

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

November 18, 2020 - 3:07 p.m.

DAY 3
[SESSION 2 of 2]

[Remote Hearing conducted via Webex]

RE: **LIBERTY UTILITIES (ENERGYNORTH
NATURAL GAS) CORP. d/b/a LIBERTY
UTILITIES - KEENE DIVISION:
Winter 2020-2021 Cost of Gas.**

PRESENT: Chairwoman Dianne Martin, Presiding
Cmsr. Kathryn M. Bailey

Jody Carmody, Clerk
Eric Wind, PUC Remote Hearing Host

APPEARANCES: **Reptg. Liberty Utilities (EnergyNorth
Natural Gas) Corp. d/b/a Liberty
Utilities - Keene Division:**
Michael J. Sheehan, Esq.

Reptg. Residential Ratepayers:
Christa B. Shute, Esq.
Office of Consumer Advocate

Reptg. PUC Staff:
Mary E. Schwarzer, Esq.

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

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

2 *(Recess taken at 2:57 p.m. and the*
3 *hearing resumed at 3:07 p.m.)*

4 CHAIRWOMAN MARTIN: Thank you. Let's
5 go back on the record. And I did want to say
6 that I have a hard stop at about five minutes of
7 5:00 this afternoon.

8 Go ahead, Ms. Schwarzer.

9 MS. SCHWARZER: Could Ms. Robidas just
10 tell me what the last question and answer was?

11 Oh, I'm sorry.

12 MR. PATNAUDE: She is no longer in the
13 building.

14 MS. SCHWARZER: No worries. All right.
15 Well, we'll just take it from there then.

16 MR. SHEEHAN: Mary, I can offer that
17 you were changing topics, which is why I think
18 the Chair took the break.

19 MS. SCHWARZER: Great. Thank you.
20 Okay. So -- sorry, I'm on the wrong page. Be
21 right there.

22 BY MS. SCHWARZER:

23 Q Okay. So, Mr. Mullen, your testimony, at Page 18
24 and 19, you make a statement that the Company has

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1 requested and received approval of the CNG supply
2 contracts in past cost of gas proceedings.

3 Correct?

4 A Correct.

5 Q And it's your position not just that prospective
6 rates were approved, but you're literally
7 asserting that a prudence approval was implicit
8 in that process. Is that correct?

9 A Hold on. I'm reviewing my exact words. I'm
10 saying "the contract was already approved."

11 Q Well, when you say "approved", do you mean "found
12 prudent by implication" or just that "proposed
13 rates were acceptable"?

14 A Proposed rates were just and reasonable, and that
15 included the CNG costs.

16 Q And, so, implicitly, because the rates were just
17 and reasonable, it's your position that the
18 contract was also deemed prudent?

19 A Correct.

20 Q Okay. And you go on to say that the Commission
21 has not merely approved, but also implicitly
22 found prudent two contracts referenced in Order
23 26,409, in Docket 17-198. And I don't think you
24 used the words "implicitly found prudent", but

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1 you say, in your direct testimony, that the
2 Commission approved the rates, and therefore
3 approved the contracts. And you made reference
4 to that earlier with Ms. Shute, correct?

5 A Correct.

6 Q Okay. And the two contracts that you're
7 referring to from DG 18-137 are a PNGTS agreement
8 and an ENGIE supply contract?

9 A Those, to correct the record, those are from DG
10 17-198.

11 Q I'm sorry, DG 17-198. And, before we discuss
12 those particular contracts, I do want to ask you,
13 assuming you generally read cost of gas orders,
14 is that -- you generally read them?

15 A Yes.

16 Q Okay. And there's pretty standard language in
17 them, that says that the purpose of the cost of
18 gas adjustment mechanism is that it's a "way to
19 pass onto consumers increases and decreases in
20 energy supply costs quickly, without having to go
21 through extended proceedings to change delivery
22 rates." And then, further, that cost of gas
23 mechanism is appropriate "in instances where a
24 company has little control over the price of its

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1 supply fuels." Would you agree with me?

2 A I'll take that subject to check.

3 Q Okay. And the cost -- to approve a brand new CNG
4 supply-and-demand contract, in an instance where
5 the Company has control over significant terms,
6 is somewhat at odds with the purpose of the cost
7 of gas mechanism, isn't it?

8 A No.

9 Q Would you explain why not?

10 A Because we enter into all sorts of different
11 supply contracts, and, you know, this is really
12 no different than how we -- we don't submit every
13 single supply contract for specific approval. We
14 put the costs in associated with those contracts,
15 and this is really no different.

16 The two contracts from 17-198 were not
17 submitted in those cost of gas proceedings. The
18 costs associated with those contracts were. So,
19 it's the same sort of circumstance.

20 Q Well, the contracts in 17-198 were standard
21 pipeline contracts, with very basic terms and no
22 surprises, isn't that correct?

23 A Well, I believe one of them is a 20-year contract
24 on an expansion of the Portland Natural Gas

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1 Transmission system. So, I wouldn't say that
2 that's standard. And the other one -- so, I
3 mean, we're talking about a capacity contract and
4 a supply contract. So, I don't know what your
5 definition of "standard contract" is, but each
6 one of those would have its own specific terms
7 and conditions, which is really no different than
8 the CNG contract here.

9 Q Well, let's go back to that phrase I just read to
10 you.

11 In instances where a company has little
12 control over the price of its supply fuels. So,
13 do you think, in a pipeline supply contract, the
14 Company has little control over the price of its
15 supply fuels?

16 A That's all subject to negotiation.

17 Q Okay. But, if I give you the "subject to
18 negotiation", would you agree that the
19 marketplace dictates fuel supply costs?

20 A I would say the suppliers do.

21 Q So, you don't see any distinction between a first
22 instance CNG supply-and-demand contract
23 separating demand charges for a period of 26
24 months from supply, and the two contracts that

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1 are referenced in here for the Granite Bridge?

2 A I don't. Those are also -- I would refer to
3 those as "first instance" type of contracts, too.
4 They had different --

5 Q Because it's a -- go ahead.

6 A Because they -- the nature of those contracts
7 were different -- different circumstances than
8 what had existed. You know, these aren't
9 off-the-shelf type of contracts.

10 Q But it's because of the duration, correct, the
11 20 years?

12 A It's because of -- it's because of all the terms
13 and conditions associated with those two
14 different contracts. One's a capacity contract,
15 one's a supply contract, of different durations,
16 different circumstances, different quantities.
17 There's a lot that goes into them.

18 Q Would you agree that, with regard to the CNG
19 supply contract, Liberty had control over the
20 price of its fuel supplies?

21 A You know, we went out to RFP. And then, as a
22 result of the responses to that RFP, we picked
23 the best cost solution.

24 Q Well, "best cost solution" and "least cost

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1 solution" aren't always the same thing, are they?

2 A There's a lot that goes into "least cost" and
3 there's a lot that goes into "best cost". So,
4 they can be the same, but they are not always the
5 same.

6 Q Well, can you explain? When are they different?

7 A Again, that goes to the different types. I mean,
8 if you're talking "least cost", "least cost"
9 takes into -- it's a little -- you know, if you
10 look at the statutory version of "least cost",
11 it's the "least reasonable cost". And you have
12 to look at all the other different factors that
13 are involved.

14 You know, that's why we go out to RFP.
15 And, you know, we do a market solicitation. And
16 from there, we take the best result out of that,
17 and that is what goes to customers.

18 Q Least reasonable cost is what goes to customers?

19 A Least reasonable cost or, in some cases, it's the
20 best cost solution, because the marketplace
21 changes.

22 Q And what would make something a "best cost", but
23 not a "least cost", in your view?

24 A Well, I can't speak to specifics. Again, you

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1 have to look at individual -- you have to look at
2 individual circumstances of the market at the
3 time.

4 Q Well, is the CNG supply contract at issue here a
5 least cost and best cost?

6 A It's certainly -- it's certainly a best cost
7 solution, based on the results of the RFP. And
8 my understanding is, we went with the lowest cost
9 supplier. So, from that perspective, it's the
10 least cost.

11 Q Is it the least cost supply for the fuel for the
12 system?

13 A When you say "the system", are you referring to
14 the Marketplace?

15 Q I'm referring to the cost of air-propane in
16 Keene?

17 A Well, this supply contract only serves the
18 Marketplace. So, it wouldn't be appropriate to
19 compare it to the Keene system overall.

20 Q Well, before it was converted, it was appropriate
21 to compare it to the Keene system overall,
22 correct?

23 A No, because it wasn't meant to serve the entire
24 system.

[WITNESS: Mullen]

1 Q Well, let's focus on the contracts that you
2 compared the CNG contracts to. For the PNGTS
3 agreement, can you summarize what that capacity
4 contract provides, broadly? What did it achieve?

5 A Well, these are getting a little beyond the scope
6 of what I testified in this proceeding. I'm
7 generally aware of those contracts. But I can't
8 talk to the specifics of the PNGTS contract or
9 the ENGIE contract.

10 Q Well, would you agree that the PNGTS contract was
11 a supply and capacity contract, approving winter
12 cost of gas rates, that provided for additional
13 capacity starting on November 1, 2018, to be
14 phased in over a three-year period for 22 years?

15 A I can't remember if it was 20 years, 22 years, 25
16 years.

17 Q Okay. Approximately 20?

18 A Correct.

19 Q Okay. And can you explain why the capacity
20 increase was being phased in with a smaller
21 quantity in year 1 and 2?

22 A I cannot. That goes to the negotiation of the
23 contract and the circumstances associated with
24 that supplier and what they were doing to their

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1 system.

2 Q Okay. Hypothetically, not the case here, but
3 hypothetically, if you assume that EnergyNorth's
4 ability to take that increased capacity was
5 dependent on Liberty building a take station that
6 it planned to have in service prior to November
7 1, 2018, but Liberty was unable to do that for a
8 variety of reasons. And let's say some of those
9 reasons were that NHDOT did not approve the
10 proposed location, and that DES did not approve a
11 wetland site, and that the Safety Division
12 pointed out that the take station design violated
13 safety codes.

14 Given that hypothetical, is it your
15 position that, because the Commission approved
16 the 2018-2019 supply plan, that included PNGTS
17 capacity costs, the Commission could not find
18 those costs were imprudent and disallow recovery
19 when EnergyNorth recovered those costs in the
20 2019-2020 Winter Cost of Gas?

21 A Boy, that's quite the hypothetical there.

22 My reaction to that is we'd have to
23 look at all of the circumstances that were
24 involved there, and which particular costs were

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1 incurred. So, I can't speculate on that.

2 Q So, you -- okay. Let's take one factor. Let's
3 say EnergyNorth was unable to take that capacity,
4 because DES did not approve the site, since it
5 was wetlands. Do you think, in that instance,
6 the Commission could not find that the costs were
7 imprudent?

8 A I think the Commission is perfectly capable of
9 looking at all the facts and circumstances
10 associated with any particular contract, and the
11 costs associated with that, and to weigh all
12 those appropriately. And I'm not going to
13 speculate on what the Commission may or may not
14 do.

15 Q Okay. Let's talk about the ENGIE contract.
16 Which was the peaking contract that was also part
17 of that that you referenced. Can you describe
18 broadly what the ENGIE contract provided?

19 A The specifics escape me at the moment.

20 Q Okay. How about this? Is it a supply over 90
21 days during the winter period, and three years
22 later expanded to five years, beginning the
23 Winter of 2018-2019?

24 A I will repeat my prior answer.

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1 Q Okay. Did that contract allow EnergyNorth to
2 terminate the contract if it did not get
3 Commission approval of the contract?

4 A I would have to review the contract.

5 Q Well, I'll suggest to you the answer is "yes",
6 subject to check.

7 A Okay.

8 Q And although -- okay. And, hypothetically, not
9 the case here, assume that during the Winter of
10 2018-19 winter period EnergyNorth had fully
11 utilized those supplies, rather than take a lower
12 cost option available to it through its supply
13 portfolio in error. And assume that the reason
14 that the Company had selected the supply option
15 was because the Company employee believed it to
16 be the lowest cost option at the time, and yet
17 later found that it wasn't when the invoice came
18 in.

19 Is it your position that, because the
20 Commission approved the 2018-2019 supply plan,
21 that included that supply contract, the
22 Commission could not find those higher costs were
23 imprudent and disallow recovery when EnergyNorth
24 sought recovery of those costs in their 2019-2020

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1 Winter Cost of Gas?

2 A I'll repeat my prior answer, in terms of what the
3 Commission should -- is perfectly capable of
4 taking into account when it reviews the facts and
5 circumstances of any particular situation.

6 Q Well, would you agree that factors that are not
7 directly tied to market rates, that are or should
8 be within the knowledge and control of the
9 utility, are relevant to whether recovery should
10 be allowed or disallowed?

11 A Could you repeat that?

12 Q Yes. Would you agree that factors not tied
13 directly to market rates, that are or should be
14 within the knowledge and control of the utility,
15 are relevant to whether an expense should be
16 allowed or disallowed?

17 A Yes. As I would also agree that the factors that
18 we are not aware of or should not have been aware
19 of that also take place should be taken into
20 account.

21 Q Well, see, here's where that sounds like
22 hindsight, like 20/20 driving to me. How do you
23 know what you're not aware of at the time, unless
24 you can point to what was available to be known,

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1 or what other utilities knew, or existing
2 regulations?

3 A That is hindsight, just like --

4 Q Hindsight is the existing regulations?

5 A No. I'm not saying "existing regulations are
6 hindsight." I'm saying, there's all sorts of
7 other circumstances, I was speaking very
8 generally, that can arise that should also factor
9 into determinations about what should and
10 shouldn't be recovered.

11 Q I'm sorry. That's a very general answer. Can
12 you -- I'm not sure what you're driving at?

13 A I'm saying that there are also factors that arise
14 that were unexpected that should also be taken
15 into account when --

16 Q Well, I -- yes. Okay. I'm sorry, I didn't mean
17 to cut you off. Go ahead.

18 A No. That's fine.

19 Q So, for example, if we have a hypothetical with a
20 company that contracts to buy a thousand bottles
21 of perfume, and then a pandemic strikes, and that
22 factory is converted to hand sanitizer. The fact
23 that there might be a 26-month delay in producing
24 perfume is not something that you would

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1 necessarily find imprudent? A pandemic is hard
2 to anticipate.

3 A Correct.

4 Q Okay. Are there factors in the CNG supply
5 contract that you can point me to that you
6 believe are unanticipatable? Things that Liberty
7 could not have known?

8 A Yes. And those are described in my testimony and
9 in the discovery responses that are attached to
10 my testimony.

11 Q Well, can you -- can you list them for me now,
12 things that occurred in the 2016-2017 timeframe?

13 A Give me a minute. If you turn to Bates 29 of my
14 testimony, which is Attachment SEM-2.

15 Q Hold on. Yes.

16 A There's a two and a half page response there that
17 goes through a number of items.

18 Q But that doesn't go to 2016-2017, does it?

19 A This goes to -- this starts in early 2017.

20 Q Would you agree that a company entering into a
21 novel process, with a brand new supply, should
22 have anticipated that there could be regulatory
23 delays and other risks?

24 A Regulatory delays and risks happen. They're part

[WITNESS: Mullen]

1 of being a regulated utility.

2 Q They are. And, so, perhaps that ought to be
3 anticipated when contracts are drafted?

4 A Well, you know, at some point, you also have to
5 say, you know, when you're making a decision to
6 enter into a contract, you can't always assume
7 that everything's going to get delayed, because
8 you'll never sign anything.

9 Q Did Liberty take any steps to expedite the
10 declaratory judgment docket?

11 A Well, let's see. We filed it, and I'm trying to
12 remember, I know it took six months to get a
13 decision. I'm not sure exactly why that was.
14 And I can't recall if we -- if we, you know,
15 filed anything with the Commission to move it
16 along. I mean, sometimes you make a filing, and
17 we can't control what happens on the Commission
18 end. I don't know why it took six months for a
19 decision, but it did. And that's just a factor.

20 We didn't expect, when we started this
21 process, that we'd even have to file for that
22 declaratory judgment, because we had a franchise
23 to serve gas service dating from 1860. So, that
24 was unexpected, as far as we're concerned, and

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1 that took six months that we won't get back.

2 Q Mr. Mullen, you heard from Staff that they had
3 concerns in March of 2017, before you went
4 forward with the amendment, is that correct?

5 A I believe that's why we filed the Petition for
6 Declaratory Judgment. Did we expect it would
7 take six months? We did not.

8 Q And you could have canceled the contract up until
9 the time the May 22nd amendment was signed?

10 A From our perspective, we thought it was pretty
11 clear. We already had a franchise. Gas service
12 had changed its character a number of times since
13 1860. So, we didn't figure it was going to be
14 a -- so, we made a judgment that, you know, there
15 was no reason to change course going forward.

16 MS. SCHWARZER: Madam Chairman, if I
17 could have a brief recess to speak with Staff,
18 maybe five minutes, and I'll come right back?

19 CHAIRWOMAN MARTIN: So, then, are you
20 wrapping up your questions?

21 MS. SCHWARZER: Yes, I am.

22 CHAIRWOMAN MARTIN: We'll take a
23 five-minute break. Return at 3:35.

24 MS. SCHWARZER: Thank you very much.

[WITNESS: Mullen]

1 *(Recess taken at 3:30 p.m. and the*
2 *hearing resumed at 3:37 p.m.)*

3 CHAIRWOMAN MARTIN: Okay. Let's go
4 back on the record. Ms. Schwarzer.

5 MS. SCHWARZER: Thank you, Madam
6 Chairwoman. Mr. Mullen, thank you for your
7 testimony. I have no further questions.

8 CHAIRWOMAN MARTIN: Okay. Thank you.
9 Commissioner Bailey, do you have questions?

10 CMSR. BAILEY: Just a few.

11 BY CMSR. BAILEY:

12 Q I'm sorry. I've lost some facts, and I want to
13 get them back on track.

14 When did you start serving CNG at
15 Monadnock Marketplace?

16 A I believe it was October 4th of 2019.

17 Q And the cost of gas case, where you say we
18 approved CNG demand charges and supply charges
19 was before that?

20 A There were rates that were approved, I believe,
21 in the 20 -- I have to remember now, I'm getting
22 all these jumbled in my head myself. I think it
23 was the 2017 or 2018 Winter Cost of Gas
24 proceeding. However, since we didn't --

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1 WITNESS MULLEN: Somebody needs to
2 mute.

3 CMSR. BAILEY: Oh.

4 WITNESS MULLEN: Thank you. I wasn't
5 sure who it was.

6 **CONTINUED BY THE WITNESS:**

7 A But there were costs that were approved in the
8 rate for that, for the upcoming winter period,
9 that included CNG commodity and demand prices --
10 demand costs, I should say. So, those rates were
11 considered to be just and reasonable.

12 And, however, since we didn't end up
13 providing -- supplying CNG during those periods,
14 when we do the reconciliation, those costs then
15 come out.

16 But, to the extent that the costs that
17 were done in accordance with the contracts were
18 included in the approved rates, that's really,
19 that's, you know, going back to the Granite
20 Bridge docket, it's really the same sort of
21 scenario, where the contract-related costs were
22 considered to be just and reasonable and included
23 in rates to be charged to customers.

24 BY CMSR. BAILEY:

[WITNESS: Mullen]

1 Q Can you tell me a time, based on your experience,
2 when the Commission has made a determination on
3 prudence before an investment was used and
4 useful?

5 A Well, there's a decision to go forward, and the
6 costs get reviewed later. One scenario I can
7 think of is the conversion of Schiller Unit 5 to
8 burn wood. That decision was put before the
9 Commission in Docket, I believe, 03-166, and
10 hopefully I got that right, I usually have to
11 pull those out, but I think that's right. And
12 Public Service Company of New Hampshire got
13 approval to convert Unit 5 at Schiller Station to
14 burn wood. The costs were later subject to a
15 determination.

16 Here, we have a similar situation,
17 where the decision -- we're saying the decision
18 to convert the Monadnock Marketplace was
19 approved, and the costs will be subject,
20 certainly, you know, up for review in a future
21 proceeding, whether it's the rate case or
22 whatever.

23 So, that's one, one that comes to mind
24 from my experience.

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1 Q And, when you say "the costs are subject to
2 further review", you mean whether they were
3 prudent or not?

4 A Correct. That's the cost -- excuse me, just to
5 clarify. That's the cost of the physical
6 improvements or investments that needed to be
7 done. As the Company states that, you know, we
8 received approval to convert those customers to
9 natural gas, and, as I said earlier, where the
10 Commission recognizes that propane would not be
11 an option for those customers, then we have to
12 serve them, you know, what the -- the only fuel
13 that we can.

14 Q Okay. In the first contract that we've been
15 talking about, the one that got signed in October
16 '16 that would have had the skid behind Price
17 Chopper, there were no demand charges in that
18 contract, right?

19 A I believe that's correct, yes.

20 Q So, why didn't it occur to you, since you had to
21 go from Plan A to Plan B, to negotiate some kind
22 of opt-out or a provision to not have to pay
23 demand charges in the RFP that you issued for the
24 next contract?

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1 A Yes. And I'd have to -- I'd have to see exactly
2 what was in the RFP, and, you know, and all the
3 circumstances that were done as part of the
4 negotiations with the suppliers. I wasn't part
5 of that, so I can't really speak directly to it.

6 I know that, you know, all I know is a
7 few proposals were received, and we went through
8 them, and picked what was the best result out of
9 that. I can't speak to exactly what options were
10 or were not on the table.

11 Q Okay. Backing up just a little bit, to the
12 decision to convert the Marketplace and retire
13 the blowers.

14 I know we went through that table that
15 was attached, I think that had Mr. Knepper's
16 report on the incident in December 2015. But did
17 the Company consider other options after that
18 report to serve the Marketplace? Or did you
19 think that that was -- the only option you had
20 was to retire the blower? And could you have
21 purchased another blower?

22 A And I think that was, you know, part of -- part
23 of the table that we were going -- that I was
24 going through with Attorney Schwarzer earlier.

[WITNESS: Mullen]

1 There were a lot of different things that we
2 looked at. And, for various reasons or other,
3 whether it was cost, whether it was risk, whether
4 it was time involved, this was the route that we
5 decided to go down.

6 So, there were a lot of other options
7 that were looked at, some more short term, some
8 more long term. So, I can't speak directly to
9 every single one of those at the moment. Those
10 involved a lot of operational and engineering
11 things that go on just beyond -- there's factors
12 other than just cost, when you start looking at
13 complexity and risk and that sort of thing.

14 Q Okay. And I know that, when the Company -- well,
15 let me ask you this. I think you testified that,
16 when the Company acquired the Keene system, it
17 thought, at the time of acquisition, that it was
18 going to convert that system to natural gas. Is
19 that right?

20 A That's correct. And I believe the prior owner or
21 two, going back in the history, had also wanted
22 to do the same thing. They had intended to do
23 it, and, for various reasons, never did.

24 Q And is that decision that still has to be made at

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1 any cost? I mean, could there be a cost that's
2 too high to actually do that conversion?

3 A Oh, sure, there could be. I mean, as we've
4 talked about, there's a lot that's gone into even
5 trying to site the permanent facility. And then,
6 once you do that, the cost of installing the
7 permanent facility. And then, once you do that,
8 the cost of converting and/or expanding going out
9 from that permanent facility.

10 As we know, from the Commission's
11 order, I think it was 26,122, in 17-048, the
12 Commission put a lot of risk-sharing provisions
13 on that that we would have to meet. So,
14 everything will certainly go through -- go
15 through that type of review process. We have --
16 all of these plans would need to get reviewed by
17 the Safety Division. And we're certainly -- you
18 know, we certainly know that all that's coming.
19 And it's not that we're going to do this at any
20 cost. If it gets to be too expensive to do it,
21 then we'll have to see what else we do going
22 forward.

23 You know, we've talked about the
24 condition of the propane facility and the

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1 upcoming expiration of the lease. So, those are
2 other factors that we have to take a look at, and
3 the fact that we don't own it. So, it's all
4 going to come in, and we're not going to just do
5 this whatever the cost is, because that's not
6 right for the customers either.

7 But we're also trying to look at, as we
8 look at the system as a whole, "what's the best
9 way to go forward long term, so we can provide
10 safe and reliable service to our customers at
11 just and reasonable rates?" And we think this is
12 the right way to go down.

13 And, you know, the thing is, is you
14 can't just look at it as a snapshot on one day,
15 when you compare a CNG price to a spot propane
16 price. I mean, it's a lot that goes into the
17 consideration, when you start planning for the
18 long-term future of the system.

19 Q Including the investment necessary to make sure
20 the piping is safe and the decompression
21 equipment is safe?

22 A Yes. I mean, even along with the piping, I mean,
23 we still have some cast iron/bare steel to
24 replace in Keene, and that would be done

[WITNESS: Mullen]

1 regardless.

2 So, you know, so, there's other --
3 there's a lot of other things related to the
4 Keene system that have to be taken into account.
5 We're trying to do this very methodically, and,
6 you know, not just make any snap judgments and
7 say "Here's how we're going."

8 But, as we've talked about, this
9 Monadnock Marketplace conversion was something
10 that came up because of, you know, other
11 circumstances related to the incident in December
12 '15, and another one in February of '16, that led
13 us to say "Hey, we've got to do something here to
14 address this, and so we don't keep running into
15 this."

16 Q And what would happen, if you decided that the
17 cost to convert the whole Keene system was too
18 expensive? What would happen to the Marketplace
19 in that case?

20 A It could be, as I discussed earlier, we may have
21 to do something that turns that temporary
22 facility into more of a permanent installation.
23 But, right now, we don't own it. So, we'd have
24 to look at it and say "Would it make sense to

[WITNESS: Mullen]

1 kind of operate that as a separate system, as it
2 is now, for a longer period of time?" But, you
3 know, that's that part of the system, and we
4 still have to figure out, you know, what we would
5 do with the rest of the people that are served
6 with propane.

7 So, you know, the fact that they're not
8 physically connected right now is helpful in that
9 regard, because, you know, if need be, we could
10 go that way. But that's certainly not how we
11 plan to go forward. But that's, you know, if it
12 were to become too expensive, then we'd have to
13 look at options. That's probably one of them.
14 You know, there may be other options that aren't
15 coming to my -- into my head at the moment.

16 CMSR. BAILEY: Okay. Thank you.

17 That's all I have.

18 CHAIRWOMAN MARTIN: Okay.

19 BY CHAIRWOMAN MARTIN:

20 Q Mr. Mullen, Attorney Shute asked you about
21 communications or arrangements with the customers
22 who were actually converted. And I wasn't clear
23 as to whether there were communications from
24 Liberty to those customers.

[WITNESS: Mullen]

1 So, can you tell me if you are aware of
2 any related documents, like letters to the
3 customers who were going to be converted, notices
4 that the conversion would happen, and things
5 along those lines to those customers?

6 A I believe there were communications. If I
7 recollect, there were written communications.
8 I'd have to go back and look. I know that our
9 Operations personnel had to work very closely
10 with the customers, to let them know what was
11 happening and when. Especially where we
12 initially were planning to do the conversions
13 prior to the Winter of '17, then prior to the
14 Winter of '18, and then, we ended up doing it
15 just prior to the Winter of '19. So, there
16 were -- we had to make sure that things worked
17 for them. I think a lot of it was working
18 through the night, when a lot of these customers
19 would be closed. So, there was certainly a lot
20 of coordination and communication that went on
21 with the customers, to let them know what was
22 happening and when.

23 And, you know, what's good is, my
24 understanding anecdotally, from talking to other

[WITNESS: Mullen]

1 Company personnel, is that the customers are very
2 happy with the quality and consistency of the
3 product they're getting.

4 CHAIRWOMAN MARTIN: Okay. I'd like to
5 make a record request for any written
6 communications with the customers related to the
7 conversion, whether that be letters, notices,
8 anything written.

9 *(Record request made.)*

10 BY CHAIRWOMAN MARTIN:

11 Q You testified that the skid was delivered in
12 July, and that you expected service to begin in
13 the -- toward the end of the year. But you also
14 testified that the demand charges began in
15 August. Do you know why the demand charges were
16 agreed -- why did Liberty agree to start demand
17 charges in August, if they didn't expect to begin
18 service until the end of the year?

19 A And I would have to look at the terms of the
20 contract. I don't know if it specifically stated
21 that "demand charges would begin in August" or if
22 "demand charges would begin after delivery of the
23 skid". So, I think that might have been a
24 triggering event, in terms of that.

[WITNESS: Mullen]

1 I know that, in terms of getting the
2 thing on site, and having to do some distribution
3 mains to connect to it. I mean, there's some
4 lead time before you could actually start flowing
5 gas to customers.

6 But I'd have to look, again,
7 specifically at the contract, to see if the
8 timing for the commencement of demand charges was
9 tied to the delivery of the skid, or if there was
10 some other triggering event there.

11 Q Do you know if Liberty ever anticipated beginning
12 service in August?

13 A August of 2017?

14 Q Yes.

15 A I don't know. We may have at one point.
16 Remember, we had a contract entered into in
17 November of '16 that had an earlier -- had a
18 three-year timeframe that started earlier. So,
19 it's quite possible we originally expected to
20 serve around that time. I would have to -- but I
21 can't -- I can't tell for sure. But there's a
22 reason that we had the earlier contract, and then
23 we amended it to delay the start date of the
24 contract.

[WITNESS: Mullen]

1 Q But you're not aware that it was ever planned to
2 start in August?

3 A I'm not aware. But I'm not saying it's also not
4 possible that that's what we planned to do.

5 CHAIRWOMAN MARTIN: Okay. My other
6 questions are for counsel.

7 So, Mr. Sheehan, do you have any
8 redirect?

9 MR. SHEEHAN: I do. As you do, I take
10 notes. So, this will be a little scatter-shot,
11 just sort of picking up some things that I
12 commented along the way.

13 **REDIRECT EXAMINATION**

14 BY MR. SHEEHAN:

15 Q Steve, can you just explain a little further the
16 concept of what has to be done to change a
17 customer from propane-air to CNG? Knowing you're
18 not an engineer, but is it true that we actually
19 have to, for example, when a customer buys a hot
20 water heater, we have to go into their house and
21 change a gizmo on the hot water heater so that it
22 can burn propane-air?

23 A Yes. I believe the orifice that, where the gas
24 is burned, would certainly have to change. And I

[WITNESS: Mullen]

1 think, you know, if you consider we're dealing
2 with commercial customers, whatever equipment
3 they have, there would be more of those, and
4 there would be probably some other complications
5 associated with that.

6 MR. SHEEHAN: Chairwoman Martin, I'm
7 having a little bandwidth issues. I'm going to
8 turn my camera off to see if that helps, if
9 that's okay with you?

10 CHAIRWOMAN MARTIN: Okay. Thank you.
11 That's great.

12 MR. SHEEHAN: Yes. That sounds better.

13 BY MR. SHEEHAN:

14 Q And, so, in the example of the Marketplace
15 conversion, these are stores with, like Price
16 Chopper, has stoves and ovens. And, so,
17 similarly, this conversion at the Marketplace, we
18 had to get into those stores and change their
19 equipment from propane-air back to natural gas.
20 Is that your understanding?

21 A Correct. And I believe some of the stuff
22 involved rooftop installations, and other
23 circumstances such as that.

24 Q And, to the Chair's questions about

[WITNESS: Mullen]

1 communication, so, obviously, our Operations
2 folks have to work hand-in-hand with the
3 customers, to make sure we were on their roofs at
4 a good time for their businesses and the like, is
5 that fair?

6 A Correct. Correct.

7 Q And this also -- this also ties into the question
8 Ms. Shute asked, about why we paid for the
9 customer conversions. And that is because our
10 quirky propane-air fuel is on us, so to speak.
11 And we had to convert them to propane-air, and it
12 was, therefore, on us to convert them to natural
13 gas in that case. Is that your understanding?

14 A Correct. My understanding is, you can't go to
15 the store, like, if I wanted to buy a stove to
16 burn propane, you can't do that. You have to buy
17 a natural gas stove, and then buy some kit, or
18 have somebody come in to convert it to propane.

19 CHAIRWOMAN MARTIN: Mr. Sheehan, did we
20 lose you?

21 MR. SHEEHAN: No, I'm here. I'm sorry.
22 You can't see me. I'm looking down at my notes.

23 CHAIRWOMAN MARTIN: No worries. I just
24 wanted to make sure you were still here.

[WITNESS: Mullen]

1 BY MR. SHEEHAN:

2 Q And, briefly, Mr. Mullen, if we just run through
3 the timing related to the 192 issue, whether the
4 federal Part 192 applied to the skid or not. Is
5 it fair to say that the Commission Staff was
6 aware of our intent or plans to convert the CNG,
7 obviously, as early 2016, as noted in the Safety
8 Division's report? Is that right?

9 A Yes.

10 Q And you've testified to some efforts to place the
11 CNG facility in the Marketplace that Winter of
12 '16-17. Is it your understanding that Company
13 personnel were working with Commission Staff
14 through that process as well?

15 A That's my understanding, yes.

16 Q And then, in the Spring of '17, there was a
17 meeting, I believe Mr. Knepper was asked
18 questions about this, in March of '17, where
19 there was a Company/Staff discussion about CNG,
20 what we plan to do, *etcetera*. Do you recall that
21 testimony?

22 A I do recall that. I was not present at that
23 meeting, but I did receive frequent updates from
24 people involved in the process. And that is

[WITNESS: Mullen]

1 consistent with it.

2 Q And what -- sure. And what's your understanding,
3 coming out of that meeting, what the Company's
4 thinking was about this Part 192? As background,
5 is it fair to say that the CNG skid was built by
6 XNG, not to the 192 standards, and now we know
7 that Safety Division preferred that it be built
8 to the 192 standards, and that's ultimately what
9 happened.

10 What's your understanding of the
11 Company's knowledge coming out of that March 2017
12 meeting about that issue?

13 A Well, my understanding is that there was
14 certainly -- there certainly was not an agreement
15 on that. But what I will do is I'd rather refer
16 to Attachment SEM-6 to my testimony, where, I
17 mean, that kind of goes through how the skid was
18 designed and, you know, why we were thinking what
19 we were thinking. That begins on Bates 040 of my
20 testimony.

21 Q And it came a time later in 2017 when it was
22 clear that -- it became clear to the Company that
23 the skid had to be modified to comply with 192,
24 is that correct?

[WITNESS: Mullen]

1 A Yes. That was in late August of 2017.

2 Q And is it your understanding that, I think you
3 said this, that the work was done to do that
4 modification within a matter of weeks, or, if not
5 weeks, or a month or two, is that right?

6 A I believe it was completed around the October '17
7 timeframe.

8 Q And, so, going back to the questions of what we
9 knew when we signed the contract in May of '17,
10 regardless of whether we understood or
11 misunderstood the 192 issue, is it your
12 understanding that that was, in effect, early
13 enough in time for service that winter, if other
14 things hadn't happened?

15 A Correct.

16 MR. SHEEHAN: Check a little further
17 here.

18 I think that's all I have. Thank you
19 Mr. Mullen. It's been a long day.

20 CHAIRWOMAN MARTIN: Okay. I think, at
21 this point, we need to admit -- oh,
22 Ms. Schwarzer?

23 MS. SCHWARZER: Thank you, Madam
24 Chairwoman.

1 I have no need to recall Mr. Knepper or
2 Mr. Frink, unless the Commission has questions
3 for them. I have reserved time, but I put it to
4 you. If you'd like me to recall them, if you or
5 Commissioner Bailey would like me to recall them,
6 I would be happy to.

7 CHAIRWOMAN MARTIN: Commissioner
8 Bailey, do you have a desire to have them
9 recalled?

10 *(Commissioner Bailey indicating in the*
11 *negative.)*

12 CHAIRWOMAN MARTIN: Okay. And I do not
13 either. So, I think we're fine that way. Thank
14 you.

15 All right. So, I have Exhibits 6, 10,
16 and 22 still needing to be admitted as full
17 exhibits, in addition to Exhibit 9, the updated
18 replacement. So, we'll strike ID on those and
19 admit them as full exhibits, with the note that
20 the updated Exhibit 9 is dated "November 18th,
21 2020" for identification purposes going forward.

22 We will also leave the record open and
23 reserve Exhibit 23 for the record request
24 regarding the analysis, and Exhibit 24 for the

1 record request regarding communications with the
2 customers.

3 (**Exhibit 23** and **Exhibit 24** reserved for
4 record requests.)

5 CHAIRWOMAN MARTIN: Anything else we
6 need to do before closing arguments?

7 [No verbal response.]

8 CHAIRWOMAN MARTIN: Okay. Seeing none.

9 MR. SHEEHAN: Nothing from the Company.

10 CHAIRWOMAN MARTIN: That's true. I
11 can't see you. So, I should have asked you to
12 confirm verbally. Great.

13 Ms. Shute, would you like to start?

14 MS. SHUTE: Thank you, Chairwoman
15 Martin.

16 The Office of the Consumer Advocate
17 believes that the Commission should either
18 declare these costs as imprudent, based on a
19 failure of the Company to justify the costs, or
20 it should be referred to the rate case to be
21 evaluated as Phase I of the CNG cost of
22 conversion.

23 Overall, the OCA's position is that
24 neither of these prudence issues should be

1 addressed in an accelerated cost of gas
2 proceeding. Our concern is morphing the cost of
3 gas proceeding, which, as each Commission order
4 explains, and as Attorney Schwarzer read today,
5 it was implemented in 1974 during an era of
6 rapidly changing prices, to provide a way to
7 immediately pass onto customers any price
8 increases and decreases in supply costs without
9 having to go through an extended proceeding.

10 Cost of gas hearings are intended to be
11 accelerated dockets, that facilitate the
12 pass-through of commodity pricing that is beyond
13 the control of the company. And, yes, there is
14 some degree of prudence to be evaluated in that
15 process, but primarily from an auditing,
16 verification, and reconciliation perspective
17 regarding changing prices.

18 However, the contract we are talking
19 about today is not just about commodity. Part of
20 it was, and is, controllable by the Company.

21 A related concern is that of due
22 process. The Company relies on the approval of
23 the 2018 Summer Cost of Gas filing as
24 justification for the CNG costs. Yet, that

1 filing did not include the contract, and only
2 included 19 lines of testimony on CNG, lines, not
3 pages. Lines that indicated a 10-cent savings, a
4 considerable savings amount. But nothing in that
5 filing put the OCA and our residential customers
6 on notice that there was anything of concern to
7 evaluate, and thus we didn't participate.

8 Similarly, the Company has referred to
9 the declaratory ruling of 17-068 as justification
10 for CNG. But the Company's counsel's own words
11 during the hearing that followed that ruling was
12 that only -- the only issue in the docket was a
13 legal issue. A prudency determination, based on
14 fact-finding and analysis, is not a legal issue.

15 The fact that the Commission imposed
16 safety requirements for CNG does not change that
17 it was a legal issue. That it was not a
18 fact-based determination of whether or not they
19 should do CNG, just that they could.

20 So, given what was testified to today,
21 and on the first day of the hearing, as the
22 inability to convert these customers back, and
23 the identification -- and what is identified as
24 "Phase I", and even though the Company says this

1 is not a plan for full conversion, it seems that
2 the Company is trying to push through a temporary
3 facility that will help justify a permanent
4 facility.

5 So, of all of this being said, we feel
6 these issues would be better resolved in the
7 pending rate case. However, in the event that
8 these are issues the Commission thinks should be
9 decided in this cost of gas proceeding, then we
10 support the Staff's positions.

11 From a broader perspective, we first
12 note that all of these costs were incurred for 15
13 to 20 commercial customers, that are on a totally
14 separate distribution system, and yet they will
15 be spread throughout the Keene cost of gas
16 territory to propane-air customers. Those 15 to
17 20 commercial customers and the Company made a
18 choice to convert to a different system. The
19 remaining customers in the Keene service
20 territory, particularly, from our perspective,
21 the non-commercial, a.k.a residential customers,
22 that will not ever, according to the testimony
23 today, be served from the temporary skid, those
24 customers should not be paying for that choice of

1 the 15 commercial customers and the Company.

2 So, we support the Staff and its
3 recommendation to disallow -- or, in addition, we
4 support the Staff and its recommendation to
5 disallow the CNG demand costs incurred prior to
6 commencing the CNG service. We do not consider
7 those costs just and reasonable, because our
8 understanding is that the Company entered a
9 contract that incurred costs prior to performing
10 the -- prior to performing the research and
11 analysis that was necessary and foreseeable, in
12 order to submit to the Commission a comprehensive
13 plan and to attain the requisite safety
14 permissions to enter into service.

15 And we understand that it is sometimes
16 necessary to enter into contracts prior to all
17 approvals being in place. But entering into
18 contracts prior to the appropriate research and
19 analysis should be considered imprudent.

20 We also support Staff's recommendation
21 that the Company not be allowed to recover
22 incremental CNG costs that exceed what customers
23 would have paid had they not been converted from
24 propane-air to CNG until a prudence determination

1 is made, either in the current rate case, DG
2 20-005 [20-105], or a future proceeding.

3 So, I'd just like to walk through a
4 couple of observations that were not brought up
5 earlier today. In addition to the fact that DG
6 17-068 was limited to a legal issue, the Company
7 stated, on Page 12 of its Petition in that
8 docket, "that it understood that prudence of the
9 decision to convert to natural gas and the
10 prudence of the costs incurred to implement the
11 transition would occur through the cost of gas
12 rates."

13 However, in Order 26,065 granting the
14 declaratory ruling, the Commission actually
15 stated "This order does not include any finding
16 of prudence regarding the Keene installation.
17 These matters should be examined in the rate case
18 in the first instance, and potentially as part of
19 a separate review proceeding." That speaks, in
20 our opinion, to the fact that the Commission did
21 not see the expedited nature of cost of gas
22 hearings that the Company indicated in its
23 Petition as an appropriate place for determining
24 prudence. That the determination was properly

1 put in the rate case or a separate review
2 proceeding.

3 So, we don't find it reasonable to
4 assume that the expedited cost of gas hearing, in
5 the Summer of 2018, was a review of prudence, as
6 the Company contended earlier in this hearing,
7 and in Mr. Mullen's testimony.

8 In order after order, which I will not
9 go through, roughly eight, by my count, through
10 until the latest COG order, cost of gas order,
11 this may -- it was -- the Commission, in each of
12 the orders, has addressed the fact that the issue
13 of whether the conversion to CNG, which, by
14 definition, has to include Phase I, the temporary
15 CNG facility, has yet to be determined for
16 prudence. Because none of the other cost of gas
17 proceedings have addressed the prudence issue,
18 and the Commission has several times in orders
19 recommended that the issue be addressed in the
20 rate case or some separate proceeding, then we
21 recommend that the additional costs not be
22 approved in this cost of gas hearing.

23 The Commission should protect the
24 nature of cost of gas proceedings, so that they

1 can stay as they were intended, as swift dockets,
2 meant to either assist the Company in times of
3 rising costs, or to protect the consumer in times
4 of decreasing costs.

5 Alternatively, if the Company is
6 signing a contract, or procuring supply, they
7 need to make sure they are doing it at least
8 cost. If they are relying on something other
9 than propane, then the cost should be less than
10 the alternative, or the Commission should have
11 determined whether it is prudent.

12 They should have known, in the 2018
13 filing, that the CNG was a higher cost, as
14 referenced in our confidential session earlier
15 today in this hearing. And yet, it was
16 identified as a much lower cost in the Petition.

17 It is not appropriate to take advantage
18 of expedited cost of gas hearings to slip things
19 through. And we think that it is clear, from the
20 material in the record and the testimony across
21 three days of hearings, that there has not been
22 evidence of the analysis necessary to justify a
23 finding that the additional costs incurred for
24 these 15 to 20 customers should be spread across

1 the remainder of Liberty-Keene ratepayers,
2 including residential customers.

3 If the Commission agrees with the
4 position of Staff and the OCA, that the prudence
5 of entering Phase I of the CNG transition by
6 entering the contract in question has not yet
7 been approved, as the Commission itself seems to
8 identify in its own orders, and if, based on the
9 data request that we have on the record here
10 today, that analysis has not yet been done in
11 this docket, well, today is November 18th, and
12 the delivery of the data request is a day,
13 November 25th, the day before a two-day holiday,
14 which leaves one day before the goal date of the
15 Commission issuing an order for December 1st.

16 So, we recommend that the Commission
17 disallow the controversial CNG incremental costs
18 in this COG proceeding as not having previously
19 been addressed and as an inappropriate setting to
20 declare prudence here.

21 And further, that the Commission direct
22 that the prudence determination for the
23 justification of these additional costs be
24 specifically ruled on by the Commission in the

1 current rate case docket, DG 20-005 [20-105].

2 This will make sure that the issue is analyzed
3 appropriately, and ruled on specifically, by next
4 summer, in time for the next winter cost of gas.

5 The Office of the Consumer Advocate
6 appreciates the time of the parties and the
7 Commissioners. Thank you for your consideration
8 of our concerns on behalf of residential
9 customers.

10 CHAIRWOMAN MARTIN: Thank you,
11 Ms. Shute. Ms. Schwarzer.

12 MS. SCHWARZER: Thank you, Madam
13 Chairwoman.

14 My closing remarks are going to
15 summarize why Liberty did not act prudently when
16 it signed the CNG contracts several years ago,
17 and Staff's recommendation and proposed rates for
18 the 2020-21 Winter season.

19 Before I begin that, however, it bears
20 emphasis that Liberty has the burden of proof in
21 this docket. It is Liberty that must show you
22 that it's more likely than not, based on what the
23 Company knew, or should have known, between
24 October 2016 and May 22, 2017, that it was

1 prudent for the Company to sign CNG contracts,
2 multiple CNG contracts, that require payments of
3 the demand charges irrespective of supply, and
4 prudent for the Company to act in such a way that
5 demand charges were payable from August of 2017
6 through September of 2019 without any CNG being
7 made available to any Keene customers.

8 In addition to the burden of proof,
9 Liberty must account for prior Commission orders,
10 as has been commented on by Attorney Shute. And
11 significantly, as a matter of law, the Commission
12 has not made a prudency finding, as stated in
13 Order 26,305, published on October 31st, 2019,
14 the Liberty-Keene Winter 2019-2020 cost of gas
15 order, which explicitly stated that "The
16 Commission has yet to find the use of natural gas
17 in Keene to be consistent with a least cost
18 supply, or otherwise prudent." And that, "To
19 date, Liberty has not sought recovery of
20 conversion/expansion costs, provided the
21 financial analysis to demonstrate that ratepayers
22 are not burdened with unfair or unwarranted
23 costs, or sought a prudence review from the
24 Commission." And finally, stated that

1 "Accordingly, our approval is contingent on
2 Liberty-Keene tracking the incremental costs
3 associated with the use of CNG and contingent on
4 the refund of incremental costs, if
5 Liberty-Keene's conversion to CNG, including its
6 CNG supply contract, is determined to be
7 imprudent." Liberty did not appeal that order,
8 and it became a final order on the merits.

9 The remaining orders have been cited,
10 and they speak for themselves. It is Staff's
11 position that no prudence finding has been made
12 since the October 31st, 2019 order either, and a
13 prudence finding approving the proposed rates
14 cannot be implicit. And that a prudence review
15 is only made upon the reconciliation of actual
16 costs, and cannot be based on projected rates,
17 especially when the projected rates describe CNG
18 as less expensive than propane, and actual rates
19 later show that CNG is more expensive.

20 Consistent with the cost of gas
21 mechanism, the cost of gas is a method to pass on
22 to consumers increases and decreases in supply
23 costs quickly, in instances where the Company has
24 little control over the price of its supply

1 fuels. In this instance, Liberty had significant
2 control over aspects of its supply costs,
3 especially the demand costs. And, moreover, the
4 cost of gas approval is always based on proposed
5 rates, and the cost of gas mechanism explicitly
6 states that "Since actual costs and revenues are
7 reconciled each year" -- "every year, any
8 adjustments needed as a result of further inquiry
9 into the matters addressed in this order, can be
10 made in Liberty's cost of gas filing implicitly
11 for the next year."

12 In this instance, Staff agrees that the
13 CNG historic demand charges may be found
14 imprudent, but that they cannot be found prudent
15 absent review of the entire conversion in the
16 rate case.

17 Staff concedes that circumstances might
18 exist, hypothetically, in which a significant
19 delay could be deemed prudent. And, for example,
20 if a company signed a contract to deliver 10,000
21 bottles of perfume the day before a worldwide
22 pandemic struck, and the supplier converted its
23 perfume factory to manufacturing hand sanitizer,
24 resulting in extended delay, the contract might

1 still be deemed prudent. On the facts at issue
2 in this hearing, based on what Liberty knew or
3 should have known, Liberty did not act prudently.

4 Liberty did not act prudently when it
5 entered into the CNG contracts requiring the
6 payment of demand charges irrespective of supply.
7 And the contract history raises questions as to
8 the forethought that went into the RFP process
9 and the negotiation of several contract terms and
10 timing, all have been absent from Liberty's
11 timeline. Liberty has produced no witnesses that
12 were able to provide any details, that required a
13 record request to attempt to supplement what it
14 would seem would be obviously necessary for
15 Liberty to show prudence. No witnesses actually
16 participated in any aspect of the contemporaneous
17 RFP or contract negotiations, and none of them
18 have been able to identify analysis with any
19 specificity.

20 Chronologically, Liberty entered into
21 the October 2016 contract, after the Monadnock
22 Marketplace had recovered and been running
23 without any safety issues for at least ten
24 months. And then, eleven days later, in November

1 of 2016, the Company signed a new contract
2 including demand charges, and expanded contract
3 terms, i.e., volume and date. In May of 2017,
4 the Company terminated the October 2016 contract
5 and amended the November 2016 contract, and
6 increased the CNG quantity to be delivered and
7 extended the term for another year.

8 None of the contracts rolled
9 preparation, supply, or demand into a CNG rate to
10 be paid when the CNG flowed. For that reason, we
11 ask that the entire 26 months be disallowed.
12 There was no regulatory out. There was no
13 stepping. It was not until -- excuse me -- at
14 some point the Company had the third party
15 supplier deliver the skid well in advance of
16 being able to supply CNG realistically. And two
17 and a half years later, after CNG had begun to
18 flow, and Liberty obtained a bill, Liberty
19 discovered a heretofore unknown marketer basis
20 charge, which further increased the costs, and
21 are now part of the incremental demand costs that
22 Staff recommend not be compensated at this time.

23 The Company would have you believe that
24 the historic CNG demand charges and actual

1 incremental costs, including the marketer basis
2 charge, were prudent merely because Liberty
3 expected to serve CNG in the Summer of 2017.

4 However, whether or not Liberty
5 genuinely expected or planned to serve CNG, its
6 expectations were not reasonable, because of what
7 Liberty, as a reasonable utility in the same or
8 similar circumstances, would have known, and
9 should have known, Liberty should have known, no
10 later than July of 2014, that it, as a utility,
11 it was not an end-user of CNG propane, and that
12 the standards that were applicable to end-users,
13 such as large commercial enterprises, did not
14 apply to Liberty, and, at the very least, that
15 Liberty could be required to meet additional or
16 different construction and safety standards than
17 end-users meet, and that the economies of the
18 Company's plan could be different accordingly.

19 Liberty knew, or should have known,
20 that pursuant to an existing New Hampshire
21 Administrative Rule Puc 506.01, which has been
22 in effect for decades, and in the exactly same
23 form since May of 2013, that there were
24 standards that were applicable, and did not

1 include the ASME B31.3 standard Liberty preferred
2 to meet.

3 Liberty should have been able to
4 discover a New York decision, in which the New
5 York equivalent of the PUC addressed very similar
6 questions for a utility, and ultimately
7 determined, as did Mr. Knepper, that the
8 demarcation point required changes, that Liberty
9 then had to go back, and resulting in larger
10 expense and delay.

11 And, even notwithstanding Mr. Mullen's
12 testimony that it was weeks or months of delay
13 based upon a change in standard, when Liberty
14 decided to first introduce a novel fuel for the
15 first time, it should have anticipated and
16 attended to the fact that Staff had questions
17 about the franchise, and extended -- and
18 anticipated as it did in the 2017 docket
19 discussing the tariff change, that there could be
20 safety concerns that would need to be addressed
21 irrespective of our view of the entire system.

22 A thorough economic analysis was
23 necessary to determine if entering into a CNG
24 contract in 2016 and in May of 2017 was the most

1 economic, least cost, and best supply option. A
2 thorough economic analysis would have identified
3 and included the marketer basis charge, in the
4 first instance, as a cost and factored in the
5 risk associated with not having regulatory
6 approvals. It would have factored in concerns
7 about facilities and the customers' use of CNG.
8 Liberty failed to do the kind of thorough
9 analysis the Company promised to undertake when
10 it sought Commission approval to acquire the
11 Keene system, and it failed to do, to the best of
12 everyone's knowledge at this time, any economic
13 analysis referenced in the March 2016 Appendix 2
14 to the IR 15-517 report Mr. Knepper did, with
15 what Mr. Clark was charged with doing.

16 Mr. Mullen would have you believe that
17 the Staff expects the Company to predict the
18 future, and that is not at all the case. A
19 reasonable utility, seeking to incorporate CNG
20 service into fuels offered to New Hampshire
21 utility customers for the first time would have
22 identified the four factors I've just listed, and
23 adjusted its CNG supply contract and timetable
24 and economies accordingly.

1 Liberty's timeline, at Mullen's
2 prefiled testimony at 039, starts much too late,
3 after the relevant period for inquiry and
4 reflection and analysis and contract negotiation.
5 The Company's timeline starts with the contract
6 execution, which, frankly, is the end of the
7 story with regard to the prudence of the CNG
8 supply contract.

9 Liberty failed to take other reasonable
10 steps available to it, which it might have
11 compensated for the Company's failure to address
12 the four factors I just recited. It did not
13 engage in general discussions with Staff.
14 Liberty began trying to install CNG in December
15 of 2016, without any groundwork, and Staff found
16 out inadvertently through a third party, and then
17 set up the March meeting.

18 Liberty did not inform the Staff or the
19 Commission, during the 2015 COG proceeding, of
20 the RFP/contracting process. No CNG RFPs or
21 contracts were shared with Staff, or discussed
22 even, until four months after the first two
23 contracts, October and November in 2016, had
24 already been signed. And the Company signed the

1 May 2017 amendment two months after it already
2 knew Staff had concerns about the scope of the
3 franchise, and, as testified to on Day 2, it
4 exchanged multiple emails with the Safety
5 Division.

6 There was testimony that Liberty could
7 have canceled the CNG contract in May of 2017,
8 but it did not do that. It should have known the
9 proceeding was imprudent at that time. Liberty
10 failed to draft an "out clause" in the May '17
11 amendment, although it include it in other
12 contracts subsequently.

13 Liberty did not consider rolling all
14 the costs, mobilization, preparation, demand and
15 supply, into the cost of the CNG when it was
16 actually flowing, but not before then.

17 In this docket, you're not asked to
18 decide if there was urgency or alternative
19 purpose for the Company's undertaking the
20 conversion of the Keene Monadnock Marketplace.
21 Even if that is the case, however, and the
22 Commission need not make that decision here,
23 entering into a supply contract that required the
24 payment of demand charges for 26 months in

1 advance of the CNG flowing was imprudent. It
2 should be disallowed.

3 In sum, Liberty failed to understand
4 its regulatory and safety obligations, including
5 Puc 506.01, and its status as other than an
6 end-user. It failed to do a thorough economic
7 analysis to determine whether the cost of the
8 conversion made economic sense, failed to even
9 recognize a significant cost, the marketer basis
10 charge, which it was obligated to pay under the
11 terms of the contract it entered into. It failed
12 to reasonably assess whether, or if, additional
13 CNG supplies would be needed when it increased
14 the quantities and extended the terms of the
15 contract. It failed to negotiate a contract with
16 terms that would eliminate or reduce the
17 possibility that it would not be able to simply
18 start taking and serving CNG supply a month or
19 two after executing the contracts.

20 And, for the above reasons, Staff asks
21 the Commission to find that Liberty did not act
22 prudently when it executed the CNG contracts that
23 required the demand charges be paid prior to
24 taking CNG service.

1 Staff also recommends that the actual
2 incremental costs of CNG continue to be tracked
3 and subject to refund for the same reasons the
4 Commission found -- the same reason the
5 Commission found persuasive in the Liberty -- in
6 prior Liberty-Keene dockets.

7 If, at some future date, incremental
8 savings are achieved, supply, demand, or
9 production costs, they can be used to offset
10 those incremental costs.

11 The fact that Liberty must now serve 20
12 or 15 to 20 customers that it converted, prior to
13 seeking a prudency review with the Commission, is
14 simply irrelevant to whether it is prudent for
15 those customers to be using CNG. The fact that
16 Liberty proceeded with the conversion cannot be
17 used to justify finding it prudent.

18 The nature of the cost of gas mechanism
19 is to address increased or -- increases or
20 decreases over which the Company has no control.
21 And, in this instance, Liberty had control over
22 the structure of the CNG supply contract it
23 signed with XNG, and because Liberty did not act
24 prudently in 2016 and 2017, the contract is

1 ill-conceived.

2 Staff's proposed rates and
3 recommendations: Staff recommends that the
4 Commission reject Liberty's proposed rates and,
5 instead, approve Staff's proposed rates.
6 Specifically, Staff's proposed initial
7 residential rate of \$1.0253 for residential
8 customers, and 1.0453 as an FPO rate. Those
9 rates were presented on October 23rd, 2020, Day 1
10 of the hearing, and should be adopted, with
11 following adjustments: Pursuant to Order 26,421,
12 interim rates effective November 1, 2020 were put
13 in place. And those rates included Staff's
14 proposed residential rate as stated, \$1.0253, and
15 Liberty's proposed FPO of \$1.23.

16 For a final Winter 2020-2021 rate,
17 effective December 1, 2020, therefore, Staff
18 recommends that the Commission adopt Staff's
19 proposed residential rate of \$1.0253, and Staff's
20 proposed FPO rate of 1.0453, that it be adjusted
21 to become \$1.0277 for FPO customers December 2020
22 through April 2021, to achieve a roughly
23 mathematical equivalency of rates that the FPO
24 customers would have been charged had they been

1 charged Staff's recommended rate from November
2 through April, as illustrated in Exhibit 22.

3 The above rates reflect Staff's
4 recommendations that the Commission disallow
5 recovery of the CNG demand costs the Company
6 incurred prior to commencing CNG service for all
7 26 months; that the Staff recommends that the
8 Commission not allow recovery of CNG for the
9 2019-2020 Winter incremental costs in the
10 2020-2021 Winter rates at this time, subject to
11 that the costs remain subject to refund pending a
12 prudence finding in the rate case; and that Staff
13 recommend the Commission set 2020-2021 Winter
14 rates to include projected CNG costs on the
15 condition that Liberty tracks incremental costs
16 and savings and on the condition that those
17 incremental costs may be subject to refund
18 pending a prudence determination.

19 We would also ask that the Commission
20 require Liberty to notify FPO customers the
21 difference between the FPO rate offer and the
22 approved rates. These recommendations appear in
23 Mr. Frink's prefiled testimony at Bates 022, and
24 were part of his testimony on November 2nd, 2020,

1 and the November 18, 2020 exhibit relating to
2 bill impacts.

3 Staff wants to stress that, as with any
4 cost of gas rate-setting mechanism, the 2020-2021
5 winter gas costs and revenues will also be
6 reconciled and subject to review as part of next
7 year's winter cost of gas.

8 Commission Staff appreciates the
9 collegial work that typifies OCA, Liberty-Keene,
10 and Staff interactions, particularly during an
11 expedited case such as this.

12 Thank you.

13 CHAIRWOMAN MARTIN: Thank you,
14 Ms. Schwarzer. Mr. Sheehan.

15 MR. SHEEHAN: Thank you. I've turned
16 my video on. If you have problems, holler, and
17 I'll turn it off.

18 We always prepare some closing remarks,
19 and they get scattered a little by what happens
20 during the hearing.

21 So, I'd like to start by addressing
22 Commissioner Bailey's "big picture" question of
23 "what happens if the permanent facility and the
24 permanent build-out that we plan is simply too

1 expensive?" The first point is, clearly, when we
2 get to that point, and hopefully it's this
3 winter, that we have a handle on the site, and
4 are close to finally picking that, and the cost
5 to do it, we will sit down with Staff at first
6 and do some projections: It's going to cost X
7 dollars, and it will have Y impact on rates.
8 Because, certainly, when we make the formal
9 filing for the next phase, we do have to make all
10 the demonstrations of economic viability to go
11 forward.

12 And there is a chance that it's simply
13 too expensive, and that puts us in a box, because
14 the propane-air facility that we're now
15 operating, we won't be running in ten years. A
16 combination of the lease and the condition of
17 that facility, it's not a long-term solution.
18 So, if we can't replace it with an economic
19 LNG/CNG facility, it's a hard -- it's a bad
20 story. And we're hoping to avoid that, but
21 that's where we are. And, as Steve testified, we
22 really are thinking of that ten-year horizon,
23 when we are away from that propane-air facility.

24 CHAIRWOMAN MARTIN: Mr. Sheehan? Mr.

1 Sheehan, you are going in and out. So, you may
2 want to switch.

3 *[Court reporter interruption.]*

4 MR. SHEEHAN: Okay. And, as Steve
5 testified, we are working on a ten-year plan of
6 "where are we going to be in ten years?" And
7 it's not going to be the existing propane-air
8 facility. So, that's our horizon. And the steps
9 we're taking now are not directly related to
10 that, because the Monadnock Marketplace is sort
11 of a small side issue that we had to deal with,
12 but that's what our thinking is. So, I just
13 wanted to hit that.

14 The highlight of the closing argument
15 is that the Commission has already decided both
16 issues that are before you today. And the first
17 is, "was the May 2017 contract prudent?" And, as
18 you've heard many times now, our position is that
19 the approval of cost of gas rates in that May of
20 '18 order does constitute a finding that the
21 contract is prudent. It can't be any other way.
22 If the Commission approves rates that include a
23 half a dozen different contracts, or, in
24 EnergyNorth's case, a couple dozen different

1 contracts, it necessarily is finding the terms of
2 those contracts to be reasonable, because it's
3 what comprises that rate. And, if it were any
4 other way, it would be completely unworkable.

5 And the PNGTS contract that was
6 discussed is a perfect example. That's a 20-year
7 contract. I'm not sure of the exact number we
8 pay each year for that, but it's north of a
9 million dollars. If we have to reexamine that
10 contract every two or three years, and look again
11 to see if it's "in the money", and then we may be
12 disallowed the million or two million dollars of
13 demand charges four years from now, that's not
14 how it works. That's not how it has ever worked.

15 And the Commission's order in the
16 Granite Bridge case acknowledged that. If you
17 will recall, we asked -- did ask for approval of
18 those contracts in the Granite Bridge proceeding.
19 And, when the Commission was -- and, when we
20 proposed to add the new issues to the Granite
21 Bridge docket, one of the things we said is "This
22 docket is still alive, because it has those two
23 contracts that need to be approved." The
24 Commission denied our request to add the new

1 issues. And, in addressing what were the last
2 two things in that docket, the two contracts, the
3 Commission said, I'll find it, "We note that the
4 two contracts that Liberty sought approval for in
5 this docket", 17-198, "were discussed and
6 approved in Liberty's 2018 Cost of Gas docket, DG
7 18-137."

8 I went back to that docket. Those two
9 contracts are discussed in the Company's
10 testimony. I don't think there was a word about
11 them in the hearing, and there's not a word about
12 them in the order. So, by approving the rates in
13 that 18-137 docket, the Company -- and the
14 Commission acknowledged this, the Commission
15 approved those contracts as reasonable. So, yes,
16 there can be what has been called an "implicit
17 finding of prudence".

18 And, if it worked for the PNGTS
19 contract and the ENGIE contract, that the
20 approval of those rates of '18 constituted
21 approval of the contracts, then the exact same
22 logic applies here. The approval in the Summer
23 of '18, of the Summer of '18 rates, which
24 specifically included the CNG contract, does

1 approve the contract.

2 And I do note there was an important
3 difference. In the '18 CNG issue, Ms. Shute
4 noted there was "only 19 lines of testimony",
5 but, if you read the transcript, I just did a
6 word search for "CNG", and it comes up 32 times.
7 There was a thorough discussion of the demand
8 charges, how they apply, how they are allocated,
9 *etcetera*. And, then, in the order, there is a
10 discussion of CNG, and how this is a new thing,
11 and the rates are approved.

12 And going back to my analogy, you can't
13 have it any other way. If you approve the
14 contract in one proceeding, you can't then later
15 say "Oh, now that the costs have gone up, we
16 don't find it prudent anymore, because it's more
17 expensive." That's not how it works.

18 And, so, as for the contract, our
19 position is the Commission has already approved
20 it. And, therefore, those demand charges that
21 flow with that contract are prudent and should be
22 recovered.

23 Factually, the reason you pay demand
24 charges starting on day one is because the

1 contractor has put a piece of equipment on our
2 property, and that costs whatever it costs, a
3 million dollars, and we're effectively paying
4 rent for it. So, there's no way a provider would
5 wait until we serve gas to start collecting its
6 rent. And that's part of the RFP, and we got the
7 best deal we could.

8 So, to suggest that we could
9 willy-nilly revise that contract to the terms
10 that were most favorable to EnergyNorth, it was
11 not the case. We did an RFP. And the market
12 does dictate it, and we picked the best market
13 price for the contract.

14 The other issue in this case are the
15 incremental costs. And, of course, that turns on
16 whether it was prudent for us to do the
17 conversion of the Marketplace. And both counsel
18 elected not to talk about the order that gave us
19 explicit approval to convert the Marketplace.
20 And, of course, that's the order of July of '19,
21 Order 26,374 [26,274?], "Accordingly we grant
22 Liberty the permission and approval to undertake
23 the conversion of the Keene system, subject to
24 the conditions set forth herein." And the

1 context of that order was the Marketplace, not
2 the whole Keene system.

3 No one has explained satisfactorily why
4 Liberty Utilities, in July of '19, having read
5 that language, should not go forward with
6 converting the Marketplace, and that's what we
7 did.

8 This is an issue that has been in front
9 of the Commission in several dockets over the
10 years before. Everyone is aware of it. And this
11 was explicit approval to convert. And the timing
12 of it was the Commission had received a
13 satisfactory report from the Safety Division.
14 And this was confirmed two months later, in Order
15 26,294. That's the order that laid out Steps 1
16 through 8 for all the future phases of Keene
17 conversion. And it did apply to the Monadnock
18 Marketplace conversion as well, except the order
19 explicitly excluded the Marketplace from some of
20 its requirements. So, you can go through all
21 eight requirements in that order, and this is
22 September, late September of 2019, literally a
23 week before we did the conversion, and we met all
24 the conditions.

1 For example, Number 1, Liberty report
2 of final plan submitted for review by the Safety
3 Division; done. And Number 2, Safety Division
4 assessment of final plans; done. Number 3,
5 Commission approval of that assessment; done.
6 Number 4, detailed cost reporting and DCF
7 analysis; the Commission explicitly excused the
8 Marketplace from that step, of course, we need to
9 do it for the future phases. 5, risk-sharing
10 mechanism; that will be applied to the
11 Marketplace. The cost of the Marketplace will be
12 included in a future risk-sharing mechanism, when
13 we can pair those costs with new customers. So,
14 that's basically premature. Item 7 was actually
15 not related to that. And Item 8 is the
16 requirement that we file with the Commission
17 reports of our costs of the conversion; which we
18 did.

19 So, we have received explicit approval
20 to convert in the July order, and we have met all
21 of the conditions in the September order, and we
22 went forward with the conversion in October.

23 Staff and the OCA pointed to the
24 October order that said that the Commission has

1 not made a determination of prudence. The only
2 reasonable interpretation of that order, given
3 what I just went through, is the Commission has
4 not made a finding of the conversion of any other
5 part of the Keene system. And we totally accept
6 that. We have those requirements, 1 through 8,
7 to satisfy you, and there's more, for every
8 future phase of Keene. And that's what the
9 Commission has not approved yet, and that is
10 accurate.

11 So, it's our position that the demand
12 charges that flowed from the contract are
13 reasonable, because the Commission approved it.
14 And recall, when the Commission approved it, it
15 also had to look forward -- reasonably look
16 forward to see what may happen in the future.
17 The Staff, interestingly, supported approval of
18 the rates that included those demand charges in
19 May of 2018. And the Commission, the Staff, and
20 the Company all agreed, effectively, that that
21 was prudent in 2018. If it's prudent in 2018,
22 the contract is prudent as well.

23 Check a couple notes here. Apparently,
24 I misspoke, and it's not Order "26,374", it's

1 "26,274".

2 I think the genesis of the confusion
3 here is just the way the Keene Monadnock
4 Marketplace issue has just been parts of several
5 dockets, rather than the central part of a single
6 docket. The Commission took the declaratory
7 judgment, which started as a pure issue of law,
8 and expanded it by asking for the safety review,
9 and that was expanded further when it imposed the
10 phasing requirements that I just talked about.
11 So, that's one piece. There have been several
12 cost of gas orders where it's been discussed,
13 approved, and sometimes it was approved, and then
14 we weren't able to finish the conversion. So, it
15 didn't actually get put into service. So, it's
16 been an unfortunate procedural history that it's
17 come up in bits and pieces in many dockets.

18 But the two orders I cited clearly
19 found the conversion prudent, clearly found the
20 contract prudent. So, we ask that you allow
21 recovery of those costs as requested in the
22 Company's filing.

23 The Company is certainly willing to
24 discuss a different treatment of the demand

1 charges, the past demand charges. If the
2 Commission would rather spread the recovery over
3 a longer period of time, the Company is willing
4 to do that.

5 And, as a final note, Steve put this in
6 his testimony, Staff and the OCA and the Company
7 need to sit down and have a beginning-to-end
8 conversation of where we are with Keene, what's
9 going to happen in the future, how we plan to get
10 there, so that there are no surprises.

11 As I mentioned at the outset, we have
12 looked at more than a dozen sites in Keene. We
13 have done significant engineering on many of
14 them. And, for one reason or another, each of
15 them have fallen to the wayside, and we're back
16 down to one or two, and we are still doing
17 engineering now.

18 You may not know it, but Keene -- the
19 entire City of Keene apparently is a wetland.
20 And no matter where we go, we keep running into
21 wetland issues, or contamination, or too close to
22 an airport, all kinds of things you learn trying
23 to do this process.

24 But we're very close. And then, we can

1 have that "big picture" conversation of "how can
2 we figure out an LNG/CNG facility that will be
3 cost appropriate for customers?" And Mr. Frink
4 has some ideas from past cases of how you can
5 spread those costs out appropriately, and we'll
6 endeavor to do that as best we can.

7 So, I've rambled too much. I thank you
8 for your time. And we ask that you approve the
9 rates that the Company filed beginning
10 December 1. And we can make the necessary
11 adjustments to pick up the shortage that occurred
12 during the month of November.

13 Thank you.

14 CHAIRWOMAN MARTIN: Thank you,
15 Mr. Sheehan.

16 Commissioner Bailey, did you have any
17 follow-up?

18 CMSR. BAILEY: Yes. Thank you.

19 Mr. Sheehan, can you address the
20 argument that "the Company should have known
21 about the safety requirements of Puc 506.01."

22 MR. SHEEHAN: Yes. We did. And, so,
23 the skid was manufactured by XNG to a different
24 standard. They bring it to our site, and there

1 is an open question of whether the PUC's
2 jurisdiction extends to the inlet to that skid or
3 the outlet.

4 If it applies at the outlet, then 192
5 applies from the outlet into our system, and not
6 to the box, the skid itself is actually a box.

7 If the 192 and Commission's
8 jurisdiction applies to the inlet, then the skid
9 was designed to a slightly different standard and
10 it would have to be fixed.

11 That was an open question. That was
12 discussed at the March '17 meeting with Staff.
13 We did not get a clear answer then. I don't know
14 if it was our fault or Staff's fault, but we did
15 not get a clear answer. We have notes from
16 people there saying there are questions related
17 to that. August we got a clear answer. There is
18 note from one of our people, in bright red, "192
19 applies".

20 But it really doesn't matter, because
21 we made the changes to the skid within weeks.
22 So, it caused no delay. If everything else fell
23 in place, that skid was ready to serve gas in
24 November of 2017.

1 So, we internalized that it applied in
2 August. We made the changes by October. We were
3 ready to turn it on in November. And all the
4 other things are what caused the early delays.
5 So, there definitely was a disconnect on 192, it
6 had no impact on schedule.

7 And a quick comment about the New York
8 decision. The important difference in the New
9 York case, or one difference is it's New York
10 law, not New Hampshire law, and they're all
11 different. But the more important difference is
12 the utility owned the entire facility. And they
13 were trying to say "We own the facility, but we
14 don't want 192 to apply except at the outlet."
15 And they actually filed a declaratory judgment,
16 and the Commission said "No, you own the
17 facility, and it's the inlet that" -- "it's from
18 the inlet to the facility." That wasn't the only
19 reason that they ruled that way, but that was a
20 reason.

21 And, so, in our case, we didn't own the
22 facility. So, there is some -- it wasn't a clear
23 answer, as has been suggested. It still left
24 open the same question.

1 But, of course, we know that 192
2 applies to our whole system, and this is just a
3 quirky question that we resolved and we fixed in
4 time.

5 CMSR. BAILEY: Okay. Thank you.

6 CHAIRWOMAN MARTIN: Okay. Thank you,
7 everyone. It has been a long day. Appreciate
8 everybody's efforts today.

9 We will take this matter under
10 advisement and issue an order. We are adjourned
11 for the day.

12 ***(Whereupon the hearing was adjourned***
13 ***at 4:53 p.m.)***