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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

November 18, 2020 - 11:21.m. DAY 3
[SESSION 1 OF 2]
CONFIDENTIAL REDACTED

[REMOTE HEARING VIA WEBEX]

RE: DG 20-152
LIBERTY UTILITIES (ENERGYNORTH NATURAL
GAS) CORP., D/B/A LIBERTY UTILITIES -
KEENE DIVISION WINTER 2020-2021
COST OF GAS
(Hearing)

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

Jody Carmody, Clerk
Eric Wind, PUC Remote Hearing Host

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

Rptg. Residential Ratepayers:
Christa Shute, Esq.
Office of the Consumer Advocate

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

Court Reporter: Susan J. Robidas, NH LCR No. 44

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I N D E X

WITNESS: STEPHEN P. FRINK

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WITNESS: STEVEN E. MULLEN

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RECORD REQUEST MADE:	97
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Liberty produce any analysis or information regarding any economic or financial analysis done by any employee or consultant that supports CNG for Keene distribution system from the period of May 2016 through May 2017.

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE
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9	Exhibit 9 updated/replacement	5
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22	Staff proposed rates and bill impacts	5
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1 P R O C E E D I N G S

2 CHAIRWOMAN MARTIN: Okay. Let's go
3 on the record. We're here this morning in
4 DG 20-152, to continue the hearing regarding
5 the Liberty Utilities Corporation's Keene
6 Winter 2020-2021 Cost of Gas filing. The
7 last hearing day, Liberty's witness had
8 technical issues due to a power outage during
9 the hearing, and so we are returning for that
10 portion.

11 We already made the necessary
12 findings to hold this as a remote hearing,
13 but I will remind everyone that if there is
14 an issue during the hearing, you can call
15 (603)271-2431 if there's a problem. And in
16 the event the public is unable to access the
17 hearing, the hearing will be adjourned and
18 rescheduled.

19 We have to take a roll call
20 attendance of the Commission. My name is
21 Dianne Martin. I'm the Chairwoman of the
22 Public Utilities Commission, and I am alone.

23 Commissioner Bailey.

24 CMSR. BAILEY: Good morning.

1 Commissioner Kathryn Bailey, and I am alone.

2 CHAIRWOMAN MARTIN: Okay. Let's
3 take appearances, starting with Mr. Sheehan.

4 MR. SHEEHAN: Good morning again.
5 Mike Sheehan for Liberty Utilities
6 (EnergyNorth Natural Gas).

7 CHAIRWOMAN MARTIN: And Ms. Shute.
8 There you are.

9 MS. SHUTE: Good morning,
10 Commissioners. Christa Shute, staff attorney
11 for the Office of the Consumer Advocate on
12 behalf of residential customers. Thank you.

13 CHAIRWOMAN MARTIN: Thank you. And
14 Ms. Schwarzer. Good morning.

15 MS. SCHWARZER: Good morning, Madam
16 Chairwoman and Commissioner Bailey. Mary
17 Schwarzer. I'm here representing the staff
18 of the Public Utilities Commission.

19 CHAIRWOMAN MARTIN: Okay. Thank
20 you, everyone. I will remind everyone
21 participating that they should refrain from
22 identifying information that's been
23 identified as confidential during the public
24 session.

1 Are there any other preliminary
2 matters we need to go over before we start
3 with the witness? Ms. Schwarzer.

4 MS. SCHWARZER: Thank you, Madam
5 Chairwoman. There are two exhibits that I'd
6 like to introduce and have made part of the
7 record. Counsel for Liberty and counsel for
8 the OCA have assented to their being entered.
9 One is Exhibit 9, which is updated, as was
10 intended at the last hearing, but was
11 unsuccessful. The changes are listed in the
12 cover letter. You can tell it is different
13 from the other Exhibit 9 because it has the
14 November 18, 2020 date in the upper left-hand
15 corner. So that is an exhibit with which
16 you're all familiar.

17 The second exhibit, Exhibit 22, was
18 put together by the Director of Water and
19 Gas, Stephen Frink, at his direction or by
20 him, and shows the bill impact rates for
21 Staff's recommended rate and FPO rate. He
22 has not been on the record to identify that.
23 If the Commission would prefer that, we can
24 do that. Counsel for OCA and Liberty have

1 assented to the exhibit being entered into
2 evidence.

3 CHAIRWOMAN MARTIN: Have you
4 stipulated to the facts in the exhibit
5 otherwise --

6 MS. SCHWARZER: I have not done
7 that with them on the record.

8 CHAIRWOMAN MARTIN: Okay. If
9 there's not a stipulation to the facts, then
10 I would just have him swear -- sworn in and
11 adopt that.

12 MS. SCHWARZER: Then I will recall
13 him briefly then turn it over to Liberty.

14 CHAIRWOMAN MARTIN: Ms. Robidas,
15 did you have a problem?

16 (Discussion off the record.)

17 CHAIRWOMAN MARTIN: Go ahead, Ms.
18 Schwarzer.

19 (WHEREUPON, STEPHEN P. FRINK was duly
20 sworn and cautioned by the Court
21 Reporter.)

22 STEPHEN P. FRINK, SWORN

23 DIRECT EXAMINATION (cont'd)

24 BY MS. SCHWARZER (cont'd):

1 Q. Mr. Frink, you're still under oath. I want
2 to ask you about Exhibit 22. What is that
3 exhibit?

4 A. Exhibit 22 provides the bill impacts if the
5 Commission were to approve Staff's
6 recommended rates effective December 1st. So
7 it uses the interim rates for November and
8 the Staff recommended rates for December
9 through April.

10 Q. And what is the significance of the last two
11 pages, Pages 3 and 4.? Why were those
12 included?

13 A. So Page 3 shows what a non-FPO customer is
14 paying compared to last winter, and Page 4
15 shows what an FPO customer would be paying
16 this winter compared to last winter if they
17 had not been an FPO customer. And you can
18 see, if you were an FPO customer -- a non-FPO
19 customer this winter, you're expected to pay
20 \$831. And if you were a non-FPO customer and
21 you elected to be an FPO customer, this
22 winter you'd pay \$840. So that shows the
23 risk premium of choosing the FPO option. So,
24 basically it's the exact same thing, but with

1 a two-cent per therm risk premium added.

2 Q. And do you have any changes to make to
3 Exhibit 22 today?

4 A. I do not.

5 Q. And do you adopt it as your testimony?

6 A. Yes, I do.

7 Q. Thank you.

8 MS. SCHWARZER: I have nothing
9 further.

10 CHAIRWOMAN MARTIN: Any cross from
11 either counsel on that?

12 MR. SHEEHAN: No, thank you.

13 CHAIRWOMAN MARTIN: Okay. Thank
14 you.

15 MS. SHUTE: No, thank you.

16 CHAIRWOMAN MARTIN: Ms. Schwarzer,
17 you mentioned the date on the new, updated
18 Exhibit 9. Can you say that again?

19 MS. SCHWARZER: Yes. It was the --
20 the updated Exhibit 9 has the November 18,
21 2020 in the upper left-hand corner of the
22 exhibit, as well as the docket number on the
23 right-hand side.

24 CHAIRWOMAN MARTIN: Okay. Thank

1 you for that.

2 Commissioner Bailey, do you have
3 any questions about any of what Ms. Schwarzer
4 has done?

5 COMMISSIONER BAILEY: No questions.
6 Thank you.

7 CHAIRWOMAN MARTIN: All right.
8 Let's move on to Mr. Sheehan and Mr. Mullen.

9 Ms. Robidas, could you swear in Mr.
10 Mullen.

11 (WHEREUPON, STEVEN E. MULLEN was duly
12 sworn and cautioned by the Court
13 Reporter.)

14 STEVEN E. MULLEN, SWORN

15 DIRECT EXAMINATION

16 BY MR. SHEEHAN:

17 Q. Mr. Mullen, please introduce yourself and
18 describe your position with the Company.

19 A. My name is Steven Mullen. I'm the director
20 of Rates and Regulatory Affairs for Liberty
21 Utilities Service Corp.

22 Q. And did you prepare the testimony that's been
23 marked as Exhibit 6 in this proceeding?

24 A. Yes, I did.

1 Q. And you assembled the attachments that would
2 go along with your testimony as well; is that
3 correct?

4 A. Yes, it is.

5 Q. Do you have any changes or corrections to
6 your testimony you'd like to bring to the
7 Commission's attention this morning?

8 A. I have two minor edits. The first is on
9 Bates 13. At the bottom of the page there's
10 a footnote No. 1. In the second line of that
11 footnote, the end of the sentence that ends
12 in the middle of that line says "under which
13 the Company took service," the word "took"
14 should be replaced with "did not take."

15 And the second correction is on
16 Bates 21, Line 4. There was a date given for
17 the order on that line. "August" should be
18 replaced with "July."

19 Q. Thank you. With those changes, do you adopt
20 your written testimony as your sworn
21 testimony this morning?

22 A. Yes, I do.

23 Q. And of course I won't go through your
24 testimony, but I would appreciate you just

1 very briefly reminding us what the Company's
2 positions are as to the two issues that are
3 before the Commission, the two remaining
4 issues that are before the Commission in this
5 docket.

6 A. Yes. And these were described on Bates 8 and
7 9 of my testimony. But in summary form, it
8 really comes down to whether we should be
9 allowed to recover the prior period demand
10 charges related to the CNG contract, as well
11 as how the incremental costs of CNG versus
12 propane should be handled in this proceeding.

13 Q. And of course, the Company's position is well
14 known. And with that, I guess I will let the
15 others ask questions of you on
16 cross-examination. Thank you.

17 CHAIRWOMAN MARTIN: Ms. Shute, do
18 you have questions?

19 MS. SHUTE: I do have questions.

20 CROSS-EXAMINATION

21 BY MS. SHUTE:

22 Q. Okay. And I apologize, Mr. Mullen, if some
23 of these questions seem really basic or are
24 included in the record. We do the best we

1 can at the OCA to help keep up with these
2 dockets, and the expedited dockets are
3 particularly challenging. I appreciate your
4 forbearance, and I'll try not to take too
5 much time.

6 I also want to be forthright, that the
7 Office of the Consumer Advocate doesn't
8 believe that either of these additional CNG
9 costs should be approved, or even that a
10 determination of prudence should be
11 ascertained. But in the event that the
12 Commission decides to address that issue, we
13 feel it's prudent to make sure that certain
14 things are on the record.

15 So you already mentioned the issues at
16 the center of today's hearing, and a big part
17 of that is the difference in cost between
18 propane air and CNG. And I just want to
19 clarify for the record that propane air is
20 different from just propane. My
21 understanding is that propane air is
22 essentially a synthetic natural gas that's
23 formed by mixing vaporized propane or liquid
24 propane gas with air and that it can be used

1 as a direct replacement for natural gas in
2 combustion applications. Is that a correct
3 understanding?

4 A. Well, I don't know about the characterization
5 of it as a "direct replacement" because there
6 are changes to customers' equipment that
7 needs to be done because they burn at
8 different BTUs -- at different BTU contents.
9 But in terms of, you know, how you described
10 the difference, I will accept that.

11 Q. Okay. And my understanding is that in a cost
12 of gas hearing, the costs from the propane
13 air and the CNG costs would be blended into
14 the same cost of gas rate; is that correct?

15 A. Yes.

16 Q. And you say in your testimony, on Page 8,
17 that the CNG costs only relate to a limited
18 number of customers. And I think that's
19 about -- is that still about 20 customers in
20 the Monadnock area?

21 A. It's 15 to 20. I don't know the exact
22 amount. But at the Monadnock Marketplace,
23 yes.

24 Q. And so if that's a blended, does that -- that

1 means that all of these incremental costs for
2 these few commercial customers -- they are
3 all commercial customers; right -- are
4 getting socialized across all of the Keene
5 customers?

6 A. Yes.

7 Q. And they are all commercial?

8 A. Yes.

9 Q. So what's involved in a conversion? What was
10 involved to convert the customers from
11 propane air to CNG?

12 A. Well, that's -- you know, I can speak
13 generally about it. If you want further
14 detail, you have to speak to people in
15 operations or engineering.

16 But there's conversions at the customer
17 location. Their equipment needs to be
18 changed in order to burn natural gas rather
19 than propane. We had to -- then we also had
20 to connect the temporary CNG facility to the
21 Marketplace. And what we essentially ended
22 up doing there was creating a system that's
23 separate from the rest of the propane air
24 customers in Keene. That's also the cost --

1 so if you're talking conversion, that's
2 what's involved to get the CNG to the
3 customers. We also installed the temporary
4 CNG skid for the supply portion.

5 Q. Okay. And so the conversion for the skid and
6 the temporary facility, that's something that
7 the Company's paid for. The conversions at
8 the customer location, was that something
9 that the Company paid for or that the
10 customers paid for?

11 A. The Company did.

12 Q. Do you have any idea, roughly, just ballpark
13 order of magnitude, what the cost to convert
14 the customers was?

15 A. Off the top of my head, I think roughly it
16 might be in the area of 300,000 or so. But
17 those costs aren't at issue in this
18 proceeding. Those are things that will be
19 viewed as part of the rate case. None of
20 those costs that I've spoken about are at
21 issue in this proceeding.

22 Q. So doesn't the... well, seems to me that the
23 decision to put in temporary CNG is at issue
24 in this proceeding because it involves the

1 prudency finding of whether or not the demand
2 charges and the additional charges should be
3 charged. So shouldn't the costs and the
4 analysis of whether or not the temporary CNG
5 should occur -- why would that not be
6 relevant?

7 A. Because what we're concerned about here
8 are -- this is a cost of gas proceeding where
9 we're talking about the cost to serve our
10 customers, whether it be through propane or
11 CNG, the costs of those. So those are
12 basically supply and demand costs that are
13 folded into the cost of gas rate. The whole
14 reasoning for installing the temporary CNG
15 was all a part of Docket DG 17-068. And as
16 stated in my testimony, it's the Company's
17 position that the Commission approved the
18 conversion of these customers to CNG. So now
19 we have a responsibility to serve those
20 customers with CNG, and those are the costs
21 that are resulting from the supply contract
22 and that are at issue in this proceeding.

23 Q. Okay. And DG 17-068, that was a petition for
24 a declaratory ruling as to whether or not it

1 made sense -- whether or not serving CNG was,
2 as a matter of law, part of the existing gas
3 franchise of Liberty; correct?

4 A. That's how it started, yes.

5 Q. So that's what was in the order of notice.
6 That's what was in the filing, and you say
7 that's how it started. Could you explain
8 what you mean by that?

9 A. Sure. And there's a series of orders in that
10 proceeding. You know, at first the
11 Commission agreed with the Company that we
12 had the franchise authority to serve natural
13 gas in Keene. And then there were some
14 further determinations about the need for a
15 safety assessment. There were other rulings
16 related to motions by an intervenor. So
17 there were other things as you go through
18 those orders. There were other findings that
19 the Commission made that go beyond just our
20 request for a declaratory ruling about the
21 need for a franchise. There were -- again,
22 the Commission ruled that a safety assessment
23 was needed; that was done. The Staff issued
24 a recommendation after that, and after the

1 Company responded to that, and the Commission
2 approved the Staff's recommendation. And as
3 part of the approvals there -- and I've got
4 some of this in my testimony. Let me get to
5 the right page. If you refer to Bates 21 of
6 my testimony, you will see that I quote from
7 Order 26,274. It stated in that order,
8 "Accordingly, we grant Liberty the permission
9 and approval to undertake the conversion of
10 the Keene system, subject to the conditions
11 set forth herein."

12 Later, on Lines 19 to 24, the Commission
13 acknowledges that this would be a separate
14 system from the rest of the propane system in
15 Keene, and recognizes that once a customer
16 begins receiving natural gas, that customer
17 will no longer be able to receive propane air
18 as a fuel source.

19 So as a long way of answering your
20 question, there are a number of things that
21 went beyond just how the case started with
22 the request for a declaratory ruling related
23 to the need for a franchise.

24 Q. Okay. So the original order was the

1 declaratory ruling. And that was the order
2 that specifically said this order does not
3 include any finding of prudence regarding the
4 Keene installation. These matters should be
5 examined in the rate case in the first
6 instance and potentially as part of a
7 separate review proceeding. So what you're
8 saying --

9 A. I think you may have mixed orders there.

10 Q. That's Order 26,065 from October 20th, 2017
11 in DG 17-068.

12 So my understanding from what you're
13 saying is that after that order happened,
14 there was additional procedure in the docket
15 which included a hearing later in 2018, which
16 I think is where you're getting to, the order
17 that came out of that hearing making the --
18 making some clarifying statements. But that
19 transcript shows that the docket was simply
20 to address the scope of Liberty's existing
21 franchise.

22 So at what point in time was anybody put
23 on notice that 17-068 was going to include a
24 determinancy of prudence, and at what point

1 in time in the docket was any testimony or
2 whatnot filed regarding that prudence?

3 A. Well, first, let's be clear. When we're
4 talking about conversion, this isn't about --
5 what we have converted so far is just the
6 handful of customers at the Marketplace. The
7 Company's position is that the Commission
8 gave us approval to do that. You know, we're
9 not saying that the conversion of the entire
10 system to CNG or LNG from propane has been
11 ruled prudent. We don't have that -- that
12 decision hasn't been made. There's too much
13 more information that needs to be developed
14 related to the permanent facility and plans
15 from that permanent facility once it's
16 finally sited.

17 So what we're talking about is, and I
18 want everybody to keep in mind because I
19 think the hearing has kind of gone a little
20 far afield at times, is that this is really
21 about the customers for which the Company --
22 the Commission has approved the conversion to
23 natural gas and our responsibility to provide
24 those customers with service. And as the

1 Commission acknowledged, the only way that
2 once they're converted is that propane is not
3 an option. So we have an existing CNG supply
4 contract that we signed back in May of '17,
5 and those are the costs that are at issue
6 here.

7 Q. Okay. But just to go back to the original
8 question that I asked, Mr. Sheehan said in
9 that hearing that the position of Liberty,
10 and what it viewed from the October order,
11 was that the Company -- that, quote, "The
12 Company does have the right to serve Keene
13 customers with natural gas." That was based
14 on the declaratory ruling. That's on Page 8
15 of the transcript. And he goes on to say
16 that, "Our position is that the issue in this
17 docket is a legal issue: Do we have the
18 right or not to serve natural gas?"

19 So again, there's sort of a limitation
20 in terms of the scope of the docket. So I
21 guess I'll just move on from that question.
22 But I --

23 A. Well, I would just say the orders have
24 certain decisions and the orders speak for

1 themselves in terms of the approvals that
2 were given.

3 Q. Okay.

4 CHAIRWOMAN MARTIN: Ms. Shute,
5 you're on mute.

6 MS. SHUTE: Apologies. Thank you.

7 BY MS. SHUTE:

8 Q. Do you plan, from the temporary skid from
9 which these additional costs have been
10 generated, do you plan to serve any of the
11 residential customers in the Monadnock
12 Marketplace area?

13 A. My understanding is that is not planned for
14 that. Residential customers would be served
15 after we site a permanent facility. And
16 then, you know, conversions would have to
17 happen. Again, once you have that anchor
18 point, you know where your starting point is.
19 So any residential conversions would take
20 place from that spot and again from that
21 permanent facility.

22 Q. And you had said -- you state in your
23 testimony, and you stated earlier today, that
24 the conversion of the entire Keene system

1 from propane air to natural gas is not at
2 issue in this proceeding; correct?

3 A. Correct.

4 Q. And I think that you stated just a minute ago
5 that the cost to convert the Monadnock
6 customers was around 300,000. Am I
7 remembering that correctly? I'm sorry.

8 A. That's off the top of my head. I'd have
9 to --

10 Q. Sure. But just order of magnitude, that was
11 like the conversion of the customers versus
12 the skid and the delivery system.

13 A. Subject to --

14 (Court Reporter interrupts.)

15 CHAIRWOMAN MARTIN: Just a minute,
16 Mr. Mullen.

17 (Discussion off the record.)

18 CHAIRWOMAN MARTIN: That's what I
19 was also going to say. There's been a lot
20 of speaking over each other. So if you could
21 be a little more sensitive to not talking
22 until the other person is done, that will
23 help Ms. Robidas and all of us.

24 MS. SHUTE: You bet.

1 A. So I would just say that those numbers would
2 be subject to check.

3 BY MS. SHUTE:

4 Q. Sure. But those are the numbers for the
5 conversion of the customers versus the
6 delivery system to the customers.

7 A. Correct.

8 Q. And on the first day of the hearing, Ms.
9 Gilbertson stated, "We can't switch the
10 customers back. They have to use the CNG."
11 Do you agree with that statement?

12 A. Yes.

13 Q. And could you elaborate as to why you agree
14 with that statement?

15 A. As I explained earlier, when we installed
16 some main to go from the temporary skid to
17 the Marketplace, that is now a separate
18 system from the rest of the Keene customers.
19 So those that have been converted in the
20 Marketplace to CNG, also their equipment has
21 been modified so it will burn natural gas
22 rather than propane air. And again, the
23 Commission acknowledged in the order that I
24 cited in my testimony, that once they're

1 converted, propane air is not an option for
2 those customers.

3 Q. Is it possible for the -- does it make sense
4 for the temporary facility to always be a
5 temporary facility?

6 A. Well, there's the word "temporary" for a
7 reason. I mean, that's not part of a
8 long-term plan. You know, that was done, as
9 you heard earlier in the hearing, that was
10 done to address safety issues with blowers at
11 the plant. That was never, as described in
12 my testimony, that was never a part of the
13 overall conversion. It was a step that had
14 to be taken because of what transpired back
15 in December of '15. And again, there was
16 another incident similar in February of '16.
17 So the Company found it necessary to address
18 that to make sure we provided safe and
19 reliable service to our customers. So, you
20 know, again, that's not -- it could -- my
21 understanding is it could physically operate
22 that way for quite a period of time. But we
23 still have the issues on the other end with
24 the propane facility, in terms of the

1 condition of that facility, as well as the
2 expiration of the lease that we need to deal
3 with.

4 Q. Okay. So from a safety perspective, in
5 DG 17-048, which was the rate case, and that
6 was in -- there was an order issued in April
7 approving the permanent rates, and in that,
8 the Commission specifically rejected the
9 Company's argument that the current cost of
10 converting a small portion of the Keene
11 system to CNG was necessary for reliability
12 and safety reasons, or that it was
13 economically justified on its own terms. So
14 what I hear you saying is that the Company
15 takes the position that the change was done
16 for safety reasons. That's not something
17 that's necessarily been agreed to, or that's
18 specifically been rejected by the Commission.

19 So my question is: You state that there
20 can't be -- that they can't go back. So I
21 understand when you said that a new system
22 was put in place to deliver the CNG to those
23 customers and that there was a conversion of
24 those customers. Is the propane air

1 delivery -- because this is separate; right?

2 This is a separate delivery system? Is the
3 propane air system still there?

4 A. For those customers? No. They are
5 physically separated from that.

6 Q. Right. I understand that they're physically
7 connected to the new system. But is the old
8 system still in the proximity of those
9 customers?

10 A. I think physically it could probably be
11 hooked up. But at the same time, that would
12 also involve re-using the blowers that we
13 found to be troublesome. Those blowers are
14 not needed for the rest of the system. They
15 were only needed for this part of the system,
16 which is referred to as the "high-pressure"
17 part of the system. By converting these
18 customers, we were able to take those blowers
19 out of service.

20 Q. So if you're making a statement that the
21 customers can't go back and that it's not --
22 that temporary -- it's called "temporary" for
23 a reason, then it seems like you're making a
24 decision on the whole system, which I

1 understand that you're saying that you have
2 not done. But it seems like that -- those
3 two things don't seem to be separable, if
4 you're going to declare that the customers
5 can't be moved back and that temporary
6 shouldn't be temporary. I don't see how we
7 can separate those two issues as you've
8 asked.

9 A. Well, the Company has long been planning,
10 even from the time that it acquired Keene, to
11 convert the entire system to CNG and/or LNG.
12 That was as part of that acquisition
13 proceeding, which I believe was DG 14-155.
14 So that hasn't changed.

15 In 17-048, in the order of you reference
16 from April of '18, the Commission put a lot
17 of conditions on any conversion of Keene and
18 any phase of expansion or conversion. And
19 we'd have to get certain customer commitments
20 in terms of revenue. We would have to, you
21 know, make sure that the revenue would
22 recover I think at least 50 percent of the
23 capital costs. So the -- so to the extent
24 that, you know, we are still going forward

1 with it, which we are, and we're exploring
2 sites for the permanent facility, we
3 understand there's lots of hoops we have to
4 jump through in order to get approval to do
5 any further conversions of the system.

6 You know, I think what's interesting,
7 too, is I don't believe that for purposes of
8 those conditions, I don't believe that order
9 singled out the Marketplace. I don't think
10 it was mentioned in relation to that. So,
11 again, any future conversions of the rest of
12 the system are going to be subject to review,
13 scrutiny. And we have lots of requirements
14 before we can do that. So this, again, is a
15 separate little piece that was done for a
16 different reason, and now we're just trying
17 to recover the costs of supplying those
18 customers with natural gas.

19 Q. Okay. It seems like they're connected to me
20 and that they should be dealt with
21 altogether. But let's leave it at that.

22 So to convert them back to propane air
23 could take as much as it cost to convert them
24 to natural gas in order to convert them back;

1 is that right?

2 A. I have no idea how much that might cost. I
3 won't speculate.

4 Q. Okay. And what kind of -- I mean, what was
5 the discussion like with these customers,
6 with these 15 commercial customers? Like
7 what kind of promises were made, or what kind
8 of arrangements were made for them to engage
9 in this conversion?

10 A. I didn't personally speak with the customers,
11 so I can't speak directly to that. I do know
12 that there had to be some coordination ahead
13 of time in order to make sure that we could
14 convert them at a time that was convenient
15 and at a time, you know, that we could get
16 everybody done at the same time. But other
17 than that, I can't speak directly because I
18 was not involved in those conversations.

19 Q. Okay. So if ultimately the -- if ultimately
20 the Company either decided not to, or the
21 Commission decided that it wouldn't be
22 prudent to allow the recovery of the
23 permanent facility, what would happen to
24 these -- what would happen to these

1 customers? What would, in that hypothetical
2 scenario, what would the Company do?

3 A. When you say "these customers," you're
4 referring to the Marketplace?

5 Q. Yup, the converted customers.

6 A. Then the temporary facility that we're doing
7 would have to continue to serve them. I
8 mean, we don't own the temporary facility.
9 So we would then have to explore whether or
10 not we continue with the types of contracts
11 that we have now where a supplier brings in a
12 skid, or if we would have to purchase a skid
13 to be able to serve these customers.

14 Q. Okay. So you state in your testimony at
15 Page 8 that the Commission approved the CNG
16 contract and its demand charges in May of
17 2018. And by "May of 2018," you're referring
18 to Order 26,126 approving the summer cost of
19 gas rate; correct?

20 A. Just trying to keep my order numbers
21 straight.

22 Q. Yeah. The time line you provided was
23 helpful, by the way. Thank you.

24 A. You can thank Maureen at the office for

1 helping me with that.

2 Q. Okay.

3 A. I will take that order number, subject to
4 check. Too many documents open in front of
5 me.

6 Q. Sure. I completely understand.

7 So you were part of the 2018 Summer Cost
8 of Gas filing?

9 A. I don't believe I filed testimony. I might
10 not have participated in that proceeding.

11 Q. Okay. But you do refer to it in your
12 testimony here. It was a fairly routine --
13 as being the place that approved the CNG
14 contract, it was a fairly routine cost of gas
15 proceeding? I mean, effectively, the order
16 of notice was like many of cost of gas
17 proceedings; right? It identified the issues
18 as those related to the justness and
19 reasonableness of rates, fairness in charges,
20 reasonableness of sales forecast, supplier
21 prices. The order of notice didn't actually
22 mention CNG. Would you accept that was the
23 case?

24 A. I accept that. You know, and the Company has

1 no input to the orders of notice.

2 Q. Hmm-hmm. So it was such a routine filing,
3 that the Office of the Consumer Advocate,
4 which seems to be involved in many dockets,
5 and frequently cost of gas dockets, actually
6 chose not to participate. So I only had
7 access to what was actually in the
8 docketbook, although this morning I did
9 receive some of the confidential information
10 from Paul Dexter, who was the attorney there.

11 So I saw that there was testimony by
12 McNamara and Gilbertson that included about
13 19 lines of testimony on CNG. And the gist
14 of the testimony was that CNG was some
15 confidential amount lower than propane, and
16 that after the inclusion of the demand
17 charges that, quote, -- and this is in the
18 docketbook and not marked as confidential.
19 So just from Bates Page 10, quote, "CNG will
20 be approximately 9.77 cents less than spot
21 propane." And basically as the volume grew
22 and the fixed demand was spread across more
23 volume, that the savings would increase from
24 there. Does that sound about right?

1 A. Subject to check, yes.

2 Q. And other than that, I saw some redacted
3 prices for CNG delivery on Schedule K, or
4 Bates Page 29, and nothing else in the filing
5 or that -- nothing else in the filing on CNG
6 except for those 19 lines of testimony and a
7 couple of lines on Schedule K. And so if
8 we're relying on the order from the 2018
9 Summer Cost of Gas as having approved the
10 contract, one would think that the contract
11 would have been part of the filing and, you
12 know, part of the issues that were to be
13 evaluated.

14 A. Well, the costs were included in the filing.
15 I can't speak to whether or not the contract
16 was reviewed as part of discovery. But to
17 the extent that the costs were included in
18 the filing, just like with the Energy North
19 cost of gas proceeding, there are lots of
20 contracts involved. They're not all
21 specifically entered into as part of the
22 initial filing. So, again, things sometimes
23 are reviewed during discovery. The costs
24 were there, and the costs were part of what

1 was approved in the rate.

2 Q. Okay. So you're saying that because the
3 costs were approved in the rate, costs that
4 were projected to be 10 cents lower, that
5 that thereby approved the contract.

6 A. I'm saying that, you know, regardless of
7 where the costs came out, because the costs
8 were in there and they were done in
9 accordance with the contract, that it's
10 really no different than the Commission's
11 recent order on Granite Bridge in DG 17-198,
12 where it talked about certain contracts and
13 said that those were already dealt with in
14 prior cost of gas proceedings, so they didn't
15 need any specific approval in that docket.
16 This is a similar circumstance.

17 MS. SHUTE: I think I'd like to
18 move to address confidential information.
19 Could we do that, please?

20 CHAIRWOMAN MARTIN: Yes, we can,
21 but we'll need to go out of public session.

22 Mr. Wind, are you able to do that
23 for us?

24 MR. WIND: Yes. So I will start a

1 private session. So the members of the
2 audience who are designated as "attendees,"
3 your screens will switch to blank. You'll
4 just see initials on the tiles, and we will
5 come out of the private session at the
6 appropriate time.

7 MS. SHUTE: Eric, can you move
8 Pradip up to the panel just for this?

9 MR. WIND: So I will observe that,
10 subject to other attorneys looking, it
11 appears that there are only members of the
12 three parties' staff who are in the public
13 section. So I don't know if you want to go
14 off the record and discuss whether or not
15 it's necessary to enter into a private
16 session right now.

17 CHAIRWOMAN MARTIN: Let's hear from
18 Ms. Schwarzer before we go off the record.

19 MS. SCHWARZER: Thank you. I
20 believe Iqbal is also among the attorneys in
21 the public group. And whereas Staff is not
22 opposed to moving them up, and it's unlikely
23 that anyone would wish to join who was not a
24 member of Staff, it seems appropriate, given

1 Right To Know ramifications and other
2 potential issues about privacy, to either
3 move them into this private session or,
4 unfortunately, exclude them.

5 CHAIRWOMAN MARTIN: Mr. Wind, let's
6 go off the record for a minute.

7 (Discussion off the record)

8 CHAIRWOMAN MARTIN: Let's go back
9 on the record a minute, Ms. Robidas, if you
10 don't mind.

11 Ms. Schwarzer.

12 MS. SCHWARZER: I believe Mr.
13 Dexter was also a participant -- whatever the
14 not participant category is. I don't know if
15 he's still there.

16 MR. WIND: He is. Shall I --

17 MS. SCHWARZER: Yes.

18 CHAIRWOMAN MARTIN: Counsel for all
19 of the parties, look at the people who are
20 identified here and confirm that they should
21 be present before confidential information
22 gets discussed.

23 Mr. Sheehan.

24 MR. SHEEHAN: I have no objection

1 to any of those who have been promoted. I
2 also have in front of me the list of those
3 who remain in the other room, and they are
4 all either members of Staff -- Mr. Weisner,
5 Mr. Vercellotti, Ms. Fabrizio -- or a Liberty
6 employee, Ms. Carr, so I don't have a problem
7 moving them all up.

8 CHAIRWOMAN MARTIN: Do you want the
9 Liberty employee moved up?

10 MR. SHEEHAN: That would be great.
11 Thank you.

12 CHAIRWOMAN MARTIN: And Ms.
13 Schwarzer, do you want all of the other Staff
14 moved up?

15 MS. SCHWARZER: Yes. Thank you
16 very much.

17 CHAIRWOMAN MARTIN: Ms. Shute, any
18 issues?

19 MS. SHUTE: No. Thank you.

20 CHAIRWOMAN MARTIN: All right.

21 (Pages 39 through 49 of the transcript
22 are contained under separate cover
23 designated as "Confidential and
24 Proprietary.")

1 * * * * * PUBLIC SESSION RESUMES * * * * *

2 MR. WIND: Okay. We're all set on
3 my end. I will gradually move the attendees
4 back down to that pool as well. You can
5 proceed.

6 CHAIRWOMAN MARTIN: Okay. We are
7 back in the regular public session at this
8 time.

9 Ms. Shute, you can proceed.

10 MS. SHUTE: Thank you, Chairwoman
11 Martin.

12 BY MS. SHUTE:

13 Q. Okay. So going back to whether the prudence
14 issue has been addressed and the reliance on
15 the Summer of 2018 Cost of Gas hearing and
16 the declaratory ruling in 17-068. In
17 addition to that, in the Winter 2018 Cost of
18 Gas, Order 26,184 indicated an approval of
19 rates with the CNG costs removed. In the
20 Summer 2019 Cost of Gas, Order 26,241, the
21 Commission declined to address Staff's
22 concern with regard to the CNG costs that may
23 exceed the cost of alternative fuels, and
24 notably indicated that Staff could raise that

1 issue in future dockets, including in the
2 Company's next rate case. Then, in both the
3 September 2019 clarifying Order of 26,294 and
4 the October 2019 Winter Cost of Gas Order of
5 26,305, the Commission reaffirmed that the
6 conversion had not yet been evaluated as
7 prudent.

8 So my question is: With all of these
9 pieces, doesn't this indicate that the
10 prudence issue has not yet been addressed?
11 And was the analysis of how to address it
12 filed in this docket or in some other docket?
13 Because I haven't been able to find an
14 analysis.

15 A. When you say "the prudence," what prudence
16 are you referring to? Conversion of the
17 entire system?

18 Q. No. I'm referring to whether or not it's
19 prudent to be delivering CNG to 15 to 20
20 customers in the Monadnock Marketplace.

21 A. And the orders that you just referenced from
22 September and October of 2019 followed the
23 order that's referenced in my testimony in
24 July of 2019, Order 26,274, where, as I

1 stated before, "We grant Liberty the
2 permission and approval to undertake the
3 conversion of the Keene system, subject to
4 the conditions set forth herein." So those
5 orders came after we received approval to
6 convert customers in the Marketplace. So,
7 again, the cost of that conversion hasn't
8 been submitted for recovery to this point.
9 But the fact that the approval to convert
10 those customers is included in that earlier
11 order.

12 Q. So that earlier order inside the declaratory
13 ruling effectively addressed a matter of law,
14 but included in as a matter-of-law issue the
15 issue of safety, because safety has to be
16 incorporated into the ability to provision
17 gas under your franchise. So how is it that
18 that declaratory ruling, in which the docket
19 itself was based on a matter of law, how does
20 that indicate a fact finding that established
21 a prudence for whether or not it made
22 sense -- whether or not -- not that it made
23 sense, but whether or not it was prudent?
24 You have the legal right to do, to provide

1 service to these folks, and that's what
2 17-068 established, that you could. It
3 doesn't establish that you should or that
4 it's prudent. I mean, was there analysis
5 provided in that -- you know, was that a
6 fact-finding docket that provided analysis as
7 to whether or not it was prudent to do or --
8 prudent to do?

9 A. Well, the docket book, the filings, the
10 orders in that case all speak for themselves.
11 When the Commission issued its initial order
12 on the declaratory ruling agreeing with the
13 Company that we had the franchise to serve
14 natural gas in Keene, it also stated that a
15 safety assessment was required. What follows
16 from that is, you know, the docket got
17 expanded beyond what we had initially
18 requested in the declaratory ruling. But
19 again, the orders all speak for themselves in
20 terms of the findings they made and the bases
21 those findings were made on.

22 Q. Thank you very much. I appreciate your time
23 in answering the questions.

24 MS. SHUTE: And I am done with this

1 witness, Chairwoman Martin. Thank you.

2 CHAIRWOMAN MARTIN: Okay. Thank
3 you.

4 Ms. Schwarzer.

5 MS. SCHWARZER: Thank you.

6 CHAIRWOMAN MARTIN: Let's go off
7 the record for a second.

8 (Discussion off the record.)

9 (Lunch recess taken at 12:41 p.m., and
10 the hearing resumed at 1:34 p.m.)

11 CHAIRWOMAN MARTIN: Let's go on the
12 record.

13 And Ms. Schwarzer, you're up.

14 MS. SCHWARZER: Thank you, Madam
15 Chairwoman.

16 CROSS-EXAMINATION

17 BY MS. SCHWARZER:

18 Q. Mr. Mullen, I'm just looking for your screen.
19 Where are you? Oh, there you are. Thank
20 you.

21 Mr. Mullen, I wanted to ask you about
22 your experience with the CNG applied contract
23 either in the RFP phase or the contract
24 negotiation phase. So let me break it down.

1 Were you directly or indirectly involved
2 in the RFP process for the CNG contract in
3 October 2016, that was signed in 2016?

4 A. I was not.

5 Q. Were you directly or indirectly involved in
6 the RFP process for the CNG contract
7 negotiation for the contract that was signed
8 in November of 2016?

9 A. I was not.

10 Q. Were you directly or indirectly involved in
11 the RFP process for the CNG contract
12 amendment that was executed in May of 2017?

13 A. I was not.

14 Q. And were you directly or indirectly involved
15 in the contract selection for the
16 October 2016 contract?

17 A. No.

18 Q. Were you involved in the contract selection
19 directly or indirectly for the November 2016
20 contract?

21 A. No.

22 Q. Were you -- okay. May 2017 --

23 A. No.

24 Q. -- same question?

1 Were you directly or indirectly involved
2 in the execution of the October 2016
3 contract?

4 A. No.

5 Q. Or the November 2016 contract?

6 A. No.

7 Q. Or the May 2017 contract?

8 A. No.

9 Q. Were you directly or indirectly involved in
10 discussions with Staff in the winter of 2015
11 about any CNG contract?

12 A. You'd have to be more specific. I've been
13 involved in lots of conversations over the
14 years. And I don't know -- I mean, going
15 back to 2015? It's possible. But I really
16 can't recall. Nothing specific for me to
17 latch on to.

18 Q. Okay. If I represent to you that the 2015
19 Winter Cost of Gas did not -- the transcript
20 didn't say anything about CNG, would that
21 surprise you?

22 A. Wouldn't surprise me.

23 Q. And how about the winter of 2016? Were you
24 involved in any discussions prior to that

1 cost of gas proceeding?

2 A. Discussions?

3 Q. About the CNG supply contract.

4 A. Again, you know --

5 Q. Too broad?

6 A. It is way too broad. When it comes to cost
7 of gas proceedings, I am involved because I
8 review information that goes into the
9 filings. But in terms of just discussions, I
10 don't know what you're referring to.

11 Q. Okay. Were you directly or indirectly
12 involved in any research connected to CNG
13 service, including the supply contract from
14 the date Liberty acquired Keene in 2014
15 through the execution of the October 2016
16 contract?

17 A. Well, again, I've been employed by the
18 Company since May of '14. I get involved in
19 lots of conversations over the time. I don't
20 know exactly what you're classifying as
21 "research." But to the extent that I may
22 have participated in conversations over time,
23 I mean, again, it's too broad a question for
24 me to give you any specific answer.

1 Q. Well, do you have any memory of any analysis
2 that was done prior to the execution of the
3 October 2016 contract that would support the
4 execution of that contract?

5 A. Not specifically, no, but that doesn't mean
6 something didn't happen that I was not
7 involved with.

8 Q. Well, I believe you were present when the
9 first Liberty panel testified?

10 A. I was.

11 Q. And would you agree that none of the three of
12 them were aware of any specific analysis that
13 was done in support of the October 2016
14 contract?

15 A. I believe that's what they said.

16 Q. And same question for the November 2016
17 contract: Did you -- Mr. Mullen, were you
18 involved in any research or analysis that
19 supported the 2016 contract as something
20 Liberty should do?

21 A. Same answer I gave before.

22 Q. Is it too broad or no?

23 A. It's too broad for me to give you any
24 specifics. I mean, you're talking in

1 generalities here.

2 Q. Well, are you aware of any specific document
3 or memo that supports entering into a CNG
4 supply demand contract at any time through
5 the May 2017 execution date?

6 A. There very well may have been documents that
7 crossed my e-mail at some point in time. May
8 have been involved in meetings. Again, we're
9 talking many years back. And I get involved
10 in lots and lots of conversations. So it's
11 hard for me, without any specifics, to be
12 able to say whether I saw any particular
13 document or I'm aware of any particular
14 conversation.

15 Q. Sitting here today, given that it's an
16 important issue, are you aware of any
17 analysis that was done in 2016 or 2017 that
18 supported entering into the CNG contract?

19 A. I'm aware that at the time we acquired Keene,
20 as I testified earlier, that part of our plan
21 was to convert the entire system eventually
22 to CNG and/or LNG. So over that time period,
23 after I joined the Company, I'm sure there
24 were conversations that were had that I may

1 or may not have been involved with that took
2 place. I can't recall any specifics at this
3 time about that. But I know that people were
4 looking into it over time because, again,
5 that was part of what we discussed in Docket
6 DG 14-155.

7 Q. Well, specifically, though, just to get an
8 answer to my question, sitting here today,
9 are you aware of any analysis, financial
10 spreadsheet or memo that you can point me to
11 that supported converting CNG for Keene?

12 A. Well, as I've testified earlier, we're here
13 talking about the cost to serve the customers
14 in the Marketplace. With respect to the
15 Marketplace, I am aware of the Company's
16 response as part of the investigation of the
17 December 2015 incident that was requested by
18 the Governor. And in there we put forth
19 alternatives. I did review the Company's
20 response there, so I do recall that. And I
21 know that that involved, among other things,
22 putting a CNG skid to serve the Marketplace.
23 It also had as an alternative to go to a
24 permanent LNG facility. So I am aware of

1 that.

2 Q. Okay. And I will ask you some questions
3 about that later. But right now I'm thinking
4 more of the spreadsheet or financial analysis
5 or projection of rates, any analysis or work
6 that was done, any economic analysis that was
7 done in 2016 or 2017 that would have
8 supported Liberty's deciding to go to CNG in
9 Keene.

10 A. I can't recall any specific document off the
11 top of my head.

12 Q. Did Chico DaFonte -- you would agree that --
13 I may be butchering his name, I apologize --
14 Chico DaFonte signed the May amendment, the
15 May 2017 amendment?

16 A. I'd have to look at it, but I believe that's
17 the case. I'll take it subject to check.

18 Q. Sure, take it subject to check. Okay.

19 And he still works for Liberty, or
20 Liberty's parent company, Algonquin?

21 A. He does.

22 Q. You did not -- Liberty did not produce him as
23 a witness.

24 A. That's correct. In this proceeding? Yes.

1 Q. Correct. Was he asked for any information he
2 might have?

3 A. And again, you've got to be more specific. I
4 mean, we have conversations with people all
5 the time.

6 Q. Was Mr. DaFonte asked about any analysis,
7 economic spreadsheet, concrete research that
8 may have been done in 2016 and 2017 to
9 support going to CNG in Keene?

10 MR. SHEEHAN: Object. This invades
11 attorney/client communications as to what we
12 request of our internal people. If Staff had
13 requested the information in a data response,
14 we certainty would have tracked it down and
15 provided it.

16 MS. SCHWARZER: I do not think it
17 goes to the attorney/client privilege.
18 Anything Mr. DaFonte may have said to Mr.
19 Sheehan would go to attorney/client
20 privilege. Mr. Mullen is not an attorney.
21 He's not a representative of the Company at
22 this time. He was clearly identified as a
23 witness to step forward. He answered data
24 responses about this entire issue. I think

1 it's fair for me to ask him if he's aware of
2 whether Mr. DaFonte participated in
3 discussions about why CNG was served in
4 Keene.

5 CHAIRWOMAN MARTIN: Can you narrow
6 your question, please, so it excludes the
7 concern related to attorney/client privilege?

8 MS. SCHWARZER: Sure.

9 BY MS. SCHWARZER:

10 Q. Mr. Mullen, with the exception of anything
11 that your attorney may have said to you, or
12 that Mr. DaFonte may have said to your
13 attorneys, or anything that you overheard in
14 a discussion that included your attorney, do
15 you have any independent knowledge of whether
16 Mr. DaFonte was asked about information that
17 supported entering into a CNG contract in
18 2016 or 2017 contemporaneous to execution?

19 A. Again, this involves too much speculation. I
20 will say this, though, that most of the
21 discussions that we have, whether they be
22 verbal or whether they be through electronic
23 version, typically involve legal
24 representation. So whether I can remember

1 something that maybe excluded Mr. Sheehan, I
2 can't tell you off the top of my head.

3 Q. Well, unless it was a legal meeting, there
4 are -- if you can't make the distinction, let
5 me just ask one more question and I'll move
6 on.

7 You wanted to -- it's your position that
8 it was prudent for Liberty to engage -- to
9 execute the contracts that it did in 2016 and
10 2017; correct?

11 A. Yes, based on the circumstances at the time.
12 And the 2016 contract ended up getting -- the
13 original one ended up getting terminated --

14 Q. Okay. And I'll get to that. But what
15 circumstances do you believe supported
16 entering into that contract?

17 A. Which one?

18 Q. Well, let's go with October 2016. Why was
19 that appropriate?

20 A. Because, as the Company said in its response
21 to the December '15 incident investigation,
22 we were going to be looking at, among one of
23 the things, to install a CNG skid to serve
24 the customers in the Monadnock Marketplace.

1 That contract was related to -- at the time
2 we were going to locate a CNG skid behind the
3 Price Chopper supermarket in that
4 Marketplace. That contract related to that.
5 We didn't end up going forward with that, and
6 that contract was terminated.

7 Q. And was the October 2016 contract a uniquely
8 supplied contract without any demand?

9 A. I don't recall the terms off the top of my
10 head.

11 Q. Do you remember Debra Gilbertson testifying
12 to that on Day 1?

13 A. I'll take that subject to check. The
14 contract speaks for itself.

15 Q. Okay. So is it your position that,
16 irrespective of costs, irrespective of future
17 costs, that the only issue that you
18 considered when -- that, you, Liberty, not
19 you, Mr. Mullen, that Liberty considered was
20 your concern about safety?

21 A. I wouldn't say that. Whenever somebody uses
22 a word like "only," I wouldn't say that's the
23 case. We also have a duty to provide
24 reliable service. And so there are other

1 considerations that went into that --

2 Q. So what --

3 A. -- so I would not -- I would not go with your
4 statement.

5 Q. Okay. So what other circumstances was
6 Liberty aware of in October of 2016 that
7 supported signing that CNG contract?

8 A. I believe I've already stated that we were
9 going to serve the customers in the
10 Marketplace with an alternative source so we
11 could be able to retire the troublesome
12 blowers that created safety and reliability
13 issues.

14 Q. You have said that. And I heard that. And I
15 understand that it's your position that it
16 was a safety issue, irrespective of whether
17 the Commission orders may say otherwise. But
18 I'm asking you about other circumstances that
19 you can identify right now that supported
20 Liberty entering into a CNG contract in 2016
21 when the contract was executed.

22 A. Well, I was not involved in the execution of
23 the contract, so others who were involved
24 more directly would be the ones to question

1 on that and not me.

2 Q. Okay. And who was involved directly, other
3 than the person, Mr. DaFonte, who signed it?

4 A. Well, I believe somebody from business and
5 development -- business development was
6 included. I'm not sure what that really has
7 to do with the costs that are at issue in
8 this cost of gas proceeding.

9 Q. Well, I will get to that. But right now I'm
10 just wanting -- trying to get a framework.

11 Bill Clark was assigned to do economic
12 analysis for CNG; is that correct?

13 A. He works on lots of business development
14 projects, and CNG was one of them.

15 Q. Okay. And he is still with
16 Liberty/Algonquin; is that correct?

17 A. Correct.

18 Q. And he is not -- Liberty did not produce him
19 as a witness?

20 A. Correct, because, as I started off my
21 testimony, there were two issues that are at
22 issue with this cost of gas proceeding, and
23 those relate to the cost to serve customers.
24 So whatever happened back in 2016 for

1 contracts that are no longer in place to me
2 seems irrelevant.

3 Q. Well, I believe the November 2016 contract
4 was amended; is that correct?

5 A. Well, now we're talking about November and
6 not October.

7 Q. Okay. Let me go back.

8 Do you have any information from Mr.
9 DaFonte about the November 2016 contract or
10 the May 2017 amendment, either one?

11 A. When you ask for more information, you have
12 to be more specific.

13 Q. Are you aware of any analysis Mr. DaFonte did
14 to support Liberty's signing the
15 November 2016 or the May 2017 contract to
16 serve CNG in Keene?

17 A. I am not personally aware of any particular
18 analysis he may have performed.

19 Q. Did you look for any before you answered data
20 responses?

21 A. Which particular data responses?

22 Q. Any of our data responses. Particularly 1-4
23 and 1-12.

24 A. I'd have to go back and see the topics of

1 those. But those were really talking about
2 timing issues that we encountered. They
3 didn't go to specific analysis of, underlying
4 analysis of entering into contracts.

5 Q. Well, you're suggesting that entering into
6 those contracts was prudent and reasonable
7 based upon what Liberty knew; is that
8 correct?

9 A. I'm suggesting that the contract that's in
10 place now and the costs that we are incurring
11 are prudent based on what we knew at the time
12 we signed the contract that's in place right
13 now.

14 Q. And I'd like to know what did you know when
15 you signed the contract in November 2016 that
16 was later amended in May of 2017? What did
17 Liberty know that supported entering into
18 those contracts?

19 A. And I believe that's discussed in my
20 testimony, as well as in the discovery
21 responses, about what we knew and what we
22 didn't know.

23 Q. I think you've talked about what happened. I
24 don't think you've talked about what you knew

1 in 2016 and 2017, which is why I'm asking.

2 A. We knew that we were going to be serving
3 customers in the Marketplace. We knew we
4 needed to retire the blowers at the propane
5 facility. And we fully expected to be able
6 to serve customers later in 2017. That's
7 what we knew, and that's why we signed the
8 contract at the time, because we knew we
9 would have to provide them service because
10 propane would no longer be an option once
11 converted.

12 Q. Well, you understand wishes and expectations
13 and plans are not the same thing as analysis.

14 A. I don't believe I spoke about wishes.

15 Q. I think you said that you planned to serve
16 CNG, you wanted to retire the blowers, and
17 you expected service in 2017.

18 A. We planned to retire the blowers. We didn't
19 just want to. And again, that was part of
20 our response to the December 2015 incident.

21 Q. We are going to talk about that later. But
22 are you aware of any economic analysis that
23 Mr. Clark did in 2016 or in 2017 with regard
24 to CNG service in Keene?

1 A. And again, does it relate to just the
2 Marketplace, or does it relate to the entire
3 system?

4 Q. I will take an answer to either and both.

5 A. Well, I don't know how to answer such an
6 open-ended question like that.

7 Q. Well, I'll try again.

8 Mr. Mullen, are you aware of any
9 economic analysis that Mr. Bill Clark did in
10 2016 or in 2017 that supported entering into
11 a CNG supply and demand contract?

12 A. Based on what I can recall at this moment,
13 no.

14 Q. I would like to talk a little bit with you
15 about the prudent standard in general. You
16 have many skills. I just want to put on the
17 record that you're not an attorney, so that's
18 why I'm asking you about the prudent standard
19 and how we're going to discuss it here.

20 In terms of prudence, you would agree
21 that prudence has to do with what someone
22 knows or should know at the time an act is
23 undertaken; yes?

24 A. Generally, yes.

1 Q. And it doesn't require an ability to predict
2 the future; correct?

3 A. Correct. Nor does it involve looking back in
4 retrospect.

5 Q. It's important to establish what was known or
6 what could be known in 2016 and 2017;
7 correct?

8 A. Correct.

9 Q. And prudence also includes due diligence and
10 ability to consider risks and potential
11 complexities and potential delays. Would you
12 agree with that?

13 A. It includes a lot of things. Those could be
14 among those, yes.

15 Q. So in your testimony on Bates Page 8, Lines 2
16 and 3, I'm just going to read them. You
17 said, "Indeed, the reasons for the delay are
18 not relevant to the current issues. The
19 Company was simply providing insight into its
20 decision making and the issues that existed
21 before and after the execution of
22 the" --(connectivity issue)

23 (Court Reporter interrupts.)

24 Q. -- "CNG supply contract."

1 The first sentence to what I began
2 reading was, "The responses" -- and you're
3 talking about your data responses -- "are not
4 intended to place blame for those delays.
5 Indeed, the reasons for the delay are not
6 relevant." Do you remember that part of your
7 prefiled testimony?

8 A. I do.

9 Q. Okay. In terms of the reasons for the
10 delays, isn't it important to figure out
11 whether information that was known or that
12 should have been known in 2016 and 2017 would
13 have dictated a different outcome or alerted
14 you to delays that surprised you later?

15 A. Sure.

16 Q. So reasons are key to determine whether an
17 entity -- in this case, Liberty -- knew or
18 what it should have known from May 2014
19 through May 2017.

20 A. I'm not sure where May 2014 comes in. I
21 guess that's when I joined the Company.

22 Q. Well, actually, May 2014 was my estimate of
23 when an RFP probably went out for the
24 October 2016 contract.

1 A. I can't speak to when the RFP went out.

2 Q. Okay. So would you agree that reasons for
3 events that occurred later are important to
4 determine whether an entity -- and in this
5 case, Liberty -- knew what it knew or what it
6 should have known from, let's say
7 October 2016, which is the date on your --
8 the first date on your timeline, through May
9 of 2017?

10 A. Sure.

11 Q. Okay. And were you here on Day 2 of the
12 testimony, when Liberty's counsel represented
13 to Mr. Frink and Mr. Knepper that Liberty
14 could have cancelled the CNG supply demand
15 contract up until the day that the amendment
16 was signed on May 22nd, 2017?

17 A. I don't recall that specifically.

18 Q. Well, subject to check?

19 A. I'll take your representation subject to
20 check. But I don't recall that specific
21 sentence.

22 Q. Okay. Let's look at Page 39, the timeline
23 that you provided with your prefiled
24 testimony.

1 A. Okay.

2 Q. What's significant to me is what's missing,
3 frankly, from this timeline. There's nothing
4 on this timeline that talks about when RFPs
5 for the October contract or the November 2016
6 contract or the May 2017 contract -- I guess
7 it would have been the November 2016 contract
8 went out. So there's no RFP process on this
9 timeline; correct?

10 A. You're free to add whatever you'd like to a
11 timeline. I mean, I prepared what I did and
12 included in my testimony based on what I
13 needed for my testimony.

14 Q. Well, there's nothing on this timeline that
15 talks about when contract negotiations
16 occurred and terms were discussed for
17 November 2016; correct?

18 A. They are not on this timeline. That is
19 correct.

20 Q. And there's nothing that shows contract
21 negotiations or analysis prior to the
22 execution of the November 2016 contract?

23 A. The timeline has what's on it, and it doesn't
24 have what's not on it.

1 Q. Okay. In terms of the May amendment, there's
2 nothing on this contract -- on your timeline
3 that suggests why an amendment was even
4 necessary; correct?

5 A. I don't know why I would put reasons in a
6 timeline.

7 Q. Okay. You've heard discussion of
8 Administrative Rule PUC 506.01, correct --

9 A. Correct.

10 Q. -- and its relevance here. If I represent to
11 you, as Mr. Knepper testified, it's
12 substantively been in place for decades, and
13 even in its present form it was in effect in
14 May of 2013, if we were to place this on the
15 timeline, it would be several years before
16 the contracts were executed; correct?

17 A. That's correct.

18 Q. Okay. And for the duration of this timeline,
19 and even going back to 2013 and 2014 when
20 Liberty acquired Keene, Liberty has never
21 been an end user. It's always been a
22 utility. So it's never been an end user of
23 fuels; correct?

24 A. I think we have some company use. I wouldn't

1 say we're not an end user.

2 Q. Would you consider yourself an end user for
3 CNG?

4 A. By myself, you mean Liberty?

5 Q. I'm sorry. Yes. Do you believe
6 Liberty-Keene is an end user of CNG for the
7 Keene distribution system?

8 A. I don't believe there's any use there, so no.

9 Q. Okay.

10 A. However, what you have to keep in mind is
11 that the Company does not own the skid. Our
12 supplier owns the skid, so --

13 Q. Why do you -- why is that important for me to
14 keep in mind?

15 A. Because I believe that was a significant
16 reason for the differing views about which
17 standards applied and which ones didn't.

18 Q. I think you're right, and I'm happy to get to
19 that. But does that change your answer as to
20 whether you consider Liberty-Keene an end
21 user of CNG?

22 A. No.

23 Q. So is it your position that, notwithstanding
24 what seems to be a lack of contemporaneous

1 information on analysis and contract
2 negotiation, and notwithstanding PUC 506.01,
3 and the fact that Liberty is not an end user
4 of CNG, that it was nonetheless prudent for
5 Liberty to sign the November 2016 and/or
6 May 2017 CNG supply contract?

7 MR. SHEEHAN: Objection to the
8 characterization. Mr. Mullen testified he
9 was not aware of any analysis. Staff could
10 have asked for any witness to be present. We
11 would have produced anyone they asked, as we
12 have in the past. So Mr. Mullen is not aware
13 of it. That doesn't mean it doesn't exist.

14 MS. SCHWARZER: I was actually
15 asking for his opinion.

16 BY MS. SCHWARZER:

17 Q. Notwithstanding the lack of contemporaneous
18 information from anyone on Liberty panels
19 about analysis and contract negotiation,
20 notwithstanding the PUC 506.01, is it your
21 position, Mr. Mullen, that Liberty acted
22 prudently when it signed the CNG contract in
23 2016 and 2017?

24 CHAIRWOMAN MARTIN: I'm going

1 sustain the objection because I have the same
2 recollection of the testimony regarding Mr.
3 Mullen not being aware of any analysis
4 himself. So if you could rephrase, you
5 can --

6 MS. SCHWARZER: Sure.

7 BY MS. SCHWARZER:

8 Q. Mr. Mullen, based on the evidence in this
9 hearing, which includes an absent -- which
10 has no contemporaneous information on
11 analysis or contract negotiation, is it your
12 position that Liberty acted prudently when it
13 signed the CNG supply contracts in 2016 and
14 2017?

15 A. Yes.

16 Q. Okay. I am going to now turn to that report
17 that you referenced earlier that looks at
18 safety issues from the 15-517 docket.

19 MS. SCHWARZER: And I'm going to
20 ask anyone who wants to follow along to use
21 either the link I described earlier. You can
22 go to the PUC web site and click on the
23 Safety Division. And then in the orange
24 columns on the left, there will be a category

1 that says Pipeline Safety Incidents, and
2 second paragraph there will be the Keene
3 incident. And at the end of the paragraph
4 there will be a hyperlink which should bring
5 you to the 100-plus-page report done by Mr.
6 Knepper.

7 MS. SCHWARZER: And I'd appreciate
8 if anybody who's still looking would sort of
9 wave 'cause it's hard for me to know if
10 you're there.

11 BY MS. SCHWARZER:

12 Q. So Mr. Mullen, Page 1 of this report is dated
13 March 31st, 2016; correct?

14 A. Correct.

15 Q. And that was before Liberty executed the
16 November 2016 contract?

17 A. That's correct.

18 Q. And before the May 2017 amendment?

19 A. Yes.

20 Q. And this is the report that you referenced
21 earlier, the purpose of which was to respond
22 to a directive to investigate the security
23 incident -- the safety incident in December
24 of 2015 for Keene.

1 A. Correct.

2 Q. Okay. If you would go to Page 15, please, as
3 numbered at the bottom of the page. Might
4 take us all a little while to get there.

5 A. I'm there.

6 Q. Okay. You beat me then.

7 (Pause in proceedings)

8 Q. Okay. On Page 15, the title says "Staff
9 Recommendations and Review of Liberty
10 Post-Incident Actions"; correct?

11 A. Yes.

12 Q. And there are a number of actions that
13 Liberty implemented and a table on the left,
14 and Safety Division comments appear on the
15 right.

16 A. And those are eight actions implemented
17 immediately post-incident.

18 Q. And that's because this report focused on the
19 short-term response. Given its date, it
20 really didn't have a chance to do much else.
21 But that was what it was directed to do;
22 correct?

23 A. I think it was that, and also for future
24 actions as well, which are addressed on

1 Page 17.

2 Q. And I agree that there are some future
3 actions on Page 17. But that wasn't the
4 purpose of the report.

5 A. I can't speak to the purpose of the report.
6 The Governor asked for an investigation, and
7 the Safety Division did an investigation.

8 Q. Okay. Well, before we leave Page 15, just at
9 the very bottom you'll notice that on Roman
10 VI and Roman VIII, Staff starts off by saying
11 "Staff agrees" or the "Safety Division
12 agrees." It doesn't do that with every item,
13 but in those two it did.

14 A. I agree that's what it says.

15 Q. Okay. And on Page 16 there's a list of
16 options that Liberty considered and
17 discarded --

18 A. Correct.

19 Q. -- as being either too costly or too complex
20 to implement; correct?

21 A. Correct.

22 Q. Okay. And towards the very bottom, No. 6 was
23 install a propane/air mix holder to feed the
24 3.5 psig system if blowers shut down, and

1 this was too costly and discarded and would
2 use CNG system as an alternative. That's
3 what Liberty proposed.

4 A. That's what it says.

5 Q. Okay. And you also -- in addition to
6 rejecting the propane/air mix holder, Liberty
7 rejected -- excuse me, there's something
8 flying in front of me, distracting.

9 Liberty considered installing a small
10 modular LNG system but decided that that
11 was -- would be also rejected.

12 A. Again, that's what it says.

13 Q. And if we go to Page 18, it says Liberty
14 identified six other actions that they plan
15 to consider going forward with. Not
16 necessarily they were going to do, but they
17 were considering doing; correct?

18 A. Correct.

19 Q. Okay. And as you have referenced earlier,
20 No. 6 -- my screen is jumping around. Excuse
21 me.

22 No. 6 said, "Install a CNG feed for all
23 or a portion of the high-pressure system,
24 including the Monadnock Marketplace, allowing

1 for deactivation of the blower system. The
2 low-pressure system fuel mixture can be
3 adequately supplied via
4 atmospherically-supplied air." Did I read
5 that correctly?

6 A. Yes.

7 Q. Then in the column with the Safety Division
8 comments, the Safety Division doesn't say it
9 agrees; right?

10 A. I'm not going to characterize what the Safety
11 Division said or didn't. The words speak for
12 themselves.

13 Q. Well, do you see the word --

14 A. I don't see the words "Safety Division
15 agrees." How the Safety Division writes
16 their reports, and if they use the same
17 terminology all the time, I can't speak to.

18 Q. Okay. Well, let's look at No. 3 before we go
19 further with No. 6.

20 Right above, 3 and 11, says the Safety
21 Division agrees an assessment of this option
22 and an estimation of the operational savings
23 make sense, right, in the same table? And
24 right --

1 A. That's correct.

2 Q. And No. 1 in the table, it says the Safety
3 Division agrees for No. 1 regarding time
4 delay.

5 A. Well --

6 Q. Correct?

7 A. Well, again, the words say what they say. I
8 agree that's what it says.

9 Q. Okay. And then what the Safety Division
10 wrote for No. 6 was, "There are tariff
11 implications of this option, including gas
12 quality and providing two different levels of
13 service to customers. This may allow
14 consistent operation of the low-pressure
15 system in atmospheric mode. Liberty would
16 need to model this prior to the conversion of
17 the high-pressure system. Liberty expects to
18 file a petition on this in second quarter."
19 Did I read that correctly?

20 A. Yes.

21 Q. Did Liberty model this CNG conversion prior
22 to conversion of the high-pressure system?

23 A. I can't speak to what may have happened in
24 operations and engineering.

1 Q. Are you aware of whether they did or not?

2 A. I believe they did. That was our plan at the
3 time. But where I'm not in the day-to-day
4 operations of engineering and operations, I
5 can't speak to everything they did or didn't
6 no.

7 Q. Earlier you said you were aware -- unaware of
8 anything that would support the conversion,
9 but now you think you're aware of engineering
10 and operational reports?

11 A. No. You were asking me before about economic
12 analysis, and this is about a specific
13 modeling. Two different questions.

14 Q. Did Liberty file a petition on the conversion
15 in the second quarter of 2016?

16 A. No, the -- I can't speak exactly why that did
17 or didn't happen or what changed the plans
18 associated with that. But sometimes you have
19 timeframes associated with things and other
20 events end up taking -- end up changing those
21 plans. I can't speak to, you know, why this
22 says second quarter and what happened after
23 that. I don't know the particulars, so I
24 can't speak directly to it.

1 Q. Okay. Why don't we move ahead, then, to
2 Page 103. And if you're like me, the writing
3 is really tiny. You may have to click on a
4 button or two to make it a little bigger,
5 'cause this is on my laptop.

6 (Pause in proceedings)

7 Q. Okay. If we go briefly to Appendix 2, which
8 first starts on Page 100, you can see in the
9 upper left-hand corner of the page,
10 Appendix 2 says "Liberty's filed report on
11 March 25th, 2016." So this is something
12 Liberty filed, not something that Staff
13 created.

14 A. I believe this was something we did in
15 response to questions from Staff, and this
16 was part of our response.

17 Q. Okay. And on Page 103, look at the columns
18 across the top. The Alternatives are
19 numbered. There's a description of the
20 alternative. There are Notes and Details
21 columns, a Scope/Procedure [sic] column, a
22 Risk column; an assessment as to whether the
23 cost would be low, medium or high, high being
24 in excess of \$500,000; long-term, short term,

1 and long-term is described as more than six
2 months. There's an assessment of complexity.
3 There's a recommendation. There's
4 Implementation Probability and there's an
5 Update column.

6 So let's look at No. 14. No. 14 says,
7 "CNG feed to HP," high pressure system, "all
8 or portion of Monadnock Marketplace"; agreed?

9 A. Yes.

10 Q. Okay. And the Scope/Resources were described
11 as "Significant." "May also be able to lease
12 the CNG station." And the Risk was described
13 as, "File as temporary solution; how much
14 space would it take up on production avenue."
15 It's assigned a medium cost, meaning Liberty
16 thought it was going to be under \$500,000.
17 It's described as "long term," more than six
18 months. Complexity is medium. And then
19 under Recommendation it says, "Pursue as
20 option. Bill Clark to pursue economics."
21 And I think we've established, but can you
22 confirm for me, you're unaware as to whether
23 Mr. Clark did that or not; correct?

24 A. Well, if this was the recommendation, knowing

1 Mr. Clark, I'm sure he did it. I just said
2 before that I'm unaware, as I sit here right
3 now, of what specific analysis he may or may
4 not have done.

5 Q. Okay. Then the entire first Liberty panel
6 and you, previously to this moment, testified
7 you had no knowledge of it. But you're
8 looking at this page and you now believe it
9 exists?

10 A. If we were asked for it, we could probably
11 search for it and see what does exist.

12 Q. Well, the implementation probability, even
13 before that economic analysis was done, is
14 described as "medium high"; correct?

15 A. I'm looking for it.

16 Q. Oh, it's the column right next to the column
17 that says, "Pursue as option. Bill Clark to
18 pursue economics."

19 A. That's what it says.

20 Q. Okay. And then the update is to proceed with
21 the interim option.

22 A. Yes.

23 Q. Now, right below that, 15 and 16, are two
24 items described as "discarded" by Liberty,

1 the air propane holder and the LNG plant. Do
2 you see that?

3 A. I do.

4 Q. And they were described as "high cost" and
5 "long-term" and "high complexity," both of
6 them; correct?

7 A. Yes.

8 Q. And leaving aside for now the recommendation
9 for the air propane holder and long-term
10 option was the LNG plant, but both are
11 labeled "discard" and "discard."

12 A. Correct.

13 Q. Okay. So I am not taking the position that
14 Liberty should have been able to project the
15 future. But I do want to ask you, given what
16 we know about the cost of the CNG conversion
17 now, and given what we know about the
18 complexity, had you known that it was high
19 cost and had you known that it was complex at
20 the time, it seems that Liberty would have
21 rejected that option --

22 A. Well, going --

23 Q. -- consistent with 15 and 16.

24 A. Well, going back to what the plan was

1 initially, the plan was to put a CNG skid
2 behind the Price Chopper at the Marketplace.
3 That would not involve the extra distribution
4 main we had to do from our current temporary
5 facility. So the plan was a bit different
6 than what we're currently dealing with today.
7 So whatever analysis went into the
8 preparation of this response would have been
9 based on the plan at that particular time and
10 what was considered to be the most efficient
11 way to do it at that time.

12 As we now know, things -- we didn't end
13 up putting a CNG skid behind the Price
14 Chopper, and ended up going a different
15 route. So, I mean, this thing says what it
16 says. And it was, you know, based on
17 whatever date in early 2016 we prepared it,
18 and that was based on the circumstances at
19 that time.

20 Q. Okay. So to return to our earlier
21 conversation about it being very important
22 what Liberty knew or should have known, this
23 sort of illustrates that; right? Because the
24 plan that was described in this table was

1 based on a very different idea of how CNG
2 distribution in Keene would occur; correct?

3 A. Could you repeat that?

4 Q. Sure. You and I discussed earlier that it
5 was important to know what a company should
6 have known or could have known when assessing
7 prudence because it goes to how plans
8 unfolded. And right here, in March of 2016,
9 as you have summarized, Liberty had a very
10 different idea of how CNG would be served in
11 Keene; correct?

12 A. Correct. And that's why we also went to a
13 different contract.

14 Q. Well, let's talk about that in a minute. But
15 I would like to talk about PUC 506.01 first.

16 MS. SCHWARZER: And for everyone
17 following along, I'm finished with this
18 exhibit, so it can be closed up. So anybody
19 who wants to open PUC 506.01 is welcome to on
20 the Commission web site.

21 BY MS. SCHWARZER:

22 Q. I'm going to read the first sentence to you,
23 Mr. Mullen. The very first sentence in
24 506.01(a) is the relevant one here. "All

1 utilities, including those with propane
2 storage facilities, shall comply with those
3 pipeline safety regulations established by
4 the United States Department of
5 Transportation, which are set forth in 49 CFR
6 Parts 191, 192, 193, 198 and 199, including
7 future amendments thereto." That's what PUC
8 506.01 says.

9 A. I haven't pulled it up, but I'll take that
10 subject to check.

11 Q. Okay. Subject to check. And as you heard
12 Mr. Knepper testify, it was in effect for
13 decades. But this actual, specific
14 regulation has been in place since May of
15 2013. And I'd ask if you'd accept that
16 subject to check.

17 A. Sure.

18 Q. And the section of 49 CFR Part 192 lists
19 standards applicable to CNG; correct?

20 A. Okay. Now I have to pull it up.

21 Q. Well, it's the entire CFR. I don't have the
22 CFR in front of me. I think --

23 A. Nor do I, so it's hard for me to agree to
24 something that neither you nor I have in

1 front of us.

2 Q. Well, let me ask you. Are you aware that the
3 ASME B31.3 standard that Liberty -- I'm
4 sorry. I see Mrs. Robidas shaking her head.

5 (Court Reporter inquiry.)

6 Q. Are you aware that the ASME B31.3 standard --
7 which you, Mr. Mullen, explained in prefiled
8 testimony at Bates 035 was the standard
9 Liberty followed for the CNG supply contract
10 and initial conversion plan -- are you aware
11 that that standard is not included in 49 CFR
12 Part 192?

13 A. They seem like different standards, so I'll
14 take that.

15 Q. Well, it's not just they're different
16 standards. It's not in the possible
17 standards that one might follow.

18 A. Sure. I'll agree to that.

19 Q. So let's now turn to the CNG contracts
20 themselves. Liberty executed a contract for
21 CNG service on October 24, 2016 covering the
22 period December 1, 2016 through May 31, 2017.
23 Are you aware of that contract?

24 A. Yes.

1 Q. And you made a correction to your testimony
2 earlier, at the beginning, to say that the
3 Company did not take service under that, in a
4 footnote in your prefiled testimony; correct?

5 A. That's correct.

6 Q. And that was a contract that only included
7 supply and no demand charge; is that correct?

8 A. I believe that is correct.

9 Q. Who determined that Liberty would need CNG
10 service during the identified contract
11 period?

12 A. Who identified? I mean, the people involved
13 in negotiating the contract.

14 Q. Do you know who that was?

15 A. Well, there would be somebody that signed it.
16 I would imagine others may have been involved
17 in negotiating it. I was not, so I can't
18 speak directly to it.

19 Q. Are you aware at all how Liberty determined
20 that CNG would be needed?

21 A. I think we've already gone down this road.

22 MS. SCHWARZER: Okay. I guess I
23 would ask the Chairwoman if she would
24 entertain a record request for any

1 information Liberty might provide about
2 analysis supporting the CNG October contract.

3 CHAIRWOMAN MARTIN: Is that clear
4 to you, Mr. Sheehan, what's being requested?

5 MR. SHEEHAN: Yes, and I object.
6 This issue has been in front of this docket
7 for months now, and there's no reason that
8 question couldn't have been asked in
9 discovery. And second, given the
10 Commission's order approving this contract,
11 and we think it's pretty clear, it's also
12 irrelevant because the Commission effectively
13 decided this issue when it approved the
14 contract in the cost of gas order. That
15 being said, I do understand it, if the
16 Commission directs us to so provide it.

17 CHAIRWOMAN MARTIN: Go ahead, Ms.
18 Schwarzer.

19 MS. SCHWARZER: Thank you. I
20 believe Staff and both the OCA have taken the
21 very strong position that the Commission has
22 not approved this contract in any order, or
23 up to the present time. And Liberty was
24 responsible for providing witnesses that are

1 knowledgeable about the matters at issue,
2 particularly when it asserts that the
3 contracts are prudent. The entire period
4 that's relevant has to do with who negotiated
5 a contract and why and when, and whether or
6 not there is any analysis that suggests that
7 CNG is appropriate for Keene.

8 CHAIRWOMAN MARTIN: Ms. Schwarzer,
9 can you specifically articulate the record
10 request that you would be asking for?

11 MS. SCHWARZER: Yes. I will ask
12 that Liberty produce any analysis that's
13 contemporaneous to the dates -- the
14 October 2016 -- I don't mean just on the
15 dates they're signed. So let me start again.

16 I would ask that Liberty produce
17 any analysis that supports CNG as appropriate
18 for economic for the Keene distribution
19 system from the period of May 2016 through
20 May 2017, either economic analysis, memos
21 about costs, about return, any information --

22 CHAIRWOMAN MARTIN: Mr. Sheehan --
23 I'm sorry. Ms. Schwarzer, are you done
24 describing?

1 MS. SCHWARZER: I'm done. Thank
2 you.

3 CHAIRWOMAN MARTIN: Mr. Sheehan, I
4 was going to ask not that identical -- make
5 not that identical request, but fairly close,
6 regarding any economic or financial analysis
7 done by any employee or consultant related to
8 this. So I think that is a request we would
9 like to make. I don't know if Commissioner
10 Bailey has anything further on that she'd
11 want to add.

12 COMMISSIONER BAILEY: No, I think
13 what Ms. Schwarzer and you articulated is
14 okay. I mean, you know, we're looking for
15 anything that shows you did some kind of
16 analysis that this was going to be
17 cost-effective.

18 MR. MULLEN: May I ask a clarifying
19 question with respect to this record request?

20 CHAIRWOMAN MARTIN: You can. Go
21 ahead. If it will help clarify what we're
22 asking for, yes.

23 MR. MULLEN: I believe I heard Ms.
24 Schwarzer's question to be about the Keene

1 system, which I took to be in general. These
2 contracts relate specifically to the limited
3 area that we've converted. So I just want to
4 be clear as to what it is that we're
5 providing, whether it's the Keene system
6 overall or just for that portion of the
7 system that's converted.

8 CHAIRWOMAN MARTIN: Ms. Schwarzer.

9 MS. SCHWARZER: Thank you. My
10 concern is it does not become a limiting
11 clause that excludes relevant information.
12 Certainly it's been Staff's understanding
13 from the beginning that the entire conversion
14 was intended. So if there's no specific
15 mention of the tiny portion of 15 to 20
16 customers, I would still be interested in
17 seeing any economic analysis or financial
18 analysis, anything that was done basically
19 from six months before the first contract was
20 signed through the date the last amendment
21 was signed, that would provide any insight
22 into why Liberty felt it was appropriate or
23 reasonable to go forward.

24 CHAIRWOMAN MARTIN: Mr. Sheehan.

1 MR. SHEEHAN: If I may respond. We
2 have not done a financial analysis for the
3 expansion conversion of the entire system.
4 Period. The reason for that fundamentally is
5 that we have not selected the starting point
6 for the system. We've been doing that for
7 two years. It's been an incredibly
8 difficult, time-consuming process. Once we
9 pick that site for the full LNG/CNG facility
10 and then prepare the cost of what it would
11 take and then do the projections of the
12 customer growth we'd expect, that's when we
13 can do the financial analysis. So that,
14 frankly, does not exist. So I can answer
15 that one easy.

16 What you've asked for that seems to
17 me more relevant, although I expressed my
18 objection, is why did we do the CNG that
19 stands today to serve the Marketplace. And
20 that we're happy to respond to the record
21 request.

22 CHAIRWOMAN MARTIN: Ms. Schwarzer.
23 You're on mute.

24 MS. SCHWARZER: This is a bit

1 challenging, in that, just as an offer of
2 proof, I believe there are other documents
3 that would suggest, and Bill -- excuse me --
4 Mr. Simek agreed that at one point the
5 conversion contemplated a larger customer
6 base. So I understand that's not the focus
7 of this hearing. And irrespective of the
8 reason, it's Staff's position that entering
9 into a CNG supply contract and paying demand
10 charges 26 months before CNG was served is
11 imprudent and should be disallowed. But it
12 brings me some concern when the record
13 request is being parsed so narrowly, because
14 surely -- excuse me -- because I believe
15 having asked Liberty why -- given that
16 Liberty is asserting that its demand, supply
17 and demand contract is prudent, it seems
18 appropriate to ask it to show why it feels
19 that, broadly.

20 CHAIRWOMAN MARTIN: Mr. Sheehan,
21 I'm going to overrule your objection. It
22 sounds like you're representing there is no
23 broader analysis. But I -- and I'll accept
24 that representation. But I don't want to, as

1 Ms. Schwarzer said, "parse" this record
2 request too finely, because to the extent
3 there is some analysis out there that could
4 inform this, I think the Commission would
5 like to see it. And we did see in the chart
6 that Bill Clark would do economic analysis
7 related to this. So I think we would like
8 for you to go back and see if anything along
9 those lines exists and produce it in response
10 to the request.

11 MR. SHEEHAN: Absolutely.

12 CHAIRWOMAN MARTIN: Thank you.

13 MS. SCHWARZER: Just a question.
14 I'm sorry, Madam Chairwoman. I don't know
15 quite what the timing would be for the record
16 request. I know we're trying to get an order
17 out by December 1st.

18 CHAIRWOMAN MARTIN: Mr. Sheehan,
19 any idea how much time we need? I know we
20 have the holiday. Is it possible to get that
21 review done by next Wednesday? I think it's
22 the 25th.

23 MR. SHEEHAN: I also don't know.

24 But I do believe Mr. Clark is the point

1 person, and we will make every effort to dig
2 up what he has and get it to you ASAP. And
3 if we do have any issues, we'll let you know
4 as soon as we appreciate there's a timing
5 issue.

6 CHAIRWOMAN MARTIN: Okay. We'll
7 expect it by the 24th. And if for some
8 reason you can't meet that deadline, if you
9 can file something letting us know why.
10 Thank you.

11 MS. SCHWARZER: I'm sorry, Madam
12 Chairwoman. Did you say the 24th or the
13 25th?

14 CHAIRWOMAN MARTIN: Sorry. You are
15 right. I said the 24th just now, but I meant
16 the 25th, which is Wednesday, and I've now
17 confirmed that with the calendar.

18 MS. SCHWARZER: So by Wednesday,
19 close of business?

20 CHAIRWOMAN MARTIN: Yes.

21 MS. SCHWARZER: Thank you.

22 (Record request made.)

23 BY MS. SCHWARZER:

24 Q. Mr. Mullen, with regard to the October

1 contract, are you aware of what approvals or
2 who needed to approve the contract? In terms
3 of the president, corporate, legal,
4 engineering, that sort of thing, who
5 generally approves a contract?

6 CHAIRWOMAN MARTIN: Mr. Mullen,
7 you're on mute.

8 MR. MULLEN: Thank you. Trying to
9 make sure I didn't have extra sound going on
10 there.

11 A. For that particular contract at that
12 particular time, I don't know what the
13 signing authorities were for various people
14 at that point in time. I think that whoever
15 signed off on the contract would have been
16 authorized to do so and would have received
17 the appropriate internal approvals. But I
18 can't speak directly to that, as to who was
19 in what roles at which time and what their
20 particular spending authority was.

21 Q. Well, then, generally, given your experience,
22 can you tell me what steps are taken to
23 approve a contract of that volume at Liberty?

24 A. I'm not involved with supply contract

1 signing, so I can't tell you specifically.

2 Q. Would that be Ms. Gilbertson who's involved
3 with supply contracts at this time?

4 A. Yes, she is.

5 Q. And was she part of the team in 2016?

6 A. She was part of the team, but I think her
7 role was different, and she -- I don't know
8 that she was directly involved with this
9 particular contract.

10 Q. Okay. And she has testified already about
11 this contract.

12 Do you know if any consideration was
13 given to a regulatory out or stepping
14 quantities over the term of the contract?

15 A. All I know is the contract that was put in
16 place I know went out to RFP, and that's all
17 I know.

18 Q. Okay. And you've already corrected your
19 testimony to say that Liberty did not take
20 any deliveries under this contract; correct?

21 A. Correct. We've stated that.

22 Q. Why did Liberty enter into the November 2016
23 contract 11 days later?

24 A. To get supply service.

1 Q. Well, you already had an October contract for
2 supply; correct?

3 A. That was terminated.

4 Q. Well, let's go back.

5 The October contract ran through May of
6 2017; correct?

7 A. Let me... it did.

8 Q. So it wasn't terminated in November of 2016,
9 was it?

10 A. I don't know exactly when that one was
11 terminated. And again, that related to our
12 plan to include to put a CNG skid behind the
13 Price Chopper, and that plan didn't go
14 forward.

15 Q. I'm sorry. The October contract or the
16 November contract? Which one?

17 A. The October contract was related to that.

18 Q. Okay. The October contract was the skid
19 behind the Price Chopper.

20 A. Correct.

21 Q. Okay. So did the November 2016 contract
22 contemplate a different arrangement for
23 delivery of CNG?

24 A. I believe it did.

1 Q. And what -- how was it different?

2 A. Well, I believe it related to our plans to
3 install the temporary CNG facility at its
4 present location. And that later got amended
5 in May of 2017 when the timetable was
6 changing a little bit.

7 Q. Okay. Well, let's just stick with the
8 November contract for right now. Is there
9 anything else that you're aware of that you
10 can tell me about why Liberty entered into a
11 contract, a second contract 11 days later?

12 A. Because the first one wasn't going forward
13 and we were doing a different plan.

14 Q. Right. Did quantities change?

15 A. Well, that's a different question. They did.
16 The term changed. You know, the first one
17 was for six months. My understanding was
18 that initial contract was only for customers
19 at the Marketplace. The second contract
20 would have included maybe five or six
21 potential customers, in that general
22 vicinity, one of which would have been a
23 large, a fairly large user. But due to
24 circumstances of timing, they ended up going

1 with bottled propane, so they didn't end up
2 taking service under that contract. But that
3 contract would only have, you know, done
4 maybe a half-dozen or so potential customers
5 in that general vicinity, and that's the
6 extent of it.

7 Q. Okay. And was the volume for the very large
8 customer that went with bottled propane -- do
9 you remember how large that was? Was that...

10 A. I don't remember, offhand. But I do know of
11 the, you know, five, six potential customers,
12 it was by far the largest of those.

13 Q. And the record request includes this contract
14 as well -- this contract; right? I just want
15 to make sure we covered that.

16 A. The record request includes, you mean, what
17 economic analysis went into that contract?

18 Q. Correct.

19 A. I believe it does.

20 Q. Did the mobilization --

21 A. I just want to make clear, does the record
22 request cover the time before each and every
23 contract or only the initial one?

24 Q. Well, as I recall it, it included May of 2016

1 through the date the amendment was executed,
2 and would include requests for support and
3 analysis for any or all of the CNG supply
4 contracts as they evolved. Any disagreement?

5 MR. SHEEHAN: I can state that my
6 understanding of the request is just that,
7 and perhaps even broader, that the Commission
8 is looking for economic analysis that would
9 have supported decisions made in Keene, both
10 as to the Marketplace which would pick up
11 these contracts and maybe other stuff, and as
12 to the eventual conversion of the whole
13 system. We will give you soup to nuts.

14 MS. SCHWARZER: But the request is
15 limited to 2016 and 2017, because I would
16 object to anything after the execution date
17 of May 22, 2017. That is not relevant to
18 this docket.

19 MR. SHEEHAN: Agreed.

20 BY MS. SCHWARZER:

21 Q. Mr. Mullen, do you have any more information
22 about what stages of permission or execution
23 were involved in the November 2016 contract?
24 I realize you said you didn't for October.

1 I'm not trying to --

2 A. What stages -- excuse me. What stages of
3 what?

4 Q. Of approval. What Company approvals were
5 needed for the November 2016 contract?

6 A. My answer would be the same.

7 Q. And would your answer be the same as to
8 whether any consideration was given to a
9 regulatory out clause or stepping quantities
10 over the term of the contract?

11 A. Again, an RFP was put out and bids were
12 received, and those were not necessarily --
13 bid proposals were received, and those were
14 all analyzed. And, you know, whatever terms
15 they included, I'm sure different parties may
16 have requested different things. So, I mean,
17 the contract is what it is.

18 Q. But certainly there's a contract negotiation
19 period for every RFP process; correct?

20 A. Sure.

21 Q. And the Company can introduce terms that it
22 may not have requested previously and see
23 whether the bidder is willing to meet those
24 terms; correct?

1 A. Correct.

2 Q. So Liberty could have asked for a regulatory
3 out clause.

4 A. Potentially. We could have asked for lots of
5 other things, too.

6 Q. Okay. And you could have asked that instead
7 of dividing supply and demand, you might have
8 proposed that all the preparation costs,
9 including demand and supply, were rolled into
10 one rate that would be paid when CNG flowed;
11 correct?

12 A. Well, yeah. And that's a lot of speculation
13 and hypotheticals. I mean, we're dealing
14 with a contract that did get signed, and
15 those are the costs that are at issue.

16 Q. But we're also actually, more importantly,
17 dealing with the process that led up to its
18 execution. That's where you have to decide
19 if the Company acted prudently, if it acted
20 on what it knew or should have known. And
21 that's why I want to focus on the period
22 before the signing.

23 So my question remains: You could have
24 negotiated to include all those costs and not

1 divide supply and demand; correct?

2 A. You could. But at some point you start
3 getting into "Monday morning quarterbacking."

4 Q. But not right now, not before the contract's
5 been executed.

6 A. I'm just saying, now, if you're looking back.

7 Q. Well, I'm not looking back from what I know
8 right now. I'm asking you, in November of
9 2016, that was possible; correct?

10 A. Lots of things are possible.

11 Q. Any idea why that wasn't done, offhand?

12 A. I was not involved in the negotiations.

13 Q. Do you know when, under the terms of the
14 November 2016 contract, Liberty began paying
15 demand charges?

16 A. I believe they were first -- I think they
17 first hit our books in August of 2017.

18 Q. And was that because the skid had been
19 delivered?

20 A. The skid was delivered in July of 2017.

21 Q. So Liberty paid mobilization charges in July
22 of 2017; correct?

23 A. I'd have to check and see exactly when those
24 mobilization charges were paid. We did pay

1 the mobilization fee. I just don't know
2 when.

3 Q. Okay. Well, it would have been charged the
4 mobilization fee for whatever happened in
5 July 2017; right?

6 A. Would have been charged in accordance with
7 the terms of the contract. I don't know when
8 that was.

9 Q. Okay. The skid was delivered in August of
10 2017?

11 A. July.

12 Q. I'm sorry, July. You began paying demand
13 charges in August of 2017.

14 A. Correct.

15 Q. Why did Liberty want the skid delivered in
16 July of 2017?

17 A. Because, as stated in the Company's cost of
18 gas filings at the time, we fully expected to
19 start serving customers in 2017. So the skid
20 had to be delivered on site, put in place,
21 tested and all of that. So that's why it was
22 delivered when it was delivered.

23 Q. I'm sorry. Is it your position that Liberty
24 included CNG in its Summer 2016 Cost of Gas

1 filing?

2 A. No. I said 2017.

3 Q. Well, right now we're back in 2016. Oh, no.
4 So we're in 2017. Okay. So the summer of
5 2017. Or maybe it's the winter of 2017-2018?

6 A. I'd have to go back and review. But I
7 believe in the summer of 2017 it may have
8 been discussed during that case. I don't
9 think any costs were included. I know the
10 Winter 2017-2018 filing did include CNG
11 costs.

12 Q. Okay. So when did Liberty expect to serve
13 CNG in the 2017-2018 time period?

14 A. It was in the latter part of 2017. I don't
15 know exactly what month we were expecting,
16 but I know it was latter part of the year.

17 Q. You expected to start serving in the winter?

18 A. Yes.

19 Q. And you thought all the conversion work that
20 you've described earlier, including changing
21 piping and -- well, let me step back.

22 It's my understanding that air propane
23 and CNG are wet and dry gases and they can't
24 run through the same pipes. Is that correct?

1 A. That's outside my area of expertise, but
2 generally I think that's correct.

3 Q. Okay. So Liberty literally had to replace
4 pipes in order to convert to CNG.

5 A. I don't believe we had to -- I would have to
6 see what, you know, in terms of the -- we had
7 to replace services, I think, at the
8 Marketplace. But again, I'm speculating. We
9 had to --

10 Q. Well, let me --

11 CHAIRWOMAN MARTIN: Mr. Mullen,
12 were you done answering the question?

13 MR. MULLEN: I'm trying to remember
14 exactly what the question was now.

15 BY MS. SCHWARZER:

16 Q. Well, honestly, I don't remember the
17 question. So... I think the question is why,
18 why Liberty decided to have the skid
19 delivered in July and start paying demand
20 charges in August. And your answer was that
21 you wanted to serve gas in November or
22 December of 2017.

23 A. I orally said "the latter part." You asked
24 me about the winter. I believe that's

1 correct.

2 Q. Okay. So why would you pay demand charges
3 for August, September, October, at least
4 three months before service?

5 A. You have to do things in accordance with the
6 terms of the contract. I'd have to go back
7 to see what representations were made in the
8 2017 cost of gas filings, as to exactly when
9 we intended to provide service. I mean, the
10 testimony in those cases would speak for
11 themselves more so than me trying to
12 recollect now, three years later.

13 Q. Okay. Well, let's talk about the March --
14 the May amendment then. And again, just to
15 reiterate, the May amendment falls within the
16 record request; correct?

17 A. We've established that. Yes.

18 Q. Okay. And the May amendment ran from May 1,
19 2017 through April 30, 2020.

20 A. Excuse me. Give me -- this was the May
21 amendment you said?

22 Q. The May 22nd, 2017 contract amendment ran
23 from May 1, 2017 through April 30 of 2020; is
24 that correct?

1 A. That is not correct.

2 Q. Okay.

3 A. That is the contract that was signed in
4 November of 2016. The May amendment was a
5 contract term that went from July 1st of 2017
6 through June 30th of 2021.

7 Q. July 1 of 2017 through June 30th, 2021?
8 Okay. Why was that amendment entered into?

9 A. Partly because the timing had slipped with
10 respect to, you know, when we initially
11 expected to begin flowing gas. And, you
12 know, that's primarily why.

13 Q. Did the terms of the contract -- other terms
14 of the contract change?

15 A. I believe other than the duration being from
16 three to four years, I think the mobilization
17 fee changed from 60,000 to 75,000.

18 Q. Do you know why?

19 A. Contract negotiation. That would be the
20 result of contract negotiations.

21 Q. But the distance -- the companies remain in
22 the same places. XNG and Liberty were still
23 based in the same locations?

24 A. You've lost me with that.

1 Q. I'm sorry. "Mobilization fee" refers to when
2 the skid goes from XNG to Liberty; correct?

3 A. I don't know exactly what was covered by the
4 mobilization fee.

5 Q. Okay. So do you know why it was \$15,000
6 more?

7 A. I do not.

8 Q. Did the volume increase?

9 A. I don't believe it did.

10 Q. Do you have any more information about who
11 negotiated the amendment than you had with
12 the prior contract?

13 A. No.

14 Q. Any more information about what steps needed
15 to get approval?

16 A. Approval of the contract?

17 Q. Correct.

18 A. Same as what I've answered before.

19 Q. And any ideas as to whether contract
20 negotiations included a regulatory out clause
21 or stepping or rolling all the prices into
22 costs once CNG began to flow?

23 A. As I was not involved in the negotiations, I
24 cannot speak to what was discussed or not

1 discussed during those negotiations.

2 Q. I'm going to ask you to turn your attention
3 to Exhibit 10, which is Mr. Knepper's
4 testimony. And at Bates Page 101 you'll see
5 a redacted version --

6 A. You'll have to let me get there.

7 Q. Sure. I'm getting there myself.

8 A. Bates Page 101 you said?

9 Q. Yes.

10 A. I'm there.

11 Q. Okay. And based on your prior answer to my
12 question, this may be the November 2016
13 contract because the contract term is May 1,
14 2017 to April 30, 2020. Do you see the
15 contract term --

16 A. Yes. And just looking at this redacted
17 version, when we just had a discussion about
18 the amount of the mobilization fee, that may
19 have been confidential information. I'll
20 have to defer to counsel on that.

21 Q. It was confidential, but we were in a
22 confidential session. The reason I'm
23 comfortable now is because this is a redacted
24 contract. There's no confidential

1 information in what's been attached to Mr.
2 Knepper's prefiled testimony. Are you
3 comfortable with that, Mr. Mullen?

4 CHAIRWOMAN MARTIN: Mr. Sheehan, do
5 you have any -- do you want to weigh in on
6 that?

7 MR. SHEEHAN: I think --

8 CHAIRWOMAN MARTIN: Are you
9 comfortable with the record as it is?

10 MR. SHEEHAN: Yeah, I think what
11 Steve was mentioning is we may have said the
12 dollar amount in the last half-hour. If
13 that's the case, we'll just go through the
14 transcript and make sure it's redacted.

15 MS. SCHWARZER: Oh, I'm sorry. I
16 got you. Okay. Yup, we will.

17 CHAIRWOMAN MARTIN: All right.
18 Thank you, Mr. Sheehan.

19 BY MS. SCHWARZER:

20 Q. If you'd turn to Exhibit B. And I'll just
21 represent the seller here is XNG and the
22 buyer is Liberty.

23 A. So this is Bates 105?

24 Q. Yes, Bates 105.

1 A. Okay.

2 Q. Okay. For 1C, it says the seller shall
3 review and approve the site design prior to
4 construction, pursuant to NFPA 52. And I
5 would represent to you that that standard is
6 also not among permissible standards in PUC
7 506.01.

8 And under 1D, it says the seller shall
9 be responsible for all permits for
10 installation and operation of the XNG
11 equipment. That is also inconsistent with
12 PUC 506.01.

13 Was Liberty aware of that when it
14 entered into this contract?

15 A. I wasn't involved in the execution of the
16 contract, so I can't speak to what people
17 were aware of or not aware of at the time
18 they entered into the contract.

19 Q. Okay. Under 2C, it says during the delivery
20 period the seller -- meaning the third party,
21 XNG, over which the Commission has no
22 regulatory control -- shall be responsible
23 for all maintenance and support for the CNG
24 equipment.

1 Was Liberty aware when it entered into
2 the contract that that's inconsistent with
3 PUC 506.01?

4 A. Well, again, same answer. And I'm not sure
5 how much of this hinges on who owns the
6 equipment and who does not. So, again, this
7 is something that I can't speak to what
8 people were aware of when they entered into
9 the contract.

10 Q. Well, would you agree that in order to comply
11 with PUC requirements, changes were
12 necessary?

13 A. I agree that after some communications back
14 and forth with the Safety Division, we had to
15 make some -- we had to make some alterations
16 to the CNG installation. So I do agree with
17 that. The Company initially did not
18 necessarily agree with that determination;
19 however, we did go along with it, and we
20 complied.

21 Q. But those discussions occurred further down
22 the line in 2018; correct?

23 A. I believe that they started in 2017. I
24 believe that beginning in August or so was

1 when we started making conversions to the
2 equipment. And I believe that we made the
3 necessary alterations by October or
4 November -- I believe October of 2017.

5 Q. Would the contracts that Liberty executed in
6 November of 2016 and May of 2017 have been
7 different had Liberty been aware of the
8 requirements of PUC 506.01?

9 A. That involves speculation. And where I
10 didn't negotiate the contracts, I can't tell
11 you what would or wouldn't have been
12 different.

13 Q. Well, would you agree that your average
14 utility's goal is to comply with PUC
15 Administrative Rules?

16 A. Absolutely.

17 Q. Okay. Under Item 2, Roman V, the November
18 contract says the system shall provide
19 emergency shutdown, the control system to be
20 provided by XNG. Says, "Control system
21 required to monitor key process conditions,
22 switch trucks when empty, provide emergency
23 shutdown."

24 Would you agree that this was something

1 that Liberty and Safety discussed and that
2 ultimately Safety insisted that Liberty have
3 the ability to do the emergency shutdown and
4 to monitor the matters described here?

5 A. I believe that took place. I don't remember
6 the exact timeline. But I do believe that we
7 made all the physical changes by
8 October 2017.

9 Q. Sometime after the contracts had been
10 executed.

11 A. Correct.

12 Q. And the demand charges continued to accrue
13 throughout that period?

14 A. Yes.

15 Q. You had mentioned earlier that you weren't
16 sure if the marketer basis charge was part of
17 the Summer of 2018 Cost of Gas. Do you
18 remember that discussion?

19 A. Correct. I did not participate in that
20 proceeding directly. I didn't put the
21 numbers together. And I referred back to Ms.
22 Gilbertson's testimony on that topic.

23 Q. If Ms. Gilbertson's testimony had been that
24 Liberty was fully unaware of the marketer

1 basis charge until such time as CNG was
2 actually provided and a bill received, which
3 did not occur until October 4th, 2019, would
4 you agree that the marketer basis charge was
5 not part of the 2018 contract?

6 A. The 2018 contract?

7 Q. The 2018 cost of gas proceeding.

8 A. Like I say, I can't speak directly to that.
9 Ms. Gilbertson talked about the circumstances
10 related to that. It was in dispute, and we
11 later resolved that. Exactly how that got
12 wrapped into cost of gas filings, I can't
13 speak directly to.

14 Q. Would you agree that the marketer basis
15 charge is only applicable when CNG is served;
16 it only comes into play when there's actual
17 delivery of CNG?

18 A. That sounds correct.

19 Q. Okay. General questions about the CNG
20 contract. Liberty-Keene is not included --

21 CHAIRWOMAN MARTIN: Ms. Schwarzer.

22 MS. SCHWARZER: Yes.

23 CHAIRWOMAN MARTIN: It is 2:57.

24 MS. SCHWARZER: Okay.

1 CHAIRWOMAN MARTIN: I know that we
2 need to take a break at 3:00.
3 MS. SCHWARZER: Sure.
4 CHAIRWOMAN MARTIN: So why don't we
5 stop now. Off the record.
6 (Recess taken at 2:57 p.m., and
7 concludes Day 3/Session 1 of 2. The
8 hearing continues under separate cover
9 in a transcript noted as
10 Day 3/Session 2 of 2.)
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