West Nashua city gate. Order at 15. The point is clear—the Precedent Agreement has so much excess capacity that the Company requires incentives and penalties in order to expand its growth to mitigate to some extent this excess capacity. Given the limited analyses undertaken by the Company as set forth in Section II a and b, it is mere speculation whether the Company will be able to mitigate the over capacity allowed by the Commission in this case.

The Commission justifies this unparalleled result by declaring it to be legally permissible, i.e. prudent, for a regulated entity to serve not only present demand but also “potential” future peak day requirements. However, EnergyNorth failed to demonstrate that entering into a long-term contract to meet potential customer requirements more than 20 years in the future, even if the Company’s forecasts are accepted, is necessary or consistent with the public interest. Moreover, as noted, there was no rigorous analysis of alternatives to serve this potential demand.

Significantly as well, the Commission did not consider the negative impacts of the Precedent Agreement on supply diversity and contract flexibility. Over-contracting for pipeline capacity can also create a disincentive to pursue demand side management. The implications of the Commission’s determination with respect to diversity, contract flexibility and demand-side management are inconsistent with the goals of New Hampshire’s State Energy Strategy. *See New Hampshire 10-Year State Energy Strategy*, N.H. Office of Energy & Planning (September 2014), at 25 (“[R]ecent changes to the State’s utility planning law now make clear that utilities must ‘maximize the use of cost effective energy efficiency and other demand side resources.’”) and 37 (“[T]here is a need for focused efforts to reduce New Hampshire’s vulnerability to price volatility and supply disruptions, and increase our flexibility and resiliency. Diversifying our fuel portfolio and increasing the use of in-state resources will be critical tools in achieving those goals, in combination with increased efficiency.”)

The Commission should reconsider its determination with respect to excess capacity and future growth in and out of EnergyNorth’s franchise area, and revise its order to exclude excess capacity from any additional capacity requirement assumed for NED.

**b. Propane**

In its decision, while the Commission noted that EnergyNorth did not propose the immediate retirement of most of its propane capacity outside of Keene (Order at 27), it nevertheless assumed that this “potential outcome” warranted consideration of additional capacity from the NED Project. There is no basis to assume on this record that the propane facilities would be retired (that is a future determination) and to conclude, assuming propane facilities are retired, that NED capacity would be a cost-effective and necessary replacement option. Both the retirement and the replacement options should be evaluated prior to approving surplus NED capacity as a cost-effective resource to replace propane.

Thus, the Commission erred by concluding that the contract level in the Precedent Agreement is reasonable if propane peaking is retired, even though EnergyNorth did not propose to retire any propane peaking, and no evidence was presented to show that retiring any of the propane plants is in the best interests of consumers. The fact that “this is a potential outcome of the next IRP” is not enough to justify this conclusion. The Commission should reconsider its determination with respect to propane facilities and revise its order to exclude capacity associated from the replacement of the propane facilities from any additional capacity requirement assumed for NED. Alternatively, the Commission should reopen the hearings to allow for submittal and examination of additional information about the replacement of propane facilities in this docket.

**c. Segmentation of the Market Path and Supply Path Projects**

The Order refers to NED as having “two separate projects, described as the ‘Supply Path’ and the ‘Market Path.’” *Id.*, p.4, n. 1. The projects are functionally and financially interrelated with Supply Path providing transportation capacity from Marcellus to Wright, NY and Market

Path (the noticed subject of this proceeding) providing transportation capacity from Wright, NY to Dracut, MA. *Id.*, *also*, at 17. The Company testified that the Market Path project is dependent upon and contingent upon the success of the Supply Path contracts and that it intends to file for Precedent Agreement approval in the future with respect to Supply Path. *See* Day 1 Tr., p. 182, l. 24 – p. 184, l. 12 (noting that “[i]t’s the assumption, but it’s also a requirement in the PA, that an infrastructure to transport gas from the Marcellus/Utica shale to Wright has to be built” and that “[w]e [EnergyNorth] would likely terminate [the PA], if no supply comes in at Wright”); Day 1 Tr., p. 188, ll. 13-15 (“You know, I would say, within the next month or so, we should have a final PA executed and ready to be filed.”); Day 2 Tr., p. 79, ll. 15-21 (“[W]e are in negotiations with Tennessee Supply Path, which would bring another Bcf or so of supply to Wright. And, so, that’s really the liquidity piece that we would be looking for. And, not just at Wright, but then diversifying, going all the way back to Marcellus as well through that Supply Path piece.”)<sup>13</sup> On its face, Market Path and Supply Path constitute one pipeline connected from Marcellus Shale to Dracut, MA. Indeed, TGP has pre-filed the Market Path and Supply Path components as a single project at FERC. *See TGP Request to Use Pre-Filing Procedures*, September 15, 2014, FERC Docket No. PF14-22 (at Accession No. 20140915-5200).

The Company unreasonably determined to segment this one pipeline project into two Precedent Agreement approval filings, thus understating the costs and risks to ratepayers of the Settlement and Precedent Agreement in this case, and the Commission erred in its consideration of Supply Path and Market Path as two separate projects. Accordingly, the Commission should reconsider its determination to accept the NED Precedent Agreement as filed in this case and,

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<sup>13</sup> The Commission was incorrect in suggesting in the Order that Supply Path “is another possible way” for the Company to get supply from Marcellus to Wright and “into the Precedent Agreement’s proposed NED Pipeline capacity.” Order at 17. In fact, Supply Path is the only path forward presented in this case to get supply from Marcellus to NED. *See* Day 1 Tr., p. 185, ll. 13-16 ((DaFonte) “The only negotiations that are currently active are negotiations with Tennessee for the Supply Path project, which accesses Marcellus/Utica shale directly.”)

instead, reject the filing with leave to re-file as a unified case to be included as part of the filing of the Company's Supply Path Precedent Agreement. At that time, the Commission will be able to evaluate the value, costs, and alternatives of the complete project.

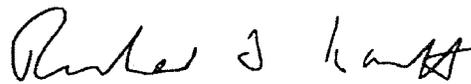
**WHEREFORE**, PLAN respectfully requests that the Commission:

- (A) open the proceeding for a rehearing on all matters identified herein;
- (B) reconsider the Commission's Order, by (i) specifically reviewing the Company's filing and testimony and (ii) applying the correct legal standards;
- (C) clarify where in the record the factual support exists for each of the Commission's conclusions; and
- (D) grant such other and further relief as the Commission deems just and equitable under the circumstances.

RESPECTFULLY SUBMITTED,

**Pipe Line Awareness Network for the  
Northeast, Inc.**

By its attorneys,



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Dated: November 2, 2015

Certificate of Service

I hereby certify that on November 2, 2015, pursuant to Puc 203.02 & 203.11, I served an electronic copy of this Motion on each person identified on the Commission's service list for this docket and with the Office of the Consumer Advocate, by delivering it to the email address specified on the Commission's service list for the docket.

A handwritten signature in cursive script, appearing to read "Richard J. Kanoff", written over a horizontal line.

Richard Kanoff

STATE OF NEW HAMPSHIRE

DG-14-380

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NHPUC NOV02'15 PM 4:13

November 2, 2015

Debra Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, New Hampshire 03301-7319

RE: DG 14-380 Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities  
Office of the Consumer Advocate Concurrence to Pipeline Awareness Network Motion for  
Rehearing, Reconsideration and Clarification

Dear Ms. Howland:

On November 2, 2015 the Pipeline Awareness Network (PLAN) timely filed a Motion for Rehearing, Reconsideration and Clarification (Rehearing Motion) in the above-captioned case. The Office of the Consumer Advocate (OCA) concurs with the Rehearing Motion.

Pursuant to RSA 363:28, the OCA represents the interests of residential utility consumers as an intervener in the above-captioned case. On May 1, 2015 the OCA filed written testimony. On July 21 and 22 and August 6, 2015 the OCA participated in the hearing on the merits and presented the witness testimony of Dr. Pradip K. Chattopadhyay. Dr. Chattopadhyay's testimony is consistent with the positions taken by PLAN in its Rehearing Motion.

In particular the OCA agrees that the Company failed to meet its burden of proof. The OCA testified that:

The crucial threshold question, as to what is the optimal capacity amount from NED [Northeast Direct Pipeline], requires a comparison of contracts with different levels of capacity for NED. At best, it appears that the Company's position is that a capacity procurement of 115,000 Dth per day from NED (with adjustment for elimination of existing contracts) is appropriate because that is the amount needed to ensure that the design-day requirement in 2038 is fully met by the incremental capacity being contracted with NED. I disagree that a capacity contract should be considered appropriate based on that characterization. What is appropriate is largely a question about costs to ratepayers. A careful analysis to determine the appropriate level of capacity to contract from NED, is essentially about determining what would be a reasonable cost exposure for ratepayers over

years into the future (say, twenty years). That analysis includes weighing all available alternatives, including consideration of a greater real-time market exposure, determining what level of capacity contract with NED reasonably minimizes the expected cost of procurement going forward, and reasonably aligning the burden and benefits to ratepayers across years.

OCA testimony (May 1, 2015) at 6.

Similarly, as the Company failed to adequately consider optimal levels of pipeline capacity, the Company also failed to consider alternative pipeline configurations and other fuel resources such as LNG. The OCA states:

The same conclusion as discussed above is also supported when one compares the net costs for NED with non-NED procurements. The recommended SENDOUT® runs for NED capacities in decrements of 5,000 Dth per day starting from 110,000 Dth per day (assuming that the existing Concord Lateral contracts are eliminated) will provide the data needed to more precisely determine the capacity level that reasonably minimizes net costs.

OCA testimony (May 1, 2015) at 17.

Such data runs were not conducted and therefore the crucial information was not developed. Regarding the Company's lack of analysis of the availability of LNG as a cost effective alternative to pipeline capacity, the OCA stated at hearing in response to a question from Company's counsel:

Q: ... In your opinion, would it be prudent for the Company to rely on the propane systems for the long term?

A: Based on your own – the Company's testimony, I mean at this point, it's not viable to get rid of it. In the long term, I haven't – again, it all depends on what further information you're going to provide...

Transcript, Day 3 (August 6, 2015) at 24.

Without the necessary factual analysis of the cost implications of propane supply, the Company failed to provide the factual support for its petition. Therefore the OCA requests the Commission grant the November 2, 2015 Rehearing Motion as filed by PLAN in the above-captioned docket.

Respectfully,



Susan W. Chamberlin  
Consumer Advocate

cc: Service list via electronic mail

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

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

DOCKET NO. DG 14-380

**OBJECTION TO PLAN MOTION FOR REHEARING, RECONSIDERATION,  
AND CLARIFICATION**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“EnergyNorth” or the “Company”), in accordance with Puc 203.07(f) and RSA 541:3, hereby objects to the motion for rehearing, reconsideration, and clarification filed by Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”). In support of this objection, the Company states as follows:

1. On November 2, 2015, PLAN filed its motion requesting that the Commission reopen this proceeding, take more evidence and then change its decision approving the Precedent Agreement and the Settlement Agreement between Staff of the Commission and the Company. PLAN claims that there are specific matters that the Commission “unreasonably overlooked, mistakenly conceived or unlawfully determined as well as new evidence that the Commission should consider.” PLAN Motion at 2. PLAN’s Motion is a twenty page restatement of all of the arguments that it previously made to the Commission, all of which were rejected.<sup>1</sup> That is not a basis for rehearing under RSA 541:3. PLAN further argues that there is “new evidence” about

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<sup>1</sup> On November 2, 2105, the Office of Consumer Advocate filed its concurrence with PLAN’s Motion. OCA’s letter suffers from the same infirmity as PLAN’s Motion – it is nothing more than a recitation of evidence it presented that was rejected by the Commission. OCA’s letter is also confused to the extent that it refers to the Company’s “lack of analysis of the availability of LNG as a cost effective alternative,” OCA letter at 2, and then points to a line of cross examination about the use of the Company’s *propane systems* as though that were in any way relevant to an analysis of LNG, an entirely different fuel.

the possibility of developing LNG facilities to serve the Company's customers, and that as a result, the matter should be reopened so that the siting of LNG can be considered as an alternative to the firm transportation capacity to be purchased through the Precedent Agreement. As explained in detail below, this is not "new evidence" and in fact is a red herring. The Commission should reject PLAN's Motion and allow Order 25,822 (the "Order") to stand.

2. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,239 (Jun. 23, 2011) at 8. PLAN's Motion is nothing more than an effort to rehash its prior arguments. All of the issues in PLAN's motion were thoroughly vetted at the hearing, as well as in briefs. The fact that the Commission reached a conclusion that PLAN opposes does not create a legal basis for rehearing.

**EnergyNorth Met Its Burden of Proof.**

3. PLAN's claim that EnergyNorth did not meet its burden of proof because "the filing lacks an adequately developed cost-benefit analysis of the Company's need for the Precedent Agreement and does not provide for any meaningful evaluation that the Precedent Agreement is a least-cost, or even best-cost option for ratepayers" is unsupported by the record. PLAN Motion at 3. The Company's need for the Precedent Agreement is based on its demand forecast which was part of the record in this case. That forecast demonstrated that the Company

would not have enough capacity to serve its customers in the future, with deficits ranging from 32,262 Dth/day in ten years up to a 62,486 Dth/day deficit in twenty years. Exhibit 3 at 16. Every single witness in this proceeding, including PLAN's own witness, agreed that the Company needed to contract for additional firm gas capacity to serve customers over the next ten years. Exhibit 12 at 6, lines 23-25; Tr. Day Three at 21; Exhibit 17 at 21, lines 13-14.<sup>2</sup> The testimony further demonstrated that the Company evaluated three options to meet this need, and that the Company selected the option that was \$537 million less than the next lowest cost option. Exhibit 3 at 35, lines 5-8. The Company presented additional evidence that the Precedent Agreement was the best option based on non-cost factors, such as reliability, flexibility, and viability, and that the tie into the western side of the Company's system presented unique benefits in the event that gas was constrained on the Concord Lateral. Exhibit 3 at 36-37; Exhibit 9 at 55. The Commission agreed with this assessment, holding that:

The amount of capacity provided by the Precedent Agreement, as modified by the Settlement, is consistent with EnergyNorth's last approved IRP. EnergyNorth used appropriate methodology in the 2013 IRP to project 90,000 Dth of pipeline capacity, and EnergyNorth's analysis supporting the Precedent Agreement built upon the IRP result to reflect growth in demand since the IRP. EnergyNorth appropriately included as post-IRP demand growth the demand associated with large capacity-exempt customers who have migrated from transportation-only service to sales service. No party disputed EnergyNorth's obligation to procure capacity for those customers, or the possibility that EnergyNorth's remaining capacity exempt load could also migrate back to firm sales.

Order at 26. PLAN's claim that rehearing is justified because EnergyNorth did not meet its burden of proof on these issues is plain wrong.

**Reliance on the Concord Lateral Upgrade Estimates Were Reasonable.**

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<sup>2</sup> If the Company's propane plants were retired, this would increase the need for capacity by 34,600 Dth/d. Exhibit 10 at 24.

4. PLAN also disagreed with the Commission's conclusion that upgrades to the Concord Lateral would be costly, claiming that the Commission's reliance upon cost estimates provided by Tennessee was "unreasonabl[e]." PLAN Motion at 13. If EnergyNorth wanted to procure additional capacity on that pipeline, it would have to pay Tennessee Gas Pipeline Company for those upgrades, as Tennessee Gas Pipeline is the owner and operator of the Concord Lateral. A third party's assessment of those costs would be irrelevant. It is what Tennessee Gas Pipeline would charge EnergyNorth – which is exactly what the evidence demonstrated – that would be at issue. There is nothing unreasonable about relying on estimates from the owner of the pipeline about what the owner would charge to have the pipeline upgraded. Further, the fact that the estimates were high level estimates does not constitute "good reason" for rehearing. What the estimates demonstrated was that the cost of upgrade to the Concord Lateral would be significant, and that as a result, the price of the competing pipeline projects, which were predicated on such upgrades, exceeded the cost of the Precedent Agreement by hundreds of millions of dollars. Tr. Day One at 210-213; Exhibit 33. As a result, the Commission was justified in its conclusion that the upgrades would be "costly." Order at 28.

**The Commission Did Not Act Unreasonably or Unlawfully When it Held that the Company Appropriately Planned for Its Future Needs by Securing Sufficient Long Term Supply Through the Precedent Agreement.**

5. PLAN further claims that the Commission committed legal error by approving the Precedent Agreement because it "allows EnergyNorth to grow into the full amount of its originally proposed capacity requirement." PLAN Motion at 17. This is not a legal issue that forms a basis for rehearing. It is a disagreement with the Commission's conclusion that "it is prudent and reasonable for an LDC when entering into a capacity agreement, to acquire the capacity necessary to serve not only current load but also future load." Order at 26. There can

be nothing more fundamental to the operation of a utility than insuring that it has sufficient capacity to serve its customers both today and into the future. The fact that PLAN holds a different view of resource procurement does not constitute requisite grounds for rehearing. Moreover, reliance on PLAN's view of appropriate capacity planning would result in chronic shortfalls in capacity, since an LDC could not add capacity instantaneously to match its load growth.

6. PLAN goes to great lengths in its Motion to argue that the Commission was unreasonable when it concluded that there were more benefits than costs associated with replacing the Company's existing 50,000 Dth/day of supply at Dracut, MA with the supply to be procured through the Precedent Agreement. PLAN acknowledges that the Commission cited at least four reasons in support of its conclusion, PLAN Motion at 5, but apparently disagrees vehemently with the Commission's analysis and conclusions. The Commission considered extensive amounts of evidence on the cost to procure and the availability of gas at Dracut, MA, the cost of upgrading the Concord Lateral, which would be necessary if the Company were to procure more gas at Dracut, MA, the reliability benefits that would be achieved by having a second feed into the Company's system, the opportunities for expansion of gas service in Southern New Hampshire, and the benefits associated with being able to tap into supply in the Marcellus Shale region, which has the lowest cost gas in the United States. The fact that PLAN wishes either the Company or the Commission performed a different analysis, comparing the cost of the existing 50,000 Dth/day at Dracut, MA to procuring 65,000 Dth/day from the NED pipeline (for which EnergyNorth had no price since it did not have a contract to procure that amount), does not make the Order unreasonable or unlawful.

7. Further, PLAN's request that the Commission reopen the hearings in this docket to consider additional information about the replacement of the Company's propane facilities is nothing more than an attempt to get a second bite at the apple. PLAN Motion at 19. There was significant testimony on the issue of the propane plants, including testimony that "given the age of the facilities, the propane plants are not a viable long-term solution." Exhibit 8 at 51. It was not unreasonable or unlawful for the Commission, as it considered how much capacity the Company should procure for the next twenty years, to consider the potential impact of the retirement of the plants. In addition, the Settlement Agreement specifically provides for future analysis of the potential retirement of certain of the Company's propane facilities as part of the Company's next Least Cost Integrated Resource Plan filing. Exhibit 14 at 6. PLAN would have both the Company and the Commission adopt a "wait and see" approach to gas supply planning, which hardly would be prudent.

**There is Ample Evidence in the Record to Support the Commission's Conclusion that LNG is Not a Viable Alternative to the Precedent Agreement.**

8. PLAN next claims that rehearing should be granted because the Commission committed legal error when it failed to require the Company to evaluate and consider LNG as a possible option to meet its capacity shortfall, as well as the Commission's conclusion that expansion of the Company's existing LNG facilities was not possible. PLAN casts this as a failed prudence review. As the Commission stated in the Order, the Company used an appropriate methodology in the last approved IRP to determine its need for capacity. Order at 26. Mr. DaFonte testified that the Company evaluated all of the pipeline projects that could meet this need. Exhibit 3 at 31. At the hearing, he presented uncontroverted testimony that "[t]he existing facilities, LNG facilities of the company, are in, for the most part, densely populated areas, and are grandfathered because of the fact that they're, you know, 30-40 years old. Any

expansion would bring them under the new regulations, which clearly would not allow the plants to function even as they function today.” Tr. Day 2 at 62-63. He further explained that the Company did not consider siting LNG because the site has to:

be somewhere near where the Company's largest consuming part of its service territory is, because there has to be takeaway capacity, in a sense. So, for example, you couldn't put it on the extremities of the distribution system because there would be no demand out in those locations. So, it has to be closer to the urban, if you will, urban setting. And, it would certainly have to be a large facility or multiple facilities to provide the same 115,000 Dekatherms per day of capacity.

Tr. Day 2 at 65-66. Based on this and other testimony, there is sufficient record evidence to support the Commission's conclusion that LNG is not a viable long term supply option to meet the Company's need for 115,000 Dth/day, which as described above, was based on a reasonable forecast using a Commission approved methodology.

9. PLAN further argues that there is “new evidence” that demonstrates that LNG is in fact a viable alternative to the capacity to be procured through the Precedent Agreement. PLAN Motion at 11-12. Specifically, PLAN claims that because the Company has stated that it does consider LNG an important part of its portfolio, and that it may use LNG or CNG on a temporary basis in Keene or that it has proposed to build an LNG and CNG facility in Lebanon proves that LNG could be a viable alternative to firm pipeline capacity for the Company's existing franchise area. PLAN paints this as a black and white conclusion: “either LNG is available to serve customers as claimed in the above dockets or it is not available as claimed in the instant case.” *Id.* at 12. This is not an “either or” proposition. The Company testified that it cannot expand its LNG facilities within its existing franchise area, which includes Nashua, Manchester and Concord, to meet its long term need for capacity. Mr. DaFonte explained that the LNG facilities would need to be close to where the LNG was being consumed. While it is possible for the Company to construct an LNG system in Lebanon to serve customers in

Lebanon and Hanover, that has no relevance to LNG service to customers in Nashua, Manchester or Concord. Further, the fact that the Company may consider using LNG to serve Keene for some period of time is nothing new. The Settlement Agreement in this case *requires* the Company to conduct an analysis in its next IRP on supply alternatives to service from a lateral pipeline. Exhibit 14 at 6.

10. PLAN further argues that “the Commission determined without analysis that the LNG global market is unstable and ‘may compromise the reliability of EnergyNorth’s service to customers at least-cost.’” PLAN Motion at 9. The Commission heard extensive testimony on the reduced production of LNG in Canada, the fact that Canadian utilities are now procuring natural gas from the United States instead of from Canadian producers, as well as testimony on the impact of global demand for LNG. Exhibit 9 at 38-39; Tr. Day 1 at 61-63. It was not unreasonable for the Commission to rely on this evidence in reaching its conclusion in this case. There is nothing new here, nor is there any “good reason” for rehearing.

**PLAN’s Arguments About the LDC Consortium, Affiliate Relationships and the Supply Path Precedent Agreement Are All Red Herrings.**

11. There is no basis for PLAN’s request for rehearing on the issue of information developed by the LDC Consortium. PLAN presents this as though it were a new issue, when in fact it was an issue addressed by the Commission in response to a PLAN Motion to Compel. In Order 25,789, the Commission held that PLAN was not entitled to take discovery on information relating to LDC negotiations over the Precedent Agreement. Order 25,789 at 3-5. The fact that the Commission denied cross examination on this issue does not constitute grounds for rehearing. Rather, the issue is *res judicata*, since PLAN did not move for rehearing on Order 25,789. Similarly, there is nothing new and no “good reason” for rehearing based on PLAN’s complaint about alleged affiliate issues in this docket. The Commission was clear that the

Company demonstrated not only the need for the Precedent Agreement but that the Agreement was both prudent and reasonable. Order at 30. The fact that the Commission reached that conclusion without addressing the affiliate issue is not legal error.

12. Finally, PLAN argues that the Commission committed legal error when it considered the Market Path Precedent Agreement in isolation from any Supply Path Precedent Agreement. It claims that this resulted in an understatement of the costs and risks. PLAN Motion at 20. If this were PLAN's position, PLAN should have moved to dismiss the Company's filing at the time it was made, and not raised the issue for the first time on rehearing. There is nothing new to justify rehearing, and there is no good reason that the Commission should now reject the filing of the Precedent Agreement. The Commission had every right to review and rule the contract that was put before it and was under no obligation to require the Company to file the two Precedent Agreements for omnibus consideration.

13. For these reasons, the Company requests that the Commission deny PLAN's Motion.

WHEREFORE, EnergyNorth respectfully requests that the Commission:

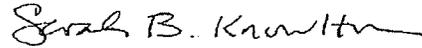
- A. Deny PLAN's Motion for Rehearing, Reconsideration and Clarification, and;
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

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

By Its Attorneys,

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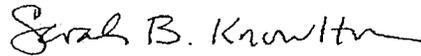


November 9, 2015

By: \_\_\_\_\_  
Sarah B. Knowlton, Esquire

Certificate of Service

I hereby certify that on November 9, 2015, a copy of this Objection to Motion for Rehearing, Reconsideration, and Clarification has been forwarded to the service list in this docket.



\_\_\_\_\_  
Sarah B. Knowlton

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DG 14-380

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

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

Order Denying Motion for Rehearing  
by Pipe Line Awareness Network for the Northeast, Inc.

ORDER NO. 25,845

December 2, 2015

In this order, we deny PLAN's motion for rehearing, reconsideration, and clarification of Order No. 25,822 (October 2, 2015), which approved a settlement and an amended agreement between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty and the Tennessee Gas Pipeline Company for the purchase of firm gas transportation.

**I. PROCEDURAL HISTORY**

On December 31, 2014, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth") filed a Petition for Approval of a Firm Transportation Agreement ("Precedent Agreement") with Tennessee Gas Pipeline Company, LLC ("TGP"). The Precedent Agreement is a 20-year contract between EnergyNorth and TGP for firm capacity on the proposed Northeast Energy Direct Market Path pipeline project ("NED Pipeline"). On June 26, 2015, Commission Staff ("Staff") filed a Stipulation and Settlement Agreement ("Settlement") between EnergyNorth and Staff. Following hearings and written submissions by the parties, the Commission issued Order No. 25,822, in which the Commission approved the Settlement and the Precedent Agreement as modified by the Settlement. *Liberty Utilities (EnergyNorth Natural*

*Gas) Corp.*, Order No. 25,822 (October 2, 2015) at 31 (the “Order”). Specifically, the Commission found that EnergyNorth’s acquisition of capacity from TGP was prudent and reasonable. *Id.*

On November 2, 2015, Richard M. Husband and the Pipe Line Awareness Network for the Northeast, Inc. (“PLAN”), each moved for rehearing of the Order,<sup>1</sup> and the Office of Consumer Advocate (“OCA”) filed its concurrence with PLAN’s motion. EnergyNorth filed timely objections to the two motions.

## II. COMMISSION ANALYSIS

We will grant rehearing when a party states good reason for such relief and demonstrates that a decision is unlawful or unreasonable. *See, e.g., Rural Telephone Companies*, Order No. 25,291 (Nov. 21, 2011) at 9. Good reason may be shown by identifying specific matters that were “overlooked or mistakenly conceived” by the deciding tribunal, *see Dumais v. State*, 118 N.H. 309, 311 (1978), or by identifying new evidence that could not have been presented in the underlying proceeding, *see O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977); *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25,088 (Apr. 2, 2010) at 14.

In this case, PLAN has not given us good reason to reconsider our Order. Although we find that each of PLAN’s arguments in its rehearing motion has been raised and considered we will address each argument briefly for clarity.

### A. Burden of Proof

PLAN argues that EnergyNorth failed to meet its burden of proof concerning whether it reasonably investigated and analyzed its long term supply requirements and alternatives for meeting those requirements. PLAN Motion at 2-3. PLAN claims that all experts in the case

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<sup>1</sup> In Order 25.843 (November 20, 2015), we denied Mr. Husband’s motion for rehearing.

“agreed that EnergyNorth failed to reasonably investigate its long-term supply requirement and undertake the rigorous review required for a commitment of this scope and size.” *Id.* at 3. PLAN states that EnergyNorth failed to develop an adequate cost-benefit analysis and did not demonstrate that “the Precedent Agreement is a least-cost, or even best-cost, option for ratepayers.” *Id.* PLAN argues that the Commission’s prudence determination should have been based on known facts and a complete record, but that in this case the record is inadequate and the Commission relied on future activities. PLAN also argues that the Commission erred in its prudence analysis of the Precedent Agreement.

According to EnergyNorth, the Company’s demand forecast established the need for the capacity procured through the Precedent Agreement, demonstrating capacity shortfalls of approximately 32,000 Decatherms per day (“Dth/day”) in 10 years and 62,000 Dth/day in 20 years. EnergyNorth Objection at 2-3. EnergyNorth points out that all witnesses in the case, including the PLAN witness, agreed that the Company will need additional capacity to serve customers over the next 10 years. EnergyNorth Objection at 3 (citing Exhibit 12 at 6, lines 23-25; Tr. Day 3 at 21; and Exhibit 17 at 21, lines 13-14). EnergyNorth relies on testimony concerning its evaluation of three options to meet future capacity needs and its conclusion that, of those three options, the Precedent Agreement was the least expensive by approximately \$537 million. EnergyNorth Objection at 3 (citing Exhibit 3 at 35, lines 5-8). Further, EnergyNorth points to evidence in the record that the Precedent Agreement provides non-price advantages over other options, including greater reliability, flexibility and viability. EnergyNorth Objection at 3 (citing Exhibit 3 at 36-37; Exhibit 9 at 55).

Although PLAN disagrees, the record, as well as our Order, demonstrates a more than sufficient basis for our findings. Order at 25-28. PLAN presented evidence in the form of cross

examination of EnergyNorth witnesses, and arguments in briefs concerning the adequacy of the Company's analysis of future capacity needs, as well as the cost and benefit analysis of the Precedent Agreement versus the other two pipeline projects. *See, e.g.*, PLAN Brief at 7 (urging the Commission to reject the Company's "deficient proposal" because it lacks "an adequately developed cost-benefit analysis ... and any meaningful evaluation that the Precedent Agreement is a least-cost ... option for ratepayers). In its presentation of the case, EnergyNorth described its process for forecasting its customer demand for natural gas and its analysis of various alternatives for meeting that demand. *See, e.g.*, Exhibit 4 at 8, lines 3-5 (the Company used a design day forecast process to project design day demand for the Precedent Agreement consistent with its last approved Integrated Resource Plan). The OCA agreed that EnergyNorth appropriately used the "resource mix methodology" to project demand in the 2013 IRP. Tr. Day 3 at 10, line 17 to 11, line 23.

Prudence determinations concerning utility investments are an integral part of the Commission's ratemaking process. There is no constitutional or statutory directive as to a specific ratemaking analysis. "It is a constant in the law of ratemaking that there is no single formulation sufficient to express constitutional, statutory, or judicially derived standards for determining rate base inclusion." *Appeal of Conservation Law Found.*, 127 N.H. 606, 637 (1986) (citing *Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 602 (1924)); *see also Appeal of Richards*, 134 N.H. 148, 164 (1991) (citing *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944)). The standards used by the Commission to determine rate base "are said to be flexible, *LUCC v. Public Serv. Co. of N.H.*, 119 N.H. 332, 343-344 (1979), and their application subject to 'pragmatic' adjustment, *New Eng. Tel. & Tel. Co. v. State*, 98 N.H. 211, 219 (1953)." *Appeal of Conservation Law Found.*, 127 N.H. at 637. The determination of

prudence requires “the exercise of judgment and discretion in determining the recognition that is appropriately due to the competing interests of the company and its investors and of the customers who must pay the rates to provide the revenue permitted.” *Appeal of Conservation Law Found.*, 127 N.H. at 638.

Our determination in this case that EnergyNorth’s contract with TGP for firm pipeline capacity is prudent necessarily involves considerable discretion in the factors weighed and analyzed. We found the record developed in this case sufficient to meet EnergyNorth’s burden in demonstrating that its entry into the Precedent Agreement, as modified by the Settlement, was prudent.

#### **B. Supply from Dracut**

PLAN contends that the Commission’s determination that the NED project was more cost effective than retaining existing capacity on the Concord Lateral was not supported by the record. PLAN Motion at 5-8. Instead, PLAN posits that the Commission should have analyzed keeping existing supply from Dracut, Massachusetts, over the Concord Lateral. *Id.*

EnergyNorth disagrees with PLAN’s assertion that replacing the 50,000 Dth/day supply at Dracut, Massachusetts, with supply from the Precedent Agreement was unreasonable. EnergyNorth Motion at 5. EnergyNorth argues that there was extensive evidence on the costs and benefits of the use of Dracut supply, and the fact that the Commission did not require the Company to perform, or did not itself perform, a different kind of analysis, does not make the Order unreasonable or unlawful. *Id.*

PLAN repeats its arguments concerning a lack of support for our finding that the Precedent Agreement was a cost effective substitute for the 50,000 Dth/day currently supplied through Dracut. PLAN brief at 2-3 and fn. 5 (replacement of Dracut capacity will cost customers

more); *id.* at 7-10 (the Company does not require replacement capacity on NED). They lacked merit before and they lack merit now. As discussed in the Order, we found the testimony supporting the price volatility at Dracut credible. Order at 27-28; *see, e.g.*, Tr. Day 1 at 66, lines 4-10 (NED avoids Dracut, described as “one of the highest price points in North America” for purchasing gas); Tr. Day 3 at 79, line 4 to 80, line 5 (PLAN witness agreed with EnergyNorth’s witness’s concern about price spikes at Dracut, stating “his point is certainly well taken that there’s been a great deal of price volatility in New England the last several winters”); *id.* at 82, lines 10-13 (PLAN’s witness testified the “issue with supply at Dracut, in particular, and New England more generally, is largely an issue of price”).

As PLAN noted in its motion, we also based our conclusions on other benefits of replacing the Dracut supply: (1) avoidance of supply constraints at Dracut, (2) increased reliability, (3) opportunity for a new lateral off West Nashua delivery point, and (4) avoidance of costly upgrades to the Concord Lateral. PLAN Motion at 3 (citing Order at 27-28). Based on the evidence presented, the alternate supply provided by the Precedent Agreement appears to be a less expensive source of supply compared with the alternatives. Hearing Tr. Day 1 at 57, lines 2-7, and 177, lines 10-14 (115,000 on NED, ensures long-term reliability of supply at least cost); Tr. Day 2 at 83, line 23, to 84, line 16 (NED project less expensive than alternatives even without costs of Concord Lateral expansion). Therefore, we reject PLAN’s argument that we erred in our findings about the replacement of the existing Dracut capacity.

### C. LNG to Meet Demand

PLAN argues that the Commission erred in not considering adding liquid natural gas (“LNG”) storage and vaporization to meet anticipated growth requirements. PLAN Motion

at 9-13. PLAN claims that the Commission's concerns about the unstable global market for LNG and reliability of supply were not a valid basis for not considering LNG as an alternative future supply for EnergyNorth. PLAN Motion at 9-10. Further, PLAN criticizes the Commission's reliance on EnergyNorth's testimony that safety regulations prevent the company from expanding its LNG facilities within its New Hampshire franchise area. PLAN Motion at 10. PLAN also relies on EnergyNorth's recent proposals to use LNG to supply customers in Lebanon, Keene, and southwestern New Hampshire, as a basis for claiming that the Commission improperly failed to consider LNG to supply EnergyNorth's future growth. PLAN Motion at 11-13. In its concurrence with PLAN's Motion, the OCA argues that EnergyNorth failed to thoroughly analyze the cost of LNG as an alternative to pipeline capacity.

EnergyNorth contends that the Commission and the Company did the appropriate analysis and considered appropriate alternatives and that LNG is not an appropriate alternative to meet the Company's need for 115,000 Dth/day. EnergyNorth maintains that the Commission heard "extensive testimony on the reduced production of LNG in Canada" as well as "the impact of global demand for LNG." EnergyNorth Objection at 8 (citing Exhibit 9 at 38-39; Tr. Day 1 at 61-63). EnergyNorth asserts that it was "not unreasonable for the Commission to rely on this evidence in reaching its conclusion in this case" and no "good reason" exists for rehearing. EnergyNorth Objection at 8.

In response to PLAN's argument regarding expansion of LNG facilities, the Company points to uncontroverted testimony that the LNG facilities, "are in, for the most part, densely populated areas, and are grandfathered because of the fact that they're ... 30-40 years old. Any expansion would bring them under the new regulation, which clearly would not allow the plants to function even as they function today." EnergyNorth Objection at 6-7 (citing Tr. Day 2

at 62-63). EnergyNorth asserts that any additional LNG would need to be located close to the urban areas of the system and that added LNG facilities would have to be very large to provide the additional capacity needed in the future. EnergyNorth Objection at 7 (citing Tr. Day 2 at 65-66). EnergyNorth thus claims that the record supports a finding that LNG is not a viable long term supply option to meet 115,000 Dth/day.

EnergyNorth also disputes PLAN's claim of "new evidence," that other pending proceedings demonstrate that LNG is a viable alternative to the Precedent Agreement. EnergyNorth Objection at 7-8. PLAN's argument relies on statements that the Company may use LNG or Compressed Natural Gas ("CNG") on a temporary basis in Keene, or that it plans on building an LNG or CNG facility in Lebanon. EnergyNorth Objection at 7. According to EnergyNorth, use of LNG to serve small outlying areas does not contradict the testimony concerning use of LNG to serve Nashua, Manchester, or Concord. EnergyNorth Objection at 7-8. Further, EnergyNorth asserts the evidence regarding LNG in Keene is not new. In fact the Settlement Agreement requires the Company to analyze supply alternatives to a lateral in the Keene area in its next LCIRP. EnergyNorth Objection at 8 citing Exhibit 14 at 6.

Although PLAN disputes our findings that LNG supply is unstable, both as to supply and pricing due to global demand, we found the evidence presented on the issue credible. Order at 29; *see also* Tr. Day 1 at 62, lines 16-21 (LNG is a global commodity that sells to the highest bidder); *id.* at 61, line 16 to 63, line 1, and at 88, lines 7-17 (offshore LNG supplies available at Dracut are declining, lack of LNG "liquidity" causes price spikes).

In addition, the Commission was not obliged to consider LNG as an alternative to pipeline capacity, and we disagree with PLAN and the OCA that our analysis was deficient or incorrect. Even if we had required consideration of LNG, the Company provided a sufficient

explanation to support a finding that expansion of its existing LNG peaking capacity or the development of new LNG peaking capacity within its franchise is not an available option to meet its long-term design day needs. *See, e.g.*, Tr. Day 2 at 62, line 1, to 63, line 9 (EnergyNorth did not consider expansion of its existing LNG peaking capacity because of federal requirements for “vapor dispersion of LNG facilities and thermal radiation zones” and the densely populated locations of the facilities); *id.* at 64, line 6; to 66, line 12 (EnergyNorth unaware of locations within its franchise to site a new LNG facility to meet long-term design day demand comparable to the Precedent Agreement capacity); *see also* Order at 8 and 29.

Lastly, we disagree with PLAN that its “new evidence” concerning EnergyNorth’s pending proposals to use CNG/LNG to serve small satellite systems “wholly contradict[s] EnergyNorth’s testimony in this case.” Motion at 12. The pending CNG/LNG dockets<sup>2</sup> do not compare to this docket. For example, the number of customers to be served in either of the satellite systems would be no more than a few thousand compared to the approximately 90,000 customers currently being served by EnergyNorth’s distribution system. The fact that EnergyNorth may propose the use of LNG to supply considerably smaller satellite systems, including Keene, does not undermine our finding that LNG is not a viable long-term substitute for capacity demand levels in the 100,000 Dth/day range. The record supports our finding that expansion of EnergyNorth’s LNG facilities does not provide an adequate resource for additional long-term capacity.

#### **D. Cost of Upgrades to Concord Lateral**

PLAN challenges our finding that the costs to upgrade the Concord Lateral are substantial and that other pipeline projects that supply through Dracut to the Concord Lateral are

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<sup>2</sup> DG 15-289 (Liberty request for a franchise to serve customers in Lebanon and Hanover); DG 15-442 (Liberty request for a franchise to serve customers in Jaffrey, Rindge, Swanzey and Winchester).

significantly more expensive than obtaining capacity through the Precedent Agreement. PLAN Motion at 13 (citing Order at 28). PLAN claims that the Commission erred in relying on TGP, the owner of the Concord Lateral, for estimated cost of upgrades to the Concord Lateral to increase capacity to meet EnergyNorth's projected needs. PLAN Motion at 13-14. According to PLAN, the estimates relied on a different route in some areas, and were merely estimates without sufficient work papers or supporting information. PLAN Motion at 13. Further, PLAN maintains that the Commission should have requested estimates to upgrade the Concord Lateral to increase capacity to levels well below 65,000 Dth/day.

EnergyNorth disagrees. EnergyNorth Objection at 3-4. The upgrade costs were provided by TGP, the owner and operator of the Concord Lateral, because TGP is the entity that would be responsible for having the pipeline upgraded. EnergyNorth Objection at 4. According to EnergyNorth, the upgrade cost estimates for the Concord Lateral demonstrated that the cost of the upgrade would be significant, and would cause the costs of purchasing capacity on one of the competing pipeline projects to exceed the cost of the Precedent Agreement by hundreds of millions of dollars. *Id.* (citing Tr. Day 1 at 210-213; Exhibit 33).

PLAN's objection to the Concord Lateral estimates is not a new argument. Tr. Day 3 at 83, line 9 to 84, line 18. We found those estimates to be sufficiently reliable as a cost comparison to other supply alternatives. Order at 28. The cost estimates for upgrades to the Concord Lateral were prepared by TGP, the owner and operator of the Concord Lateral. Tr. Day 1 at 210, line 8 to 211, line 13, and at 212, lines 18-22 (Company witness testifies about initial and updated cost estimates for the Concord Lateral upgrade); Tr. Day 2 at 83, line 23 to 84, line 16 (Company witness testifies that the updated cost estimate for Concord Lateral upgrades exceeds the costs of the NED project "all the way back to Marcellus"). The

fact that PLAN disagrees with our conclusion does not render the evidence on the issue insufficient.

#### **E. Demand Forecast**

PLAN argues that the Commission has allowed EnergyNorth to contract for excess capacity in reliance on speculative load growth. PLAN Motion at 16-18. In its concurrence with PLAN's Motion, the OCA points out that it had objected to EnergyNorth's lack of analysis of varying levels of capacity from the NED pipeline. According to the OCA, EnergyNorth's analysis should have included cost comparisons at decreasing levels of NED capacity in increments of 5,000 Dth/day.

EnergyNorth contends that it was entirely appropriate and prudent for the Company to plan for future demand growth. EnergyNorth Objection at 4-5. As a result, EnergyNorth argues that it was not error for the Commission to approve the Company's planning to ensure that it has sufficient capacity to serve its customers, both today and into the future. EnergyNorth Objection at 5.

We disagree with PLAN that the record does not support our finding that EnergyNorth should procure pipeline capacity to support future demand growth. We also disagree with the OCA that EnergyNorth should have analyzed multiple additional demand scenarios. Planning for future load growth is always a central component of utility planning and a demand forecast is the foundation for a utility least cost integrated resource plan. Order at 25-26. We found EnergyNorth's estimates of increased demand credible and consistent with its last filed 2013 LCIRP. Order at 25-27. There is ample support in the record for our findings on future demand growth. *See, e.g.*, Exhibit 8 at 26, lines 2-6 and fn. 33 (accelerated reverse migration has occurred for several years now and is likely to continue based on volatile natural gas pricing

arising from constrained pipeline capacity in New England); Tr. Day 1 at 52, lines 18-22 (since the filing of the Company's rebuttal, two or three additional capacity customers have returned to firm sales service and assigned capacity, with approximately a 200 Dth requirement on design day; the Company still has approximately 14,000 Dth of design day capacity-exempt load that could migrate back to sales service and capacity assignment); *id.* at 54, lines 2-9 (the Company is in discussion with Concord Steam customers who may become sales and capacity-assigned customers).<sup>3</sup> We acknowledge that EnergyNorth's growth projections may not end up being perfect, but they are far from speculative.

#### F. Propane Facilities

According to PLAN, the Commission mistakenly assumed retirement of most of the propane capacity outside of Keene. PLAN Motion at 19-21. PLAN claims that the record does not support such an assumption, and that the Commission erred in finding capacity would be needed to replace the propane facilities after retirement. PLAN Motion at 19. In its concurrence, the OCA contends that the Company failed to adequately explore the continued use of its propane system.

With regard to the potential retirement of the EnergyNorth propane facilities, EnergyNorth points to testimony that "given the age of the facilities, the propane plants are not a

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<sup>3</sup> See also Tr. Day 1 at 56, lines 7-12 (the Company's design day demand forecast in this case did not include demand associated with potential Concord Steam customers); *id.* at 72, line 7 to 75, line 24 (Company witness testifies about recent increased growth and Company efforts to accommodate growth); at 76, lines 1-7 (Company witness testifies that Settlement's growth requirements are achievable); at 76, line 18 to 77, line 13 (Company witness testifies about potential growth of "between 850,000 and 1.2 million Dekatherms annually" along the NED pipeline route); at 79, line 14 to 80, line 12 (Company will look at retiring propane plants if projected demand does not materialize, which reduces reserve capacity by approximately 34K Dth per day); and at 84, lines 2-16 (Company witness testifies that the Settlement is in the public interest and will allow the Company to continue "aggressive customer expansion"); Tr. Day 3 at 40, line 12 to 41, line 12, and at 64, line 22 to 65, line 13 (OCA witness testifies that the addition of post-IRP demand growth to the design day demand projected in the 2013 IRP exceeds 100K Dth per day, assuming the retirement of the Manchester and Nashua propane facilities); and at 65, line 14 to 67, line 1 (OCA witness testifies that the addition of 34K, representing the capacity of some of the Company's aging propane facilities, to the OCA's incremental capacity recommendation for NED exceeds the 100K and 115K of NED capacity contracted for in the Precedent Agreement).

viable long-term solution.” EnergyNorth Objection at 6 (citing Exhibit 8 at 51). Further, the Company argues that the Settlement provides for future analysis of the retirement of the propane facilities as a part of the Company’s next least cost integrated resource plan. EnergyNorth Objection at 6 (citing Exhibit 14 at 6). EnergyNorth asserts that it was reasonable for the Commission to consider the possible retirement of the propane facilities during the next twenty years as part of the Company’s supply planning. EnergyNorth Objection at 6.

We find that the record supports our assumption that the Company’s propane facilities are not a long-term supply option and that, due to their age, they will likely be retired during the term of the Precedent Agreement. Order at 27. The Settlement requires the Company to analyze the retirement of the propane facilities in the next LCIRP, and the record supports consideration of retirement in the future. Tr. Day 1 at 57, lines 10-13 (“the Company believes that its existing propane facilities are not a viable long-term solution, and would not ultimately be part of the Company’s portfolio”); *id.* at 79, lines 11 to 14, and 80 lines 9-12 (Company witness confirms that continued applicability of growth requirements and financial penalties is tied to retirement of certain propane facilities; Company can avoid Settlement disallowances by retiring certain propane plants); *id.* at 174, lines 14-19 (Company witness testifies about Company’s intention to evaluate the cost effectiveness of its propane plants and that the plants are “not long-term, viable supply alternatives within the portfolio”). Consequently, we reject PLAN’s contention that we erred in considering the retirement of the propane plants.

#### **G. Affiliate Relationship between EnergyNorth and Algonquin**

PLAN asserts that the Commission failed to consider the affiliate relationship between Algonquin and EnergyNorth. PLAN Motion at 14-15. According to PLAN, it is well recognized that affiliate transactions are not arm’s length and may not be just and reasonable. PLAN

Motion at 14. PLAN claims that testimony from EnergyNorth witness DaFonte should have prompted the Commission to examine the affiliate relationship further. PLAN Motion at 15.

EnergyNorth argues that there is no good reason for the Commission to reconsider its rulings on affiliate issues, because the Commission has already found the Precedent Agreement both prudent and reasonable without reaching those affiliate issues. EnergyNorth Objection at 8-9.

PLAN's motion to compel raised issues about EnergyNorth's affiliate relationship with Algonquin and the record confirms the existence of that affiliate relationship. Nonetheless, the testimony referenced by PLAN describes the affiliate relationships, but does not evidence any communications between or among the various affiliates. Tr. Day 2 at 14, line 11 to 17, line 6. Thus any claim of bias or collusion is purely speculative. Tr. Day 2 at 21, lines 4-12, and 22, line 9 to 34, line 17. We have found, based on extensive evidence, that the terms of the Precedent Agreement as amended by the Settlement are reasonable. Order at 25. Having found the terms reasonable, and absent any evidence of collusion, we need not delve further into PLAN's claim that the affiliate relationship tainted the negotiation process. Order at 30.

#### **H. LDC Consortium Negotiations**

PLAN claims that the Commission erred when it failed to allow discovery of the discussions and analysis among the members of the consortium of local distribution companies ("LDCs") that negotiated the terms of the Precedent Agreement. PLAN Motion at 15-16. According to PLAN, the consortium, of which EnergyNorth is a member provided an analysis that the terms of the Precedent Agreement were favorable. PLAN Motion at 15. Without access to those discussions and that analysis, PLAN claims that a basis for EnergyNorth's decision to enter into the Precedent Agreement cannot be adequately probed. PLAN Motion at 15-16.

EnergyNorth claims that PLAN cannot seek rehearing on the issue of information concerning the negotiations among the LDC consortium members because the Commission already denied this request in Order No. 25,789 (June 5, 2015). EnergyNorth argues that the issue is *res judicata*, and it urges the Commission to reject PLAN's request for rehearing on that ground.

We disagree with PLAN that it was error for us to deny cross-examination about the analysis and discussions among the LDC Consortium members. Order 25,789 (June 5, 2015) at 3-5. Without evidence of the negotiations, the record supported the Company's assertion that the Precedent Agreement provided lower cost supply than other alternatives analyzed. Order at 31. The Commission is free to consider the terms of the contract resulting from the negotiations and to analyze whether its terms are reasonable and prudent. As noted herein, there was ample evidence presented on the terms of the Precedent Agreement to support the Commission's determinations. Consequently, it was not legal error to ignore the negotiations leading to those contract terms.

Because we reject the substance of PLAN's argument regarding the LDC Consortium, we do not need to consider EnergyNorth's argument that PLAN was required to seek rehearing or reconsideration of Order 25,789 to preserve its right to pursue this particular issue.

#### **I. Supply Path Project**

PLAN also suggests that the Commission should have required the Supply Path project, which will carry Marcellus gas to Wright, New York, to be heard with the Market Path, the pipeline carrying Marcellus gas from Wright to New Hampshire, the capacity considered in this docket. PLAN Motion at 19-21. PLAN claims that the Market Path is contingent and dependent upon the Supply Path being developed. *Id.* As a result, PLAN urges the Commission to reject

the Precedent Agreement and require contracts for capacity on the Market Path and the Supply Path to be considered as a unified case. PLAN Motion at 20-21.

EnergyNorth asserts that the Commission was not required to hear the Precedent Agreement, dealing with the Market Path supply, together with any Supply Path agreement. EnergyNorth Objection at 9. EnergyNorth points out that PLAN raises this argument for the first time in its motion on rehearing and should have raised it earlier in the proceeding. *Id.*

We agree with EnergyNorth that PLAN may not raise this issue for the first time in motion for rehearing. EnergyNorth first mentioned the Supply Path as a way of accessing, through the Market Path capacity, supply directly from Marcellus. DaFonte Direct at 25, lines 6-11. The Company's witness testified about the Supply Path project and its relationship with the Market Path project at the hearing. Tr. Day 1 at 65- 66. Nevertheless, PLAN did not advocate combining our review of the Market Path capacity with our review of a future precedent agreement for capacity on the Supply Path project.

Assuming PLAN has the right to raise this issue, we disagree with PLAN that it was an error not to require the Supply Path Project contract and the Market Path Project contract, the Precedent Agreement, to be heard together. The record supports our conclusion that we can review the Precedent Agreement as a stand-alone arrangement. *See, e.g.*, Tr. Day 1 at 65, line 17 to 66, line 24 (Company witness testifies about NED Supply Path project and that the Precedent Agreement stands alone as a cost-effective alternative). Also, if supply at Wright is not sufficiently liquid, EnergyNorth can terminate the Precedent Agreement. Tr. Day 1 at 67, lines 1-8. We found testimony concerning liquidity of supply at Wright to be credible and have approved the Precedent Agreement on that record. Order at 28. *See, e.g.*, Tr. Day 1 at 182, line 12 to 184, line 23 (testimony concerning pricing and availability of supply at Wright); at 185,

lines 13-16 (EnergyNorth negotiating for firm supply at Wright); at 186, line 16 to 187 line 7 (several suppliers at Wright other than NED Supply Path); at 193, lines 15-24 (new pipelines expected to create a "market" at Wright); Tr. Day 2 at 77, line 5 to 80, line 19 (basis for EnergyNorth's expectations of sufficient liquidity at Wright); and Tr. Day 3 at 93, line 20 to 95, line 11 (between 600 and a million Dth of new pipeline capacity being built to Wright versus "several hundred thousand" of new capacity being built to Dracut).

### III. CONCLUSION

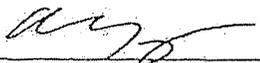
As explained above, none of the issues raised by PLAN is grounds for us to rehear or reconsider Order No. 25,822. PLAN's arguments were either dealt with in the Order, or are new and insufficient to justify the relief requested.

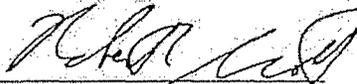
**Based upon the foregoing, it is hereby**

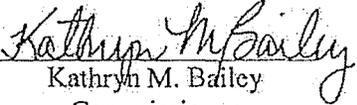
**ORDERED**, that the motion for rehearing is **DENIED**.

By order of the Public Utilities Commission of New Hampshire this second day of

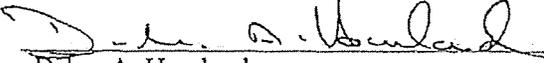
December, 2015.

  
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Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Robert R. Scott  
Commissioner

  
\_\_\_\_\_  
Kathryn M. Bailey  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director

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**Smith, Kim**

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**Subject:** DG 14-380, Liberty Utilities (ENGI) Corp. d/b/a Liberty Utilities - Order Issued  
**Attachments:** 25-845.pdf

An Order was issued today in Docket No. DG 14-380, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, Petition for Approval of a Firm Transportation Agreement with the Tennessee Gas Pipeline Company, LLC. It is an Order Denying Motion for Rehearing by Pipe Line Awareness Network for the Northeast, Inc.

A copy of Order No. 25,845 is attached.

Kim Smith  
NHPUC  
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Concord, NH 03301  
603-271-2436

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## **RSA 363:17-a (2015)**

### **363:17-a. Commission as Arbitrator.**

The commission shall be the arbitrator between the interests of the customer and the interests of the regulated utilities as provided by this title and all powers and duties provided to the commission by RSA 363 or any other provisions of this title shall be exercised in a manner consistent with the provisions of this section.

## **RSA 363:17-b (2015)**

### **363:17-b. Final Orders.**

The commission shall issue a final order on all matters presented to it. The transcript or minutes of oral deliberations shall not constitute a final order. A final order shall include, but not be limited to:

- I. The identity of all parties;
- II. The positions of each party on each issue;
- III. A decision on each issue including the reasoning behind the decision; and
- IV. The concurrence or dissent of each commissioner participating in the decision.

## **RSA 374:1 (2015)**

### **374:1. Service.**

Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.

## **RSA 374:2 (2015)**

### **374:2. Charges.**

All charges made or demanded by any public utility for any service rendered by it or to be rendered in connection therewith, shall be just and reasonable and not more than is allowed by law or by order of the public utilities commission. Every charge that is unjust or unreasonable, or in excess of that allowed by law or by order of the commission, is prohibited.

## **RSA 374:4 (2015)**

### **374:4. Duty to Keep Informed.**

The commission shall have power, and it shall be its duty, to keep informed as to all public utilities in the state, their capitalization, franchises and the manner in which the lines and property controlled or operated by them are managed and operated, not only with respect to the safety, adequacy and accommodation offered by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements.

## **RSA 374:7 (2015)**

### **374:7. Investigation of Other Utilities; Orders.**

The commission shall have power to investigate and ascertain, from time to time, the quality of gas supplied by public utilities and the methods employed by public utilities in manufacturing, transmitting or supplying gas or electricity for light, heat or power, or in transmitting telephone and telegraph messages, or supplying water, and, after notice and hearing thereon, shall have power to order all reasonable and just improvements and extensions in service or methods.

## **RSA 378:7 (2015)**

### **378:7. Fixing of Rates by Commission.**

Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed. The commission shall be under no obligation to investigate any rate matter which it has investigated within a period of 2 years, but may do so within said period at its discretion.

## **RSA 541:3 (2015)**

### **541:3. Motion for Rehearing.**

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

## **RSA 541:13 (2015)**

### **541:13. Burden of Proof.**

Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.

# RSA 541-A:35 (2015)

## 541-A:35. Decisions and Orders.

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed promptly to each party and to a party's recognized representative.

## ***Puc 202.01, Requests for Commission Determinations***

(a) Except as provided in (b) through (m) below, any person seeking the action of the Commission shall do so by submitting a petition pursuant to Puc 203.

(b) A person seeking to implement or amend a tariff or special contract pursuant to RSA 378 shall make the appropriate filing required by Puc 1600.

(c) A person seeking authorization of a corporate transaction pursuant to RSA 369:8, II shall file an application that includes a copy of the document memorializing the transaction and the detailed representation concerning the effects of the transaction as set forth in the statute.

(d) Except in connection with an adjudicative proceeding, a person seeking waiver of a commission rule pursuant to Puc 201.05 shall do so by filing a letter with the executive director requesting the waiver.

(e) A person seeking the adoption, amendment or repeal of a commission rule shall do so by complying with Puc 205.03.

(f) A person seeking to make a formal complaint against an entity over which the commission has jurisdiction shall do so by complying with Puc 204.

(g) A person seeking to register as a competitive electric power supplier or aggregator shall do so by complying with Puc 2003.

(h) A person seeking to register as a competitive natural gas supplier or aggregator shall do so by complying with Puc 3003.

(i) A person seeking to be authorized to provide voice service as an excepted local exchange carrier (ELEC) shall do so by complying with Puc 404.02.

(j) A person seeking to register as a telecommunications carrier shall do so by complying with Puc 413.

(k) A person seeking a certificate of compliance with the design requirements of the Code for Energy Conservation in New Building Construction shall do so by complying with Puc 1804.

(l) A person seeking a certification that a building as constructed complies with the Code for Energy Conservation in New Building Construction shall do so by complying with Puc 1805.01.

(m) A utility filing a compliance plan, amendment to a compliance plan or notification related to affiliates or affiliate transactions shall do so by complying with Puc 2100.

(n) A person seeking certification of a renewable energy source shall do so by complying with Puc 2500.

## Puc 203.05, *Pleadings*

Puc 203.05 Pleadings.

(a) All petitions and motions shall include the following:

- (1) A cover page identifying the name of the utility and the subject matter of the motion or petition;
- (2) A clear and concise statement of the authorization or other relief sought;
- (3) The statutory provision or legal precedent under which the authority or other relief is sought;
- (4) The legal name of each person seeking the authorization or relief and the address or principal place of business of such person;
- (5) The electronic mail address of the person making the filing or a statement that the person making the filing is unable to receive electronic mail;
- (6) A concise and explicit statement of the facts upon which the commission should rely in granting authorization or relief; and
- (7) Such other data as the petitioner considers relevant to the request for authority or relief.

## **Puc 203.12(a), *Notice of Adjudicative Proceeding***

Puc 203.12 Notice of Adjudicative Proceeding.

(a) The commission shall give notice of a pre-hearing conference, or of a hearing in a case for which no pre-hearing conference has been scheduled, which shall contain the information required by RSA 541- A:31, III, namely:

- (1) A statement of the date, time, place and nature of the hearing;
- (2) A statement of the legal authority under which the hearing is to be held;
- (3) A reference to the particular statutes and rules involved, including this chapter;
- (4) A short and plain statement of the issues presented; and
- (5) A statement that each party has the right to have an attorney represent them at the party's own expense.

## **Puc 203.20, *Settlement and Stipulation of Facts***

Puc 203.20 Settlement and Stipulation of Facts.

- (a) All participants in settlement conferences shall treat discussions at settlement conferences as confidential and shall not disclose the contents of such discussions to third parties or seek to introduce them into evidence.
- (b) The commission shall approve a disposition of any contested case by stipulation, settlement, consent order or default, if it determines that the result is just and reasonable and serves the public interest.
- (c) The parties to any proceeding before the commission shall, by stipulation in writing filed with the commission or entered in the record at the hearing, agree upon the facts or any portion thereof involved in the hearing when such facts are not in dispute among the parties.
- (d) If a stipulation is filed and is not contested by any party, the stipulation shall bind the commission as to the facts in question, and the commission shall consider the stipulation as evidence in the decision of the matter.
- e) Settlements and stipulations shall be filed no less than 5 days prior to the hearing, except as provided in (f).
- (f) The commission shall accept late-filed stipulations and settlements when such acceptance:
  - (1) Promotes the orderly and efficient conduct of the proceeding; and
  - (2) Will not impair the rights of any party to the proceeding.

## **Puc 203.25, *Burden of Proof***

Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence.

## 49 C.F.R. § 193.2051

### Scope

Each LNG facility designed, constructed, replaced, relocated or significantly altered after March 31, 2000 must be provided with siting requirements in accordance with the requirements of this part and of NFPA-59A-2001 (incorporated by reference, see § 193.2013). In the event of a conflict between this part and NFPA-59A-2001, this part prevails.

## 49 C.F.R. § 193.2057

### Thermal Radiation Protection

Each LNG container and LNG transfer system must have a thermal exclusion zone in accordance with section 2.2.3.2 of NFPA-59A-2001 (incorporated by reference, see § 193.2013) with the following exceptions:

- (a) The thermal radiation distances must be calculated using Gas Technology Institute's (GTI) report or computer model GTI-04/0032 LNGFIRE3: A Thermal Radiation Model for LNG Fires (incorporated by reference, See § 193.2013). The use of other alternate models which take into account the same physical factors and have been validated by experimental test data may be permitted subject to the Administrator's approval.
- (b) In calculating exclusion distances, the wind speed producing the maximum exclusion distances shall be used except for wind speeds that occur less than 5 percent of the time based on recorded data for the area.
- (c) In calculating exclusion distances, the ambient temperature and relative humidity that produce the maximum exclusion distances shall be used except for values that occur less than five percent of the time based on recorded data for the area.

## 49 C.F.R. § 193.2059

Flammable vapor-gas dispersion protection.

Each LNG container and LNG transfer system must have a dispersion exclusion zone in accordance with sections 2.2.3.3 and 2.2.3.4 of NFPA-59A-2001 (incorporated by reference, see § 193.2013) with the following exceptions: (a) Flammable vapor-gas dispersion distances must be determined in accordance with the model described in the GTI-04/0049, "LNG Vapor Dispersion Prediction with the DEGADIS 2.1 Dense Gas Dispersion Model" (incorporated by reference, See § 193.2013). Alternatively, in order to account for additional cloud dilution which may be caused by the complex flow patterns induced by tank and dike structure, dispersion distances may be calculated in accordance with the model described in the Gas Research Institute report GRI-96/0396.5 (incorporated by reference, see § 193.2013), "Evaluation of Mitigation Methods for Accidental LNG Releases. Volume 5: Using FEM3A for LNG Accident Consequence Analyses". The use of alternate models which take into account the same physical factors and have been validated by experimental test data shall be permitted, subject to the Administrator's approval.

(b) The following dispersion parameters must be used in computing dispersion distances:

(1) Average gas concentration in air = 2.5 percent.

(2) Dispersion conditions are a combination of those which result in longer predicted downwind dispersion distances than other weather conditions at the site at least 90 percent of the time, based on figures maintained by National Weather Service of the U.S. Department of Commerce, or as an alternative where the model used gives longer distances at lower wind speeds, Atmospheric Stability (Pasquill Class) F, wind speed = 4.5 miles per hour (2.01 meters/sec) at reference height of 10 meters, relative humidity = 50.0 percent, and atmospheric temperature = average in the region.

(3) The elevation for contour (receptor) output  $H = 0.5$  meters.

(4) A surface roughness factor of 0.03 meters shall be used. Higher values for the roughness factor may be used if it can be shown that the terrain both upwind and downwind of the vapor cloud has dense vegetation and that the vapor cloud height is more than ten times the height of the obstacles encountered by the vapor cloud.

(c) The design spill shall be determined in accordance with section 2.2.3.5 of NFPA-59A-2001 (incorporated by reference, see § 193.2013).

# 75 FR 48593, 48594, 48597

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**SUMMARY:** PHMSA is amending the Federal pipeline safety regulations to incorporate by reference all or parts of 40 new editions of voluntary consensus technical standards. This action allows pipeline operators to use current technologies, improved materials, and updated industry and management practices. Additionally, PHMSA is clarifying certain regulatory provisions and making several editorial corrections. These amendments do not require pipeline operators to take on any significant new pipeline safety initiatives.

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## V. Summary of Final Rule

This final rule accepts the following updated editions of technical standards in parts 192, 193, 195. PHMSA is also amending titles, dates, and references as applicable. Before describing each newly incorporated standard, PHMSA is providing additional information regarding the partial incorporation of NFPA 59A and the full incorporation of several API standards.

PHMSA will incorporate only those sections of NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" (2006 edition) relating to ultrasonic inspection and seismic design requirements. PHMSA believes the NFPA 59A committee needs to reconcile differences relating to dispersion analyses for vapor releases from process and safety equipment; containers with liquid penetrations at grade; design spill cases for full and double containment containers; standards for impoundment sizing for snow accumulation, severe weather, emergency depressurization, and fuel bunkering. Therefore, except for specified sections in the 2006 edition mentioned above, PHMSA will continue to reference NFPA 59A (2001 edition).

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## N.H. Constitution, Article 12

[Art.] 12. [Protection and Taxation Reciprocal.] Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

[Art.] 12-a. [Power to Take Property Limited.] No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.

## N.H. Constitution, Article 14

[Art.] 14. [Legal Remedies to be Free, Complete, and Prompt.] Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

## N.H. Constitution, Article 15

[Art.] 15. [Right of Accused.] No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

## **N.H. Constitution, Article 38**

[Art.] 38. [Social Virtues Inculcated.] A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives, and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government.

## **U.S. Constitution, Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## **U.S. Constitution, Fourteenth Amendment, Section 1**

Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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