STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

DG 21-050

<u>In the Matter of:</u>
<u>Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities-Keene Division, 2021 Summer Cost of Gas</u>

Prefiled Direct Testimony of
Stephen P. Frink
Director – Gas & Water Division

As Previously Filed as Exhibit 9 in
Docket No. DG 20-152

On

November 18, 2020

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Attachments

New Hampshire Public Utilities Commission

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

Keene Division

DG 20-152

Testimony of
Stephen P. Frink, Director, Gas & Water Division

Q. Please state your name, occupation and business address.

A. My name is Stephen P. Frink and I am employed by the New Hampshire Public Utilities Commission (Commission) as the Director of the Gas & Water Division. My business address is 21 S. Fruit Street, Suite 10, Concord, New Hampshire 03301.

Q. Please summarize your educational and professional experience.

A. I joined the Commission in 1990 as a member of the Audit Team and worked as a Utility Analyst, Sr. Utility Analyst, Assistant Finance Director, and Assistant Director of the Gas & Water Division before becoming the Director of the Gas & Water Division in 2018. I have primary responsibility for the administration of the financial aspects of the regulation of the gas utilities in New Hampshire.

Prior to joining the Commission, I worked as a Budget/Financial Analyst for the cities of Austin and Dallas, Texas. I have a Bachelor of Arts and a Master's in Business Administration from the University of New Hampshire.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony is to provide Staff's recommendation on the Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities Keene Division (Liberty-Keene or the Company) 2020-2021 Winter Cost of Gas (COG) filing.

Q. Please summarize Staff's recommendation.

A. Staff recommends that the Commission: disallow recovery of compressed natural gas (CNG) demand costs incurred prior to commencing CNG service; do not allow recovery of incremental CNG costs from last winter at this time; and allow recovery of projected 2020-2021 winter CNG costs in setting the 2020-2021 Winter Liberty-Keene COG and Fixed Price Option. Incremental CNG costs or savings should be tracked and reported in the Liberty-Keene 2020-2021 Winter reconciliation, and incremental CNG costs determined to be imprudent should be subject to refund.

Accordingly, Staff recommends that the Commission approve Liberty-Keene COG and FPO rates for the upcoming winter as $1.0253 per therm and $1.0453 per therm, respectively (as compared to the Company's proposed rates of $1.2100 and $1.2300). ***See Attachment SPF-1.***

__Liberty Utilities Acquisition of the Keene Propane System__

Q. When did Liberty Utilities (EnergyNorth Natural Gas Corp.) d/b/a Liberty Utilities acquire the Keene propane-air system?

A. Liberty Utilities (EnergyNorth Natural Gas Corp) d/b/a Liberty Utilities (Liberty) acquired the Keene propane-air system on January 2, 2015. Order No. 25,736, issued November 21, 2014, in Docket DG 14-155 approved a settlement agreement allowing Liberty to purchase New Hampshire Gas Corporation (NHGC), which owned the propane-air distribution system but not the propane production plant. The purchase included a 12-year lease of the production plant and an option to extend the lease for up to three additional years.

Q. Would you please summarize Liberty's position in the NHGC acquisition docket?

A. Liberty sought approval to acquire NHGC for $3,000,000, which was $289,000 or 11.6% over NHGC book value as of December 31, 2013. Liberty was not seeking recovery of the acquisition premium, transaction costs, or transitions costs (as defined by Liberty) related to the acquisition.

Liberty stated that it intended to undertake a number of projects to integrate NHGC into Liberty's operations and described its future plans for the Keene operations. In Docket DG 14-155, on June 6, 2014, Liberty's president, Richard H. Leehr, testified about the potential to serve new large customers if Liberty were to convert the Keene propane air system to a CNG and/or liquefied natural gas (LNG) system (this potential conversion plan is referred to henceforth as "the Keene conversion"). Mr. Leehr's pre-filed testimony stated:

> Following EnergyNorth's acquisition of the Keene System, EnergyNorth would evaluate a near term program to convert those customers from propane air to natural gas. ***Such a conversion, if approved by the Commission***, would have the desired effect, given the more recent historical pricing experience, of lowering their existing energy costs, and stimulate surrounding markets dependent on other competing fuels and market restrictions to seek gas service as well. Bates p. 156, line 9-14 [Emphasis added]
>
> When reviewing the logistics required to provide safe and reliable delivery of natural gas derived from CNG or LNG, as mentioned below, additional facility investments will be required above those of a facility connected to a transmission pipeline. The additional required investments linking Keene's distribution system to a natural gas supply source require further investigation. ***Any such***

> ***investments would not be proposed until after closing, and would be subject to Commission review and approval. However if and when such modifications are proposed,*** EnergyNorth anticipates that a current customer of the Keene System will save on the COG portion of their bill compared to the existing propane COG as discussed further in Mr. DaFonte's testimony. Bates p. 158, lines 3-11 [Emphasis added].

In the same docket, DG 14-155, on June 6, 2014, Francisco DaFonte, Senior Director of Liberty's Energy Procurement, prefiled testimony stated:

> Should the Company decide to continue to serve the Keene System with propane, it may enter into a new propane supply contract that takes advantage of the additional inventory capacity discussed earlier in my testimony. With the additional inventory capacity, the Keene System would not be as reliant on spot propane purchases in the winter period. Bates p. 180, Lines 15-19.
>
> Given the various economics and logistics of LNG and CNG, ***the Company will conduct an in-depth analysis before making any decisions as to whether LNG, CNG or a combination of the two is the best-cost future supply option for the Keene System customers***. Bates p. 183, lines 10-13 [Emphasis added]

Neither Liberty in Docket DG 14-155, nor thereafter Liberty-Keene, in any docket, has submitted an in-depth analysis or any evidence or argument in support of an explicit finding that the Keene Conversion, including the CNG supply contract, would be more economical for Keene customers than the existing propane service.

Q Did Liberty or Liberty-Keene seek explicit Commission approval to enter into a CNG supply contract before the contract was signed, or anytime thereafter?

A. No.

Q. Did Liberty or Liberty-Keene provide the Commission with an in-depth analysis as to whether LNG, CNG, or a combination of CNG and LNG is the best-cost future supply option for Keene customers?

A. No, neither Liberty nor Liberty-Keene has filed such a study with the Commission.

Q. Did Liberty-Keene provide the Commission with an in-depth analysis as to why propane is insufficient or how CNG/LNG might become the best-cost future supply option for Keene customers?

A. No.

Q. Please list the dockets and orders related to the Keene conversion.

A. See Table 1 below for a list of dockets and orders related to the Keene conversion:

Table 1			
Orders Related to Keene Conversion to Natural Gas			
Docket	Type	Order	Decision
DG 14-155	Acquisition	25,736	Approves Liberty purchase of Keene system
DG 17-048	Rates & Consolidation	26,122	Approves Keene rate consolidation & risk sharing
DG 17-068	Declaratory Ruling	26,065	Finds Tariff allows for use of natural gas
DG 17-068	Declaratory Ruling	26,065	Clarifies safety requirements to serve natural gas
DG 17-068	Declaratory Ruling	26,065	Denies rehearing & further clarify requirements
DG 17-069	Tariff Revision	N/A	Methodology for billing natural gas usage
DG 18-145	Winter COG	26,184	Removes CNG cost from proposed COG rates
DG 19-068	Summer COG	26,241	Declines to address CNG cost concerns in docket
DG 19-153	Winter COG	26,305	Requires tracking of CNG incremental costs
DG 20-041	Summer COG	26,351	Reiterates reporting requirments for new fuels

Q. Has the Commission determined whether the Keene conversion is prudent?

A. No, as stated in Order No. 26,305 (October 31, 2019) approving the Liberty-Keene 2019-2020 winter rates:

> The Commission has yet to find the use of natural gas in Keene to be consistent with a least cost supply, or otherwise prudent. *See* Order No. 26,294 at 11 (September 25, 2019) ("Liberty must justify the cost-effectiveness and ensure the just and reasonable rate impacts for each phase of conversion and expansion of the Keene gas system"). In marked contrast, the Commission has found that the economic viability and cost structure of Liberty's conversion/expansion plans is unknown. *See* Order No. 26,122 at 38. The Commission has already

> imposed specific requirements to protect EnergyNorth's distribution customers from potential over-capitalization and cross subsidization of the Keene Division. *See id. at 38-40*; and Order No. 26,294 at 14-15. To date, Liberty-Keene has not sought recovery of conversion/expansion costs, provided the financial analysis to demonstrate that ratepayers are not burdened with unfair or unwarranted costs, or sought a prudence review from the Commission.
>
> Accordingly, our approval is contingent on Liberty-Keene tracking the incremental costs associated with the use of CNG and contingent on the refund of incremental costs if Liberty-Keene's conversion to CNG, including its CNG supply contract, is determined to be imprudent. We require this in light of the Company's recent introduction of CNG into the Keene system, its forecasted use of CNG this winter, and a projected blended COG that exceeds the projected COG using propane-air.

Q. When did Liberty-Keene actually provide CNG to any Keene customers?

A. On October 4, 2019, Liberty-Keene began providing CNG service to a small number of commercial customers at the Monadnock Marketplace. To date, those are the only customers being served with CNG.

Q. When did Liberty-Keene sign the CNG supply contract that is in effect?

A. Liberty-Keene signed the contract on October 24, 2016, and signed a first amendment on May 22, 2017. There have been no additional amendments of which Staff is aware. The amount of the CNG demand charges paid by Liberty from August 2017 through September 2019, prior to commencing CNG service, can be found on Bates page 8, line 10, of Liberty's filing.

Q Does Liberty-Keene claim that the Commission has found the Keene conversion and CNG supply contract prudent?

A. Yes, or so it appears based on Liberty-Keene's response to Staff Data Requests. ***See Attachment SPF-2 (Company Response to Staff DR 1-12).***

Q. What Commission orders or actions does Liberty-Keene cite as having determined that

the Keene conversion, the CNG supply contract, and CNG rates are prudent?

A. First, Liberty-Keene claims that the Commission allowed a tariff revision designed to accommodate the Keene conversion to go into effect, and that the tariff was an [implicit] prudency finding for the Keene conversion and/or CNG supply contract (DG 17-069). Second, Liberty-Keene claims that an ordering clause in Order No. 26,274, stating "that the Commission's Safety Division's recommendation that Liberty be permitted to initiate the conversion of the Keene propane-air distribution to compressed natural gas to customers in the Keene Division for Phase I is approved" was an [implicit] prudency finding for the Keene Conversion and/or the CNG supply contract (DG 17-068). Third, Liberty-Keene asserts that Commission's approval of the Keene 2018 Summer COG that included projected CNG demand charges and the Keene 2019 Summer COG rates that included projected CNG demand charges constituted an [implicit] prudency findings.

Q. Please explain Staff's position that the tariff change was not an implicit or an explicit prudency finding.

A. A finding of prudence is never "implicit"; the purpose of a prudency finding is to analyze alternatives and explicitly find the expenditures at issue to be just and reasonable. *See* RSA 378:7. There was no finding of prudency. The tariff change merely established a methodology for billing Keene customers for natural gas usage. (At the time, June 2017, there was no natural gas service in Keene.) The tariff change was "ministerial"; it would simply enable the Company to appropriately bill natural gas customers *if* and *when* Liberty went forward with the Conversion, with or without a prudency finding having been made. As stated by Liberty/ Liberty-Keene at the prehearing conference on the proposed tariff change rates:

> From the Company's perspective, this docket is requesting, in effect**, a ministerial change in its tariff**, Page 17, really to describe how we will calculate therms of natural gas to be billed to customers who will be served by the new CNG facility we are building.
>
> We do not consider this to be a change in any rates, fares, charges, or policies—or prices. We will still charge the same PUC approved per therm rates for both natural gas and what's the existing propane/air system.
>
> The Company **does not believe this docket should examine the prudency of our decision to convert to compressed natural gas.** That would be for a rate case or perhaps a cost of gas proceeding where those CNG costs will likely lie.
>
> The Company does not believe this is a proceeding to determine whether we can serve natural gas. We believe strongly that we have the authority to serve natural gas of any kind… including natural gas, as our tariff, dating back 150 years, provides for the right to serve gas. And that issue is raised in Docket 17-068.
>
> **Finally, we do not believe this is a proceeding to examine the safety of the CNG facility. The Safety Division always has the right and the authority to inspect, to monitor, and to take steps it believes are necessary to make sure we do that CNG facility properly**….. [City of Keene and Planning Board approval obtained]….
>
> Therefore, the only issue we believe is before the Commission is whether the language inserting how we will calculate a bill for natural gas is appropriate and reasonable.

(Docket 17-069, Transcript of June 23, 2017 at 5) (Emphasis added). Allowing the proposed tariff to go into effect did not constitute a Commission decision on the prudency of the Keene conversion. The Company itself was in agreement on that point, as quoted above.

Q. Please explain Staff's position that the Commission's acceptance, in Order No. 26,274 (July 26, 2019) in Docket DG 17-068, of the Safety Division's conclusion that Liberty-Keene's revised plans to provide a small number of commercial customers with CNG was "adequate," was not an implicit or explicit prudency finding.

A. A finding of prudence is never "implicit;" the purpose of a prudency review is to analyze alternatives and explicitly find the expenditures at issue just and reasonable. *See* RSA 378:7. Moreover, Liberty-Keene, having never obtained an assessment that the Keene Conversion was prudent, remained free to proceed at its own risk, so long as its actions did not create significant and potentially lethal conditions for its employees or any property nearby. Liberty-Keene sought a declaratory judgment that "it need not seek permission under RSA 374:22 and 374:26 to distribute natural gas in the City of Keene, because Liberty's existing franchise to distribute 'gas' already includes 'natural gas.'" Order No. 26,274 at 1. Nothing in Order No. 26,274 referenced RSA 378:7 or otherwise addressed whether natural gas or propane would ultimately provide the most economical fuel for Keene's customers. Rather, the Commission's Safety Division Staff reported that the Company's amended conversion plan complied with Commission Order No. 26,065 (granting Liberty its requested ruling and imposing over 180 recommendations for design, installation, operational and maintenance changes and other conditions relating to engineering and operational safety). Order No. 26,274 also addressed a pending Motion for Reconsideration and other issues not relevant here, as they are unrelated to any finding of prudence. Steps the Commission took to assure itself that Liberty-Keene's engineering and operational plans were minimally safe, and finding conditions to proceed (at Liberty-Keene's discretion) had been met, is not the equivalent of a prudency finding under RSA 378:7. As anticipated by Liberty-Keene on June 23, 2017, this docket was a "proceeding to examine the safety of the CNG facility," limited to service in the Monadnock Plaza. "Adequate" plans are not equivalent to "prudent" plans. Even oversight over financial costs is distinct from a finding of prudence. *See* Order No. 26,065 (cautioning that the declaratory ruling did not include any finding of prudence);

DG 17-048 (Liberty rate case which “provided only limited testimony … as to how the proposed conversion might be economically just and reasonable” cited in Order No. 26,274). Utilities are free, absent conditions, to pursue plans without a prudency finding, at their own risk.

The Commission explicitly stated that Order No. 26,065 (the declaratory judgment) should not be construed to constitute pre-approval of as yet undefined proposals for future capital projects within Liberty-Keene’s service territory. *See* Order No. 26,274 (Liberty-Keene to inspect appliances of customers and, if necessary, readjust those appliances for new conditions, without charge).

Q. Please explain Staff’s position that the Commission orders approving the Keene 2018 and 2019 Summer COG rates were not implicit or explicit prudency findings.

A. A finding of prudence is never “implicit”; the purpose of a prudency review is to analyze alternatives and explicitly find the expenditures at issue to be just and reasonable. *See* RSA 378:7. In contrast, the approved 2018 Keene Summer COG included forecasted CNG costs, including CNG demand charges (DG 18-052). Liberty-Keene did not seek recovery of CNG costs previously incurred, and Liberty-Keene remained unable to provide CNG service in 2018. During the 2019 summer period, monthly COG rate adjustments were made to reflect actual summer costs, which, with the exception of October CNG usage, were exclusively propane costs.

The Company’s 2018-2019 Keene Winter COG included forecasted CNG costs, including CNG demand charges (DG 18-145). Liberty did not seek recovery of CNG costs previously incurred in that preceding. Staff testified that the supply plan filed by Liberty-

Keene included CNG demand and commodity costs that were substantially higher than available propane supplies and therefore was not an economic – or least cost – supply plan. Order No. 26,184, issued October 30, 2018 in DG 18-145, approved the winter rates proposed by Staff and found, "The record in this case shows that for the upcoming winter, on a fuel-only per gallon basis, continued use of propane is the lower cost option for service on Liberty-Keene's distribution system. We recognize that, while Liberty-Keene forecasted the use of CNG this winter, the introduction of CNG into the Keene system **will not occur** until after this winter period." [Emphasis added.]

The approved 2019 Keene Summer COG included forecasted CNG costs, including CNG demand charges for that period (DG 19-068). Liberty did not seek recovery of CNG costs previously incurred. Liberty commenced CNG service in October 2019 and monthly COG rate adjustments were made to reflect actual summer costs, to only include one month of CNG charges. At the Keene 2019 Summer COG hearing (DG 19-068), the Company witness agreed with Staff that the CNG costs for Summer 2018 was not an issue as there had been no CNG costs during the prior summer and the 2018 Summer COG rates had been had been adjusted accordingly:

> Q And you are seeking to recover demand costs in this cost of service?
> A (Gilbertson) Correct. Correct.
> Q So, the price customers will be paying for the use of the CNG this summer is a higher price per therm than the alternative supply, which is the spot purchases of propane?
> A (Gilbertson) Right. So, and I did address this in the testimony, that with CNG, the cost of -- the overall cost of gas per therm for sendout it doesn't include the injection costs, you know, those are other things that go into the rate, but just for the sendout gallons is, with CNG, is $1.07, $1.07 for the whole portfolio. If you pull the CNG out completely, the overall cost of propane or therms for the portfolio is $1.06. There is -- it's a little higher. And I have that if -- I figured

you'd ask. So, if you -- and it is addressed in the testimony. If you want that, I have that for you.
Q Thank you. I appreciate your being prepared for that question. But I do believe this was an issue that was in your winter cost of gas filing for Keene, you included CNG rates in your original filing?
A (Gilbertson) Correct.
Q And those rates were significantly higher than spot propane, the price of the spot propane purchases, is that correct?
A (Gilbertson) I actually don't remember what the differential was.
Q And Staff filed testimony, and do you recall what Staff's position was on that?
A (Gilbertson) I believe we took it out for the CNG.
Q Right. Ultimately, the Company was not able to do the conversion of the customers. And so, it was basically a nonissue?
A (Gilbertson) Correct.
Q But Staff, prior to that -- the determination that the Company wasn't going to go forward with the CNG, subject to check, was that ratepayers shouldn't be paying for an uneconomic dispatch of CNG?
A (Gilbertson) I believe that was the position, yes.
Q Okay. Thank you. And although in this filing, basically we're seeing the same thing, although with a much smaller discrepancy between the average cost of CNG and the average cost of spot propane purchases?
A (Gilbertson) Correct. [Hearing Transcript April 23, 2019, p. 28]

The Commission did not dismiss Staff's concern that the use of CNG could result in higher costs than would be case absent CNG in approving the 2019 Keene Summer COG, as Liberty-Keene claims in Staff 1-12 /1-4. Instead the Commission stated, "We decline to address Staff's concerns with regard to CNG costs that may exceed the cost of alternative fuels ***at this time*****.** **Staff *is free to raise the issue in future dockets***, including in the Company's next rate case." Order No. 26,126 (May 1, 2018) at 5 [Emphasis added]

<u>**Liberty-Keene 2020-2021 Winter COG**</u>

Q. Please describe how Liberty-Keene's proposed 2020-2021 winter rates were calculated.

A. As is typically done in COG dockets, Liberty-Keene reconciled last winter's gas costs and revenues to determine if there was an over- or under-collection, developed a sales forecast and supply plan for the upcoming winter. In COG dockets, the over- or under-recovery is then added or subtracted from the projected winter supply costs and divided by projected therm sales to determine the rate. This year, for the first time, the Company also included a portion of the 26 months of CNG demand costs incurred prior to October 2019 in calculating the proposed rate, and a proposal to recover the full 26 months of CNG demand costs incurred prior to October 2019 in the ensuing three year period.

Q. What sources of supply were used last year (2019-2020) and in the supply plans for this winter, Winter 2020-2021?

A. Propane and CNG.

Q. Does Staff have any concerns regarding propane supply costs?

A. No.

Q. Does Staff have any concerns regarding the 2020-2021 winter sales projection in light of the COVID-19 pandemic?

A. No, the Company considered the impact of the COVID-19 pandemic in its forecast and the forecast reflects recent monthly sales data that reflect increasing sales approaching pre-pandemic levels. In response to a Staff data request the Company calculated what the cost per therm would be if the current Winter 2020-2021 sales forecast was reduced by 10 percent, and the impact on projected gas costs was minimal, an increase of approximately one percent.

Q. Does Staff have any concerns regarding CNG supply costs Liberty is seeking to recover?

A. Yes.

Q. What are the CNG costs the Company is seeking to recover in this proceeding?

A. Liberty-Keene is seeking to recover CNG costs for three distinct periods.

- CNG demand costs incurred prior to commencing CNG service (August 2017 through September 2019)
- CNG demand and commodity costs incurred last winter (2019-2020)
- Projected CNG demand and commodity costs for the upcoming winter (2020-2021)

Q. Why does Liberty-Keene believe it should be allowed to recover CNG demand costs incurred prior to providing CNG service?

A. In its responses to Staff data requests, Liberty/Liberty-Keene argues it was expecting to put the CNG facility online in 2017 and, therefore, it was prudent to have a contract in place. The Company claims there were unknown obstacles and delays involved with getting the CNG installation finalized to the satisfaction of all parties but that the Company needed to be ready "at any point" during the period from August 2017 through September 2019 to commence CNG service.

As I understand Liberty-Keene's prefiled testimony and data responses, Liberty testified that the Commission recognized that the Company planned to begin providing CNG in the fall of 2017, and left open the possibility that CNG could flow during the 2017–2018 winter. Liberty cited Order No. 26,067 at 5-6 (Oct. 31, 2017), "We recognize that while Liberty-Keene is forecasting the use of CNG this winter, the introduction of CNG into the Keene system will not occur by the proposed effective date of these rates (November 1) due to the safety requirements laid out in our order in DG 17-064 [sic, 17-068]. Thus, we will not approve the proposed 2017–2018 winter COG rates as filed and will require Liberty-Keene to refile COG rates that remove any costs of CNG."

Liberty-Keene testified that the Commission approved the inclusion of CNG in the summer 2018 Keene cost of gas rate, Order No. 26,126 (May 1, 2018), and claims that since it had to be ready to serve customers when that took place, it was reasonable to incur the demand charges beginning in the fall of 2017.[1]

Q. Is the Company's claim of unexpected obstacles and delays valid?

A. No. The "unknown obstacles and delays" identified in the Company's response to Staff Data Request 1-4 were foreseeable and should have been addressed by the Company in advance of contracting for CNG supply. ***See Attachment SPF-3 (Company Response to Staff DR 1-4).***

Q. What obstacles did the Company identify?

A. The Company identified the following: Liberty filing for Commission permission to provide natural gas in Keene; the Commission requiring the Company to file comprehensive safety engineering and operations plans on how it would safely provide CNG; the Commission requirement that the Commission's Safety Division (Safety Division) find the Company's plans adequate, and Commission accepting the Safety Division findings.

Q. Please explain what the Company identified as the "request for permission to provide natural gas" obstacle.

A. According to Liberty-Keene, it filed a petition with the Commission for a Declaratory Ruling (filed April 24, 2017 and revised on April 26, 2017) because of Staff. Differences of opinion and a variety of perspectives are foreseeable. Moreover, the nature of Liberty's franchise is

1 Liberty-Keene filing, Bates pages 8-9.

unrelated to a finding of prudence.

Liberty-Keene's current petition states that "Staff advised that the Company is required to: (1) file reports required by RSA 374:5,2 and (2) file a petition under RSA 374:22 and RSA 374:26, the franchise statutes, for permission to distribute natural gas because, according to Staff, the conversion from propane to natural gas constitutes a 'change in the character of service.'"

Based on representations made by Liberty when acquiring the Keene system, referenced above, Staff reasonably expected Liberty to perform an in-depth analysis regarding converting any or all of the Keene system from propane-air to natural gas and to share that analysis with the Commission. Staff's concern that providing natural gas in place of propane-air service constituted a change in the character of service was a valid concern and an in-depth analysis would have identified it as such. Or if not, if the analysis had been shared with the Commission, Staff would have raised the issue at that time, as Staff did at the March 27, 2017 meeting reference in DG 17-068 petition. Liberty should have considered and addressed that issue before beginning conversion efforts and well in advance of signing a CNG supply contract.

Furthermore, the Company, not Staff, elected to pursue a Declaratory Ruling based on Staff's interpretation of the applicability of the statutes. Ultimately, Staff took no position in DG 17-068 and Order No. 26,065 (October 20, 2017) affirmed Liberty's legal authority to offer CNG/LNG service in Keene, so long as it did so with "adequate" safety:

> While we agree with Liberty that it has the legal authority to offer CNG/LNG service in Keene, it is critical that any new CNG/LNG installations be accomplished safely. We note that CNG/LNG installations of the type contemplated by the Company

> include technology and piping that requires much higher operating pressures than are found in New Hampshire gas distribution systems. Pursuant to RSA 374:1 (utilities must provide safe and adequate service), RSA 374:3 (Commission's general supervision of utilities), RSA 374:4 (Commission's duty to keep informed), and related statutes, the Commission has the authority and responsibility to ensure that all utility installations are safely and reliably engineered in conformance with all applicable standards, and that public utilities like Liberty meet their duty to provide safe and adequate service under RSA 374:1. To that end, pursuant to RSA 374:1, RSA 374:3, and RSA 374:4, with respect to the system conversion in Keene, we order Liberty to provide all final plans for engineering, construction, installation, testing, operations, public awareness, maintenance, emergency response, procedures, and schematics, including qualifications and training of personnel, in sufficient detail as requested by the Commission's Safety Division. Further, <u>before</u> gas flows through these installations, we must receive a report from the Safety Division assessing the adequacy of the Company's plans and the satisfactory completion of a physical inspection of all installations.

Order No. 26,065 at 3-4.

Q. Please explain what the Company identified as "filing of comprehensive plans" obstacle.

A. The plans Liberty-Keene submitted to the Safety Division failed to meet the applicable safety standards for utility CNG installations. As a result, the plans required significant additions and revisions. Liberty's response to Staff DR 1-4 states, "The Company understands that this CNG installation was the first of its kind in New Hampshire and required significant research and investigation." That significant research and investigation should have been conducted by the Company prior to submitting CNG plans to the Safety Division and well before signing a CNG supply contract; instead Company plans required extensive work by the Safety Division. The testimony of Staff witness Randall Knepper provides a more detailed explanation as to reasons for the delay related to the Company filing of comprehensive plans for Phase I, the Monadnock Marketplace.

Q. Please explain what the Company identified as "Commission accepting the Safety

Division findings" obstacle.

A. The Safety Division Adequacy Assessment of the Proposed Compressed Natural Gas Installation (Safety Report) by Liberty dated October 3, 2018 found that the draft and finalized document had numerous inconsistencies and further corrections were necessary. The Safety Report concluded that if all the issues were addressed by Liberty, Staff would likely conclude that the CNG facilities would meet applicable safety requirements, but could not without Liberty formally incorporating the necessary enhancements as identified the Safety Report. The Safety Report recommended that the Commission condition its acceptance of Liberty's plans as "adequate" on Liberty's fully integrating the Safety Division's proposed enhancements and do so by Commission order.

The Safety Report make clear that as of October 3, 2018, there was more work to be done before Liberty could safely begin providing CNG in Keene. The Commission subsequently issued Order No. 26,274 (July 24, 2019), which accepted and approved the Safety Division's recommendations.

Since the conversion could not safely occur during cold weather, the earliest Liberty could have begun providing CNG would have been the following summer. Therefore, Commission acceptance and approval as adequate on July 24, 2019 did not materially delay the provision of CNG.

Q. What is your recommendation regarding recovery of CNG demand costs incurred prior to commencing CNG service?

A. The Commission should disallow recovery CNG demand costs incurred prior to commencing CNG service. (August 2017 through September 2019).

Q. What is the basis for disallowance of CNG demand costs incurred prior to commencing CNG service?

A. Liberty should not have entered into a CNG supply contract 26 months in advance of being able to provide CNG service. Entering a supply contract with significant demand charges years in advance of being able to use the supply was a mistake. Ratepayers should not be responsible for costs that were not prudently incurred and for 26 months the CNG contract Liberty-Keene entered into was not "used and useful." Rates that include CNG demand costs that served no purpose would not be just and reasonable.

Q. What is your recommendation regarding recovery of 2019-2020 Winter CNG costs?

A. Liberty should recover CNG costs from last winter to the extent that those costs do not exceed what it would have cost to serve Keene if the Company had used propane. Liberty should not recover the incremental cost of CNG through this winter's supply rates.

Q. What is the basis for not allowing full recovery of last winter's CNG costs at this time?

A. CNG costs were significantly more expensive than the propone supply options that would have been available if Liberty had not converted a portion of its system to CNG. There should be no recovery of incremental CNG costs pending a Commission decision as to whether the conversion, and timing of the conversion, and any CNG contracting costs not directly related to supply, were prudent.

Q. Is the issue of the prudency of the Keene conversion currently before the Commission?

A. Yes, in Docket DG 20-105, Liberty's request of an increase in distribution rates puts the issue of the prudency of the Keene conversion squarely before the Commission. Staff intends to file a recommendation in that proceeding regarding Keene conversion costs and saving.

There may be operation and maintenance savings related to the conversion that offset or exceed incremental CNG supply costs in the future, and if new distribution rates reflect such savings it would be appropriate to include those savings in determining incremental CNG supply cost or savings in subsequent COG filings.

Q. What is your recommendation regarding recovery of projected 2020-2021 winter COG costs?

A. Projected CNG costs for this winter should be included in setting the 2020-2021 winter rates, conditioned on a full or partial refund of incremental supply costs pending a Commission decision on the prudency of the Keene conversion.

Q. If the Commission approves a lower FPO rate than what Keene customers were offered, should a new notice be issued and the enrollment period reopened?

A. No. It is Staff's belief that customers that have enrolled, or will be enrolling, in the 2020-2021 FPO program are seeking price certainty to avoid market risks and would make the same decision if the offering had been at Staff's proposed COG and FPO rates.

Q. Should customers that enroll in the FPO program at the offered rate be charged that rate?

A. No, assuming the Commission approves a rate below what the Company offered customers. The FPO program provides customers the option of locking in a rate that protects against rate increases due to fluctuations in energy prices. In this instance, the change in rates is due not to changes in energy prices but results from Liberty seeking to recover incremental CNG costs. Ratepayers, regardless of whether an FPO or non-FPO customer, should not be responsible for supply costs that have not been determine as having been prudently incurred.

Staff recommends that customers that enrolled in the FPO program should be charged $1.0453 per therm, and notified that the Commission approved a lower rate than the Company originally identified.

Q. Please summarize Staff's recommendation.

A. In summary, Staff recommends that the Commission:

- Disallow recovery of compressed natural gas (CNG) demand charges incurred prior to October, 2019;
- Do not allow recovery of CNG 2019-2020 winter incremental costs in 2020-2021 winter rates at this time;
- Allow recovery of projected CNG costs in 2020-2021 winter rates on the condition of potential refund of incremental CNG costs, pending a prudency determinate in a future docket;
- Approve a COG rate of $1.0253 per therm (which reflects the above);
- Approve a FPO rate of $1.0453 per therm (which reflects the above);
- Require Liberty to notify FPO customers of the difference between the FPO rate offer and the approved rate.

Q. Has the discovery process been completed?

A. No. In this expedited COG docket, Liberty has not responded to the October 6, 2020, Technical Session Data Requests (issued October 8, 2020), and I reserve the right to revise my testimony in light of additional information the Company may provide.

Q. Is there anything else you would like to add?

A. Yes. Staff will be evaluating the prudency of Liberty's Keene conversion in the Liberty rate case (DG 20-105) as to whether and, if so, to what extent Liberty should be allowed to recover incremental CNG costs. Staff's recommendation in this preceding is that Liberty not be allowed to recover those costs until a more complete record is developed in DG 20-105 for the Commission's consideration in deciding the issue.

Regardless of whether or not the Keene conversion is ultimately determined to have be prudent, entering a supply contract years in advance of being able to use that supply was not a prudent decision and the CNG demand costs incurred prior to commencing natural gas service in Keene should be disallowed.

Q. Does that conclude your testimony?

A. Yes.

31. CALCULATION OF FIRM SALES AND FIXED WINTER PERIOD COST OF GAS RATE KEENE CUSTOMERS

Calculation of the Cost of Gas Rate

Period Covered: Winter Period November 1, 2020 through April 30, 2021

Projected Gas Sales - therms			1,108,419
Total Anticipated Cost of Gas Sendout			$1,238,731
Add:	Prior Period Deficiency Uncollected	($104,463)	
	Interest	($935)	
Deduct:	Prior Period Excess Collected	$0	
	Interest	$0	
	Prior Period Adjustments and Interest		($105,398)
Total Anticipated Cost			$1,133,333

Cost of Gas Rate

Non-Fixed Price Option Cost of Gas Rate - Beginning Period (per therm)	$1.0225
Fixed Price Option Premium	$0.0200
Fixed Price Option Cost of Gas Rate (per therm)	$1.0425

Pursuant to tariff section 17(d), the Company may adjust the approved cost of gas rate upward on a monthly basis to the following rate:

Maximum Cost of Gas Rate - Non-Fixed Price Option (per therm)	$1.2781

DATED: October 31, 2020

ISSUED BY: /s/Susan L. Fleck
Susan L. Fleck

EFFECTIVE: November 01, 2020

TITLE: President

Authorized by NHPUC Order No. xx,xxx dated October xx, 2020 in Docket No. DG 20-xxx

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Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division

DG 20-152
Winter 2020/2021 Cost of Gas

Staff Data Requests - Set 1

Date Request Received: 9/24/20	Date of Response: 10/5/20
Request No. Staff 1-12	Respondent: Steven Mullen

REQUEST:

Re: Testimony of Gilbertson, McNamara and Simek at 8 and Order 26,305 (October 31, 2019 Docket No. 19-153) at 2 ("When seeking Commission approval for its acquisition of Keene in 2014, Liberty mentioned future plans to convert the existing Keene propane-air gas system to a natural gas system") at 7 ("The Commission has yet to find the use of natural gas in Keene to be consistent with a least cost supply, or otherwise prudent"). Given that the prudence of the CNG conversion, including the CNG supply contract, has not been determined, isn't it premature to include demand charges from August 2017 through September 2019 in this filing? Would this matter more appropriately be considered in a future docket that presents the question of whether the conversion was prudent?

RESPONSE:

The Company disagrees with the statement that "the prudence of the CNG conversion, including the CNG supply contract, has not been determined," at least with respect to the limited number of customer conversions that have taken place to date.

First, in Docket No. DG 17-069, the Commission allowed to go into effect changes to the Company's tariff that allowed for the conversion to CNG in Keene. "Specifically, Liberty-Keene plans to convert from a system that delivers propane-air to a system that delivers natural gas, and the adjustments to Page 17 of NHPUC No.1 are designed to accommodate this conversion." Order No. 26,019 at 1 (May 24, 2017). The Order suspended the proposed tariff until August 24, 2017, and, since the Commission elected to take no further action in the docket, the tariff became effective on August 24 by operation of law.

Second, the Commission approved Liberty's conversion of the customers at the Monadnock Marketplace from propane-air to CNG in Order No. 26,274 (July 26, 2019) in Docket No. DG 17-068 with the following language:

> FURTHER ORDERED, that the Commission's Safety Division's recommendation that Liberty be permitted to initiate the conversion of the Keene propane-air distribution

> system to compressed natural gas to customers in the Keene Division for Phase I is approved; and it is
>
> FURTHER ORDERED, that Liberty shall not flow any gas through Phases II through V of CNG/LNG installations in Keene until the Director of the Commission's Safety Division has DG 17-068 found the required plans and reports to be adequate and has completed its physical inspection of the facilities;

Third, the Commission twice approved as "just and reasonable" cost of gas rates that included CNG demand charges in the Summer 2018 and Summer 2019 cost of gas proceedings. *See* Order No. 26,126 at 5 (May 1, 2018); Order No. 26,241 at 5 (Apr. 29, 2019). The 2018 order did not condition its approval on some future prudence determination. The 2019 order rejected Staff's argument that the CNG costs may be imprudent, simply saying Staff could make that argument elsewhere: "We decline to address Staff's concerns with regard to CNG costs that may exceed the cost of alternative fuels at this time. Staff is free to raise the issue in future dockets, including in the Company's next rate case." Order No. 26,241 at 5. The Order unequivocally approved the requested COG rates as filed, which included demand charges. Although the Company later removed the demand charges through the summer period reconciliations because the CNG did not flow during those seasons, these orders remain conclusive findings that it was prudent for the Company to incur the CNG demand costs at the time they were incurred, which, of course, is the appropriate prudence standard.

The discussion above indicates that (a) the Commission approved the demand charges through the 2018 and 2019 cost of gas orders; (b) since the conversion of the customers in the Monadnock Marketplace from propane-air to compressed natural gas was approved, the Company needed to provide those customers with CNG, and (c) there was no approval at that point of any further conversions on the Keene system.

The CNG costs that have been incurred to date relate to the temporary CNG facility that is being used to supply customers in the Monadnock Marketplace and the contract to provide the needed CNG supply for those same customers. The Company had planned to put the temporary CNG facility online in the latter part of 2017, so it was necessary to have a CNG contract in place, including the incurrence of demand charges, to be ready to serve customers. Although the conversion of customers in the Monadnock Marketplace to natural gas was delayed until the fall of 2019, it was expected at various interim times that CNG service would commence sooner. See, for example, the Company's testimony during the October 13, 2017, hearing in the 2017 Winter cost of gas proceeding, at 26-27, stating the Company intended to begin serving CNG on November 2, 2017, and the testimony filed on March 30, 2018, in Docket No. DG 18-052 which stated that the Company expected to begin serving a limited number of customers with CNG during June or July 2018. Also see the Company's response to Staff 1-4 for further information about events that occurred to cause the commencement of CNG service to be delayed.

From the Company's perspective, there are really three decisions at issue with respect to CNG costs:

1) The incurrence of demand charges beginning in August 2017;
2) The incurrence of CNG costs to serve customers that have been converted from propane-air to natural gas; and
3) Future conversion of portions of the Keene system beyond the Monadnock Marketplace.

While the first topic has been included in this docket for consideration, the Company views the second topic as costs it needs to incur to provide service to the customers in the portion of its system that have been converted to natural gas service. Given the Commission's approval of the cost of gas rates described above, and approval of the conversion of that limited part of the system, it is inappropriate to put the Company in a position where the costs to supply natural gas to those customers will continually be compared to propane costs as if the conversion had never happened because those prudently converted customers must be served natural gas.

The third topic will be dealt with in the future as each conversion/expansion phase is being considered. Pursuant to the provisions included in Order No. 26,122 (April 27, 2018), the Company needs to meet a series of requirements and get specific approval of all future conversion/expansion plans by both the Safety Division and the Commission before proceeding with any future phase. It seems at those times the Commission will have the opportunity to determine whether any future conversion/expansion phase would be in customers' interests.

Thus, the Company believes the Commission has already approved the CNG demand charges and does not believe a future docket is needed to address the question of the Marketplace CNG conversion. The Company is trying to methodically plan for the future of the Keene system, but the continual uncertainty regarding cost recovery makes future planning much more problematic.

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division

DG 20-152
Winter 2020/2021 Cost of Gas

Staff Data Requests - Set 1

Date Request Received: 9/24/20	Date of Response: 10/5/20
Request No. Staff 1-4	Respondent: Steven Mullen

REQUEST:

Ref. Bates p. 9. Please describe each obstacle and the associated delay. To what form of permission does the phrase "the go-ahead to put the CNG system online at any time" refer?

RESPONSE:

The obstacles to putting the temporary CNG system online varied since early 2017 when the Company informed Staff and the OCA of its plan to install the facility on its Production Avenue site to serve the Monadnock Marketplace and retire the blower systems. (In 2016, the Company and Staff discussed a temporary facility located behind a store at the Marketplace, but there was not sufficient time to work through the various issues that arose with siting the facility there.) The permissions also evolved over time.

The first obstacle was Staff's statement that the Company did not have the franchise right to serve natural gas in Keene. As described in the April 24, 2017, Petition for a Declaratory Ruling ("Petition") (revised on April 26, 2017) in Docket No. DG 17-068, the Company had been discussing with Staff its plan for a temporary CNG facility in Keene on several occasions and, during a March 27, 2017, meeting, was advised by Staff that the Company needed to file for franchise approval to be able to serve natural gas to its customers in Keene. The Petition further stated the Company's plans to have the temporary CNG facility ready for the 2017–2018 winter season. Although the Company did not agree that it needed to seek franchise authority, it filed the Petition in an attempt to avoid significant delay given the difference in position and essentially obtain "permission" to serve natural gas in Keene.

The Company received this "permission" on October 20, 2017, six months after filing with no other activity in the docket, when the Commission issued Order No. 26,065 in DG 17-068 granting the Company's petition and declaring that additional franchise authority was not required. Given the timing of that order, even if it was issued without the further requirements discussed below, the temporary CNG facility could not have been put online to serve customers because it was already too late in the season to be able to convert the customers in the Marketplace for the 2017–2018 winter season. The conversions cannot safely occur during cold weather. Had the Company known the Petition was going to be pending at the Commission for an extended period of time then it likely would have altered its plans regarding the timing of putting the CNG facility in service and not entered into a CNG supply contract in advance of the 2017–2018 winter season.

The second obstacle to the CNG facility going online, and the second permission needed before serving CNG, arose from the conditions imposed in Order No. 26,065:

> FURTHER ORDERED, that Liberty provide the final comprehensive plans and reports as described above; and it is
>
> FURTHER ORDERED, that Liberty shall not flow any gas through the CNG/LNG installation in Keene until the Commission's Safety Division has found the required plans and reports adequate, and completed its physical inspection of the facilities as described above.

This language indicates that the ability to grant permission rested with the Commission's Safety Division with no mention that further action by the Commission would be necessary.[1] The requirement to obtain Safety Division approval gave rise to nearly a two year delay.

As the Company proceeded to provide plans and reports as required in Order No. 26,065, it became apparent that there was a significant difference in interpretation of the appropriate demarcation point on the CNG decompression equipment between where ASME B31.3 and 49 CFR Part 192 standards applied. The Company submitted its documentation consistent with ASME B31.3, which is the code governing the supplier of the CNG skid and is what that company used in its other installations of CNG unloading facilities, including those that feed into utility transmission and distribution piping, throughout the country. As part of that documentation, the demarcation point between the applicability of ASME B31.3 and 49 CFR Part 192 would be the outlet flange after the decompression was complete. The Safety Division, while acknowledging that "[t]here is no single applicable safety standard used within New Hampshire, nor nationwide, for CNG trailers,"[2] applied 49 CFR Part 192 to the installation as part of its assessment of the CNG installation, which meant that the demarcation point was the hose that connects the decompression facility to the trailers. This interpretation was not expected by the Company and resulted in the entire CNG skid having to be modified to meet the different standards, and also necessitated significant revisions to the Company's documentation, including the documentation of the owner of the CNG skid. The Safety Division's October 3, 2018, Adequacy Assessment took approximately a year to produce.

[1] The Company did not definitively learn that Commission approval of the Safety Division's assessment was a portion of the permission until twenty-one months later when the Commission issued Order No. 26,274 (July 24, 2019) and "accepted" and approved the Safety Division's assessment.
[2] NHPUC Safety Division Adequacy Assessment of the Proposed Compressed Natural Gas Installation by Liberty Utilities - Keene, NH Division (October 3, 2018) at 7.

The Company understands that this CNG installation was the first of its kind in New Hampshire and required significant research and investigation, but this was a significant portion of the delays that were encountered throughout the process. As the Company had no idea how long the Safety Division's assessment might take or what it might say, it was reasonable for the Company to have a CNG supply contract in place to be ready to serve customers for the 2018–2019 winter as the approval could have happened "at any time."

Following months of the Company providing the necessary responses and updates to the Safety Division's Adequacy Assessment, on April 6, 2019, the Safety Division submitted its recommendation that "allows the commencement of the proposed Monadnock Marketplace system conversion from propane-air to natural gas and begins the flow of natural gas." Although receipt of the Safety Division's recommendation gave support for the commencement of natural gas service, the Commission subsequently issued Order No. 26,274 (July 24, 2019) which denied Mr. Clark's motion for rehearing of Order 26,065 (which had been pending since May 2018), and "accepted" and approved the Safety Division's recommendation. As stated earlier, this was a procedural step that was not expected by the Company nor previously articulated by the Commission.

Mr. Clark sought further reconsideration of the July 24 order. As long as Mr. Clark's motion was still pending, the Company could not proceed because there was still the possibility the Commission could alter its ruling after rehearing. The Commission denied that pending motion in Order No. 26,294 (September 25, 2019), almost two years after issuing Order 26,065, which, coupled with the other events described above, finally provided the "go-ahead" to proceeding customer conversions and the provision of natural gas service in advance of the 2019–2020 winter season.

The Company converted the Marketplace customers and began flowing CNG in October 2019, two and one half years after encountering the first obstacle.