

ORIGINAL

N.H.P.U.C. Case No. DG. 12-284

Exhibit No. #2

Witness Brian Maloney

ADJUSTMENTIVE FROM FILE

NEW HAMPSHIRE GAS CORPORATION

DG-12-284 - WINTER PERIOD 2012-2013 COST OF GAS

DATA RESPONSES - SET NO. 1

Date Request Received: 10/05/12

Date of Supplemental Response: 10/22/12

Request No.: Staff 1-7

Witness: Brian Maloney

REQUEST:

Ref. Testimony, page 8, lines 14-23. Please provide a description of the off-site storage arrangement along with a copy of the agreement when it is finalized.

SUPPLEMENTAL RESPONSE:

A copy of the finalized off-site storage arrangement is included as Attachment 1 to Supp. NHPUC 1-7. **(CONFIDENTIAL)**

Propane Storage Agreement

THIS PROPANE STORAGE AGREEMENT (the "Agreement") dated November 1st, 2012 ("Effective Date") is by and between EnergyNorth Natural Gas, Inc. ("EnergyNorth" or the "Company") with a principal place of business at 11 Northeastern Boulevard, Salem, NH 03079 and New Hampshire Gas Corporation, a New Hampshire corporation, with a principal place of business at 80 Pearl Street, Keene, New Hampshire 03431 ("NH Gas"). EnergyNorth and NH Gas are each referred to as a "Party" and collectively, the "Parties."

WHEREAS, EnergyNorth is the owner of a facility in Amherst, New Hampshire with eight 61,400 gallon water capacity tanks and four 30,000 gallon water capacity tanks totaling approximately 611,200 gallons of capacity for the storage of liquid propane (the "Amherst Facility") with equipment for loading and unloading trucks and related equipment; and

WHEREAS, NH Gas has a requirement for utilization of the Amherst Facility as well as the loading and unloading equipment; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by EnergyNorth and NH Gas, the Parties hereby agree as follows:

1. Definitions. The following words and terms shall be understood to have the following meanings when used in this Agreement:

- 1.1. "Gallon" shall mean a U.S. Gallon of 231 cubic inches of liquid at 60 Fahrenheit and at the vapor pressure of the liquid;
- 1.2. "Product" shall mean odorized propane HD-5 conforming to specifications of the Gas Processor Association (GPA), Publication 2140-92, or the then latest revisions thereof, unless otherwise agreed between the Parties, with olefins not to exceed 2% by volume and sulfur not to exceed 25 p.p.m. and completely free of ammonia;
- 1.3. "Tanks" shall mean the Product storage tanks at the Amherst Facility;
- 1.4. "Winter Period" shall mean from November 1, 2012 to April 30, 2013.

2. Withdrawal of Product

- 2.1. **Right to Withdraw.** During the Winter Period, and upon twenty-four (24) hours written notice via facsimile or electronic mail to EnergyNorth, NH Gas shall have the right to withdraw up to 50,000 gallons of Product from the Amherst Facility, provided that NH Gas refills the Amherst Facility no later than October 1, 2013 with the amount of Product withdrawn during the Winter Period. NH Gas shall provide EnergyNorth with twenty-four (24) hours written notice via facsimile or electronic mail of any delivery of Product to the

Amherst Facility. EnergyNorth shall handle and unload the Product into any trucks provided by NH Gas, and shall receive, handle, and load into the Tanks any Product delivered by NH Gas for the purpose of refilling the Tanks. Any difference between the number of Gallons withdrawn and the number of Gallons refilled from the Amherst Facility at the termination of this Agreement shall be reimbursed by the Party holding the excess difference to the other Party at EnergyNorth's weighted average cost of all of EnergyNorth's inventory of the Product. In the event that NH Gas withdraws or refills any Product in the Amherst Facility, NH Gas shall pay EnergyNorth for all of EnergyNorth's labor costs incurred in the loading and unloading of the Product, which shall include, but not be limited to, all direct and indirect charges associated with such labor.

- 2.2. Option to Withdraw. In addition to any payments due and owing pursuant to section 2.1 of this Agreement, NH Gas shall pay EnergyNorth [REDACTED] within fifteen (15) business days of execution of this Agreement for the option to withdraw Product from the Amherst Facility during the Winter Period.

3. Term. This Agreement shall become effective as of November 1, 2012 or the Effective Date, whichever comes last, and shall be terminated on October 31, 2013, unless otherwise terminated pursuant to Section 4 of this Agreement.

4. Termination. This Agreement may be terminated under the following circumstances:

- 4.1. The Parties agree in writing to terminate the Agreement.
- 4.2. The Company may terminate this Agreement upon the occurrence of an Event of Default by NH Gas as provided in Section 18 of this Agreement.
- 4.3. Either Party, upon 30 days written notice, may terminate this Agreement if there are any changes in state or federal law, regulations, or orders of any regulatory body having jurisdiction over the Amherst Facility and/or this Agreement that have a material adverse effect on a Party's ability to perform its obligations under the terms of this Agreement.

The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of termination. Sections 18, 19, 20, 24 and 25 shall survive the termination of this Agreement.

5. Product Measurement. Product withdrawn by NH Gas shall be the volume in gallons measured by EnergyNorth as loaded into NH Gas's trucks, and Products delivered by NH Gas shall be the volume in gallons measured by EnergyNorth as loaded into the Tanks. All such gallons are to be determined by use of EnergyNorth's Production Tech, who will utilize a dip tube to measure the Tank before and after loading Propane in or out of the Tank and calculate the gallons utilizing the conversion on tank level chart. EnergyNorth will prepare and provide to NH Gas a report of the amount of the withdrawal or the delivery as the case may be, such report to reflect Product on a temperature corrected basis. To the extent that either party disagrees with the amount reported pursuant to this Section 5, such party will notify the other in writing no later than five business days following such

withdrawal or delivery. EnergyNorth and NH Gas shall in good faith attempt to resolve any discrepancies in such reports no later than twenty calendar days following such notice.

6. **Billing and Payment.** Within ten business days of any withdrawal of the Product, EnergyNorth shall invoice NH Gas for any labor charges incurred pursuant to Section 2.1 of this Agreement. NH Gas shall pay EnergyNorth within 30 days from receipt of such invoice. Any invoice not paid when due will incur interest at the lesser of the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and the maximum rate permitted by applicable law.

7. **Operation of Loading and Unloading Facilities.** EnergyNorth shall provide personnel to perform loading and unloading of Product into NH Gas's trucks from Monday to Friday between the hours of 7:30 a.m. to 4:00 p.m., subject to EnergyNorth's right to interrupt the provision of loading and unloading services. EnergyNorth shall have no obligation to provide loading and unloading services at other times.

8. **Ownership of Product.** At all times, EnergyNorth shall own all Product in the Tanks.

9. **Risk of Loss and Indemnification**

- 9.1. The risk of loss for the Product shall pass from EnergyNorth to NH Gas at the point of interconnection between the loading flange at the Amherst Facility and the transport truck/trailer furnished by NH Gas.
- 9.2. EnergyNorth shall indemnify and hold harmless NH Gas from any claims arising out of any injuries to persons or damage to property, including claims by EnergyNorth's employees or third parties, NH Gas or NH Gas's employees or agents, arising out of the handling of the Product when such Product is in the control of EnergyNorth under the terms of this Agreement, unless such injuries or damage results from NH Gas's negligence or that of its respective employees or agents. NH Gas shall indemnify and hold harmless EnergyNorth from any claims arising out of any injuries to persons or damage to property, including claims by NH Gas's employees or agents, EnergyNorth or EnergyNorth's employees or third parties, arising out of NH Gas's handling of Product at all times other than when such Product is under the control of EnergyNorth, unless such injuries or damages result from EnergyNorth's negligence or that of its respective employees or agents. Neither party shall be liable for any special, indirect, incidental, consequential or punitive damages of any character, including, without limitation, loss of profits suffered by the other party or any third party claiming through such other party regardless of the theory of recovery.

10. Insurance. NH Gas or its designated propane carrier shall purchase and maintain, at its expense, a minimum of: (a) \$1,000,000 (one million dollars) of general commercial liability (including completed operations and contractual liability) insurance per occurrence, such policy shall be an Occurrence Type (versus claims-made) policy; (b) \$9,000,000 (nine million dollars) of excess liability insurance per occurrence; (c) \$1,000,000 (one million dollars) of general automobile liability insurance on vehicles; and (d) statutory Worker's Compensation insurance and Employer's liability insurance with limits of \$1,000,000 (one million dollars) per accident, \$1,000,000 (one million dollars) per disease, \$1,000,000 (one million dollars) policy limit on disease. Upon receipt of any notice of reduction, cancellation or expiration, NH Gas or its designated propane carrier shall immediately notify EnergyNorth. All such insurance shall provide that EnergyNorth shall receive thirty (30) days advance notice of any material change or cancellation of any such policy and that EnergyNorth and its parent company, Liberty Energy Utilities (New Hampshire) Corp. shall be included as additional insureds (other than Worker's Compensation). All NH Gas insurance shall be primary and non-contributory to any insurance carried by or for the benefit of EnergyNorth or Liberty Energy Utilities (New Hampshire) Corp. Upon execution hereof, NH Gas will provide EnergyNorth with a certificate of insurance and appropriate endorsements, satisfactory to EnergyNorth, as evidence of NH Gas's compliance with the insurance requirements set forth above.

11. Taxes. The term "tax" as used in this Agreement shall mean any tax (other than ad valorem, income or excess profits taxes) license fee, or charges now or hereinafter levied, assessed or made by any governmental authority on the Product or on the act, right or privilege of transportation, handling, storage, exchange, receipt, or delivery of the Product, which is measured by the volume or value of the Product; provided, however, that the term "tax" shall not be deemed to include any general gross receipts tax, general gross income tax, general occupational or license tax, or general franchise tax imposed on corporations on account of their corporate existence or on the right to do business within a state of the United States as a domestic or foreign corporation. Any taxes with respect to the Product delivered to the Tanks by NH Gas shall be paid by NH Gas.

12. Assignment. Except as provided herein, neither Party shall voluntarily assign its rights or obligations, in whole or in part, under this Agreement without the other Party's prior written consent. Any purported assignment without the other Party's prior written consent shall not be valid. Neither Party shall unreasonably withhold or delay its consent to the other Party's assignment of this Agreement.

13. Amendments and Modifications. No amendment or modification of this Agreement shall be binding unless in writing and duly executed by both Parties.

14. Permits and Approvals. Each Party shall obtain all permits and approvals lawfully required by governmental authorities associated with its obligations under this Agreement. Upon request, each Party shall provide copies of any such permits to the other Party.

15. Force Majeure. For purposes of this Agreement, "Force Majeure Event" means any event:

- 15.1. that is beyond the reasonable control of the affected Party; and
- 15.2. that the affected Party is unable to prevent or provide against by exercising commercially reasonable efforts, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war or terrorism, public disorder, insurrection, or rebellion; floods, hurricanes, earthquakes, lighting, storms, and other natural calamities; explosions or fire; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, such Party will promptly notify the other Party in writing, and will keep the other Party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected Party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected Party is taking to mitigate the effects of the event on its performance. The affected Party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected Party will use reasonable efforts to resume its performance as soon as possible. In no event will the unavailability or inability to obtain funds constitute a Force Majeure Event.

16. Warranty. NH Gas hereby warrants and guarantees title to all of the Product delivered by it to EnergyNorth.

17. Notices

- 17.1. Any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given on the date actually delivered in person or five (5) business days after being sent by certified mail, e-mail, or any nationally-recognized delivery service with proof of delivery, postage prepaid, to the person specified below:

If to Company:

EnergyNorth Natural Gas, Inc.
Attn: Candy Bogdan
11 Northeastern Boulevard
Salem, NH 03079
candace.bogdan@libertyutilities.com
Telephone: (603) 328-2728
Facsimile: (603) 896-6175

If to NH Gas:

New Hampshire Gas Corporation
ATT: Stephen Rokes, Manager – NH Gas Division
80 Pearl Street
Keene, NH 03431
E-mail: nhgas.stephenrokes@myfairpoint.net
Telephone: 603-352-1230
Facsimile: 603-352-3172

- 17.2. A Party may change its address for Notices at any time by providing the other Party Notice of the change in accordance with this Section 17.
- 17.3. The Parties may also designate operating representatives to conduct the daily communications, which may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone numbers may be communicated or revised by one Party's Notice to the other.

18. Default and Remedies

- 18.1. **Defaults.** Any one of the following shall constitute "An Event of Default."
- 18.1.1. NH Gas shall fail to pay any undisputed bill for charges incurred under this Agreement, any such failure shall continue for a period of thirty (30) days after written notice of nonpayment from EnergyNorth to NH Gas, or
- 18.1.2. One of the Parties fails to comply with any other provision of this Agreement or breaches any representation or warranty in any material respect and fails to cure or remedy that default or breach within sixty (60) days after notice and written demand by the affected Party to cure the same or such longer period reasonably required to cure (not to exceed an additional 90 days unless otherwise mutually agreed upon), provided that the defaulting Party diligently continues to cure until such failure is fully cured.
- 18.2. **Remedies.** Upon the occurrence of an Event of Default, the affected Party may at its option, in addition to any remedies available under any other provision herein, do any, or any combination, as appropriate, of the following:
- 18.2.1. Continue to perform and enforce this Agreement;
- 18.2.2. Recover damages from the defaulting Party except as limited by this Agreement;
- 18.2.3. By written notice to the defaulting Party terminate this Agreement;
- 18.2.4. Pursue any other remedies it may have under this Agreement or under applicable law or in equity.

19. Entire Agreement. This Agreement represents the entire agreement between the Parties and their agents with respect to the Amherst Facility and as between EnergyNorth and

its agents and NH Gas, all previous agreements, discussions and communications related thereto are superseded by the execution of this Agreement.

20. Governing Law. This Agreement shall be interpreted, governed, and construed under the laws of the State of New Hampshire without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.

21. Non-waiver. None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

22. Counterparts. This Agreement may be signed in counterparts.

23. No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties hereto. Nothing in the Agreement shall be construed to create any rights in or duty to, or standard of care with respect to, or any liability to, any person not a party to this Agreement.

24. Dispute Resolution. In the event of any dispute, disagreement, or claim arising out of or concerning this Agreement, the Party that believes there is such a dispute, disagreement, or claim will give written notice to the other Party of such dispute, disagreement, or claim. The affected Parties shall negotiate in good faith to resolve such dispute, disagreement, or claim. If such negotiations have not resulted in resolution of such dispute to the satisfaction of the affected Parties within ten (10) working days after notice of the dispute has been given, then, an affected Party may, upon mutual agreement of all of the affected Parties, submit such dispute, disagreement, or claim arising out of or concerning this Agreement, including whether such dispute, disagreement, or claim is arbitrable, to binding arbitration. The arbitration proceeding shall be conducted by a single arbitrator, appointed by mutual agreement of the affected Parties, in Manchester, New Hampshire, under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time a demand for arbitration under such rules was made. In the event that the affected Parties fail to agree upon a single arbitrator, each shall select one arbitrator, and the arbitrators so selected shall, within twenty (20) days of being selected, mutually select a single arbitrator to govern the arbitration. A decision and award of the arbitrator made under the Rules and within the scope of his or her jurisdiction shall be exclusive, final, and binding on all Parties, their successors, and assigns. The costs and expenses of the arbitration shall be allocated equitably amongst the affected Parties, as determined by the arbitrator(s). Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each Party hereby consents and submits to the jurisdiction of the federal and state courts in the State of New Hampshire for the purpose of confirming any such award and entering judgment thereon.

25. **Severability.** If any clause, provision, or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, or section, shall not affect any of the remaining provisions herein.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused two (2) originals of this Agreement to be executed under seal by their duly authorized representatives.

Energy North Natural Gas, Inc.

Name: Vito De Vecchio

Title: PRESIDENT

Date: 10-19-12

Signature: Vito De Vecchio

New Hampshire Gas Corporation

Name: Michael D. Eastman

Title: Treasurer NH Gas

Date: October 16, 2012

Signature: Michael D. Eastman

KED