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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 23, 2020 - 2:08 p.m. DAY 1
Concord, New Hampshire REDACTED FOR PUBLIC USE

[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,

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

*** R E D A C T E D F O R P U B L I C U S E ***

I N D E X

WITNESS: DAVID B. SIMEK
 DEBORAH M. GILBERTSON
 CATHERINE A. McNAMARA

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| 4 | 2 | REDACTED Testimony of Deborah Gilbertson, Catherine McNamara, David Simek and attachments | PREMARKED |
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| 8 | | | |
| 9 | | | |
| 10 | 5 | CONFIDENTIAL Version of Ex. 5 | PREMARKED |
| 11 | 7 | REDACTED Revised Red-Lined Testimony of Deborah Gilbertson, Catherine McNamara, David Simek | PREMARKED |
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| 16 | | | |
| 17 | 11 | Revised REDACTED Liberty Response to Staff 1-6 | PREMARKED |
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| 19 | 12 | Revised CONFIDENTIAL 1-6 | PREMARKED |
| 20 | 13 | Staff Set 1-9 with REDACTED attachment | PREMARKED |
| 21 | | | |
| 22 | 14 | Staff Set 1-9 W/CONFIDENTIAL attachment | PREMARKED |
| 23 | | | |
| 24 | 15 | REDACTED Staff TS 1-1 | PREMARKED |

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| 1 | 16 | CONFIDENTIAL Staff TS 1-1 (April 2020 CNG charges) | PREMARKED |
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| 3 | 17 | REDACTED Staff TS 1-3 | PREMARKED |
| 4 | 18 | CONFIDENTIAL Staff TS 1-3 | PREMARKED |
| 5 | 19 | REDACTED Staff 1-4 | PREMARKED |
| 6 | 20 | CONFIDENTIAL Staff 1-4 | PREMARKED |
| 7 | 21 | Staff TS 1-8 | PREMARKED |

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

2 CHAIRWOMAN MARTIN: All right.

3 Let's go on the record then.

4 We are here this afternoon in
5 Docket DG 20-152 for a hearing regarding the
6 Liberty Utilities Corporation (Keene) Winter
7 2020/2021 Cost of Gas filing. I have to make
8 the necessary findings for remote hearing.

9 As Chairwoman of the Public
10 Utilities Commission, I find that due to the
11 State of Emergency declared by the Governor
12 as a result of COVID-19 pandemic, and in
13 accordance with the Governor's Emergency
14 Order No. 12, pursuant to Executive Order
15 2020-04, this public body is authorized to
16 meet electronically. Please note that there
17 is no physical location to observe and listen
18 contemporaneously to this hearing which was
19 authorized pursuant to the Governor's
20 Emergency Order. However, in accordance with
21 the Emergency Order, I am confirming that we
22 are utilizing Webex for this electronic
23 hearing. All members of the Commission have
24 the ability to communicate contemporaneously

1 during this hearing through this platform,
2 and the public has access to
3 contemporaneously listen and, if necessary,
4 participate. We previously gave notice to
5 the public of the necessary information for
6 accessing the hearing in the Order of Notice.
7 If anybody has a problem, please call
8 (603)271-2431. In the event the public is
9 unable to access the hearing, this hearing
10 will be adjourned and rescheduled. I
11 apologize for all of you who have already
12 heard that once today.

13 All right. Let's take a roll call
14 attendance of the Commission. My name is
15 Dianne Martin. I am the Chairwoman of the
16 Public Utilities Commission, and I am alone.
17 Commissioner Bailey.

18 COMMISSIONER BAILEY: Good
19 afternoon. Kathryn Bailey, Commissioner at
20 the Public Utilities Commission, and I'm
21 alone as well.

22 CHAIRWOMAN MARTIN: All right.
23 Thank you. Let's take appearances, starting
24 with Attorney Sheehan.

1 MR. SHEEHAN: Good afternoon. Mike
2 Sheehan for Liberty Utilities (EnergyNorth
3 Natural Gas).

4 CHAIRWOMAN MARTIN: All right. And
5 Attorney Shute.

6 MS. SHUTE: Good afternoon.
7 Christa Shute, staff attorney for the Office
8 of the Consumer Advocate, on behalf of
9 residential ratepayers.

10 CHAIRWOMAN MARTIN: Thank you. And
11 Attorney Schwarzer.

12 MS. SCHWARZER: Good afternoon,
13 Madam Chair, Commissioner Bailey. I'm Mary
14 Schwarzer. I'm a staff attorney with the
15 Public Utilities Commission. With me today
16 are Safety and Security Director, Randy
17 Knepper; Director of the Gas and Water,
18 Stephen Frink; and utility analyst, Al-Azad
19 Iqbal.

20 CHAIRWOMAN MARTIN: Okay. Ms.
21 Robidas, are you able to hear Attorney
22 Schwarzer?

23 THE COURT REPORTER: Very faintly.

24 CHAIRWOMAN MARTIN: Let's go off

1 the record for a minute.

2 (Discussion off the record)

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

5 I have Exhibits 1 through 21
6 prefiled and premarked for identification.
7 Are there any issues with exhibits? Attorney
8 Schwarzer or --

9 MR. SHEEHAN: Okay. Go ahead.

10 CHAIRWOMAN MARTIN: Go ahead,
11 Attorney Schwarzer. You're on mute.

12 MS. SCHWARZER: Thank you, Madam
13 Chairwoman. I need to make an oral motion
14 for waiver for late filing pursuant to the
15 remote hearing guidelines.

16 The exhibit list, the witness list,
17 and all exhibits were to be filed by 4:30 on
18 October 22nd. And due to the press of filing
19 multiple exhibits and the complexity of
20 testimony in this docket, the witness list
21 and exhibit list and staff exhibits
22 encompassing 1 through 10, exclusive of those
23 filed by Liberty, were filed at 5:00, and the
24 remaining exhibits, 11 through 21, were filed

1 at 9:30 the following morning. The
2 Commission rules for waiver, PUC 201.05,
3 permits waiver when it's appropriate. And it
4 is appropriate for the reasons I've provided,
5 but also if there's no particular -- there's
6 no party prejudiced by the delay. In this
7 instance, parties all had access to
8 information, which was identified by 5:00,
9 although Staff apologizes to the Commission
10 because, of course, you could not access what
11 was not provided to you until 9:30 the
12 following morning. Staff suggests that a
13 waiver will not disrupt the orderly and
14 efficient resolution of these matters before
15 the -- (connectivity issue)

16 CHAIRWOMAN MARTIN: Attorney
17 Schwarzer, just a minute. Let's go off the
18 record. We lost you for a minute. I think
19 you're having a bandwidth issue.

20 (Discussion off the record)

21 (Record read back as requested.)

22 CHAIRWOMAN MARTIN: Let's go back
23 on the record and pick it up there.

24 MS. SCHWARZER: ... will not

1 disrupt the orderly and efficient resolution
2 of matters before the Commission because the
3 delay was minimal and because most of the
4 parties already had access through discovery
5 to the identified information. And a waiver
6 will serve the public interest by permitting
7 resolution of the expedited cost of gas case
8 with all information relevant. Staff
9 acknowledges that the Commissioners and any
10 members of the public were inconvenienced and
11 regrets that and asks for oral -- that you
12 grant waiver of admission of the exhibits as
13 filed.

14 CHAIRWOMAN MARTIN: Any objection?

15 MR. SHEEHAN: None from Liberty.

16 CHAIRWOMAN MARTIN: Ms. Shute.

17 MS. SHUTE: None from the OCA.

18 Thanks.

19 CHAIRWOMAN MARTIN: Okay. Waiver
20 is granted. I don't see any prejudice, and I
21 think it's perfectly appropriate in this
22 scenario.

23 All right. Any other preliminary
24 issues? Mr. Sheehan.

1 MR. SHEEHAN: I have a couple,
2 Madam Chair. We similarly filed a written
3 motion because our affidavit of publication
4 was filed after the due date. The
5 publication itself occurred timely. The
6 order required publication within 24 hours on
7 our web site. It was posted within the hour.
8 We simply did not file the affidavit until
9 after the deadline. And similarly, there's
10 no prejudice. All parties had appropriate
11 notice. So we ask that you address that.

12 Second, there are confidential --

13 CHAIRWOMAN MARTIN: Let's take that
14 one first. Any objection to that? If you
15 can just speak.

16 MS. SHUTE: No objection.

17 MS. SCHWARZER: No objection.

18 CHAIRWOMAN MARTIN: Okay. Thank
19 you. I will also grant that waiver as well.

20 Okay. Go ahead with your second
21 issue.

22 MR. SHEEHAN: Thank you. The
23 second one was, again, to formalize our
24 assertion of confidentiality to the various

1 confidential matters in this docket pursuant
2 to PUC 201.04 and 201.06.

3 The third is -- get my little cheat
4 list. A couple of the exhibits marked by
5 Staff are the red-lined versions of other
6 filings. And not to re-litigate what we
7 discussed a couple hours ago, the Company
8 just suggests that that is something the
9 Commission should look at carefully before
10 admitting red-lined documents that have some
11 perhaps unattended consequences that are
12 complicating and confusing. Again, the
13 information in those documents is not
14 objectionable.

15 And finally, we have four
16 witnesses, three of whom filed direct
17 testimony, and one filed rebuttal, and we
18 would prefer to present them that way; that
19 we present the direct witnesses and then
20 present Mr. Mullen after Staff has presented
21 its witnesses.

22 CHAIRWOMAN MARTIN: All right.
23 Let's take it one issue at a time. The
24 red-line issue.

1 Attorney Schwarzer, do you have a
2 response on that?

3 MS. SCHWARZER: Well, I won't
4 repeat the points made before, other than in
5 summary fashion, which is that Staff relies
6 upon them to notice changes. The changes
7 made at the last minute are relevant and
8 helpful to identify early that they're not
9 repetitive, and that the burden of comparing
10 and creating changes really should be on
11 Liberty and not on Staff at the last minute
12 to check updated documents to try to
13 determine what changes were made. I do --
14 Attorney Sheehan prompted me to think that
15 it's appropriate for Staff to say that, to
16 the extent there are confidential matters in
17 any of the revised documents, certainly we
18 imagine that Liberty's mention of
19 confidentiality protection be extended to
20 that, notwithstanding that Staff filed the
21 red-lined documents. And I see Attorney
22 Sheehan nodding in agreement. So we would
23 just make that explicit caveat here.

24 CHAIRWOMAN MARTIN: Attorney Shute,

1 do you want to be heard on that?

2 [No verbal response]

3 CHAIRWOMAN MARTIN: I don't hear
4 anyone asking to do anything different with
5 regard to the exhibits that were actually
6 filed, so I think we can proceed and just
7 note -- oh, go ahead, Attorney Schwarzer.

8 MS. SCHWARZER: Thank you. I did
9 want to address the panel question. Staff
10 would prefer --

11 CHAIRWOMAN MARTIN: Attorney
12 Schwarzer, let me just finish what I was
13 saying on the issue of the red lines. I
14 wanted to say that we would note the issue
15 for the record in this case and that it was
16 also raised this morning in Docket DG 20-141.

17 Okay. Go ahead to the panel
18 question.

19 MS. SCHWARZER: Thank you, Madam
20 Chairwoman. Although entitled rebuttal
21 testimony, Mr. Mullen's data responses in
22 Staff 1-4 and 1-12 attached to his prefiled
23 testimony are what prompted Staff to file
24 prefiled testimony. Liberty bears the burden

1 of proof in this case. It's appropriate for
2 all Liberty witnesses to testify on the
3 initial panel and then for Staff to follow
4 because that's really the order of proof.
5 And we would object to forcing Staff to rebut
6 data responses and allowing Liberty to rebut
7 Staff's rebuttal.

8 CHAIRWOMAN MARTIN: Attorney Shute.

9 MS. SHUTE: I think generally it
10 would be easier to have the panel all at the
11 same time. I don't have any other opinions.

12 CHAIRWOMAN MARTIN: I agree with
13 you, Attorney Shute. I think it would be
14 easier. I also think that it is Attorney
15 Sheehan's decision as to whether he puts on
16 his witness as a rebuttal witness. But it
17 will be as rebuttal.

18 So, Attorney Sheehan, I don't know
19 if you wish to reconsider.

20 MR. SHEEHAN: Reconsider what? I
21 mean --

22 CHAIRWOMAN MARTIN: If you want to
23 put on all your witnesses at once for ease of
24 putting them on at once; otherwise, I'm going

1 to let you do it as a rebuttal.

2 MR. SHEEHAN: I would prefer to do
3 it as rebuttal because, frankly, it may
4 shorten the rebuttal. So I would prefer to
5 go that route. So the witnesses we would
6 call on direct would be Ms. Gilbertson, Ms.
7 McNamara and Mr. Simek.

8 CHAIRWOMAN MARTIN: Attorney
9 Schwarzer.

10 MS. SCHWARZER: Thank you,
11 Chairwoman. Trouble with that mute button.

12 If they're going to proceed with
13 two separate panels, Staff would like to
14 reserve direct testimony time at the end to
15 recall Mr. Frink and Mr. Knepper if
16 necessary.

17 CHAIRWOMAN MARTIN: Attorney Shute,
18 I see your hand up.

19 MS. SHUTE: I would just say that I
20 do think that some of the questions that I
21 have are probably going to be best answered
22 by Mr. Mullen, but not necessarily. I'm not
23 really in a position to know who the best
24 person is that's going to be answering the

1 questioning at this point.

2 CHAIRWOMAN MARTIN: Attorney
3 Sheehan.

4 MR. SHEEHAN: It's the agreed
5 procedural schedule allowed for direct,
6 Staff, and then rebuttal. That's what we
7 followed. There's usually not a rebuttal to
8 the rebuttal. That being said, it's
9 certainly from the Chair's discretion, that
10 if there are issues that Staff can articulate
11 a good reason to recall witness, that's
12 certainly your decision to make.

13 CHAIRWOMAN MARTIN: Okay. Thank
14 you. Let's proceed with the first panel.

15 And I agree with you, Attorney
16 Schwarzer, to the extent there is a need for
17 Staff to be able to rebut the rebuttal, then
18 we will give you that opportunity.

19 Ms. Robidas, can you swear in the
20 three witnesses, please.

21 (WHEREUPON, DAVID B. SIMEK, DEBORAH M.
22 GILBERTSON, CATHERINE A. McNAMARA, were
23 duly sworn and cautioned by the Court
24 Reporter.)

1 DAVID B. SIMEK, SWORN

2 DEBORAH M. GILBERTSON, SWORN

3 CATHERINE A. McNAMARA, SWORN

4 CHAIRWOMAN MARTIN: Thank you.

5 DIRECT EXAMINATION

6 BY MR. SHEEHAN:

7 Q. Mr. Simek, if you could please introduce
8 yourself again today and your position with
9 Liberty and your involvement in this docket.

10 A. (Simek) Sure. My name is David Simek,
11 manager of rates and regulatory affairs. And
12 together with Ms. McNamara, we put together
13 the testimony and worked closely with Ms
14 Gilbertson to put together some of the
15 schedules in order to calculate the cost of
16 gas for Keene.

17 CHAIRWOMAN MARTIN: Attorney
18 Sheehan, you're on mute.

19 A. (Simek) You're on mute, Mike.

20 Q. There's testimony filed by all three of you
21 that's been marked in this case in various
22 forms. Exhibit 2 and 3 is the redacted and
23 confidential version of our original filing
24 on September 17; Exhibits 4 and 5 are the

1 revised versions, redacted and the
2 confidential, respectively. As to those
3 testimonies and as to revised Exhibits 4 and
4 5, do you have any further changes that need
5 to be addressed today?

6 A. (Simek) I do not.

7 Q. And again, the testimony was by three of you.
8 To the extent the sections you prepared,
9 today do you adopt that as your testimony?

10 A. (Simek) I do.

11 Q. Ms. McNamara, same questions, please. Could
12 you identify yourself and explain what role
13 you played in this filing.

14 A. (McNamara) Yes. I'm Catherine McNamara. I'm
15 a rates analyst for rates and regulatory
16 affairs for Liberty Utilities. I did assist
17 in writing testimony for this case. Is there
18 another question that I missed?

19 Q. No. I was on mute. The testimony you
20 prepared is what is contained within Exhibits
21 2 and 3, the original filing, and Exhibits 4
22 and 5, the revised filing; is that correct?

23 A. (McNamara) Yes.

24 Q. And do you have any changes to your portions

1 or responsibilities within those filings?

2 A. (McNamara) I do not.

3 Q. And do you adopt that testimony as your sworn
4 testimony here this afternoon?

5 A. (McNamara) Yes, I do.

6 Q. And since you were involved in the rate
7 components, could you summarize, as you did
8 this morning, the proposed rates for Keene
9 and how those rates compare to what was
10 approved last year and what was actually paid
11 by customers, the weighted average last year.

12 A. (McNamara) Sure. The current proposed rate
13 is \$1.21 cents, which can be found in
14 Exhibit 2 on Bates Page 18. There is an
15 increase of roughly 26 cents, or 27-1/2
16 percent, over the approved rate for last
17 winter, which was 94 cents, or rounded to 95
18 cents. There's an increase of 39 cents, or
19 47 percent, over the weighted average cost of
20 gas from last winter actual, and that is
21 .8229.

22 Q. Do you have bill impacts prepared in your
23 testimony that you could summarize for us
24 today?

1 A. (McNamara) Yes. The bill compare for the
2 non-FPO rate of \$1.21 can be found in
3 Exhibit 5 on Bates 33R. Give me one second.
4 The bill impact for the cost of gas rates
5 this year versus last year is an increase of
6 \$173.02 over the six-month period, or
7 47 percent. And the total bill proposed rate
8 is \$192 over last year, or 26.6 percent.

9 Q. Thank you. And last, the Company is
10 proposing an FPO, or fixed price option rate;
11 is that correct?

12 A. (McNamara) Correct. And that is --

13 Q. And did the Company -- go ahead.

14 A. (McNamara) And that is \$1.23.

15 Q. And that FPO rate was calculated the way we
16 have in the past, by simply adding the two
17 cents to the proposed rate?

18 A. (McNamara) Correct.

19 Q. And do you have any information on customer
20 participation yet for this upcoming winter?

21 A. (McNamara) We do have some. Across both
22 EnergyNorth and Keene, there's roughly 7,000
23 people who have accepted the FPO rate, and
24 approximately, based on history, a hundred

1 customers of those are Keene.

2 Q. Thank you. Now, Ms. Gilbertson, please
3 introduce yourself and explain your role in
4 this Keene cost of gas proceeding.

5 A. (Gilbertson) Yes. My name is Deborah
6 Gilbertson. I'm the senior manager of energy
7 procurement for Liberty Utilities. And my
8 role in this cost of gas filing is to gather
9 information to help set the rate for the
10 upcoming winter.

11 Q. And the information you gather for setting
12 the rate is based on your work in actually
13 arranging for the propane and CNG that is
14 provided to Keene customers; is that right?

15 A. (Gilbertson) Yes, that's correct.

16 Q. And given Staff's testimony recommending
17 disallowance of two years of demand charges,
18 which are included in this filing, I have a
19 couple questions for you about those.

20 A. (Gilbertson) Okay.

21 Q. The demand charges that are at issue are from
22 roughly July of '17 through July or August of
23 '19. Can you tell me what's the basis of
24 those demand charges?

1 A. (Gilbertson) Yes. We had a contract in place
2 with the vendor, and we retained their
3 services, as well as their mechanical
4 devices, a skid and what we need to flow
5 CNG --

6 (Court Reporter interrupts.)

7 A. (Gilbertson) We retained their service, and
8 we also had a skid in place at the site to
9 serve customers CNG.

10 Q. And by skid, S-K-I-D, you mean the device
11 that takes the CNG from a truck and puts it
12 into the piping system underground; is that
13 correct?

14 A. (Gilbertson) Yes.

15 Q. Can you tell us when you -- when the Company
16 signed the contract that gave rise to the
17 demand charges that are at issue here today?

18 A. (Gilbertson) I believe it was in May of 2017.

19 Q. And was it the intent of the Company to serve
20 CNG that fall, the fall of 2017?

21 A. (Gilbertson) Yes. Yes, it definitely was.

22 Q. And can you tell me why would you enter into
23 a contract in May for services that would not
24 begin until the winter season of November 1?

1 A. (Gilbertson) We enter into contracts all the
2 time for advanced supply. This is not
3 unusual. And given the fact that we needed
4 to -- this is not just a normal pipeline
5 supply contract. This is a project we needed
6 to have a contract in place to serve early.

7 Q. So the contract with this vendor included, as
8 you said before, the skid, the device that
9 would decompress the gas, as well as the gas
10 itself; is that correct?

11 A. (Gilbertson) Yes.

12 Q. And is it your understanding that the device
13 had to be delivered to New Hampshire and
14 installed and hooked up and whatever work
15 needed to be done to allow the gas to flow?

16 A. (Gilbertson) Yes.

17 Q. And did the Company issue an RFP for this CNG
18 service?

19 A. (Gilbertson) Yes.

20 Q. And was this vendor chosen as the least cost
21 respondent to that RFP?

22 A. (Gilbertson) They were, yeah.

23 Q. The contract, and I think it's either
24 described and/or attached to some of Staff's

1 exhibits, is for a period of years; it's
2 either three or four years. Why would the
3 Company enter into a longer term contract
4 like that rather than a year-to-year contract
5 for this particular service?

6 A. (Gilbertson) Because there are set up fees
7 involved, and they're expensive. So it's
8 much more economical to have a longer term
9 contract rather than bringing in suppliers
10 and switching out skids and having to pay
11 mobilization fees. It's much more economical
12 to have a longer term contract.

13 Q. So I think you've already stated this. But
14 if the skid, the device itself, came with the
15 contract, that is not company-owned; is that
16 correct?

17 A. (Gilbertson) It is not company-owned. It
18 isn't.

19 Q. So if we switch suppliers, the existing
20 supplier would have to remove their skid, and
21 the new supplier would have to install their
22 skid. And those are the mobilization fees
23 that you're talking about?

24 A. (Gilbertson) Yes.

1 Q. In your opinion, do you believe the contract
2 that the Company entered into in 2017 was a
3 reasonable contract?

4 A. (Gilbertson) Yes, I do.

5 Q. And as to your role in the testimony that was
6 filed in this docket -- and as I already
7 indicated it's Exhibits 2 through 5 -- do you
8 have any changes that you're responsible for
9 in those testimonies?

10 A. (Gilbertson) No.

11 Q. And do you adopt that testimony as your sworn
12 testimony here today?

13 A. (Gilbertson) Yes.

14 Q. Thank you.

15 MR. SHEEHAN: That's all I have for
16 these witnesses. Thank you.

17 CHAIRWOMAN MARTIN: All right.
18 Thank you.

19 Attorney Shute, do you have
20 questions?

21 MS. SHUTE: Sorry. I was having
22 trouble getting to my mute button. One
23 second.

24 CROSS-EXAMINATION

1 BY MS. SHUTE:

2 Q. In regards to the contract for CNG service,
3 I'm wondering what -- so I have a couple of
4 questions around CNG.

5 So, effectively, you're putting that
6 into place in order to replace customers
7 receiving propane air; is that correct?

8 A. (Gilbertson) Yes.

9 Q. And so those customers had to convert from
10 propane air to CNG; is that correct?

11 A. (Gilbertson) Yes, it is.

12 Q. Do you know what's involved for a commercial
13 customer to do that conversion?

14 A. (Gilbertson) I really don't know the answer
15 to that.

16 Q. Okay. So is there -- I guess I can hold that
17 question for somebody else.

18 But is there -- was an analysis done
19 prior to issuing the RFP, and did that
20 analysis include a cost benefit on what the
21 conversion costs are for customers and for
22 the Company?

23 A. (Gilbertson) I don't know if there was a cost
24 analysis on what it cost the customer to

1 convert. I don't really know that. I don't
2 know if Mr. Simek has any information on
3 that. I don't know.

4 A. (Simek) I do believe that there was quite a
5 bit of analysis done. I don't have that
6 information with me. But I do believe that
7 when we were able to get the contract
8 approved by the Commission, that there were
9 many questions regarding the type of analysis
10 and what was given at the time.

11 Q. Okay. So that --

12 MS. SCHWARZER: Sorry. Objection.

13 CHAIRWOMAN MARTIN: Attorney
14 Schwarzer.

15 MS. SCHWARZER: The contract was
16 not approved by the Commission.

17 CHAIRWOMAN MARTIN: Attorney
18 Sheehan.

19 MR. SHEEHAN: It actually was, and
20 that's part of our argument here today, that
21 the Commission approved the contract. And
22 specifically in the 2018 summer cost of gas,
23 when they approved the summer COG rates that
24 included CNG, that included the cost of this

1 contract as expressly described in Ms.
2 Gilbertson's testimony in that docket. So we
3 have two arguments here today on the demand
4 charges.

5 CHAIRWOMAN MARTIN: Attorney
6 Sheehan, can you speak up a little bit? I'm
7 having trouble hearing you.

8 MR. SHEEHAN: Sure. We have two
9 basic arguments. One was that the contract
10 was reasonable when we entered into it, and
11 that was the reason for some of my questions
12 of Ms. Gilbertson. As to whether the
13 Commission approved the contract, we believe
14 the Commission did in the summer 2018 cost of
15 gas order. And I will certainly go through
16 that through Mr. Mullen, and perhaps even
17 Mr. Frink when I cross-examine him, and in my
18 closing.

19 CHAIRWOMAN MARTIN: Attorney
20 Schwarzer.

21 MS. SCHWARZER: Thank you. There's
22 an explicit finding and order by the
23 Commission in the 2019 winter cost of gas in
24 which the Commission explicitly found that no

1 prudency finding had been made in this docket
2 for either the Keene conversion or for the
3 CNG supply contract. It's a final decision
4 as a matter of law. There is no implicit
5 finding of prudence in this docket to date.
6 And whereas Liberty may wish the Commission
7 to entertain an argument that those demand
8 charges which are now being requested should
9 be found prudent, as a matter of law they
10 have not been found prudent as of today.

11 CHAIRWOMAN MARTIN: Attorney Shute,
12 do you want to be heard on this?

13 MS. SHUTE: My understanding prior
14 to this time was that they had not been found
15 prudent, and I -- sorry. I do not have any
16 further information to add in that regard.

17 CHAIRWOMAN MARTIN: I think the
18 Commission can take administrative notice of
19 its own orders and reach a conclusion. I
20 obviously do not have the history on that.
21 But we should be able -- the orders speak for
22 themselves, so we should be able to rely on
23 those.

24 MS. SHUTE: And could --

1 CHAIRWOMAN MARTIN: Go ahead,
2 Attorney Shute.

3 MS. SHUTE: Could someone please
4 repeat for me which order incorporates -- or
5 Attorney Sheehan, could you repeat which
6 order you believe incorporates a finding of
7 prudence? And is there an underlying
8 analysis in that docket that was provided?

9 MR. SHEEHAN: Yes.

10 CHAIRWOMAN MARTIN: Why don't we do
11 this: Let's keep the legal argument to the
12 end and put that into the closings. Mr.
13 Simek can be of the opinion that the
14 Commission approved the orders, but we will
15 let the orders speak for themselves.

16 MS. SHUTE: Okay. Sorry.

17 CHAIRWOMAN MARTIN: Okay. Go
18 ahead.

19 BY MS. SHUTE:

20 Q. Okay. So could you identify the basis -- and
21 if you want, I'll wait for Mr. Simek on
22 this -- for the Company's belief that the
23 incremental costs of the CNG services is
24 prudent?

1 A. (Gilbertson) Are you talking about the demand
2 charges or the incremental supply charges?
3 Because there's two things here.

4 Q. I am switching over to the incremental
5 supply -- the incremental costs and not
6 demand charges.

7 A. (Gilbertson) Oh, okay. Okay. So Staff is
8 comparing the cost of the CNG to the spot
9 propane, and they would like us to credit
10 back the customer the difference of that
11 incremental cost. I don't think that that's
12 something we should do. It's in many ways
13 treating the spot propane price like a swap.

14 Last winter was very warm, for starters,
15 and the propane prices were low. That
16 doesn't mean that that's always going to be
17 the case. And I don't think you can -- to
18 proceed that way, it's unfair. We can't
19 switch the customers back. They have to use
20 the CNG. And as I said, it's not to say the
21 CNG is always going to be more expensive.
22 The propane prices last year were very low.
23 We had a very long -- we had a very warm
24 winter. I think that, you know, we have

1 price protection programs in place that, you
2 know, decrease volatility. I mean, we can't
3 go back and -- you know, if we have a
4 situation where the volatility programs don't
5 render a benefit, would it be fair to say,
6 oh, well, the customer -- the Company has to
7 pay back the difference? That's not how it
8 works.

9 Q. I guess I was referring more to what was the
10 basis of the analysis that was originally
11 done to make the decision to switch to CNG
12 service that indicated that it was prudent,
13 such that the incremental costs that we're
14 seeing would have been justified at that
15 time. I didn't mean in each year and as they
16 come. And perhaps you're saying that the
17 basis is that ultimately you imagine that on
18 average it would not be a higher cost. Is
19 that the basis for why the customers were
20 switched from propane air to CNG?

21 A. (Gilbertson) I don't think that's the reason.
22 I believe we had a safety issue. And I think
23 the customer -- I mean, the Company did what
24 they needed to do. I think there's many

1 reasons. And I'm sure that Mr. Mullen will
2 be better prepared to answer what the
3 customer -- all the reasons that we decided
4 to go with CNG. There's many reasons.

5 Q. Okay. And so on that basis, the decision to
6 go to CNG also involves moving toward a
7 permanent facility to do that; is that
8 correct?

9 A. (Gilbertson) Yes.

10 Q. And has a site been identified? Is that
11 still in consideration for that facility?

12 A. (Gilbertson) I don't believe a site has been
13 identified. Again, that's not really my
14 area. So I'm sure Mr. Mullen can answer
15 better than me.

16 MS. SHUTE: Okay. I think I can
17 reserve the rest of my questions, Madam
18 Chairwoman.

19 CHAIRWOMAN MARTIN: Do you have
20 other questions of the Liberty witnesses?

21 MS. SHUTE: Well, I have questions
22 around the facility and the expectations
23 around that, which I think is related to the
24 incremental costs and prudence. But if Ms.

1 Gilbertson isn't the right person, then I
2 either need to be directed to who the right
3 person is or I need to hold them until
4 someone has spoken on the subject that I can
5 react to. I apologize that I don't know the
6 rules better than that, but that's the
7 situation I'm in.

8 CHAIRWOMAN MARTIN: Well, I think
9 these other witnesses are available for your
10 examination. So if either of the other
11 witnesses are able to answer those questions,
12 I think now would be the best time to do
13 that.

14 A. (Simek) Yeah, I mean, the Company did perform
15 an analysis. I just wasn't really a part of
16 it. So I can say I know we did look at
17 historical propane prices over, like, a
18 10-year period and was comparing that to what
19 natural gas was. And we did some analysis
20 looking at the future markets at the time and
21 did verify that CNG, when it's all said and
22 done, would be in the ballpark.

23 I also do know, as Ms. Gilbertson had
24 stated, that there are several factors of why

1 we did choose to move forward with CNG, and
2 one of them was the safety issue with the
3 blowers at the old propane plant. One of
4 them had to do with us losing our lease. We
5 don't own that building, and the lease is up
6 in a couple years. I know in prior hearings,
7 I believe it was last year's winter cost of
8 gas, in the closing argument Mr. Sheehan had
9 mentioned a bunch of things, of other reasons
10 why we did it. Like I said, I can give you
11 kind of high-level answers, but I don't have
12 the details.

13 BY MS. SHUTE:

14 Q. Okay. Do you know whether a site has been
15 identified?

16 A. (Simek) I do not believe we have identified a
17 site yet, no. I believe the search is
18 ongoing as we speak.

19 Q. And do you know what the time frame is from
20 the point at which you secure or find the
21 site to sort of go through the entire
22 construction process relative to when that
23 lease is up?

24 A. (Simek) I do not know that answer. I do know

1 that the lease, I believe, is up in like two
2 years, and then we have an option to extend
3 it for a couple more years. But I don't know
4 the specifics of it. So in order to answer
5 your question, I'm saying that it sounds like
6 we have like a six- or seven-year time frame
7 of what we could do for the construction
8 process, but I don't know what the true
9 expectation is for that.

10 Q. Okay. So is it the expectation that the
11 Company would do an analysis of prudence of
12 the permanent CNG facility, and would that
13 occur once the site was identified or once
14 the site was secured or -- when is that
15 expected to occur?

16 A. (Simek) I do know in the last Company's rate
17 case, in DG 17-048, there were several
18 stipulations that were included in there that
19 we need to follow in order to move forward
20 with a site and progress of construction and
21 the number of customers that needed to be
22 lined up and all that. But unfortunately, I
23 just don't have all that off the top of my
24 head.

1 CHAIRWOMAN MARTIN: Attorney
2 Schwarzer.

3 MS. SCHWARZER: Excuse me. Thank
4 you. I wanted to bring to everyone's
5 attention that the order of notice explicitly
6 stated that the prudence of the conversion,
7 including facilities, and on a larger scale,
8 would not be considered in this proceeding.
9 It's not appropriate to discuss that
10 conversion or, indeed, 17-048. That has been
11 reserved for the rate case. And the only
12 matter really here that's been raised by
13 Liberty that falls within the order of notice
14 that's been marked as Exhibit 1 is the CNG
15 supply contract and whether the demand
16 charges from 2017 to 2019 are appropriate and
17 whether the incremental costs should be
18 excluded from compensation. Thank you.

19 MS. SHUTE: That was my final
20 question.

21 CHAIRWOMAN MARTIN: Attorney
22 Schwarzer.

23 MS. SCHWARZER: I'm sorry. Madam
24 Chair, is this for me to believe able to ask

1 questions of the panel?

2 CHAIRWOMAN MARTIN: Yes.

3 MS. SCHWARZER: Thank you.

4 CROSS-EXAMINATION

5 BY MS. SCHWARZER:

6 Q. Mr. Simek, before I go back to more general
7 questions about the propane docket, so that
8 we get the basic nuts and bolts out of the
9 way, I did want to go back to your suggestion
10 that one of the reasons CNG was entered into.

11 Isn't the plan for CNG to be the least
12 cost supply?

13 A. (Simek) Like I said, the way I look at it,
14 and the way I personally look at prudence, I
15 guess, isn't just an economic analysis. It's
16 really what's best for the customer --

17 Q. My question's not about prudence. I'm asking
18 you the reason the Company planned to convert
19 to CNG -- (connectivity issue)

20 (Court Reporter interrupts.)

21 Q. -- was because CNG is supposed to be a least
22 cost supply. Just "Yes" or "No."

23 MR. SHEEHAN: I believe the witness
24 is entitled to explain an answer that would

1 address counsel's question.

2 CHAIRWOMAN MARTIN: I don't recall
3 the opening of Mr. Simek's response, whether
4 he did answer the question "Yes" or "No" and
5 was explaining.

6 MS. SCHWARZER: He did not.

7 CHAIRWOMAN MARTIN: Mr. Simek, can
8 you answer the question "Yes" or "No" and
9 then explain your answer, please?

10 A. (Simek) Yes. I believe that my answer to the
11 question is no, and I'd like to explain why,
12 is that when we're looking at making business
13 decisions, we would like to decide on what's
14 best for the customer. And when I say that,
15 I look at it more than just the lease cost
16 supply. I look at it for safety issues, the
17 fact that maybe we are losing the lease that
18 we had at the building and that we are able
19 to upgrade and that -- and like I said,
20 there's a whole bunch of things. I just
21 don't have them all. So when we're actually
22 looking at, and I am just going to say the
23 term "prudence," I believe it's doing what's
24 best for the customer, not just economic

1 analysis. And so least cost supply wouldn't
2 be the only reason that I believe that we
3 switched to CNG.

4 Q. Was switching to CNG, any part of it, so that
5 you could develop a least cost supply?

6 A. (Gilbertson) No. It was the best cost supply
7 for the portfolio.

8 Q. It was what?

9 A. (Gilbertson) It was the best cost supply for
10 the portfolio. Not the least cost, the best
11 cost.

12 Q. Okay. Mr. Simek --

13 A. (Gilbertson) We concluded that CNG --

14 Q. Mr. Simek, is it your testimony that it was
15 essential to enter into a CNG supply contract
16 in 2017 because the lease may need to be
17 extended by a few years in 2027?

18 A. (Simek) No, that's not what I'm saying. I'm
19 saying that the main driver of CNG, based on
20 my understanding -- again, I work in the
21 rates and regulatory department, not
22 operations, not engineering. But to my
23 understanding, conversion to CNG was made
24 mostly as a decision by the Company for

1 safety. And it was to move these 18 or so
2 customers from the Monadnock Marketplace over
3 to CNG so that we would not have to have the
4 blowers switch on during the winter period
5 because enough of the load would be handled
6 by CNG. And this is the temporary facility.
7 That was the whole point. The whole
8 long-term plan of the conversion to whether
9 it's CNG or LNG or both would be more about
10 growth and some other issues. But this was
11 solely based, as I understand it, as a safety
12 decision made by the Company.

13 Q. Is it possible that in 2015 and 2016, one of
14 the reasons provided for Liberty's converting
15 from air propane to CNG was so they could
16 service fuel oil customers and expand their
17 customer base?

18 A. (Simek) I do believe there was one or two
19 customers that we thought we would
20 potentially have been able to pick up with
21 this conversion. But again, it was mainly
22 for the 18 customers that were located at the
23 Monadnock Marketplace. That's why the
24 decision was made.

1 Q. Are you aware that the contract was amended
2 in May of 2017 to extend to the entire
3 franchise and not just the Monadnock
4 Marketplace?

5 A. (Simek) I am not aware of that, no.

6 Q. Would you be surprised to learn that an
7 amendment to extend the -- excuse me -- that
8 a second contract was -- the initial contract
9 was signed in October 2016 and then
10 renegotiated and re-signed in November of
11 2016 to cover the entire Keene customer base?

12 A. (Simek) Well, I was aware that there was a
13 new contract that was made. But I assume Ms.
14 Gilbertson took herself off mute, so I'll let
15 her address that.

16 Q. Thank you.

17 A. (Gilbertson) Yes. So there was another
18 contract that would allow for expansion. But
19 we didn't pay for supply without flowing
20 supply. It just allowed in the event there
21 was expansion. The vendor was notified
22 through this contract that there may be more
23 than just a small section. It didn't happen.
24 But it didn't change the contract either. We

1 only paid --

2 Q. I'm sorry. Are you telling me that the
3 contract that was signed in May of 2017 was
4 signed for the sole purpose of serving 18
5 customers in the Monadnock Marketplace?

6 A. (Gilbertson) No, it wasn't. It allowed for
7 expansion.

8 Q. Well, was it --

9 A. (Gilbertson) The volumes were higher --

10 Q. The volumes were quite -- were high enough to
11 serve the entire Keene customer group; is
12 that correct?

13 A. (Gilbertson) I'm not sure if it was that
14 high. I don't know. I know it was higher.

15 MS. SCHWARZER: I apologize. If I
16 can have just one moment to open a door. My
17 cat is slamming against the window, and it's
18 extremely distracting. And I do apologize to
19 the Chair. If I could just open the slider.

20 CHAIRWOMAN MARTIN: Go ahead.

21 MS. SCHWARZER: Thank you.

22 (Pause in proceedings)

23 BY MS. SCHWARZER:

24 Q. I did want to get back --

1 (Court Reporter interrupts.)

2 MS. SCHWARZER: We're on the
3 record?

4 CHAIRWOMAN MARTIN: Yes. Go ahead.

5 MS. SCHWARZER: Thank you, Your
6 Honor.

7 BY MS. SCHWARZER:

8 Q. Ms. Gilbertson, you had answered a question,
9 I believe, that was asked by Attorney Shute
10 and said that when you signed the contract --
11 and you had said in May of 2017, but should
12 we press that back to October 2016 or
13 November of 2016? Which contract are we
14 discussing? All of them?

15 A. (Gilbertson) I guess all of them.

16 Q. Okay.

17 A. (Gilbertson) One was terminated, and it was
18 replaced by another one. But the time period
19 never -- there was no -- I don't think there
20 was any modification to the -- any
21 interruption in the start date. They
22 overlapped. They overlapped. But the second
23 contract, which was the expanded contract,
24 was for more, a longer term. And as I said,

1 it allowed for expansion. So it also had
2 more volume. And the pricing changed. I
3 mean, there were a few things. It definitely
4 was a different contract.

5 Q. Well, I believe you said that when the
6 contract was signed, you were prepared to
7 flow CNG.

8 A. (Gilbertson) Yes, we expected to. Yes. The
9 Company --

10 Q. Whether or not you expected to --

11 CHAIRWOMAN MARTIN: Attorney
12 Schwarzer, can you just be careful about
13 letting the witness finish speaking before
14 you speak?

15 MS. SCHWARZER: I apologize. I'm
16 sorry.

17 CHAIRWOMAN MARTIN: Thank you.

18 Go ahead, Ms. Gilbertson, if you'd
19 like to finish your answer.

20 A. (Gilbertson) I think the question was whether
21 or not we were prepared. I'd say that the
22 Company expected to flow CNG.

23 BY MS. SCHWARZER:

24 Q. Was the Company physically able to flow CNG

1 when the contract was signed?

2 A. (Gilbertson) Well, I think that we get into
3 the delays and the obstacles like right after
4 that. So that's the gray area, right?

5 Q. So is your answer, no, the Company was not
6 prepared to actually flow CNG into its
7 pipeline?

8 A. (Gilbertson) The Company was prepared -- the
9 Company was expecting to flow CNG at the time
10 the contract was signed.

11 Q. I appreciate that you hoped to do that. But
12 were you actually able to do that? Was the
13 underlying structure set up to permit you to
14 put CNG into the pipeline?

15 A. (Gilbertson) The skid was there. I don't
16 know the mechanical engineering aspects of
17 it. I fall short there. I don't know.

18 Q. Okay. In terms of... let me run through the
19 nuts and bolts questions so we can sort of go
20 through the propane piece.

21 How do current propane and natural gas
22 future prices compare to those in the filing?

23 A. (Gilbertson) Can you say that one more time,
24 please?

1 Q. Sure. How do current propane and natural gas
2 futures prices compare to those in the
3 filing?

4 A. (Gilbertson) Compare to those in the filing?
5 What do you mean? Are you comparing both of
6 them in the filing?

7 Q. I'm wondering, I guess, how Nymex rates
8 compare to what the Company used to estimate
9 its proposed -- or to create its proposed
10 rates in this filing.

11 A. (Gilbertson) I'm sorry. I have to check the
12 filing. So if you go to Schedule C of the
13 filing --

14 Q. Do you have a Bates page?

15 A. (Gilbertson) I got to find it. It looks like
16 it's 24, Bates 24.

17 Q. Twenty-four revised?

18 A. I think it's probably the same, yes. Is it
19 Schedule C?

20 Q. Schedule C, yes.

21 A. (Gilbertson) Yup. Okay. So if you look at
22 Schedule C and you go to Lines 23 and 24, you
23 see the expected cost of CNG without demand
24 charge. And then on line -- oh, gosh, it's

1 not really perfect. But right underneath
2 23 -- it should be 24, but it's not -- you
3 see the price with the demand charge. And I
4 don't know if I'm supposed to say the price
5 because it's confidential.

6 Q. No. No, please don't.

7 A. (Gilbertson) Okay.

8 Q. I actually --

9 A. (Gilbertson) And if you want to compare that
10 to the spot propane, that's on Line 30.

11 Q. I'm sorry. I think I'm asking a different
12 question. I'm trying to back up and just do
13 some generic cost of gas questions about
14 current Nymex prices -- or the current Nymex
15 doesn't -- current propane and natural gas
16 future prices compared to those in the
17 filings. Has there been a change from when
18 you filed it?

19 A. (Gilbertson) Oh, okay. I'm sorry. I thought
20 you meant -- okay. Yes, there has been a
21 change. And we looked at it on the, I
22 believe it was the 12th. And when we did
23 that, the cost of spot propane was probably a
24 nickel higher and the cost of the CNG hadn't

1 changed.

2 Q. Okay. And so did you feel it was worth
3 adjusting the rate schedules at that time, or
4 is it your expectation that that will be
5 worked out in reconciliation next year?

6 A. (Gilbertson) They felt that we could work it
7 out and we really didn't need to change the
8 filing.

9 Q. Has there been any change in the number of
10 Keene customers since last October?

11 A. (Gilbertson) Number of customers?

12 Q. Yes.

13 A. (Gilbertson) It seems there's less. Last
14 year I think we had, like, 1200, and now
15 we're looking at, like, 1100. So it looks
16 like there's been a little dip in the
17 customer count.

18 Q. When did the Company mail the FPO information
19 to its customers?

20 A. (Gilbertson) I don't know. Dave could
21 answer, or Cathy.

22 Q. Whichever of you would like to take that
23 question.

24 A. (McNamara) So I only am aware that it was

1 done prior to October 1st. I don't have that
2 letter in front of me for when it actually
3 was sent.

4 Q. Mr. Simek, do you have a more precise answer
5 than that?

6 A. (Simek) No. If I did, I would have chimed
7 in. Thank you.

8 Q. How many customers have enrolled to date in
9 the FPO option, and how does that compare to
10 prior years?

11 A. (McNamara) So we don't have a specific number
12 for Keene. There are approximately, I
13 believe I said earlier, 4,000 customers
14 between Keene and EnergyNorth. And
15 approximately, based on history,
16 approximately 100 Keene customers take the
17 FPO.

18 Q. Are you able at this time to assess how many
19 have accepted for this year, or you don't
20 have that information?

21 A. (McNamara) I know that in total, between
22 Keene and EnergyNorth, that it was -- let me
23 just pull it up. One second. Sorry.

24 (Witness reviews document.)

1 A. (McNamara) They received approximately 7,000
2 customers between both EnergyNorth and Keene
3 that have accepted the FPO. We do not have a
4 specific number for Keene only at this point.

5 Q. And when does FPO end?

6 A. (Simek) The FPO period is from just for the
7 winter months, November through April.

8 Q. But when can you enroll? I'm sorry. When
9 does the enrollment end?

10 A. (Simek) I believe it's from one month from
11 billing. Thirty days from the date that they
12 mailed the letter. And the only information
13 we received, I believe to date from customer
14 service, was that the letter went out before
15 October 1st.

16 Q. Okay. Thank you. Does the cost of gas filed
17 here include any production costs for
18 Keene -- (connectivity issue)

19 CHAIRWOMAN MARTIN: Just a minute,
20 Attorney Schwarzer.

21 Ms. Robidas, were you able to hear
22 all that? You got it?

23 THE COURT REPORTER: I did, but it
24 was a bit garbled. But I got it.

1 (Record read back as requested.)

2 MS. SCHWARZER: Yes.

3 CHAIRWOMAN MARTIN: Okay. Good.

4 A. (McNamara) No, it does not.

5 Q. I'm sorry. Who answered that? Ms. McNamara?

6 Okay.

7 Ms. Gilbertson, can you help me
8 understand why Liberty believed it was
9 essential to obtain CNG by November 1st of
10 2017?

11 A. (Gilbertson) I'm sorry. Why did we -- we
12 had it -- we wanted it as of I think
13 November -- we wanted it in 2016. So we
14 fully expected to have it by 2017. This has
15 kind of been a long -- like a moving target.
16 I guess I don't understand the question. Of
17 course the Company expected to serve CNG in
18 2017. We expected to serve it in 2016.

19 Q. But that's -- expecting to serve it is
20 different than needing to have it. I just
21 wonder why did you believe that you had to
22 have it in November of, I believe, 2016 or
23 2017. Why did you need it?

24 A. (Gilbertson) I don't know what the initial --

1 I don't know if the safety issue came first.
2 I don't really know the chronological event
3 that led to them deciding that CNG was -- I
4 don't know what moment that was that they
5 decided that.

6 Q. When did the Company send out an RFP for CNG?

7 A. (Gilbertson) In 2016, May.

8 Q. I'm sorry?

9 A. (Gilbertson) May of 2016.

10 Q. And when did you get a response?

11 A. (Gilbertson) I'm not sure what the dates were
12 of the responses. I don't know. I
13 assumed -- I'm sure we needed to have a
14 response. I don't have the RFP in front of
15 me.

16 Q. Are you aware of any of the research that was
17 done around using CNG?

18 (Connectivity issue)

19 CHAIRWOMAN MARTIN: Ms. Gilbertson,
20 we didn't hear any of that answer.

21 A. (Gilbertson) Oh, okay. Yes, there was --
22 (connectivity issue)

23 (Court Reporter interrupts.)

24 A. (Gilbertson) So the question was did we do an

1 analysis. Yes, we did an analysis.

2 Q. But are you aware of any of the details of
3 that analysis?

4 A. (Gilbertson) I have a spreadsheet on it, yes.

5 Q. Are you aware that there is a difference
6 between a utility obtaining CNG and an end
7 user obtaining CNG, in terms of regulatory
8 requirement?

9 A. (Gilbertson) No.

10 Q. Do you know how the gas has to get from the
11 tank into a pipeline for utility use?

12 A. (Gilbertson) I generally know how.

13 Q. Do you know where the demarcation point is
14 for a CNG propane facility?

15 A. (Gilbertson) No.

16 Q. Would you have been part of the contracting
17 process for the RFP?

18 A. (Gilbertson) No --

19 Q. Who was --

20 A. (Gilbertson) -- I wasn't.

21 Q. Who was part of that process?

22 A. (Gilbertson) Maybe Dave knows better. I'm
23 not sure who was involved. Bill Clark was
24 there. And then --

1 A. (Simek) I do know that --

2 (Court Reporter interrupts.)

3 CHAIRWOMAN MARTIN: Mr. Simek,
4 please stop. Too many people are talking
5 over each other. Ms. Robidas cannot keep the
6 record.

7 Did you get what Ms. Gilbertson
8 said?

9 THE COURT REPORTER: I didn't get
10 the end of what she said, and then Mr. Simek
11 jumped in. Thank you.

12 CHAIRWOMAN MARTIN: Okay. Ms.
13 Gilbertson, can you try to say what you said
14 at the end, and then we'll go to Mr. Simek.

15 (Record read back as requested.)

16 A. (Gilbertson) And then Chico DaFonte signed
17 the contract from energy procurement.

18 BY MS. SCHWARZER:

19 Q. Is anyone here today someone who was --

20 CHAIRWOMAN MARTIN: Just a minute,
21 Attorney Schwarzer. Mr. Simek was responding
22 and we interrupted.

23 Can you please restate your
24 response, Mr. Simek?

1 A. (Simek) Yes. I'm sorry about that, by the
2 way. With a little delay, I thought Ms.
3 Gilbertson was done speaking when I spoke.
4 But all I was going to add was that I knew
5 Mr. Clark was involved in the process.

6 CHAIRWOMAN MARTIN: Okay. Attorney
7 Schwarzer, go ahead.

8 BY MS. SCHWARZER:

9 Q. Is there anyone here on the panel today, or
10 prospectively to testify for Liberty, who was
11 involved in that contracting process in 2016,
12 2017?

13 MR. SHEEHAN: If I may interject
14 here. The issue here is the demand for --
15 the demand charges of that contract. The
16 players that negotiated that is not relevant.
17 And the operations of the skid itself are not
18 particularly relevant. I mean, I just think
19 we're getting too far afield as to what the
20 issue is for this hearing. So I object.

21 MS. SCHWARZER: I'm happy to make
22 an offer of proof as to why who was
23 negotiating was relevant and the skid is
24 relevant if the Chair would wish me to do

1 that.

2 CHAIRWOMAN MARTIN: Well, I
3 certainly want to hear your position on what
4 I take to be an objection.

5 MS. SCHWARZER: Thank you. Who was
6 negotiating and what they knew is relevant
7 because in response to Liberty's argument
8 that the CNG supply contract was prudent,
9 Staff wishes to demonstrate that it was
10 reasonable for -- reasonably foreseeable that
11 there would be problems with the approach
12 that Liberty was taking with CNG for a
13 variety of reasons, including the fact that
14 Liberty attempted to create a facility that
15 would allow CNG to be used in a manner that
16 the vendor sells CNG to end users, which have
17 much lower safety standards than the method
18 in which CNG must be used by utilities, as
19 illustrated by a court case -- excuse me -- a
20 New York State Public Utilities Commission
21 case attached to Mr. Knepper's testimony,
22 which mirrored the issues here with
23 remarkable similarity and was a published
24 decision no later than 2014.

1 CHAIRWOMAN MARTIN: Attorney Shute,
2 do you have any position on this? If you
3 can't unmute and you want to shake your head
4 one way or the other.

5 MS. SHUTE: Apologies. Not at this
6 time. Thanks.

7 CHAIRWOMAN MARTIN: If I'm
8 understanding this issue correctly, this RFP
9 that Attorney Schwarzer is inquiring about is
10 directly related to the contract for the
11 demand charges that you're seeking to
12 recover; is that correct? Attorney Sheehan,
13 you're on mute.

14 MR. SHEEHAN: I'm sorry. Yes.

15 CHAIRWOMAN MARTIN: Okay. For that
16 reason, I am going to overrule your objection
17 and allow the questions.

18 BY MS. SCHWARZER:

19 Q. Is there anyone here on the panel today who
20 was part of the RFP or the contract
21 negotiations for this supply contract?

22 A. (Simek) I was not part of any of the
23 negotiations, no.

24 Q. Was Mr. Mullen, if you know?

1 A. (Simek) I do not know what role Mr. Mullen
2 played in that contract, if any.

3 Q. Is anyone here on the panel right now aware
4 of the 2014 decision, or have you reviewed it
5 since it was filed in this docket? Mr.
6 Simek?

7 A. (Simek) I have not.

8 Q. Ms. Gilbertson?

9 A. (Gilbertson) I was aware of the decision, but
10 I wasn't part of the discussion. I wasn't in
11 this role at that time. But I was aware of
12 the --

13 Q. You were aware of the New York State Public
14 Utilities Commission decision?

15 A. (Gilbertson) Oh, no, not that. I was aware
16 that we entered into a contract with CNG.
17 No, I didn't. I'm sorry.

18 Q. Ms. McNamara, have you read the New York
19 State decision from 2014?

20 A. (McNamara) I have not.

21 Q. And is anyone on this panel aware of the
22 difference between safety requirements for
23 the end user of CNG propane that's not a
24 utility as opposed to the end user of a CNG

1 facility that is a utility? Mr. Simek?

2 A. (Simek) I am not aware, no.

3 Q. Ms. Gilbertson?

4 A. (Gilbertson) No, I'm not.

5 Q. Ms. McNamara?

6 A. (McNamara) I am not.

7 Q. Are the members of the panel aware that this
8 would -- when Liberty decided to use CNG,
9 this was the first time that that had been
10 done in New Hampshire?

11 A. (Simek) Yes, I was aware of that.

12 Q. Ms. Gilbertson?

13 A. (Gilbertson) No, I was not aware of that.

14 Q. Ms. McNamara?

15 A. (McNamara) I don't recall hearing that.

16 Q. Has Liberty sought recovery of the demand
17 charges at issue here in any prior docket to
18 date?

19 A. (Simek) I just want to clarify that you're
20 asking about the demand charges that are from
21 the historical demand charges; correct?

22 Q. Yes.

23 A. (Simek) No, we have not.

24 Q. Why not?

1 A. (Simek) Because we were waiting to flow --
2 until the actual gas started to flow, and
3 then we were going to go ahead and bring it
4 up to the Commission for review and to get
5 their opinion. At that point, we figured
6 that we would -- again, in our testimony, we
7 offered to spread it out over three years.
8 We thought it was reasonable. And we also
9 felt at this time it would be, now that we
10 had started to flow the gas, it would be a
11 good time to bring it up to the Commission
12 for a decision.

13 Q. After you'd already invested and committed to
14 the contract?

15 A. (Simek) Yes. Again, if I understood Ms.
16 Gilbertson correctly, we were planning on
17 supplying -- you know, signing the contract
18 and supplying it right away.

19 Q. That was your -- (connectivity issue)

20 A. (Simek) That was --

21 (Court Reporter interrupts.)

22 A. -- was the expectations in the planning, too,
23 yes.

24 Q. I have a question that relates more generally

1 to CNG but not in this preliminary phase.

2 Can someone tell me what the "marketer
3 basis charge" is? Could you define that on
4 the record?

5 A. (Gilbertson) Yes. The marketer basis charge
6 is a charge that the supplier charges for
7 them to get the supply.

8 Q. And has that been something that Liberty has
9 paid to date?

10 A. (Gilbertson) Yes, we are paying the marketer
11 basis charge.

12 Q. When did you begin paying that?

13 A. (Gilbertson) Well, we disputed it because we
14 felt there was some double counting going on.
15 But we negotiated with the vendor and agreed
16 that they were -- that the charge was valid,
17 and then we started paying it in July. And
18 we essentially paid it back to October of
19 2019 when we first started flowing the CNG.

20 Q. And is the market -- does the marketer basis
21 charge increase the per therm cost of the CNG
22 by [REDACTED] per therm?

23 A. (Gilbertson) Yes. Well, not anymore. That's
24 what the initial charge was, but we

1 negotiated it to a lower amount. Not sure if
2 I'm supposed to say what it is.

3 Q. Oh, I'm sorry. Darn it. Okay. Is there
4 some place on the Bates documents that would
5 show what the marketer basis charge that's
6 being paid right now is?

7 A. (Gilbertson) Yes, there's a DR on that, I
8 believe.

9 MS. SCHWARZER: I'll bring to the
10 stenographer's attention to perhaps flag my
11 mention of the cost differential.

12 CHAIRWOMAN MARTIN: Ms. Robidas, do
13 you understand what she's asking?

14 (Court Reporter nods affirmatively.)

15 MS. SCHWARZER: My apologies.
16 Thank you.

17 A. (Gilbertson) So Staff TS 1-1, which is --
18 let's see. I think it's Exhibit 15. That
19 might be the redacted one.

20 Q. Yeah. Exhibit 16 is the confidential one.

21 A. (Gilbertson) Yeah. Okay. So if you look at
22 the bottom of that page, it tells you what
23 the -- it's grayed out, but you can see what
24 it was. And then it's been reduced to a

1 lower amount starting in July 2020.

2 Q. Okay. Thank you. And I don't think we need
3 to spend more time on that marketer basis
4 charge, except for two more questions.

5 Is the marketer basis charge part of the
6 incremental costs that are being disputed
7 here between Staff and the Company?

8 A. (Gilbertson) Yes.

9 MS. SCHWARZER: Madam Chair, if I
10 could have just five minutes to consult with
11 Staff before I relinquish my -- before I
12 conclude, I would appreciate it.

13 CHAIRWOMAN MARTIN: Any objection?

14 [No verbal response]

15 CHAIRWOMAN MARTIN: Okay. Let's
16 take a five-minute recess off the record.

17 (Brief recess was taken at 3:29 p.m., and
18 the hearing resumed at 3:35 p.m.)

19 CHAIRWOMAN MARTIN: Back on the
20 record. Attorney Schwarzer.

21 BY MS. SCHWARZER:

22 Q. Two follow-up questions for the panel. My
23 first question -- just to put your comments
24 in context this afternoon, I'm going to quote

1 from Order 26,305, published on October 31st,
2 2019, in the winter Keene cost of gas case at
3 Page 7.

4 "The Commission has yet to find the use
5 of natural gas in Keene to be consistent with
6 a least cost supply, or otherwise prudent."

7 Are you familiar with that order? Mr.
8 Simek?

9 A. (Simek) Yes, I am.

10 Q. So if you're --

11 (Pause in proceedings)

12 CHAIRWOMAN MARTIN: Go ahead,
13 Attorney Schwarzer.

14 BY MS. SCHWARZER:

15 Q. Notwithstanding that stated, Mr. Simek, you
16 believe a finding of prudence has been found?

17 MR. SHEEHAN: If I can interject, I
18 believe the Chair suggested that would be
19 appropriate for legal argument. I'm not sure
20 Mr. Simek is the right one to make legal
21 arguments at this point.

22 CHAIRWOMAN MARTIN: Attorney
23 Schwarzer, I'm going to sustain the
24 objection. You could ask this witness

1 regarding his opinion, because I think I
2 clarified before, the orders speak for
3 themselves. And he can give his opinion as
4 to what happened, but the orders speak for
5 themselves.

6 BY MS. SCHWARZER:

7 Q. Mr. Simek, notwithstanding that sentence, it
8 continues to be your opinion that the
9 Commission's made a prudency finding with
10 regard to the CNG contract?

11 A. (Simek) What I had said earlier, and my
12 opinion is, I don't believe that prudency
13 should be based solely on economic reasons.
14 It should be what's best overall for the
15 customer. And that's my opinion.

16 Q. Thank you.

17 Ms. Gilbertson, are you familiar with
18 that sentence, that the Commission has yet to
19 find the use of natural gas in Keene to be
20 consistent with a least cost supply, or
21 otherwise prudent?

22 A. (Gilbertson) Yes, I'm familiar with that.

23 Q. And nonetheless, is it your opinion that a
24 prudency finding has been made?

1 A. (Gilbertson) I don't know.

2 Q. Okay. Ms. McNamara, are you familiar with
3 that sentence, "The Commission has yet to
4 find the use of natural gas in Keene to be
5 consistent with a least cost supply, or
6 otherwise prudent"?

7 A. (McNamara) Yes.

8 Q. And is it your opinion that a prudency
9 finding has been made?

10 A. (McNamara) I would agree with Mr. Simek, that
11 prudence -- on the definition of prudency.
12 But I don't have an opinion on that order.

13 Q. Thank you.

14 And my final question. I'm not sure to
15 whom it should be addressed. The demand
16 charges at issue here are from, I believe,
17 May or July of 2017 through November --
18 excuse me. Strike that.

19 I believe the demand charges at issue
20 here run from July of 2017 through August or
21 September of 2019; is that correct?

22 A. (Simek) I disagree with that. I believe we
23 have two issues that Staff has here. One of
24 them has to do with the demand costs that are

1 is flickering, I believe.

2 A. (Simek) I believe it was --

3 (Connectivity issue)

4 CHAIRWOMAN MARTIN: Let's go off
5 the record for a minute.

6 (Discussion off the record.)

7 CHAIRWOMAN MARTIN: All right.

8 Back on the record. Go ahead.

9 BY MS. SCHWARZER:

10 Q. Mr. Simek, were you able to find those
11 months? You're muted.

12 A. (Simek) Sorry about that. The months were
13 August 2017 through September 2019.

14 Q. Thank you. There was a -- (connectivity
15 issue)

16 (Court Reporter interrupts.)

17 Q. There was a contract, a CNG supply contract
18 with the same vendor in place in
19 October 2016; is that correct?

20 A. (Simek) Yes, that's correct.

21 Q. And were there any demand charges associated
22 with the period from October of 2016 through
23 July of 2017?

24 A. (Gilbertson) The demand charges didn't begin

1 until I believe it was July of 2017. So...

2 Q. There were no demand charges for the prior
3 contract?

4 A. (Gilbertson) Not prior to July of 2017.

5 Q. And did the contract in place in
6 October 2016, or as amended in May of 2017,
7 did that include a clause that would allow a
8 delay in charges were Liberty unable to
9 obtain regulatory approval?

10 A. (Gilbertson) No, I don't think it did. I
11 don't know for sure, but I don't think it
12 did.

13 Q. Was it considered, if you know?

14 A. (Gilbertson) I don't know.

15 Q. Okay. Thank you.

16 Does anybody else on the panel want to
17 speak to that?

18 A. (Simek) I do not know that answer.

19 MS. SCHWARZER: Then I have no
20 further questions of this panel. Thank you.

21 CHAIRWOMAN MARTIN: Okay. Thank
22 you.

23 Commissioner Bailey.

24 COMMISSIONER BAILEY: Thank you.

1 QUESTIONS BY COMMISSIONERS:

2 BY COMMISSIONER BAILEY:

3 Q. I guess I'll start with the easy question.
4 Can you turn to Page 14R in Exhibit 5? Are
5 you there? You're on mute, Mr. Simek.

6 A. (Simek) Yes, I'm there.

7 Q. Okay. This answer is explaining why there's
8 an increase to the cost of gas rate. And
9 part of it is because of the contract demand
10 charges that you're talking about, and part
11 of it is because of a difference between an
12 over-collection and under-collection. But at
13 the top of Page 12 of the testimony, which is
14 on Bates Page 14R, you say, "Approximately
15 five cents of the increase is due to a
16 billing adjustment made in May 2020 due to a
17 faulty meter that had to be replaced for a
18 large customer."

19 Can you explain that to me and how that
20 would increase cost of gas?

21 A. (Simek) Yes. It's really a timing issue. It
22 was -- it had to do with a cancel and re-bill
23 for the customer. And we were given -- we
24 were charging the customer too much, and then

1 we had to do credits. And it had to do with
2 timing, where some of the charges happened
3 in, like, the summer period and some happened
4 in the winter period. And it's really just
5 an accounting issue of how that impacted it.

6 Q. I don't understand how an accounting problem
7 with your billing system would change the
8 cost of gas.

9 A. (Simek) Ms. McNamara may have more
10 information on that. I don't...

11 A. (McNamara) So it has to do with the revenues
12 collected. We originally booked revenues of
13 a certain number that was much higher than
14 what they should have been. And that error
15 and fix was not made until the next period,
16 the next season. So because we overstated
17 our revenues, we ended up having to collect
18 more from the customer because -- we
19 overstated our revenues, so we had to -- when
20 we gave that back to the customer, it causes
21 a credit. It causes a decrease.

22 Q. Well, it seems like that's a problem with
23 your customer, not -- I don't understand how
24 that can impact the cost of gas.

1 A. (McNamara) Because when the cost of gas -- it
2 has two components. It has the cost itself,
3 and that cost is offset by the revenues. And
4 the revenues used were not correct. So that
5 overbill or under-bill that -- it has to do
6 with almost like the beginning balance when
7 it's carried through. The costs were the
8 same. But to offset that cost, our revenues
9 were different than what we thought they
10 were. So when we make that revenue
11 correction, it makes us have to collect those
12 original costs that never changed from other
13 customers. Does that make sense?

14 Q. So basically you're creating
15 under-collection?

16 A. (McNamara) Correct.

17 Q. Was that different than the
18 under-collection -- oh, and you're just
19 flagging that because it was --

20 A. (McNamara) It was one customer and --

21 (Court Reporter interrupts.)

22 Q. Did you just flag that because it was one
23 customer and a faulty meter?

24 A. (McNamara) That's correct. We flagged it as

1 one customer.

2 Q. A faulty meter.

3 A. (McNamara) Correct. And if I remember
4 correctly, the faulty meter, the Company that
5 produced it admitted there was an issue with
6 the meter. I don't know if Dave remembers
7 about that or not precisely. I would have to
8 go back into my --

9 A. (Simek) It was a new vendor that we used.
10 And the meter that they had was unable to
11 read CNG properly, so we had to switch it out
12 and put in a correct meter. And then that
13 caused the issue to have these cancel and
14 re-bills, which affected the revenue stream
15 for the cost of gas.

16 Q. So this happened to be one of the 18
17 customers in Monadnock Place [sic]?

18 A. (Simek) I believe so, yes.

19 Q. Okay. Does anybody know what the other five
20 cents that is described as "Other" is about?

21 A. (McNamara) I do not have more details on the
22 "Other."

23 Q. Okay. I think it was Mr. Simek who testified
24 that one of the reasons for converting

1 Monadnock Place had to do with a safety
2 issue. Or maybe it was Ms. Gilbertson. And
3 I wanted to ask you if you know whether the
4 Company considered any alternatives to
5 addressing that safety issue other than
6 converting Monadnock Marketplace to CNG.

7 A. (Simek) I do not know the steps that were
8 taken by operations or engineering, as far as
9 how they chose, you know, to move in this
10 direction with CNG and do a conversion of
11 Monadnock.

12 Q. Ms. Gilbertson, do you know?

13 A. (Gilbertson) I thought that they were
14 mitigating the risk by having resources in
15 place 24/7, which raised the production
16 costs. I thought that's what they were doing
17 before the CNG, is that they have to have
18 personnel in place to make sure that the
19 blower was functioning properly, and that
20 meant around the clock.

21 Q. Yeah, I remember that. But my question is:
22 Did they consider any alternatives to solving
23 that issue, or did they -- do you know that
24 the CNG costs customers less than manning the

1 plant 24/7?

2 A. (Gilbertson) I didn't hear the end of that.
3 Did you say cost less than --

4 Q. Yeah. I'm sorry. I don't understand why my
5 microphone's not working.

6 Did the Company consider any
7 alternatives other than CNG to solving the
8 blower problem that required manning 24/7?

9 A. (Gilbertson) Yes. My understanding is that
10 there -- it was a CNG/LNG solution that they
11 were planning to go forward with for the
12 whole area. It was a -- it's a big project.
13 And the thought was that CNG -- having the
14 LNG in place along with the CNG, you'd have
15 some redundancy there and you could take
16 advantage of lower priced LNG that you could
17 inject in the summertime and that would
18 soften the price of CNG. So it was a plan, a
19 plan that was developed to ultimately be
20 cheaper than the spot propane of gas. But
21 the CNG alone -- I don't believe the thought
22 that the CNG alone would be cheaper than the
23 cost of the spot propane.

24 Q. And to your knowledge, did the Company look

1 at other solutions to the problem that didn't
2 involve converting to CNG and/or LNG?

3 A. (Gilbertson) I don't know. As far as an
4 energy type, I don't know that there is --
5 well, there probably is. But I don't know
6 that they did. I think they looked at such
7 things as the lease is running out, the
8 propane's very old and antiquated. The plant
9 is -- I think they were trying to upgrade the
10 whole distribution system with a better
11 option rather than propane.

12 Q. Mr. Simek --

13 CHAIRWOMAN MARTIN: Commissioner
14 Bailey, can I have a follow-up on that?

15 COMMISSIONER BAILEY: Sure.

16 CHAIRWOMAN MARTIN: Bearing in mind
17 that I don't have the history that most of
18 you folks have, was the reason this was done
19 on a temporary basis to be able to more
20 quickly address the safety issue, or was it
21 part of the larger proposed conversion to the
22 CNG/LNG?

23 MS. GILBERTSON: I'm not a hundred
24 percent sure of the thought process there. I

1 know that there's been a lot of discussions
2 that putting the CNG in place would mitigate
3 that risk that we had because of that
4 incident back in December of, I think it
5 was -- was it 2017? I'm not even sure. But
6 it was a serious safety issue. And I recall
7 the conversations in the Company, that
8 converting to the CNG and quartering off that
9 section would make it -- would improve the
10 blower situation, and we wouldn't need to
11 have the 24/7 personnel on site. I recall
12 that discussion.

13 CHAIRWOMAN MARTIN: Okay. Thank
14 you.

15 BY COMMISSIONER BAILEY:

16 Q. Mr. Simek, you said that you knew at a high
17 level about an analysis, but not the details.
18 Do you recall that?

19 A. (Simek) Yes.

20 Q. Do you know who knows the details?

21 A. (Simek) I'm trying to remember who requested
22 some information from me. I remember passing
23 along some historical commodity prices that
24 were being used for some analysis. I believe

1 it may have been Mr. DaFonte, who was the
2 director of energy procurement at that time.

3 Q. Do you know if that analysis was ever filed
4 at the Commission?

5 A. (Simek) I do not.

6 Q. Do you think the Commission could make a
7 prudency determination without that analysis?

8 A. (Simek) I do, because of that -- that
9 analysis was solely made to try to come up
10 with, at that time, how the CNG price alone,
11 just the commodity price of CNG compared to
12 propane, looking at both a long-term
13 historical and a long-term forward look. As
14 I stated earlier -- and I believe that they
15 came to the conclusion that they were in the
16 ballpark at that time with how the market
17 showed.

18 But like I said earlier, in my opinion,
19 prudency isn't just based on that economic
20 analysis. It's also based on other
21 situations that are what make it best for the
22 customer.

23 Q. Okay.

24 A. (Simek) I'm sorry. Go ahead.

1 Q. Are you saying, then, that the only analysis
2 that was done was an economic analysis?

3 A. (Simek) No. I'm saying that that's the
4 only -- I just know that I was asked for some
5 information to be able to put some
6 information into a model to look at some
7 economic data. I wasn't involved in meetings
8 and everything else that the Company had
9 throughout this whole process of determining
10 CNG and all that. So I'm not really aware of
11 all the work that was put in and all the
12 analytical-type work to come to the
13 conclusion that this was the best move to
14 make.

15 Q. Is anybody else aware of that analysis that
16 this was the best move to make?

17 A. (McNamara) I am not.

18 A. (Gilbertson) I'm not aware of the analysis.

19 Q. Ms. Gilbertson, when the demand -- well, the
20 contract that's at issue today was
21 renegotiated and it was expanded to allow --
22 or it allowed expansion so that you could
23 serve all of Keene with CNG under that
24 contract, did the demand charge increase from

1 the original contract?

2 A. (Gilbertson) The separate contract -- the
3 first contract that was just for, I think, a
4 one-year period did not have a demand charge
5 in it, but it had a very high cost of
6 commodity. It was -- well, I shouldn't say.
7 I can't say. But it was a high cost of
8 commodity. That contract was terminated, and
9 at the same time a new contract was put in
10 place for the expansion that had a lower cost
11 of commodity with a demand charge.

12 Q. And that demand charge would satisfy the
13 ability to serve the entire franchise in
14 Keene.

15 A. (Gilbertson) I don't know that. I know that
16 there is a demand charge there and I know
17 that it's a different contract. But the
18 commodity is lower -- I don't know that.

19 Q. Well, do you know whether demand charge is
20 based on some amount of capacity that's
21 available?

22 A. (Gilbertson) It's an expected amount, yes,
23 and it is higher. So, therefore, the demand
24 charge will cover -- or so says the contract.

1 That demand charge will cover that amount of
2 volume, which is a good -- a lot.

3 Q. So if the demand charge in the contract that
4 we're talking about could cover the whole
5 franchise area, it's really much higher than
6 it would be if it was only intended to cover
7 the Monadnock Marketplace; isn't that right?

8 A. (Gilbertson) I don't know that. It's a skid.
9 It's equipment that's on site. You know, we
10 have trailers that pull up to that skid. We
11 can hook up. I don't know that it makes any
12 difference. I don't know. Do we need two
13 skids? I don't know. It seems to me that --

14 CHAIRWOMAN MARTIN: Just a minute.

15 Ms. Robidas had her hand up.

16 Let's go off the record.

17 (Discussion off the record.)

18 CHAIRWOMAN MARTIN: Let's go back
19 on the record. Commissioner Bailey, I had a
20 question about the scope of that second
21 contract. Are you -- is this a good place to
22 interject that or -- I don't want to
23 interrupt your flow of questions.

24 COMMISSIONER BAILEY: No, I think

1 that was my last question. But I'm not sure
2 we finished the answer. Did we?

3 (Court Reporter interrupts.)

4 A. (Gilbertson) I don't know that we need two
5 skids, first of. But I don't know that the
6 demand charges make any difference whether
7 you're serving, you know, 20 customers or,
8 you know, 1200 customers. I don't know. I
9 know there's a cost of putting that skid
10 there. And I know the contract states that
11 there is a demand charge. The first contract
12 didn't have a demand charge, but the cost of
13 the CNG itself was much higher. So they're
14 just different contracts. I don't know that
15 the demand charge is based on the -- you
16 know, a volume. You couldn't -- you know,
17 like you need to have a skid there. So I
18 don't know.

19 COMMISSIONER BAILEY: Okay. That's
20 all I have. Thank you, Madam Chair.

21 BY CHAIRWOMAN MARTIN:

22 Q. Okay. I was wondering on the second
23 contract. I heard you, Ms. Gilbertson,
24 describing the setup period that was expected

1 to be some period of time over the summer,
2 from May through the fall, when you expected
3 to start flowing CNG. Was the scope of the
4 contract the same for the entire period? In
5 other words, was there a different charge for
6 the setup period than for the time when the
7 service would actually start?

8 A. (Gilbertson) Are you talking about the
9 original, the contract that was terminated?

10 Q. No. My recollection of your testimony is
11 that the second contract began in May of
12 2017, and that service -- or the flow, as
13 we've heard today, was expected to begin in
14 the fall of 2017. And during that interim
15 period there would be some setup, this skid
16 would arrive, connections had to happen. Was
17 that all the same charge? Or was that period
18 identified separately and the scope described
19 differently and the costs described
20 differently?

21 A. (Gilbertson) If I'm understanding you
22 correctly, there was a setup fee, and it was
23 amended to a little bit more than that. Not
24 much more, but it was -- and there's been no

1 additional setup since that May 2017 contract
2 that was later amended to start in July of
3 2017.

4 Q. Okay. So did the demand charges begin in
5 July?

6 A. (Gilbertson) Yes.

7 Q. And was the setup happening in July?

8 A. (Gilbertson) Yes.

9 Q. Okay. Ms. Gilbertson, I have another
10 question for you. I heard you mention on the
11 marketer basis charge, that originally
12 Liberty disputed those charges, or there was
13 some dispute related to those? Is that
14 right?

15 A. (Gilbertson) Yes.

16 Q. And you said you negotiated, and ultimately
17 they were included. Was that a different
18 charge that you negotiated?

19 A. (Gilbertson) We disputed the charge because
20 we felt it was double-counting. And the
21 vendor proved to us, to our satisfaction,
22 that wasn't double-counted. We felt that it
23 was -- they could do better, and they lowered
24 the charge to a better charge.

1 Q. That's what I was trying to get clarity on.
2 So ultimately the charge was lower.

3 A. (Gilbertson) It is now, yes.

4 Q. Okay. And you mentioned in the second
5 contract that it allowed for expansion. Was
6 the expansion charge or the related charge
7 for that optional?

8 A. (Gilbertson) No. Those are my words, "that
9 allowed for expansion." It's bigger volumes.
10 So I would, you know, assume that it's
11 allowing for expansion.

12 Q. Okay. So you're saying that it didn't allow
13 for expansion, it was just a larger volume.

14 A. (Gilbertson) Yeah.

15 Q. Okay. All right. Thank you.

16 CHAIRWOMAN MARTIN: That's all my
17 questions.

18 Attorney Sheehan, do you have
19 follow-up questions?

20 MR. SHEEHAN: Just one or two for
21 Ms. Gilbertson.

22 REDIRECT EXAMINATION

23 BY MR. SHEEHAN:

24 Q. Debbie, if you'd turn to Exhibit TS 1-18.

1 It's Exhibit 18. I'm sorry. It's Data
2 Response TS 1-3. That has a copy of the
3 contract attached to it.

4 A. (Gilbertson) Yes.

5 Q. I can represent that is the contract signed
6 in November '16 and, as you testified, was
7 amended in May of '17.

8 And if you look on Page 3 of 8 of that
9 exhibit, it has a table of the quantities of
10 gas that could be nominated by month under
11 that contract. Are you there?

12 A. (Gilbertson) Yes.

13 Q. First question: Did this table --

14 MS. SCHWARZER: I apologize. I'm
15 not there. I just don't know where you are.

16 CHAIRWOMAN MARTIN: Can you just
17 pause for a moment while everyone catches up,
18 please?

19 MS. SCHWARZER: I don't see Page 3
20 of 8. I'm at Exhibit 18. Is there a Bates
21 number?

22 CHAIRWOMAN MARTIN: Attorney
23 Sheehan, you're on mute.

24 COMMISSIONER BAILEY: I think he's

1 talking about Bates Page 3.

2 MR. SHEEHAN: Sorry. I was on
3 mute. Yes, it's the third of eight pages of
4 that document.

5 MS. SCHWARZER: But --

6 COMMISSIONER BAILEY: It's Bates
7 Page 3, Mary.

8 MR. SHEEHAN: Correct. I'm sorry.

9 MS. SCHWARZER: Thank you.

10 CHAIRWOMAN MARTIN: Okay. Go
11 ahead.

12 BY MR. SHEEHAN:

13 Q. My first question, Debbie, is: Did the
14 amendment in May of 2017 change the contract
15 quantity that's in the middle of the page
16 we're looking at?

17 A. (Gilbertson) The amendment didn't, no.

18 Q. So this contract quantity by month is still
19 part of the contract that's at issue here
20 today that was in effect, if you will, in May
21 of '17; right?

22 A. (Gilbertson) Yes.

23 Q. And this shows a total of 51,000 MMBTu that
24 could have been served under that contract.

1 Does that give you any better idea as to how
2 much of the whole Keene system could be
3 served under this contract? Or perhaps Mr.
4 Simek may know the total throughput of the
5 Keene system.

6 A. (Gilbertson) Yeah, I think that's not enough
7 to serve the whole -- for a whole year,
8 not --

9 Q. Do you have an order of magnitude difference
10 between the 51,000 and what we need to serve
11 all of Keene for a whole year?

12 A. (Gilbertson) I'd have to add it all up. But
13 that -- we're looking at -- these are in
14 MMBTus. And if you convert them to therms,
15 you come up with 510,000 therms. 510,000
16 therms -- we're looking at, for just this
17 winter, 1,185,000 therms for the whole
18 portfolio.

19 Q. Okay.

20 A. (Gilbertson) But just the winter, not the
21 summer. So that's not a -- that's just a --
22 you're right. That's not going to do it, is
23 it.

24 Q. So is it fair to say these quantities are

1 sufficient to serve the marketplace plus some
2 more, but certainly not the whole system? Is
3 that fair?

4 A. (Gilbertson) Yes, that is fair to say.

5 Q. And there was an exchange between you and Ms.
6 Schwarzer over the question of was the
7 Company prepared to flow gas at the time we
8 signed the contract in May.

9 And is it fair to say that after signing
10 the contract, there were a number of things
11 that had to happen before we could turn on
12 the gas, such as delivery of the facility and
13 hookup of the facility, et cetera? Is that
14 correct?

15 A. (Gilbertson) Yes.

16 Q. And the event that triggered the start of
17 demand charges was some event related to that
18 delivery or siting or something more
19 operationally rather than the signing of the
20 contract itself in May.

21 A. (Gilbertson) Right.

22 Q. And do you know if it was delivery of the
23 facility or some similar event, the skid?

24 A. (Gilbertson) Well, I know the skid was

1 delivered in July of 2017.

2 Q. Okay.

3 MR. SHEEHAN: That's all I have.

4 Thank you.

5 CHAIRWOMAN MARTIN: All right.

6 Thank you. Any recross?

7 MS. SCHWARZER: If I might --

8 CHAIRWOMAN MARTIN: I'm sorry. I
9 couldn't hear you. Go ahead, Attorney
10 Schwarzer.

11 MS. SCHWARZER: May I ask just a
12 follow-up to that question?

13 CHAIRWOMAN MARTIN: Yes.

14 MS. SCHWARZER: Thank you.

15 RECROSS-EXAMINATION

16 BY MS. SCHWARZER:

17 Q. Ms. Gilbertson, the delivery of the skid was
18 not the same thing as allowing gas to flow;
19 is that correct?

20 A. (Gilbertson) It's a step towards it, but I
21 don't know if it's the -- I'm sure there's
22 other things that need to be done as well.

23 Q. Hypothetically, if there were PUC
24 administrative rules that required certain

1 safety conditions for gas to flow, then you
2 couldn't flow gas until those were met; is
3 that correct?

4 A. (Gilbertson) Yes, I would assume. I don't
5 know. I'm not one of the engineers that were
6 on that project, so I really don't know how
7 that chain of events rolled out.

8 Q. So Liberty was not prepared to flow gas in
9 July of 2017.

10 A. (Gilbertson) Liberty was expecting to flow
11 gas in July of 2017. I can't comment on
12 whether or not they were prepared. That I
13 don't know. I was not part of that team that
14 made that determination. Somebody other than
15 me could probably answer that better. Maybe
16 somebody from engineering or -- probably
17 someone from engineering or gas control.

18 Q. Do you think it's reasonable to expect to
19 flow gas merely because you have a skid?

20 MR. SHEEHAN: Objection. This is
21 far beyond the redirect question I asked of
22 this particular witness, and we're going into
23 new topics.

24 MS. SCHWARZER: Well, I'd like to

1 be heard because her answer was that they
2 expected to flow gas.

3 CHAIRWOMAN MARTIN: I think we
4 covered this in the cross originally, so...

5 MS. SCHWARZER: Okay.

6 CHAIRWOMAN MARTIN: Any other
7 questions?

8 MS. SCHWARZER: No. Thank you very
9 much.

10 CHAIRWOMAN MARTIN: Okay. At this
11 point, it's about 4:15. I understand that we
12 have reserved next Wednesday. Is that right,
13 Ms. Schwarzer?

14 MS. SCHWARZER: I was only able to
15 reserve 9:00 a.m. to 10:00 a.m. next
16 Wednesday, on the 28th. And I believe it was
17 cancelled yesterday; although, I didn't
18 cancel it, so I'm not sure why. I thought
19 you might have a -- I believe I was told by
20 the scheduling entity that you had a
21 conflict.

22 CHAIRWOMAN MARTIN: I am not aware
23 of the conflict. That doesn't mean there
24 isn't one.

1 Okay. So how should we proceed
2 here? Because it looks like we still have
3 quite a bit to go, right, if we're going to
4 have Staff members testify, followed by a
5 rebuttal witness? I'm thinking we have at
6 least a couple hours.

7 MS. SCHWARZER: So if I could be
8 heard, Madam Chairwoman?

9 CHAIRWOMAN MARTIN: Go ahead.

10 MS. SCHWARZER: This is an
11 expedited proceeding because we need to
12 assign rates for November 1st. And an order
13 needs to go out the door, and it is
14 October 23rd. It seems to me, likely, that
15 we have perhaps half a day to a whole day's
16 worth of ongoing testimony, although I don't
17 know. There are two Staff witnesses and Mr.
18 Mullen to testify, based on prefiled
19 testimony.

20 I would suggest the option of
21 deferring the prudence of the CNG supply.
22 But I don't -- if we're able to fit it in,
23 I'm happy to do that. I just don't know that
24 the calendar allows it at this point in time.

1 CHAIRWOMAN MARTIN: Does anyone
2 else have a conflict on Wednesday,
3 October 28th, at 9 a.m.?

4 MS. SHUTE: I'm only available for
5 an hour before I have another docket. But
6 it's -- yeah, it's a tech session. So
7 perhaps I can -- I don't know.

8 CHAIRWOMAN MARTIN: Looks like that
9 is potentially the only date we have because
10 of the Eversource hearings. I have a hearing
11 at 1:00 on Wednesday, October 28th. So that
12 is literally the only opening I think if
13 we're going to get this done in a timely
14 fashion. I apologize, Attorney Shute. If
15 you think that could work, I suggest we do
16 that.

17 MS. SHUTE: Is there any chance
18 of -- would it be too much to start at 8:30,
19 just to get a little bit --

20 CHAIRWOMAN MARTIN: I'd start at
21 4:30 in the morning if everyone else was
22 game. I will defer to Commissioner Bailey on
23 that. Is 8:30 too early to start?

24 COMMISSIONER BAILEY: 8:30 is not

1 too early for me to start, but 4:30 is.

2 CHAIRWOMAN MARTIN: Fair enough.

3 Mr. Frink.

4 MR. FRINK: I would just like to
5 say there have been instances in the past
6 where there have been disputes that couldn't
7 be resolved within the start of the winter or
8 summer period, and the Commission approved
9 interim rates and set up hearings after the
10 start of the period. And after we had those
11 hearings, the Commissioners made a ruling
12 once the record was complete, and then the
13 rates issued in a rate order setting
14 permanent winter rates. So they were winter
15 rates at the time. As much as cost of gas
16 rates are permanent. So you could -- an
17 option is to set interim rates and then
18 resolve it after November 1 and then set the
19 actual winter rate.

20 CHAIRWOMAN MARTIN: Thank you for
21 that suggestion.

22 Commissioner Bailey.

23 COMMISSIONER BAILEY: Would the
24 interim rate include the \$72,000 for the

1 demand charges and then be rebated back if we
2 found it wasn't -- it shouldn't be allowed?
3 Or would it be the other way around;
4 implement rates and raise them later if we
5 found that it should be allowed?

6 MR. FRINK: That would be up to
7 you.

8 COMMISSIONER BAILEY: Okay.

9 MR. FRINK: You have two proposed
10 rates. You have the Company's proposed rate
11 and you have Staff's proposed rate. There's
12 nothing -- if it's an interim rate, there's
13 nothing magical about it. You could split
14 the baby. You could go with one or go with
15 the other. Hopefully it would get resolved
16 within a month, so it wouldn't really have a
17 big impact on customers over the course of
18 the six months. But, again, that's your
19 call.

20 CHAIRWOMAN MARTIN: Would the
21 parties like to be heard on that suggestion?

22 MR. SHEEHAN: From Liberty's
23 perspective, I completely agree that's an
24 option. And to the extent we feel pressed

1 between now and November 1, it takes some of
2 that pressure off. Steve's exactly right.
3 It's ultimately reconcilable. I don't have
4 authority to agree to one or the other or the
5 middle as Steve suggested, but we're fine
6 with the concept.

7 CHAIRWOMAN MARTIN: Attorney Shute.

8 MS. SHUTE: I'm fine with that
9 concept certainly.

10 CHAIRWOMAN MARTIN: Attorney
11 Schwarzer.

12 MS. SCHWARZER: Staff is fine with
13 that concept. Thank you, Madam Chairwoman.

14 CHAIRWOMAN MARTIN: All right. I'd
15 like to take a five-minute recess, please.
16 Off the record. We'll return in five
17 minutes.

18 (Brief recess was taken at 4:22 p.m.,
19 and the hearing resumed at 4:31 p.m.)

20 CHAIRWOMAN MARTIN: Let's go back
21 on the record. If we were to accept the --
22 oh --

23 MS. SCHWARZER: Madam Chair?

24 CHAIRWOMAN MARTIN: Yes.

1 MS. SCHWARZER: Could Staff be
2 heard as to which of those two preferences
3 would be better?

4 CHAIRWOMAN MARTIN: I'm sorry. Did
5 you say can you be heard on which preference
6 would be better?

7 MS. SCHWARZER: Yes.

8 CHAIRWOMAN MARTIN: Do you have a
9 change from your prior position?

10 MS. SCHWARZER: I have an
11 additional reason to support a temporary rate
12 that would be consistent with the Staff rate.

13 CHAIRWOMAN MARTIN: Okay. Go
14 ahead.

15 MS. SCHWARZER: Thank you. In this
16 year of people dealing with COVID and job
17 loss, it would be preferential to charge
18 customers less and not more. Staff also has
19 a concern that one of Liberty's arguments is
20 that somehow by approving payment of CNG
21 rates, in I believe the 2018 order, even
22 though no CNG was served, that somehow the
23 Commission implicitly granted or made a
24 prudency finding. So Staff would want it to

1 be very clear that if any rate other than the
2 Staff's rate were approved as a temporary
3 rate, it would be without prejudice to any
4 legal position that Liberty may have taken,
5 that other rates have implied prudence.

6 CHAIRWOMAN MARTIN: Attorney Shute.

7 MS. SHUTE: I think the Commission
8 should also consider whether or not the
9 prudency issue in this case should be shifted
10 to the rate case.

11 CHAIRWOMAN MARTIN: Attorney
12 Sheehan.

13 MR. SHEEHAN: As far as shifting it
14 to the rate case, the CNG contract is a
15 supply contract. They are usually not in the
16 rate cases. The larger ones, like the TGP
17 checkcheck contract that we will be filing
18 soon and the NED checkcheck contract of a few
19 years ago are stand-alone and when approved
20 get into cost of gas. All the other
21 contracts are folded into cost of gas
22 proceedings and are approved as part of cost
23 of gas orders. So I'm not sure going into a
24 rate case with that is the right way. As far

1 as the -- yeah, I think my sense is not to
2 put any of this in the rate case. So that's
3 my thought.

4 CHAIRWOMAN MARTIN: Is it Staff's
5 position now that the historical demand
6 charge should not or could not be included in
7 the interim rate and then reconciled as was
8 suggested before?

9 MS. SCHWARZER: Yes, it is.

10 CHAIRWOMAN MARTIN: Because what I
11 think I heard Attorney Sheehan say is he's
12 not in a position at this time to agree to
13 inclusion of that. And so the Commission
14 needs to make a determination on the interim
15 rates, which I don't think we're in a
16 position to do at this moment.

17 MS. SCHWARZER: Madam Chairwoman,
18 I'm not sure I understood your question. Was
19 your question, is it Staff's position that
20 the historical demand charges should not be
21 included in this rate?

22 CHAIRWOMAN MARTIN: In the interim
23 rate.

24 MS. SCHWARZER: Oh. I think it

1 would be our position, yes, that it should
2 not be included in the interim rate because
3 of the COVID situation, but certainly without
4 prejudice, because Liberty has argued that
5 payment of demand charges associated with CNG
6 use implied prudence. We would -- if
7 anything other than the Staff rate is
8 established as a temporary rate, Staff has a
9 concern that it be done so without prejudice,
10 or any implication that there's a finding of
11 prudence by virtue of payment of that
12 temporary rate. I don't find that argument
13 compelling, but it's one Liberty made.

14 MR. SHEEHAN: Certainly if the
15 Commission would approve on an interim basis
16 anything, it is obviously without prejudice.
17 Our arguments based on prior orders are under
18 very different circumstances. So we would
19 not make that argument, that an interim
20 approval has any binding effect on these
21 issues.

22 CHAIRWOMAN MARTIN: Commissioner
23 Bailey.

24 COMMISSIONER BAILEY: I think my

1 question is in response to Mr. Sheehan's
2 comments about the rate case.

3 Mr. Sheehan, is the prudence of the
4 conversion of the Monadnock Marketplace an
5 issue in the rate case?

6 MR. SHEEHAN: I don't think so
7 because -- I have to think about this for a
8 minute. The argument is that one of the
9 other orders did approve the conversion of
10 the Marketplace. Clearly, nothing else has
11 been approved. And we get that. But the
12 next step in Keene has to come back before
13 the Commission and we have to make all these
14 filings that are in the --

15 COMMISSIONER BAILEY: Wait. Are
16 you asking to get that investment in rate
17 base?

18 MR. SHEEHAN: "Investment" meaning?

19 COMMISSIONER BAILEY: The
20 conversion to the Marketplace.

21 MR. SHEEHAN: Oh, that's -- I don't
22 know that question. If Mr. Simek could pipe
23 up. There were some costs that were Company
24 investments to do those conversions. They

1 may be --

2 David, are those in the rate case?

3 MR. SIMEK: I'd have to -- I don't
4 know that for sure. You're right that there
5 is some costs there that is capital that are
6 sitting, I believe, in a deferred account
7 right now or -- they haven't been placed in
8 service, obviously. So I don't believe -- I
9 just don't know that answer. I'm sorry.

10 MR. SHEEHAN: To your point,
11 Commissioner Bailey, there are those kinds of
12 costs, that if they are in the rate case,
13 that's where they belong. So I guess at that
14 level it could be a rate case determination
15 of whether the conversion was reasonable, I
16 guess. I guess that's fair. The cost that
17 would not be in a rate case would be the
18 supply -- the demand charges that come out of
19 the contract and the argument over
20 incremental cost. But again, if you make a
21 determination in the rate case, some of those
22 decisions would flow from that. If the
23 conversion of the Marketplace is prudent,
24 then it goes one way; if it's not prudent,

1 then it goes another way. The issue there is
2 it's another year delay on resolution of
3 those issues. But I guess if that's the
4 route the Commission chooses, it's -- all of
5 this is ultimately reconcilable to whatever
6 the final decision is.

7 CHAIRWOMAN MARTIN: Attorney Shute
8 had her hand up before you, Attorney
9 Schwarzer. I just want to be respectful on
10 order.

11 Go ahead, Attorney Shute.

12 MS. SHUTE: Thank you, Madam
13 Chairwoman. One other thought to consider is
14 that we could follow the route of the last
15 cost of gas, which would be to defer, again,
16 the prudence question until the next cost of
17 gas. Although, I will say if that were to be
18 considered, I think the same issue comes up,
19 that we need the time to work through it.
20 But in any event, that's just another
21 possibility.

22 CHAIRWOMAN MARTIN: Thank you.
23 Attorney Schwarzer.

24 MS. SCHWARZER: Thank you. It's my

1 understanding from Paul Dexter, who's the
2 Staff attorney on the rate case, 20-10 --
3 sorry. It's my understanding that 20-105,
4 that docket does include conversion of the
5 Keene -- the prudence of the conversion of
6 the Keene facility. And again, the order
7 quoted earlier, 26,305, explicitly said that
8 there had been no finding of prudence as to
9 any aspect of that Keene conversion. I think
10 it's a question for the Commission to decide,
11 in terms of the bundle of sticks that is a
12 rate case, whether carving out the cost of
13 gas mechanism to adjust rates also carved out
14 that part of the bundle of sticks that
15 included a prudence finding on the rates.
16 And that's really an open question.
17 Although, I think Staff's view is that it can
18 be addressed in this proceeding, the prudence
19 of the supply contract only.

20 MR. SHEEHAN: And if I may, just to
21 leave the -- to respond to Staff's reference
22 to the order that does say what Ms. Schwarzer
23 says. There is a prior order, a July 26, '19
24 order, in the so-called "franchise filing,"

1 the declaratory judgment. And this is the
2 quote: "Accordingly, we grant Liberty the
3 permission and approval to undertake the
4 conversion of the Keene system subject to the
5 conditions set forth herein." And that was
6 right after the safety division gave the okay
7 for all the requirements to convert the
8 Marketplace. So that's the order I keep
9 referring to on the conversion piece and a
10 different order on the contract. But just to
11 put that out there.

12 CHAIRWOMAN MARTIN: Thank you.
13 Attorney Schwarzer, and then I want to get
14 back to the question of what we're going to
15 do here today.

16 MS. SCHWARZER: Thank you, Madam
17 Chairwoman. The order that Mr. Sheehan
18 references is explicitly with regard to
19 safety. Mr. Knepper's testimony speaks to
20 that. There was no expectation that the
21 franchise order did anything with regard to
22 prudence. I mean, it was uniquely a
23 declaratory judgment, to the extent that
24 there were -- they was waiting for safety to

1 approve anything. It spoke uniquely to
2 whether it was safe to proceed to take the
3 physical steps necessary to convert the Keene
4 Marketplace. There could have been no
5 implicit finding of overall prudence because
6 the content necessary to make such a decision
7 was not part of that proceeding.

8 CHAIRWOMAN MARTIN: Okay. Thank
9 you.

10 So on the question of where we are
11 today, do we have other evidence that needs
12 to come in in order for the Commission to
13 make a decision on an interim rate?

14 MR. SHEEHAN: From the Company's
15 perspective, you heard from the witnesses who
16 support -- whose testimony supported all of
17 the usual elements of a cost of gas rate and
18 the extra costs, so to speak, that Staff
19 challenges. Staff's testimony identifies
20 what they think are the imprudent costs, and
21 their rate would get you back to a usual cost
22 of gas rate if we weren't having this
23 conversation over demand charges -- old
24 demand charges and new incremental charges.

1 So I think you have certainly
2 evidence from the Company on the usual stuff.
3 Staff supports that. There's a dispute over
4 the demand charges and the incremental, and
5 that's because our witnesses have sworn to
6 the testimony and adopted it, and those
7 numbers are all there.

8 And the exhibits, I guess to the
9 extent the exhibits are the math that
10 subtracts out what Staff wants to subtract
11 out, the Commission could accept those
12 exhibits, and that would be additional
13 evidence.

14 CHAIRWOMAN MARTIN: Mr. Knepper.

15 MR. KNEPPER: I just have a
16 question, and I don't know who this should be
17 for, either Liberty or Staff.

18 But could you help the Commission
19 and say when you would need to get something
20 out by the Commission for November 1st to be
21 implemented, you know, what that timing is?
22 Can you speak to that -- i.e., if you need
23 something to go into effect on November 1st,
24 does it have to be October 30th,

1 October 29th, 28th? Whatever the rate is,
2 what time?

3 MR. SHEEHAN: I'll let Steve or
4 Dave speak to this. They're the ones that
5 have to push all the buttons internally.

6 MR. SIMEK: I believe historically
7 we've received orders as late as the 1st or
8 even the 2nd, which I know is a Monday. So I
9 think we could probably go out that far.

10 MR. MULLEN: This is Steve Mullen.
11 I will chime in and say to the extent it's
12 earlier than that, that helps with the rate
13 approval process, as we have to go through
14 all the checks and balances to make sure
15 everything comes out right before we start
16 billing customers.

17 CHAIRWOMAN MARTIN: Mr. Knepper,
18 can you explain what your thinking is there?

19 MR. KNEPPER: I just wanted you to
20 have an idea as to what kind of -- once the
21 Commission makes some sort of order, how much
22 time it takes for the Company to actually
23 implement it and get things into rates and
24 actually get them into customers' bills. I

1 was hoping that -- if they say it took two
2 weeks, then it doesn't really matter. If it
3 can be done and turned around in a day, then
4 we can do that and that would help. That's
5 all.

6 CHAIRWOMAN MARTIN: All right.
7 Thank you. I think my bigger concern is on
8 the Commission side with the schedule that we
9 have next week.

10 So I want to hear from Staff,
11 though, and from the OCA, as to whether they
12 think other evidence needs to come in in
13 order for the Commission to make an interim
14 decision.

15 Ms. Schwarzer.

16 MS. SCHWARZER: Thank you, Madam
17 Chairwoman. I agree with Attorney Sheehan,
18 that the prefiled testimony can be accepted
19 from Staff, and that but for the disputed CNG
20 historical demand charges and incremental
21 costs, it's Staff's position that the
22 proposed rates should be approved. We
23 support those rates.

24 I'd like Mr. Frink to also make a

1 statement because he hasn't testified and
2 should speak to that.

3 CHAIRWOMAN MARTIN: I have a
4 follow-up to that. Do you need that
5 testimony as evidence? And if so, I think we
6 need to have it sworn to on the record now.

7 MS. SCHWARZER: Certainly, Your
8 Honor, I could ask Mr. Frink to testify to
9 the prefiled testimony and adopt it here.

10 CHAIRWOMAN MARTIN: Okay. To the
11 extent that we need that to make the decision
12 on an interim rate, I think that should be
13 done.

14 MS. SCHWARZER: Okay. Shall we
15 proceed?

16 CHAIRWOMAN MARTIN: Let's just be
17 clear here on whether there's anything else.

18 Attorney Shute, do you have
19 anything else that you think needs to be
20 addressed?

21 MS. SHUTE: No. I think with the
22 testimonies that are in the docket and being
23 sworn to, that they are -- that's sufficient,
24 along -- I think that addresses all the

1 orders that we would bring to the
2 Commission's attention, and that's a matter
3 of law that you can interpret. So I am all
4 set.

5 CHAIRWOMAN MARTIN: All right.
6 Thank you.

7 Go ahead, Attorney Schwarzer.

8 MS. SCHWARZER: Thank you, Madam
9 Chairwoman.

10 Would Ms. Robidas swear in the
11 witness, please.

12 (WHEREUPON, STEPHEN P. FRINK was duly
13 sworn and cautioned by the Court
14 Reporter.)

15 STEPHEN P. FRINK, SWORN

16 DIRECT EXAMINATION

17 BY MS. SCHWARZER:

18 Q. Mr. Frink, could you please state your name
19 for the record and your role here at the
20 Commission.

21 A. Stephen Paul Frink. I'm the director of the
22 Gas and Water Division.

23 Q. And did you file prefiled testimony in this
24 docket that's been identified as Exhibit 9?

1 A. Yes, I did.

2 Q. And did you -- was that testimony and the
3 attachments either prepared by you or
4 prepared at your direction?

5 A. It was.

6 Q. Do you have any changes to make to that
7 testimony today?

8 A. I do have one minor change.

9 Some information came in from the
10 Company after I filed my testimony that
11 updated one data response that very slightly
12 affects the rates that I proposed, Staff's
13 proposed rates. If you go to Bates Page 2,
14 Line 14 --

15 Q. I'm just going to wait for people to find
16 Exhibit 9., including myself, and go to Bates
17 Page 2.

18 A. Wait a minute. That's actually Bates -- it's
19 Bates page -- it's kind of over-stamped. I
20 don't know if it's 2 or 4. Let me see.

21 Q. Look at the next page, it's five. So I
22 believe it's four.

23 A. Okay. So on Bates Page 4, on Line 14, you'll
24 see that -- well, Lines 13 and 14 I state

1 that the COG and FPO rates for the upcoming
2 winter should be \$1.0225, and the FPO rate
3 should be \$1.0425. Those numbers should
4 be -- I'm revising it to be \$1.0253, and the
5 FPO rate should be \$1.0453.

6 Q. Let me --

7 A. And that same correction needs to be made on
8 Bates Page 21, Lines 13 and 14. I better
9 make sure that's the right number.

10 Q. I have some very strange Bates stamping --

11 A. Right.

12 Q. -- on mine. The page number at the top, Page
13 18 and 19, seems more sequential. And I
14 apologize for the Bates stamping. I did not
15 notice that problem. Can you tell us what
16 page it is based on the bolded numbers?

17 A. I believe it's -- okay. It's on the summary
18 page, which is Bates Page 23. On Line 13
19 you'll see the COG rate, my original
20 proposal, \$1.0225. That should be changed to
21 \$1.0253. Right below it, the FPO rate should
22 be changed from 1.0425 to 1.0453.

23 Q. Do you have any other changes?

24 A. If you go to Bates Page 23, which is

1 Attachment SPF 1, you'll see that there's
2 a --

3 Q. I'm sorry, Mr. Frink. I'm not with you.

4 A. Okay. Bates Page 23, I believe. It's Staff
5 Attachment SPF 1. It's a tariff page.

6 Q. Yeah, it's really hard to read these Bates
7 numbers. It's kind of hard because they seem
8 to be over-typed.

9 A. Right.

10 Q. Immediately following Page 22, which is the
11 last page of your testimony, and in the upper
12 right-hand corner it says Attachment SPF-1;
13 is that correct?

14 A. Correct. So it's the Company's 12th revised
15 Page 93.

16 So on the tariff page, the proposed
17 rate, Staff's initially proposed rate of
18 \$1.0225, fourth number from the bottom, that
19 should be 1.0253. And then two lines below
20 that you'll see the FPO rate of 1.0425. That
21 should be 1.0453. Those were the only
22 changes.

23 Q. So having made those changes, if you were to
24 testify today, would this be your testimony?

1 A. Yes, it would.

2 Q. And do you adopt it as your sworn testimony?

3 A. Yes, I do.

4 MS. SCHWARZER: Madam Chairwoman, I
5 don't have any other questions related to the
6 question of evidence to support this rate.

7 CHAIRWOMAN MARTIN: All right.

8 Thank you.

9 Are there questions from Attorney
10 Sheehan or Attorney Shute related to Mr.
11 Frink's testimony that you need to ask at
12 this point?

13 MR. SHEEHAN: The only question I
14 have for maybe Mr. Frink, or maybe someone
15 else, is how we reconcile the FPO rate he
16 just proposed, should the Commission approve
17 it, with the FPO rate that we've already
18 communicated to customers. There's not a big
19 difference there, but it'd be good to have
20 guidance on which FPO rate we should charge
21 should the Commission approve what Steve just
22 testified to.

23 MR. FRINK: I would -- if that's a
24 question for me -- the FPO rate that you set

1 out in the letter is already significantly
2 higher than what Staff has proposed. And to
3 the extent that the Commission approves a
4 rate that's lower than what's in the letter,
5 that is not really an issue because no FPO
6 customer is going to be dissatisfied with the
7 lower rate. I think an interim rate,
8 whatever it's decided at, the FPO rate is two
9 cents above whatever the approved cost of gas
10 rate is. So you could set an interim rate.
11 And if we can resolve this before December 1,
12 whatever the approved COG and FPO rate is,
13 customers would start -- would get that and
14 get notice that this is the approved FPO
15 rate. It's below what -- if it's below what
16 the Company approved because it's tied to the
17 cost of gas rate. And the letter compares
18 FPO to COG rates in the letter saying
19 basically this is two cents more than the
20 variable rate. If you want price certainty,
21 you know, go with that. So I think what you
22 typically get is it's not so much the rate,
23 it's just people that don't want to
24 experience the volatility. I don't think

1 anybody who enrolled at the offered price is
2 going to -- would want to un-enroll. And I
3 don't think anybody who didn't enroll is
4 going to enroll at a lower rate because it's
5 still going to be two cents higher than the
6 comparable variable rate. So I do understand
7 the concern that with an FPO rate that we set
8 as an interim rate, that that FPO rate could
9 be different in December than what it is in
10 November.

11 One thing you could do is set an
12 FPO rate at what's -- bill customers the FPO
13 rate at the number in the letter and then
14 adjust it -- well, that would be awfully
15 complicated -- adjust it in December.

16 One important thing to keep in mind
17 is November and March are the shoulder
18 months. So the volumes in those months are
19 typically much lower than what you get in
20 December, January and February. So there
21 shouldn't be a huge impact if a final
22 decision is made December 1. But I really --
23 the FPO rate is a little different animal
24 than when the Commission used interim rates

1 in the past. So that's a little bit
2 trickier.

3 MS. SCHWARZER: Mr. Frink, do you
4 address the FPO rate in your testimony on
5 Page 20, bolded at the top --

6 MR. FRINK: I do.

7 MS. SCHWARZER: -- starting on
8 Line 15?

9 I just wanted to point out on the
10 record that that position is reflected in Mr.
11 Frink's testimony.

12 CHAIRWOMAN MARTIN: Attorney
13 Sheehan, were you done with your questions?

14 MR. SHEEHAN: Yeah. I think we
15 just wanted to highlight that issue and make
16 sure whatever order the Commission issues, it
17 gives us clear guidance on what we should be
18 charging as the FPO for November 1. And
19 again, if there's a second order for
20 December 1, we'll probably raise the same
21 thing, to make sure we have clarity, if the
22 FPO is going to change, which normally
23 doesn't happen.

24 CHAIRWOMAN MARTIN: Okay. Thank

1 you.

2 Attorney Shute, do you have
3 questions?

4 MS. SHUTE: I do not. Thank you.

5 CHAIRWOMAN MARTIN: Okay. And am I
6 assuming, then, that the testimony of Mr.
7 Knepper does not need to come in related to
8 this if we're just doing an interim rate? We
9 can reserve that for the next part of the
10 proceedings?

11 MR. SHEEHAN: Agreed.

12 MS. SCHWARZER: That is correct.

13 CHAIRWOMAN MARTIN: Okay. So let
14 me just make sure we have no other things we
15 need to cover.

16 All right. Then it looks like --
17 oh, go ahead, Commissioner Bailey.

18 COMMISSIONER BAILEY: Mr. Frink, is
19 it your understanding that the interim rate
20 we are going to set is the rate that is now
21 recommended in your testimony, or has that
22 not been --

23 MR. FRINK: Well, obviously, that's
24 my recommended rate, and I hope that will be

1 the decision. But that's not my decision.

2 COMMISSIONER BAILEY: Okay.

3 CHAIRWOMAN MARTIN: Yeah, I think
4 we were leaving the decision on what the
5 interim rate would be for the Commission to
6 make --

7 COMMISSIONER BAILEY: Okay. I just
8 wanted to clarify -- okay. Thanks. But Mr.
9 Frink's recommendation is to make it the rate
10 in his testimony and make it an interim rate.

11 MR. FRINK: Correct.

12 COMMISSIONER BAILEY: Okay.

13 CHAIRWOMAN MARTIN: All right. So
14 we will strike I.D. on Exhibits 1 through 9,
15 and 11 through 21, because I believe Mr.
16 Knepper's testimony is Exhibit 10; is that
17 correct?

18 [No verbal response]

19 CHAIRWOMAN MARTIN: All right.
20 Will admit those exhibits as full exhibits.

21 We will close the record with
22 regard to everything except the demand
23 charges -- Ms. Schwarzer.

24 MS. SCHWARZER: Mr. Mullen's

1 testimony, Exhibit 6, should probably also
2 remain for identification only.

3 CHAIRWOMAN MARTIN: Good point. I
4 apologize. I missed that one. So Attorney
5 Sheehan, I assume you agree with that?

6 MR. SHEEHAN: Yes.

7 CHAIRWOMAN MARTIN: So let me back
8 that up then. We will strike I.D. on
9 Exhibits 1 through 5, 7 through 9, and 11
10 through 21, and admit those as full exhibits.
11 Exhibit 6 and Exhibit 10 will remain as I.D.
12 for the time being.

13 Okay. Anything else? Attorney
14 Schwarzer, are you all set?

15 MS. SCHWARZER: Yes. Thank you.
16 I'm all set.

17 CHAIRWOMAN MARTIN: Mr. Knepper.

18 MR. KNEPPER: Are we still on for
19 April [October?] 28th? Has that been decided
20 or not?

21 CHAIRWOMAN MARTIN: No. I think
22 the plan I think we're proceeding with is
23 that we will, as proposed by Mr. Frink, we
24 will set an interim rate. We will continue

1 the portion of this proceeding that relates
2 to the demand charge to a later date that
3 will be determined by the Executive Director,
4 and she will provide notice of that.

5 Sorry. I see Attorney Schwarzer's
6 hand first, I think, and then Mr. Frink.

7 MS. SCHWARZER: Thank you, Madam
8 Chairwoman. If it's of assistance, I believe
9 December 8th, although later than perhaps
10 hoped for, was reserved with all parties for
11 a tech session in case we needed additional
12 time and it was deferred. So, although
13 ideally I think we would do something in
14 November, should that not be possible, we do
15 have a December 8th date.

16 CHAIRWOMAN MARTIN: Mr. Frink.

17 MR. FRINK: Yes. I would just like
18 to say my recollection is, back when the
19 Commission approved interim rates in a prior
20 docket, when they approved the rates, they
21 also set the schedule for when they were
22 going to hear the remaining issues. So I
23 think it's just a good policy that you don't
24 want to issue another order or notice or

1 change in the procedural schedule after the
2 order comes out. It be much better just to
3 incorporate that into the order.

4 CHAIRWOMAN MARTIN: Okay. Thank
5 you for that.

6 Okay. So I believe that at this
7 point we are closing the record on the
8 question of the interim rate, other than for
9 evidence on the demand charge, which we will
10 take up at a later date. Presumably that
11 schedule will be set in the order that comes
12 out on the interim rate; however, I will let
13 the Executive Director make the ultimate
14 decision on that. And I think that's all we
15 need to do for today. Although, I now see
16 three hands. Attorney Schwarzer, you were
17 first.

18 MS. SCHWARZER: Thank you, Madam
19 Chairwoman. You mentioned the historical
20 demand charges as an outstanding matter. But
21 there's also the matter of the incremental
22 costs.

23 CHAIRWOMAN MARTIN: Okay. And Ms.
24 Shute, was that your point as well?

1 MS. SHUTE: (Head nodding).

2 CHAIRWOMAN MARTIN: Okay. We will
3 leave the record open related to the
4 historical demand charge and the incremental
5 costs. No hands after that one? I'm
6 starting to think you all just want to stay
7 here for the weekend.

8 Okay. So shall we take closing
9 arguments on the rate piece? Is that
10 something you want to be heard on? I'll
11 leave it to the parties to decide.

12 MR. SHEEHAN: I have no need to.
13 Again, it's reconcilable. So whatever the
14 interim decision is, it's really a stop gap.
15 And certainly everyone supports the rates up
16 to what Mr. Frink is recommending. So we'll
17 be fighting over the extra later anyway.

18 CHAIRWOMAN MARTIN: Okay.

19 Attorney Schwarzer, you agree with
20 that?

21 MS. SCHWARZER: I do. I just
22 wanted to acknowledge that the parties have
23 worked hard to cooperate and exchange
24 information, and we're always grateful for

1 that role.

2 CHAIRWOMAN MARTIN: All right.

3 Thank you, everyone. We will take the matter
4 under advisement, and we will issue an order
5 very shortly. Thank you.

6 (Whereupon the hearing was adjourned at
7 5:05 p.m.)

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