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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

July 22, 2015 - 2:31 p.m.
Concord, New Hampshire

DAY 2

{REDACTED - for public use}

NHPUC JUL30'15 PM 1:09

RE: DG 14-380
LIBERTY UTILITIES (ENERGYNORTH NATURAL
GAS) CORP. d/b/a LIBERTY UTILITIES:
*Petition for Approval of a Firm
Transportation Agreement with the
Tennessee Gas Pipeline Company, LLC.*

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott

Sandy Deno, Clerk (until 4:03 p.m.)
Clare Howard-Pike, Clerk (after 4:03 p.m.)

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth
Natural Gas) Corp. d/b/a Liberty Utilities:
Sarah B. Knowlton, Esq. (Rath, Young...)

Reptg. the Pipe Line Awareness Network
for the Northeast, Inc. (PLAN):
Richard A. Kanoff, Esq. (Burns & Levinson)
Zachary R. Gates, Esq. (Burns & Levinson)

Reptg. Residential Ratepayers:
Susan Chamberlin, Esq., Consumer Advocate
Dr. Pradip Chattopadhyay, Asst. Cons. Adv.
Office of Consumer Advocate

Reptg. PUC Staff:
Rorie E. Patterson, Esq.
Stephen P. Frink, Asst. Dir./Gas & Water Div.
Al-Azad Iqbal, Gas & Water Division
Melissa Whitten (LaCapra Associates)

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

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I N D E X

PAGE NO.

**WITNESS PANEL: FRANCISCO C. DaFONTE
WILLIAM J. CLARK
MELISSA WHITTEN**

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E X H I B I T S

| EXHIBIT NO. | D E S C R I P T I O N | PAGE NO. |
|--------------------|--|-----------------|
| 34 | Liberty/EnergyNorth Response to Data Request PLAN 4-18 (CONFIDENTIAL) | premarked |
| 35 | Liberty/EnergyNorth Response to Data Request PLAN 4-18 <i>(Redacted)</i> | premarked |
| 36 | Liberty/EnergyNorth Response to Data Request Staff 1-19 | premarked |
| 37 | Liberty/EnergyNorth Response to Data Request PLAN 2-8 Supplemental | premarked |
| 38 | Algonquin Power & Utilities Corp. Q1 2015 | premarked |
| 39 | Liberty/EnergyNorth Response to Data Request PLAN 1-16 | premarked |
| 40 | Liberty/EnergyNorth Response to Data Request PLAN 2-38 | premarked |
| 41 | Tennessee Gas Pipeline Company, LLC Docket No. PF14-22-000 Supplemental Filing (12-08-14) | premarked |
| 42 | Liberty/EnergyNorth Response to Data Request PLAN 2-27 Supplemental | premarked |
| 43 | <u>Boston Globe</u> article - West Roxbury pipeline approved by federal regulators | premarked |
| 44 | Kinder Morgan Northeast Energy Direct Project report | premarked |

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E X H I B I T S (continued)

| EXHIBIT NO. | D E S C R I P T I O N | PAGE NO. |
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| 45 | Liberty/EnergyNorth Response to Data Request PLAN 1-7 | premarked |
| 46 | Liberty/EnergyNorth Response to Data Request PLAN 1-25 | premarked |
| 47 | Liberty/EnergyNorth Response to Data Request Staff 2-1 (CONFIDENTIAL) | premarked |
| 48 | Liberty/EnergyNorth Response to Data Request Staff 2-1 <i>(Redacted)</i> | premarked |
| 49 | Liberty/EnergyNorth Response to Data Request Staff Tech-17 | premarked |
| 50 | Liberty/EnergyNorth Response to Data Request PLAN 2-23 | premarked |
| 51 | Liberty/EnergyNorth Response to Data Request PLAN 1-4 | premarked |
| 52 | Liberty Utilities Northeast LNG Project report | premarked |
| 53 | Page 45 of 56 to the Rebuttal Testimony of Francisco C. DaFonte, identified with Bates No. "047R2" (CONFIDENTIAL) | 106 |
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CHAIRMAN HONIGBERG: Good afternoon.

We're going to continue the hearing in DG 14-380. Mr. Kanoff, you will have the floor momentarily. We have a whole slew of exhibits that looks like were premarked. We're going to go as long as we can here today and hope we can finish. As we get to the end of the day, we'll see what needs to be done.

Is there anything we need to do before we start?

MS. KNOWLTON: I wanted to let the Commissioners know that the Company does have a revised version of Exhibit 10, which is Page 47R of Mr. DaFonte's testimony. We can do that at any time, but we do have it with us, and wanted to let you know that.

CHAIRMAN HONIGBERG: Okay. We can deal with that, really, anytime. Because all you're doing is changing some numbers in the text to match up with what is in the table, is that right?

MS. KNOWLTON: That's right. We also lifted the "confidential" designation on some parts of the table, so there's more information now that would be public. So, those are the nature of the two changes.

CHAIRMAN HONIGBERG: All right. Thank

1 you. Anything else?

2 (No verbal response)

3 CHAIRMAN HONIGBERG: Mr. Kanoff, you may
4 proceed.

5 MR. KANOFF: Thank you. I want to just
6 distribute the exhibits that got premarked to the rest of
7 the group.

8 CHAIRMAN HONIGBERG: I think they will
9 be thrilled to receive them.

10 MR. KANOFF: I'm sure they will.

11 (Atty. Kanoff distributing documents.)

12 MR. KANOFF: As Exhibit for
13 identification, we have the data request response to PLAN
14 4-18, that's been marked as "34". And, that's the
15 confidential version. I'll distribute it to counsel.

16 As "Exhibit 35", we've marked for
17 identification the redacted version of that same data
18 request. I'll distribute that as well.

19 As "Exhibit 36", we have the -- for
20 identification, we have the Data Request Staff 1-19.

21 CHAIRMAN HONIGBERG: Mr. Kanoff, there
22 are something like 19 exhibits that were premarked before
23 we came in. Are you going to be doing each one of them
24 individually? Is there any way you could have your

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 associate do that while we get started with questioning?

2 MR. KANOFF: Yes, there is. And, I was
3 just thinking, as you asked that, at some point the
4 questioning will catch up to the exhibits, but not right
5 away. Let me just distribute a couple more?

6 CHAIRMAN HONIGBERG: Okay.

7 MR. KANOFF: And, then, I think that's
8 it. I agree, that's a great way to do it. We tried to
9 get started as quickly as possible with this, but it is
10 what it is.

11 And, as exhibit for identification "37",
12 we have data request response to PLAN 2-28.

13 MS. PATTERSON: Thank you.

14 CHAIRMAN HONIGBERG: While Mr. Kanoff is
15 doing that, I will note that we received some more public
16 comment, in the form of a few letters and e-mails. So,
17 the pile continues to grow.

18 MR. KANOFF: And, as "Exhibit 38", for
19 identification, we have Algonquin Power Utilities Corp.
20 Quarter 1 2015, specific pages to that, marked for
21 identification.

22 MS. PATTERSON: Thank you.

23 MR. KANOFF: Mr. Chairman?

24 CHAIRMAN HONIGBERG: Yes.

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 MR. KANOFF: If you give me one more
2 moment, I'll coordinate now with my colleague, and then
3 we'll have that happening as questions go on.

4 (Atty. Kanoff conferring with Atty.
5 Gates.)

6 MR. KANOFF: We are ready to proceed
7 here, and having those additional exhibits collated. Good
8 morning -- or, good afternoon.

9 WITNESS DaFONTE: Good afternoon.

10 WITNESS CLARK: Good afternoon.

11 **FRANCISCO C. DaFONTE, previously sworn**

12 **WILLIAM J. CLARK, previously sworn**

13 **MELISSA WHITTEN, previously sworn**

14 **CROSS-EXAMINATION (continued)**

15 BY MR. KANOFF:

16 Q. I just wanted to follow up on one question that we
17 discussed yesterday. And, this has to do with the
18 Concord Lateral expansion cost estimates. And, I just
19 wanted to clarify that the original cost estimate for
20 expansion of the Concord Lateral was for expansion from
21 Nashua, is that right?

22 A. (DaFonte) Yes. It was just an expansion to the
23 existing Nashua gate station.

24 Q. And, that number has not changed, is that correct?

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 A. (DaFonte) No. That estimate is still the same.

2 Q. Okay. And, then, you also provided another estimate of
3 expansion of the Concord Lateral from -- to, excuse me,
4 to Nashua, but also split to Manchester and Concord, is
5 that right?

6 A. (DaFonte) That's correct.

7 Q. Okay. And, those are different estimates based upon
8 different assumptions, is that right?

9 A. (DaFonte) Yes. There is different estimates based on
10 where the gas is ultimately to be delivered.

11 Q. Thank you.

12 MR. KANOFF: Apologies for the delay.

13 We just got out of sequence here. We're ready.

14 BY MR. KANOFF:

15 Q. The questions I want to ask you now have a little bit
16 to do with Algonquin Power. That's your parent
17 company, is it not?

18 A. (DaFonte) That's the parent company of Liberty
19 Utilities Co., yes.

20 Q. And, you listed the entities involved in the
21 relationship between parent companies and Liberty
22 Utilities in what's been marked now as "Exhibit 36" for
23 identification, is that correct?

24 A. (DaFonte) Yes.

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. And, if I'm reading that correctly, is EnergyNorth is a
2 wholly owned sub of Algonquin Power, is that correct?

3 A. (DaFonte) Can you repeat the question? And, where are
4 you looking on the exhibit? What page?

5 Q. I was looking on the exhibit two things. I was looking
6 at Chart A, going into Chart B. And, then, I was also
7 basing perhaps some of the question on, not only the
8 charts, but your information about the relationship
9 between EnergyNorth, the utility, and Algonquin Power.
10 So, the question was, EnergyNorth is a wholly owned sub
11 of Algonquin Power, is that right?

12 A. (DaFonte) I'm not -- I didn't put the information
13 together. So, I'm not sure if it -- where it lies, in
14 terms of "wholly owned". But it is certainly a
15 subsidiary of Algonquin Power & Utilities Corp.

16 Q. Is there any reason or would you just subject to check
17 that it's a wholly owned sub of Algonquin?

18 A. (DaFonte) Sure.

19 Q. Okay. So, Algonquin is a 4.5 billion company, based in
20 Canada, with diversified assets all over North America?
21 Is that your understanding of the parent, more or less?

22 A. (DaFonte) More or less, yes.

23 Q. It's big. And, Algonquin Power is also the parent to
24 Liberty Utilities and Liberty Utility (Pipeline &

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Transmission) Company, is that right? It's also in
2 Exhibit 36?

3 A. (DaFonte) Yes.

4 Q. And, APUC, or Algonquin Power, is an investor-owner, is
5 it not, on the Kinder Morgan Pipeline, through its
6 affiliate Pipeline & Transmission Corp. --

7 (Court reporter interruption.)

8 BY MR. KANOFF:

9 Q. -- Utilities (Pipeline & Transmission) Corp.

10 A. (DaFonte) I'm sorry. The question again?

11 Q. Algonquin Power is an investor-owner in the Kinder
12 Morgan Pipeline through its affiliate Liberty Utilities
13 (Pipeline & Transmission) Corp., is that right?

14 A. (DaFonte) I guess I'd ask for a clarification on
15 what -- which Kinder Morgan Pipeline?

16 Q. The NED project that's at issue here. And, the --
17 well, let's start with that. It's part owner of the
18 NED project that's at issue here, is it not?

19 A. (DaFonte) I'm not familiar with how it's all
20 constructed. But the NED -- the NED Pipeline project
21 is a Tennessee-sponsored project.

22 Q. Is what, sorry?

23 A. (DaFonte) It's a Tennessee Gas Pipeline-sponsored
24 project. So, our PA is with Tennessee Gas Pipeline,

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 which is the sponsor of the Northeast Energy Direct
2 project.

3 Q. I was just trying to establish it, and look at
4 Exhibit 38. This isn't a trick question. I was just
5 trying to establish the reality that APUC, in some form
6 or another, I believe it is through the Pipeline &
7 Transmission Corp., is, in fact, an owner of -- in
8 partnership with Kinder Morgan in the development of
9 the project at issue here today, among other projects.
10 It might be slip as well.

11 CHAIRMAN HONIGBERG: Mr. Kanoff, are you
12 looking at Exhibit 36?

13 MR. KANOFF: I'm looking at Exhibit
14 36 -- I'm looking at exhibit now, just to get to the nub
15 of this --

16 CHAIRMAN HONIGBERG: It's 36. And, it's
17 the multipage corporate organization chart that you're
18 trying to refer to, isn't it?

19 MR. KANOFF: Well, it's 38 as well. I
20 had referred to -- I had referred to Exhibit for
21 identification --

22 CHAIRMAN HONIGBERG: Yes, I missed the
23 transition to 38. Mr. DaFonte, are you familiar with the
24 corporate structure and the family relationships of

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Algonquin and Liberty and NED and Tennessee? Is that
2 something you're familiar with?

3 WITNESS DaFONTE: Only with respect to
4 how it appears here on this form.

5 CHAIRMAN HONIGBERG: Ms. Knowlton, can
6 you help us out and maybe streamline this somewhat?
7 Because I don't think this is controversial, I just want
8 to make sure that he's asking a witness who knows.

9 MS. KNOWLTON: Yes. I think, without
10 becoming a testifying witness myself, I think Mr. DaFonte
11 can speak to the structure of the contracts that are on
12 Page 4 of 4 of Staff 1-19, which depicts the entity that
13 owns the pipeline, the lessor of the rights on the
14 pipeline, and those relationships. I mean, subject to,
15 obviously, his testimony, I believe that he could answer
16 those questions.

17 CHAIRMAN HONIGBERG: It's just I know
18 that he's not the witness who responded on -- to that data
19 request. And, so, I'm concerned that he's not really
20 familiar with that structure. But I see -- I'm a lawyer.

21 MS. KNOWLTON: Right.

22 CHAIRMAN HONIGBERG: I can see what this
23 structure looks like, and I know what Mr. Kanoff wants to
24 do. This shouldn't be as complicated --

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 MS. KNOWLTON: Right.

2 CHAIRMAN HONIGBERG: -- as I'm fearing
3 that it's going to be.

4 MS. KNOWLTON: Agreed. And, Mr. DaFonte
5 can, you know, take a stab at answering the questions.

6 MR. KANOFF: Well, I have a suggestion?

7 CHAIRMAN HONIGBERG: Go ahead.

8 MR. KANOFF: Yes.

9 MS. KNOWLTON: I mean, we can also
10 stipulate. I mean, I'll stipulate. Why don't we do that.
11 I'll stipulate, now we're talking, I'll stipulate to --
12 or, the Company will stipulate to the fact that an
13 Algonquin subsidiary is -- has a membership interest in
14 Northeast Expansion, LLC. How that's?

15 MR. KANOFF: Well, why don't you just
16 stipulate that the answers, in what's been marked for
17 identification "Exhibit 36", on Page 1, is correct?

18 MS. KNOWLTON: Because I don't remember
19 what the question is. I'm sorry.

20 (Laughter.)

21 MR. KANOFF: Well, I just gave you the
22 answer.

23 MS. KNOWLTON: I know you did. But I'm
24 telling you what I'm willing to stipulate to, which I

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 think moves it along pretty quickly. What else do you
2 want to stipulate to? We can make this real quick today.

3 MR. KANOFF: Sure. I want to stimulate
4 that APUC is an investor-owner --

5 (Court reporter interruption.)

6 MR. KANOFF: I want to stipulate that
7 APUC is an investor-owner in the Kinder Morgan Pipeline
8 through one of its affiliates, Liberty Utilities (Pipeline
9 & Transmission) Corp. And, basically, to stipulate also,
10 as part of that, the answer on Page 1 of Exhibit for
11 identification 36 is correct.

12 MS. KNOWLTON: Take the first piece, and
13 I want to be accurate, and not use the term "Kinder Morgan
14 Pipeline". So, as depicted on Page 4 of 4, Chart C, Staff
15 1-19, that's been marked for identification as "Exhibit
16 36", the owner of the pipeline in question is Northeast
17 Expansion, LLC, which is partly owned by Kinder Morgan
18 Operating, LP "A" and Liberty Utilities (Pipeline &
19 Transmission) Corp. Liberty Utilities (Pipeline &
20 Transmission) Corp. is an affiliate of Liberty Utilities
21 (EnergyNorth Natural Gas) Corp., which is the Petitioner
22 in this proceeding.

23 CHAIRMAN HONIGBERG: Do they -- is the
24 Petitioner in this proceeding and Liberty Utilities

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 "Pipeline & Transmission" Corp., they share a common
2 owner?

3 MS. KNOWLTON: Correct.

4 CHAIRMAN HONIGBERG: Is the ownership
5 throughout this chart 100 percent --

6 MS. KNOWLTON: Well, are held by -- they
7 have a common holding company.

8 CHAIRMAN HONIGBERG: Okay. Is the
9 holding basically 100 percent throughout this
10 organizational chart?

11 MS. KNOWLTON: Yes. So, if you go back
12 and you look at, and, again, I'll stipulate to this, if
13 you go a page, both Liberty Utilities (Pipeline &
14 Transmission) Corp. and Liberty Utilities (EnergyNorth
15 Natural Gas) Corp. share a common parent of Liberty
16 Utilities Co. There's an intervening parent for Liberty
17 Utilities (EnergyNorth Natural Gas) Corp., which is
18 Liberty Energy Utilities (New Hampshire) Corp. But they
19 both are ultimately owned by Liberty Utilities Co.

20 CHAIRMAN HONIGBERG: Mr. Kanoff, that's
21 what you need, right? For the first step of what you're
22 trying to do, correct?

23 MR. KANOFF: That's right.

24 CHAIRMAN HONIGBERG: Good. All right.

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 MR. KANOFF: Thanks.

2 BY MR. KANOFF:

3 Q. And, then, Liberty Utilities Co. is, in fact, owned by
4 Algonquin, is that correct?

5 MS. KNOWLTON: I'll stipulate to that as
6 well. How's that?

7 CHAIRMAN HONIGBERG: Thank you. Off the
8 record.

9 (Brief off-the-record discussion
10 ensued.)

11 CHAIRMAN HONIGBERG: All right. Go
12 ahead.

13 BY MR. KANOFF:

14 Q. And, isn't -- if you take a look at Exhibit for
15 identification 38, Page 20.

16 MR. KANOFF: I first want to just -- if
17 I could approach the witness?

18 CHAIRMAN HONIGBERG: Go ahead.

19 MR. KANOFF: I just first want to show
20 counsel. I'm just going to have him --

21 (Atty. Kanoff showing a document to
22 Witness DaFonte.)

23 BY MR. KANOFF:

24 Q. Take a look at this. Is this a familiar document to

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 you? It's Algonquin's Quarterly Report?

2 A. (DaFonte) I have not read it.

3 Q. Have you seen it?

4 A. (DaFonte) Just now, yes.

5 Q. Is it something that Liberty Utilities (EnergyNorth)
6 contributes to?

7 A. (DaFonte) I believe so. But I am not an individual
8 contributor to that.

9 Q. Would you have any reason to believe that information
10 in here is not correct?

11 A. (DaFonte) I do not have any reason to believe that it's
12 not correct.

13 Q. I want to refer you to Page 20. And, it talks about
14 the Transmission Business Group.

15 A. (DaFonte) Okay.

16 Q. And, I believe we talked about this group. So, this
17 group is, according to that paragraph, has a
18 partnership with Kinder Morgan, is that correct?

19 A. (DaFonte) I think counsel for EnergyNorth has already
20 stipulated that the agreement is -- or, with a
21 partnership with Kinder Morgan, Northeast Expansion
22 LLC. And, that's what it says on Page 20 of
23 Exhibit 38.

24 Q. Okay. And, the interest that, according to this, that

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 the Transmission Group, which is part of Algonquin, has
2 is as stated here, "2.5 percent", do you see that?

3 A. (DaFonte) Yes. I see that, yes.

4 Q. And, the investment can increase up to "10 percent".
5 Do you see that?

6 A. (DaFonte) Yes.

7 Q. And, the value of that investment for APUC, doesn't say
8 for "Transmission Group" or "Northeast Expansion LLC",
9 it says for "APUC", does it not, to be up to
10 400 million?

11 A. (DaFonte) That's what it says here, yes.

12 Q. Okay. Thank you. Now, it says -- I'm sorry, we talked
13 yesterday about shareholders. Does EnergyNorth have
14 any shareholders?

15 A. (DaFonte) I don't know.

16 Q. Is that something that you can answer subject to check,
17 and perhaps confirm one way or another during a break?
18 And, the subject to check would be, subject to check,
19 EnergyNorth itself does not have any shareholders?

20 CHAIRMAN HONIGBERG: Why don't you ask
21 him to assume that that's true, because I don't know that
22 he knows what the structure is. And, unless you want to,
23 again, stipulate with counsel something you may well be
24 able to stipulate, and perhaps could have stipulated

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 before we entered the room today, about the structure --
2 actually, why don't I stop right here.

3 Why don't you give us a preview of what
4 it is you want to establish. Not necessarily an offer of
5 proof, but maybe, I mean, I have a sense of where you're
6 going with this. And, it may -- I suspect the first 19
7 steps of it are probably not that controversial.

8 MR. KANOFF: That's what I was thinking.

9 CHAIRMAN HONIGBERG: So, why don't we --
10 why don't you --

11 MR. KANOFF: And, I'm surprised that
12 we're even stuck on this level. But here we are.

13 CHAIRMAN HONIGBERG: I think the problem
14 is that you have a witness -- the only witness you have
15 available to you doesn't actually know the answers to some
16 of the questions you're asking. And, you know, that's
17 kind of what discovery is for, and you've got a whole
18 bunch of answers that the Company signed off on, that I
19 don't think they're going to be able to walk away from if
20 you assert them as facts.

21 And, so, I think counsel knows how to
22 object, if she thinks you're doing something that's
23 unfair. But you're asking this witness questions it is
24 apparent that he doesn't know the answer to.

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 MR. KANOFF: One of the reasons, just to
2 clarify, about the, for example, the shareholder question,
3 they talked about shareholders yesterday, and EnergyNorth
4 shareholders. But, to answer your question specifically
5 about where this is going, it's essentially establishing,
6 and we'll establish fairly quickly, the link between
7 EnergyNorth utility and APUC as owner, the interest that
8 APUC has in NED independent from the interests that
9 EnergyNorth has, the common link of the owners and
10 directors and so forth. And, just the opportunity in that
11 relationship and those interactions, especially at the
12 board and officer level, for bias.

13 And, it's really quick. It doesn't take
14 a lot. The information is right here in the information
15 request responses. And, if we could just get through some
16 of the preliminaries, we'll be there.

17 CHAIRMAN HONIGBERG: And, "this is a
18 response that the Company submitted. And, this is right,
19 isn't it?" "Yup, that one's right." And, then, you can
20 argue whatever you want off of that document, right?

21 MR. KANOFF: I'm there.

22 CHAIRMAN HONIGBERG: Go. Go for it.

23 MR. KANOFF: Okay. Let's do it.

24 BY MR. KANOFF:

{DG 14-380} [REDACTED - for public use] {07-22-15/Day 2}

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. I want to refer you to Exhibit for identification 37.

2 MR. KANOFF: Mr. Chairman, just one
3 moment. There seems to just be, in my copy, a page
4 missing. And, I just need to reference that really
5 quickly with my colleague.

6 (Atty. Kanoff conferring with Atty.
7 Gates.)

8 BY MR. KANOFF:

9 Q. Take a look at Exhibit 37.

10 A. (DaFonte) I have it.

11 Q. Okay. And, this lists the management and Board of
12 Directors, does it not -- management and Board of
13 Directors, does it not, for Liberty's Utility and
14 Transmission Company?

15 A. (DaFonte) Yes. I see that.

16 Q. You see that?

17 A. (DaFonte) I do.

18 Q. Okay. And, for -- if we go through that list for
19 Algonquin Power, we have Ian Robertson is CEO and on
20 the Board of Directors, is that right?

21 A. (DaFonte) Correct.

22 Q. And, for Liberty Utilities (Pipeline & Transmission),
23 we have Ian Robertson is on the Board of Directors,
24 Greg Sorenson is on the Board of Directors, and Richard

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Leehr is President, is that right?

2 A. (DaFonte) Correct.

3 Q. And, for EnergyNorth, your company, we have Greg
4 Sorenson, Board of Directors; Ian Robertson, Board of
5 Directors; and Richard Leehr, Board of Directors, is
6 that right?

7 A. (DaFonte) That's correct.

8 Q. And, Richard Leehr is the individual who submitted that
9 information request response we talked about a few
10 minutes ago, is that correct?

11 A. (DaFonte) Yes.

12 Q. He's the President. Okay. Sorry, he's Board of
13 Directors. So, wouldn't you agree, as a general
14 proposition, that the Board of Director -- well, as a
15 general proposition, Board of Directors are charged
16 with setting goals and direction of the company, and
17 the officers are charged with carrying out those goals?
18 Is that generally right?

19 A. (DaFonte) I can't attest to that in all cases.

20 Q. Okay. All right. But, basically, we have the same
21 individuals as both members of the Board of Liberty as
22 utility and shipper, and as officers and Board members
23 of the Pipeline & Transmission Company, is that right?

24 A. (DaFonte) Yes.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. The same folks? Yes?

2 A. (DaFonte) Yes.

3 Q. And, we already talked about the investment involved
4 here for APUC is up to \$400 million. Do you recollect
5 that?

6 A. (DaFonte) Yes, I do.

7 Q. So, that would be a significant investment, would it
8 not?

9 A. (DaFonte) I don't know. I don't get involved in the
10 investment side of the business. I got involved in
11 negotiating the PA. If you want to ask me about the
12 PA, I think I could do a better job answering the
13 questions.

14 Q. That's fine. Do you know how much at all, were you
15 involved at the time that Algonquin Power purchased
16 Liberty Utilities?

17 A. (DaFonte) I wasn't involved at the time of the
18 purchase. I was hired after the purchase.

19 Q. Is it your understanding that -- strike that. Was the
20 Liberty Utilities' Board of Directors aware of the
21 filings and activities that were made with respect to
22 the Kinder Morgan investment?

23 MS. KNOWLTON: I'd ask that, to the
24 extent Mr. Kanoff refers to Liberty Utilities, that you

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1 clarify which entity you're referring to.

2 BY MR. KANOFF:

3 Q. We talked about it yesterday. There was discussions
4 between EnergyNorth management and its Board in this
5 proceeding. I believe you mentioned at some point that
6 the Board was taking a look and did evaluate the
7 transaction, Market Path transaction, before the
8 Precedent Agreement was signed, as one example of that,
9 is that correct?

10 A. (DaFonte) I don't recall any statement to the effect
11 that "the Board evaluated the Market Path commitment".

12 Q. It did evaluate whether you should sign and did provide
13 guidance, did it not, on whether you should sign the
14 Precedent Agreement?

15 A. (DaFonte) I'm only aware that the Board took a vote to
16 grant the President of EnergyNorth the signature
17 authority for the Precedent Agreement, which he then
18 signed.

19 Q. So, they did take a look at that? The Board took a
20 look at whether you should sign the Precedent
21 Agreement?

22 A. (DaFonte) Well, I can't say exactly what the Board did.
23 They gave authorization to the President of EnergyNorth
24 to sign the Agreement.

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. So, do you know whether the Board of Directors was
2 aware of any of the filings that were related to the
3 Precedent Agreement?

4 MS. KNOWLTON: Objection. The question
5 is vague. It doesn't specify which filings counsel's
6 referring to.

7 BY MR. KANOFF:

8 Q. Filings in this case?

9 CHAIRMAN HONIGBERG: So, the question
10 is, "is the Board of Directors of the Company that made
11 these filings in this case, this docket, aware of the
12 filings that were made in this docket?"

13 MR. KANOFF: That is correct.

14 CHAIRMAN HONIGBERG: Okay.

15 **BY THE WITNESS:**

16 A. (DaFonte) My understanding is that the Board of
17 Directors was aware of the Precedent Agreement,
18 because, clearly, they had to grant signature authority
19 to the president. As to their awareness of any filings
20 in the case, I can't say that they were aware of that
21 at all.

22 BY MR. KANOFF:

23 Q. Are they aware that this proceeding is ongoing here
24 today -- not "here today", but are they aware that you

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 filed for approval of this application with this
2 Commission, the Board of Directors of EnergyNorth?

3 A. (DaFonte) I would assume that some of them are.

4 Q. Is Richard Leeher aware of it? He filed an information
5 request response.

6 A. (DaFonte) He would have to be, yes.

7 Q. Correct. And, he's on the Board of Directors, is he
8 not?

9 A. (DaFonte) Correct.

10 Q. So, at least one member of the Board of Directors is
11 aware of it?

12 A. (DaFonte) Correct.

13 Q. And, would Richard Leeher be aware that, as part of
14 that, that Liberty North was requesting approval for
15 115,000 Dekatherms a day?

16 A. (DaFonte) I think you meant "EnergyNorth"?

17 Q. EnergyNorth, yes.

18 A. (DaFonte) Yes. He would have been part of the Board
19 that gave the approval for signature authority.

20 Q. And, it's possible some of the other Board members
21 would know as well?

22 A. (DaFonte) Yes, I would think so.

23 Q. And, similarly, is Richard Leeher and the other Board
24 members, would they be aware of your proposal to have

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 the Settlement Agreement approved?

2 A. (DaFonte) Not that I'm aware of, no.

3 Q. So, Richard Leehr does not know, as a Board -- he knows
4 everything else we just talked about, but he doesn't
5 know that you requested this matter be settled?

6 A. (DaFonte) He would only know based on public
7 information that's available.

8 Q. Well, who's going to -- who's going to sign the
9 Settlement Agreement for the Company? Is he going to
10 then -- is he going to be surprised when you go and say
11 "hey, we got this approval"? I don't understand this.

12 A. (DaFonte) Well, he doesn't sign -- he would not sign
13 the Agreement.

14 Q. But he would have to approve it as one member of the
15 Board, would he not?

16 A. (DaFonte) I'm not sure that he -- well, I don't know if
17 he would need Board approval to sign the Settlement
18 Agreement. I just know that the authorization to sign
19 the Precedent Agreement was required, Board approval
20 was required for that. As to the Settlement Agreement,
21 I'm not sure how that process would work.

22 Q. Would Board approval then be --

23 MS. KNOWLTON: I think that, for the
24 record, it's clear who signed the Settlement Agreement in

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 this case, which was me. Counsel for the Company signed
2 the Settlement Agreement, as did counsel for Staff.

3 BY MR. KANOFF:

4 Q. The question has to do with what the management knows
5 about the Settlement Agreement as -- and, I think the
6 question has to do with the information at the Board
7 level for the Settlement Agreement. There's a draft
8 modification Amendment to the Precedent Agreement
9 submitted as part of the Settlement, is that right?

10 A. (DaFonte) Yes.

11 Q. And, wouldn't the Company, as part of the execution of
12 that document, need Board approval?

13 A. (DaFonte) I'm not sure. It's a draft at this point in
14 time.

15 Q. If it were to be approved, if it were to be granted by
16 this Commission, would the Board have to approve it?

17 A. (DaFonte) I don't know. I can't really answer that.

18 Q. Do you know whether the Board of Directors had any
19 discussion with management, that would be anybody in
20 your management group, about how much capacity
21 EnergyNorth should contract for in the NED project?

22 A. (DaFonte) No. The negotiations were conducted by
23 myself, solely.

24 Q. Did you ever make any presentations or provide any

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 information to anyone in your management structure, who
2 would then forward that information to the Board of
3 Directors of EnergyNorth?

4 A. (DaFonte) I don't believe so, in terms of directly to
5 the Board.

6 Q. So, what I'm struggling with is, and I'll try to make
7 this a question, but what I'm struggling with is the
8 idea that a significant investment of \$400 million here
9 to APUC, with -- through a sub that has members of the
10 Board of Directors that are of the same -- the same
11 folks at EnergyNorth, and that there's no
12 communication, according to your testimony, between
13 EnergyNorth management and the Board about this case,
14 which involves that significant investment. Is that
15 your testimony?

16 MS. KNOWLTON: I'm going to object to
17 the form of the question, because I think Mr. DaFonte has
18 already testified that he does not know whether or not
19 there were communications among Board members of
20 EnergyNorth. All he knows about, which he's testified to
21 repeatedly, is that the Board took a vote authorizing the
22 Company to enter into the Precedent Agreement that's
23 before the Commission today.

24 CHAIRMAN HONIGBERG: Mr. DaFonte, is it

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 your position that entering into the Settlement Agreement,
2 that the Company is entering into the Settlement
3 Agreement, is already within the authority that the
4 Company had been given by the Board? That you didn't need
5 to go back to the Board for further authority?

6 WITNESS DaFONTE: I believe so, because
7 we -- I did not go back to the Board.

8 CHAIRMAN HONIGBERG: Mr. Kanoff, the
9 broad theory here is that you've got one, essentially, one
10 board making decisions for both companies. And, then,
11 it's in the broad corporate interests of the parent to
12 have the sub subscribe, and I think, under your theory,
13 oversubscribe, to this other investment they have. That's
14 the theory, right?

15 MR. KANOFF: Yes. That's correct. Yes.

16 CHAIRMAN HONIGBERG: And, I think you
17 are asking this witness obliquely for evidence that they
18 were communicating about it. How much more do you want to
19 get from him that he doesn't know? And, do you have any
20 other -- any other way of establishing that they were
21 directing the activities of all of them, clearly, the
22 Board of Directors, we got that. I mean, that's pretty
23 good for you. You like that.

24 So, the notion of "bias", which is the

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 word you used before, is an interesting one, because, of
2 course, they're biased. They want to make money. And,
3 they want all of their corporate family to make money.
4 That's their bias. So, they're going to do what they
5 believe is in their financial best interest. We're all
6 with you on that one.

7 This becomes a problem for them, if the
8 management of EnergyNorth is doing things that are not in
9 EnergyNorth's best interests, right?

10 MR. KANOFF: That's correct. Right.

11 CHAIRMAN HONIGBERG: Okay. What have
12 you got, besides the general structure, and that
13 circumstance that may well get you all that you need, but
14 do you have anything? Because I know we had a discovery
15 dispute about this, so --

16 MR. KANOFF: We did. We did,
17 Commissioner -- Chairman. And, the fact that there was a
18 discovery dispute stopped a lot of the information about
19 this. It was delayed for a little bit. And, the
20 communication that was asked for in one of the discovery
21 responses that had to do with in a -- not necessarily this
22 part, but communication among the Board, was not -- there
23 wasn't any communication. What would be -- so, short
24 answer, there's nothing we've been able to get from the

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Company, other than the reality, as you are correct with,
2 is that APUC is incentivized to go with the biggest number
3 it can get, because it's going to make the biggest amount
4 of money. It's incentivized to go with having this
5 project succeed. The building blocks to get there had to
6 start with "what's the communication back and forth from
7 the Board?" We weren't able to get that. And, if we
8 could ask for a record request to confirm.

9 MS. KNOWLTON: We answered this
10 question. So, this was a subject of a Motion to Compel.
11 It was the Motion to Compel on PLAN 2-28, among other
12 questions. And, if I recall, in the Commission's order on
13 the Motion to Compel, the Company was required to answer
14 the question to the extent that it -- the question sought
15 documents, to the extent that it had any documents between
16 EnergyNorth and the various entities that were named in
17 PLAN 2-28(c) regarding the Precedent Agreement, and the
18 terms and conditions of the Precedent Agreement. And, the
19 Company answered in a supplemental data response on
20 June 9th, 2015 that it had no documents memorializing one
21 or more obligations of EnergyNorth to any of the entities
22 in PLAN 2-28 concerning the Precedent Agreement. So, in
23 essence, there were no documents between EnergyNorth and
24 its affiliates regarding the Precedent Agreement. So,

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 we've answered that.

2 There was another round of discovery
3 that came in on June the 10th, 2015. We didn't receive
4 any further questions on this subject matter. So, I'm not
5 sure what there's left to inquire on.

6 CHAIRMAN HONIGBERG: What is there
7 left -- what is there left to inquire on then?

8 MR. KANOFF: In the absence, you know,
9 I'll answer the question directly, in the absence of any
10 confirmation from the Company that, in fact, there were
11 discussions between EnergyNorth's management and
12 EnergyNorth's Board back and forth as to this project,
13 and, therefore, between -- possibly between EnergyNorth's
14 Board and Transmission Company Board, because they're the
15 same people, it's almost, you know, as a factual problem,
16 it's a factual barrier to try to make a link. And, I get
17 that.

18 CHAIRMAN HONIGBERG: But, ultimately --
19 but, ultimately, if the amount -- if the level of
20 subscription that EnergyNorth has bought -- has signed on
21 to here is reasonable, then it really doesn't matter.

22 MR. KANOFF: Well, that's --

23 CHAIRMAN HONIGBERG: And, if it's
24 unreasonable, it's got a separate problem, a problem

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 separate and apart from why it's unreasonable. The "why"
2 may help explain what happened, but it doesn't establish
3 in and of itself that it's unreasonable. A fair amount of
4 the questioning yesterday directed at the witnesses who
5 were up there tried to get at whether this was a
6 reasonable amount.

7 Isn't that ultimately more significant
8 than the "whys" of how they did it? Because, if it's
9 unreasonable, it's reasonable, and we shouldn't approve
10 it. If it's reasonable, even it was done for some really
11 ugly, unpleasant, internal corporate reasons, we should
12 approve it.

13 MR. KANOFF: Well, I think -- I think
14 that, whether it's reasonable or not is sometimes a
15 function of the back-and-forth that occurred by management
16 and the Board. But I get your point. I do. And, I
17 think, as far as this hearing is concerned right now, I'm
18 just going to wrap it one with maybe three questions, then
19 we can move onto another area.

20 CHAIRMAN HONIGBERG: Okay.

21 MR. KANOFF: I don't know, given the
22 testimony and the witness and so forth, other than going
23 through another round of record requests, how we get to
24 that. And, if, in fact, the trier of fact is looking at

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 this the way you just described, that it's either
2 unreasonable or it's not, and bias is something that is
3 not essential to that determination, we're good with that.

4 CHAIRMAN HONIGBERG: Well, I mean,
5 understand that, if they have done something for -- to
6 benefit an entity other than the one we regulate, if
7 they're -- I think this is apparent from our order on the
8 discovery dispute. If there's evidence that someone up
9 the corporate chain is directing the regulated subsidiary,
10 the one we can -- we have control over, to do something
11 that's not in its best interest or its ratepayers best
12 interests, we want to know about that.

13 MR. KANOFF: And, I think, you know, I
14 think we're right at that line, and we can't get an
15 answer. Because it could will be, and I'm just going to
16 give a hypothetical, it could well be that up the food
17 chain, at APUC, a \$4.5 billion company, they're investing
18 in this pipeline, and they're, and we don't have this,
19 it's behind the curtain, but they're, in some ways,
20 directing, and it may not be overt, but they're directing
21 this Company to take as big a chunk as it can that it
22 thinks it can get approved.

23 And, that is really an explanation
24 that's as plausible as any other explanation, if you

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 believe that they're oversubscribed here. So, --

2 CHAIRMAN HONIGBERG: And, underlying
3 that is the essential question, "what's a reasonable
4 amount for this Company to subscribe to?"

5 And, Ms. Knowlton, do you want to say
6 something? You look like you wanted to say something.

7 MS. KNOWLTON: Yes, I do. I mean, --

8 CHAIRMAN HONIGBERG: And, understand,
9 all Mr. Kanoff was doing was spinning out a hypothetical
10 theory. He was not making any accusations.

11 MR. KANOFF: And, I'm not a witness.

12 MS. KNOWLTON: Correct. And, I'm not a
13 witness either, but Mr. DaFonte is. And, Mr. DaFonte has
14 testified that he solely negotiated this Agreement on
15 behalf of EnergyNorth. That his negotiations, I believe
16 he testified to this yesterday, that his negotiations on
17 this agreement started I think at least a year in advance
18 of the existence of Liberty Utilities (Pipeline &
19 Transmission) Corp. That the Company has responded to a
20 discovery request that it has no documents between
21 EnergyNorth and any of the affiliate entities regarding
22 this Agreement. So, again, people can spin theories, but
23 I don't really know what there is here. Other than the
24 fact that Algonquin has an investment interest in the

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 entity that owns the pipeline, you know, that Tennessee is
2 the lessor of, which we stipulated to, I believe, or, if
3 not, I'll stipulate to that. That's not in question here.

4 So, as to this issue of "bias", and, you
5 know, Mr. DaFonte can testify further about the timing of
6 things. But I think it is clear that the negotiation of
7 this was by him alone, and well prior to any investment or
8 an entity -- the existence of an entity that made an
9 investment.

10 CHAIRMAN HONIGBERG: I understand where
11 you are, Ms. Knowlton.

12 Mr. Kanoff, I understand you have a few
13 more questions you want to ask, and then we're going to
14 move onto another topic.

15 MR. KANOFF: Yes.

16 CHAIRMAN HONIGBERG: So, why don't you
17 give that a whirl.

18 MR. KANOFF: That's correct.

19 BY MR. KANOFF:

20 Q. Would you, just for the record, tell us who your boss
21 is. Who do you report to?

22 A. (DaFonte) I currently report to David Pasioka.

23 Q. And, who does he report to?

24 A. (DaFonte) David reports to Ian Robertson.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. And, Ian Robertson is, as we discussed, is CEO of APUC?

2 A. (DaFonte) Correct.

3 Q. If Liberty were to withdraw, as a hypothetical, from
4 their Consortium, or not have this contract approved,
5 or it were to reduce its obligation under the Precedent
6 Agreement, would that have a impact on the chances of
7 success of this project?

8 A. (DaFonte) You mean EnergyNorth?

9 Q. Yes.

10 A. (DaFonte) The Precedent Agreement stipulates that the
11 volume that is, you know, at issue here is 115,000
12 Dekatherms. That, with Commission order, can be
13 reduced to 100,000 Dekatherms. That was in the filing.
14 Any deviation from that essentially requires a
15 renegotiation of all terms and conditions with
16 Tennessee Gas Pipeline. That's essentially what would
17 have to happen. There are no provisions for a volume
18 less than 100,000 Dekatherms.

19 Q. And, is it your understanding that reducing then the
20 level and having additional negotiations with Tennessee
21 Gas Pipeline would diminish the chances of success of
22 this project?

23 CHAIRMAN HONIGBERG: What is "this
24 project"? Because I'm not sure he has the same notion of

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 what "this project" is, the last two words of your
2 question.

3 BY MR. KANOFF:

4 Q. It would be the NED project.

5 A. (DaFonte) I can't speak for the business plan and the
6 strategy associated with Kinder Morgan's decisions with
7 regard to the Tennessee project.

8 Q. You suggest -- just four more questions here and we'll
9 be done. You suggest that the Pipeline is in the best
10 interest of customers and represents the least-cost or
11 the best-cost option, is that right?

12 A. (DaFonte) Absolutely.

13 Q. Okay. Is it also in APUC's interest to have this
14 Pipeline be approved and built? They have a
15 \$400 million investment?

16 A. (DaFonte) I would assume it would be good for the
17 Company.

18 Q. Good for APUC?

19 A. (DaFonte) Good for APUC.

20 Q. And, isn't it in APUC's interest to have Liberty invest
21 in its Pipeline, as compared to other alternatives?

22 A. (DaFonte) It may be for them. But, again, I only know
23 what I know through the negotiation of the PA. I don't
24 know what they're doing at the corporate level with

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 regard to their investments.

2 Q. And, you don't know any -- the conversations between
3 Mr. Ianson [sic] and Mr. Pareck -- Parecki [sic], is
4 that your boss?

5 A. (DaFonte) Ian Robertson is the CEO, and David Pasioka.

6 Q. "Pasioka".

7 A. (DaFonte) Right.

8 Q. You don't have any information about their
9 conversations?

10 A. (DaFonte) No. I don't.

11 Q. And, isn't it in APUC's interest, given those -- given
12 that relationship, that EnergyNorth do everything it
13 can, from a commercial and regulatory perspective, to
14 ensure that -- to ensure the success of the NED
15 project?

16 A. (DaFonte) I don't know what kind of influence they have
17 over the NED project. And, I just note, they have a
18 2.5 percent interest in a LLC that is leasing capacity
19 to Tennessee Gas Pipeline. I'm not sure, you know,
20 what kind of control they have, in terms of their
21 directing the strategy with regard to NED.

22 Q. But are you -- strike that.

23 MR. KANOFF: I'm going to move onto
24 another area.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 CHAIRMAN HONIGBERG: Okay.

2 (Atty. Kanoff conferring with Atty.

3 Gates.)

4 BY MR. KANOFF:

5 Q. I want to refer you to Exhibit 39 for identification
6 and Exhibit 40 for identification. And, also note your
7 testimony that this Pipeline, the NED Pipeline, will
8 transverse existing rights-of-way through southern New
9 Hampshire, is that correct?

10 A. (DaFonte) What's your reference? You said
11 "Exhibit 39"?

12 Q. Thirty-nine (39), which is PLAN 1-16, and 40, which
13 is --

14 A. (DaFonte) I don't believe you gave those to me.

15 Q. -- PLAN 2-38.

16 A. (DaFonte) I have 39 in front of me.

17 Q. And 40?

18 A. (DaFonte) I do not have 40.

19 Q. We're getting -- we're getting it to you. Sorry.

20 (Atty. Gates handing document to Witness

21 DaFonte.)

22 BY MR. KANOFF:

23 Q. Now, is it fair to say that, based upon these exhibits
24 and your testimony, that the Pipeline will traverse

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 through southern New Hampshire?

2 A. (DaFonte) That's my understanding of the route at this
3 particular time.

4 Q. And, is it your understanding that that is going to be
5 part of a existing right-of-way in some fashion?

6 A. (DaFonte) I mean, I'm not familiar with the
7 right-of-way and any kind of negotiations --

8 Q. But -- and that's what it says in, I believe,
9 Exhibit 39, that you're not aware of whether NED
10 requested route has been approved with respect to
11 right-of-way access. And, my question to you is, did
12 you ask NED about that? In 1-16(d), you said "the
13 Company is not involved". When you got this data
14 request, did you reach out to Kinder Morgan/Tennessee
15 Gas Pipeline and ask them for any additional
16 information about the status of this right-of-way
17 access?

18 A. (DaFonte) No, we did not. I think I testified
19 yesterday, our negotiations with Tennessee center on
20 various terms and conditions related to getting gas
21 from Point A, in this case, Wright, New York, to our
22 citygates. The actual path of the pipeline is really
23 nothing that we can control or have any influence over.

24 Q. But you are involved in taking advantage of the

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 commercial opportunities that may be presented to the
2 Company, given its route. We talked about that
3 yesterday, isn't that correct?

4 A. (DaFonte) Correct. But, as I said, we have no
5 influence over the pipeline route. My testimony
6 yesterday was stating that, based on the current route,
7 there are commercial opportunities that we would take
8 advantage of, in order to utilize as much of that
9 pipeline capacity as quickly as possible.

10 Q. So, you're paying attention somewhat to the route,
11 because of the possible opportunities it presents from
12 a commercial perspective, but you're not necessarily
13 paying attention, getting information about the way
14 that route is going to use rights-of-way?

15 A. (DaFonte) That's correct.

16 Q. You could have asked about that information, though, is
17 that right?

18 A. (DaFonte) I suppose so. But that wasn't something that
19 was part of the PA.

20 Q. You chose to -- do you know whether this project will
21 traverse, and I suspect -- I just need to ask this, so
22 bear with me, do you know whether this project will
23 traverse or be parallel to an existing right-of-way or
24 not?

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 A. (DaFonte) It's a long project. I'm not sure which
2 particular portion you're talking about. I am familiar
3 somewhat with the fact that the pipeline will run
4 through some existing right-of-way. It will traverse
5 probably some right-of-way. I don't know the exact
6 details of where it's going to traverse, whether it's
7 going to be in the right-of-way, outside of the
8 right-of-way. I don't know those details behind the
9 project.

10 Q. So, in making a judgment about whether this is a good
11 project for ratepayers, at least-cost or best-cost, you
12 did not factor in at all the impact of the Pipeline
13 with respect to how it was going to be placed and any
14 effects it might have on communities along the way?

15 A. (DaFonte) That is not what my job is as the Vice
16 President of Energy Procurement.

17 Q. So, you did not, is that correct?

18 A. (DaFonte) Correct.

19 Q. Are you aware, in December, that Kinder Morgan moved
20 this pipeline from Massachusetts to New Hampshire, so
21 it could use the existing utility corridors? Is any of
22 that familiar to you?

23 A. (DaFonte) I believe that there was some public
24 information with regard to that, yes.

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. And, if you want to look at Exhibit 41.

2 A. (DaFonte) Which I don't have.

3 (Atty. Gates handing documents to
4 Witness DaFonte.)

5 WITNESS DaFONTE: Okay. I have 41 here.

6 BY MR. KANOFF:

7 Q. Okay. And, have you seen this letter before? It's a
8 letter from Kinder Morgan, dated December 8th, 2014, to
9 FERC, with respect to the change in route from
10 Massachusetts to New Hampshire?

11 A. (DaFonte) I may have seen it.

12 Q. Okay. And, on the top of Page 2 and 3, it basically
13 explains one of the reasons for that change in route.
14 And, it says that a change, and I'm paraphrasing here,
15 you can look at the bottom of Page 2, the change in
16 route "will enable a very substantial portion of the
17 proposed new pipeline construction to be located
18 adjacent to, and parallel with, existing corridors in
19 the states of New York, New Hampshire," -- sorry, "New
20 York, Massachusetts and New Hampshire." Do you see
21 that?

22 A. (DaFonte) Yes.

23 Q. Okay. And, so, would you agree that, at least as far
24 as this letter is concerned, one of the reasons

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Tennessee Gas Pipeline moved this to New Hampshire was
2 to use existing utility corridors?

3 A. (DaFonte) It would appear that way.

4 Q. And, you haven't done -- as you said, you haven't done
5 any analysis of environmental impacts and associated
6 costs and risks of those impacts to this project, have
7 you?

8 A. (DaFonte) No. I'm not constructing the Pipeline. I'm
9 just signing up for capacity.

10 CHAIRMAN HONIGBERG: Along those lines,
11 Mr. Kanoff, where are we going with this?

12 BY MR. KANOFF:

13 Q. Well, the next question was, you are aware that
14 environmental costs are included as part of the
15 Precedent Agreement pricing?

16 A. (DaFonte) I don't have any information with regard to
17 the individual costs associated with the construction
18 of the Pipeline. All I do have is the rate that we
19 were able to negotiate on behalf of EnergyNorth
20 customers with Tennessee Gas Pipeline. Their costs are
21 their costs. And, I don't know what role they play in
22 the rate that was negotiated.

23 Q. Would you take subject to check that some measure of
24 environmental impacts may be included in the costs that

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 you ultimately would pay?

2 MS. KNOWLTON: Objection. The witness
3 has stated that he doesn't have any knowledge as to the
4 costs with regard to the construction of the Pipeline.

5 CHAIRMAN HONIGBERG: Mr. Kanoff, you
6 want to know -- he negotiated the Agreement. The
7 Agreement contains some provisions that are relevant to
8 where you're going. That's what you want to ask him
9 about, right?

10 MR. KANOFF: Right.

11 CHAIRMAN HONIGBERG: The provisions that
12 are in the contract that he negotiated.

13 MR. KANOFF: That's right. And, so, the
14 question had to do with, is he -- I was just trying to get
15 at --

16 CHAIRMAN HONIGBERG: No, I think you're
17 good. Go ahead.

18 MR. KANOFF: Okay. Fine.

19 BY MR. KANOFF:

20 Q. And, if I could refer you to Bates 098.

21 CHAIRMAN HONIGBERG: Of what?

22 MR. KANOFF: The DaFonte testimony.

23 WITNESS DaFONTE: May I just mention
24 that that's all confidential.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 MR. KANOFF: Right. And, I think I may
2 have taken it as far as I can take it. But I want to at
3 least reference that's the link.

4 **BY THE WITNESS:**

5 A. (DaFonte) Okay. But I don't know the specific costs
6 associated with any of those items listed there.

7 BY MR. KANOFF:

8 Q. I want you to look at Exhibit 42. And, take a look at
9 Exhibit for identification 42, 43, and 44. And,
10 cutting to the chase here, in response to the
11 Supplemental Exhibit 42 response, you submitted what is
12 marked for identification "43" and "44", is that right?

13 A. (DaFonte) Correct.

14 Q. And, first question, with respect to Exhibit 43, do you
15 know anything more about the project, the "AIM project"
16 reference in this document and what is referenced in
17 the exhibit? Do you have any information beyond what's
18 here?

19 A. (DaFonte) I do not.

20 Q. Okay. And, look at Exhibit 44. Do you recognize this
21 document?

22 A. (DaFonte) I do.

23 Q. And, this was a response that you provided to us as
24 part of an information request response, is that right?

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 It's a NESCOE presentation, the New England States
2 Committee on Energy, if I got that right, by Kinder
3 Morgan, in December 2014, is that right?

4 A. (DaFonte) Correct. We provided the link to the
5 document.

6 Q. Right. And, this is the document.

7 A. (DaFonte) Correct.

8 Q. From that link. And, this is the same time when Kinder
9 Morgan decided, Tennessee Gas decided to move this
10 project from Mass. to New Hampshire, is that right?

11 A. (DaFonte) Approximately.

12 Q. Yes. And, this is one of the first presentations they
13 made, at least publicly, announcing that decision?

14 A. (DaFonte) I can't confirm that.

15 Q. It would seem about the same timeline, given December
16 8th?

17 A. (DaFonte) I said it's "approximately", yes.

18 Q. Okay. Fine. And, if you look on Page 3, this
19 referenced some of the reasons why at least Kinder
20 Morgan believes that the NED project makes sense for
21 New England. You talked about some of these in the
22 statements you made yesterday in support of the
23 Settlement, although you said, as part of that, after
24 making the statements, they're not part of the case. I

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1 just want to, with my questions, say, are you aware
2 that there's other pipelines, Spectra, Access
3 Northeast, Portland Natural Gas Transmission pipelines,
4 that will do the same things as some of the elements
5 listed on this page, to "provide direct access to
6 Marcellus", isn't that correct?

7 A. (DaFonte) I believe, as part of my testimony and the
8 analysis that I conducted in this case, I've identified
9 the available alternatives at the time that we were
10 analyzing the benefits of the NED project. So, I have
11 listed -- we have conducted analysis on the PNGTS/C2C
12 project, as well as the Spectra/Atlantic Bridge
13 project. Which, at this point, I might as well add
14 that those two projects now have run their course, in
15 terms of their Open Seasons, and are fully subscribed.

16 Q. I'll talk about alternatives later. That's the last
17 element I have. We don't have to get into it now then.
18 Let's look at Page 7. And, that shows a map of the
19 change in route from Massachusetts to New Hampshire,
20 does it not?

21 A. (DaFonte) Yes. That's correct.

22 Q. And, on Page 7, it also says, as a comment, "we
23 listened". Do you see that?

24 A. (DaFonte) I do see that. Yes.

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 CHAIRMAN HONIGBERG: Where are we going,
2 Mr. Kanoff? We're talking right now about the pipeline
3 route and the change. So, tell me where we're going.

4 MR. KANOFF: What I want to show is
5 that, at the time that the route changed, which was just
6 about the time that the Precedent Agreement was executed,
7 December and December, and after the time that the
8 Precedent Agreement had been approved and signed off by
9 the Liberty Board, that the assumptions with respect to
10 Liberty were all Massachusetts-based. So, by that, I mean
11 there was no -- at that point, there was no opportunity --
12 this wasn't going through the areas of southern New
13 Hampshire, it wasn't going to provide for the kind of
14 growth that they state now exists from the changed route.
15 And, therefore, all those additional after-the-fact
16 justifications for why they need the 115,000 Dekatherms a
17 day did not exist at the time that this was originally
18 proposed.

19 CHAIRMAN HONIGBERG: Do you want him to
20 testify that "it's even better than he thought it was"?

21 MR. KANOFF: Well, it depends where we
22 stop the clock, Chairman. You know, there's always
23 opportunities to grow after the fact. It depends how
24 we're going to look at ratemaking, I guess, or how we're

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 going to look at gas supply.

2 So, at some point you say, they made a
3 bet, and the bet was "it's 115, based on these facts."
4 And, now, we're allowing in other information about why
5 it's better or it may be further justification for the
6 facts originally assumed. But we could add other facts,
7 just as hypothetically, other pipelines, other realities,
8 that make it less economic than they have assumed. At
9 some point, we have to just say "they made a bet at this
10 point in time", and we have to understand that and stick
11 with it.

12 WITNESS DaFONTE: I don't mind
13 answering, --

14 CHAIRMAN HONIGBERG: Go ahead.

15 WITNESS DaFONTE: -- if you --

16 CHAIRMAN HONIGBERG: Go ahead.

17 **BY THE WITNESS:**

18 A. (DaFonte) Sure. The original testimony, and the
19 analysis that was conducted, did not include any growth
20 with regard to the changed pipeline route. It had no
21 Keene in there. There was no load associated with any
22 potential communities along the new pipeline route.
23 There wasn't even any more than about a thousand or so
24 dekatherms associated with returning capacity-exempt

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 customers. So, the Company, when it filed for the
2 115,000, that 115,000 was supported by the original
3 route and the market activity at the time, again,
4 mentioning the capacity-exempt customers. And, by the
5 way, those customers, once they do return, they stay
6 with us for good. That means they have to pay for that
7 capacity long-term. So, those now have to be factored
8 into our future planning. And, as I testified
9 yesterday, those have increased to approximately 3,600
10 Dekatherms per day.

11 So, the change in the route, that really
12 has led to an even greater need for capacity. And, I
13 think, as part of the Settlement, you know, that
14 Settlement kind of takes that into consideration, and
15 says "okay, sure, you know, 115, but you got to meet
16 some of these targets that were negotiated. And, if
17 you don't, then it goes down to 100. And, oh, by the
18 way, whether it's 115 or 100, you got to hit certain
19 growth targets, or else there is a disallowance of
20 costs through the cost of gas."

21 So, I don't know if that's where you're
22 going. But the initial filing was premised on the
23 route at the time, and no additional growth was
24 factored in.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. And the route at the time essentially was as filed, and
2 the reaction of three experts in this case to that
3 filing was that the Company did not undertake adequate
4 analysis of that route at that amount. Isn't that
5 right?

6 A. (DaFonte) I don't believe so, no. In my opinion?

7 MS. PATTERSON: And, actually, at this
8 point, I would just object and say that the testimony
9 speaks for itself, as far as the Staff testimony goes.

10 BY MR. KANOFF:

11 Q. And, to the extent that the testimony does speak for
12 itself, and does suggest in some way that the Company's
13 analysis, as filed, was deficient, then wouldn't it be
14 a logical link to suggest that adding on additional
15 possibilities to that foundation is even more
16 speculative, more problematic than the original filing?

17 MS. KNOWLTON: Objection. I'd ask that
18 the witness be shown particular portions of specific
19 testimony, if he's going to be asked a question based on
20 that testimony.

21 CHAIRMAN HONIGBERG: Mr. Kanoff.

22 MR. KANOFF: We'll let the testimony
23 speak for itself at this point. I think that the question
24 can be answered with another question, I'd just as soon go

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 in that direction.

2 CHAIRMAN HONIGBERG: Okay.

3 MR. KANOFF: All right.

4 BY MR. KANOFF:

5 Q. The question is, in December of 2014, and as part of
6 your submittal in this case, you undertook an analysis
7 that was based upon and presented analysis that was
8 based primarily or almost totally on a Massachusetts
9 route, is that right?

10 A. (DaFonte) The analysis was not based on the route
11 itself. The analysis was based on the terms of the
12 Agreement, and specifically the negotiated rate in the
13 Agreement, as it related to the alternatives that were
14 available at that time.

15 Q. And, the amount of alternatives that you relied on at
16 that time were based upon a Massachusetts route that
17 would serve EnergyNorth by a little spur called the
18 "West Nashua Lateral", isn't that right?

19 A. (DaFonte) I believe that it was a lateral that would be
20 coming from Massachusetts, but the terms and conditions
21 were the same. And, I keep going back to this, but
22 what I'm negotiating is a rate that our customers will
23 ultimately pay, and the benefits associated with the
24 contract that will accrue to our customers as well.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 The route is not in our control. And, as I've just
2 said a little while ago, to the extent that that route
3 changed and it provided other commercial opportunities
4 to bring natural gas service to other communities,
5 then, of course, we would want to take advantage of
6 that.

7 Q. Let me ask two questions on this, and then I'll move
8 on. Is the way a company looks at analysis that it
9 establishes a -- based upon what the amount of
10 customers are, how much gas it needs, or does it
11 determine that it has a certain amount of gas and then
12 evaluates how much customer it needs? Which is the
13 best approach?

14 A. (DaFonte) Well, the Company first conducts a demand
15 forecast, based on assumed growth and, you know, market
16 trends. And, then, it compares that demand forecast to
17 its available resources. And, any deficiency in those
18 resources would have to be addressed through a capacity
19 or supply procurement.

20 Q. And, is that what this is? Is this -- is the NED
21 project, the Precedent Agreement, is that a capacity or
22 supply procurement, as you just described?

23 A. (DaFonte) Yes. It's a capacity contract.

24 CHAIRMAN HONIGBERG: Are we at a

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 breaking point, because I know Mr. Patnaude is going to
2 need a break?

3 MR. KANOFF: This would be a great place
4 to break.

5 CHAIRMAN HONIGBERG: Okay. We'll break
6 for ten minutes, come back at quarter after four.

7 (Recess taken at 4:03 p.m. and the
8 hearing resumed at 4:20 p.m.)

9 CHAIRMAN HONIGBERG: Mr. Kanoff.

10 MR. KANOFF: Thank you. I have to turn
11 it on.

12 CHAIRMAN HONIGBERG: Yes, it helps if
13 it's on.

14 MR. KANOFF: Okay.

15 BY MR. KANOFF:

16 Q. Mr. DaFonte, is it still possible that the route for
17 the NED project will change?

18 MS. KNOWLTON: Objection as to the
19 relevance of the question.

20 CHAIRMAN HONIGBERG: Sustained.

21 BY MR. KANOFF:

22 Q. I want to refer you to exhibits for identification 45,
23 46, 47 confidential, 48 redacted, 49, 50, 51, and 52.

24 Do you have those in front of you?

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 A. (DaFonte) I have all of them, yes.

2 Q. Now, you referenced in your testimony, and also
3 referenced in some of those information request
4 responses that are now exhibits for identification,
5 that you looked at Atlantic Bridge and C2C, is that
6 right?

7 A. (DaFonte) That's correct.

8 Q. And, for each option, for those two projects, you
9 assumed 115,000 Dekatherms a day long-haul
10 transportation, from either Wright or Ramapo, New York
11 beginning in 2018, is that right?

12 A. (DaFonte) That's correct.

13 Q. And, did you take any negotiation -- do you undertake
14 any negotiations with Atlantic Bridge or C2C for any
15 amounts less than 115,000 Dekatherms a day?

16 A. (DaFonte) No, we did not. It was on an
17 apples-to-apples basis, based on the needs that the
18 Company identified in its filing.

19 Q. And, did you assess either one of those alternatives at
20 any other timetable, other than the timetable that you
21 used for NED and which would be service beginning
22 November 2018?

23 A. (DaFonte) No. We evaluated the project on a long-term
24 cost analysis basis.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. And, to be clear, both those facilities go to Dracut,
2 is that right? Let me say it a different way. Both
3 those possible options, they both go to Dracut?

4 A. (DaFonte) Well, the PNGTS project would go to Dracut,
5 because it has existing capacity to Dracut. The
6 Atlantic Bridge project is not proposed to go to Dracut
7 specifically.

8 Q. If the Precedent Agreement or the Settlement is not
9 approved for any reason, what would EnergyNorth propose
10 to do?

11 A. (DaFonte) Well, EnergyNorth would immediately begin
12 exploring other alternatives that are out there. There
13 are other projects that are being proposed that would
14 be considered. It would certainly have to look at an
15 expansion of the Concord Lateral, as probably the first
16 order of business.

17 Q. Is it a fair -- is it a fair statement that other
18 options are emerging beyond the two options that you
19 looked at as part of your proposal in this case?

20 A. (DaFonte) I'm only aware of one other pipeline option
21 that has been announced at this point in time.

22 Q. Which one would that be?

23 A. (DaFonte) It would be the Access Northeast project.

24 Q. Are you aware of any opportunities with respect to the

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 PNGTS system/TransCanada connections that would also
2 provide availability to Dracut?

3 A. (DaFonte) I have not seen any announcements with regard
4 to PNGTS, other than what was provided in the C2C Open
5 Season.

6 Q. Are you familiar at all with the filing that PNGTS made
7 in the regulatory proceedings with respect to LDCs in
8 the Consortium, regarding its ability to serve and
9 provide gas to Dracut from Marcellus/Utica?

10 A. (DaFonte) No, I'm not familiar with that.

11 Q. And, as a hypothetical, just one last question on this,
12 the options available, if for some reason the Precedent
13 Agreement was not approved or the project was not
14 built. Is Spectra/Access Northeast, the Access
15 Northeast project, would that be an option for the
16 Company? Would you look at that?

17 A. (DaFonte) The Company would have to look into the
18 project. What I know of it is it's a project that's
19 been at least marketed to electric distribution
20 companies. In fact, electric distribution companies
21 are partial owners of the project.

22 Q. Are you also aware that LDCs are signing up for that as
23 well?

24 A. (DaFonte) I am not aware of that, no.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. Now, you did not consider LNG as part of your
2 assessment of NED, is that right? Expansion of LNG
3 peaking?

4 A. (DaFonte) Yes. The Company did not consider the
5 expansion of its existing LNG peaking facilities,
6 because it does not have the ability under federal
7 regulation to expand those facilities.

8 Q. Can you enlighten us as to what that federal regulation
9 that you're referring to is?

10 A. (DaFonte) Sure. It's NFPA 59A, "NFPA" being the
11 National Fire Prevention Association. And, in that
12 rule, NFPA 59A --

13 Q. I'm sorry. I'm sorry to interrupt you. Could you say
14 that again? I didn't get the entire reference. It's
15 "NFPA 59" --

16 A. (DaFonte) A. And, it's -- "NFPA" stands for the
17 "National Fire Protection Association". And, that
18 basically has specific requirements around vapor
19 dispersion of LNG facilities and thermal radiation
20 zones. The existing facilities, LNG facilities of the
21 company, are in, for the most part, densely populated
22 areas, and are grandfathered because of the fact that
23 they're, you know, 30-40 years old. Any expansion
24 would bring them under the new regulations, which

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 clearly would not allow the plants to function even as
2 they function today.

3 Q. And, those regulations, I believe in one of your
4 information responses, were enacted this year, is that
5 your testimony?

6 A. (DaFonte) No. I don't believe they were enacted this
7 year. They have been around for awhile now.

8 Q. Do you know when they went into effect?

9 A. (DaFonte) I do not.

10 Q. In 2007, as part of the Company's testimony in seeking
11 approval of the Concord Lateral, it proposed to expand
12 its existing propane facilities significantly. It was
13 a alternative to expanding the Concord Lateral. And,
14 so, the question is, really, what changed from 2007,
15 from a regulatory perspective, that would make that
16 option not available now as it was then?

17 A. (DaFonte) I wasn't with the Company at that time.
18 Liberty Utilities did not own EnergyNorth at that time.

19 Q. I understand.

20 A. (DaFonte) So, I don't know.

21 Q. But I guess the confusion is, I'm trying to get a
22 timeline on this reg., and I believe one of my
23 colleagues is looking it up as we speak, but, if the
24 regulation would not have prevented Grid from

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 expanding, in fact, they made a proposal here to do
2 that, then the question is, how it would prohibit you
3 from doing the same thing?

4 A. (DaFonte) You're making an assumption that I can't
5 answer.

6 Q. Now, with respect to the expansion of LNG, you say two
7 things. One was that there was a regulation that was
8 challenging, and you just referenced that regulation.
9 You also indicate that, with respect to LNG, that
10 you're not aware of any new sites that would work.
11 Could you talk about that a little bit.

12 A. (DaFonte) Can you point me to the data request or the
13 exhibit that you're referencing?

14 Q. Sure. It's in Exhibit 49(b), last sentence. "The
15 Company is not aware of any potential LNG sites that
16 would be able to comply with all federal codes." So,
17 you talked about "current facilities", and you also
18 talked about "potential LNG sites". So, I'm asking now
19 about potential LNG sites?

20 A. (DaFonte) My answer would be the same.

21 Q. So, are you -- is your testimony then, with potential
22 sites, that there are no sites that would meet the --
23 satisfy the prohibitions or the regulations of NFPA 59A
24 anywhere in New Hampshire? I'm just trying to

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 understand the context, your response that there's "no
2 sites".

3 A. (DaFonte) No, I'm just suggesting -- I'm saying that
4 we're not aware of sites within the Company's service
5 territory that would be able to provide that level of
6 service and satisfy the NFPA 59A requirements.

7 Q. So, it's just within your service territory?

8 A. (DaFonte) Yes. That's the only way we could get
9 service.

10 Q. And, so, there's no -- strike that. So, what have you
11 done to actually evaluate possible sites? I mean, how
12 do you know that there's no sites? Your service
13 territory encompasses a large area, presumably, and a
14 lot of it is not as urban as your existing sites. What
15 have you done to evaluate that there's no sites
16 available in your service territory?

17 A. (DaFonte) Well, the site has to be somewhere near where
18 the Company's largest consuming part of its service
19 territory is, because there has to be takeaway
20 capacity, in a sense. So, for example, you couldn't
21 put it on the extremities of the distribution system,
22 because there would be no demand out in those
23 locations. So, it has to be closer to the urban, if
24 you will, urban setting. And, it would certainly have

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 to be a large facility or multiple facilities to
2 provide the same 115,000 Dekatherms per day of
3 capacity.

4 Q. Well, it doesn't have to provide 115,000 Dekatherms a
5 day, does it? It just has to provide some measure of
6 peak demand.

7 A. (DaFonte) Well, to satisfy the long-term requirements,
8 that's what we --

9 Q. Well, the LNG would not be a long-term requirement
10 option, but it would be a peaking solution?

11 A. (DaFonte) Yes. But it would be a solution to satisfy
12 our long-term design day requirements.

13 Q. It would reduce your design day long-term requirements,
14 would it not, if it was available to you? That's what
15 Grid said.

16 MS. KNOWLTON: Objection. I would ask,
17 to the extent that Mr. Kanoff is referring to what Grid
18 said, to show Mr. DaFonte National Grid's testimony, so he
19 could review that, that specific reference to that
20 testimony page, etcetera.

21 BY MR. KANOFF:

22 Q. Well, why don't I just modify the question and say,
23 would not LNG, if it were employed, available,
24 constructed by the Company, reduce peak -- I mean, be a

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 capacity source to serve peak demand, and wouldn't that
2 reduce the amount of supply necessary otherwise under
3 long-haul transportation?

4 A. (DaFonte) Yes. I believe that's what I was saying.
5 It's a supply-side resource. So, if that were the
6 solution, and, again, comparing apples to apples, we
7 would be looking at 115,000 a day, which is what we're
8 looking at for -- what we've put forth in our testimony
9 as being the appropriate amount of capacity required to
10 satisfy long-term customer demand.

11 Q. Just a few more questions. Are you aware that Northern
12 Utilities is considering at least one site in New
13 Hampshire for an LNG facility?

14 A. (DaFonte) Well, I probably would turn to Mr. Clark with
15 regard to anything related to any LNG facilities to
16 serve customers elsewhere. I'm assuming it's Keene
17 or --

18 Q. I don't know. I'm asking you.

19 A. (DaFonte) That's the only one I'm aware of that there's
20 been discussion of being able to provide service to --

21 MS. KNOWLTON: Mr. Kanoff can --
22 objection. I believe the question was as to "Northern
23 Utilities".

24 MR. KANOFF: And, I believe they're

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 answering the question.

2 WITNESS DaFONTE: Oh, I'm sorry. I
3 misunderstood. I didn't realize it was Northern, Northern
4 Utilities. So, I apologize for that.

5 CHAIRMAN HONIGBERG: Okay. Let's start
6 again.

7 MR. KANOFF: Start again. Question.

8 BY MR. KANOFF:

9 Q. Are you aware that Northern Utilities is considering at
10 least one site in New Hampshire for an LNG peaking
11 facility?

12 A. (DaFonte) No, I'm not.

13 Q. And, I just want to refer you to Exhibit 48. And,
14 Liberty itself -- do you have that in front of you?

15 A. (DaFonte) Yes. I have 48.

16 Q. And, Liberty itself has established a joint venture to
17 develop LNG liquification and storage to support LNG
18 peaking use --

19 (Court reporter interruption.)

20 **BY THE WITNESS:**

21 A. (DaFonte) I'm confused. It's not 48, right?

22 BY MR. KANOFF:

23 Q. Sorry. Fifty-two, 52 is the exhibit number for
24 identification.

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 A. (DaFonte) Okay. I have that in front of me.

2 Q. Okay. And, Liberty established a joint venture to
3 develop LNG liquification and storage to support LNG
4 peaking use in the region, is that correct?

5 A. (DaFonte) Yes. I'm aware of that.

6 Q. Okay. Is any of that going to be available to Liberty
7 (EnergyNorth)?

8 A. (DaFonte) Yes. It could be, in the form of liquid, to
9 replenish the existing LNG facilities that we have.

10 Q. And, would you agree that LNG is a significant and
11 important resource available to gas companies/LDCs
12 generally to support your peaking requirements?

13 A. (DaFonte) Yes. That's why it's part of our diversified
14 portfolio.

15 Q. And, that's why you're really looking to build that
16 business through the joint venture, is that right?

17 A. (DaFonte) I don't know about the business venture. But
18 I just know from the contracting side, and exploring
19 all alternatives for LNG in liquid form, as we do every
20 year, to replenish our facility storage.

21 MR. KANOFF: Mr. Chairman, that's
22 really, that's all I have. I just want to note that, from
23 yesterday, there was one confidential area. So, if we go
24 into a confidential section -- discussion at any point,

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1 there's really one question possible, and I'll relook at
2 that to see if it's even necessary.

3 CHAIRMAN HONIGBERG: Okay. Then, we'll
4 circle back to you after you've had a chance to do that.

5 Commissioner Scott, do you have
6 questions for the witnesses?

7 COMMISSIONER SCOTT: I do. Thank you.
8 And, good afternoon.

9 WITNESS DaFONTE: Good afternoon.

10 WITNESS CLARK: Good afternoon.

11 BY COMMISSIONER SCOTT:

12 Q. Let me start with the Settlement. I just want to
13 understand a little bit better. So, as I read it, it's
14 conditional. And, when I look on Page 3, and you
15 probably don't need to go there, because I know you
16 know the Settlement pretty well anyways. But I just
17 want to make sure I understand some of the dynamics
18 here. So, if it ends up that more than 10,000
19 Dekatherms a day are needed for expansion, if you will,
20 then the trigger is the amount of pipeline
21 transportation purchase stays at 115, correct?

22 A. (DaFonte) That's correct.

23 Q. But if it's 9,999, it reverts to 100, correct?

24 A. (DaFonte) That's correct.

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1 Q. Right. So, that increment there, is there something
2 special with that increment? Help me out how that
3 happens. I'm just trying to understand the mechanics
4 again.

5 A. (DaFonte) Yes. So, it's based on, essentially, three
6 factors. The design day requirements of iNATGAS, which
7 is the CNG facility being built in Concord. It's the
8 design day capacity of any existing capacity-exempt
9 customers. And, those are the customers that have
10 their own capacity, essentially, upstream to supply
11 themselves through a marketer. And, as those customers
12 come back, they, as I mentioned earlier, they are
13 entitled to our capacity, and then must pay for that
14 capacity in perpetuity. But they are allowed to go
15 back to transportation service. So, essentially, they
16 take the capacity on a *pro rata* share. So, their *pro*
17 *rata* share of all of our resources. And, they can
18 assign those to their marketer, and then their marketer
19 goes out and procures supply accordingly. And, so,
20 they can continue to be a transportation customer. It
21 does not prohibit them from going back. But they do
22 have to pay 100 percent of the fixed costs associated
23 with all of our resources. So, that's the second
24 piece. The other one is, which is more recent, is the

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 fact that the Company has been talking to customers of
2 Concord Steam who wish to switch to natural gas direct
3 service from EnergyNorth.

4 Q. So, am I correct to paraphrase, you know, I was making
5 it extreme, 9,999 you don't need that extra increment,
6 that one more you do. But it's really directional, am
7 I correct? Meaning, if you're able to demonstrate that
8 these are needed, then there's a good understanding
9 that you'd need the full 115. Is that kind of the
10 thinking? Is that correct?

11 A. (DaFonte) Yes. Yes, exactly right.

12 Q. Did I hear correctly, so, if that is triggered, so
13 it's -- the purchase amount is 100,000, not 115, that
14 you do not require to renegotiate the Precedent
15 Agreement? Did I hear that correctly?

16 A. (DaFonte) That's correct. The Tennessee has agreed
17 that, under the terms of the PA, which essentially
18 established a 100 or 115 type threshold, that this
19 still falls within that threshold. So, they are
20 amenable to an amendment.

21 Q. And, the pricing would be the same regardless?

22 A. (DaFonte) Right. And, as I had stated, that's really
23 one of the benefits that comes out of the Settlement.

24 That is that it is, essentially, a no-cost option to be

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 able to lower the commitment on the NED project.

2 Q. Okay. Thank you. Is there -- obviously, you've, as
3 you stated in your testimony, you've worked with a
4 consortium. And, my understanding is that is to kind
5 of leverage buying power, is that correct?

6 A. (DaFonte) Yes. Absolutely. And, as part of that, all
7 the Consortium members receive the same benefits, if
8 you will.

9 Q. So, what I'm interested in is that, that increment.
10 So, is there a magic number related to the Precedent
11 Agreement with the 100,000, is that -- do you have to
12 buy in lots, if you will, or chunks? Or is that -- is
13 there a number that you need to do in order to be part
14 of this, I guess?

15 A. (DaFonte) Well, the number is, you know, the number is
16 really based on what our requirements were. And, you
17 know, each utility within the Consortium has their own
18 specific requirements. So, because it's a 20-year
19 contract, we looked out 20 years to see what our demand
20 would look like. And, based off of that, that 115
21 number was appropriate, given that we have decisions to
22 make within that time period on the retirement of our
23 propane facilities. So, the planning horizon really
24 isn't 20 years, it's more in the five to ten year

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 range, because of the 34,600 of propane capacity that
2 we have on the system that would -- we would expect
3 would eventually go away. So that was the basis for
4 our commitment, and then each LDC had their own basis
5 for commitment of a particular volume.

6 Q. So, if I understood you right, you didn't have a
7 particular amount you had to purchase in order for this
8 to go forward. Is it not correct, though, that the
9 pipeline developer, in general, needs a certain
10 critical mass before they move forward or nobody gets
11 anything?

12 A. (DaFonte) Right. Exactly. And, that's, as part of the
13 Consortium, because we were able to, you know, look at
14 our individual needs, pool them together, and go to the
15 pipeline, we were able to go to them with a particular
16 volume. And, the pipeline agreed that, under, you
17 know, with that volume in mind, we would provide you
18 with a certain rate under those conditions. And, then,
19 they would make a determination, that being, you know,
20 Tennessee Gas Pipeline, would make a determination
21 based on the additional participants in the project
22 whether they would go forward with it. And, as I
23 mentioned, they did announce, on July 16th, that they
24 would go forward with the current volumes, if, in fact,

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1 they're approved by their representative state
2 commissions.

3 Q. So, you mentioned the price. When does that actually
4 get locked in? When do you have a firm price?

5 A. (DaFonte) Well, the negotiated rate gets locked in
6 immediately, once -- upon approval of the Precedent
7 Agreement, that gets locked in. And, then, there are
8 adjustments that I believe are confidential in nature,
9 but there are some adjustments that could -- that could
10 cause the price to go up and adjustments that could
11 cause the price to go down as well.

12 Q. And, you went to my next question. So, to the extent
13 there are cost overruns, how is that handled? We're
14 being asked to approve a certain thing. Would the
15 utility come back to us? Or, what's the -- what are
16 you envisioning if there's cost overruns?

17 A. (DaFonte) Well, the PA includes provisions associated
18 with the cost overrun, as well as the cost underrun.
19 So that there's a -- well, it's confidential. But we
20 can -- the provisions are in the PA, but they are
21 confidential. And, so, I don't want to divulge those
22 at this point in time.

23 CHAIRMAN HONIGBERG: So, Commissioner
24 Scott, do you want to finish other aspects of your

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1 questioning, then circle back to that issue, and then, at
2 that point, maybe Mr. Kanoff will also be able to ask his
3 questions?

4 COMMISSIONER SCOTT: That would be fine.

5 BY COMMISSIONER SCOTT:

6 Q. And, what I'm really trying to ask, I don't know if you
7 need to go into the confidential side, is, to the
8 extent there are cost overruns triggered in the PA, is
9 it your assumption that those will be absorbed, if we
10 approve the Precedent Agreement, are we also approving
11 to that limit of whatever the cost overruns are?

12 A. (DaFonte) Yes. Yes.

13 Q. Okay.

14 CHAIRMAN HONIGBERG: Let me ask you
15 this, Mr. DaFonte. Do you want to circle back to the
16 confidential information and providing an answer to the
17 question Commissioner Scott asked you just before that
18 last one?

19 WITNESS DaFONTE: If it's helpful, I
20 would, yes. I would do that.

21 CHAIRMAN HONIGBERG: All right. So,
22 when Commissioner Scott is done, and maybe when I'm done,
23 we'll circle back to that question, and that will also be
24 Mr. Kanoff's opportunity to do what he needs to do, before

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1 we then bring back everybody else and let Ms. Knowlton
2 redirect. So, that's how we're going to go.

3 COMMISSIONER SCOTT: Thank you.

4 BY COMMISSIONER SCOTT:

5 Q. So, moving, in my view anyways, to the other end of the
6 equation, my view is a lot of your cost/benefit
7 analysis assumes a certain liquidity at Wright, is that
8 correct?

9 A. (DaFonte) Yes.

10 Q. And, if I think I heard yesterday in your testimony,
11 there was some talk about, if certain conditions aren't
12 met, the Precedent Agreement wouldn't take into effect.
13 Is liquidity one of those?

14 A. (DaFonte) You know, again, that's a -- that's another
15 confidential issue that we could certainly discuss.
16 But there are provisions in the PA that would, in a
17 sense, ensure that there is some liquidity there at
18 Wright.

19 Q. Sounds like I'm developing a list of confidential
20 items.

21 MS. KNOWLTON: If I may interject? I
22 mean, Mr. DaFonte, on the public record, could point the
23 Commissioners to the particular page of the PA in
24 question, and at least provide some information that way

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1 now, if that's helpful. And, then, if there's a need to
2 get into the particulars, could do that on the
3 confidential record.

4 COMMISSIONER SCOTT: Fine. I'll do
5 that. But, if you think it's more helpful to talk in the
6 confidential side anyways, I'm fine with waiting till
7 then, too.

8 WITNESS DaFONTE: Sure. I can do that.

9 **BY THE WITNESS:**

10 A. (DaFonte) I can elaborate a little bit with respect to
11 liquidity, and the way in which we try to determine
12 what the costs will be at Wright. But, essentially,
13 our approach we used was sort of a "wellhead plus"
14 approach. What that means is that we looked at the
15 project that we know has been approved by the FERC,
16 which is the Constitution Pipeline project, which is
17 designed to go from, essentially, Marcellus to Wright.
18 It's designed to bring about 650,000 Dekatherms a day
19 to Wright. And, so, we looked at the rate associated
20 with that project, which, at the time when we looked at
21 it, we assumed a 75 cent rate. And, in actuality, it's
22 about a 65 cent rate.

23 But our assumption was that the
24 shippers, which are two producers, on that project

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1 would want to recover those demand charges, those fixed
2 costs, in the winter period, when there's typically
3 more demand. So, we took the 365 days of demand
4 charges, and assumed that they would all be recovered
5 in the winter period. And, then, what we did is we
6 took that demand charge and sculpted it based on the
7 months with the highest demand, and that became the
8 basis for Wright. And, so, that's how we developed
9 that, that pricing assumption.

10 And, with respect to that liquidity, in
11 addition to Constitution, I think I mentioned that
12 Dominion has a project that is being built to
13 interconnect with Iroquois Gas Transmission, which is
14 where Wright is located, right off of Iroquois. In
15 addition, I mentioned as well, that we are in
16 negotiations with Tennessee Supply Path, which would
17 bring another Bcf or so of supply to Wright. And, so,
18 that's really the liquidity piece that we would be
19 looking for. And, not just at Wright, but then
20 diversifying, going all the way back to Marcellus as
21 well through that Supply Path piece.

22 BY COMMISSIONER SCOTT:

23 Q. So, when we go to the confidential side, if it is
24 needed, what I'm interested in is where are the

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1 bookends for liquidity that we're approving, that,
2 again, you did some analysis with what you understand
3 is going to happen at Wright, I believe. All of that
4 is somewhat -- and, I agree, the Constitution has been
5 approved by FERC, but, you know, they're somewhat
6 speculative, it's not there right now. So, where are
7 the bookends of what we're being asked to approve,
8 vis-a-vis how liquid it -- obviously, if Wright becomes
9 less liquid, then, we have -- you know, it's a whole
10 nother calculation, correct?

11 A. (DaFonte) Right. Agreed. And, that's why we're in
12 negotiations with Tennessee as well, to make sure that
13 we are looking at a fully diversified portfolio. But,
14 as I said, with regard to Wright, there are projects
15 that are being proposed to be built there, and that
16 there are some protections, if certain things don't
17 happen.

18 Q. And, those protections are what I would like to
19 discuss.

20 A. (DaFonte) Exactly.

21 Q. Or, I'm not saying we'd do this, but, with those
22 protections, would we do a conditional approval, where,
23 assuming these things happen, this is how the approval
24 is, that type of thing.

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Okay. Moving on for me, on the
2 Settlement, the growth incentives. So, again, if
3 certain triggers, my word, aren't used -- aren't met,
4 the cost of gas reconciliation are reduced by certain
5 amounts, correct?

6 A. (Clark) Correct.

7 Q. So, who bears those costs, if you will, or that lack of
8 recovery, who bears that?

9 A. (Clark) That would be shareholders.

10 Q. Okay. So, help me out. An earlier discussion was that
11 "EnergyNorth had no stakeholders", did I hear that
12 correctly?

13 A. (DaFonte) Yes, the shareholder issue?

14 Q. Yes, "shareholders".

15 A. (DaFonte) I mean, ultimately, it's the parent that
16 bears the cost, which is APUC.

17 Q. Okay. And, in no case would it be the ratepayers,
18 correct?

19 A. (DaFonte) No, absolutely not. They would actually be,
20 you know, paying less.

21 Q. Okay.

22 MS. KNOWLTON: If I might, maybe one
23 more thing I'll stipulate to, so there's no question.
24 EnergyNorth does have a shareholder. It's wholly owned by

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1 Liberty Energy Utilities (New Hampshire) Corp., which is
2 then wholly owned by the next entity up the chain. So,
3 there is a shareholder involved.

4 CHAIRMAN HONIGBERG: A more general or
5 generic way of talking about this is that the owners of
6 the Company bear the risk when in a circumstance where
7 it's not able to recover costs. That's -- whoever owns
8 it. Whether that's called "shareholders", "investors",
9 "partners", whatever, it's the owners who bear that risk,
10 right?

11 WITNESS CLARK: Correct.

12 CHAIRMAN HONIGBERG: Okay.

13 WITNESS DaFONTE: Yes.

14 COMMISSIONER SCOTT: Thank you.

15 BY COMMISSIONER SCOTT:

16 Q. Again, the prior questioning went down the line of
17 ownership, ownership change, if you will, for
18 Algonquin. And, I guess I'd like to ask the question
19 directly. Mr. DaFonte, you obviously negotiated the
20 Precedent Agreement. Were you pressured by anybody
21 above you in your chain of command, if you will, for a
22 particular outcome for that negotiations?

23 A. (DaFonte) No, I was not.

24 Q. Okay. Also, on the discussion for LNG, liquified

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1 natural gas, storage, I understood your comments about
2 within your service territory. Did you look at --
3 well, let me back up. For one of your -- one of your
4 rationale, if I understood right, for not using --
5 pulling gas from Dracut in the future, if this is
6 approved, is that the cost -- the price point at
7 Dracut?

8 A. (DaFonte) That's correct. There is declining supply in
9 Atlantic Canada. There's been quite a few articles out
10 there and statements from one of the producers that the
11 proven reserves have decreased by 50 percent. And, so,
12 some of that, whether directly or indirectly, makes its
13 way to Dracut or is consumed up in the, you know, the
14 Atlantic provinces of Nova Scotia, New Brunswick, and
15 so forth. And, so, as that supply begins to
16 essentially shut down, those LDCs up there are going to
17 require capacity. And, I believe some have already
18 signed up for capacity on some of the new projects.

19 Q. So, on that end, have you -- did you look at use of
20 other LNG facilities, Distrigas, Canaport, as a --
21 maybe a way to right size the amount of pipeline
22 capacity you need?

23 A. (DaFonte) Certainly, we looked at alternatives that
24 would get the gas to us directly. So, you know, the

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1 comparable projects, being the PNGTS/C2C project and
2 the Spectra/Atlantic Bridge project, could get gas to
3 Dracut. But none of those projects, nor any LNG
4 option, from Repsol or from GDF Suez, could get that
5 gas from Dracut, up to us on the Concord Lateral. So,
6 you would still need a Concord Lateral expansion. And,
7 that's an expensive proposition. As we mentioned, the
8 initial estimate was what it was. It's confidential.
9 But it was rather, you know, it's rather high. With
10 the updated cost estimate, that would bring gas to all
11 of our citygates, not just Nashua, that price now
12 begins to dwarf the NED project, which goes all the way
13 back to Marcellus. So, you're essentially, you know,
14 paying more for transportation from Dracut to your
15 citygates, than you would be by going all the way back
16 to Marcellus.

17 Q. Thank you. And, along the lines of ownership, just to
18 clarify, Attorney Kanoff brought up Exhibit 43, which
19 talked about the AIM project, Algonquin Incremental
20 Market project. Am I correct, that has no relationship
21 to the Algonquin that's in your ownership chain, is
22 that correct?

23 A. (DaFonte) That's correct.

24 Q. Despite the name?

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1 A. (DaFonte) Yes. Exactly.

2 Q. And, before we go to confidential, so, obviously, we've
3 heard a lot from the public on the route to be taken.
4 Have you got any feedback from your customers on the
5 project?

6 A. (DaFonte) I haven't specifically.

7 Q. Or are you aware of any?

8 A. (DaFonte) I mean, there's -- we've had, I mean, letters
9 have been sent in --

10 A. (Clark) Right.

11 A. (DaFonte) -- that I know of from customers that would
12 like to see the project built. That these are large --
13 some of the largest employers and energy users in the
14 state, and they have had to deal with very volatile
15 pricing and very high pricing over the last couple
16 years. And, so, as it relates to their business and
17 their ability to compete in their specific marketplace,
18 they have certainly sent letters of encouragement to
19 the Commission to approve the contract.

20 And, of course, as I mentioned, we've
21 had capacity-exempt customers that are coming back to
22 our system. So, they're looking for price stability
23 and supply security by getting our capacity. And, so,
24 that is akin to, you know, adding new customers to the

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1 system.

2 And, you know, again, more recently, the
3 fact that the Concord Steam customers are looking at
4 taking gas directly from EnergyNorth, it's just another
5 indicator of what some of these larger consumers are
6 looking for, and which is the low-cost natural gas
7 option.

8 Q. And, Mr. Clark, I didn't mean to cut you off. Did
9 you --

10 A. (Clark) No. I'm aware of the letters that were sent in
11 in support from some of our larger industrial
12 customers, as well as some labor and trades groups.

13 Q. And, probably for Mr. Clark. So, is it your
14 understanding that, for the existing customers, if this
15 project were to go through and be approved as
16 envisioned, that's a benefit?

17 A. (Clark) I do agree.

18 Q. For Ms. Whitten, you haven't got a lot of questions, I
19 don't want to miss you. In your experience with
20 utilities or LDCs, related to the amount of reserve
21 capacity being projected for this project for this LDC,
22 how does that compare with other similarly situated
23 LDCs that you're aware of? Is this a lot more or
24 similar? Or, is it just not comparable?

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1 A. Are you referring to the 15,000 [sic]? I'm aware of
2 the Precedent Agreement -- the petitions to approve
3 precedent agreements for NED in Massachusetts. And,
4 all three of those Massachusetts LDCs have requested a
5 similar, I believe Witness DaFonte referred to it as a
6 "regulatory out" that would allow them to reduce their
7 volumes without paying a penalty.

8 The magnitude actually is higher for two
9 of them, because they're larger utilities, and about
10 the same for the smallest utility, Berkshire. And,
11 that's as much as I can say without going into a
12 confidential session. But I'd be happy to talk more
13 about it confidentially.

14 Q. Thank you. And, I think my final non-confidential
15 question is regarding the Consortium. The Consortium
16 members, are they also subsidiaries of your parent?

17 A. (DaFonte) No. None of them are.

18 Q. And, obviously, they're moving ahead also in other
19 jurisdictions to have a precedent agreement approved,
20 is that correct?

21 A. (DaFonte) Yes. As Ms. Whitten just mentioned, the
22 three in Massachusetts, and I believe there's another
23 one in Connecticut.

24 COMMISSIONER SCOTT: Thank you.

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 CHAIRMAN HONIGBERG: I don't think I'm
2 going to be doing anything that requires confidential. I
3 may change my mind in the middle, but I'm not planning on
4 it.

5 BY CHAIRMAN HONIGBERG:

6 Q. Mr. DaFonte, I want to find out a little bit more from
7 you about how you do what you do, and how you get
8 authority to do what you do, and how -- what happens
9 when you feel like you're on the edge of the authority
10 you've been given by your superiors. Talk to me a
11 little bit about how that works for you.

12 A. (DaFonte) Well, basically, you know, my responsibility
13 is to all of the gas and electric utilities that are
14 under the purview of APUC. So, all the regulated
15 utilities. So, I provide these same services to our
16 utilities in Massachusetts, Georgia, Illinois, Iowa,
17 Missouri, and California. And, basically, we determine
18 needs, we make purchases to satisfy those needs. We
19 look out long term, based on each individual state's
20 requirements. In New Hampshire, we have a five-year
21 Least Cost Integrated Resource Plan which we file. In
22 Massachusetts, we have a similar plan, but they call it
23 a "Forecast and Supply Plan". Most of the other
24 jurisdictions are essentially year-to-year. But it's

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 those longer term plans where we really look at our
2 long-term requirements of our customers.

3 And, so, as the Company looked into --
4 or, put together its 2013 IRP, at that time it started
5 to identify the need for an incremental resource beyond
6 even the five years. And, so, that's when we first
7 began to look at what at that time was the Northeast
8 Expansion project, or an opportunity to contract for
9 that.

10 So, once that was identified as a need,
11 then we would begin to look at alternatives that were
12 out there, refine the forecast, get the most recent
13 demand, actual usage by our customers and so forth, and
14 then explore alternatives as they came up.

15 And, so, once we've done that, I look at
16 the contract. I compare it to other alternatives. I
17 make a determination as to what's the, you know, the
18 best-cost alternative. And, when it comes time for
19 signing off, I basically provide a summary of the
20 agreement to corporate and ask for their approval of
21 the agreement. And, so, that's pretty much how it
22 works. They don't get involved in day-to-day
23 transactions, even smaller transactions, such as
24 contract renewals that come up almost on an annual

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 basis. They -- I have complete authority to renew
2 those contracts.

3 Q. But this is a larger deal than one of those?

4 A. (DaFonte) Exactly. So, something of this magnitude,
5 that's where I have to put together, you know, some
6 summary to my boss, for example. And, then, that gets,
7 you know, passed on up the, you know, the hierarchy in
8 the organization. But I basically bring it to my boss
9 with a summary of the terms and conditions of the
10 agreement.

11 Q. How many of that type, the larger type, of transactions
12 you think you negotiate in a year?

13 A. (DaFonte) Not many. There aren't a lot of
14 opportunities that come up. You know, the last
15 greenfield pipeline, essentially, that was built here
16 in New England was in 2000 -- or, 1999 really. And,
17 so, those opportunities don't come up very often. But,
18 as a result, certainly, of the high energy prices that
19 customers have experienced over the last couple winters
20 in particular, that has certainly encouraged the
21 development of new projects, given, you know, what most
22 people would recognize as a lack of sufficient pipeline
23 infrastructure into the region. So, that sort of
24 kicked it off, and that's why there are alternatives

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 out there. And, that's why we identified those as
2 competing projects.

3 Q. And, so, the Agreement was signed roughly December, I
4 think, is what we --

5 A. (DaFonte) It was October.

6 Q. It was October? Okay. Maybe it was filed in December,
7 I don't remember the details. But, if it was finalized
8 in roughly October, at what point did you bring the
9 people above you into the loop and let them know "this
10 is what we have in mind here"?

11 A. (DaFonte) Well, you know, when we file the Integrated
12 Resource Plan, that is, you know, for me, it's one of
13 my key goals, and when we do make that filing, I
14 generally communicate, you know, sort of the results of
15 that filing and what it is that we're sort of
16 providing. And, at that time, you know, there was
17 that, the commencement of a discussion with Tennessee
18 on the Northeast Expansion project.

19 Q. And when was that IRP?

20 A. (DaFonte) That was in 2013.

21 Q. Okay. All right. Thank you. Ms. Whitten, I haven't
22 forgotten you either. Your testimony, do you have
23 that?

24 A. (Whitten) Yes, I do.

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Q. At the end, and I think Ms. Patterson probably did some
2 of this with you, but it really was a long time ago and
3 I have forgotten. On Page 56, you talk somewhat about
4 what your recommendation to the Commission is. And, it
5 was essentially to deny or require changes?

6 A. (Whitten) Correct.

7 Q. How much of what you put on Page 56 is reflected in the
8 Settlement Agreement, in your view?

9 A. (Whitten) Well, all of it, basically, because it's
10 embedded in the Settlement Agreement. What we were
11 looking for, based on our review of the filing as
12 originally filed, was not just a trend assumption for
13 growth, but the backup that shows the cost/benefit of
14 the assumed growth. And, in addition to that, you
15 know, we wanted to see a little more discussion of the
16 alternatives. But the primary concern was the growth
17 assumption, that was based on a trend analysis, rather
18 than the normal -- the typical econometric-driven
19 analysis type of equations that would forecast growth.

20 And, in addition, we were concerned
21 about the fact that, as originally filed, after 20
22 years, the Company would have at least 2,000 a day, by
23 its own admission, of excess capacity. And, it seemed
24 as though, after 20 years, with an assumption of

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 growth, there shouldn't be that much excess capacity.

2 I'm sure Witness DaFonte would disagree with me,
3 because he refers to that as "necessary reserve". But
4 I think of it as, over time, that much time, it
5 shouldn't be there. So, we --

6 Q. He says "Precedent" [sic], you say "Precedent". You
7 decide.

8 A. (Whitten) And, the other thing we were concerned about
9 was the assumption that -- the apparent assumption that
10 they would retain the propane/air plants. Now, I
11 realize that in Witness DaFonte's -- and I recognize
12 that in Witness DaFonte's testimony, he said that the
13 Company would "look at that". But, from my
14 perspective, "looking at it" is not the same thing as
15 agreeing to evaluate it and present the evidence that
16 shows that they should be retained or not. And, so --
17 but what I wanted to do with this set of
18 recommendations was to lay down a marker to the Company
19 that they needed to -- that they had deficiencies in
20 their original filing, and that they needed to address
21 those deficiencies.

22 Q. Is it -- I'm not sure I had really understood this
23 before, but is it fair to say that your original
24 position on the application or on the Petition wasn't

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 that "this couldn't be a good deal", but that "the
2 Company hadn't demonstrated that it was a good deal"?

3 A. (Whitten) Essentially, yes. Yes. I mean, as filed,
4 with no changes, you have to have a position on that,
5 assuming they refused to make any changes. But, in
6 fact, they did come forth with responses through
7 rebuttal and through other venues, technical sessions
8 and discovery, with additional information.

9 Q. You probably don't know this, but this pile of public
10 comments that we've had printed out, I'm guessing
11 there's somewhere between 80 and 100 public comments,
12 all but a handful are negative. And, all but a handful
13 of those negative ones quote you. They quote your
14 testimony.

15 A. (Whitten) They do, yes.

16 Q. They quoted -- many of them quote the same passages.
17 But I think that, well, I guess I would say, what would
18 you say to the people who looked at your original
19 testimony and said "she thinks this a bad idea." How
20 would you respond to them today?

21 A. (Whitten) I would say that the recommendations that I
22 made were conditional on the opportunity for the
23 Company to improve their filing. That they were tied
24 specifically to the assumptions for growth. I've had

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 some experience running a LDC portfolio, a supply and
2 transportation and capacity portfolio. And, I was not
3 in a position to overbuy capacity or supply either.
4 Our approach was to grow responsibly. So, we couldn't
5 go out and sign on customers that weren't
6 cost-effective for us to serve.

7 So, my metric in analyzing this filing
8 was a cost-based filing. It was not related to any
9 other issues that might be associated with other
10 potential customers for this project. It was strictly
11 this filing. And, we do a data-driven type of
12 analysis, where we start with the demand forecast, as
13 Witness DaFonte said they start with, and we found
14 concerns with that. Now, I could imagine that they
15 were addressable, if the Company wanted to come forward
16 with more information. So, I embedded that in my
17 recommendations.

18 I think what the -- with respect, I
19 understand that these people who have filed comments
20 are entitled to file those comments, and they do have
21 their concerns, but they quoted one part of my
22 testimony and not all of it.

23 CHAIRMAN HONIGBERG: Thank you very
24 much. I think that's all I have. I know that

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[WITNESS PANEL: DaFonte~Clark~Whitten]

1 Commissioner Scott wants to do confidential, I know Mr.
2 Kanoff may. Do you, by the way, Mr. Kanoff?

3 MR. KANOFF: If we're going to go to --
4 if we're going to go to a confidential session, I will ask
5 a question. I would not necessarily compel that.

6 CHAIRMAN HONIGBERG: Commissioner Scott
7 wants to. So, you're going to get --

8 MR. KANOFF: Then, I will ask --

9 CHAIRMAN HONIGBERG: You're going to get
10 a chance.

11 MR. KANOFF: I will ask a question.

12 CHAIRMAN HONIGBERG: So, here's what --
13 let's go off the record.

14 (Brief off-the-record discussion
15 ensued.)

16 ***(Public portion of the record suspended)***

17 ***(Pages 97 through 108*** of the hearing
18 transcript is contained under separate
19 cover designated as "**Confidential &**
20 **Proprietary**". Accordingly, *Pages 97*
21 *through 108* herein have been
22 intentionally left blank.)

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1 **(The Public Portion of the record**
2 **resumes.)**

3 CHAIRMAN HONIGBERG: Ms. Knowlton, do
4 you have redirect for these witnesses?

5 MS. KNOWLTON: Very limited.

6 CHAIRMAN HONIGBERG: I should have asked
7 Ms. Patterson. Do you have any redirect for your witness?

8 MS. PATTERSON: No thank you.

9 CHAIRMAN HONIGBERG: Okay. Why don't
10 you go ahead, Ms. Knowlton.

11 **REDIRECT EXAMINATION**

12 BY MS. KNOWLTON:

13 Q. Mr. Clark, on cross-examination you were asked about
14 the number of customers served by the Company's system
15 in Keene, and you answered that there were "about 1,250
16 customers" in Keene. If there were natural gas in
17 Keene, would there be opportunities to serve more than
18 1,250 customers?

19 A. (Clark) Yes, there would. Keene is a very unique
20 system. It's a low-pressure propane/air system. We've
21 identified four or five very large commercial
22 customers, that would require 5 to 15 pounds of
23 operating pressure, which that system can't supply.
24 So, by converting it to natural gas, and extending the

[WITNESS PANEL: DaFonte~Clark~Whitten]

1 gas lines to those larger commercial customers, we
2 would also be going through some residential
3 neighborhoods to offer service to those customers at
4 well -- as well.

5 Those four customers that we've
6 identified would more than triple the throughput of the
7 existing system. So, significant.

8 Q. Mr. DaFonte, if additional capacity was brought into
9 the Company's distribution system in West Nashua, would
10 there be opportunities to ultimately tie together the
11 Company's Nashua system into its Manchester system from
12 Bedford?

13 A. (DaFonte) Yes. There are a couple opportunities.
14 There's about one mile that could be built to connect
15 the Manchester and Nashua systems in Merrimack. That
16 would just be a -- excuse me -- that would just be a
17 simple laying of new pipe. Alternatively, as the
18 Company continues to grow that portion of its service
19 territory, it could eventually grow that out so that it
20 goes through several towns and connects up through,
21 that we talked about the Bedford expansion already, and
22 we would continue with that expansion, moving onto
23 Amherst and the Milford area, and to provide sort of
24 organic growth, you could also tie in the two systems.

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1 MS. KNOWLTON: I have nothing further
2 for the Company witnesses.

3 CHAIRMAN HONIGBERG: All right. I think
4 we are done with these witnesses. Been a long slog. You
5 can return to your seats.

6 MS. PATTERSON: May I ask a question?
7 May Ms. Whitten be excused from participating, if we do
8 have to go on longer than today?

9 CHAIRMAN HONIGBERG: I don't see why
10 not.

11 MS. PATTERSON: Okay.

12 CHAIRMAN HONIGBERG: She's there mainly
13 as your witness. So, if you feel like you don't need her
14 to be there with you any further, then it's certainly up
15 to you.

16 MS. PATTERSON: Okay.

17 CHAIRMAN HONIGBERG: It's quarter to
18 six. Let's go off the record for a minute and talk about
19 what we can do.

20 (Off-the-record discussion ensued.)

21 CHAIRMAN HONIGBERG: All right. So,
22 we're going to go back on the record. We've had a
23 discussion off the record about scheduling and how we're
24 going to wrap this proceeding up. The plan is that we

1 will return on Thursday, August 6, in the morning. We
2 will probably be looking to start at 9:00, and try to
3 finish. I'm optimistic that we will.

4 The Parties would like an opportunity to
5 submit post hearing memoranda. There will be a 20-page
6 page limit, and those will be due close of business
7 Friday, the 7th.

8 Is there any other business we need to
9 transact?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: Good. Thank you
12 all very much. We will see you in a couple of weeks.

13 **(Whereupon the hearing was adjourned at**
14 **6:02 p.m. The hearing is scheduled to**
15 **resume on August 6, 2015, commencing at**
16 **9:00 a.m.)**