

1 **STATE OF NEW HAMPSHIRE**2 **PUBLIC UTILITIES COMMISSION**

3 **June 22, 2023** - 9:02 a.m.
4 21 South Fruit Street
5 Suite 10
6 Concord, NH

6 *[Hearing also conducted via Webex]*

7 RE: **DG 22-041**
8 **LIBERTY UTILITIES (ENERGYNORTH NATURAL**
9 **GAS) CORP. d/b/a LIBERTY UTILITIES:**
10 Petition for Approval to Recover
11 Revenue Decoupling Adjustment Factor
12 Costs.

11 **PRESENT:** Chairman Daniel C. Goldner, *Presiding*
12 Commissioner Pradip K. Chattopadhyay
13 Commissioner Carleton B. Simpson

13 Eric Wind, Esq./*PUC Legal Advisor*

14 Doreen Borden, *Clerk and PUC*
15 *Hybrid Hearing Host*

16 **APPEARANCES: Reptg. Liberty Utilities (EnergyNorth**
17 **Natural Gas) Corp. d/b/a Liberty**
18 **Utilities:**

17 Michael J. Sheehan, Esq.
18 Cheryl Kimball, Esq. (*Keegan Werlin*)

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20 Office of Consumer Advocate

21 **Reptg. New Hampshire Dept. of Energy:**

21 Paul B. Dexter, Esq.
22 Mary E. Schwarzer, Esq.
22 (*Regulatory Support Division*)

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

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P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good morning. I'm Chairman Goldner. I'm joined today by Commissioner Simpson and Commissioner Chattopadhyay. We're here in Docket DG 22-041, a hearing on Liberty Utilities' Petition for Approval to Recover Revenue Decoupling Adjustment Factor Costs.

First, let's take appearances, beginning with Liberty.

MR. SHEEHAN: Good morning, Commissioners. Mike Sheehan, for Liberty Utilities (EnergyNorth Natural Gas). And with me is Cheryl Kimball, from the Keegan Werlin firm, who has been assisting us in this case.

CHAIRMAN GOLDNER: Okay. Thank you. And the Department of Energy?

MR. DEXTER: Good morning, Mr. Chairman, Commissioners. Paul Dexter, appearing on behalf of the Department of Energy, joined by co-counsel, Mary Schwarzer.

CHAIRMAN GOLDNER: Thank you. And the Office of the Consumer Advocate?

MR. KREIS: Good morning, Mr. Chairman,

1 Commissioners. I'm Donald Kreis, the Consumer
2 Advocate. We represent the interests of
3 residential utility customers.

4 CHAIRMAN GOLDNER: Thank you. Are
5 there any members of the public here today?

6 *[No indication given.]*

7 CHAIRMAN GOLDNER: Okay. Seeing none.
8 Okay. The parties prefiled and
9 premarked for identification Exhibits 1
10 through 6. Are there any preliminary matters
11 related to these exhibits?

12 MR. DEXTER: Mr. Chairman, I have one
13 matter. But, if Liberty has --

14 MR. SHEEHAN: For the six, no.

15 CHAIRMAN GOLDNER: Okay.

16 MR. DEXTER: In the course of preparing
17 for this hearing, yesterday we realized that our
18 Exhibit 4, which was submitted on April 20th,
19 prefiled testimony submitted on April 20th,
20 submitted as an exhibit on June 14th, we noticed
21 that two attachments that were supposed to be in
22 that exhibit were missing. We provided them last
23 night electronically. We have hard copies here
24 today, if anyone likes them. Attachment 9 and 10

1 were omitted.

2 They were both identified in the
3 testimony of Dr. Arif. And both are documents
4 that come from DG 17-048. So, they are publicly
5 available on the Commission's website, and have
6 been since the testimony was filed. It was just
7 an error.

8 So, we filed that letter in the docket,
9 and those exhibits. So, I guess I just want to
10 point that out to everyone. And, if anyone needs
11 a hard copy, we have that here.

12 CHAIRMAN GOLDNER: Does the Department
13 plan to refile Exhibit 4 after the proceeding
14 with all of the pages?

15 MR. DEXTER: Well, we could. Or, we
16 could, like I said, the pages were filed in the
17 docket. So, presumably, they will have their own
18 tab. Maybe the easier way to do it would be to
19 make this June 21st filing "Exhibit 7".

20 CHAIRMAN GOLDNER: Okay. That sounds
21 sensible. Let's do that, Mr. Dexter, make that
22 "Exhibit 7".

23 (The document, as described, was
24 herewith marked as **Exhibit 7** for

1 identification.)

2 CHAIRMAN GOLDNER: And then, there was
3 another matter -- well, let me ask, does the
4 Consumer Advocate have any issues?

5 MR. KREIS: The Consumer Advocate does
6 have issues. But they don't relate to any --
7 they don't relate to the admissibility or status
8 or voracity of any of the exhibits.

9 CHAIRMAN GOLDNER: The topic of
10 "exhibits" is what I meant, sir.

11 MR. KREIS: Yes.

12 CHAIRMAN GOLDNER: So, thank you. Very
13 good.

14 One additional issue, Attorney Dexter.
15 I think it's an additional issue.

16 On June 16th, the DOE filed a notice
17 that it intends to refer to Exhibit 5 from Docket
18 20-105. That's a different issue, correct?

19 MR. DEXTER: Yes. We did not file that
20 as an exhibit, because it's -- it was an exhibit
21 in another case. And I think the practice is not
22 to do that, but rather that the practice would be
23 you just refer to that other docket.

24 The reason I submitted the letter when

1 I did was to alert the parties that we intended
2 to do that. So that, if someone was preparing
3 for this hearing, that would be on their radar.

4 And it's a one-page exhibit. It was --
5 well, we'll get to it, but it was prepared by
6 Liberty in 20-105, which was the succeeding rate
7 case. And it will be, you know, I have some
8 questions for our witnesses about that, and for
9 the Company's witnesses. So, we can get into it
10 then.

11 CHAIRMAN GOLDNER: Okay. Would anyone
12 else like to be heard on this issue?

13 *[No verbal response.]*

14 CHAIRMAN GOLDNER: Okay. Seeing none.

15 Okay. My final question this morning
16 is, will the Liberty witnesses be on a panel? I
17 think the answer is "yes". And followed by a DOE
18 witness panel?

19 MR. DEXTER: Yes. And we appreciate
20 the opportunity for Mark Thompson to testify
21 remotely. He's on the screen. He's appearing
22 from the West Coast. And we also appreciate his
23 associate, Hugh Gil Peach, who will be listening
24 today from the West Coast, but is not -- will not

1 be testifying.

2 CHAIRMAN GOLDNER: Okay. Thank you,
3 Attorney Dexter.

4 Okay. Are there any other preliminary
5 matters, before we take opening statements?

6 MR. DEXTER: I have one. But, again, I
7 don't have to go first.

8 MR. SHEEHAN: I do not have one.

9 MR. KREIS: The OCA has one. And I
10 guess I would like to go first, if you don't
11 mind?

12 CHAIRMAN GOLDNER: All right.

13 MR. KREIS: And I apologize if this
14 comes across in any way as divisive or
15 unconstructive. But, really, I feel compelled to
16 say this.

17 This Petition that the Commission is
18 hearing today was filed on July 6th of last year.
19 And, on the exact same date, on that date, the
20 Office of the Consumer Advocate filed a Motion to
21 Dismiss this Petition, which the Commission then,
22 several months later, dismissed without
23 prejudice.

24 And, since then, there have been tons

1 and tons of meetings and conversations and
2 back-and-forth about this issue. And here we are
3 today, the Company has eight people here, two
4 lawyers; the Department of Energy has, I don't
5 know how many people here, two lawyers. And,
6 yet, the issue remains exactly the same as the
7 one I laid out in my Motion to Dismiss. And I
8 renew it here today, and suggest to the
9 Commission that this entire hearing is absolutely
10 unnecessary, and shouldn't go forward and here is
11 why.

12 If you look at Exhibit 1a, which is
13 literally a thousand pages long, and let me just
14 say right now, I am willing to stipulate to the
15 truth of everything in every bit of testimony
16 that is part of that exhibit. I can't say I've
17 read all 1,000 pages of that exhibit, but I have
18 read the testimony. And, for purposes of this
19 case, I would stipulate to the truth of every
20 last bit of that testimony.

21 All you need to know about this case is
22 contained on Page 39 of 81 of the initial direct
23 testimony, I think it's Bates Page 041 of
24 Exhibit 1a. And, at that page of Exhibit 1a, the

1 Company quotes tariff language, and says "As
2 demonstrated by the highlighted text above, the
3 precise wording of the First Compliance Tariff
4 called for the Benchmark Base Revenue per
5 customer to be set by Customer Class rather than
6 be Customer Class Group." And that is a true
7 statement.

8 But what it demonstrates is that the
9 tariff that was in effect until the Company's
10 last rate case contained an error. That is
11 regrettable. It is truly regrettable, because it
12 cost them money, it cost this utility something
13 like \$4 million, and it had the effect of
14 punishing it for doing something that I
15 considered virtuous.

16 The OCA was responsible for
17 encouraging, or maybe even pressuring, electric
18 and natural gas utilities to adopt revenue
19 decoupling as an alternative to something that we
20 had before that was much worse. And this
21 utility, to its great credit, was the very first
22 one to step forward and say "Okay, we'd like to
23 give that a shot." They conducted the
24 experiment. And, you know, whether you think it

1 was a success or a failure, I think it's pretty
2 obvious that it failed, at least to this degree,
3 in that the Company proposed to you, and you
4 approved, a tariff that deprived the Company of
5 substantial sum of money that it was not able to
6 collect from customers.

7 But, nevertheless, the law is
8 inexorable. And, by the "law" here, I actually
9 mean the "New Hampshire Constitution". Because,
10 under Part I, Article 20, of this state's
11 Constitution, retroactive ratemaking is
12 impossible. It's illegal. It's
13 unconstitutional. The Commission can't approve
14 it. This Company should not be here suggesting
15 this.

16 So, I mean, you can look through
17 Ms. Menard's testimony in Exhibit 1a. It is
18 riddled with references to where, to her
19 admission, that the tariff was simply wrong.
20 And, if you prefer, you can look at Paragraph 6,
21 7, 8, 9, and 10 -- actually, starting at
22 Paragraph 3, 4, 5, 6, 7, 8, 9, and 10 of the
23 Company's Petition, it says the same thing: "The
24 tariff was wrong." But you can't change a tariff

1 retroactively, it's unconstitutional.

2 So, everything that the Company plans
3 to tell you today, everything the Department of
4 Energy plans to tell you today, might be
5 interesting, it might be elucidating about the
6 guts of a revenue decoupling mechanism, but it's
7 all irrelevant.

8 So, if you want to call my Motion to
9 Dismiss, that you rejected without prejudice back
10 last September, a "summary judgment motion" at
11 this point, feel free. You can call it whatever
12 you want. But I respectfully renew the Motion I
13 made on the day this docket was filed, and
14 request that the Commission cancel today's
15 hearing, and reject the Company's Petition as a
16 matter of law.

17 And, if you would prefer, I would be
18 happy to brief this issue yet again, and
19 reiterate all the arguments I made in the Motion
20 to Dismiss, and that I've made orally here today
21 in writing again.

22 Thank you again. I apologize if that
23 comes across as divisive, I really don't intend
24 it that way. I genuinely feel for this Company.

1 It made a mistake, and that cost the Company a
2 lot of money.

3 CHAIRMAN GOLDNER: Okay. Very good.
4 That was almost an opening statement. Is there
5 anything you wish to add to the preliminary
6 matters, before we take opening statements?

7 MR. KREIS: Well, I apologize if that
8 came across as an opening statement. But I'm
9 serious. I really think this hearing shouldn't
10 go forward today. It's unnecessary.

11 CHAIRMAN GOLDNER: Thank you. Any
12 other preliminary matters from the Department of
13 Energy?

14 MR. DEXTER: Well, yes, I did. I had
15 one, and it's related, I guess.

16 We undertook this venture -- this
17 request was made in a cost of gas proceeding in
18 late 2021. It was deemed too complicated for a
19 cost of gas proceeding, and it was spun into this
20 docket, appropriately so. And we had a
21 prehearing conference, and we discussed the
22 legalities.

23 And the Department of Energy's approach
24 to this was a little bit different from what the

1 Consumer Advocate just said. Our approach was
2 "Well, let's get to the bottom of this. And
3 let's see if there really is a problem. Let's
4 put the legal issue aside." Because, in the end,
5 we didn't really think there was going to be a
6 problem.

7 And we undertook this investigation.
8 It ended up being quite long. I think it took
9 seven months for the Company's testimony to come
10 in, and it took us another six or seven months to
11 get through analyzing that and for our testimony
12 to come in. And, so, here we are, twelve months
13 later.

14 We noted in our testimony, with an
15 unfortunate typographical error, that the
16 testimony was not intended to discuss any of the
17 legal issues that Attorney Kreis just mentioned.
18 That our testimony was going to review, from an
19 economic and a financial standpoint, whether or
20 not the tariffs, the base rates, and the LDAC
21 that were set in DG 17-048 did what they were
22 intended to do, whether or not they made economic
23 sense. And we put the legal -- we put the legal
24 issue aside. And that's where we are today.

1 And, so, we're not here today prepared
2 to address the legal issues that the Consumer
3 Advocate referenced. And my preliminary issue
4 was going to be to request a briefing period
5 after this case, after this hearing, so that we
6 could bring -- so that, when the Commission makes
7 their decision, they would have both the factual
8 side, which we're dealing with today, and the
9 legal side.

10 Now, you know, in retrospect, maybe we
11 did this backwards, and maybe we should have done
12 the legal side of this first. But we didn't.
13 That's not the course that the case has taken.
14 The Company has spent a tremendous amount of time
15 explaining their position; we've spent a
16 tremendous amount of time analyzing it and coming
17 up with our own position.

18 So, I think the hearing should go
19 forward. I understand it's time-consuming and
20 expensive, but I think most of the time and money
21 has been spent. And I think today is the day to
22 put the facts before the Commission, and then
23 address the legal issues in a briefing schedule
24 after this hearing.

1 I will say, and this will be obvious,
2 it's obvious from the testimony, and it will be
3 obvious from today, the Department of Energy did
4 not get to where we hoped to get to. We hoped
5 that, when we reviewed this with the Company,
6 that we would find that there was no problem.
7 And, in fact, the Company maintains that there
8 was a problem, that there is a \$4 million
9 discrepancy or under-collection. And, through
10 our analysis, looking retrospectively, we have
11 determined that there is no \$4 million
12 under-collection. And, in fact, if anything, the
13 working of the base rates and the LDAC from
14 17-048 may have or have worked to enrich the
15 Company by \$2 million. So, we actually made the
16 problem worse from a factual perspective.
17 "Worse", in the sense that we did not resolve the
18 dispute, which is what we intended to do when we
19 undertook this investigation.

20 So, having said all that, I would
21 recommend that the hearing go forward today. But
22 that we do be permitted a briefing schedule --
23 briefing period after the hearing ends.

24 Thank you.

1 CHAIRMAN GOLDNER: Thank you, Attorney
2 Dexter.

3 Does the Company have any comments that
4 are preliminary in nature, but before opening
5 statements?

6 MR. SHEEHAN: I think I could address
7 both what Mr. Dexter and Mr. Kreis said in an
8 opening statement. So, we can get to that point.

9 CHAIRMAN GOLDNER: Okay.

10 MR. SHEEHAN: As far as briefs --
11 preliminary, we're okay with a briefing schedule,
12 we think that makes sense, especially for the
13 legal issue.

14 CHAIRMAN GOLDNER: Okay. Thank you.
15 Just a moment.

16 *[Chairman Goldner and Atty. Wind*
17 *conferring.]*

18 MR. SHEEHAN: And, if I may, to the
19 extent the Commission is thinking of the renewal
20 of the Motion, I would like to be heard on that
21 before, if that's what you folks are breaking
22 for?

23 CHAIRMAN GOLDNER: Okay. Yes. Let's
24 do that now, and then we'll take a break.

1 MR. SHEEHAN: Sure.

2 Simply put, the legal issue is whether
3 there is a tariff that can be interpreted two
4 ways based on its existing language. And a
5 general of rule of construing contracts,
6 construing the statutes, construing tariffs, is
7 you try your best to make the existing language
8 work.

9 Here, we will show you the existing
10 language can lead down two paths: One, returning
11 the 4 million to customers, which happened, and
12 we think was the incorrect result; the other is
13 applying the tariff in a way that properly
14 reconciled the decoupling dollars.

15 The purpose of the tariff is to
16 reconcile to the approved base rates. If we were
17 approved to collect \$100, each year, if we
18 collected 99, the tariff was supposed to give us
19 the one dollar, and, vice versa, if we collected
20 \$101, it was supposed to give it back to the
21 customers.

22 If you -- you can interpret the tariff
23 in a way that does that properly, and we'll show
24 you that today. You can also interpret the

1 tariff to do it improperly, like it actually
2 happened.

3 So, if you conclude that there are two
4 reasonable interpretations of the tariff, one
5 achieves the intent of the decoupling mechanism,
6 and one that does not, as a matter of law, you
7 have to choose the one that achieves the
8 operation of the tariff. And we will show you
9 today that there are two reasonable
10 interpretations of the tariff; one that works and
11 one that doesn't.

12 So, for that reason, the legal argument
13 fails, the legal request to dismiss fails.

14 Second, on retroactive ratemaking, this
15 is all a reconciling mechanism to get us to that
16 \$100. We have not -- which is the base rates or
17 the revenue requirement or the distribution
18 rates, whatever you want to call it, nowhere have
19 we changed that \$100 requirement. We're all
20 taking about "Did we collect 98 or 102, and was
21 it returned properly?" And you will hear from
22 the witnesses that that's the case.

23 And, to the extent the Department of
24 Energy's argument is going into base rates,

1 that's not what this case is about. Base rates
2 were set five years ago. You can't change them.
3 That's retroactive ratemaking.

4 Thank you.

5 CHAIRMAN GOLDNER: Okay. Thank you.
6 Let's take a quick break, and return at 9:30.

7 Yes.

8 MR. KREIS: Mr. Chairman, I apologize,
9 because I don't want to hold you back from your
10 break. But, really, what you just heard was
11 pretty outrageous. And you should not put
12 countenance in it even during the brief break
13 that you are about today -- about to take.

14 I mean, what the Company has just told
15 you that it is repudiating what it actually said
16 to you in its initial Petition. In the initial
17 Petition, and I refer you to Paragraph 3, the
18 Company said, and I quote: "Embedded in the 2018
19 tariff was a mismatch in the language that
20 governed the annual reconciliation of the allowed
21 and actual revenues for the low-income R-4 rate
22 class."

23 The Petition, and Ms. Menard's initial
24 testimony, is riddled with concessions that the

1 tariff was simply wrong, though clear, and,
2 therefore, applied in a manner that deprived this
3 Company of a pile of money.

4 Now, they are here telling you a
5 different story, that "the tariff was ambiguous."
6 They should not be allowed to do that.

7 And I object in the most vehement and
8 strenuous terms.

9 CHAIRMAN GOLDNER: All right. Before
10 we take a break, let's go around one more time.

11 Mr. Dexter, would you care to have any
12 additional comments, before the Commission takes
13 a break?

14 MR. DEXTER: Well, part of the -- part
15 of the inquiry I have today is to try to draw
16 this distinction between "ambiguous" and
17 "unambiguous". And I plan to ask the witnesses
18 to review the specific tariff, witnesses -- both
19 the Liberty witnesses and the Department of
20 Energy's witness. Our intent is to demonstrate
21 that there's no ambiguity in this tariff; the
22 tariff is crystal clear. And, so, that's what we
23 plan to do today. And I think that's appropriate
24 for the Commission to hear that from the

1 witnesses.

2 Secondly, it's important to remember
3 that this decoupling mechanism was adopted in a
4 base rate case. And I said it at the prehearing
5 conference, that we would go down this road of
6 looking at the decoupling tariff, but only in
7 conjunction with the rates that were set at the
8 time, because they are inextricably intertwined.

9 And I don't agree with Attorney
10 Sheehan's recommendation or position that we
11 should only be looking at the tariff, the LDAC
12 tariff, and not the base rates, because the two
13 have to work in conjunction with each other. And
14 you will see how they work in 17-048. And we
15 will show you how, in the next rate case, both --
16 in 20-105, both the LDAC tariff, and the
17 calculation of the revenue requirement, were
18 changed to correct this problem that the Company
19 had identified. And the reason they're
20 intertwined is this low-income discount that you
21 read so much about and will hear so much about
22 today.

23 The low-income discount is essentially
24 a base rate item, in the fact -- in the sense

1 that it collects what I call "real money", money
2 that goes to the Company's bottom line, unlike
3 gas costs, which don't go to the Company's bottom
4 line, or energy efficiency charges, which don't
5 go to the Company's bottom line. The low-income
6 revenue affects the bottom line, and, therefore,
7 has an impact on the revenue requirement. And,
8 therefore, although the LDAC -- although the
9 low-income discount is collected through the
10 LDAC, it is inextricably tied to the revenue
11 requirement set in base rates. So, we plan to go
12 through that exercise today to demonstrate that.

13 But I caution the Commission about
14 narrowing this investigation, in the same way
15 that I did when we met in the prehearing
16 conference, you know, back in the fall.

17 CHAIRMAN GOLDNER: Thank you, Attorney
18 Dexter.

19 Attorney Sheehan?

20 MR. SHEEHAN: So, yes, I guess it's a
21 brief repeat. The existing tariff language, the
22 mismatch, which now all parties existed in that
23 tariff, can be read in a way so there's no
24 mismatch. And, if that's the case, you have two

1 interpretations of the tariff, one that allows
2 recovery and one that does not.

3 To the extent that the 2017 rate case
4 set rates based on a thinking of how this would
5 work, the Commission approved, and that was not a
6 settlement, that was a Commission-approved \$8
7 million rate increase. If that \$8 million should
8 have been \$7 million or it should have been \$9
9 million, it's irrelevant to the reconciliation
10 issue. Regardless of where the rates were set,
11 you have the exact same reconciliation process of
12 providing the discount and collecting the
13 discount. And that's what our witnesses will be
14 prepared to describe.

15 CHAIRMAN GOLDNER: Okay. Thank you.

16 We'll still return at 9:30, and we'll
17 be back in five minutes. Off the record.

18 *(Recess taken at 9:25 a.m., and the*
19 *hearing resumed at 9:32 a.m.)*

20 CHAIRMAN GOLDNER: Okay. Thank you.

21 We're back on the record.

22 So, we'll require legal briefs,
23 allowing two weeks for the briefs and two weeks
24 for the rebuttal briefs. And, if anyone wants to

1 touch on that at closing, in terms of needing
2 more or less time, please feel free to do so.

3 We'll proceed today with the matter at
4 hand. And we'll move now to opening statements,
5 beginning with the Company.

6 MR. SHEEHAN: Thank you. This will all
7 sound familiar, based on the last half an hour.

8 Very quick timeline: A decoupling
9 mechanism was proposed in the 2017 case, by
10 Mr. Therrien. There was a Settlement that was
11 rejected by the Commission, and the Commission
12 approved a decoupling mechanism that was largely
13 embodied in the Settlement, but was different
14 from what was originally proposed. And we'll
15 explain those differences. So, we have a draft
16 one, and then what was proposed, what became
17 Tariff 10 was different.

18 What was proposed would have worked
19 perfectly. What was approved, and the process of
20 editing from a proposed to approved, there some
21 language changes, and some loose ends, if you
22 will, that didn't get fixed. And one of those is
23 what we're talking about today, the decoupling
24 frame -- the decoupling language.

1 And the language in that tariff, again,
2 as you can read it, there's a "purpose" statement
3 that says the purpose of the RDAF is to reconcile
4 base revenues to the exact amount we're supposed
5 to recover. And it has language that says you
6 first calculate the allowed revenue, how much are
7 we supposed to recover, based on all the various
8 classes and the targets. And then, it has a
9 calculation for the actual revenue, what do you
10 look at to say "how much did we actually
11 collect?" And, if you do that comparison, you're
12 going to result with a positive or minus that
13 gets returned or collected.

14 The problem with, and it's only a
15 problem with this one component, the R-4 customer
16 that has a discount. For all purposes, other
17 than the discount, R-4 and R-3 are the same.
18 These are residential customers. We are allowed
19 to keep the same amount for every R-3 and R-4
20 customer. It's only the collection.

21 And, so, when you're looking at a
22 reconciliation, you have to make sure each side
23 of the calculation is done on the same basis, or
24 we get to this mismatch. And it's simple. If

1 you're going to look at how much you're supposed
2 to get from R-4 customers, you look at a
3 discounted number or a non-discounted number.
4 Again, let's say we can collect \$100 from each
5 customer, R-3 and R-4, so -- and there's a 60
6 percent discount. So, that R-4 customer is
7 paying 40 bucks. So, you're going to compare
8 the \$40 they actually pay, or the non-discounted
9 100 bucks that we're entitled to recover for
10 that customer on one side, and make a decision, A
11 or B. On the other side, when you're looking at
12 what they actually paid, the actual revenues, you
13 need to look at what they actually paid on their
14 40 percent discounted bill, or what we're allowed
15 to recover, which is that amount, plus the amount
16 recovered through the adjustment factor. If
17 you -- A and B on one side, and C and D on the
18 other.

19 If you calculate one based on the
20 discount, the other not, you have a mismatch.
21 And here's how it would work. If the target
22 revenue is based on the discount, \$40, and the
23 actual revenue is based on the non-discount,
24 \$100, it's going to show that we over-collected

1 by 60 bucks, and we're supposed to return it.
2 That's what happened here, plain and simple. And
3 that's one reading of the tariff that gets you
4 there.

5 Another reading of the tariff says "No.
6 (a) The Purpose statement says you're supposed to
7 reconcile", and that's clearly not a
8 reconciliation. And, second, there's language
9 that says "you can and should calculate the left
10 side the same as the right side on the same
11 basis."

12 That's the whole case. It's
13 complicated, there's a million ways -- background
14 stuff, and it takes everyone a long time to get
15 there, and we'll spend some time on it today.
16 But that's the whole case.

17 No one's disputed the dollar amounts
18 that are at issue. We'll get the precise
19 numbers, \$2 million for each of those first two
20 years.

21 There is a legal argument whether it's
22 retroactive ratemaking. The simple answer is,
23 it's reconciling numbers. Clearly, there's no --
24 we're not changing distribution rates at all,

1 we're not touching them. So, it's not -- you're
2 not going back changing rates, you're going back
3 to make sure we recovered what we were authorized
4 to recover.

5 So, in a nutshell, that's the case.
6 And we'll move to the witnesses, once the other
7 folks speak.

8 CHAIRMAN GOLDNER: Thank you. We'll
9 move to the Department of Energy.

10 MR. DEXTER: Thank you.

11 Well, this case starts with Liberty
12 asking for what I called from the beginning an
13 "extraordinary remedy". It requires -- they have
14 asked the Commission, and it requires those
15 involved to investigate, what happened in a rate
16 case, which is now over five years old. And what
17 Liberty has asked is that the Company -- that the
18 Commission review the tariff that they proposed,
19 interpret it differently, and quantified the
20 difference that they would like you to interpret
21 it by, and then they want to collect the \$4
22 million difference through their Local
23 Distribution Adjustment Clause over the past 24
24 months.

1 In order for the Commission to, and,
2 again, we're putting the legalities aside for
3 now, but, in order for the Commission to do that,
4 it's the view of the Department of Energy that
5 there would have to be a very, very strong case
6 put before the Department that would demonstrate
7 that such a remedy would be appropriate. Again,
8 we're going back five years, and we're going back
9 two rate cases.

10 But we undertook the analysis in good
11 faith. And, to the best of our ability, we
12 looked back at the -- we looked back two rate
13 cases ago. And, in the view of the Department of
14 Energy, looking retrospectively, the result that
15 came out of the 17-048 rate case is, generally
16 speaking, just and reasonable. In other words,
17 it makes economic sense.

18 What we found is that the tariff
19 language is, in fact, mismatched. Our witnesses
20 acknowledge that. That the actual revenues and
21 the benchmark revenues don't align in the clause
22 that was approved in 17-048 in the decoupling
23 tariff.

24 But, as I said, in order to determine

1 whether or not the result of the 17-048 rate case
2 is reasonable, you have to look at the entire
3 rate case. And, so, what we did is go back into
4 the rate case and looked at only -- we looked at
5 only one aspect of the case, we looked at this
6 low-income discount.

7 So, Liberty serves residential
8 customers, and provides low-income customers a
9 discount. I always get confused whether it's a
10 60 percent discount or a 40 percent discount, but
11 it's one of those two. And they quantify that
12 discount, and collect it from all the other
13 customers, through a surcharge through the Local
14 Distribution Adjustment Charge, known as the
15 "LDAC".

16 And that R-3 residential regular
17 customers and R-4 residential low-income
18 customers is at the crux of the so-called
19 "ambiguity", or mistaken tariff language. So, in
20 order to evaluate that issue, one needs to look
21 at the treatment of the R-3 and the R-4 customers
22 in the development of the base rates.

23 So, we did two things. We looked at
24 the development of the revenue requirement in the

1 rate case. And it's our observation that the
2 revenue requirement was calculated in a way that
3 fully compensated the customer -- the Company for
4 this R-4 discount. It's very simple, and our
5 witnesses will go through it. In the revenue
6 requirements calculation, all the revenues -- I'm
7 sorry, all the costs of serving all the
8 residential customers are built into that revenue
9 requirement calculation. The Company made this
10 clear in an email that they sent us that we've
11 included as an exhibit, and we'll point you right
12 to that email. There's no -- I don't believe
13 there's any dispute about that, but we'll ask the
14 witnesses about that.

15 The revenue requirement covers all the
16 costs of all the customers. The revenue
17 requirement calculation is the result of
18 revenues, minus costs. When one looks at the
19 revenues that was input into that revenue
20 requirement calculation, you will find that the
21 LDAC revenues -- that the R-4 discount revenues
22 are not included in that calculation. Therefore,
23 the revenue requirement calculation fully
24 compensates the Company, in this instance, for

1 the R-4 discount. And then, they also collect
2 that same discount through the LDAC.

3 So, in a sense, if you just stop there,
4 the Company would be recovering this R-4 discount
5 twice. Once through the revenue requirement set
6 in the case, and a second time through the LDAC.

7 However, this is why you have to read
8 the clauses in tandem. This is how the so-called
9 "mismatch" now makes sense. Because it
10 specifically accounts for that difference, and
11 passes back the collection of that R-4 discount
12 through the decoupling charge. And, again, it's
13 a little bit complicated. We'll go through it
14 with all the witnesses. But the bottom line is,
15 when you look at it in total, it all makes a
16 certain amount of sense.

17 With the benefit of hindsight, and,
18 again, the witness that we have here were not
19 involved in those prior rate cases. I was
20 counsel on those rate cases, so I recall them.
21 But the witnesses are not -- the Department's
22 witnesses today were not involved in those cases.
23 So, we're looking backwards five years.

24 What we did find out, though, is,

1 because the two mechanisms that I just described
2 to you, the base rate mechanism and the
3 decoupling mechanism, didn't take effect at the
4 same time. There was a sixteen-month gap between
5 the time the rates took effect, which was
6 July 1st, 2018, and the decoupling mechanism took
7 effect, which was November 1st -- which was
8 November 1st -- I'm sorry, I think I have those
9 dates wrong. The base rates took effect
10 July 1st, 2017, through the recoupment provision.
11 The decoupling rates took effect November 1st,
12 2018. So, there's a sixteen-month time period
13 there.

14 So, there was a period where the -- I
15 hate to use the term "double-collection", but the
16 double-collection of the R-4 discount, which was
17 happening in the base rates, was in effect for a
18 sixteen-month period before this decoupling
19 passback started. And that's the essence of the
20 \$2.1 million that the Department has indicated,
21 again, from a financial standpoint, appears to
22 have been a mismatch.

23 We're not going to talk today about
24 whether or not it's permissible to go back and

1 try to recover that \$2.1 million on behalf of the
2 customers. That's something we'd like some time
3 to look at.

4 But that's the essence of the case, as
5 the Department of Energy sees it. We have
6 witnesses that will demonstrate all this to you
7 today. And we hope, at the end, the Commission
8 will issue a ruling that says "looking backwards,
9 we're not going to disturb the situation as it
10 was set back in 2017 and 2018."

11 Thank you.

12 CHAIRMAN GOLDNER: Thank you, Attorney
13 Dexter. And we'll move to the Consumer Advocate.

14 MR. KREIS: Thank you, Mr. Chairman.
15 You've already heard quite a bit from me so far
16 today. And, so, I'm going to be super brief.
17 Also, although there is a defibrillator down the
18 hall, I don't want to give myself a heart attack.

19 The essence -- you heard a very
20 succinct little opening statement from Mr.
21 Sheehan. "That's the whole case", he said, in
22 reference to a particular tariff provision and a
23 particular mechanism under the revenue decoupling
24 tariff. And I agree with him, that's the whole

1 case. The problem is, there was a tariff, it
2 deprived the Company of some money that it should
3 have recovered, and it didn't recover it. End of
4 story, because the New Hampshire Constitution
5 precludes retroactive ratemaking.

6 In other words, in legal terms, there
7 is no genuine issue of material fact in this
8 case. And the customers of the Company are
9 entitled to judgment as a matter of law.

10 Now, one thing I do want to address
11 briefly, because I haven't addressed it yet, is
12 this idea that what we're really doing here is
13 just reconciling things. And the tariffs of
14 various utilities, as approved by the Commission,
15 are full of reconciliation mechanisms. Every
16 utility is reconciling various components of its
17 rates all the time. And that is a true
18 statement. But the reconciliation mechanisms are
19 not themselves retroactive ratemaking, as long as
20 you follow the tariff, which lays out what the
21 reconciliation mechanism requires.

22 So, if I consume electricity or natural
23 gas from Liberty today, and I pay charges for
24 consumption today that will later be subject to

1 some kind of reconciliation that might result in
2 them recovering additional costs in the future,
3 I'm not going to like it necessarily, but I have
4 been put on notice, by virtue of the language in
5 the tariff, that that is likely to happen, or may
6 happen. And, therefore, I can, if I want to,
7 adjust my consumption accordingly.

8 I mean, that's what this is all about,
9 right? A tariff as the force and effect of law,
10 but it's fundamentally a contract. And, again,
11 you can't just change the terms of a contract
12 retroactively. That's what our State
13 Constitution says. The law can't change the
14 terms of a contract retroactively.

15 Now, I am really interested in what Mr.
16 Dexter just told you. Because, if I heard him
17 correctly, he and his team are prepared to
18 demonstrate that, actually, the Company owes
19 customers \$2 million bucks. And, like Mr.
20 Dexter, I'm going to reserve judgment on whether
21 we should, in our briefs, argue that customers
22 are entitled to get that \$2 million back.

23 But this I promise: If the Commission
24 does not issue an order that rejects the

1 Company's arguments, I will file a motion for
2 rehearing. And, if the Commission doesn't grant
3 the motion for rehearing, I will file a Notice of
4 Appeal with the New Hampshire Supreme Court.
5 This case shouldn't be here, we shouldn't be
6 here. The Company's positions are outrageous.
7 The Company has to answer for the fact that it is
8 here before you today contradicting its own
9 Petition and the testimony that it initially
10 filed in this case. I find that outrageous, and
11 we're going to have to get to the bottom of that,
12 too.

13 I think that's all I should say at this
14 point.

15 CHAIRMAN GOLDNER: So, I think, before
16 we get the ball rolling, I think, if I can
17 summarize at a high level. The Company is trying
18 to collect \$4 million; the Department of Energy
19 is trying to return \$2 million; and, based on the
20 OCA's preliminary statement, the OCA believes the
21 answer is "zero".

22 But there was some additional comment,
23 I think, sir, in your opening statement, that you
24 may want to consider the Department's position?

1 MR. KREIS: You're asking me to respond
2 to that, because I'd love to?

3 CHAIRMAN GOLDNER: Yes, please.

4 MR. KREIS: I don't have any analyst on
5 my staff. And, so, I have not done the kind of
6 rigorous analysis that I know the Department has
7 done. So, I'm essentially curious about how they
8 get to that position. I'm as interested in what
9 their testimony is going to be as you are, just
10 as a matter of curiosity.

11 But, just to be absolutely forthright
12 with you, I mean, it's arguable, and I am
13 certain, because I already know what the Company
14 will tell you, if I had the audacity to say to
15 you "Well, they can't change the tariff
16 retroactively to claw back their 4 million bucks,
17 but I can, to claw back our 2 million bucks." I
18 mean, they're going to argue that I'm
19 contradicting myself, right? And that's a
20 colorable argument, I'll concede that up front.

21 But note that the customers and the
22 Company are not in the same position, all right.
23 I mean, you know, they write the tariff, it's
24 their burden all the time. They have to file

1 tariffs with you that you approve, and mistakes
2 are on them, not customers.

3 So, that's why I am reserving judgment
4 on that \$2 million. And I hope, in the
5 circumstances, that's okay.

6 CHAIRMAN GOLDNER: Okay. Thank you for
7 the clarification.

8 MR. DEXTER: Mr. Chairman, could I
9 comment on your high-level summary?

10 CHAIRMAN GOLDNER: Please.

11 MR. DEXTER: So, what I've tried to do,
12 and maybe I'm not painting this fine line very
13 well, but, again, our case today is from an
14 economic and financial standpoint. And we
15 believe we can demonstrate that the result of the
16 17-048 rate case resulted in roughly a \$2 million
17 enrichment to the Company, for the reasons that I
18 laid out.

19 We are not here today saying that that
20 money should be refunded to customers. That's
21 what we need to look into.

22 We have very, very serious concerns
23 about retroactive ratemaking as well. And we
24 also believe we are supportive of what the OCA

1 just said, that this isn't necessarily
2 symmetrical, because the customers and the
3 Company are not on the same footing. It is the
4 Company that proposes the tariffs. It is the
5 Company that has access to all the information.

6 But we're not -- we're not requesting a
7 refund -- a refund through the LDAC. That's what
8 we would like to look into. And, frankly, with
9 the amount of time we've spent looking at the
10 facts of this case, we have not done the legal
11 analysis yet. So, it may be that that's our
12 position. But it may be that, when we look at
13 the law, and the various precedents and the
14 various clauses in the examples that Ms. Menard
15 put in the back of her testimony, that we come to
16 the conclusion that, economically, it makes
17 sense, but, you know, five years after-the-fact,
18 it's not legal or not good policy. We just
19 haven't come to that conclusion yet.

20 CHAIRMAN GOLDNER: So, you would want
21 to brief that in the briefs that are already
22 required?

23 MR. DEXTER: Yes.

24 CHAIRMAN GOLDNER: Okay. So, I'll try

1 to summarize again, and maybe I'll get closer
2 this time.

3 So, the Department's position is the
4 answer is either 2 or zero; the OCA's position is
5 it's either 2 or zero; and the Company's position
6 is that it's a collection of 4, plus 4. Fair
7 enough?

8 Okay. I get it. All right. I'm very
9 proud.

10 MR. DEXTER: Two plus two equals four?

11 CHAIRMAN GOLDNER: Yes.

12 MR. DEXTER: Correct?

13 CHAIRMAN GOLDNER: Yes. Yes.

14 MR. DEXTER: Not four plus four equals
15 eight?

16 CHAIRMAN GOLDNER: Yes, sir. Yes, sir.

17 Okay. Very good. We got there. Let's
18 move forward. And, Mr. Patnaude, if you could
19 please swear in the witnesses.

20 *(Whereupon **ERICA L. MENARD** and*
21 ***GREGG H. THERRIEN** were duly sworn by*
22 *the Court Reporter.)*

23 CHAIRMAN GOLDNER: Mr. Sheehan.

24 MR. SHEEHAN: Thank you. We'll start

[WITNESS PANEL: Menard|Therrien]

1 with the formalities.

2 **ERICA L. MENARD, SWORN**

3 **GREGG H. THERRIEN, SWORN**

4 **DIRECT EXAMINATION**

5 BY MR. SHEEHAN:

6 Q And, Ms. Menard, please introduce yourself, your
7 employer, and your role with your employer?

8 A (Menard) Good morning. My name is Erica Menard.
9 I'm the Senior Director of Rates and Regulatory
10 Affairs for Liberty Utilities Service Company.
11 And we provide service to, in this case,
12 EnergyNorth.

13 Q Ms. Menard, I'm going to walk through the
14 exhibits that have been marked and have you
15 adopt, where appropriate, and just describe
16 otherwise. Exhibit 1 bears your name, it's the
17 "Testimony of Erica Menard", and I presume you
18 played a role in drafting that testimony, is that
19 correct?

20 A (Menard) Yes.

21 Q Do you have any changes or corrections to your
22 testimony?

23 A (Menard) No, I do not.

24 Q And do you adopt your testimony in Exhibit 1

[WITNESS PANEL: Menard|Therrien]

1 today as your sworn testimony?

2 A (Menard) Yes, I do.

3 Q Is it fair to say, although voluminous, the
4 thought behind including all the attachments was
5 to basically put everything that could be
6 important to this case at our fingertips?

7 A (Menard) Yes. That's correct. There's a lot of
8 history to this case, and to put it all into one
9 filing to make it easier for parties, and that
10 way we could reference that as part of the
11 testimony. That's the reason why it's so
12 voluminous.

13 Q Exhibit 2 is a Supplement to the Petition, that
14 was filed in response to a Commission request.
15 And we've marked it as an exhibit, although
16 signed by me, it does have some factual
17 statements in it, is that correct?

18 A (Menard) That's correct. That was a result of a
19 prehearing conference, where the Commissioners
20 had asked for some additional information.
21 Pulled that information together, and provided
22 not only the attachment, but an Excel workbook to
23 support the Petition.

24 Q And, again, it's not your testimony, but you

[WITNESS PANEL: Menard|Therrien]

1 reviewed that, and the facts in that are
2 accurate, to the best of your knowledge?

3 A (Menard) Yes.

4 Q Exhibit 3 are Liberty's responses to some data
5 requests. And the purpose of marking that was,
6 as I understand it, provide the Commission with
7 some background information that it might find
8 helpful in addressing this case, is that fair?

9 A (Menard) That's correct.

10 Q Exhibit 4 is the DOE testimony. Exhibit 5 is
11 prefiled testimony that bears your name and
12 Mr. Therrien's name, is that correct?

13 A (Menard) That's correct. Rebuttal testimony.

14 Q Rebuttal. And, as to that testimony, do you have
15 any corrections or changes to the portions that
16 you are responsible for?

17 A (Menard) No, I don't.

18 Q And do adopt that testimony here today?

19 A (Menard) Yes, I do.

20 Q And Exhibit 6 is the Company's responses to the
21 Commission's record requests of just a few weeks
22 ago, is that correct?

23 A (Menard) That is correct.

24 Q And, again, it's not testimony, but did you

[WITNESS PANEL: Menard|Therrien]

1 participate in preparing those responses?

2 A (Menard) Yes, I did.

3 Q And they are accurate, to the best of your
4 knowledge?

5 A (Menard) They are.

6 Q Thank you. And, Ms. Menard, if you could just
7 confirm kind of what we just talked about with
8 the Commission, the high-level request that the
9 Company is making in this case. As I understand
10 it, we all know it's two years' worth of RDAF
11 reconciliations filed in '19 and '20 for the
12 years. Can you quantify the request and point to
13 where in the record the Commission can find the
14 numbers?

15 A (Menard) Yes. The actual number is located in --
16 I guess the Petition would be one place where you
17 could find that number, "\$4,023,830" of an
18 under-collection for the first two decoupling
19 years. It's probably in other places within the
20 Company's filing. But this is -- this is related
21 to, at the time the Company filed this, back in
22 July of '22, the request was to recover that over
23 a two-year period in the LDAC.

24 Q Without carrying charges, correct?

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) Without carrying charges, correct.

2 Q And those numbers were first presented to the
3 Commission in the cost of gas proceedings filed
4 in the Fall of '19 and 2020, is that correct?

5 A (Menard) That is correct.

6 Q And, of course, in the cost of gas proceedings,
7 the Commission also addresses the LDAC, and this
8 is a component of the LDAC?

9 A (Menard) Correct.

10 Q The other thing I'd like to cover with you, at a
11 high level, is the -- how the Company has made
12 this request of the Commission over the years.
13 Is it fair to say that, in the first year, year
14 one reconciliation, which was filed in the Fall
15 of '19, and was addressing the first decoupling
16 year of November '18 to November '19, that the
17 Company flagged an issue of "the calculation of a
18 return of roughly \$2 million didn't seem right",
19 is that fair?

20 A (Menard) That is fair. And, in the cost of gas
21 and LDAC proceedings is the appropriate
22 mechanisms and manner in which to review the
23 decoupling mechanisms and the excess or
24 deficiencies. So, in those proceedings, the

[WITNESS PANEL: Menard|Therrien]

1 issue was identified, and it has been continued
2 to be identified, and pushed into the next case
3 or the next rate case. And, so, it has lingered
4 over a number of years. But it was initially
5 identified back in the initial first decoupling
6 mechanism filing.

7 Q And it was in -- in that filing was the testimony
8 of Mr. Simek, who is seated to my right, is that
9 correct?

10 A (Menard) That is correct.

11 Q And, in that case, it was not resolved in favor
12 of the Company. There was testimony by a -- by
13 Mr. Iqbal, who was -- I just forgot whether he
14 was with OCA or Staff at the time, and is that
15 who took a contrary view to -- that supported us
16 having to return the \$2 million, is that right?

17 A (Menard) That's correct.

18 Q And that's the position the Commission adopted in
19 that first cost of gas order?

20 A (Menard) Correct.

21 Q As you mentioned, we raised it again in the next
22 year, the Fall of '20. And, at that time, the
23 2020 rate case was in progress, it had been filed
24 several months earlier, is that right?

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) That's correct.

2 Q And is it your understanding that the
3 conversation, if you will, in the 2020 cost of
4 gas was "We'll deal with this in the rate case"?

5 A (Menard) That's correct.

6 Q And, in fact, it was dealt with in the rate case,
7 correct?

8 A (Menard) It was. The tariff was revised.

9 Q Okay. And then, the third year was in the Fall
10 of 2021, after the resolution of the rate case,
11 and that's when we applied the new tariff
12 language that had just been approved?

13 A (Menard) That's correct.

14 Q Okay. And, of course, the Commission's
15 questions -- record requests asked some questions
16 about that year three and the application of that
17 tariff, which we did address later, is that fair?

18 A (Menard) That's fair.

19 Q Okay. Thank you, Ms. Menard. Mr. Therrien,
20 please introduce yourself?

21 A (Therrien) Good morning, Commissioners. My name
22 is Gregg Therrien. I'm a Vice President of
23 Concentric Energy Advisors.

24 Q And, Mr. Therrien, you've been working with

[WITNESS PANEL: Menard|Therrien]

1 Liberty on this particular case, and we also
2 understand you played a role in the 2017 rate
3 case, on behalf of Liberty, is that correct?

4 A (Therrien) Yes, that's correct. In the 2017
5 case, I directly sponsored the decoupling
6 testimony, and I sponsored joint testimony with
7 Mr. Simek on rate design.

8 Q For the current case, your name appears on the
9 rebuttal testimony, "Exhibit 5", I believe. Is
10 it correct that you participated in the drafting
11 of that testimony?

12 A (Therrien) Yes.

13 Q Do you have any changes or corrections to the
14 portions you were responsible for?

15 A (Therrien) No.

16 Q And do you adopt that here today?

17 A (Therrien) I do.

18 Q Mr. Therrien, we'll walk briefly through a few
19 questions to orient everyone. Back in the 2017
20 case, you proposed a decoupling tariff at the
21 outset of the case. And the Commission
22 ultimately approved a decoupling mechanism the
23 following year, is that correct?

24 A (Therrien) That is correct.

[WITNESS PANEL: Menard|Therrien]

1 Q Was the tariff that you proposed in the initial
2 filing, and the tariff that was ultimately
3 approved, was it the tariff that was ultimately
4 approved at the end of the case?

5 A (Therrien) No, it was different.

6 Q Are you familiar with Tariff 10, the one that was
7 approved at the end of the case?

8 A (Therrien) I have been studying it extensively,
9 yes.

10 Q Does the structure of the Tariff 10 that was
11 approved vary from what you proposed at the
12 beginning of DG 17-048?

13 A (Therrien) Yes, it does.

14 Q They're the same or they're different?

15 A (Therrien) They're different.

16 Q Okay. Can you explain what the -- if there's a
17 fundamental difference that's relevant to us here
18 today?

19 A (Therrien) Sure. I think the biggest differences
20 in the original tariff proposed in the 2017 rate
21 case, we proposed customer class groupings. So,
22 there were three customer class groupings that
23 would have a targeted revenue per customer and an
24 actual revenue per customer.

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[WITNESS PANEL: Menard|Therrien]

1 And then, the second fundamental
2 difference is that, in the language of the
3 tariff, the target revenue per customer for those
4 groupings, those class groupings, was published
5 in the tariff. So, you can look and see if it's,
6 let's say, \$400 for the Residential Customer
7 group.

8 Q And the difference -- you said the tariff you
9 proposed had these customer groupings. How was
10 that addressed in the Tariff 10 that was
11 approved?

12 A (Therrien) So, the Tariff 10, it's my
13 understanding, through a prolonged tariff
14 discussion/settlement, which I was not part of,
15 the "customer grouping" concept was disaggregated
16 down to a "rate class" concept. So, stated
17 differently, instead of grouping customers
18 together and doing the actual versus benchmark,
19 you just did it at the class level.

20 Q And, so, relevant here, we're talking about R-3
21 and R-4, and your initial proposal, R-3 and R-4
22 would have been in the same group, aggregated
23 together with perhaps a few other rate classes,
24 is that correct?

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[WITNESS PANEL: Menard|Therrien]

1 A (Therrien) That's correct.

2 Q And the tariff that was approved got more
3 granular, and looked at each class, each rate
4 class itself, R-4, separate from R-3, separate
5 from all the others?

6 A (Therrien) That is correct.

7 Q And I said -- or, it was said in some of the
8 various comments earlier today that, in the
9 transition from the proposed tariff you drafted
10 to what was approved, some of the language
11 changes, that should have been made regarding to
12 groups and non-groups, were less than clear, is
13 that fair?

14 A (Therrien) In my opinion, they are less than
15 clear, yes.

16 Q Do you agree with Ms. Menard's testimony that
17 there's an issue with Tariff 10, in that the
18 language of the tariff creates a mismatch between
19 benchmark revenues and actual revenues?

20 A (Therrien) In my opinion, yes. It creates a
21 mismatch.

22 Q Could you please explain what you see as the
23 general problem?

24 A (Therrien) Certainly. And, if we could, it may

[WITNESS PANEL: Menard|Therrien]

1 be helpful for folks to go to Bates 1292 of
2 Ms. Menard's direct testimony in this case, the
3 attachments.

4 So, in that, and I'll wait for folks,
5 if people need that. But, and again, forgive me,
6 your question was what is -- could you repeat
7 your question, just so I can frame it properly?

8 Q Sure. So, 1292, just to be clear, is Tariff 10?

9 A (Therrien) Correct.

10 Q Okay. My question was "Please explain what you
11 see as the problem that exists in Tariff 10 that
12 brings us here today?"

13 A (Therrien) Well, the problem is that the devil's
14 in the details, so to speak. When you go to the
15 formula, and you attempt to apply the formula, it
16 creates a situation that violates the purpose of
17 the reconciling mechanism. So, --

18 Q If I may just stop you there. Where is the
19 purpose of the "reconciling mechanism" stated?

20 A (Therrien) That is on Bates 1292. This is
21 Section D, Revenue Decoupling Adjustment Factor,
22 Subpart 1, "Purpose". And I'll read the first
23 sentence, because I think it's instructive: "The
24 purpose of the Revenue Decoupling Adjustment

[WITNESS PANEL: Menard|Therrien]

1 Clause (RDAF) is to establish procedures that
2 allow the Company, subject to the jurisdiction of
3 the New Hampshire PUC, to adjust, on an annual
4 basis, its rates for firm gas sales and firm
5 transportation in order to reconcile Actual Base
6 Revenue per Customer with Benchmarked Base
7 Revenue per Customer."

8 Q Okay.

9 A (Therrien) With some emphasis on the word
10 "reconcile".

11 Q And why do you put an emphasis on that word?

12 A (Therrien) Because, when I hear the word
13 "reconcile", that means "comparing one to
14 another", and both must be stated on equal terms.

15 Q And here that's not the case, which is why we've
16 been using the word "mismatch" so often, is that
17 correct?

18 A (Therrien) And that's why I said "the devil's in
19 the details." Because, if you go further down in
20 the tariff, I'm on Bates Page 1295, and you spend
21 some time on the formula, you will see the
22 definition for "Actual Base Revenue", which is
23 denoted as "AR", and then " T_{-1} ", it says "The
24 Actual Base Revenue for the applicable Customer

[WITNESS PANEL: Menard|Therrien]

1 Class for the most recently completed Decoupling
2 Year, (T-1), as defined in Section 4(D)." And
3 then, there's an important sentence, which has
4 been discussed by many folks already today: "For
5 purposes of calculating the Actual Base Revenue,
6 base revenues for Low Income rate class R-4,
7 shall be determined on a non-discounted R-3."

8 Q So, Mr. Therrien, going back to my opening, is
9 that to say that we are comparing, applying the
10 sentence for purposes of calculating the actual,
11 that's the money in, you look at the \$40 they
12 paid, plus the \$60 discount, the non-discounted
13 payment, if you will, is that correct?

14 A (Therrien) You would look at it on a gross basis.

15 Q Right.

16 A (Therrien) So, that is correct.

17 Q And, of course, if the gross basis was \$41 they
18 paid, and you added the document, it would be
19 103, or whatever the delta would be, and off you
20 would be on your reconciliation?

21 A (Therrien) That is correct.

22 Q Okay. So, this is telling us to look at the
23 non-discounted R-4 on the actual side of the
24 equation?

[WITNESS PANEL: Menard|Therrien]

1 A (Therrien) That's correct.

2 Q And the next step is what?

3 A (Therrien) And then, the next step is the next
4 definition, capital letters "BRPC", "T-1", which
5 is "The Benchmark Base Revenue Per Equivalent
6 Bill", I'm reading now from the tariff, "for the
7 applicable Customer Class as determined in
8 accordance with Section 4(D) for the most
9 recently completed Decoupling Year, stated on a
10 monthly basis (T-1)." And then, it ends.

11 So, from a tariff construct, in my
12 opinion, we have some ambiguity, which is the
13 actuals clearly discuss how to treat R-3 and R-4,
14 while the Base Revenue Per Customer is silent,
15 which leaves that calculation open to
16 interpretation.

17 Q So, based on looking at that language you just
18 read, we could interpret "Benchmark" to say "Look
19 at" -- and "Benchmark" is what's been approved
20 that we can retain for these customers, right?

21 A (Therrien) Correct.

22 Q We look at that based on the discounted or the
23 non-discounted R-4, correct?

24 A (Therrien) Yes. It's unclear to me which was

[WITNESS PANEL: Menard|Therrien]

1 chosen, but yes.

2 Q It would -- it would allow for either, I guess?

3 A (Therrien) It could have been either.

4 Q Okay. Is there a next step to this? If you were
5 to look up to Page -- I just scrolled too far.

6 A (Therrien) Well, before we do that, I will just
7 point out that, in the original tariff, as part
8 of my prefiled testimony in the 2017 case, we
9 defined, and I testified to this earlier this
10 morning, we defined the "base amounts". So,
11 there was no ambiguity in that tariff.

12 Q And, by "base", are you saying the same thing as
13 "benchmark"?

14 A (Therrien) Correct.

15 Q So, if you go to Page -- I'll get there in a
16 minute. Bates Page 1292.

17 A (Therrien) I have that.

18 Q And it says a definition of "Actual Base
19 Revenue". I'm sorry.

20 A (Therrien) Yes, I see that.

21 Q Just bear with me for a moment, I've lost track.
22 1292, under the Section 4, "Definitions", it has
23 "Actual Base Revenue". And that tells you what?

24 A (Therrien) Well, it's defined as "the actual

[WITNESS PANEL: Menard|Therrien]

1 revenue derived from the Company's distribution
2 rates for a given Decoupling Year for a Customer
3 Class."

4 Q Okay. So, where is the ambiguity that you see in
5 the Tariff 10?

6 A (Therrien) In my mind, the biggest ambiguity is
7 the one I pointed out in the formula definitions,
8 where one clearly has the sentence that describes
9 how to treat R-3 on a gross basis, while the base
10 or the benchmark revenue is silent and does not
11 include that.

12 Q And how is that applied in the proceedings back
13 in the Fall of 2019 and 2020 in a way that we
14 claim incorrectly caused a refund to customers?

15 A (Therrien) Well, as I understand it, the
16 benchmark was set too low, meaning that it
17 included the low-income discount in that
18 calculation.

19 Q And the actuals?

20 A (Therrien) Being specifically grossed up, on a
21 gross basis, would be much higher just without
22 any other variation.

23 Q And that's the definition I just pointed you to,
24 that the actuals have to be based on the customer

[WITNESS PANEL: Menard|Therrien]

1 class, right?

2 A (Therrien) Correct.

3 Q So, if the benchmark revenues are calculated on a
4 different basis than the actual, thus the
5 mismatch, correct?

6 A (Therrien) That is correct. And that's not a
7 reconciliation, that's just a mismatch.

8 Q Have you reviewed Tariff Number 11?

9 A (Therrien) I did.

10 Q Has the language in Tariff 11 fixed the problem?

11 A (Therrien) My review of it is that it fixes the
12 problem. And it's my understanding that the
13 parties have collaborated to fix that problem,
14 and it's reflected in Tariff 11.

15 Q And Tariff 11 went into effect after the close of
16 the 2020 rate case in the -- not to be precise,
17 but in the Summer of 2021, is that fair?

18 A (Therrien) That's my understanding.

19 Q And the next reconciliation for RDAF year 3 was
20 filed after that, in the Fall of 2021?

21 A (Therrien) That's also my understanding.

22 Q Okay. And, in your opinion, when you do a
23 reconciliation like that, that was addressed in
24 the Fall of '21 in that year's cost of gas, which

[WITNESS PANEL: Menard|Therrien]

1 tariff would govern the reconciliation process,
2 Tariff 10 or Tariff 11?

3 A (Therrien) Well, you would use the tariff that is
4 approved at the time.

5 Q And, if it --

6 A (Therrien) And I believe that would be, for the
7 first eleven months, Tariff 10.

8 Q Okay. At the time of the filing, Tariff 11 was
9 in effect. So, if Tariff 11 is approved in the
10 Summer of '21, and we are filing in September of
11 '21, and a hearing in October of '21 on the
12 reconciliation. So, --

13 A (Therrien) Okay. At that time, then, if I had my
14 timing mixed up, I apologize, you would use the
15 tariff that's in effect at the time of the
16 reconciliation.

17 Q Okay. So, --

18 A (Therrien) So, if I had my timing mismatched, I
19 apologize.

20 Q Sure.

21 A (Therrien) It's very simple --

22 *[Court reporter interruption.]*

23 **CONTINUED BY THE WITNESS:**

24 A (Therrien) It's, in my mind, it's

[WITNESS PANEL: Menard|Therrien]

1 straightforward. You use the tariff that's
2 approved at the time.

3 BY MR. SHEEHAN:

4 Q Have you seen a case where a reconciling
5 mechanism applied two different tariffs over
6 portions of the reconciled year?

7 A (Therrien) I have not.

8 Q The Commission's record request is suggesting
9 that process. They have asked us to calculate
10 "What if we had applied Tariff 10 for part of the
11 year and Tariff 11 for part of the year?", is
12 that correct?

13 A (Therrien) That's correct.

14 Q And you have not seen that happen before, in your
15 experience?

16 A (Therrien) No. In my experience, I have not.

17 MR. SHEEHAN: I guess that's all I
18 have. And we can make these witnesses available.

19 CHAIRMAN GOLDNER: Okay. Thank you.
20 We'll -- pardon me -- we'll move to DOE cross.

21 MR. DEXTER: Thank you, Commissioners.

22 **CROSS-EXAMINATION**

23 BY MR. DEXTER:

24 Q I want to start where most of the direct just

[WITNESS PANEL: Menard|Therrien]

1 ended, which is to talk about the specific tariff
2 language that's at issue in this case. And the
3 witnesses have already directed us to Exhibit 1,
4 Bates Page 1292 and 1295, but I just want to make
5 sure we know what we're talking about.

6 That tariff begins on Bates Page 1284.
7 Could you explain exactly what tariff that is
8 that we've been looking at?

9 A (Menard) One second. Well, it doesn't have the
10 very first page of the tariff. But, in the upper
11 left-hand corner of Bates Page 1284, it
12 identifies as the "NHPUC Number 10 Gas" tariff.

13 Q And, in fact, on the pages that we were talking
14 about, you were just talking about, Bates 1292
15 and 1295, there are some dates and some
16 authorizations at the bottom there, correct?

17 A (Menard) Correct.

18 Q So, is it fair to say that we've been talking
19 about the tariff that came out of the 17-048 rate
20 case?

21 A (Menard) Correct.

22 Q And, with respect to the decoupling provisions
23 that we've been talking about, those were -- came
24 out of a process that wrapped up in the end of

[WITNESS PANEL: Menard|Therrien]

1 October -- no, let me rephrase the question. The
2 Commission's order in 17-048 came out in late
3 April 2017 [2018?], correct?
4 A (Menard) The initial order from the rate case?
5 Q Yes.
6 A (Menard) Correct.
7 Q But the decoupling tariff was not made effective
8 through that order, would you agree?
9 A (Menard) I believe that's correct.
10 Q And there was a six-month period where the tariff
11 was to be developed consistent with the order
12 that was issued in April, is that your
13 understanding?
14 A (Menard) Yes. That's my understanding.
15 Q And this tariff that we've been talking about is
16 the result of that six-month period, right?
17 A (Menard) Yes.
18 Q Okay. So, I wanted to go to the same place that
19 Attorney Sheehan did, which was to talk about --
20 which was to talk about "ambiguity". So,
21 Mr. Therrien just testified that, in his mind,
22 the clause that's ambiguous lies on Page 1295, in
23 the definitions that follow the formula. And,
24 more specifically, in the definition that's

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1 labeled "BRPC_{T-1}", in other words, the definition
2 of "Benchmark Revenues". Is that a fair
3 assessment of your testimony, Mr. Therrien?

4 A (Therrien) Yes.

5 Q Okay. So, then, can I conclude from that that
6 you agree that the clause right above it,
7 "AR_{T-1}", is not ambiguous? In other words,
8 that's pretty clear what it says, right?

9 A (Therrien) I agree.

10 Q Okay. And I think I heard you say that what
11 makes the "Benchmark" clause ambiguous is because
12 it's not as specific as the clause right above
13 it, which deals with the "Actual Revenue", is
14 that fair?

15 A (Therrien) Yes.

16 Q Okay. And, so, let's talk about the clause that
17 you've identified as being "ambiguous". It says
18 that "The Benchmark Revenue Per Equivalent Bills
19 for the applicable Customer Class as determined
20 in accordance with Section 4(D) for the most
21 recently completed Decoupling Year, stated on a
22 monthly basis." So, what specifically is unclear
23 in that, in that sentence, to you?

24 A (Therrien) Well, what's unclear to me, just on

[WITNESS PANEL: Menard|Therrien]

1 its face, is why the definition for AR would be
2 so specific to address the treatment for R-3, and
3 why the BRPC does not.

4 Q So, the "Benchmark" definition does refer to the
5 "applicable Customer Class", and that's a defined
6 term, correct?

7 A (Therrien) Yes. Now I just lost my page, one
8 minute please.

9 I apologize. I had inadvertently hit a
10 button and I lost my page. I'm back.

11 Q No problem.

12 A (Therrien) Would you mind repeating your question
13 please?

14 Q Yes.

15 A (Therrien) Thank you.

16 Q I was on Bates 1295.

17 A (Therrien) Okay.

18 Q And we're talking about the two definitions,
19 "Actual Revenue" and "Benchmark Revenue". And
20 your testimony was that "the Benchmark Revenue
21 was ambiguous, because it wasn't as specific as
22 the Actual Revenue." And, then, I said that the
23 Benchmark Revenue refers us to the "applicable
24 Customer Class", and "Customer Class" is a

[WITNESS PANEL: Menard|Therrien]

1 defined term, correct?

2 A (Therrien) Yes. In Definition, 4 -- Section 4,
3 Subsection d.

4 Q Okay. So, let's go up there. And I think that's
5 about three pages above.

6 So, I'm on Bates Page 1292. And I'm in
7 the "Definitions". And the term that we're
8 looking for was "Customer Class", right? That's
9 the term that's used in the "Benchmark"
10 definition, "Customer Class"?

11 A (Therrien) Customer Class, correct.

12 Q Okay. So, what's the definition of "Customer
13 Class"?

14 A (Therrien) Definition, 4, Subsection d, "Customer
15 Class is the group of all customers taking
16 service pursuant to the same Rate Schedule."

17 Q Right. So, is R-1 a rate schedule, Residential,
18 I think that's a water heating rate or a
19 non-heating rate?

20 A (Therrien) It's a non-heating rate. Yes, that's
21 a rate schedule.

22 Q And is R-3 a rate schedule?

23 A (Therrien) Yes, it is.

24 Q And what's that?

[WITNESS PANEL: Menard|Therrien]

1 A (Therrien) That's the regular Residential rate.

2 Q And is R-4 a rate schedule?

3 A (Therrien) Yes, it is.

4 Q And what's that?

5 A That's the Residential Low-Income Discount rate.

6 Q Okay. And we could go on and on through the Gs,
7 and all that. But they're all different rate
8 schedules, correct?

9 A (Therrien) Correct.

10 Q Okay. So, now, let's go back to 1295, and see if
11 we can figure out what's ambiguous. So, back to
12 the definition of "Benchmark Revenue", it says
13 "The Benchmark Revenue Per Equivalent Bill for
14 the applicable Customer Class as determined in
15 accordance with Section 4(D)", where we just
16 were, "for the most recently completed Decoupling
17 Year."

18 So, doesn't that tell you that the
19 Benchmark Revenue is determined on a separate
20 rate schedule, when you read the two of those
21 clauses together, and then, for example, R-1 and
22 R-3 and R-4 would all be calculated separately,
23 because they're all, in fact, separate rate
24 schedules?

[WITNESS PANEL: Menard|Therrien]

1 A (Therrien) They are all, in fact, separate rate
2 schedules. But, upon reading that, and to apply
3 that, you would then have created a benchmark for
4 R-4 that would have been inclusive of the
5 discount. And that's because that's what R-4
6 has, that's what the revenues include. That
7 creates an unreconcilable or a mismatch, and
8 that's not what the purpose of this entire
9 section says to do. So, we have a conflict,
10 which then leads the reader to have to interpret
11 what the right thing to do is, in my opinion.

12 Q Okay. So that the ambiguity -- so, the
13 benchmark -- the definition of "Benchmark
14 Revenue" can be figured out exactly the way we
15 just described it, according to the terms that we
16 just read. And, in fact, that's what the Company
17 did in 2019 and 2020, correct?

18 A (Therrien) I think so, yes.

19 Q Okay. But the problem that you've identified is
20 that that is, in your opinion, in conflict with
21 the "purpose" statement of the tariff?

22 A (Therrien) That's correct.

23 Q Okay. So, were either of you, Mr. Therrien or
24 Ms. Menard, involved in the drafting of this

[WITNESS PANEL: Menard|Therrien]

1 Tariff 10?

2 A (Therrien) I was not.

3 A (Menard) I was not.

4 Q And were either of you involved in the rate
5 design that came out of this case in 17-048?

6 A (Menard) No.

7 A (Therrien) Yes.

8 Q I'm sorry. So, Ms. Menard was "no"; Mr. Therrien
9 was "yes"?

10 A (Therrien) Yes. I co-sponsored the rate design
11 testimony with Mr. Simek.

12 Q Okay. All right. So, Ms. Menard, I want to go
13 back to your testimony, at Bates Page 039,
14 Line 11, for a minute. It's going to take me a
15 minute to get there.

16 So, this is sort of in the middle of
17 your testimony. And I focused on Line 11,
18 because I wanted to ask you about the word
19 "inadvertently". There's a sentence there that
20 says: "These wording changes inadvertently
21 changed the basis of the RPC targets from
22 "Customer Class Groups" to "Customer Class"."
23 Before I ask you about "inadvertently", can you
24 tell me where are we in the timeline on Page 39

[WITNESS PANEL: Menard|Therrien]

1 of your testimony?

2 I think we're talking about the period
3 from the end of April 2018, when the rate order
4 came out, and the end of the six-month period
5 where the decoupling tariff was developed, which
6 came out around November 1st. Is that the period
7 we're talking about here?

8 A (Menard) That's correct.

9 Q Okay. And, so, the wording changes that you're
10 talking about are comparing the tariff that was
11 proposed by the Company at the beginning of the
12 case for decoupling, as compared to what came out
13 of that six-month period, correct?

14 A (Menard) Yes.

15 Q Okay. And the tariff that was proposed at the
16 beginning of the case was drafted by
17 Mr. Therrien, correct?

18 A (Therrien) That's correct.

19 Q Now, no one would have expected the tariff, at
20 the end of the six-month period, to be the same
21 as the tariff that was submitted at the beginning
22 of the case, back in the summer of 2017, because
23 the revenue decoupling mechanism was
24 fundamentally changed, would you agree?

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[WITNESS PANEL: Menard|Therrien]

1 A (Therrien) And, if -- I need to ask, if I may, a
2 clarifying question?

3 Q Sure.

4 A (Therrien) When you say "fundamentally changed",
5 are you referring to the "Customer Class", rather
6 than the "Customer Group"?

7 Q Well, there were a number of changes that I
8 remember. One was that, that the tariff -- the
9 mechanism that you proposed, and for which you
10 drafted a tariff at the beginning of the case,
11 was not done on a "per customer" basis, the
12 decoupling was being done on a "per company"
13 basis. Do I have that right?

14 A (Therrien) No, you do not, sir.

15 Q Okay. So, --

16 A (Therrien) It was "per customer".

17 Q It was on a "per customer" basis?

18 A (Therrien) Correct.

19 Q Okay. And the beginning tariff that you proposed
20 didn't have a weather-normalization adjustment,
21 agreed?

22 A (Therrien) Well, partial agreement. It didn't
23 have a customer-level weather-normalization
24 adjustment. It did include the impact of weather

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[WITNESS PANEL: Menard|Therrien]

1 in the overall calculation of the decoupling.

2 Q Sure. But it didn't have the real-time per
3 customer weather calculation that came out of
4 that case, would you agree?

5 A (Therrien) I would, yes.

6 Q So, that's a fundamental change, wouldn't you
7 agree?

8 A (Therrien) When I hear the word "fundamental", I
9 think of the intent of what decoupling is. And
10 the purpose of decoupling, fundamentally, is to
11 disassociate the Company's sales from its
12 revenues, and its revenue requirement. That is
13 true, whether you apply that on a "per company"
14 basis or "per class" basis or "per customer
15 group" basis. Whether or not it includes weather
16 within the overall decoupling adjustment or
17 whether it has a specific customer-level weather
18 adjustment, the fundamentals of decoupling remain
19 the same.

20 Q Okay. All right, fair enough. Let me get back
21 to where I was before. I got off on a tangent
22 there.

23 Back on Ms. Menard's testimony, Page
24 39, Line 11, it says: "The wording changes

[WITNESS PANEL: Menard|Therrien]

1 inadvertently changed the basis of the RPC
2 targets from "Customer Class Groups" to "Customer
3 Class"." Ms. Menard, I wanted to ask you what
4 led you to the conclusion that "these changes
5 were inadvertent"?

6 A (Menard) I think, when you look at the nature of
7 how the RPC was calculated initially, how it was
8 initially intended to be calculated, R-3 and R-4
9 were together. And, so, when you change the
10 wording from "Customer Class Groups" to "Customer
11 Class", that's the inadvertent.

12 Q But you weren't there? In other words, you
13 didn't -- if it was inadvertent that, you know,
14 unintentional, accidental, you weren't involved
15 in any of that, right?

16 A (Menard) Correct.

17 Q That's your observation looking backwards, that
18 it appears to you that it was an inadvertent
19 change?

20 A (Menard) Correct.

21 Q Okay. And I had a similar question on Bates
22 Page 041. And I want to make sure that I know
23 what we're talking about on Bates Page 041.

24 Bates Page 041, Line 5, says: "This

[WITNESS PANEL: Menard|Therrien]

1 change in language inadvertently required the
2 allowed revenue targets (or Benchmark Base
3 Revenue per Customer) to be set individually for
4 the R-3 and R-4 customer class, which thus caused
5 the low-income discount to be included in the R-4
6 targets."

7 We're talking about the same thing here
8 that we were talking about on Page 39, correct?
9 It's the same language change?

10 A (Menard) That's correct.

11 Q So, the answers regarding "inadvertent" would be
12 the same?

13 A (Menard) Yes.

14 Q Okay. Now, the tariffs are proposed by the
15 Company, would you agree?

16 A (Menard) The tariffs are initially proposed by
17 the Company. And we have discussions throughout
18 proceedings with parties. And there might be
19 changes that parties recommend. And we
20 ultimately come up with a final version, yes.

21 Q And, in this case -- well, I should have been
22 more specific. The tariff we're talking about
23 here is a compliance filing, came at the end of
24 the case, right?

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) Yes.

2 Q So, this was developed by the Company, would you
3 agree?

4 A (Menard) The compliance tariff was developed by
5 the Company. But, again, there's discussions
6 that happen throughout a case where changes are
7 suggested, agreements are made, you come to a
8 consensus on what should be in there, and a final
9 compliance tariff is filed by the Company, yes.

10 Q Okay. And, in fact, there's an officer's name at
11 the bottom of every tariff that you file, right?
12 In this case, I believe it was the president of
13 the Company at the time?

14 A (Menard) Correct.

15 Q Okay. When you say a "consensus", is it your
16 position that this tariff was a consensus between
17 various groups? And, if so, which groups?

18 A (Menard) Again, I wasn't involved in the
19 discussions. But, you know, knowing how
20 conversations happen throughout a case, yes,
21 there are discussions, there's discovery that
22 happens, there's questions asked of the Company.
23 And you ultimately come up with, you know, where
24 parties agree in a case.

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[WITNESS PANEL: Menard|Therrien]

1 Q But, in this instance, you'll recall that this
2 case, in fact, wasn't settled, it was fully
3 litigated, except for the issue of return on
4 equity. Is that your understanding?

5 A (Menard) The final number was fully litigated,
6 yes.

7 Q As well as the decoupling clause, would you
8 agree?

9 A (Menard) Yes.

10 Q Okay. Now, I want to go forward to Bates
11 Page 050 or so in your testimony, and this talks
12 about another docket, DG 19-145, which I believe
13 in direct you --

14 A (Menard) Which page?

15 Q Sure. Bates Page 050.

16 A (Menard) Okay, I'm there.

17 Q So, I'm down around Page 11 -- I'm sorry, Line
18 11, on Bates Page 050. You talk about
19 "September 2019", and the question asked in the
20 testimony is "did the Company recognize there was
21 a potential mismatch between Benchmark and Actual
22 Revenues?" And the answer is "Yes." You would
23 agree, right?

24 A (Menard) I say that in the testimony, yes.

[WITNESS PANEL: Menard|Therrien]

1 Q And, for the next ten or so pages, you discuss --
2 you discuss this very -- you discuss how this
3 mismatch was handled in 19-145, is that right?

4 A (Menard) That's correct.

5 Q So, is it, you know, again, I know you weren't --
6 you weren't there for this, right? You weren't
7 involved in 19-145?

8 A (Menard) No, I was not.

9 Q But, looking back, the way we are, --

10 A (Menard) Sure.

11 Q -- is it your assessment that this issue was --
12 that this mismatch was made clear? In other
13 words, did parties -- did Liberty raise the
14 mismatch, and Staff of the PUC at the time
15 understood the Company's concerns about a
16 mismatch? Is that the impression you get from
17 reading the documents?

18 A (Menard) I have the benefit of history, just
19 looking back as an objective observer in this
20 case. And, yes, I can see the issue was raised.
21 I'm not sure parties fully understood.

22 Q Okay. On Page 56, you include a quotation from
23 Staff's testimony, I believe.

24 A (Menard) Sorry, what page?

[WITNESS PANEL: Menard|Therrien]

1 Q It's Bates Page 056. And the footnote -- there's
2 a big quote in the middle of the page, and the
3 footnote tells us that this is the "Testimony of
4 Mr. Iqbal, Exhibit 5 in 19-145." Do you see that
5 quote?

6 A (Menard) On Line 5? Line 12?

7 Q Bates 056, the quote starts on Line 12.

8 A (Menard) Yes.

9 Q And the last sentence says -- of that quote says
10 "The intent of RDAF and tariff language match
11 perfectly in this context." And that's a pretty
12 clear statement, would you agree? In other
13 words, that lays out what Mr. Iqbal's thinking
14 was at the time. Would you agree?

15 A (Menard) I would agree, if I pull that apart,
16 "the intent of RDAF", again, the purpose, "and
17 the tariff language match perfectly". You know,
18 I think we've laid out in the case that that's
19 not true. But that is -- I would agree with you,
20 that was the understanding of Staff at the -- I
21 believe it was Staff at the time.

22 Q Yes. Fair enough. That I'm not expecting that
23 you would agree with the statement. But the
24 point I wanted to make was that it's not --

[WITNESS PANEL: Menard|Therrien]

1 everybody here, looking back, can read this quote
2 that you've provided and see where Staff stood at
3 the time?

4 A (Menard) Yes.

5 Q Okay.

6 A (Menard) But, if, you know, if you think about
7 what the months of investigation we've gone
8 through just in this case looking back, and the
9 amount of time that was spent looking through
10 this issue back at that time of reconciliation,
11 you know, we have dug into every aspect of this
12 reconciliation. We've gone back to how the
13 revenue requirement was calculated.

14 So, you know, I'm not going to dispute
15 that statement. I just don't know how much
16 digging into the actual issue was done at that
17 time.

18 Q Okay. And the result of that case, in 19-045,
19 was that the Commission adopted a position that
20 was consistent with what Mr. Iqbal's testimony
21 said, not what the concern that was initially
22 raised by the Company, agreed?

23 A (Menard) Agreed.

24 Q Okay. So, moving down to Bates Page 063 in your

[WITNESS PANEL: Menard|Therrien]

1 testimony, --

2 A (Menard) Bates 063?

3 Q 063, yes. And I'm looking specifically at Line
4 13. The question that's asked in the testimony
5 is "Why did the Company agree to an incorrect
6 solution in the 2018-2019 cost of gas
7 proceeding?" And the answer was "The Company did
8 not know for sure at the time that the approach
9 recommended by Commission Staff was, in fact,
10 wrong."

11 And then, later on, the next sentence
12 says "Again, Commission Staff and other parties
13 were attempting to construe the relevant
14 provisions of the Approved Decoupling Tariff and
15 it was difficult to come to the conclusion that
16 the tariff [page] provisions were just wrong."

17 So, your testimony here says that "the
18 tariffs are wrong." It doesn't say they're
19 ambiguous. I guess I'm asking, what did you mean
20 by "just wrong"? In other words, it produced the
21 wrong result, based on the purpose of the tariff,
22 is that what we're hearing today?

23 A (Menard) Again, you have to put yourself in that
24 time where you're going through a reconciliation

[WITNESS PANEL: Menard|Therrien]

1 docket under a very short time period. And an
2 issue is identified, the Company and Staff are
3 trying to resolve that issue. Parties could see
4 that something was not happening correctly,
5 because it is clearly violating what everyone
6 assumed decoupling would -- the outcome would be.

7 And, so, at the time, parties didn't
8 come to the conclusion that "the tariff was
9 wrong", and that's the statement that "it was
10 difficult to come to the conclusion that the
11 tariff provisions were wrong."

12 Q Well, I mean, Mr. Iqbal's testimony came to the
13 opposite conclusion, he said "the tariffs made
14 perfect sense." So, we're not talking about
15 Staff at this point. I think what I'm asking is,
16 is the Company at this point has determined that
17 "the tariffs are just wrong"?

18 A (Menard) The statement says "the Company,
19 Commission Staff, and other parties were
20 attempting to construe the relevant provisions of
21 the Approved Decoupling Tariff and it was
22 difficult to come to the conclusion that the
23 tariff provisions were just wrong." So, parties,
24 in reviewing the tariff, in reviewing the

[WITNESS PANEL: Menard|Therrien]

1 decoupling mechanism within the context of the
2 reconciliation docket, it was difficult to come
3 to that conclusion that the tariff was wrong.

4 Q Right. And, in fact, Mr. Iqbal came to the
5 opposite conclusion. So, I guess what I'm asking
6 is, is it the Company's conclusion that the
7 tariffs were just wrong?

8 A (Menard) I think we have established that there
9 are components within the tariff where it is, if
10 you follow the tariff, as the Company did in that
11 reconciliation docket at that time, there was a
12 mismatch, and it did not align with what the
13 Company intended revenue decoupling to produce.

14 Q Okay. Okay, thanks. So, I want to switch topics
15 to something that Staff has raised in its
16 testimony, and we'll get into it with the Staff
17 witnesses. But I want to talk for a moment about
18 the calculation of the revenue requirement in
19 17-048.

20 And, rather than go through the various
21 models that have been provided, and we appreciate
22 them, by the way. I should have said this at the
23 outset. The Company provided a tremendous amount
24 of information in discovery in this case,

[WITNESS PANEL: Menard|Therrien]

1 including live Excels that we didn't have
2 anymore. And, so, I wanted to -- I want to just
3 point that out to the Bench, that I think Liberty
4 has been extremely forthcoming in information in
5 this case. And a lot of it is attached to
6 Dr. Arif's and Mr. Thompson's testimony, which
7 we'll get to later on. But, anyway, I just
8 wanted to point that out.

9 But I'm not going to go into the models
10 right now. But we had a lot of tech sessions, a
11 lot of conversations. And, around April, we
12 posed three questions to the Company via email.
13 It was getting late in the process, I guess, and
14 that's why it didn't go through the formal
15 discovery process. And, so, the answer came out
16 in an email, rather than a formal data request.
17 But I wanted to ask a bit about that email.

18 Now, to find the email, we have to go
19 to Exhibit 4, which is Dr. Arif and Mr.
20 Thompson's testimony, and we have to go to Bates
21 Page 4 -- right around Page 422. So, I'm going
22 to take a minute to get there myself.

23 Do the witnesses have it?

24 A (Menard) Yes.

[WITNESS PANEL: Menard|Therrien]

1 MR. DEXTER: How about the Bench?

2 WITNESS THERRIEN: Bates page?

3 MR. DEXTER: I'm finding the beginning
4 of the email on Bates Page 422 in Exhibit 4.

5 WITNESS MENARD: Thank you.

6 MR. SHEEHAN: And, for the record, this
7 is an email from me. But, obviously, I had --
8 it's not my answers, it's the Company's response.
9 And, so, I'm just stating that.

10 MR. DEXTER: Again -- no, fair enough.
11 And, again, this, you know, probably should have
12 taken a different form, but this is how the
13 answer came, and the answer is valuable. So, the
14 Department decided to put the email into the
15 record. So, that's where we are today.

16 BY MR. DEXTER:

17 Q Ms. Menard or Mr. Therrien, are you familiar with
18 this email and the responses? I see, Ms. Menard,
19 you were copied on it.

20 A (Menard) I'm familiar, yes.

21 Q Okay. Good. So, --

22 A (Therrien) I was not copied on it. But I have
23 read it in preparation for this hearing.

24 Q Okay. Good. So, the gist of this email was to

[WITNESS PANEL: Menard|Therrien]

1 talk about, and, in fact, I think the question --
2 it raises three questions. And, on Bates Page
3 423, it states: "Note - The point of this
4 request is: How were the test year RLIAP
5 revenues (which we understand total about 1.6
6 million) how are they reflected in and traced
7 through the revenue requirements model." So, the
8 purpose of the question --

9 A (Menard) Where do you see that question?

10 Q That was sort of a note at end of Question 1.c,
11 sort of a summary note to Question 1. Question 1
12 had three parts.

13 But do you see that? It's in the
14 middle of Bates Page 423. "The point of this
15 request is: How were the test year", "TY" --

16 A (Menard) Oh, yes. I see it.

17 Q -- "test year RLIAP revenues" --

18 A (Menard) Yes.

19 Q -- reflected in the revenue requirements model."

20 A (Menard) Yes.

21 Q And "RLIAP" stands for "Residential Low-Income
22 Assistance Program", correct?

23 A (Menard) That's correct.

24 Q That's the discount offered to the R-4 customers,

[WITNESS PANEL: Menard|Therrien]

1 correct?

2 A (Menard) Correct.

3 Q Okay. And the test year amount of that discount
4 was roughly 1.6 million, agreed?

5 A (Menard) Yes.

6 Q Okay. So, if you go to Bates Page 422, and you
7 go to the last paragraph on Bates Page 422, the
8 blue print -- the blue text is the answer from
9 the Company, correct?

10 A (Menard) Yes.

11 Q And the black text is the email that we sent?

12 A (Menard) Yes.

13 Q And the first sentence says "The amount of the
14 RLIAP revenues that were credited to expense
15 account 804.2 during 2016 was \$1.6 million." So,
16 again, that's the RLIAP revenue. That was
17 accounted for as a negative gas cost, rather than
18 as a revenue. Is that your understanding?

19 A (Menard) That's true.

20 Q Okay. And then, in the last sentence, it says
21 "Also, note that the balance of the 804 accounts
22 were removed from tab RR-EN-2-1 within the
23 revenue requirements model on line 8." So, I
24 read that as saying that "the RLIAP revenue, that

[WITNESS PANEL: Menard|Therrien]

1 was recorded as a negative gas cost, was removed
2 from the revenue requirements calculation." Do
3 you agree with that?

4 A (Menard) No. That's the -- sorry, we're talking
5 about the expense?

6 Q No, we're talking about the revenues, but the
7 revenues were recorded as a negative gas cost, is
8 what we were told from the Company.

9 A (Menard) So, an expense. Right.

10 Q They were recorded as a negative expense to
11 804.2, Account 804.2?

12 A (Menard) Right. So, they were removed from the
13 expense.

14 Q They were removed from the expense. And, so,
15 therefore, they didn't factor into the revenue
16 requirements calculation, would you agree?

17 A (Menard) No. They were included in the revenue
18 requirements calculation.

19 Q Then, why does it say they "were removed" in the
20 last sentence?

21 A (Menard) From the expense.

22 Q No, it's not what it says. It says "the accounts
23 were removed", 804 is an expense account, "the
24 accounts were removed from the revenue

[WITNESS PANEL: Menard|Therrien]

1 requirements model."

2 A (Menard) If you'd like to walk through RATES-5,
3 we can do that. But, yes. It was -- so, within
4 the revenue requirements calculation, the RLIAP
5 revenue is included in the overall revenue
6 requirement.

7 Q Well, I'm not referring to RATES-5, which is a
8 rate design schedule. I'm referring to a revenue
9 requirements model. And I can go through it, or
10 I can go through it with my own witnesses. And
11 let me think about that, what might be the
12 easiest way to do it.

13 But I'm not talking about the rate
14 design, which happens on Schedule RATES-5. I'm
15 talking about the development of the revenue
16 requirement in the case. And that's what this
17 question was about in the email. So, we'll let
18 the email speak for itself, I guess.

19 A (Menard) Sure. And I think, in our rebuttal
20 testimony, we have incorporated the description
21 of the revenue requirement and how it was
22 calculated.

23 Q Okay.

24 A (Menard) We've incorporated this email in a

[WITNESS PANEL: Menard|Therrien]

1 clearer format.

2 Q Okay. So, I was talking just then about the
3 "RLIAP revenues", which were recorded as a
4 negative gas costs in Account 804.2.

5 A (Menard) In the expense, yes.

6 Q And, now, I want to talk about the cost of
7 serving R-4 customers. On Bates Page 424,
8 Paragraph 1, it says, in blue print, which means
9 it comes from the Company, "The "cost of service"
10 is determined through a review of the Company's
11 proposed revenue requirement. The proposed
12 revenue requirement reflects the total
13 (representative) cost of serving all customers.
14 [That] the rate that a low-income customer pays
15 is actually irrelevant to this analysis." So, I
16 read that to say that "the cost of serving all
17 customers, including R-4 customers", and that
18 would be costs like plant and payroll and
19 depreciation and taxes. All of those costs are
20 incorporated into the revenue requirement
21 calculation. Would you agree?

22 A (Menard) Yes. So, if you -- if you were to think
23 of the cost to serve customers, so, an R-4
24 Customer is an R-3 customer. It's a residential

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[WITNESS PANEL: Menard|Therrien]

1 customer that uses gas, right? And, so, when you
2 calculate the Company's revenue requirement, the
3 cost to serve our customers, you factor in all
4 the expenses, depreciation and taxes, all those
5 types of things, and the return on the Company's
6 rate base. You develop that revenue requirement
7 for all customers, residential customers, and we
8 don't necessarily think of them as a low-income
9 versus another type of customer. You take that
10 overall revenue requirement, and then you go
11 through an allocation, and then you get into the
12 rate design process.

13 But, when you're calculating the
14 revenue requirement, the amount of revenue that
15 the Company should receive to serve distribution
16 company customers, you do it at a total level.
17 So, you don't worry about the low-income discount
18 at that time. So, it is included in the revenue
19 requirement. And that is what that Item 1 is
20 trying to say. "The rate that the low-income
21 customer", "the rate that the low-income customer
22 will actually pay is irrelevant" to the revenue
23 requirement calculation.

24 Q Right. I agree with all that.

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) Okay.

2 Q Very well -- very well and very well clearly
3 stated, I agree with that completely. But I'm
4 still stuck on this revenue question that I asked
5 a minute ago. Because part of a revenue
6 requirement calculation, as I understand it, is a
7 revenue figure, because you're working from a net
8 income figure, which is revenue, less expenses.

9 A (Menard) Yes.

10 Q And, so, --

11 A (Menard) Can I -- and, if I can say, so, again,
12 going back to the revenue requirement, it's the
13 amount of expenses, plus return that the Company
14 needs to collect from customers to serve its
15 customers. You're talking about something
16 different, you're talking about a "deficiency".
17 When we talk about "revenue requirement", it's
18 the overall cost to serve the customers.

19 Q So, maybe I was -- maybe I was using the terms
20 "revenue requirement" and "revenue deficiency" --

21 A (Menard) Yes.

22 Q -- interchangeably, and maybe I shouldn't?

23 A (Menard) Yes.

24 Q So, in calculating a revenue deficiency, you

[WITNESS PANEL: Menard|Therrien]

1 agree that there is an input into that
2 calculation, which includes test year revenues or
3 adjusted revenues? There's a revenue figure in
4 there, would you agree?

5 A (Menard) Yes. When you're comparing one number
6 to another number, that calculates your
7 deficiency, correct.

8 Q And would you agree that the RLIAP revenues back
9 in that calculation were excluded from that
10 calculation, because they were removed from that
11 calculation as negative gas costs?

12 A (Menard) Sorry, from which calculation?

13 Q The revenue deficiency calculation that came out
14 of 17-048?

15 A (Menard) No, I don't believe so. If you can walk
16 me through, I can walk through it with you.

17 CHAIRMAN GOLDNER: Mr. Dexter, this
18 might be a good time for a break. If you're
19 amenable to that, we can maybe take 10 or 15
20 minutes?

21 MR. DEXTER: Yes.

22 CHAIRMAN GOLDNER: Unless you were
23 right at the end of your testimony and you'd like
24 to keep going?

[WITNESS PANEL: Menard|Therrien]

1 MR. DEXTER: No, that would be helpful,
2 because I am deciding whether to try to go
3 through that. It's going to be very tedious, or
4 whether to do it through my witnesses.

5 So, I'd like to discuss that with Dr.
6 Arif, and a 15-minute break would be helpful.

7 CHAIRMAN GOLDNER: Okay. Thank you.
8 Let's return at 11:15. Off the record.

9 *(Recess taken at 10:59 a.m., and the*
10 *hearing resumed at 11:19 a.m.)*

11 CHAIRMAN GOLDNER: Okay. We'll go back
12 on the record, and pick up with Attorney Dexter.

13 MR. DEXTER: Okay. Thank you.

14 BY MR. DEXTER:

15 Q When we broke, we were questioning whether or not
16 the RLIAP revenues, which the Company in 2016
17 recorded as negative gas costs, were included in
18 the revenue deficiency calculation? And I think
19 your answer was that "they were", is that right?

20 A (Menard) I think I had asked you to walk me
21 through where you were looking, so that I could
22 understand your question.

23 Q Okay. So, I can do that, and maybe we should do
24 it, but let me just ask you this question first.

[WITNESS PANEL: Menard|Therrien]

1 When you're calculating a revenue deficiency, --

2 A (Menard) Uh-huh.

3 Q -- you start with the Company's total books, and
4 you subtract out things that don't flow through
5 to the distribution operations, correct? Things
6 like gas costs?

7 A (Menard) Correct.

8 Q Okay. And, so, if these revenues were recorded
9 as gas costs, it makes perfect sense that they
10 would have dropped out of the calculation before
11 you even calculated the revenue deficiency,
12 wouldn't you agree?

13 A (Menard) So, I'm sorry to keep saying this, but
14 can you walk me through the numbers that you're
15 going through, because then I can tell you what's
16 in revenues and what's not? Because the revenue
17 deficiency is the difference between revenues at
18 a certain point in time and revenues at a new
19 point in time.

20 So, if we're talking about the
21 difference between the test year revenue
22 requirement level and the new revenue requirement
23 level that makes up that revenue deficiency, then
24 I can tell you what's in this revenue requirement

[WITNESS PANEL: Menard|Therrien]

1 and what's in this revenue requirement.

2 So, if we could walk through, and,
3 again, a revenue deficiency calculation is, you
4 know, if we were to walk through an example, I
5 can clearly lay out how the revenues play into
6 whatever that starting point is.

7 Q Okay.

8 A (Menard) But I need to understand the starting
9 point, because it's just --

10 Q Sure.

11 A (Menard) -- it's just a calculation between two
12 points in time.

13 Q Okay, we'll give it a try. So, if you were to
14 look at DOE's joint testimony, Attachment 4, at
15 the back, where it's described, it's labeled
16 "Liberty's Revenue Requirement Model of Final
17 Attachment".

18 A (Menard) Can you give me the Bates page?

19 Q Well, I wanted to do it with the Excel sheet,
20 because Bates pages I don't know that they --

21 A (Menard) I don't have an Excel sheet.

22 Q -- that they calculate it very well.

23 A (Menard) If you can just point me to the page, I
24 can try to --

[WITNESS PANEL: Menard|Therrien]

1 Q Well, let me see if I can find it. I think I'm
2 there. So -- no, not quite.

3 (Short pause)

4 BY MR. DEXTER:

5 Q There we go. Thanks. The schedule I wanted to
6 look at is Schedule RR-EN-2, Page 10 of 83, and
7 it appears in Exhibit 4 at Bates Page 200. And
8 it's entitled the "Operating Income Statement-
9 EnergyNorth".

10 A (Menard) Okay. I'm there.

11 Q Now, in this calculation, I think what we've been
12 now talking about is the revenue deficiency, it
13 appears in the column "Proposed Increase", and
14 it's \$13 million, roughly, is that right?

15 A (Menard) On Line 2, yes.

16 Q Line two. That's the revenue deficiency. Right?

17 A (Menard) Yes. I see that on the previous page,
18 the "Revenue Deficiency", Line 13.

19 Q Yes. It's on Page 199 also, but I wanted to look
20 at Page 200. So, this revenue deficiency is --
21 this worksheet starts with the Company's total
22 books in the first column, it's called "Test Year
23 Ended December 31st, 2016", has revenues of \$120
24 million, expenses of \$186 million, something like

[WITNESS PANEL: Menard|Therrien]

1 that, I've got to make this a little bigger. Do
2 you see that first column? That's the Company's
3 books, right?

4 A (Menard) The first column, yes.

5 Q Okay. The next column takes out the cost of gas
6 and the LDAC, would you agree?

7 A (Menard) Yes.

8 Q And then, the next column says "Distribution
9 Operating Income". That's the distribution
10 operating income where you calculate the revenue
11 deficiency, because you have taken out all the
12 gas costs and the LDAC, agreed?

13 A (Menard) Well, it gets you to your net income,
14 right, on Line 18, the \$18 million?

15 Q Right. And that becomes the basis for the
16 revenue deficiency, you see what your -- you see
17 what your current distribution income is, you
18 make some known and measurable changes, you
19 compared to your required net income, and the
20 difference is the revenue deficiency, right?

21 A (Menard) Right. But your revenue deficiency, if
22 you were to go to the prior page, that's where
23 your -- that's your revenue deficiency. So, what
24 are you collecting at current rates? So, what is

[WITNESS PANEL: Menard|Therrien]

1 the Company allowed under current rates? And
2 then, what is the Company's new proposed rate
3 level? And then, that's the deficiency.

4 Q Right. And that same \$18 million of operating
5 income requirement that's on Page 200 is also on
6 Page 199, isn't it?

7 A (Menard) Which one? Sorry.

8 Q You had mentioned an operating income figure of
9 \$18 million?

10 A (Menard) Yes.

11 Q Okay. So, my point is, that I'm trying to get
12 to, which I think we're -- I don't really think
13 there's a disagreement here, is that, in
14 calculating the revenue deficiency, you removed
15 gas costs and LDAC from the calculation, as shown
16 by column 2. It's all taken out before you get
17 to the revenue deficiency calculation, right?

18 A (Menard) Yes.

19 Q Okay. Now, you had testified before that you --
20 that you had told us, and that, in fact, RLIAP
21 revenues were recorded as negative gas costs in
22 Account 804.2. Agreed?

23 A (Menard) Yes. An expense, yes.

24 Q Right. You would agree that that -- whatever was

[WITNESS PANEL: Menard|Therrien]

1 in Account 804.2 is in that figure on Line 7,
2 column 2, 45,726,000, that's -- all that gas
3 costs is taken out, agreed?

4 A (Menard) I believe so. Looking right here right
5 this minute, I can't prove that. But, subject to
6 check, yes.

7 Q Okay. That's the point, that's the only point I
8 was trying to make on this. And I'll go through
9 it again further with my witnesses.

10 A (Menard) But, just to be clear, that's the
11 revenue deficiency. So, we're talking about, you
12 know, what the Company is collecting, and how
13 rates are established, where we look at the
14 revenue requirement.

15 Q Right. So, the revenue deficiency in DG 17-048,
16 although it was calculated at a requested amount
17 of roughly \$13 million, the end result of that
18 case was a revenue deficiency of I think it was
19 8,060,117, or something like that, roughly \$8
20 million. Do you recall that?

21 A (Menard) Yes.

22 Q Okay.

23 A (Menard) And, again, when you're adding your
24 revenue deficiency, you know, what is your

[WITNESS PANEL: Menard|Therrien]

1 starting point? So, you've got to understand
2 your base level, and what's included in that base
3 amount, and then you add on your revenue
4 deficiency, and then that gets you to your
5 revenue requirement, which is then allocated.

6 Q Which is then used to design the rates?

7 A (Menard) Yes.

8 Q And that's done on RATES-5?

9 A (Menard) Correct.

10 Q Okay. So, let's go to RATES-5 for a minute.

11 RATES-5 is a rate design worksheet. We'll use
12 the *pdf* version that came out of DG 17-048. It
13 was provided in the DOE's joint testimony as
14 Attachment 2. And it's labeled "Exhibit 90" from
15 that case. So, let me see if I can find that.

16 [Short pause.]

17 **BY THE WITNESS:**

18 A (Menard) Bates Page 376, I believe.

19 BY MR. DEXTER:

20 Q So, I'm on the Department's joint testimony,
21 starting at Bates Page 186.

22 A (Menard) I'm there.

23 Q And this is a fairly complicated spreadsheet that
24 goes on for four -- for four pages. But what I

[WITNESS PANEL: Menard|Therrien]

1 want to ask you is whether -- we've been talking
2 about "revenue requirement" and "revenue
3 deficiency", and I think you said you have to
4 know what the revenue deficiency is or the
5 revenue requirement is when you design the rates.

6 I'm looking at this sheet on Page 1,
7 and I'm looking in the lines, roughly, 39, 40,
8 41, 42, in that area.

9 A (Therrien) Yes, I see that.

10 Q Is the revenue requirement that the rates were
11 designed on contained on those lines, and, if so,
12 which one of those lines?

13 A (Therrien) You design rates based on the total
14 revenue requirement, less special contract
15 revenues, because those are not tariff rates, and
16 less other revenues. So, that would be the base
17 rate revenue requirement, exhibit line 41,
18 revenue amount of "\$76,958,801".

19 Q And does that number include the \$8 million
20 revenue deficiency that came out of the case?

21 A (Therrien) Yes, it does.

22 Q Okay. So, that was a long way to get there, but
23 thank you.

24 A (Menard) But just --

[WITNESS PANEL: Menard|Therrien]

1 Q Okay.

2 A (Menard) Sorry. Can't let it go. The basis of
3 that, I think we were talking about the \$77
4 million, is the discounted revenues of
5 \$72 million, plus the \$8 million revenue increase
6 that was agreed upon. It gets you to \$80
7 million, roughly, and then there's a tax
8 reduction of about \$2.7 million. That gets you
9 to your \$77 million. So, then, you got to take
10 out, you know, the special contract and other
11 revenues. And then, you add in your RLIAP
12 discount. And then, you add in the step
13 adjustment. And, so, then that gets you to your
14 full revenue requirement that you are then
15 allocating and designing rates on.

16 And, so, you design your rates on your
17 full revenue requirement, including the discount.
18 So, again, you got to know your starting point,
19 whether that's discounted or not, as to whether
20 you added it in correctly or not, allocate those
21 costs to your rate classes. And then, at the
22 very end, when you're designing your rate, that's
23 when you discount it.

24 Q I'm not sure I followed all that. But let me --

[WITNESS PANEL: Menard|Therrien]

1 you don't disagree with what Mr. Therrien just
2 said, that the \$8 million revenue deficiency is
3 included --

4 A (Menard) I do.

5 Q -- in the \$70 million -- \$77 million --

6 A (Menard) And I think I just stated that.

7 Q You do disagree?

8 A (Menard) No. I don't disagree.

9 Q You don't disagree?

10 A (Menard) Right.

11 Q Okay. I thought so. Okay. So, I want to finish
12 up by taking about DG 20-105. And, as I
13 indicated in a letter about a week ago, and in
14 preliminary matters this morning, I wanted to
15 refer to Exhibit 5 from that case.

16 MR. DEXTER: And I have paper copies of
17 it, or people can go to Exhibit 5, whatever
18 works.

19 CHAIRMAN GOLDNER: We're okay. Thank
20 you.

21 BY MR. DEXTER:

22 Q Do the witnesses have Exhibit 5 from DG 20-105?

23 A (Menard) I do. We can share.

24 Q Okay. Are you familiar with what this exhibit

[WITNESS PANEL: Menard|Therrien]

1 was? And, if so, can you describe it?

2 A (Menard) I am familiar from our discussions. It
3 is -- Exhibit 5 is the -- I guess I'll call it
4 the "Comparison of Temporary and Permanent
5 Revenue Requirements". There was an original,
6 and updated calculation, and then a final
7 proposed revenue requirement as part of that
8 case.

9 Q Right. And this schedule was proposed during the
10 temporary rate phase in that case, would you
11 agree?

12 A (Menard) I believe that's correct. It was early
13 on in the case.

14 Q Okay. And, so, I want to look at -- I'm only
15 looking at Page 1 of this exhibit, which is a
16 horizontal sheet. And it's got three columns
17 called "Temporary", and two columns called
18 "Permanent" on the right-hand side. So, I
19 just -- that's what you have in front of you,
20 right?

21 A (Menard) Correct.

22 Q Okay. So, I just want to look at the right-hand
23 column that's called "Permanent". And, when DG
24 20-105 was filed, the Company requested a 13 and

[WITNESS PANEL: Menard|Therrien]

1 a half million dollar revenue deficiency. Do you
2 recall that?

3 A (Menard) Yes. That's in that column.

4 Q And that column shows -- that figure shows up in,
5 these columns aren't numbered, but in the column
6 called "Original (booked) Bates II-133",
7 "Proposed Revenue Increase 13,497,000", right?

8 A (Menard) Yes.

9 Q Okay. And up above, on the third line, where it
10 says "LDAC Low Income Revenue", the figure in
11 this column for LDAC Low Income Revenue is zero,
12 correct?

13 A (Menard) Correct.

14 Q Now, the next column, which represents an update
15 by the Company, or a "Proposed Revenue as of
16 August 1st, 2021", which was after the case was
17 filed, the revenue -- the "Proposed Revenue
18 Increase" is \$6.4 million, correct?

19 A (Menard) Correct.

20 Q And, in the line for "LDAC Low Income Revenue",
21 we have "2,106,802". Agreed?

22 A (Menard) Agreed.

23 Q Can we conclude from that that, in calculating
24 the revised revenue deficiency in August of 2021,

[WITNESS PANEL: Menard|Therrien]

1 that the Company included the LDAC Low Income
2 Revenue in its revenue -- requested revenue
3 increase calculation?

4 A (Menard) So, the Company requested a revenue
5 requirement, and that's that line, you see the
6 \$99 million, that did not change. It's just,
7 again, it's the starting point, and how you get
8 from the starting point to your end revenue
9 requirement.

10 So, the first line is your current
11 level of operating revenue, and then your -- that
12 last bolded line is your "Proposed". And, so,
13 once -- you're just trying to make sure you're
14 comparing them on the same basis.

15 And, so, you can see, like that
16 "Decoupling Revenue" line was taken -- it's added
17 back in, and it's essentially trying to
18 neutralize. So, once you dig into the
19 original -- the original numbers, and what's
20 included in revenues on that first line, then you
21 can see that decoupling revenue was a refund to
22 customers. So, you added that back in to sort of
23 neutralize that impact, because you don't want
24 that impact in your revenue requirement. And

{DG 22-041} {06-22-23}

[WITNESS PANEL: Menard|Therrien]

1 then, the Low Income was added back in, so that
2 you have a complete total revenue requirement to
3 calculate your rates on.

4 Q Well, if I were to add up the three numbers that
5 were "zero" in the column marked "Original (per
6 book) Bates", and by that I mean the Decoupling
7 Revenue, the LDAC Revenue, and the Production
8 Cost Increase. If I add those three numbers up,
9 doesn't that get me exactly the difference
10 between the two proposed increase numbers? In
11 other words, the Company started with a \$13.5
12 million requested increase, but then reduced it
13 to a \$6.4 million requested increase. The
14 difference between those requested increases is,
15 in fact, those three numbers added up, correct?

16 A (Menard) It is, yes. But, if you notice, the
17 revenue requirement didn't change.

18 Q Okay. But the requested increase went down when
19 those three revenues were accounted for in the
20 calculation?

21 A (Menard) Again, it's just calculating the
22 difference between a starting point and an ending
23 point. So, you know, the Company requests a
24 revenue requirement. And, so, how you get there

[WITNESS PANEL: Menard|Therrien]

1 from that current -- from your baseline revenue
2 number to your new proposed revenue, that's just
3 the math between the two.

4 A (Therrien) I think I can help a little bit.
5 Those two columns really represent slightly
6 different things. So, under the "Permanent" two
7 columns, the first one that you mentioned, the
8 "Original (Booked) Bates", that is the
9 determination of the total revenue requirement,
10 okay? And it says the Company needs \$99,286,000
11 to operate.

12 The last column is "How are those
13 revenues going to be billed out?" And they're
14 going to be billed out through the Decoupling
15 Revenue, through the LDAC, and Production Cost
16 Increase, and then Other Revenue stay the same,
17 and then the Distribution Operating Income and
18 Proposed Revenue Increase together are my base
19 rate revenues.

20 So, I think we're talking about how
21 those dollars get collected.

22 Q And, in fact, when DG 20-105 was over, do you
23 recall what the revenue increase was? It was in
24 the area of \$5 million, if I'm not mistaken?

{DG 22-041} {06-22-23}

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) Subject to check, I think you're right.

2 Q Okay.

3 A (Menard) But, you know, when I dig in to, and you
4 don't have this page, but it's the second page of
5 that same exhibit, and you start at the "Revenue"
6 line, and you see \$155.8 million of "Operating
7 Revenue", and you understand what's in that
8 revenue number, your low-income discount is not
9 in that revenue number.

10 Q Ms. Menard, I just want to interrupt you, so that
11 I can get to that page, because I didn't print
12 that one. But I need to -- I just need a minute,
13 if you will, for a moment please.

14 A (Menard) Okay.

15 *[Short pause.]*

16 BY MR. DEXTER:

17 Q Okay. Thank you. So, you're on Page 2 of
18 Exhibit 5 now?

19 A (Menard) Yes.

20 Q Okay. Sorry to interrupt you, but I'd like to
21 hear what you had to say about Page 2?

22 A (Menard) Sure. So, what I was saying was the --
23 you know, to understand how the revenue
24 requirement and revenue deficiencies are

[WITNESS PANEL: Menard|Therrien]

1 established, you really have to understand the
2 baseline and the basis of what's in revenues and
3 what's in expenses. And I know, again, this is a
4 different case, so, it's a different issue, but I
5 know what's in that revenue number, I know what's
6 in the \$155.8 million. I know what's in that
7 cost of gas number. And, so, it looks like, when
8 the Company first proposed that revenue increase,
9 the revenue decoupling excess at that time,
10 because it was a credit back to customers, was
11 included, so that needed to be adjusted for. And
12 I assumed that parties realized that the
13 low-income discount was not included in revenues
14 and needed to be back -- put back in. So, it's
15 not that -- it's just trying to make sure that
16 everything is on the same basis, when you're
17 comparing the starting point to the ending point.

18 So, when building that revenue
19 requirement up, and establishing what gets
20 allocated to the rate classes through rate
21 design, you needed to make sure that the
22 appropriate distribution costs were being
23 included in the distribution rates. So, again,
24 you build up the revenue requirement, deficiency

{DG 22-041} {06-22-23}

[WITNESS PANEL: Menard|Therrien]

1 doesn't -- I know it's a number, it doesn't
2 really play into how you're designing rates. You
3 get your revenue requirement, that's your total
4 pie, allocated to your classes through, you know,
5 an allocated cost of service study, you use that,
6 come up with your allocation of the revenue
7 requirement to the various classes. At the very
8 end of rate design, that is when you discount it.
9 So, you need to have that starting point, so that
10 you have your entire pie.

11 Q When you say "discount it", you mean -- what do
12 you mean? "At the very end, you discount it",
13 you said. What do you discount at the very end?

14 A (Menard) The rate. So, when you calculate the
15 R-4 rate, it's just a discount on the R-3 rate.
16 So, you compare them as a total class, because
17 R-4 and R-3 are one class, for all intents and
18 purposes. So, you calculate your revenue
19 requirement, you allocate it to that entire
20 class. And, then, at the very end, when you're
21 setting rates, you discount it. Then, when you
22 go into "actual" land, you're not collecting
23 that -- that discounted revenue through your
24 distribution rate, you end up collecting it

[WITNESS PANEL: Menard|Therrien]

1 through your LDAC. So, you're still making
2 yourself whole, but it's just -- it's really that
3 starting point of how you're --

4 Q The starting point is key, is what you're saying?

5 A (Menard) Correct.

6 Q Okay.

7 A (Menard) Yes.

8 Q I just want to -- and I'm trying not to confuse
9 this, I'm trying to simplify things. But have
10 you -- you jumped to Page 2 on Exhibit 5.

11 A (Menard) Yes.

12 Q And I just want to point out that Page 2 isn't
13 going to match the columns that we were looking
14 at on Page 1, because Page 2 deals with the
15 temporary rate increase, agreed? Not the
16 permanent rate increase that we were talking
17 about? And, if it helps, I can point out that --

18 A (Menard) Sure. But, you know, for me, that's
19 what I needed to know, what was in my test year
20 revenue. That first line, I needed to understand
21 what was in that number. So, that's why I jumped
22 to Page 2.

23 Q Okay.

24 A (Menard) So, yes.

[WITNESS PANEL: Menard|Therrien]

1 Q So, the revenue -- the temporary rate revenue
2 deficiency that's calculated on Page 2 is
3 "9,837,964", correct? Appears in the second to
4 the -- the column second from the end on the
5 right-hand side?

6 A (Menard) Yes.

7 Q That number also appears on Page 1, in the first
8 column, under the line "Proposed Revenue
9 Increase", right?

10 A (Menard) Yes. I would say, the Page 2 probably
11 was maybe not updated, because it doesn't look
12 like it. It looks like the original. It was
13 really just to understand what went into the
14 first line, the "Distribution Operating
15 Revenue" --

16 Q Okay.

17 A (Menard) -- or, "Income", sorry.

18 MR. DEXTER: All right. That's all the
19 Department has for questions. Thanks.

20 CHAIRMAN GOLDNER: Okay. Thank you.
21 We'll move to the Office of the Consumer Advocate
22 for cross.

23 MR. KREIS: Okay. I have not no
24 questions, but very few questions.

[WITNESS PANEL: Menard|Therrien]

1 I think I'd like to start with
2 Mr. Therrien.

3 BY MR. KREIS:

4 Q Mr. Therrien, you testified, quite a while ago
5 now, that you consider the tariff that we're
6 talking about here to be "ambiguous". Do I
7 remember that correctly?

8 A (Therrien) I used that word. I would also maybe
9 clarify saying that I find some conflicting
10 components of the tariff, yes.

11 Q And you're offering that testimony in your
12 capacity as an expert witness, yes?

13 A (Therrien) Yes.

14 Q Because you are actually an expert on drafting
15 tariffs?

16 A (Therrien) That is one of my expert-listed
17 capacity in my CV, yes.

18 Q But you aren't a lawyer?

19 A (Therrien) I am not a lawyer, no.

20 Q And, since you aren't a lawyer, you probably
21 would have no way of knowing that, under New
22 Hampshire law, the question of whether a contract
23 contains ambiguous language is a matter of law,
24 rather than fact, yes?

[WITNESS PANEL: Menard|Therrien]

1 A (Therrien) I would not know that. Correct.

2 Q Would you agree with me that a tariff is a kind
3 of contract?

4 MR. SHEEHAN: Obviously, he just said
5 he's not a lawyer.

6 **BY THE WITNESS:**

7 A (Menard) I would say "We're not lawyers."

8 MR. SHEEHAN: We just established that.
9 If the witness can answer from a non-legal
10 perspective, I won't have any --

11 MR. KREIS: Well, obviously, if he's
12 not a lawyer, he can answer questions from a
13 non-legal perspective. But you just heard him
14 testify that he is "an expert on tariffs".

15 BY MR. KREIS:

16 Q That's a pretty basic question, that you would
17 assume an expert on tariffs would at least have
18 an opinion about?

19 A (Therrien) Certainly. I think I got hung up on
20 the word "contract". I view tariffs as "the
21 rules of the road." They are the approved rules
22 that this Commission approves for the Company to
23 follow and for customers connected to the system
24 to adhere to.

[WITNESS PANEL: Menard|Therrien]

1 Q Okay. Now, if you nice people would give me a
2 second, my creaky old computer, which is in its
3 last day of service, I'm proud to say, doesn't
4 have a lot of memory, so I can't keep a lot of
5 documents open at one time. And I want to go
6 back to Exhibit 1a, and close out Exhibit 4 that
7 Mr. Dexter was talking about.

8 Okay. All right. So, I want to talk a
9 little bit about Exhibit 1a. And, in particular,
10 I want to focus on Ms. Menard's direct testimony
11 of July 5th, 2022.

12 Now, Ms. Menard, you -- this testimony,
13 that's dated July 5th, 2022, was attached to the
14 Company's initial Petition in this docket, yes?

15 A (Menard) Yes.

16 Q And you adopted that testimony earlier today as
17 your sworn testimony in this proceeding?

18 A (Menard) Yes.

19 Q And, so, "adoption of that testimony" means that,
20 if Mr. Sheehan had asked you all of those
21 questions live on the record here, the answers
22 that you would have given from where you're
23 sitting right now on the stand would be the same
24 as the ones that you wrote down in that written

[WITNESS PANEL: Menard|Therrien]

1 testimony that was dated July 5th of last year?

2 A (Menard) Yes.

3 Q Okay. I just want to go through a few of the
4 assertions in that testimony.

5 Let's start with Bates Page 005. All
6 these references are going to be to Bates pages,
7 rather than the numbers at the top of the page.

8 A (Menard) I'm there.

9 Q Now, if you look at Lines 6 through 9, there's a
10 sentence that says "This testimony concludes
11 that, by operation of the approved RDM tariff
12 language, revenues associated with the Company's
13 low-income program were refunded to customers as
14 part of the first two annual decoupling cycles of
15 2018 to 2019 and 2019 to 2020, although no
16 revenue was actually due." I've read that
17 sentence correctly, yes?

18 A (Menard) Correct.

19 Q And, by "this testimony", at the very beginning
20 of the sentence, you're referring to "the
21 testimony" that I just read from?

22 A (Menard) Yes.

23 Q And, so -- and you said that, basically, too much
24 money was refunded to customers by operation of

[WITNESS PANEL: Menard|Therrien]

1 the approved RDM tariff language, yes?

2 A (Menard) Yes.

3 Q Is that still your testimony?

4 A (Menard) That is.

5 Q How do you square that with the testimony that
6 we've already heard today that the tariff was
7 somehow "ambiguous", and could have supported an
8 entirely different outcome?

9 A (Menard) The Company's decoupling filings in '18
10 and '19 and '19 and '20 calculated a refund
11 according to how the Company interpreted that
12 tariff. And, so, in doing so, and, actually, I
13 think even in those reconciliation filings, the
14 Company proposed two different ways to calculate
15 that. However, the path of one approach was
16 taken, and, in doing that, the Company refunded
17 more money than we believe was supposed to be.

18 Q Okay. Let's move to Bates Page 007. And, now, I
19 am looking at Lines 8 through -- well, Lines 8
20 through 12. And, in particular, at Line 10,
21 there's a reference to "a mismatch embedded in
22 the tariff".

23 Now, you don't have to repeat your
24 previous answer. But, you know, I'm just trying

[WITNESS PANEL: Menard|Therrien]

1 to figure out what you mean by "embedded in the
2 tariff"? What that says to me is "the tariff is
3 wrong." It doesn't say "the tariff is
4 ambiguous." It means, that "mismatch embedded in
5 the tariff", means that "there is something wrong
6 with the tariff." Am I misinterpreting your
7 testimony?

8 A (Menard) No. I think what this statement says is
9 "there is a mismatch in the tariff", between the
10 Benchmark, how we interpreted the Benchmark to be
11 calculated, and how the Actual is very
12 specifically defined to be calculated. So,
13 that's the mismatch that that sentence is
14 referring to.

15 Q Okay. Now, moving to Bates Page 008, looking at
16 Lines 8 through 11 of Bates Page 008, and --

17 A (Menard) Sorry, which line?

18 Q Eight.

19 A (Menard) And at which line?

20 Q Page 8, Line 8.

21 A (Menard) Oh. Got it.

22 Q And, so, there you say "The RDM tariff should
23 have directed the comparison of non-discounted
24 target revenues to non-discounted actual

[WITNESS PANEL: Menard|Therrien]

1 revenues....." So, at the beginning of that
2 sentence, you're saying "the tariff should have
3 directed the comparison of something to something
4 else." But, presumably, you mean "it didn't do
5 that." Isn't that what you're saying there?

6 A (Menard) The tariff was silent. And, so, it
7 didn't -- it didn't really say how the Company
8 should have done the Benchmark. The tariff
9 should have directed and should have been clear
10 as to how to compare the Benchmark to the Actual.

11 Q Okay. Now, moving to Page 9, and now I'm looking
12 at Lines 20 and 21, it says "During the time the
13 mismatch was unresolved, the Company, following
14 the then-approved tariff language, issued refunds
15 to customers." So, that is still your testimony,
16 is it not?

17 A (Menard) That is correct.

18 Q So, what you just said, in those two lines, is
19 that "the Company followed the then-approved
20 tariff language", yes?

21 A (Menard) The Company followed the approved tariff
22 language, interpreting the way that the Benchmark
23 was to be calculated. Again, we had proposed two
24 different ways of calculating that Benchmark; one

[WITNESS PANEL: Menard|Therrien]

1 produced one set of results, the other produced
2 another set of results. The path that was
3 approved was the "mismatch" approach.

4 Q Right. I just -- I can't understand, as a fellow
5 English speaker, how you square what you just
6 said with the idea that there is something
7 "ambiguous" about the tariff. How do you do
8 that?

9 A (Menard) Well, I think we've laid out this
10 morning, in going through the very specific
11 language in the tariff, and it really surrounds
12 that Benchmark. If you understand how the -- you
13 know, the purpose of what revenue decoupling is
14 intended to do, and compare two sets of numbers,
15 it should be on the same basis. When you go
16 through the Actual and the Benchmark, when the
17 Actual is very specific, with a very specific
18 sentence, and the Benchmark is silent on that
19 sentence, the interpretation or ambiguity is "how
20 should the Company have calculated that Benchmark
21 or interpreted how that Benchmark can be
22 calculated?"

23 You know, that's how I would state
24 this. You know, it's a restatement, I think, of

[WITNESS PANEL: Menard|Therrien]

1 what both of the witnesses have said, and we've
2 walked through the tariff.

3 Q Sure. And I apologize for belaboring this.
4 Skipping ahead to Page 25 -- Bates Page 025 of
5 your July 5th testimony, looking at Lines 10 and
6 11, you testify that "the Company conducted its
7 reconciliation in strict compliance with the
8 approved tariff provisions in both proceedings."
9 Now, doesn't the phrase "strict compliance" mean
10 that, in your opinion, the Company followed a
11 directive that it received that it was obliged to
12 comply with strictly, yes?

13 A (Menard) If you were to read the language in the
14 tariff, if you were to -- because there was no
15 sentence that said how the R-4 should be
16 calculated, absent that language, the Company
17 interpreted it in a very strict and narrow
18 fashion, and that's what created this mismatch
19 between the Benchmark and the allowed -- I'm
20 sorry, the Benchmark and the Actual.

21 Q And you don't detect or admit to any difference
22 between what you just said from the stand, and
23 what you stated in writing at Lines 10 and 11 of
24 Bates Page 025?

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) The "strict compliance"?

2 Q Okay. I'm just -- I'm having a hard time
3 squaring what you're saying now to what you said
4 then, which you technically also said today,
5 because you just adopted all this testimony. I'm
6 just -- I'm struggling with this phrase "strict
7 compliance with the approved tariff." How
8 does -- how do you square this idea that what the
9 Company did was "strict compliance" with an
10 approved tariff, with the idea that somehow there
11 was this "ambiguity" that would have supported an
12 entirely different interpretation?

13 A (Menard) So, if you were to think back, and,
14 again, I wasn't there at the time, but I've read
15 through a lot of the exhibits and the filings the
16 Company made, there were two proposals presented.
17 So, you know, the Company went with the one that
18 was, if you were to say "strict compliance",
19 again, missing the sentence that said how the
20 Company should have handled the Benchmark, that's
21 the way that the Company followed.

22 But, if you were to say "well, what was
23 the purpose, what was the intent? Should they
24 have been on the same basis?" That's where you

[WITNESS PANEL: Menard|Therrien]

1 could come up with a different approach. And I
2 think that's where the Company did propose a
3 different alternative, as to how to calculate the
4 revenue deficiency or excess.

5 Q So, if I understood what you just said correctly,
6 aren't you basically just saying "Well, the
7 Company had two choices. In fact, the right
8 choice," if I understood Mr. Therrien correctly,
9 was actually in the tariff that he originally
10 drafted at the very beginning of the 2017 rate
11 case, but what you're essentially saying is "the
12 Company made the wrong choice"?

13 A (Menard) The Company made a choice. And the
14 reason why we're here today is because that
15 choice, or the interpretation and the path that
16 the Company chose to do that reconciliation, is
17 not in alignment with that purpose. And, so, the
18 Company had raised this issue, had identified it
19 as an issue. Again, it kept getting pushed out,
20 pushed out.

21 You know, and I think back to we had an
22 electric decoupling tariff that was inoperable in
23 Granite State's first decoupling filing. And we
24 stopped and said "we cannot use this tariff in

[WITNESS PANEL: Menard|Therrien]

1 its fashion", and had to stop and revise the
2 tariff.

3 So, you know, there are oftentimes
4 where the language in the tariff needs to be
5 interpreted. We do it all the time.

6 Q Okay. Agreed. You do it all the time. I want
7 to go back to something that Mr. Dexter has
8 already asked you about, which is certain
9 language on Page 41 of your prefiled written
10 testimony. And, as he was, I'm looking at
11 Lines 2 through 8. And, particularly on Lines 2
12 through 4, you say "As demonstrated by the
13 highlighted text above," and by that you mean
14 "highlighted text from the tariff that at issue
15 in this docket that you are now saying is
16 ambiguous." Do I have that right?

17 A (Menard) Yes.

18 Q Okay. Then, you go on to say "the precise
19 wording of the First Compliance Tariff called for
20 the Benchmark Base Revenue per Customer to be set
21 by Customer Class rather than by Customer Class
22 Group." So, there you're referring to "precise
23 wording". And, again, I don't know how you can
24 square the idea that you were following the

[WITNESS PANEL: Menard|Therrien]

1 "precise wording of the First Compliance Tariff",
2 with the idea that you're now proposing to the
3 Commission, that there was something "ambiguous"
4 about that compliance tariff?

5 A (Menard) So, that sentence is talking about the
6 "precise wording", describing the information
7 above. Again, how the Company interpreted the
8 Benchmark was one way, and it was different, it
9 was in a different -- on a different basis than
10 the Actual.

11 MR. KREIS: Okay. Mr. Chairman, I
12 could go on about this all afternoon. But I
13 don't want to waste the afternoon doing that, so
14 I'm not going to ask any more questions.

15 CHAIRMAN GOLDNER: Okay. Thank you,
16 Attorney Kreis. We'll turn to Commissioner
17 questions, and then we'll plan on a lunch break
18 from around 11 -- or, from 12:30, rather, to
19 1:00. Will that work for everyone? Is that
20 enough time? Is 30 minutes enough, or does
21 anyone need more time?

22 MR. KREIS: I would actually appreciate
23 more time, because breaking at 12:30 will
24 actually allow me to make a 12:30 meeting that I

[WITNESS PANEL: Menard|Therrien]

1 was supposed to go to, that I think will last
2 about an hour.

3 CHAIRMAN GOLDNER: About an hour, okay.
4 Any chance it could be 45 minutes? I think we're
5 going to be tight today, and I would --

6 MR. KREIS: Sure.

7 CHAIRMAN GOLDNER: Would that be okay?

8 MR. KREIS: Absolutely. I mean,
9 really, my job here is to meet your needs. Your
10 job isn't necessarily to meet mine.

11 CHAIRMAN GOLDNER: We try to be
12 accommodating. Okay. So, let's go through
13 Commissioner questions. And then, if we -- we'll
14 take a break around 12:30.

15 We'll begin with Commissioner Simpson.

16 CMSR. SIMPSON: Thank you, Mr.
17 Chairman.

18 BY CMSR. SIMPSON:

19 Q How did the Company come to identify this issue?

20 A (Menard) In my research, and in talking through
21 with Company representatives, and reading through
22 filings, the issue was identified with the
23 magnitude of the refund to customers was very
24 large.

[WITNESS PANEL: Menard|Therrien]

1 Q When was that?

2 A (Menard) That was in -- it was in the first
3 decoupling filing. Off the top of my head, I
4 think it was in 2020. I could have my timeline
5 wrong.

6 Q Was it before or after the Company's most recent
7 gas rate case, 20-105?

8 A (Menard) Before.

9 Q And was this topic part of the discussion in
10 20-105?

11 A (Menard) Yes.

12 Q And, in your view, how was this issue not
13 resolved in that case? How was it not part of
14 the Settlement agreement in that case?

15 A (Menard) In 20-105?

16 Q Yes.

17 A (Menard) It was resolved.

18 Q Okay. So, why are we here then?

19 A (Menard) The issues are unresolved from the 2017
20 case. And these first two decoupling years are
21 from the 2017 case, decoupling years one and two.
22 Decoupling years three and four are the result of
23 the 2020 case.

24 Q And --

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) But, I guess to answer your question,
2 so, the concept in the tariff language was
3 resolved, and the revenue per customer
4 calculation. But any sort of outstanding issues
5 were not rolled into the distribution rates
6 allowed in the 2020 case. So, they remained
7 outstanding.

8 Q If so, why -- what was the Company's thinking in
9 settling that case?

10 A (Menard) I don't know how to answer that. From
11 looking back through the timeline, this was an
12 outstanding issue that was still outstanding at
13 the time of the distribution rate case, and it
14 was not resolved in that 2020 case. So, it has
15 just lingered since then.

16 Again, this testimony was filed a year
17 ago. And it has just remained an outstanding
18 unresolved issue.

19 Q From the time that 20-105 was settled, why did
20 the Company wait until '22 to pursue this issue?

21 A (Menard) I think it's the timing of when the
22 decoupling filings are made. So, that '18-'19
23 decoupling year ends, a filing is made, then the
24 '19-'20 ends, and then a filing is made a year

[WITNESS PANEL: Menard|Therrien]

1 later. So, I think it's just a timeline of how
2 things have progressed. And, at that time, it
3 would have been around the '21-'22 timeframe.
4 And then, it took some time to pull together an
5 actual filing, because the issue was still
6 outstanding. And then, in mid '22 an actual
7 filing was made.

8 Q The dollar amounts are significant that are at
9 issue, correct? Would you agree with that?

10 A (Menard) I would say, for a decoupling, yes.
11 Yes.

12 Q Help us understand the significance of this issue
13 to the Company, your bottom line -- to your
14 bottom line?

15 And I ask that, because we're really
16 looking back five years. I mean, we're looking
17 back at an adjustment to customer rates that
18 predated the Company's prior rate case.

19 A (Menard) Yes.

20 Q And it's really five years from today.

21 A (Menard) Yes. Agreed. It is, I guess, if you're
22 asking "is this going to make or break the
23 Company's, you know, revenues?" You know, it's
24 \$2 million over two years. I think, from the

[WITNESS PANEL: Menard|Therrien]

1 Company's perspective, it's significant enough,
2 and, you know, that we would pursue it. Is it
3 going to overall break the Company? Probably
4 not.

5 Q And I'm asking, because I'm trying to understand
6 how this issue, from the Company's perspective,
7 has been existing for such a long period of time?

8 A (Menard) That's a good question. I think it has
9 just been kicked to the next year, kicked to the
10 rate case, kicked to -- and it just has lingered.
11 And, you know, we've had several dockets that I
12 don't understand how they linger for five years.
13 We've had, you know, an Integrated Resource Plan
14 that lingered for five years. And I think issues
15 just go unresolved. And, you know, personnel
16 changes, and Commissions change, and it -- before
17 you know it, five years has gone by. And, you
18 know, to be fair, this was filed a year ago.

19 Q Uh-huh.

20 A (Menard) And it has taken a year just to even get
21 to a hearing.

22 Q Yes. So, four years from when they filed it.

23 A (Menard) Still, it's --

24 Q Yes.

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) Still, it's a lengthy amount of time.

2 Q It certainly is.

3 A (Menard) It's just a slow administrative process.

4 Q If I were to ask you to walk us through how a
5 bill is calculated, for an average residential
6 customer, R-3 customer, would you feel prepared
7 to walk us through the math right now, every
8 element?

9 A (Menard) For a bill?

10 Q Yes.

11 A (Menard) Sure.

12 Q Okay. Why don't we do that.

13 A (Menard) Okay. So, if we were to talk about an
14 R-3 customer, we would have their customer
15 charge, their monthly fixed charge. If you're
16 going to ask me to do numbers off the top of my
17 head, you know, I --

18 Q Not at this point.

19 A (Menard) Let's just talk conceptually. And then,
20 we would have the volumetric charge. There --
21 for an R-3 customer, there's no block, you know,
22 in terms of this amount of therms is one rate,
23 and this amount of therms is another rate. So,
24 you would have your volumetric charge, whatever

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[WITNESS PANEL: Menard|Therrien]

1 they used for that month, multiply it by the rate
2 in effect. And then, we have an LDAC component,
3 same thing, number of therms times whatever the
4 LDAC rate is.

5 Put all those together, and I think
6 I've got all the components, and that would be
7 their monthly bill.

8 There is a weather-normalization piece
9 within there, that weather-normalizes their
10 usage. But that's essentially how a bill is
11 calculated.

12 Q So, how does an alleged error like this occur
13 mechanically within the Company? How do you --
14 how was this mistake made? I would guess it, in
15 your view, this mistake, or this issue, how was
16 it manifested?

17 A (Menard) It's really manifested in the
18 calculation of the revenue deficiency or excess.

19 Q Where does that occur?

20 A (Menard) In the LDAC proceeding.

21 Q But, I mean, systematically, where does that
22 occur within the Company? How is that
23 calculation performed, and what system performs
24 it? Who enters the variables that factor into

[WITNESS PANEL: Menard|Therrien]

1 the calculation?

2 A (Menard) It would largely be an accounting
3 exercise. The rates themselves are designed to
4 collect a certain amount of revenue, and we set
5 those as part of a distribution rate case. We
6 then come back -- well, actually, on a monthly
7 basis, we will calculate the actual revenues that
8 are coming in from the billing system, straight
9 from, you know, how a bill is calculated, how
10 much a customer used, times the rate in effect,
11 comes up with an actual revenue number, that is
12 booked on the Company's books.

13 The Company, from an accounting
14 perspective, you know, humans involved, --

15 Q Uh-huh.

16 A (Menard) -- would say "okay, this is how much we
17 should get this month", as is spelled out in a
18 tariff as to how the Benchmark is established, we
19 know the Actuals, because they're coming right
20 from the books and records of the Company, then
21 we calculate the difference. And that difference
22 is considered the "revenue decoupling excess" or
23 "deficiency". So, it's trying to get you back to
24 that allowed revenue that was established. So,

[WITNESS PANEL: Menard|Therrien]

1 what your rates are supposed to be collecting.

2 Q That happens on a monthly basis?

3 A (Menard) Monthly basis.

4 Q And somebody in Accounting, in an Excel
5 spreadsheet, is --

6 A (Menard) Yes.

7 Q -- iteratively every month rerunning that
8 calculation?

9 A (Menard) Yes.

10 Q Okay.

11 A (Menard) And, when we get to the end of a
12 decoupling year, we add up all those monthly
13 numbers, and that's what goes into a filing in an
14 LDAC proceeding. And, so, you would have your
15 monthly actuals, you would have your monthly
16 Benchmark, again, calculated by the Company, and
17 you would compare them. And it would come up
18 with either an excess or a deficiency.

19 Q So, it's unclear to me whether a mistake was made
20 or whether there were multiple options that the
21 Company could have used in interpreting the
22 tariff language, which we've walked through the
23 definitions for allowed base revenue. Did the
24 Company make a business decision in their

[WITNESS PANEL: Menard|Therrien]

1 implementation of those variables?

2 A (Menard) When calculating what that -- that
3 revenue per customer is, that Benchmark Revenue
4 per customer, humans are involved in saying
5 "well, I think this is" -- "this is how that
6 revenue per customer should be calculated. It
7 should be this number divided by this number."
8 And, when trying to look at how that number
9 should be calculated, you have some rules that
10 you have to follow. And, so, those rules are the
11 tariff. And, so, when you say "okay, well, I
12 know how that revenue was established. So, I'm
13 going to calculate this Benchmark based on how I
14 know the revenue was established."

15 But, then, if I look over here, it says
16 "well, I don't" -- "I don't know exactly that I
17 should be combining these two classes together."
18 So, if I say "well, because this sentence is
19 missing, I think I should do it this way." And,
20 so, that's then how it was presented in the
21 reconciliation filings.

22 But, again, two ways were presented.
23 You could do it this way, and this will get you
24 to what we think it was intended to do, or how

[WITNESS PANEL: Menard|Therrien]

1 the rates were designed. But, over here, if you
2 look, because this sentence is missing, you could
3 interpret it this way, too.

4 Q I mean, if we look at those definitions for
5 "Benchmark Base Revenue" and "Actual Base
6 Revenue", you're distinguishing that, in Actual
7 Base Revenue, the low-income rate class is
8 specified.

9 A (Menard) Yes, it is.

10 Q There's a distinguishing element?

11 A (Menard) Yes.

12 Q And what I think you both have testified today is
13 that it was an error that there was no
14 distinguishing of the low-income rate class in
15 the definition for "Benchmark Base Revenue". Am
16 I understanding your testimony correctly?

17 A (Menard) Yes. And it's hard to know, because I
18 wasn't there, and you don't know what's in the
19 mindsets. Did people assume it was known or was
20 it specifically left out?

21 And, so, you know, when you come back
22 and you're left to read the language and
23 interpret that language, by a strict
24 interpretation of that, because that sentence is

[WITNESS PANEL: Menard|Therrien]

1 not there in one calculation, but it is in the
2 other. And it's clear, in the Actuals, because
3 you know when the Actuals come in, because we
4 just went through how the R-3 is calculated, you
5 could do the same thing for an R-4, and that R-4
6 rate is actually lower than the R-3 rate. So,
7 you know when the actual revenues come in, it's
8 missing, it's lower than what it should be. So,
9 it's clear you needed to add that sentence in for
10 the Actuals.

11 Q And that's not clear to me. What -- you
12 anticipated my follow-up question quite well.
13 How is it that -- or, how do we know that it was
14 not intentionally removed from the definition of
15 "Benchmark Base Revenue"? How is it -- how can
16 we be sure, today, that that was not a deliberate
17 decision by the Settling Parties in 20-105?

18 A (Menard) In the way that I know is because I go
19 back to how the revenue requirement was
20 established, and it was established including, so,
21 it was, I guess, bumped up, or it was assumed to
22 encompass the whole pie.

23 Q Excuse me, and I meant "17-084" [17-048?], I said
24 "20-105".

[WITNESS PANEL: Menard|Therrien]

1 A (Menard) That's all right. I know what you
2 meant.

3 Q In that rate case.

4 A (Menard) So, when I take that entire pie, and I
5 know it's in there, so, I know it's in my revenue
6 requirement and how I established rates. One
7 could, again, sitting back with hindsight, you
8 could say "well, yes, I know it's in there. I
9 know that's how I set my rates." I can see it
10 when I look at this RATES-5 exhibit that we add
11 it back in, so that we've got the entire revenue
12 requirement. So, I know it's in my "baseline",
13 my "benchmark", whatever you want to call that,
14 that term, it's the revenue that the Company is
15 expected to get from how the case was
16 established.

17 But I know, when I get my actuals in,
18 because I've got this discount going on, I know
19 my actuals aren't going to have that number. So,
20 I needed to make sure that that language was in
21 there, so I had them on the same basis.

22 But, you're right. How do you sitting
23 there, how do I sitting here, because we weren't
24 involved, we didn't -- we don't know. We have to

[WITNESS PANEL: Menard|Therrien]

1 take a look. And we say "well, we have the
2 history, we've laid out the case." You know,
3 nowhere does it say "you should take this out."

4 But, again, when you go through and you
5 understand the basis, that's when you assume that
6 it should have been included in there. And
7 that's when you can -- and then, when you see the
8 numbers, and how the Company had to interpret the
9 tariff, and you see this disconnect, it's very
10 easy to see the disconnect later.

11 Q I wonder whether, under what has been presented
12 to us today, whether the Company can accurately
13 implement these complex tariffs? When you have
14 multiple options for interpretation, and it
15 appears that the Company chose an option, from
16 your testimony, that was not advantageous to the
17 Company, that was a decision that was made. And,
18 now, we're being asked to revise what the Company
19 filed to us when we approved your tariff. Do you
20 have any response to that?

21 How can we have confidence in the
22 Company's ability to implement tariffs, with
23 reconciliations and decoupling, and many
24 different changing variables?

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[WITNESS PANEL: Menard|Therrien]

1 A (Menard) So, I'd like to just respond to, you
2 know, again, when the Company identified this as
3 an issue and presented two different approaches,
4 there was a decision made, an order was issued,
5 approving one particular way. So, did the --
6 just a slight nuance, did the Company choose this
7 way? I don't know that the Company chose it, but
8 that's what was ordered, that's what we --

9 Q You filed the tariff, though?

10 A (Menard) -- we filed it.

11 Q You proposed the tariff?

12 A (Menard) We did file the tariff, yes. In terms
13 of "how do you have confidence that the Company
14 can implement these complex mechanisms?" You
15 know, I don't think it has to be complex. I
16 think there was complexity that was added into.
17 And I think that, under compression of time,
18 maybe some things were missed. I think, since
19 that time, the 2020 case did correct the issues
20 that were identified in 2017. And I think, since
21 then, I don't think there are any issues since
22 then.

23 So, there are, again, I mentioned that,
24 in the electric case, again, the decoupling

[WITNESS PANEL: Menard|Therrien]

1 tariff -- the language in the tariff was not
2 accurate, and so it needed to be resolved. And,
3 so, we spoke with parties, went through it, had
4 some pretty detailed discussions on how the
5 tariff should be implemented, and had to make
6 some changes to that.

7 So, I think it's, while it is complex,
8 this is what we do. This is part of utility
9 ratemaking and tariff design, and all those
10 things. And I think it's been addressed and
11 resolved since then.

12 A (Therrien) May I offer a quick perspective on
13 your last question, sir?

14 Q Please.

15 A (Therrien) So, you're right, the tariffs have
16 gotten a lot more complex. Not just for this
17 Company, but for the gas industry, for the
18 electric industry. And, for instance, I'm
19 involved in another proceeding in another
20 jurisdiction on net metering. And we all know
21 how difficult net metering tariffs and programs
22 have been to implement.

23 That doesn't mean you shouldn't do
24 them, right? Because you have public policy

[WITNESS PANEL: Menard|Therrien]

1 objectives in which the Commission's doing their
2 duty to implement, and it requires complex
3 tariffs. And, certainly, I have seen in other
4 jurisdictions tariff implementations that have
5 had some growing pains.

6 So, when I look at this particular
7 situation, it is, I'll say, unfortunate that it
8 wasn't put in accurately in the beginning. But
9 it's not that much of an outlier. Things happen.
10 And, in order to effect that public policy, these
11 tariffs are, by definition, going to be just more
12 and more complex.

13 So, just a little bit of a perspective
14 on that.

15 A (Menard) And I would just also add, you know,
16 this was the first time, coming out of the 2017
17 rate case, this was the first time that the
18 Company in the state had implemented revenue
19 decoupling. And any time you have firsts, I
20 think there are going to be issues. I think
21 we've learned from it, and I think we've tried to
22 resolve it since then. But, you know, it was new
23 at the time.

24 And it was, you know, not intended. I

[WITNESS PANEL: Menard|Therrien]

1 think there was -- I think people were trying to
2 do the right thing, and to make sure that
3 costs -- the actuals and the benchmarks were
4 aligned. And, again, until you can dig into it
5 and understand it, that's what happened.

6 CMSR. SIMPSON: Thank you both for your
7 testimony. Thank you both for being here.

8 I would just leave everybody with a
9 question. If everyone in this room struggles to
10 understand how these types of tariffs work,
11 imagine the average customer?

12 That's all I have. Thank you.

13 CHAIRMAN GOLDNER: Thank you,
14 Commissioner Simpson. We'll take a break until
15 1:15, and return with Commissioner
16 Chattopadhyay's questions.

17 *(Lunch recess taken at 12:32 p.m., and*
18 *the hearing resumed at 1:20 p.m.)*

19 CHAIRMAN GOLDNER: Okay. We'll go back
20 on the record, and pick up with Commissioner
21 Chattopadhyay's questions.

22 CMSR. CHATTOPADHYAY: Good afternoon.

23 WITNESS MENARD: Good afternoon.

24 WITNESS THERRIEN: Good afternoon.

[WITNESS PANEL: Menard|Therrien]

1 CMSR. CHATTOPADHYAY: Let me make sure
2 I have my files in the right place. I have the
3 laptop out, so just bear with me.

4 BY CMSR. CHATTOPADHYAY:

5 Q So, I want to go to Ms. Erica Menard's testimony
6 first. So, let's go to Bates Page 039. And I go
7 back to the point about you have, in Line 11,
8 "These wording changes inadvertently changed the
9 basis of the RPC targets", and thereon. Were you
10 absolutely sure that it was inadvertently
11 changed?

12 A (Menard) In discussions with the Company
13 personnel that would have been involved in that,
14 and looking at the end result, I came to the
15 conclusion that it was inadvertent, because it --
16 the way that we interpret it, there is this
17 inherent mismatch. And, so, I don't think the
18 purpose of the decoupling would have been to
19 purposefully create the mismatch. And, so,
20 therefore, it seems to me it would have been
21 inadvertent.

22 Q Were you -- I'm guessing you weren't involved in
23 17-048, --

24 A (Menard) Correct.

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[WITNESS PANEL: Menard|Therrien]

1 Q -- the rate case, at all, right?

2 A (Menard) Correct.

3 Q And, so, going to Mr. Therrien, staying with that
4 Bates page, in the box it says, and I'm focusing
5 on the red highlighted text there, "Customer
6 Class Group". So that, you were privy to that
7 language, right, when you were working on this
8 rate case?

9 A (Therrien) Yes. That was in my direct testimony.

10 Q Okay. And the language that appears later, and
11 which is starting Line 14 through 17, okay, the
12 same Bates page, Lines 14 through 17, were you
13 involved in drafting that?

14 A (Therrien) No, I was not. That was from the
15 first compliance tariff, which I was not involved
16 in.

17 Q So, do you have a sense of, like, what was the
18 gap between what appeared in the box below there,
19 like when it was filed, and what ultimately was
20 approved, which is Lines 14 through 17, if you
21 have a sense? Like, when that was being worked
22 on, how long was the period?

23 A (Therrien) So, I was not directly involved. I
24 remember the period, because, even though I

[WITNESS PANEL: Menard|Therrien]

1 wasn't involved in the negotiations, they would
2 occasionally come with a one-off question from --

3 *[Court reporter interruption.]*

4 **CONTINUED BY THE WITNESS:**

5 A (Therrien) -- a one-off question from staff, from
6 the Liberty staff that is.

7 My understanding is that they were
8 working very hard on this tariff, on a
9 collaborative process. So, I can't tell you any
10 specifics about this particular language, but I
11 do know they were working for -- I believe it was
12 a period of four to six months.

13 BY CMSR. CHATTOPADHYAY:

14 Q I'm going to go to Exhibit 4. And I think the
15 Bates Page, let me make sure I have it, 186.

16 A (Menard) Okay.

17 Q So, when you look at Line 27, it says "Class
18 Revenue Targets".

19 A (Menard) Yes.

20 A (Therrien) Yes, I see that.

21 Q You see that? Yes. So, when you're determining
22 revenue targets, you're really talking about cost
23 of service study and, you know, what you in
24 entirety you need to recover for your business,

[WITNESS PANEL: Menard|Therrien]

1 right?

2 A (Therrien) That's correct. And using our
3 previous analogy, that's the entire pie. And
4 then, how are we going to cut that pie up amongst
5 the rate classes?

6 Q So, if you look at that, and I don't know how
7 this played out, you know, the docket played out,
8 essentially, if you go down all the way to
9 Line 55, it says "\$78,572,880".

10 A (Therrien) I see that.

11 Q At the end. And, so, that's the revenue that you
12 would be -- that's what you -- it's the cost of
13 running the business, right?

14 And I'm using very loose terms there,
15 but that's what you would --

16 A (Therrien) That is the revenue requirement
17 necessary to run the business.

18 Q Okay. So, and when you were talking about "cost
19 of service", the total cost, it doesn't matter
20 where the revenues are coming from, and, you
21 know, correct? Like, if you were -- unless
22 you're talking about a special customer, you may
23 adjust for it, because you're looking at
24 distribution customers only?

[WITNESS PANEL: Menard|Therrien]

1 A (Therrien) Well, actually, when you think about
2 the cost of running the business, revenues are
3 not even really a consideration. It's the cost,
4 meaning O&M, it's the return of and return on
5 capital investments, and taxes. So, you don't
6 even need to consider revenues at that point in
7 time.

8 Q Okay. So, if you go to Line 43?

9 A (Therrien) I see that.

10 Q You had previously mention today, in some other
11 back-and-forth, that it doesn't matter, you know,
12 where the R-3 revenue is coming from, what it is,
13 but it does matter in this, in this formulation.
14 You added the current RL -- sorry -- RLIAP?
15 That's in Line 43.

16 A (Therrien) That's correct.

17 Q Yes. So, you ended up actually adding it to
18 get to the number 78,572,5 -- I'm getting all
19 these, 80 [78,572,880], I think it is. And, so,
20 that's what you did there. Do you agree? Not
21 you, meaning what this --

22 A (Therrien) No, I understand.

23 Q Yes.

24 A (Therrien) That's the correct addition.

[WITNESS PANEL: Menard|Therrien]

1 Q Okay.

2 A (Menard) And the reason why it needed to be added
3 was because, when you have that starting point on
4 Lines 30 -- Line 38, I think, the RLIAP discount
5 was not included in that starting number. So, it
6 had to be added back in.

7 Q I completely disagree with you. You're talking
8 about the cost of service here, has nothing to do
9 with RLIAP. You have, yourself, said it before.
10 So, let's not go there.

11 Have you looked at -- I'm just curious
12 whether this RATES-5 model was used in the
13 previous rate case, before even 17-048? So,
14 going back to I think it's 14-180?

15 A (Therrien) I can't confirm that here, sir. I
16 don't know.

17 Q Can the other witness tell me whether that was
18 the model that was used before?

19 A (Menard) I don't know for sure. But we could --
20 we could certainly find out, and get back to you
21 before the end of the day.

22 It would have been a 20 -- had to have
23 been a 2014 case, which would have been when
24 Liberty was first acquired, when Liberty first

[WITNESS PANEL: Menard|Therrien]

1 acquired EnergyNorth.

2 Q So, I will remind you that, if you can actually
3 go back and look at Exhibit 1 in that docket, and
4 it appears as Bates Page 0 -- sorry -- Bates Page
5 312. And, in that construct, when you're talking
6 about "class revenue targets", the RLIAP did not
7 even appear when you're talking about what the
8 revenue requirement was. So, RLIAP --

9 A (Menard) Sorry, where are you?

10 Q Okay. I'm going to DG 14-180.

11 A (Menard) Oh. Okay. Sorry, I don't have that.

12 Q Sorry if I wasn't clear. Okay. And, if you go
13 to Exhibit 1 there, and if you go to Bates Page
14 312, --

15 A (Menard) Can you just give me a second, so I can
16 pull it up?

17 Q Sure.

18 A (Menard) What was the case?

19 Q So, it's -- repeat that, I didn't --

20 A (Menard) What was the case number?

21 Q 14-180.

22 A (Menard) Exhibit 1. Okay.

23 Q And Bates Page 312.

24 A (Menard) Can you point to which attachment? I'm

[WITNESS PANEL: Menard|Therrien]

1 looking on the --

2 Q It's Attachment RATES-5, the same, that's why I'm
3 going there.

4 A (Menard) Can you tell me which testimony it's in?
5 I'm looking on the web.

6 Q Okay.

7 A (Menard) So, I don't have the full --

8 Q Oh, you don't have it. Okay. Yes, I'm looking
9 at the attachments.

10 A (Menard) What's the Bates number?

11 Q Bates Page is 312.

12 MR. SHEEHAN: It's the Simpson/Hall
13 attachments.

14 WITNESS MENARD: Okay. Thank you.

15 BY CMSR. CHATTOPADHYAY:

16 Q And I'm hesitating to move too much in my
17 document, because sometimes it's moving too fast,
18 and then I lose the page. So, I appreciate, and
19 you can take your time.

20 A (Menard) Okay. It looks like it is the same,
21 yes.

22 A (Therrien) It looks like it's the same model.

23 Q Yes. And, therein, if you look at, under "Class
24 Revenue Targets", the RLIAP is not appearing at

[WITNESS PANEL: Menard|Therrien]

1 all. Will you agree with me?

2 I think it's just a "yes" or "no"
3 question. So, --

4 A (Menard) Unfortunately, it's hard to know the
5 answer to that just looking at a *pdf*, and not
6 knowing the basis, and in a case that I don't
7 have any detail on.

8 Q But do you agree that it's not appearing at least
9 in this *pdf* webpage under --

10 A (Menard) I agree that there's not a separate
11 line. And, if we can agree to that, then, yes.

12 However, I can't say --

13 Q If it was a separate --

14 A (Menard) -- whether it was in the "Functional
15 Cost of Service Study", that line. You know,
16 because I can tell you, in the current -- in the
17 '17 case, in that Functional Cost of Service,
18 that starting point, RLIAP is not included.

19 Q And, you know, I'm simply trying to confirm
20 something based on this page. So, what I'm
21 saying is --

22 A (Menard) I'm sorry, I can't answer the question,
23 is what I'm saying.

24 Q Yes. Can you, though, look at the column that

[WITNESS PANEL: Menard|Therrien]

1 says "Company Total"?

2 A (Menard) Yes.

3 Q And, in, for those rows 38 through, I mean, I
4 could go all the way to 50, does the RLIAP play
5 any role?

6 A (Menard) I can't answer that, because I don't
7 know what's behind that Functional Cost of
8 Service number, sitting here right now.

9 Q Okay. So, you're saying it may be part of the
10 Liberty requirement?

11 A (Menard) Yes.

12 CMSR. CHATTOPADHYAY: But what doesn't
13 make sense to me is we are talking about "cost of
14 service"; RLIAP has nothing to do with it. So,
15 you can't just tell me that "that line may
16 include RLIAP revenue as a separate line."

17 So, anyway, I'll stop there. That's
18 all I have.

19 CHAIRMAN GOLDNER: Okay. The Chair has
20 no further questions. Any follow-up from
21 Commissioner Simpson or Chattopadhyay?

22 *[Cmsr. Simpson and Cmsr. Chattopadhyay*
23 *indicating in the negative.]*

24 CHAIRMAN GOLDNER: Okay. Commissioner

[WITNESS PANEL: Menard|Therrien]

1 Chattopadhyay, did you want any follow-up from
2 the witnesses, or shall I exclude -- shall I
3 excuse the witness panel?

4 MR. SHEEHAN: If I may, I have a couple
5 of redirect.

6 CHAIRMAN GOLDNER: Oh, I'm sorry.
7 Thank you, sir. It's been a long day.
8 Anything -- just a moment.

9 *[Chairman Goldner and Cmsr.
10 Chattopadhyay conferring.]*

11 CHAIRMAN GOLDNER: Okay. Okay, sorry,
12 Mr. Sheehan. Please proceed with redirect.

13 MR. SHEEHAN: No worries. Just three
14 discrete topics.

15 **REDIRECT EXAMINATION**

16 BY MR. SHEEHAN:

17 Q First, Ms. Menard, you were asked, I think by
18 Commissioner Simpson, about the impact, the
19 dollar impact this case could have on the
20 Company. Have you been able to formulate a more
21 precise answer to that question?

22 A (Menard) Yes. Commissioner Simpson had asked
23 whether there was a significant impact, and what
24 the impact would be on the Company. And I did go

[WITNESS PANEL: Menard|Therrien]

1 back and look at the 2022 net income for
2 EnergyNorth, which is about \$28.2 million. And,
3 so, a \$4 million -- a \$4 million impact to the
4 Company. So, if -- currently, the Company has
5 deferred this on the books. If this has to be
6 written off, it will be written off in one year,
7 even though it had occurred over two years. So,
8 that will be probably about a 14 percent impact.

9 Whether that's significant or not, you
10 know, is subject to interpretation. But that
11 will be about the impact to the Company.

12 Q Thank you. Second, Mr. Dexter asked you some
13 questions about the distribution rate design, and
14 how it was built and allocated, *etcetera*. And,
15 based on DOE's testimony, I expect there will be
16 plenty of questions of his witnesses on that
17 similar topic.

18 But a simple question for you. Is
19 there any -- do you think -- let me start over.
20 Is there any double-count of the RLIAP discount
21 in the '17 rate case or the '21 -- or, in the '17
22 rate case primarily?

23 A (Menard) No, I do not believe so. We have gone
24 through an analysis. We have dug into the

[WITNESS PANEL: Menard|Therrien]

1 numbers. And I don't see a double-count.

2 Q And, last, just to review the high-level timeline
3 once again. The decoupling mechanism was first
4 approved in the 2017 rate case, with the approval
5 coming in the Summer of 2018, is that correct?

6 A (Menard) Yes.

7 Q And then, again, the tariff was worked on that
8 fall, and filed and approved right around
9 November 1st of 2018, which is when it actually
10 started?

11 A (Menard) Correct.

12 Q So, the Fall of 2019 was the first reconciliation
13 filing in the LDAC in the cost of gas?

14 A (Menard) Yes.

15 Q And it was in that filing when Mr. Simek's
16 testimony said "There's two ways to do this." He
17 flagged the issue that something's not right.
18 You can do it this way, which results in a \$2
19 million return, whatever the exact number was, or
20 you can do it this way, which would give what Mr.
21 Simek believed, and the Company, frankly,
22 believes, was the right answer. Do you recall
23 that?

24 A (Menard) Yes.

[WITNESS PANEL: Menard|Therrien]

1 Q The Staff witness, Mr. Iqbal, filed testimony
2 disagreeing with that?

3 A (Menard) Correct.

4 Q And the Commission order adopted the Staff
5 position and said "that's how the decoupling
6 mechanism will be reconciled that year"?

7 A (Menard) Yes.

8 Q Which was ordering the \$2 million return?

9 A (Menard) Correct.

10 Q The next fall is the fall of 2020, year two.
11 We've now started the rate case, we're in the
12 middle of it. Did the Company request recovery
13 of the then \$4 million in that cost of gas?

14 A (Menard) Yes. The Company proposed that for both
15 those decoupling years in that at that time.

16 Q And the issue was not addressed in that cost of
17 gas order, because there was a -- I, frankly,
18 don't know, but a suggestion, a request, or
19 whatever to carve it off?

20 A (Menard) Correct.

21 Q For obvious reasons, we've now spent a year
22 digging into it. You can't do that in a
23 three-week or a six-week cost of gas, correct?

24 A (Menard) Correct.

[WITNESS PANEL: Menard|Therrien]

1 Q In the rate case, which has been pending, we've
2 all heard many times that the tariff language was
3 addressed and fixed come Summer of '21?

4 A (Menard) Yes.

5 Q And Commissioner Simpson asked "Well, why wasn't
6 the \$4 million that was lingering out there
7 addressed then as well?" Do you have any insight
8 on that, that doesn't violate settlement
9 discussion, you weren't part of the settlement
10 discussion, but to the extent you know?

11 A (Menard) Well, as we've seen in this case, it
12 takes a long time to understand the issue, and,
13 frankly, even right now we don't agree on the
14 issue. And, so, to incorporate that into the
15 rate case and disrupt settlement negotiations, it
16 was not the appropriate time to do that. And,
17 so, therefore, it was spiked out as a separate
18 issue. And, you know, here we are today dealing
19 with this as a separate issue.

20 And that's not uncommon, when there are
21 issues that are more detailed in nature that we
22 need a lot more time or, you know, that we don't
23 want to disrupt the normal course of a business,
24 in terms of the proceeding, we will lots of time

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[WITNESS PANEL: Menard|Therrien]

1 spike things out into separate proceedings, such
2 as this.

3 Q And isn't it the case that, in the Fall of '21,
4 after the Settlement, excuse me, the number, the
5 \$4 million was again included in the cost of gas,
6 and it was in that proceeding when the Commission
7 formally said "Let's carve it out. Let's address
8 it in a separate docket"?

9 A (Menard) Yes.

10 Q And, so, that was late '21. And then, in '22,
11 six months later we filed this docket?

12 A (Menard) Yes.

13 Q Okay.

14 A (Menard) Which gets you to five years.

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

17 CHAIRMAN GOLDNER: Okay. Very good.
18 The witnesses are released. Thank you. And
19 we'll make way for Dr. Arif and Mr. Thompson,
20 after a brief pause.

21 *[Short pause.]*

22 CHAIRMAN GOLDNER: Okay. Once the
23 witnesses are settled in, Mr. Patnaude, you can
24 swear in the witnesses.

[WITNESS PANEL: Arif|Thompson]

1 *(Whereupon **FAISAL DEEN ARIF** and*
2 **MARK THOMPSON** were duly sworn by the

3 *Court Reporter.)*

4 CHAIRMAN GOLDNER: Very good. Then,
5 we'll begin --

6 *(Interruption by the court reporter,*
7 *indicating that he didn't hear*
8 *Mr. Thompson's affirmation.)*

9 CHAIRMAN GOLDNER: Okay. Mr. Thompson?

10 WITNESS THOMPSON: I apologize. I was
11 muted. I do.

12 CHAIRMAN GOLDNER: Much better. Thank
13 you.

14 And we'll start with DOE direct, and
15 Attorney Dexter.

16 MR. DEXTER: And thank you, Mr.
17 Chairman.

18 **FAISAL DEEN ARIF, SWORN**

19 **MARK THOMPSON, SWORN**

20 **DIRECT EXAMINATION**

21 BY MR. DEXTER:

22 Q Dr. Arif, would you please state your name and
23 position and employer?

24 A (Arif) My name is Faisal Deen Arif. And I am

[WITNESS PANEL: Arif|Thompson]

1 employed by the New Hampshire Department of
2 Energy as the Director for the Gas Division.

3 Q Thank you. And, Mr. Thompson, would you state
4 your name and your employer please?

5 A (Thompson) My name is Mark Thompson. I'm
6 employed by Forefront Economics, a company I
7 founded 30 years ago, specializing in utility
8 analytics and economic analysis.

9 Q And, Mr. Thompson, how is it that you came to
10 testify in this case today?

11 A (Thompson) I was employed as part of a team, H.
12 Gil Peach & Associates, to work with the
13 Department of Energy to sort through the history
14 of this, and try to unravel things and come to an
15 understanding.

16 Q Thank you. So, I'll ask this question of Dr.
17 Arif first. Dr. Arif, I'd like to direct your
18 attention to the document that's been marked in
19 this case as "Exhibit 4". Do you recognize that
20 as your testimony and attachments in this
21 proceeding?

22 A (Arif) I do.

23 Q And why don't I ask that same question to Mr.
24 Thompson at the same time. Mr. Thompson, do you

[WITNESS PANEL: Arif|Thompson]

1 recognize Exhibit 4 --

2 A (Thompson) I do.

3 Q -- as your testimony and attachments in this
4 case?

5 A (Thompson) Yes, I do.

6 Q Thank you. Dr. Arif, do you have any
7 questions -- any corrections that you need to
8 make to the testimony at this time?

9 A (Arif) I do.

10 Q Can you go ahead and describe that correction
11 please?

12 A (Arif) I need to find out the exact place.

13 Q If we're talking about the same correction, I
14 think you want to go to Bates Page 005, Line 21.

15 A (Arif) Thank you. Bates Page 005, Line 21, reads
16 "This testimony does address any concerns the DOE
17 may have about opening issues from cases that
18 have been closed for years and effectively
19 changing rates that were approved years ago."

20 I believe the correction that I would
21 like to have is to add the word "not" after
22 "does". So, basically, to suggest otherwise.
23 Thank you.

24 Q So, it would read "the testimony does not address

[WITNESS PANEL: Arif|Thompson]

1 any concerns"?

2 A (Arif) That is correct.

3 Q Thank you. And, Mr. Thompson, you're in
4 agreement with that correction?

5 A (Thompson) I am.

6 MR. DEXTER: And, just for the benefit
7 of the Bench, that was a question -- that was a
8 correction that we discovered during the
9 discovery phase, and actually sent a letter in
10 back in May, because it was an important, but
11 unfortunate, typographical error, and we didn't
12 want it to wait until this hearing. So, our
13 apologies for that.

14 BY MR. DEXTER:

15 Q Other than that typographical error, do either of
16 the witnesses have any corrections that they'd
17 like to make to this testimony?

18 A (Arif) Not at this time.

19 A (Thompson) I do not.

20 Q And, if I were to ask you the questions contained
21 in the written testimony as it was submitted in
22 Exhibit 5, would your answers be the same as
23 those contained therein?

24 A (Arif) Yes.

[WITNESS PANEL: Arif|Thompson]

1 A (Thompson) Yes, it would.

2 Q And do you adopt those answers as your sworn
3 testimony in this proceeding?

4 A (Arif) I do.

5 A (Thompson) Yes. Yes, I do.

6 Q Thank you. I have a few additional questions
7 that I think will help clear things up today. I
8 want to start by asking either witness, did you
9 have any direct knowledge or involvement in
10 Liberty's gas rate cases, DG 17-048 or DG 20-105?

11 A (Arif) I did not.

12 A (Thompson) I had no involvement at all.

13 Q Given that you had no involvement in either of
14 these cases, on what basis did you make the
15 observations and the conclusions that are
16 contained in your testimony, which is Exhibit 4?

17 A (Arif) If I may go first?

18 Q Yes. Please, Dr. Arif.

19 A (Arif) For two reasons. This is, as a part of my
20 job description as the Director of New Hampshire
21 Department of Energy of the Gas Division, it is
22 my responsibility to carry through the work. And
23 this was a new docket, after I had joined, or,
24 before, actually, slightly before I had joined,

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[WITNESS PANEL: Arif|Thompson]

1 but it fell on my responsibility. So, that was
2 the first basis.

3 The second basis is the evidence that
4 we have that have come to light through the
5 discovery process and through other docketed
6 history in different dockets that are relevant to
7 this particular case.

8 Q Did you review, and I'll get to you, Mr.
9 Thompson, in a minute, did you review the records
10 of DG 17-048 and DG 20-105, as they related to
11 decoupling and RLIAP, and R-3 and R-4 rate
12 design?

13 A (Arif) Yes, I did.

14 Q Mr. Thompson, did you do a similar review of the
15 records in those past cases?

16 A (Thompson) Yes, I did.

17 Q Okay.

18 A (Arif) May I ask for a clarification?

19 Q Sure.

20 A (Arif) Mr. Dexter, so, your question was about
21 the "revenue decoupling", is that what I have to
22 understand, in terms of the review or the scope
23 of the review, that may be relevant to this
24 docket as well?

[WITNESS PANEL: Arif|Thompson]

1 Q Well, I had asked you if you had gone back to DG
2 17-048 and 20-105, and reviewed, perhaps not the
3 entirety of those cases, but at least as far as
4 those cases dealt with decoupling, RLIAP
5 revenues, and rate design and revenue
6 requirements associated with the R-3 and the R-4
7 customers?

8 A (Arif) Yes.

9 Q And the answer is "yes"?

10 A (Arif) Yes.

11 Q And, Mr. Thompson, your answer is "yes" as well?

12 A (Thompson) My answer is "yes."

13 Q Okay. So, in a paragraph or two, Dr. Arif, or a
14 sentence or two, could you -- could you briefly
15 summarize the conclusions that you drew from the
16 review that you did of these past cases, and what
17 made its way into your testimony? In other
18 words, what's the purpose of your testimony
19 today, your written testimony?

20 A (Arif) The purpose of my written testimony, or,
21 rather, our written testimony, was to verify, in
22 an objective and economic and financial matters,
23 if the claim that has been presented in this
24 docket by the Company is valid or not.

[WITNESS PANEL: Arif|Thompson]

1 And, to respond to the other part of
2 your question, to summarize, I would respectfully
3 draw everybody's attention to Bates Page 006,
4 Lines 11 through 16, that summarizes the views
5 that we came up with at the end of the case.
6 Which is to state that, that we believe, based on
7 the evidence that was brought to light, Liberty
8 does not have the claim that's been presented.
9 And we also believe that there was an impact of
10 the consequences that sort of was adhered to at
11 the end of the rate case, 17-048, that would
12 have, and that actually, *de facto*, amounted to
13 \$2.5 million of overcompensation to the Company.

14 Q Thank you. Mr. Thompson, did you want to add
15 anything to that brief summary?

16 A (Thompson) Yes. I would say that, in terms of my
17 biggest takeaway from my contribution in
18 assisting Dr. Arif, is the -- in looking through
19 the documents, the \$8 million revenue or increase
20 included a compensation for RLIAP revenue. So,
21 it's in there once as it enters into the
22 calculations that follow.

23 Q And we'll get into this in more detail, but the
24 \$8 million you're talking about was the ultimate

[WITNESS PANEL: Arif|Thompson]

1 rate -- revenue deficiency rate increase that
2 resulted from 17-048, correct?

3 A (Thompson) That's correct.

4 Q Okay. And we'll get back to that more in a bit.
5 We started the day with all the other witnesses
6 talking about "Tariff 10". And, in your joint
7 testimony, you have, on Bates Page 007, you have
8 reproduced here the definition of "Actual Base
9 Revenue", and you've highlighted the second
10 sentence about how Actual Base Revenue should be
11 calculated with respect to the R-4 and R-3
12 classes. Do you see that quote in the middle of
13 the page, at Lines 4 and 5?

14 A (Arif) I do.

15 Q Do you find that --

16 A (Thompson) I do.

17 Q I'm sorry. Do you, either of you, sorry, do
18 either of you find that language to be ambiguous?

19 A (Arif) I don't.

20 Q Mr. Thompson?

21 A (Thompson) No, I don't either. No. It's clear.

22 Q So, you're able to read that language, and you
23 would be able to make a calculation based on the
24 language that's involved there, is that correct?

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) That is correct.

2 A (Thompson) That is correct.

3 Q Okay. Now, the essence of your testimony
4 concludes -- well, let me ask you this first.
5 You would acknowledge that the tariff language
6 that's quoted here, and the other provisions that
7 we've talked about this morning, do contain --
8 the word that's been used, "mismatch", do contain
9 a mismatch between Actual Revenue and Benchmark
10 Revenue. Do you agree that there, at least
11 according to the tariff language and the way it
12 was calculated by the Company a number of times,
13 that those two are not in exact alignment, do you
14 agree?

15 A (Arif) I do.

16 A (Thompson) I do agree, yes.

17 Q And, yet, your testimony says that, based on what
18 you've been able to conclude, looking backwards,
19 that that misalignment, or mismatch, does not
20 cause the Company harm, in the context of DG
21 17-048 and the rates that resulted from that. Is
22 that essentially what you're testifying to?

23 A (Arif) Yes, I am.

24 A (Thompson) Yes, I am as well.

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[WITNESS PANEL: Arif|Thompson]

1 Q Okay. Could you explain briefly how that is?
2 Why the Company was not harmed by strict
3 adherence to the tariff language?

4 A (Arif) For that, --

5 A (Thompson) If I can -- you want me to go first?

6 A (Arif) Yes. For that, we have to -- sorry.

7 Q I'm sorry, Mr. Thompson. Let's let Dr. Arif
8 answer first, and then I'll ask you to follow up.

9 A (Thompson) Thank you.

10 A (Arif) Thank you. For that, I would -- we would
11 like to -- we have to go through the RATES-5 that
12 has been already alluded to, and the revenue
13 requirement calculation.

14 Q Well, we'll do that in detail in a bit. But I
15 just wanted to, in a couple of sentences, what's
16 the conclusion about why the Company is not
17 harmed by the results?

18 A (Arif) So, what has come to light, in the context
19 of our discovery process, is that the Company,
20 through the \$8 million that they had received
21 from the rate case, 17-048, that \$8 million would
22 have sufficiently compensated the Company to make
23 them whole for the discount that they provided to
24 the R-4 Residential Low-Income Heating customers.

[WITNESS PANEL: Arif|Thompson]

1 And then, what has also come to light
2 that, through RATES-5 calculation, the
3 discount -- the same discount was added as a
4 separate line item for the second time on RATES-5
5 calculation, which made its way into the
6 revenue -- overall revenue requirement of
7 approximately \$82.9 million, which made their
8 way, in turn, into the rates that were designed
9 and developed for -- that coming out of that
10 17-048 rate case. So, in that manner, the
11 Company has been compensated twice.

12 There is another point that I would
13 like to point out.

14 Q Well, let me interrupt you there. Mr. Thompson,
15 do you agree with what Dr. Arif just said about
16 the "Company being compensated twice" through
17 the -- through the revenue requirement -- revenue
18 deficiency calculation and the RLIAP revenues?

19 A (Thompson) I do. I do agree with that.

20 Q Okay. What was the next point you wanted to
21 make, Dr. Arif?

22 A (Arif) The point that I wanted to also highlight
23 here, that the way in which the RLIAP revenues
24 are collected is through a reconciliatory

[WITNESS PANEL: Arif|Thompson]

1 mechanism, what we call "LDAC". It is a part of
2 the LDAC. LDAC has many components. But it is
3 specifically the RDAF component of the LDAC that
4 don't -- rather, GAP component of the LDAC.

5 "GAP" is the "Gas Assistance Program", or which
6 is the new incarnation of the Residential
7 Low-Income Assistance Program.

8 So, through that GAP component of LDAC,
9 the Company is always made whole, the portion of
10 the distribution revenue that they give out as
11 discount to the low-income customers. That
12 component was never in question. In other words,
13 that was always working fine. So, that is an
14 important element into this context.

15 With that, the overall picture is that
16 the Company has been compensated twice.

17 Q And, therefore, if the Revenue Decoupling
18 Mechanism worked to pass back the difference
19 between the R-4 and the R-3 Actual and Benchmark
20 Revenues, you're saying the end result was that,
21 when taken in its totality, did not harm the
22 Company. Is that essentially it?

23 A (Arif) That is correct.

24 Q Mr. Thompson?

[WITNESS PANEL: Arif|Thompson]

1 A (Thompson) Yes, that's exactly it.

2 Q Okay. All right. Having said all that, and I'd
3 like to get into some of the details, to see we
4 can demonstrate that to the Commissioners please.

5 And the first thing that I want to
6 focus on is the -- your first conclusion, or
7 observation, that the revenue requirement
8 calculation compensates the Company for the cost
9 of serving all customers, including the R-3 and
10 the R-4 customers.

11 To do that, I'd like to turn to Exhibit
12 4, Attachment 4, which is the revenue
13 requirements model.

14 MR. DEXTER: Commissioners, when we
15 filed the testimony back in April, as has become
16 practice in recent years -- months and years at
17 the Commission, we also filed Excel spreadsheets
18 with that. And Dr. Arif's demonstration we
19 believe is more easily followed on the Excel
20 version.

21 So, with your permission, I'd like Dr.
22 Arif to use and refer to the Excel version. It
23 was sent to the Commission, as well as all the
24 parties. So, everybody should have it.

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[WITNESS PANEL: Arif|Thompson]

1 CHAIRMAN GOLDNER: If you can just give
2 us a moment to find it, I don't have it up.

3 MR. DEXTER: Sure. Like I said, it was
4 provided by email on the same day, April 20th.
5 And it went to the PUC Clerk, as well as all the
6 other parties.

7 CMSR. SIMPSON: And is there a specific
8 attachment? I see that email.

9 MR. DEXTER: Yes. We'd be looking at
10 Attachment 4.

11 CMSR. SIMPSON: Thank you.

12 CHAIRMAN GOLDNER: Just a moment. I'm
13 having trouble locating it for some reason. What
14 was the date again, Mr. Dexter?

15 MR. DEXTER: It was provided April
16 20th, in an email from Jacqueline Trottier.

17 CHAIRMAN GOLDNER: There we go. And it
18 was number "4" you said?

19 MR. DEXTER: Attachment 4, and in a
20 little bit we're going to go to Attachment 7.
21 But, for now, we're on Attachment 4.

22 CMSR. SIMPSON: And just for my
23 confirmation, would the Bates Page be 228 in
24 Exhibit 4?

[WITNESS PANEL: Arif|Thompson]

1 MR. DEXTER: So, I want to look
2 specifically at tab "RR-EN-2". And I believe
3 that's Bates Page 200. It's actually -- we went
4 through the same sheet this morning with
5 Ms. Menard. But I thought it would be easier to
6 do it with Dr. Arif using the Excel sheet.

7 Dr. Arif, is that right, Bates Page 200
8 is the equivalent?

9 WITNESS THOMPSON: I believe it's Bates
10 202.

11 MR. DEXTER: 202. Thank you.

12 WITNESS ARIF: 200 is also relevant,
13 but 200 and 202.

14 MR. DEXTER: Okay.

15 CHAIRMAN GOLDNER: Thank you, Mr.
16 Dexter. Looks like we're all set up here.

17 MR. DEXTER: Okay. Thanks. Thanks, I
18 appreciate that.

19 BY MR. DEXTER:

20 Q So, what I'm trying to have everyone pull up here
21 is a spreadsheet entitled "Operating Income
22 Statement - EnergyNorth Test Year with Known and
23 Measurable Changes". And, if you go over to
24 Column I, there's a column that says --

[WITNESS PANEL: Arif|Thompson]

1 CHAIRMAN GOLDNER: I'm sorry, Mr.
2 Dexter. Which tab is that?

3 MR. DEXTER: It's tab "RR-EN-2".

4 CHAIRMAN GOLDNER: RR-EN-2. Thank you.
5 All set.

6 BY MR. DEXTER:

7 Q And, as I was saying, in Column I, under
8 "Proposed Increase", there's a figure of
9 \$13,037,000, which we understood to be the
10 Company's requested revenue increase in 17-048.
11 So, Dr. Arif, are you on that sheet?

12 A (Arif) I am.

13 Q Okay. Could you explain to us, using this sheet,
14 how it is that you've concluded that the revenue
15 deficiency calculation of \$13 million already
16 compensates the Company for the RLIAP discount?
17 Or, maybe I should direct that question to Mr.
18 Thompson, which either one of you that wants to
19 answer.

20 A (Arif) I would defer to Mr. Thompson.

21 A (Thompson) Sure. So, as we look at RR-EN-2, the
22 question of the -- and I'll direct your attention
23 to Column F, "Distribution Operating Income". So,
24 the total, in Column D, we have to remove from

[WITNESS PANEL: Arif|Thompson]

1 that, appropriately so, all cost of gas and LDAC
2 items to get to the distribution -- distribution
3 portion of the business. And we see there that
4 the revenue, revenue is straightforward, revenue
5 is based on actual distribution revenue, and
6 costs are the costs, subtracting out the LDAC
7 components. And it's the cost to serve all
8 customers.

9 The issue comes in the way the revenue
10 from the RLIAP was handled, it was handled as a
11 negative cost account. So, as a negative cost,
12 you know, in terms of its effect on net utility
13 income, it doesn't matter if you treat it as a
14 negative cost or a positive revenue. That
15 revenue from RLIAP would get handled
16 appropriately either way. But the issue is that,
17 because it's in a gas cost account, specifically
18 Accounts 804, it's removed and taken out on
19 Line 7 there.

20 So, we see the negative revenue
21 associated with the RLIAP customers is coming out
22 of in Column E before it ever hits distribution.
23 So, it never enters into the distribution
24 operating income or expense calculation. So, we

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[WITNESS PANEL: Arif|Thompson]

1 have all the expenses of serving all customers.
2 And we -- our revenue component is missing the
3 revenue associated with RLIAP customers. So, the
4 revenue deficiency is overstated by the exact
5 amount of the revenue from the RLIAP customers.

6 Q So, if the negative gas costs or the RLIAP
7 revenues had not been removed in Column E, it's
8 your testimony that the proposed increase would
9 have been lower, in Column I?

10 A (Thompson) Right.

11 Q Okay. And less there be any doubt that the
12 Account 804 was included in the \$45 million
13 figure in Column E, is there a sheet that details
14 the backup to that number that could demonstrate
15 that those negative gas costs were, in fact,
16 removed?

17 A (Thompson) There is. There is. Two sheets over
18 from where we are now, if we look at RR-EN-2-1.
19 We can see that that -- I'll give people a chance
20 to get over there.

21 Q That's "RR-EN-2-1".

22 A (Thompson) Here we see, on Line -- coded Line 13,
23 Excel Line 18, we see, in Column F, there is that
24 45,726,000 that came in from -- that flows over

[WITNESS PANEL: Arif|Thompson]

1 to the last sheet we were looking at. And you
2 can see the components of it. It's comprised of
3 Accounts 804, 805, and 808, just summed up.

4 Well, 804 includes the RLIAP revenue.
5 And, so, you can see the RLIAP revenue gets
6 completely netted out before it even hits the
7 distribution operating income shown in Line --
8 shown in Column G.

9 Q And we know that the negative RLIAP revenue was
10 booked to Account 804, because Liberty told us
11 that in the email we were talking about this
12 morning, correct, which is provided as
13 Attachment 8, I believe?

14 A (Thompson) That is correct. And Liberty provided
15 ample detail for us to be able to check into
16 that, and actually, you know, track that through
17 and see for ourselves, I guess. That's from the
18 2016 test year history. That's, in fact, what
19 was happening.

20 Q Very good. So, I then want to discuss how this
21 revenue deficiency, which, again, when the case
22 was over, was no longer \$13 million, but was --
23 but instead was \$8,060,000, \$8,060,000.

24 I'd like to explain -- I'd like you to

[WITNESS PANEL: Arif|Thompson]

1 explain how that \$8 million figure factored into
2 the rates that were designed in DG 17-048. And,
3 in order to do that, I think it's best explained,
4 again, using this sheet called "RATES-5", and we
5 provided an Excel version as "Attachment 7" to
6 the joint testimony.

7 MR. DEXTER: So, I would ask the
8 Commissioners again to go back to that email, and
9 open up Attachment 7. And I would ask the
10 witnesses to do the same thing.

11 BY MR. DEXTER:

12 Q And, Dr. Arif, correct me if I'm wrong, but we
13 want to click on the tab "RATES-5", is that
14 correct?

15 A (Arif) That is correct.

16 Q And this sheet was provided by Liberty Utilities,
17 is it not?

18 A (Arif) It was.

19 Q Was it not?

20 A (Arif) It was.

21 Q Okay. And this is essentially what was -- an
22 Excel version of what we looked at earlier this
23 morning in *pdf* that was marked "Exhibit 90" in DG
24 17-048, correct?

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) That is correct. It's a bit nicer
2 version, --

3 Q Yes.

4 A (Arif) -- because it's color-coded.

5 Q It's color-coded, it's easier to follow, and
6 there's actually some annotations and some
7 additional information that Liberty provided to
8 us, correct, in response to our questions during
9 the technical session?

10 A (Arif) That is correct.

11 Q Okay. So, I'd like you to focus on Lines --
12 Excel Lines, roughly, 42 through 49, or exactly
13 42 through 49. And I'd like you to explain, as
14 best you can, how it is you determined that the
15 \$8 million revenue deficiency is included in the
16 figures that are on those lines that I just
17 highlighted, which are essentially what
18 Commissioner Chattopadhyay talked about earlier,
19 are essentially the revenue targets? Why don't
20 you just take us line-by-line through that
21 section and tell us what's in there?

22 A (Arif) So, to directly respond to your question,
23 the \$8 million figure shows up on this Excel
24 sheet in exactly Cell R42, if we could all go

[WITNESS PANEL: Arif|Thompson]

1 over, which is highlighted in green, with a
2 figure "78,572,880".

3 And, if you hover your -- or, if you
4 put your -- highlight that particular cell, on
5 top the -- there is a formula bar where you would
6 find exactly the composition of what makes up
7 that \$78.5 million. In that, you will see that
8 it is a sum total of three separate figures:
9 S14, which is up on the sheet, there is that
10 "8,060,117" figure right there, and then there
11 was a negative cell of D42, which we understand
12 that that was a tax adjustment, which is provided
13 in Cell D42, on the right.

14 Q So, let me just stop you there. The "8,060,117"
15 is the revenue requirement -- revenue deficiency
16 that was granted, that came out of the 17-048
17 rate case?

18 A (Arif) That is our understanding.

19 Q Okay.

20 A (Arif) And, if you, just to corroborate that, if
21 you hover your cursor on S42, the cell right
22 beside that, you will find that that was also
23 confirmed in a note.

24 Q Okay. And, so, maybe we don't have to go

[WITNESS PANEL: Arif|Thompson]

1 line-by-line, but I see a dark arrow under that
2 cell that you had just referred to. And that,
3 so, what that really is doing is providing us
4 the backup to the number that's included in
5 Column S, Line 47, "78,572,880", correct?

6 A (Arif) That is correct.

7 Q Okay.

8 A (Arif) So, what was -- what was nice about this
9 one is that I just wanted to recognize that
10 Liberty really cooperated and provided alternate
11 explanation as to what made that 78,572,880.

12 Q Very good. And the next line is Line -- is a
13 "Step Adjustment". That's the step adjustment
14 that came out of 17-048 that went into effect the
15 same time as the permanent rates, correct?

16 A (Arif) That is our understanding.

17 Q Okay. So, that gives us a total revenue target
18 of \$82,886,000, correct?

19 A (Arif) That is our understanding.

20 Q Now, I skipped over Line 42. So, why don't tell
21 us what Line 42 is?

22 A (Arif) So, Line 42 --

23 Q Which is Excel 46, colored in blue. Sorry to
24 interrupt you, but go ahead.

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) Line 42 identifies, as you can see on
2 Column G, Line 42, it identifies that figure of
3 "1,614,079" as the "Current Revenue Shortfall R-4
4 revenues at R-4, R-3 rates". So, that is
5 referring to the discount, the RLIAP discount
6 that is provided to R-4 customers. And that
7 figure was added with the figure which is on Line
8 41, or Excel Line 45, "76,958,801". That figure,
9 plus the 1,614,000 figure makes up the
10 78,572,880.

11 Q Okay. And then, if we were to go to the bottom
12 of this page, we would see that the rates that
13 were designed from this case, both the
14 distribution rates and the -- and the LDAC rates
15 are going to get the Company -- the Company is
16 going to collect 82,886 -- 82,886,000 --

17 *[Court reporter interruption.]*

18 BY MR. DEXTER:

19 Q I'm sorry. The Company is going to collect
20 \$82,886,000?

21 A (Arif) That is correct.

22 Q And we'll get there in a minute. But, before we
23 do that, I believe you came across, because
24 Liberty provided it to us, another worksheet that

[WITNESS PANEL: Arif|Thompson]

1 demonstrated that the \$8 million was embedded in
2 these numbers that we've just been talking about,
3 the 82 million and the 78 million.

4 And either Dr. Arif or Mr. Thompson,
5 could you direct us to that other worksheet
6 please?

7 A (Thompson) Yes. That would be Attachment 11.
8 And the --

9 Q Let me interrupt you there. So, Attachment 11 to
10 your joint testimony?

11 A (Thompson) Right. And that will be on Bates 429.

12 Q And, if we wanted to go to the Excel version,
13 that was also provided in that same April email,
14 correct?

15 A (Thompson) Correct.

16 Q Okay. So, I'm going to go to the Excel version,
17 open that up on my screen. And I've got a
18 one-page -- no, I've got three tabs here. I'm
19 going to click on the tab that says "Final
20 Analysis", is that correct?

21 A (Thompson) Yes. That's right, the "Final
22 Analysis".

23 Q Okay. And, now, I'm sorry, I interrupted you
24 before, and I'm going to do it again. Could you

[WITNESS PANEL: Arif|Thompson]

1 give us the Bates page number, in case people are
2 looking at the *pdf* also?

3 A (Thompson) Sure. It's 429.

4 Q Thank you. Thanks. All right. Okay. Now, can
5 you explain how this sheet verifies that the
6 \$8 million proposed increase is built into what
7 ultimately became the revenue targets on RATES-5?

8 A (Thompson) Sure. First of all, let me draw your
9 attention to the very last number on the "Final
10 Analysis" sheet, in Column -- in C, Row 27. And
11 that's the familiar number we were just talking
12 about, just looking at from the RATES-5
13 spreadsheet, "77,859,719". We see then -- we can
14 see then how that number is derived. And,
15 starting from Line 23, "Distribution Revenue at
16 Present Rates", then we add the proposed increase
17 in, and this is the approved increase, and we get
18 to a System Total Proposed Revenue. And then,
19 taking out the tax effect that Dr. Arif just
20 described earlier, we get down to the
21 "77,859,719".

22 So, the \$8 million approved revenue
23 increase is clearly part of, a component of, the
24 number that goes into the RATES-5 sheet at the

[WITNESS PANEL: Arif|Thompson]

1 outset.

2 Q Okay. Thanks. Now, let's go back to RATES-5,
3 and the number that you were just -- sorry. Can
4 you explain again how -- which number it is that
5 transfers directly from Exhibit 11 to RATES-5?

6 A (Thompson) I'm sorry, could you repeat the
7 question?

8 Q Sure. We were just on Attachment 11, which was
9 the tie-in model. And you said "one of these
10 numbers transferred directly over to RATES-5".
11 Can you just say it again? I'm sorry, I just
12 want to make sure I get it. Which number --

13 A (Thompson) Oh, sure. Yes.

14 Q -- transfers over?

15 A (Thompson) Yes. So, if we look on RATES-5, in
16 Cell -- in Column S and Excel Line 42, we see the
17 "77,859,719". And that's -- that's what flows in
18 to the model, RATES-5, which is the rates design
19 model.

20 Q Thank you.

21 A (Thompson) And --

22 Q No, go ahead. I'm sorry.

23 A (Thompson) And you see that's the exact number
24 that was at the bottom of the "Final Analysis"

[WITNESS PANEL: Arif|Thompson]

1 sheet on Attachment 11 that we were just looking
2 at, and saw -- we observed that the 8 million
3 increase is a component of that number.

4 Q Okay. So, then, just to wrap this up. Dr. Arif,
5 so, we've got now a revenue target for purposes
6 of the Company's rates on Excel Line 49,
7 Column S, of \$82,886,000. And you said, at the
8 bottom of this sheet, we can see that that's what
9 comes out of the final rate design process that
10 the Company will collect, is that right?

11 A (Arif) That is correct.

12 Q Can you show us which line on RATES-5 that's
13 demonstrated?

14 A (Arif) That will be on Column S, Excel Line 157,
15 or 153, which is the line here.

16 Q So, "S", as in "Sam", the same column?

17 A (Arif) That is correct.

18 Q Okay. So, Excel Line 157, I see that number,
19 82,886,000. Right above it is a line that says
20 81,066,000. What's the difference between those
21 two numbers?

22 A (Arif) The difference between those two numbers
23 is that that "81,066,030" is collected directly
24 from the distribution revenues stream, and the

[WITNESS PANEL: Arif|Thompson]

1 remaining is collected through the RLIAP or GAP
2 component of the LDAC, both part of the
3 distribution revenue.

4 Q The bottom line is, the Company is going to
5 collect 82,886,000 from those two rate
6 components?

7 A (Arif) That is correct.

8 Q Okay. So, having gone through all that, and
9 concluded that the Company was not harmed by
10 the -- by the mismatch in the tariff language
11 that we've been talking about, your testimony
12 comes to the conclusion that, in fact, it's the
13 customers that appear to be harmed from an
14 economic standpoint. And I understand that has
15 to do with timing, basically.

16 Could you explain how this 2 million --
17 \$2.15 million harm to the customers manifests
18 itself?

19 A (Arif) Sure. So, what we just demonstrated is
20 that that the Company collected a total of, I'm
21 going to roughly, approximate \$82.9 million
22 through their distribution revenue. And, in that
23 \$82.9 million, they had included clearly \$1.614
24 million as the discount that was provided to

[WITNESS PANEL: Arif|Thompson]

1 RL -- the low-income customers. That, the point
2 being here, that that, when it was added to the
3 distribution revenue, that gave the Company the
4 ability to recover 82.9 million from the
5 distribution rates.

6 And, by doing that, and by virtue of
7 the RSA 378:29, which is the recoupment clause,
8 this -- the timing becomes relevant here.
9 Because, as we do here in the State of New
10 Hampshire, the Company is allowed to recoup a
11 distribution amount as if the rates were
12 effective from the date of the temporary rate
13 effective date.

14 Q And what was that date?

15 A (Arif) July 1st, 2017, in the case of 17-048.

16 Q Okay. So, I think what you're saying is,
17 effectively, due to recoupment, on July 1st,
18 2017, the Company began to collect the full
19 revenue deficiency that comes out of the
20 permanent case?

21 A (Arif) That is our understanding.

22 Q Okay. The decoupling clause that we've been
23 talking about, with the mismatched targets,
24 didn't take effect until when?

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) Until November 1st, 2018, 16 months after.

2 Q That's a 16-month gap, correct?

3 A (Arif) That is correct.

4 Q So, this rate rubric that came out of this case
5 would make better sense, better economic sense,
6 if all these things happened on the same date,
7 would you agree?

8 A (Arif) It appears so.

9 Q But that wasn't the case. They happened on
10 different dates?

11 A (Arif) That is correct.

12 Q And, so, what happened? What was the effect of
13 this decoupling clause taking effect 16 months
14 after the base rates took effect?

15 A (Arif) We attempted to provide -- let me find it.
16 My apologies for taking a little longer.

17 So, what we uncovered, through the
18 discovery process, and what seemed relevant to
19 our analysis, we tried -- we attempted to provide
20 a timeline on Bates -- that you would find on
21 Bates Page 011.

22 Q So, we're back in your testimony, Bates Page 011?

23 A (Arif) That is correct.

24 Q All right. Let's go there.

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) Exhibit 4, Bates Page 011.

2 Q All right, let me get there. Hold on. Okay, I'm
3 there.

4 A (Arif) This essentially summarizes the relevant
5 dates, and anything that we deemed relevant to
6 this current case, in a concise, pictorial
7 format, if I may put it this way.

8 So, from that, we are trying to
9 infer -- or, we suggest that, since the rates
10 that came out -- the permanent rates came out, de
11 facto, was effective from July 1st, 2017. And
12 the decoupling revenue -- decoupling mechanism
13 was instituted from November 1st, 2018. Yet, the
14 Company was actually approved to recover 82.9
15 million through the distribution rates, which
16 clearly had 1.614 million as an item that was
17 added to the distribution rate, the Company
18 collected those revenue, in fact, from July 1st,
19 2017.

20 We did, admittedly, very simple math,
21 taking 1.614 million as the revenue identified
22 from 2016 test year to be the total discount over
23 a 12-month period, and extrapolating that to a
24 16-month period, we came up to that \$2.15 million

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[WITNESS PANEL: Arif|Thompson]

1 figure that the Company over-collected through
2 this process and through this labyrinth of rules
3 that we have in the State of New Hampshire.

4 And I, again, admittedly, accept the
5 fact that this is a simplification. But what we
6 were trying to do is to point that discovery, as
7 well as provide a rough order of magnitude amount
8 that can be calculated.

9 Q Thank you. Now, just moving briefly to 20-105,
10 it's your understanding that the tariff language,
11 the decoupling tariff language in 20-105 removed
12 this mismatch. Would you agree?

13 A (Arif) I do.

14 Q And it's your understanding that the Company is
15 essentially saying that that remedy, that the
16 removing of the mismatch from 20-105, ought to be
17 applied back to 17-048?

18 A (Arif) That is our understanding.

19 Q Now, is it your testimony or your assessment that
20 simply taking that later remedy, and providing it
21 to an earlier case, might not work?

22 A (Arif) That is correct.

23 Q And why is that?

24 A (Arif) Because that creates the mismatch of the

[WITNESS PANEL: Arif|Thompson]

1 context. The context is important here. If the
2 context is the Company has already been
3 compensated, then they don't get to add
4 additional line of \$1.614 million, because that,
5 *de facto*, would be double-counting, when they are
6 in fact, compensated or made whole through the
7 RLIAP/GAP component of the LDAC charge.

8 And it is our understanding as well,
9 and we -- I believe we provided two attachments
10 to that effect, I think Attachment 13 and 14,
11 which is actually RATES-5 model that was
12 submitted in the next rate case, 20-105. The
13 first one was the initial one, at the temporary
14 phase, which had that line added. And then, the
15 second one was the final one that did not have
16 that line added. So, given the context, it made
17 perfect sense why, in the first instance, in
18 17-048, it would be -- that the tariff language
19 would be that way. And why, in the second
20 instance of 20-105, the tariff language was
21 completely different.

22 Simply put, the contexts were very
23 different. And it would be, therefore, unwise to
24 take the 20-105 context and impose it into the

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[WITNESS PANEL: Arif|Thompson]

1 context of 17-048. That creates a mismatch, but
2 of a different kind.

3 MR. DEXTER: Thank you. That's all the
4 questions I have.

5 CHAIRMAN GOLDNER: Thank you. We'll
6 move to the Consumer Advocate cross.

7 MR. KREIS: I have no questions for the
8 Department's witnesses. But I thank them for
9 their excellent work.

10 CHAIRMAN GOLDNER: All right. Very
11 good. We'll move to Liberty cross.

12 MS. KIMBALL: Okay. Thank you. Okay,
13 good afternoon, Mr. Arif. How are you?

14 *[Court reporter interruption regarding*
15 *the use of the microphone.]*

16 MS. KIMBALL: Okay. Thanks. Not many
17 people really want me to be on a microphone.

18 **CROSS-EXAMINATION**

19 BY MS. KIMBALL:

20 Q Okay. Dr. Arif, you have filed joint testimony
21 in this case with Mr. Thompson, marked as
22 "Exhibit 4", correct?

23 A (Arif) That is correct.

24 Q Is there any division of duties between you and

[WITNESS PANEL: Arif|Thompson]

1 Mr. Thompson, in relation to the joint testimony?

2 A (Arif) We worked on it collaboratively.

3 Q Before this case, had you ever participated in a
4 utility regulatory proceeding involving the
5 development of a revenue decoupling mechanism?

6 A (Arif) No, I did not.

7 Q Have you ever participated -- had you ever
8 participated in a utility-based rate proceeding?

9 A (Arif) No, I did not.

10 Q Mr. Thompson, have you ever participated in a
11 utility-based rate proceeding as a cost of
12 service witness?

13 A (Thompson) No, I have not.

14 Q Dr. Arif, did you review the Commission's
15 decision approving the permanent rate increase in
16 Docket 17-048 from start to finish before
17 preparing your testimony?

18 A (Arif) We reviewed relevant elements that would
19 lead us to the conclusion that we have provided
20 in our written testimony.

21 Q Thank you. Can I direct you to Exhibit 1, Bates
22 Page 1168, which is the order of the Commission,
23 Order Number 26,122, April 27, 2018?

24 A (Thompson) I'm sorry, could you repeat the Bates

[WITNESS PANEL: Arif|Thompson]

1 Page please?

2 Q Sure. Bates Page 1168.

3 A (Thompson) Thank you.

4 Q And there it states, at the bottom of the page,
5 "The permanent rate increase of \$8,060,117" is
6 the permanent rate effect rate change "to be
7 effective May 1, 2018." Correct?

8 A (Arif) That is correct.

9 Q And that's the number I think you mentioned
10 earlier in your testimony, correct?

11 A (Arif) That is correct.

12 Q And this was not a settled amount, is that right?

13 A (Arif) I was not there. But it was -- it is my
14 understanding that's how it has evolved.

15 Q Okay. And, turning to Bates Page 1166, do you
16 see here that this section addresses "Residential
17 Low Income Assistance Program"?

18 A (Arif) I do.

19 Q And do you see, it starts at the top, that
20 "Liberty did not propose a change to the
21 Residential Low Income Assistance Program in
22 [that] docket"?

23 A (Arif) I do see it.

24 Q And do you see below a statement of Staff's

[WITNESS PANEL: Arif|Thompson]

1 position, where it said -- it says that "Staff
2 recommended that the RLIAP be restructured so
3 that the discount would be calculated on a
4 residential customer's total bill"?

5 A (Arif) If you could direct me to that specific
6 section please?

7 Q It's right there, where it says "Staff", see
8 where it says Staff's position at the bottom of
9 the page? It's in bold, the word "Staff".

10 A (Arif) Yes. But what section of that?

11 Q It's just the first sentence. "Staff recommended
12 that the RLIAP be restructured so that the
13 discount would be calculated on a residential
14 customer's total bill." Correct?

15 A (Arif) That's what it says here.

16 Q And does it also say below that, in the second to
17 last sentence, "Staff stated that the change was
18 needed because the base rate portion of a
19 customer's gas bill [had] increased in recent
20 years while the cost of gas has decreased, and
21 thus the total discounts given were trending
22 higher than planned"?

23 A (Arif) That's what it says, yes.

24 Q So, if Staff thought that the reimbursement of

[WITNESS PANEL: Arif|Thompson]

1 the low-income discount was already in base
2 rates, why would they be proposing to change the
3 RLIAP for this reason?

4 A (Arif) If you could repeat your question please?

5 Q If Staff believed --

6 A (Arif) Uh-huh.

7 Q -- that there was reimbursement of the RLIAP of
8 the low-income discount in base rates, why would
9 Staff be suggesting that the RLIAP was even
10 needed at all?

11 A (Arif) This, I believe the detail -- "the devil
12 is in the detail", as Mr. Therrien has put it.
13 We need to go back to the context. It's not
14 necessarily the need, but the context kept on
15 changing from the initial position to the end.

16 And what we have reviewed, we
17 identified that -- that that was not the case,
18 through the -- through the working of the revenue
19 requirement model that we have looked into.

20 Q So, are you suggesting that Staff did not know
21 that there was a double-collection at the time?

22 A (Arif) I was not there. I cannot comment on
23 that.

24 Q But you have put in all this testimony on a

[WITNESS PANEL: Arif|Thompson]

1 double-collection. So, do you believe that Staff
2 knew it was a double-collection then or not?

3 A (Arif) I cannot comment on what Staff knew or
4 not. But what I can comment on is what we have
5 reviewed through this case. And, based on that
6 review, we identified that the Company was
7 compensated already in that \$8 million figure.

8 Q So, I think you testified earlier that the --
9 that this recovery, this reimbursement through
10 base rates was readily apparent on the schedules
11 that you reviewed. Do you recall saying that?

12 A (Arif) I recall saying that the \$1.614 million,
13 which is accounting for the discount, was clearly
14 identified in RATES-5 and added to the base
15 distribution revenue overall.

16 Q So, then, if your theory is correct, either the
17 Commission approved something that was a mistake
18 or the Commission knew that there was a
19 double-recovery, correct?

20 A (Arif) I, respectfully, would not comment on
21 that, because I was not there, and I don't know
22 the mindset of the Commission at that point in
23 time.

24 Q Okay.

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) So, it would be inappropriate for me to
2 comment.

3 Q Fair enough. Okay. Let me just see what we
4 have.

5 Can you point me to any language in the
6 RLIAP tariff that states that "a portion of the
7 discount is being reimbursed through base rates"?

8 A (Arif) I'm looking for it. If you could help me
9 with anything that you have identified, that
10 would be useful. I can comment on that.

11 Q I'm asking you. It's your testimony.

12 A (Arif) I have not, I mean, I did -- to the best
13 of my memory, at this point in time, I don't
14 know.

15 Q Okay.

16 A (Arif) I provided in my testimony what I thought
17 was identified relevant to the RLIAP discount,
18 which is the highlighted portion that Mr. Dexter
19 identified before.

20 Q Okay. Thank you so much. And just for purposes
21 of asking you the following questions, I'm just
22 going to refer to the Revenue Decoupling
23 Mechanism as the "RDM", is that okay with you,
24 just to save a little time?

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) Yes.

2 Q Thank you. Okay. You would agree that the
3 purpose of the RDM is to break the link between a
4 utility's sales volumes and a utility's revenue
5 level, to remove the disincentive for utilities
6 to promote conservation and energy efficiency,
7 correct?

8 A (Arif) That is correct.

9 Q And, very basically, the RDM does that by setting
10 the target level of revenues, which is approved
11 by the Commission, and then reconciling actual
12 revenues to that target, so that the utility
13 collects its allowed target revenues, no less and
14 no more, is that correct?

15 A (Arif) That is the principle.

16 Q Okay. If we turn to Bates Page 007 of your
17 testimony, which is Exhibit 4. I'm looking at
18 Lines 8 to 10. Are you there?

19 A (Arif) Bates Page 007?

20 Q Yes.

21 A (Arif) Yes. I'm there.

22 Q Okay. It says here that, at the end of Line 8,
23 "In other words, Liberty claims, due to the
24 mismatch in the Tariff 10 language (which is

[WITNESS PANEL: Arif|Thompson]

1 different from the commensurate Tariff 11
2 language), the revenue difference of 4.02 million
3 was passed back in error." Does it state that
4 there?

5 A (Arif) It does.

6 Q And the language in the parenthetical stating
7 "which is different from the commensurate Tariff
8 11 language", is that your voice in the
9 parenthetical?

10 A (Arif) That is our joint voice, yes.

11 Q Thank you. To prepare your testimony in this
12 docket, did you examine Tariff 10 and Tariff 11
13 to compare the terms and understand the
14 differences?

15 A (Arif) Of that specific section, yes.

16 Q What specific section?

17 A (Arif) Where the differences are highlighted.
18 We -- to be more specific, that language was not
19 present in that form in Tariff 11, which is
20 present in Tariff 10.

21 Q And, I'm sorry, which language are we talking
22 about?

23 A (Arif) If we -- I'm referring to the highlighted
24 section that is on the same Bates Page 007, but

[WITNESS PANEL: Arif|Thompson]

1 just above, on Line 5.

2 Q Okay. But, more generally, how would you
3 describe the differences between Tariff 10 and
4 Tariff 11, in terms of the annual reconciliation?

5 A (Arif) It is our understanding that the
6 reconciliation process is similar, by design,
7 which is to reconcile that discounted portion of
8 the R-4 revenues through the RLIAP or GAP
9 component of LDAC. So, that is the
10 reconciliation mechanism that is set out, that is
11 similar in both, under both tariffs.

12 But what is different is the language
13 in terms of the Actual Revenue, how that would
14 treat the R-4 customers between Tariff 10 and
15 Tariff 11.

16 Q If I summarize that to say that, in fact,
17 Tariff 11 combines the R-3 and R-4 rate classes
18 and treats them as a single combined rate class,
19 for purposes of calculating both the Benchmark
20 and the Actual, would you agree with that?

21 A (Arif) If you could repeat your question one more
22 time please?

23 Q Sure. If I summarized the differences or one of
24 the differences as Tariff 11 combines R-3 and R-4

[WITNESS PANEL: Arif|Thompson]

1 rate classes and treats them as a single combined
2 rate class, for purposes of setting the Benchmark
3 and the Actual Revenue calculation, would you
4 agree with that?

5 A (Arif) Under Tariff 11?

6 Q Yes.

7 A (Arif) Roughly, yes. There is a little
8 difference, though. So, we talk about "rate
9 class" and "rate class group". There is a
10 distinction between the two. And the "rate class
11 group", in this instance, would combine the --
12 all residential heating customers, which would
13 include R-4 and R-3.

14 Q Correct. Okay. Thank you. So, you would say
15 there is kind of a significance then, I think
16 you're trying to say, between whether the tariff
17 is using the term "customer class" or "customer
18 class group"?

19 A (Arif) For the purposes of revenue decoupling
20 design, yes; for the purposes of how, in
21 practice, this is -- these all are reconciled,
22 there is slight difference.

23 Q Okay. And then, on Bates Page 007 of your
24 testimony, on Line 15, it says "There is no

[WITNESS PANEL: Arif|Thompson]

1 confusion in the Tariff 10 language." Correct?

2 A (Arif) That is correct. That is our
3 understanding.

4 Q Okay. So, could we please turn to Tariff 10
5 then. And I'm going to be working from the
6 Company's version, which is at -- I'm just
7 looking at the "Revenue Decoupling" section,
8 which is Section D. And this is on Bates Page
9 1292 of Exhibit 1. Are you there?

10 A (Arif) Yes, I am.

11 Q Okay. Thank you.

12 A (Arif) Thank you.

13 Q So, if we just look first at Section 1,
14 "Purpose", do you see where the first -- in the
15 first -- is it fair to say that, in the first
16 three sentences, that "The purpose of the Revenue
17 Decoupling Adjustment Clause is to establish
18 procedures that allow the Company...on an annual
19 basis...to reconcile Actual Base Revenue per
20 Customer with Benchmarked Base Revenue per
21 Customer"? Does it say that there?

22 A (Arif) It does.

23 Q How would you generally describe the process by
24 which the RDM is designed to perform this

[WITNESS PANEL: Arif|Thompson]

1 reconciliation in this Tariff 10?

2 A (Arif) Based on the review of the available
3 material, I would describe in a similar manner as
4 I was pointing out a little while ago. Which is
5 that the Company would be collecting distribution
6 base revenue, for all other rate classes it would
7 come through distribution revenue, base revenue,
8 for specifically R-4 customers, this is
9 bifurcated into two, under RLIAP it is 60 percent
10 discount provided, and that 40 percent is come
11 through the base rates, all of it, and the 60
12 percent would come through, which is also part of
13 the base distribution revenue, from the RLIAP/GAP
14 component of LDAC through a reconciliatory
15 mechanism.

16 Q So, just to play that back again, just -- I'm
17 sorry, I just want to make sure I got it right,
18 you're not saying that "60 percent of the rate
19 that low-income customers is coming through" --
20 "pay is coming through RLIAP", you're saying
21 "60 percent of the discount comes from there"?

22 A (Arif) So, the discount is the 60 percent. And
23 that's coming from the RLIAP/GAP component of
24 LDAC.

[WITNESS PANEL: Arif|Thompson]

1 Q Okay.

2 A (Arif) But that -- and what I also am saying is
3 that that is also a part of the distribution base
4 revenue.

5 Q Okay. I just want to make sure I have your
6 statement.

7 So, in Tariff 10, is it your belief
8 then that the target and actual revenues are
9 calculated on a customer class basis or a
10 customer group basis?

11 A (Arif) I believe the distinction is there, but it
12 is actually calculated on a customer class basis.
13 Although, the overall distribution revenue, as
14 Ms. Menard has indicated before today, that there
15 is no distinction between R-4 or R-3 customers
16 what rate they should pay. The distinction is
17 solely in terms of through which mechanism the
18 Company is made whole. And, for R-4 customers,
19 there are two sources.

20 Q Okay. If we turn to the calculation of the
21 Revenue Decoupling Adjustment, in Section D.5,
22 which is on Bates Page 1294. Here it sets out
23 the equation for the annual reconciliation. Do
24 you see that? Do you see the equation at the

[WITNESS PANEL: Arif|Thompson]

1 bottom of the page?

2 A (Arif) I do. You're referring to "b"?

3 Q Yes. Thank you. And there's really two
4 equations there, correct?

5 A (Arif) Yes.

6 Q And can you explain what is the function of each
7 of those equations?

8 A (Arif) I have not specifically looked at it.

9 It's going to take a little while, if you're --

10 Q I'm happy to have you take a minute, if you'd
11 like?

12 *[Short pause.]*

13 **BY THE WITNESS:**

14 A (Arif) Yes.

15 BY MS. KIMBALL:

16 Q Okay. Can you tell me what the function of each
17 of the equations is?

18 A (Arif) I'm reading, and I'm reading on-the-fly,
19 apologize if there is any mistake, but I hope
20 that you would help me there.

21 So, what it's doing, the first
22 equation, is basically identifying the revenue --
23 decoupling revenue, which is base rate per
24 customer from the year before, times the

[WITNESS PANEL: Arif|Thompson]

1 equivalent bill counts, which is "ACUTS", from
2 the year before, minus the Actual Revenue from --
3 the Company would have collected for that
4 purposes from the year before, summed up for all
5 rate classes. That's the first equation.

6 Q Uh-huh.

7 A (Arif) That's my quick understanding of it on
8 your ask.

9 And the second one is talking about
10 the -- how that would turn into a rate, based on
11 the decoupled revenue amount as calculated from
12 there, plus any prior period balance, right,
13 divided by the throughput, so, the amount of
14 therm volumes that the Company projects to be
15 selling in the next year, and that would give you
16 a rate. If I'm not mistaken, that's what it is
17 showing.

18 Q Okay. So, if we turn to the next page, Bates
19 1295, there is the definitions of the meaning of
20 all those elements is listed there, correct?

21 A (Arif) That's what I was quickly checking.

22 Q Okay. And, as we look at the second one from the
23 top, which is "AR", and then " T_{-1} ", do you see
24 that one?

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) That is what I have highlighted on Bates
2 Page 007 of Exhibit 4.

3 Q Okay. And the first sentence in the definition
4 is "The Actual Base Revenue is" -- the first
5 sentence says "The Actual Base Revenue for the
6 applicable Customer Class for the most recently
7 completed Decoupling Year (T-1), as defined in
8 Section 4(D)." Correct?

9 A (Arif) That's what it reads.

10 Q And, if we go to Section 4(d), which is on Bates
11 Page 1292, we can see there that 4 --
12 Section 4(d) says "Customer Class is the group of
13 all customers taking service pursuant to the same
14 Rate Schedule." Do you see that?

15 A (Arif) I do.

16 Q Is it your understanding that R-3 and R-4 rate
17 classes each have a different rate schedule?

18 A (Arif) That, as you probably have heard, as I
19 did, during the beginning of this proceeding
20 today, Ms. Menard, when -- during the cross,
21 agreed or identified that these are separate rate
22 classes. I think that's what I would go with.

23 Q But you -- but did you examine this tariff before
24 you --

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) I did.

2 Q -- wrote this testimony?

3 A (Arif) I did.

4 Q So, you said -- you testified on Bates Page 007
5 of your testimony "There's no confusion in Tariff
6 10 language." So, you've been through this
7 word-by-word, correct?

8 A (Arif) Yes, I have.

9 Q Okay. And, under the rate schedules, do you
10 agree that the R-4 revenues are discounted and
11 R-3 are not?

12 A (Arif) R-4 revenues are, for the purposes of base
13 revenue -- distribution revenue calculation, they
14 are identical. R-4 revenue -- R-4 customer class
15 gets a discount, I would say that.

16 Q But on their actual rate schedule? Is it
17 discounted on the actual rate schedule or not?

18 A (Arif) If you could help me and cite specifically
19 where you are referring to, I can --

20 Q Sure. Let me rephrase the question.

21 A (Arif) Uh-huh.

22 Q If we are to refer to rate schedule -- the rate
23 schedule for the R-4 class, would you expect to
24 find that the rates listed there are discounted

[WITNESS PANEL: Arif|Thompson]

1 or non-discounted?

2 A (Arif) It would be discounted.

3 Q Okay. So, then, if we go back to the definition
4 of "AR_{T-1}", on Bates 1295, there's a second
5 sentence in this definition, that is quoted in
6 your testimony, that says: "For purposes of
7 calculating the Actual Base Revenue, base
8 revenues for Low Income rate class R-4, shall be
9 determined based on non-discounted R-3."

10 Correct?

11 A (Arif) That is correct.

12 Q So, in essence, the first sentence of the formula
13 definition says that the class rate schedules
14 will be used to calculate Actual Base Revenues,
15 but the second sentence creates an exception,
16 would you agree?

17 A (Arif) Just taken in the context of this, I would
18 agree. But I would disagree otherwise.

19 Q What does that mean, you "disagree otherwise"?

20 A (Arif) Disagreement is in the context of this
21 language was developed. And I think what Mr.
22 Thompson and I, we were demonstrating that that
23 would be what, if I understand what you are
24 suggesting, that there is a disconnect between

[WITNESS PANEL: Arif|Thompson]

1 the two sentences there, it would appear so, if
2 we only take this definition on its own. But, if
3 we look into the context of how the revenue
4 requirement, as well as the RATES-5 were
5 designed, it would not be disconnected.

6 Q So, just to play that one back at you, you're
7 saying that there was a specific conscientious
8 decision to not have the "Benchmark" definition
9 meet the "actual base revenue" definition, it was
10 a specific choice because of the context of the
11 base rate. Is that your testimony?

12 A (Arif) I would respectfully highlight the fact
13 that I was not there. And, as a result, when I
14 approached this analysis, we approached it based
15 on what was before us. And, based on that
16 analysis, I cannot comment on what was -- whether
17 it was conscientious or not. But I can comment
18 that they -- based on our analysis, we could see
19 a rationale behind it.

20 Q And, so, when we look below, just below the "AR"
21 -- the term " AR_{T-1} ", we see " $BRPC_{T-1}$ ", and that
22 is the "Benchmark Base Revenue Per Equivalent
23 Bill", correct?

24 A (Arif) That is correct.

[WITNESS PANEL: Arif|Thompson]

1 Q And that starts with the same language as the
2 previous definition, saying "go look at the
3 Customer Class language in Section 4(D)",
4 correct?

5 A (Arif) It does.

6 Q But it doesn't have that second statement?

7 A (Arif) It does not.

8 Q And, so, your testimony is that the reason that
9 parallel statement would not be there is because
10 the context is there's reimbursement happening
11 somewhere else, is that correct?

12 A (Arif) That's what I believe I said before, yes.

13 Q So, for someone not to put that language in,
14 would then have to be a conscientious decision,
15 wouldn't it?

16 A (Arif) I wouldn't comment on that. I think that
17 that would be inappropriate for me to comment.

18 Q But that's the assumption you've made?

19 A (Arif) Well, I -- we did not make any assumption.
20 We just followed the trail of evidence, and that
21 was the conclusion that we ended up with.

22 Q Okay.

23 A (Arif) If anything, if I may add, if anything,
24 any assumption was made was to adhere to two

[WITNESS PANEL: Arif|Thompson]

1 principles: No party should be harmed unduly,
2 and we should be objective in our analysis.

3 Q Okay. That's good objectives, I'll take them.
4 Okay. So, could we go then to -- we have just
5 covered a few questions. So, just give me a
6 minute here.

7 Okay. If we now flip back to Bates
8 Page 1292, and this is the "Definitions" section.
9 In Section 4.a, do you see that there is a
10 definition of "Actual Base Revenue" here?

11 A (Arif) I do.

12 Q And do you see that this section does not include
13 the sentence from the formula definition that we
14 were just looking at together?

15 A (Arif) I do.

16 Q Is the definition of "Actual Base Revenue" in
17 Section 4.a, the same as the formula definition
18 in Section 5.a?

19 A (Arif) If you allow me to read it one more time?

20 Q Sure. Of course.

21 A (Arif) It appears so. The first part of that
22 formula of the first line.

23 Q So, the second line, though, on Section 4.a, says
24 "The Company will use monthly distribution

[WITNESS PANEL: Arif|Thompson]

1 revenues and Actual Number of Customers to
2 determine the Monthly Actual Base Revenue per
3 Customer." Correct?

4 A (Arif) That's what it says, yes.

5 Q Is that sentence in the other definition?

6 A (Arif) Which definition are we referring to?

7 Q In Section 5.a, the formula definition for
8 "Actual Base Revenue"?

9 A (Arif) So, if you're -- I'm trying to understand
10 the essence of your question.

11 Q Sure.

12 A (Arif) So, is it on the monthly portion of the --

13 Q I'll rephrase it. It was confusing. So, is the
14 definition -- is the sentence -- the second
15 sentence included in the definition of "Actual
16 Base Revenue" in Section 4.a, is that sentence
17 repeated in Section 5.a, the definition of
18 "Actual Base Revenue" for the formula?

19 A (Arif) So, we are talking about 5.a? We were
20 looking at 5.b.

21 Q Oh, I'm sorry. You're correct. We're looking at
22 5 -- thank you for correcting me. We're looking
23 at 5.b, the meanings of the formula. So, I'm
24 asking you, is the second sentence in the

[WITNESS PANEL: Arif|Thompson]

1 definition "Actual Base Revenue", in Section 4.a,
2 is that sentence used in the definition of
3 "Actual Base Revenue" in the formula?

4 A (Arif) I'm hesitant to opine either way, because
5 I'm trying to understand your question. And, if
6 I may actually rephrase, if you help me, I
7 probably will give you an answer.

8 Q I'll rephrase it.

9 A (Arif) Yes.

10 Q Do you see Part "a", "4.a"? Do you see Part
11 "4.a"?

12 A (Arif) I do. And you're referring to the second
13 sentence of that definition, right?

14 Q Yes. So, I was just asking you if that sentence
15 is repeated in the other definition of "Actual
16 Base Revenues"?

17 A (Arif) It is hard for me to opine either way, and
18 here is the reason why: One is in a formulaic
19 expression. The other one is the -- the
20 sentence, trying to -- and you're asking me to
21 sort of link between the two. I see difficulty
22 in linking both of them, because of words like
23 "monthly distribution revenue" and "actual
24 numbers".

[WITNESS PANEL: Arif|Thompson]

1 I see a certain portion of it, and you
2 would see that the definition provided for each
3 of those expression in 5.b is already in the
4 tariff underneath that formula.

5 But, to comment on specifically, if you
6 could be a little bit more specific in terms of
7 what portion of that second sentence you want me
8 to opine on, that might be helpful.

9 Q I'm not asking you to opine on the sentence. I'm
10 asking you if it exists in the second definition?

11 A (Arif) I think that it would be inappropriate for
12 me to comment whether it exists or not, because
13 it's complicated.

14 Q Oh, I thought your testimony was "there's no
15 confusion in Tariff 10"?

16 A (Arif) There is no confusion in Tariff 10, in
17 terms of the principle that we adhere to, which I
18 iterated to you. Through our discovery and
19 evidence that we looked at, it made no confusion
20 to us.

21 Q So, then, just looking at the definition of
22 "Actual Base Revenue" in Section 4.a, --

23 A (Arif) Uh-huh.

24 Q -- are the monthly distribution revenues that are

[WITNESS PANEL: Arif|Thompson]

1 mentioned there discounted or non-discounted for
2 the R-4 rate class for the annual reconciliation?

3 A (Arif) It does not specifically say that it is
4 discounted or non-discounted. But, if one needs
5 to understand, in the context of the formula in
6 5.b, it would appear it is non-discounted.

7 Q Yes, because you're implying -- you're inferring
8 that the specific sentence that is in the other
9 definition you would -- you would also infer it
10 here then, is what you're saying?

11 A (Arif) Which other sentence, if you could
12 clarify?

13 Q The sentence that says "For purposes of
14 calculating the Actual Base Revenue, base
15 revenues for the Low Income rate class R-4, shall
16 be determined based on non-discounted R-3." Are
17 you suggesting that that sentence tells us that
18 the monthly distribution revenues are
19 non-discounted, in 4.a?

20 A (Arif) That sentence tells us, so, if you go back
21 to that particular sentence and let me take a
22 look at it. That sentence tells us that, only
23 for the R-4 class, we need to consider, when the
24 actual revenue is being counted, that actual

[WITNESS PANEL: Arif|Thompson]

1 revenue is the full revenue, which would be
2 identical to R-3 class revenue.

3 Q Uh-huh. So, in 4.a, when it says "The Company
4 will use monthly distribution revenues", --

5 A (Arif) Uh-huh.

6 Q -- are those revenues discounted or not
7 discounted?

8 A (Arif) It would appear that it would be full
9 revenue.

10 Q Meaning "non-discounted". And you're coming to
11 that conclusion because of your reading of the
12 "AR_{T-1}" formula definition, correct?

13 A (Arif) Not because of that reading.

14 Q Then, why -- then, how are you getting there?

15 A (Arif) Because of the principle that "no party
16 should be harmed, and we needed to be objective."
17 The motivation -- if your question is about the
18 motivation, the motivation was not there, sorry.
19 I couldn't connect that with this one. But I can
20 tell you what motivated us to see it that way.

21 So, to be more specific, we did not
22 want to be, in any form, shape, punitive to the
23 claims of the Company, if it is -- based on the
24 review, if it is justified, and it appears to be

[WITNESS PANEL: Arif|Thompson]

1 that, so that would be the conclusion we would
2 have provided; but we found otherwise.

3 Q Well, I don't think your testimony addressed the
4 meaning of "Actual Base Revenue" in Section 4.a,
5 did it?

6 A (Arif) I cannot comment what we think about that
7 one. Sorry.

8 Q No, I'm asking you. Did you --

9 A (Arif) okay.

10 Q Okay. I'll ask a different way.

11 A (Arif) Yes.

12 Q Did your testimony address Section 4.a, and make
13 a -- and put forward a position about whether
14 monthly distribution revenues would be discounted
15 or non-discounted?

16 A (Arif) I think what our testimony did was looking
17 through the evidence that was presented to us,
18 and whatever the revenue that was -- excuse me --
19 that was identified in RATES-5, for R-4 class,
20 was the revenue that we accepted as given.

21 Q I don't think that answered the question. So,
22 can you point to me in your testimony where you
23 addressed the meaning of Section 4.a, just tell
24 me what page it is?

[WITNESS PANEL: Arif|Thompson]

1 A (Arif) The meaning of Section 4.a of that tariff
2 revenue?

3 Q Correct.

4 A (Arif) I don't think we specifically analyzed
5 every bit of the tariff revenue. What we did was
6 to actually take it as a whole, go through the
7 discovery process, identify the evidence, and
8 come to a conclusion as to whether Liberty's
9 claim of that \$4.02 million is valid or not.

10 Q And, so, when you testified earlier that you
11 would interpret Section 4.a, where it states "The
12 Company will use monthly distribution revenues",
13 you are -- you testified that that would mean a
14 "non-discounted rate", although it doesn't state
15 that there, does it?

16 A (Arif) If the Company is entitled to getting the
17 tariff rate for R-4 customers from two sources,
18 that would make the Company whole. And that
19 tariff -- or, that rate would be similar to R-3
20 rates. So, that's what we provided. And that's
21 what I was providing my opinion on.

22 Q All right. And, if we go down to Part i, in the
23 same section, "Benchmark Base Revenue per
24 Customer", does it use the same language here?

[WITNESS PANEL: Arif|Thompson]

1 Let me know when you're there. Are you there?

2 A (Arif) I'm trying to. Yes, it is. I'm there.

3 Thank you.

4 Q So, this says "Benchmark Base Revenue per
5 Customer is the monthly allowed distribution
6 revenue." So, that's -- and that the prior
7 Section 4.a says "monthly distribution revenues",
8 this one says "monthly allowed distribution
9 revenue". So, if the actual is not discounted,
10 then why would this language here "monthly
11 allowed distribution revenue" mean something
12 different?

13 A (Arif) I'm trying to get to your question. So,
14 if you could -- I apologize, if you could say it
15 one more time?

16 Q Sure. In Section i, the definition that I'm
17 reading from here, "Benchmark Base Revenue per
18 Customer is the monthly allowed distribution
19 revenue per Equivalent Bill." Does it say that
20 there?

21 A (Arif) It does.

22 Q If we go back to Actual Base Revenue, and it
23 says, in 4.a, and it says "The Company will use
24 monthly distribution revenues", and you said that

[WITNESS PANEL: Arif|Thompson]

1 term would mean a "non-discounted" term, then why
2 wouldn't the term mean "non-discounted" in
3 Section i?

4 A (Arif) I wouldn't know. But I would think that
5 that would mean the same similar way what is
6 mentioned in both sections.

7 Q Okay. If we go back to Section 5.a, please --
8 I'm sorry, you corrected me, "5.b", on Bates
9 Page 1294. You explained earlier that there's
10 two equations here, correct?

11 A (Arif) We observed there are two equations here.

12 Q Okay. So, when we look at the first equation, it
13 starts with "RD", and then a little "CG". Do you
14 see that?

15 A (Arif) Yes, I do.

16 Q And, when we go to the next page, and look up
17 what that meaning is of "RD_{CG}", it says "The
18 Revenue Decoupling adjustment to revenues,
19 representing the sum of monthly Revenue
20 Decoupling Adjustments in the Decoupling Year."
21 Correct?

22 A (Arif) Where exactly are you please?

23 Q On Bates Page 1295.

24 A (Arif) Uh-huh.

[WITNESS PANEL: Arif|Thompson]

1 Q Do you see the term "RD", with the "cg"?

2 A (Arif) Yes. I was looking at the "cg" in and of
3 itself.

4 Q Yes. So, this term is defined as "The Revenue
5 Decoupling adjustment to revenues, representing
6 the sum of monthly Revenue Decoupling Adjustments
7 in the Decoupling Year." Correct?

8 A (Arif) That is correct.

9 Q Oh, sorry. Just one second. Okay. And the
10 "CG", when we look at the "CG" part of that, the
11 "CG" is "Customer Class Group", correct?

12 A (Arif) That is correct. That's what I was
13 looking at, yes.

14 Q And it says "Customer Class Groups as defined in
15 Section 4(D)", just to be full --

16 A (Arif) Yes.

17 Q Okay. Does Section 4(D) actually define
18 "Customer Class Groups"?

19 A (Arif) It does. It's on Bates 1292.

20 Q Okay. And, if we look at the term "rc", what
21 does it say the definition is of that?

22 A (Arif) "Rate classes in Customer Group." That's
23 on Bates 1295.

24 Q Correct. So, when we go back to the equation,

[WITNESS PANEL: Arif|Thompson]

1 and look at the two equations, are all the terms
2 using "Customer Group", except for the "BRPC_{T-1}",
3 in the first formula?

4 A (Arif) Sorry, what was the question again?

5 Q If we look at the formulas that are in Part b,
6 and they have all these elements here, --

7 A (Arif) Uh-huh.

8 Q -- are all of the elements in this formula using
9 the "Customer Class Group"?

10 A (Arif) Uh-huh.

11 Q All of them are using "Customer Class Group"?

12 A (Arif) Based on the description provided
13 underneath those two formulas, it would appear
14 so, yes.

15 Q Okay.

16 A (Arif) So, if I may add a little bit more? I
17 understand, and this is our understanding, that
18 the sum on the first formula is referring to each
19 customer class in a Customer Class Group.

20 Q And, so, if we -- do we need to take each one of
21 these individually then? So, are you referring
22 to the first formula?

23 A (Arif) I am referring to the first formula.

24 Q Okay. So, the first term is "RD_{CG}". And, if we

[WITNESS PANEL: Arif|Thompson]

1 look at the list of definitions, "RD_{CG}" is -- it
2 doesn't mention whether it's a "Customer Class"
3 or a "Customer Group", does it?

4 A (Arif) In that definition, it sort of like looked
5 at the explanation for the "RD_{CG}" in and of
6 itself; in separation, no. RC -- the subscript
7 of "CG", which identifies "Customer Class Groups
8 as defined in Section 4(D)", that there, I think
9 that does not.

10 And, when you look at the "rc"
11 component, which is the -- this is the -- which
12 says the "Rate Classes in Customer Group", it
13 then identifies as a whole that each of those
14 customer classes are separate, but they make up a
15 group. And that's what this formula is trying to
16 sum up to.

17 Q Right. So, I guess my question from earlier was,
18 each of the elements in this first formula, if we
19 went through, and I don't want to take everybody
20 through it, but, if we went through each element
21 here, the only element in here that is actually
22 calculated on a Customer Class basis is the
23 "BRPC_{T-1}", isn't that correct?

24 A (Arif) No. I would not agree with that.

[WITNESS PANEL: Arif|Thompson]

1 Q Well, why not?

2 A (Arif) Because you see the definition of

3 "ACUSTS" --

4 *[Court reporter interruption.]*

5 WITNESS ARIF: I'm sorry.

6 **CONTINUED BY THE WITNESS:**

7 A (Arif) The "ACUSTS_{T-1}", I think your question was
8 only focused on "BRPC_{T-1}", but, if I look at the
9 definition of the multiple of that one, which is
10 ACUSTS_{T-1}, that also clearly refers to "Customer
11 Class".

12 BY MS. KIMBALL:

13 Q But, of course, that's not a revenue component,
14 though. That's a "Number of Bills" component,
15 correct?

16 A (Arif) Yes.

17 Q So, I'll rephrase the question. The only revenue
18 component in that formula is the Benchmark,
19 correct?

20 A (Arif) I would slightly differ. The reason being
21 that "RT" -- "AR_{T-1}", that component, which is
22 also -- there is a definition provided
23 underneath, talks about "Customer Class".

24 Q But that one says that the Customer Class R-4

[WITNESS PANEL: Arif|Thompson]

1 shall be determined by using non-discounted R-3,
2 correct?

3 A (Arif) In the second sentence, yes.

4 Q Right.

5 A (Arif) But the first sentence, which also
6 provides the definition, talks about the
7 "Customer Class". So, I'm just trying to get to
8 your question.

9 Q Well, so, which sentence controls then?

10 A (Arif) I think both does. And that's what we are
11 opining on in our testimony. That we -- both of
12 these sentences for "AR_{T-1}", that definition,
13 seem conflicting on the outset, outside the
14 context where it should be read. In the context,
15 where we put it in the context, which is the
16 revenue requirement calculation and cost of
17 service calculation and the RATES-5 calculation,
18 they do not appear that way to us.

19 Q And the context you're talking about is an
20 omission of the second sentence from the
21 "Benchmark Base Revenue" definition?

22 A (Arif) No. No, I'm not talking to that context.
23 My context is what we demonstrated a little while
24 earlier, about how the \$8 million figure came by,

[WITNESS PANEL: Arif|Thompson]

1 which clearly compensated the Company for the
2 same discounted portion of the revenue, which was
3 then again added for the second time in RATES-5
4 calculation separately.

5 Q If that was -- if that hadn't happened, if that
6 part did not exist, --

7 A (Arif) Which part, if you could --

8 Q The part that you just explained, that the
9 low-income reimbursement in base rates. Let's
10 assume, hypothetically, that does not exist.
11 That's not an issue here.

12 Hypothetically, if that doesn't exist,
13 then the definition of "Actual Base Revenue" and
14 the "Benchmark Base Revenue" should match,
15 correct?

16 A (Arif) Let me understand your question, because I
17 think it's loaded. That's why, and I apologize
18 if I am frustrating you, but this is important.

19 So, what you are suggesting, and please
20 tell me if my Understanding is correct, is that,
21 hypothetically, if the Company was not
22 compensated in the \$8 million that they got out
23 of the rate case, will it be appropriate to have
24 the second line added? The answer to that

[WITNESS PANEL: Arif|Thompson]

1 question is "yes."

2 But that -- we are not in that
3 hypothetical. That's the bottom line.

4 MS. KIMBALL: I don't have any further
5 questions. Thank you.

6 CHAIRMAN GOLDNER: Okay. Let's do
7 this. We'll take a break for the Court Reporter.
8 And we'll return quickly, at 3:30. And we're
9 going to try to wrap up by 4:30 today, if at all
10 possible. Thank you. We'll take a brief break.

11 (Recess taken at 3:21 p.m., and the
12 hearing resumed at 3:33 p.m.)

13 CHAIRMAN GOLDNER: All right. We'll go
14 back on the record again. And begin with
15 Commissioner questions, and Commissioner Simpson.

16 CMSR. SIMPSON: I don't have any
17 questions for the witness, Mr. Chairman. Thank
18 you.

19 CHAIRMAN GOLDNER: All right. Thank
20 you. And Commissioner Chattopadhyay?

21 CMSR. CHATTOPADHYAY: Just give me
22 30 seconds, I need to get on my computer.

23 So, a very quick one.

24 BY CMSR. CHATTOPADHYAY:

[WITNESS PANEL: Arif|Thompson]

1 Q I'm just -- there was this discussion about "60
2 percent", "40 percent", and all of that for the
3 RLIAP. But did you take a look at the new
4 approach to, you know, the low-income discount?

5 A (Arif) Yes. So, if I understand, Commissioner
6 Chattopadhyay, your question, are you referring
7 to the -- I kept on saying "RLIAP" --

8 Q Versus "GAP".

9 A (Arif) -- versus "GAP". Okay. Thank you for
10 clarifying that question now. Yes, we did, as a
11 part of this particular case, and also another
12 one, which, like, I can't, in my memory going
13 back, disassociate the two, whether it was in
14 this context or that context more or less. But
15 we are aware of the distinction between the two
16 "regime", if I may call it that way.

17 CMSR. CHATTOPADHYAY: Okay. I think
18 that's all I have.

19 WITNESS ARIF: Okay. Thank you.

20 CHAIRMAN GOLDNER: Okay. The Chair has
21 no further questions.

22 A question for you, Attorney Dexter.
23 How long do you expect the redirect to take?

24 MR. DEXTER: I don't have any redirect.

[WITNESS PANEL: Arif|Thompson]

1 CHAIRMAN GOLDNER: Well, that's faster
2 than I was anticipating.

3 [Laughter.]

4 CHAIRMAN GOLDNER: All right. Thank
5 you.

6 Okay. We'll release the witnesses.
7 Thank you very much. The witnesses are released.

8 Okay. So, without objection, we'll
9 admit Exhibits 1 through 6, and reserve
10 Exhibit 7, Mr. Dexter, for the Department of
11 Energy.

12 I'll check with Commissioner
13 Chattopadhyay. Did you have a request relative
14 to Excel files?

15 Was there anything there that you
16 needed?

17 CMSR. CHATTOPADHYAY: I was interested
18 in seeing the Excel file that is associated
19 with -- let me get it right, DG 14-180, where we
20 were talking about RATES-5. If that is available
21 in an Excel, that would be great.

22 CHAIRMAN GOLDNER: And who was the
23 source of that file, Commissioner?

24 MR. SHEEHAN: That would be a Company

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1 file.

2 CHAIRMAN GOLDNER: Okay.

3 MR. SHEEHAN: And we will, if we have
4 it, we will provide it promptly.

5 CHAIRMAN GOLDNER: Okay. Would we put
6 that in an exhibit, I assume? Exhibit 8?

7 MR. SHEEHAN: Exhibit 8.

8 CHAIRMAN GOLDNER: Okay.

9 (**Exhibit 8** reserved)

10 CHAIRMAN GOLDNER: All right. Very
11 good.

12 So, next, on the legal briefs. So,
13 I'll check with Mr. Patnaude, because I know
14 there are some -- we'll want the transcript
15 before we make a schedule. And I know, sir,
16 you're on vacation. So, would July 11th be too
17 quick for the transcript? July 14th? July 21st?

18 *[Brief off-the-record discussion ensued*
19 *between the Chairman, Commissioners,*
20 *Atty. Wind, and Mr. Patnaude.]*

21 CHAIRMAN GOLDNER: Okay. So, we
22 will -- the Court Reporter will have the
23 transcript ready by the 13th of July. Would two
24 weeks be enough for the briefs at that point,

1 enough time?

2 Two weeks is sufficient? Everybody is
3 nodding.

4 MR. KREIS: That's perfect. And, thank
5 you, during the off-the-record chatter for
6 convincing the Court Reporter not to file his
7 transcript till July 13th, because I have a
8 vacation coming up that ends on July 12th.

9 CHAIRMAN GOLDNER: Very good. Very
10 good. Well, it sounds like you and the Court
11 Reporter might be on vacation together.

12 *[Laughter.]*

13 CHAIRMAN GOLDNER: But I won't question
14 any further on that.

15 MR. KREIS: I've got a great trip
16 planned, he's welcome to come along.

17 CHAIRMAN GOLDNER: So, let me make sure
18 I've got the math right here. So, the 13th is
19 the transcript; the 27th are the briefs; and then
20 the reply briefs would be August 10th. Is that
21 enough time for everyone?

22 And I want to make sure now that I make
23 sure I allow enough time, so we don't have a
24 filing for additional time later, we get that

1 firmed up.

2 *[Short pause.]*

3 MR. DEXTER: So, July 27th is a
4 Thursday.

5 CHAIRMAN GOLDNER: Correct.

6 MR. DEXTER: And August 10th is a
7 Thursday.

8 CHAIRMAN GOLDNER: Correct.

9 MR. DEXTER: I think those work.

10 CHAIRMAN GOLDNER: Okay. Okay. It
11 think everyone is okay? Mr. Kreis?

12 MR. KREIS: Yes.

13 CHAIRMAN GOLDNER: Okay. Okay, very
14 good.

15 So, we will -- I'll just repeat that
16 back into the microphone. The 27th on the
17 briefs, of July, and then August 10th on the
18 reply briefs.

19 Okay. So, now, we'll take closing
20 statements from the DOE and the OCA and Liberty.
21 I believe that that's it. So, we can take
22 closing statements now, beginning with the
23 Department of Energy.

24 MR. DEXTER: Well, Commissioners, it's

1 been a very long day. So, I'm not going to try
2 to summarize what our witnesses have said. I
3 think they spent a tremendous amount of time
4 putting their joint testimony together, and
5 providing the relevant materials that you would
6 need to answer any questions you might have about
7 their joint testimony. And I think I will let
8 the joint testimony stand for itself.

9 As I said at the outset, I believe the
10 Company is asking for an extraordinary remedy, in
11 the sense that they're asking us to look back to
12 the 2018 and 2019 timeframe, and determine that a
13 mistake was made or an ambiguity existed, or
14 something that caused them not to collect \$4
15 million back in that timeframe when they believe
16 they should have.

17 I guess there's a couple of things I'd
18 like the Commission to keep in mind when you
19 consider all this.

20 All the tariffs that we've been talking
21 about today were presented by the Company, with
22 an officer's signature at the bottom of the page.
23 So, the tariffs come from the companies. Now, we
24 agree with the Company's witnesses that, during

1 the course of the case, there is back-and-forth
2 and the issues change, and tariffs get revised,
3 and there's tech sessions and things like that.
4 But, ultimately, the Company puts their name on
5 the bottom of the tariff. So, that's an
6 important point to keep in mind.

7 Number two, the other point I want you
8 to keep in mind is, we don't know what would have
9 happened, in the course of events, had the
10 Company collected \$4 million in 2018 to 2019. We
11 don't know if DE [DG?] 20-105 would have existed
12 had there been \$4 million, because we don't know
13 what the impact -- of the financial impact of the
14 \$4 million would be. We heard today that it
15 could be as much as 14 percent of the Company's
16 net income, which is significant. I don't know
17 how we answer that question. You know, would the
18 rate case that came forward in 20-105 had been
19 put off a year, and what impact would that have
20 had on customers? It becomes very difficult to
21 unwind things, when you start going back through
22 the time machine and figure out, you know, what
23 should happen and who deserves what. And I think
24 that's what we're going to find, when we do the

1 research on the retroactive ratemaking, that's,
2 you know, probably one of the big reasons.

3 The other thing I want to point out, I
4 probably should have made this the second point,
5 you know, we heard -- so, this situation, you
6 know, arose in the Fall of 20-- I'm sorry,
7 2018. In the Company's very first reconciling
8 case, they highlighted this very issue. They
9 discussed the issue with Commission Staff. And,
10 indeed, if you go back and look at the
11 transcripts of that case or you look at the
12 record of that case, they did, indeed, make two
13 proposals. But then they chose which proposal to
14 put into the record as the final -- as the final
15 proposal of the Company. And that's the one that
16 they're now claiming had had the problem in it.

17 So, having identified the problem,
18 having laid it bare in 19-145, and then having
19 made the choice to submit the tariff the way we
20 see it today, that we've looked at it today, it
21 makes it even more difficult to go back and open
22 up the past, because it's not like this issue was
23 just discovered. It was discovered right after
24 the tariff was implemented. And I think

1 Ms. Menard talked about, you know, a similar
2 situation on the electric side. There was a
3 decoupling tariff that they, as she put it, she
4 just couldn't implement. So, there were changes
5 made right away. It's just extremely difficult
6 to imagine going back to an issue that the
7 Company identified, put in a revised filing, and
8 then essentially adopted a second time back in
9 2019.

10 Then, as I understand it, it was not
11 raised again in 2020, but it was 2021. So,
12 another year went by. I just think there was
13 some confusion about when it came up again.

14 Those are some of the points that I
15 would like the Commission to keep in mind when
16 they consider this matter. I'd also like you to
17 consider carefully the testimony of the joint
18 witnesses that we put on, the -- what we believe
19 was a clear demonstration we made about what went
20 into the revenue targets on RATES-5 and what went
21 into the revenue requirement that fed into the
22 revenue targets on RATES-5, and come to a
23 conclusion that you feel is just and reasonable
24 for the customers of Liberty.

1 Thank you.

2 CHAIRMAN GOLDNER: Thank you, Attorney
3 Dexter. We'll move to Attorney Kreis.

4 MR. KREIS: Thank you, Mr. Chairman.

5 Well, what has become obvious today is
6 that the tariff in question, dating back to 2017,
7 was a cesarean birth. And, now that it's a dead
8 horse, the process of flogging it has been ugly
9 indeed.

10 You've given us an opportunity to brief
11 this case, and we will brief it in detail,
12 updating, restating, and probably extending the
13 arguments that we made on the very first day that
14 this case was opened in our Motion to Dismiss.

15 But the basic reality is this: In
16 1980, in a case called "*Appeal of Pennichuck*
17 *Water Works*, the New Hampshire Supreme Court
18 said, and I quote, "A public utility's tariffs
19 define the terms of the contractual relationship
20 between a utility and its customers, and have the
21 force and effect of law and bind both the utility
22 and its customers."

23 Now, if you do the research, you see
24 that what the Court has said is that "Principles

1 of statutory construction govern tariff
2 interpretation." But, in reality, principles of
3 statutory construction are identical to the
4 same -- to the principles one would use to
5 construe language in a contract. The existence
6 of an ambiguity is a question of law; it is not a
7 question of fact. So, all the testimony that you
8 heard today, expressing various opinions about
9 whether or not there is an ambiguity, is
10 ultimately irrelevant as a matter of law. You
11 have to decide that. And maybe, ultimately, the
12 New Hampshire Supreme Court will have to decide
13 that. I surely hope not.

14 I really and truly am sorry that this
15 case has reached the stage that it has reached.
16 I'm sorry if what is about to happen is this
17 Company is going to have to wipe out 14 percent
18 of its net income. That's a regrettable turn of
19 events, for which the Company is itself
20 responsible. And I realize that this is an
21 example of "No good deed going unpunished."
22 Because the Company was, as I said before, the
23 first to step up to the plate, the first to
24 volunteer to adopt a revenue decoupling

1 mechanism, and it has not gone well.

2 And I thought that Commissioner Simpson
3 asked what may have been the most salient
4 question of the day, which is "Is overseeing and
5 implementing a complicated tariff regime like
6 this one within the capability of the actual
7 human beings who have to do that in New
8 Hampshire?" And I'll freely admit it's beyond
9 me, but I'm not, unlike Mr. Therrien, I'm not an
10 expert on tariffs. And, unlike the witnesses
11 that you heard from today, I'm not an expert on
12 utility finance, I'm not an accountant. This is
13 a hard -- this is a hard process, and it hasn't
14 gone well.

15 So, I look forward to submitting my
16 briefs. And I look forward to the Commission's
17 ruling that this tariff is not ambiguous, that it
18 can't be revised retrospectively. And that, even
19 if there were some cognizable ambiguity here, the
20 Company is estopped from changing its story from
21 "Oops, we followed the tariff and we lost a pile
22 of money", to "Oops, the tariff was ambiguous."

23 Thank you.

24 CHAIRMAN GOLDNER: Thank you. And,

1 finally, Liberty.

2 MR. SHEEHAN: Thank you.

3 As is always the case, the organization
4 of a closing is hard after the hearing, and your
5 brain is going in fourteen directions. And, with
6 the ability to file written closings, which will
7 be organized and thorough, I'm going to instead
8 just do some potshots here of things that are top
9 of mind.

10 First, the issue of timing, we've laid
11 out clearly that this hasn't sat for five years.
12 It has been pushed in various contexts.

13 Second, the law is clear that you can
14 address reconciliations years after-the-fact.
15 Somewhere in that pile of documents are a couple
16 orders, and we'll cite them again in our filings,
17 where the Company, with Mr. Simek working with
18 the Audit Division, looked at beginning balances
19 of a couple reconciling mechanisms that we
20 carried over from Grid. And the beginning
21 balances seemed unrooted to the books. So, these
22 folks spent a lot of time figuring out to get the
23 right beginning balance. One of those dockets
24 ended up in a 6 or 9 million dollar give-back to

1 customers, five, six years after-the-fact.
2 Another one resulted in a million dollars going
3 the other way, to the Company, years
4 after-the-fact.

5 So, the concept of doing this later is
6 unfortunate, but perfectly okay, if that's the
7 right thing. At the end of the day, these are --
8 RLIAP is pass-through dollars. It shouldn't be a
9 win or lose, you should get to zero. So, that's
10 that thought.

11 Second, I agree with Mr. Kreis that an
12 ambiguity is a legal question. Certainly, the
13 witnesses' explanations of what the tariff meant
14 to them illustrated here that there are
15 ambiguities, and we will point it out in the
16 brief in a very clear way. That, you know, a
17 definition here says "do discount it", definition
18 here says "do not discount it", and all the
19 effects that that has. No one seems to dispute
20 that. I think that the DOE acknowledged the
21 mismatch. And, of course, a mismatch is anathema
22 to a reconciling mechanism.

23 So, we have ambiguous language. We
24 have an outcome that -- a reconciling outcome

1 where we are giving back money that we shouldn't
2 have with the mismatch that occurred. So, with
3 those four squares, which is largely agreed to,
4 and the dollar amount is agreed to, that alone is
5 sufficient to rule in our favor.

6 The case that the DOE has put on has
7 said "well, that doesn't matter, because you got
8 the money somewhere else." First, we disagree
9 with that. The calculation of rates was proper.
10 We did not include a double-recovery. Second,
11 those are distribution rates. They're separate,
12 they're different. They can't even be, you know,
13 it's not part of this docket. It's a "fairness"
14 argument trying to make an "equity" argument, but
15 it is apples and -- as I joke, it's not "apples
16 and oranges", those are kind of similar. It's
17 "apples and drywall screws". It's totally
18 different. So, we will lay that out, and
19 concisely.

20 Third, if this went the other way, if
21 the language had us -- the dollars flowing the
22 other way, where the customers had given us money
23 that they shouldn't have given us, we would have
24 done the exact same thing. We would have raised

1 the flag and say "This is wrong", and we would
2 have fixed it. There's no question about that.
3 And, of course, no one on the other side of the
4 room would have objected to it. So, keep that in
5 mind.

6 And, last, and related to the "timing"
7 argument, there's nothing to unwind here. We're
8 not asking you to change what happened in the
9 2017 rate case. Whatever happened in that rate
10 case was reset again in the 20-105 rate case.
11 This is really going back to fix a reconciling
12 mechanism that was off-kilter.

13 Yes, we filed tariffs. Yes, we are
14 ultimately responsible. Everyone worked on these
15 tariffs. Not formally by a settlement agreement,
16 but there was consensus, drafts going back and
17 forth at DOE, with OCA, hours and hours and
18 hours.

19 So, yes, ultimately, they're our
20 tariffs that we filed, and you folks approved.
21 And I think that's a red herring to blame us for
22 the bad language. That's what happened, and
23 that's what we were left with.

24 So, again, we'll have a more organized

1 presentation than the closing, but I appreciate
2 you listening to me. Thank you.

3 CHAIRMAN GOLDNER: Thank you.

4 And just one last item. I failed to
5 mention, would fifteen pages be enough for the
6 brief? Would that be satisfactory to all?

7 That's okay? That's 45 to us. So,
8 we're trying to keep it reasonable.

9 MR. KREIS: I'm not a fan of page
10 limits. But I hear you, that you don't really
11 want to read more than fifteen pages from each of
12 us.

13 CHAIRMAN GOLDNER: Thank you. Let's
14 make it fifteen, just to keep it simple.

15 Anything else that we need to cover
16 today?

17 MR. SHEEHAN: I'm getting pressed for a
18 few more pages from my colleague.

19 CHAIRMAN GOLDNER: You want fifteen and
20 a half?

21 *[Laughter.]*

22 CHAIRMAN GOLDNER: Do I hear sixteen?
23 Sixteen and a quarter?

24 MR. SHEEHAN: She's lobbying for

1 twenty. And, if not, you know, then we start
2 playing with the font size, so -- I'm just
3 teasing you.

4 CHAIRMAN GOLDNER: That's fine. That's
5 60 to us, but that will work.

6 CMSR. SIMPSON: The word "brief" has
7 multiple definitions in the English language.

8 CHAIRMAN GOLDNER: That's long, but 15
9 pages long.

10 All right. Thank you, everybody. And
11 we are adjourned.

12 *(Whereupon the hearing was adjourned*
13 *at 3:53 p.m.)*

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