STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

March 27, 2018 - 10:05 a.m.
Concord, New Hampshire

DAY 7 HEARING

RE: DG 17-048
LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY UTILITIES: Request for Change in Rates. ***(Hearing on the Merits)***

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: **Reptg. Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities:**
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Court Reporter: Susan J. Robidas, NH LCR No. 44

I N D E X

P R O C E E D I N G S

CHAIRMAN HONIGBERG: Good morning, everyone. Please be seated. We're here first to finish up Docket DG 17-048, the hearing on the merits, in Liberty EnergyNorth Natural Gas rate case. I know there's going to be a discussion of exhibits and then some closings for the party. Where do we want to start? Mr. Sheehan.

MR. SHEEHAN: Thank you. Before you is what's been marked as Exhibit 78. And that is the -- consists of the data requests and responses that Mr. Mullen testified to at the close of yesterday. I went through the binder that he had, pulling up the ones that he talked about.

Two comments: Two of the data requests attached the same audit report. I only reproduced it once in this package so that you don't have that doubled. And second, Mr. Mullen discussed the broader audit that the Audit Division did of the entire rate case. He mentioned that that was discussed in that audit report. I pulled the pages that just mentioned Keene and attached it to the back of the document. The entire audit report is already in evidence, I think attached to Mr. Frink's testimony, so this is somewhat redundant. I apologize for not having this package Bates-numbered sequentially. My version of Adobe doesn't let me do that. And if Commission accepts and lets me replace it with a numbered package, I can do so. I understand Staff may have some comments as well.

CHAIRMAN HONIGBERG: All right. You have comments on that. But we are also going to figure out what, if any other exhibits there may be objections to.

MR. SHEEHAN: Mr. Dexter and I spoke before the hearing. And Don wasn't part of the conversation. But I have no objection to any of the other marked exhibits, 1 through 77. I understand there is a blank No. 39 in there somewhere that somehow we missed, and Sandy can just indicate "intentionally left blank." But there's nothing that this Company objects to.

CHAIRMAN HONIGBERG: Mr. Dexter.

MR. DEXTER: I agree with the second of what Mr. Sheehan said in terms of all of the exhibits that have been submitted. We don't have any objection, with the exception of Exhibit No. 78. The clerk had asked me -- there was discrepancy in the numbering early on, and I just haven't had the opportunity to sit with the clerk and Mr. Sheehan to make sure we have all the numbers right. In the early part, everything from number 40 on that was handed out in the hearings, there's no question on. But substantively, we have no objection to any of the exhibits, except No. 78, and I can address that now if you'd like.

CHAIRMAN HONIGBERG: I'm going to ask you to come back to it. But let's talk about the various exhibits that were never referenced and never picked up by any party: 4, 5, 6, 7, 15, 19, 20, 21. Those are all testimonies that were never -- no witness came, no one adopted that testimony. It was just here.

MR. SHEEHAN: This is an issue that has come up in prior dockets. It's the Company's position that these documents are akin to submitting a data request without the witness to authenticate a particular data request or the like. The Commission has authority to accept what is in effect hearsay evidence. These documents are statements by witnesses who did not appear, and we are submitting them as hearsay evidence. Again, we had this conversation before. We don't believe it requires the affirmative oath of 541-A:3. I know in the past Commission has asked for affidavits to satisfy that requirement. Again, we don't think it's necessary. If the Commission orders us to do so, we will collect those affidavits, as to the ones that apply to Company witnesses.

CHAIRMAN HONIGBERG: Seven may be wrong. I actually think Mr. Simek and Mr. Therrien may in fact have adopted their testimony. Though, some of the others, is it your view that we need to rely on any of that testimony to approve the settlement? Probably no.

MR. SHEEHAN: Correct. I mean, all of that testimony supports the entire rate case filing, and certainly 95 percent of this rate case filing was uncontested. Staff chose the issues that they chose, and that's how it usually works. So, theoretically, the testimony supports the rate case filing, which we modified some to the settlement. Is there any particular piece of those testimonies that are in dispute? I don't think so. Again, those pertain to uncontested issues, as a broad statement.

CHAIRMAN HONIGBERG: Mr. Dexter, any comment on those?

MR. DEXTER: Yes. I believe all the witnesses that Staff had, all the witnesses that submitted prefiled testimony appeared and adopted it, with the exception of Mr. Cunningham. I believe, you know, the rate case starts with the binder with all the testimonies and moves forward. In this case, it moved forward to a settlement that Staff opted not to sign. I believe it's important for the Commission to have a complete record before it so that it can choose to approve the settlement or not, or approve Staff's position or not. And I'll give you one example.

In the binder is a marginal cost study and an allocated cost of service study which lead to the rate design that was proposed by the Company. The rate design contained in the settlement is significantly different than the rate design that was proposed by the Company, supported by those studies and, in fact, as I will say in my closing, goes a long way to reversing a long line of precedent in terms of rate setting. I think it's important that the Commission have those studies before it in order to decide whether it wants to adopt the customer charges and the rate design proposal in the settlement.

CHAIRMAN HONIGBERG: Okay.

Tell me what you want to say about 78.

MR. DEXTER: Seventy-eight we object to on two grounds: One is that it came in I think after 5:00 last night, and we simply just have not had an opportunity to review it and have been deprived of an opportunity to cross-examine the witness about the information.

No. 2, I haven't had a chance to review it, but based on the summaries that Mr. Mullen gave yesterday, it strikes us as an expansion of rebuttal testimony. It appears to us to be something more that should have been submitted in the initial filing, or perhaps, if an issue came up after the initial filing, in some sort of supplemental testimony, as was done with the training center. But we've been here for seven days. This was the very, very, very final chapter of the evidentiary hearing in this case, and we feel we're prejudiced by this coming in at that late hour.

CHAIRMAN HONIGBERG: I want to apologize for not connecting with Mr.

Sheehan. I think I take full responsibility for us talking past each other last night. I was of the view that whatever you wanted to do, you were going to do yesterday. I did not -- I will be totally honest with you. I did not hear you say you intended to mark that package as an exhibit. Now seeing the transcript, I know that you did, and was told by everyone else in the room that that's what you had said, but I literally didn't hear it when you said it. And I apologize for that. So you and I misconnected last night when we talked. I understand what you have done and why you have done it. I understand Mr. Dexter's objection. My inclination is to take this one under advisement and not rule on it, as we sit here. I understand you're going to make arguments that may be based on it. We will rule on the objection to this exhibit as part of our deliberations and order.

With respect to the other exhibits, which I think are all testimony, I remain concerned about transcripts being included in the record when there's been no witness to adopt them. I know there's different views on that. I get the argument that you're making about unsworn statements coming in, hearsay and all that stuff. But there's also a statute that we've all alluded to in various conversations about this that may well override that evidence rule. I meant testimony. Sorry. Prefiled testimony. Thank you for clarifying.

So we can -- again, we don't have to rule on that. They're in. They've been marked. It's quite possible we would never have to allude to them.

I guess I would ask all of you in your closings to think about something that I've been wrestling with since the beginning of the evidentiary hearing here, which is the existence of the settlement in the middle of three different original positions: The Company's original position, or the modified position from the rebuttal, the OCA's position, and Staff's position, as all of them have evolved to the endpoint before settlement negotiations. If we were to reject any portion of the settlement, consider how we are to analyze the case from that point. Are we then looking at the Company's position, the OCA's position and Staff's position separately from the settlement agreement? If we decide there's elements of the settlement agreement that we disagree with, how do we analyze it from that point? How do we deal with the issues? It seems to me we can try to accept the settlement and modify it as we feel is appropriate, which isn't really accepting the settlement, but it may have elements of that, or we are in the position of taking it as if it were a fully contested case and deciding the case that way, as if it were a fully contested case, with no agreements among any of the parties.

Anything else you want to say on anything before you do your closings?

[No verbal response]

CHAIRMAN HONIGBERG: All right. Mr. Dexter, as we talked about yesterday, you're going to lead us off.

CLOSING ARGUMENTS

MR. DEXTER: Thank you, Mr. Chairman, and Commissioners for conducting this case over the last couple of weeks. I'd like to start by talking a little bit about Staff's role in this case. There was some discussion about Staff's role, and I'd like to give you Staff's view of its role from its viewpoint and what we've tried to do in this case over the last couple weeks.

So we've spent a year examining EnergyNorth's proposal, and we had one goal in mind, and that was to present the Commission with a clear record on which you could decide what are just and reasonable rates appropriately designed in this case. And the objective, as we understand it, is for the Commission to decide rates that would fairly balance the interest of EnergyNorth, all customer classes, and would be consistent with years of regulatory precedent and practice, and if there was a situation where there was a deviation from precedent and practice, to explain why such a deviation was warranted in this case. That's been our overall goal. In the course of doing this goal, we have sought to narrow issues where possible and only present to the Commission issues that we believe were true issues. And the narrowing of the issues has come through discovery, through updates, through settlement. And after all that, we've brought you the issues.

The best example of narrowing the issues that I can come up with is the return on equity. As you know, there were various returns on equity presented by the various parties. And at some point in the process, the comprehensive OCA-EnergyNorth settlement was presented, and it included a 9.4 percent return on equity. Staff, at that point, had to decide, you know, what to do with this issue. We were not comfortable with the settlement, but were we comfortable with this very significant and complicated issue. And after consultation with our expert witness, we decided that we were, and so we opted as Staff not to contest the 9.4 percent settlement and, in fact, urge this Commission to adopt it as just and reasonable. And we did that for two reasons: One was to simplify this proceeding, again in the pursuit of narrowing issues; and secondly, because we felt the result was overall just and reasonable. And that's the basic goal of the entire case, from our perspective, is to present a record that supports just and reasonable rates.

When it came to the comprehensive settlement, we went through the same analysis but came to a different conclusion. In Staff's expert opinion, we felt that the settlement would not produce rates that were just and reasonable. And given that, we had to decide what to do. And so Staff decided to continue to do what they set out to do, which was, as the New England Patriots like to say, "to do our job." And our job was to present before you a clear record of the various issues that were contained in the settlement or in the

Company's proposal that did not -- we felt would not result in just and reasonable rates. And that's what we spent the last couple weeks doing.

Now, this process requires us to do that in a trial-like setting, which is fine, because a trial-like setting can be efficient and gets to the point. It provides everybody due process. And it's thorough, and people understand that when they come before the Commission and take up two weeks of your time that, you know, the idea is to make the points and move on and be concise and clear, again, all with the goal of presenting clear evidence to support just and reasonable rates. Our goal is not to obfuscate the record, to trick witnesses, to confuse witnesses. The idea is to get to the facts that will allow you to make the decision.

Having said all that, I'd like to bring out one other point. All the information that Staff brings to the Commission in these cases, essentially all the information, is provided by the Company or other parties. Staff is not in a position to go out and produce original information about the Company's operations. So, for example, if Staff tells you that 2,756 hours were spent training at the training center by EnergyNorth, it's because EnergyNorth told us 2,756 hours. Now, I know there's been discussion about that. But I just want to make the point that the information comes from the Company. When Staff recommends that the payroll allotment in the revenue requirement reflect 3.5 vacancies, it's because the Company has told us that at two points in time there were three vacancies and four vacancies respectively, and we simply averaged those two. We're not in the position to independently verify whether or not those vacancies exist. And maybe I'm stating the obvious. But I just want to point that out.

The other thing we try to do with the information that we get from the Company is to present it in a way that's useful to you. And that's, I think, why you hear the expression "apples to apples" so often in the hearing room, because we want to present information that's comparable to other information that we've gotten. And again, the idea is to present clear information.

Clear information is designed to produce just and reasonable rates. So what information does the Commission need to decide whether the rates are just and reasonable? It sounds complicated, but it's actually very simple. There's four things that the Commission needs to know in order to set rates: They need to know what the Company's income is; they need to know what the Company's rate base is, and they need to know what a reasonable return on that rate base is. In terms of the reasonable return, all the parties have agreed that 9.4 percent is reasonable. So that leaves us with what's the Company's income and what's their rate base. Income has two components, revenues and expenses. And rate base is a representation of the investment that the Company has made in order to serve customers. That's all that's at issue in this case. And we'll talk a little bit further about the revenues, the expenses and the rate base. But I want to point out that's what's at issue.

What's not at issue, in Staff's view, and this was brought up in the Company's rebuttal testimony and the cross-examination of Mr. Frink, is, quote, unquote, how many employees will EnergyNorth have to lay off if Staff's position were accepted; how many growth projects will EnergyNorth have to abandon if Staff's position is accepted; how do EnergyNorth's rates compare to Northern Utilities rates. Those are not issues in this case. The issue is "just and reasonable rates." And in fact, our witnesses went on to address those, to point out that all the recommended revenue requirements allow for a full complement of payroll, with the exception of a couple of vacancies. All the presentations in this case allow for the Company an opportunity to earn 9.4 percent on its investments. So there is no reason to abandon investments.

The issue of rate comparisons to other utilities, I understand there can be a role for that, but I don't think it plays a role in the actual rate setting, because rate setting is based on historical costs adjusted for known and measurable changes. And that's what I want to get to next, the actual issues before you.

As I said, the Company has to determine the income level -- the Commission has to determine the income level of the Company. And the first input into income is revenues. So how do you determine what the Company's revenues are? Years of precedent tells you that you look at a test year, and you don't just accept that test year as what's -- let me back up a little bit.

You want to determine -- you need to determine revenues and expenses and rate base in what's called a "rate effective period," or some people call it "a rate year." And that is because the rates that you are going to set are going to take effect May 1st, 2018. The way, through tradition and precedent, the rate effective period is set is to look at a historical period. The historical period is referred to as "the test year." There's years of precedent as to how you adjust the test year to bring it up to a rate effective period or a rate year and to use that rate effective period to set rates. And that's essentially where most of the issues that we've brought before you fall.

There's two things that need to be done to a test year. You can't just accept the Company's historic information because it's not representative of what's going to happen in the rate year. So, some adjustments are made, and they basically take two forms: One is, is the test year representative of a typical year of revenues or expenses or rate base that a Company is going to experience; and secondly, because we know the test year is historically old, are there known and measurable adjustments that can be made to bring that representative test year forward into the future, into the rate effective period. Again, very basic. But I just wanted to start out with this because we start throwing around a lot of numbers, and I'm trying to put them in perspective.

So now what I want to do is go through the eight or nine adjustments -- the eight or nine issues that Staff has brought before you for resolution so that they can fall into those categories that we talked about. And again, we'll start with revenue since the income statements start with revenues.

To my understanding, there is only one issue in this case involving revenues. And again, we need to make sure that revenues are going to be reflective of what the Company experiences in the rate effective period. So we start with the test year. And we don't just use the test year revenues, because the test year revenues may not be reflective of what's going to happen in the rate effective period. The most significant revenue adjustment that every gas company makes is for weather. The test year may have had colder than normal weather, it may have had warmer than normal weather. But we don't just base rates on the test year revenues. We adjust it for normal weather. And that was done in this case, and there was no dispute over the adjustment.

Secondly, there might be a situation where a large customer came online during the test year, and therefore the full year's revenues of a contracted customer may not be reflected in the test year. That was the case here with the iNATGAS customers and the contractual revenues that were going to come from iNATGAS. They needed to be adjusted into the test year so that the test year -- so that the rate effective period would be representative. We couldn't just take the test year numbers in that regard. And that adjustment was not in controversy either. And there were others. I pointed them out to Mr. Simek while he was testifying, just to point out that the test year revenues need to be adjusted.

What is at issue in this case, and it's a fairly significant issue, is what about regular, run-of-the-mill customers that were added during the year? The Commission could just look at the test year amount, but it would ignore the fact that EnergyNorth routinely, historically adds a little over one percent of customers each year. The exhibit in Mr. Therrien's testimony demonstrates that, and Mr. Simek agreed to it when he testified on the stand. So in Staff's view, it's important that the revenues that are laid out in the rate effective period reflect the fact that we have a 10-year history of adding customers. And if we don't make an adjustment for that, the revenues that go into the calculation for rate setting are going to be understated, and therefore the revenue deficiency will be overstated. And there is no controversy as to the number. In fact, as I said earlier, virtually all the numbers in this case come from EnergyNorth. And our revenue requirements witnesses took an adjustment that was calculated by EnergyNorth, and all it does is simply take the year-end number of customers and goes through the math and multiplies it by an average use per customer and adjusts the test year revenues bumped to year end. Not only is that appropriate because we're trying to hit a rate effective period, there is also a symmetry involved in that because we adjust other elements of the equation that I'm going to talk about up to test year-end levels and beyond. And in particular, what you want to look at in this case is the rate base because there's symmetry between rate base and revenues. In other words, when the Company makes rate base investments, it's often to serve new customers. So if the rate base is going to be adjusted forward, then the revenues ought to be adjusted forward as well to create -- to keep this symmetry. Way back, 20 years ago or so, this Commission used to use an average rate base for ratemaking purposes. And they would take a 12- or a 13-month average of the plant balances in the test year and base rates -- set rates based on that. Sometime in that intervening period, the Commission has moved to using a year-end rate base. And what that means is you look at the plant in service at year end, and you use that in your rate-setting situation. And so Staff's adjustment simply says, if we're going to use year-end rate base for rate setting, why wouldn't we use a year-end customer count. And again, as I said, I believe that's the only adjustment to revenues that Staff recommends in this case. And that's an issue that the Commission needs to decide in order to set rates.

Moving on to expenses, again, because income equals revenues minus expenses. There are only, by my count, six or seven issues that deal with expenses. Some of them are minor, some of them are major. We brought these to the Commission for resolution.

First, there's an invoice that was -- there was a payment made during the test year to a consultant by the Company to evaluate the NED pipeline. There is no question as to its prudence or the amount or anything like that. What we're trying to do here is adjust the test year to a representative level. This was a fairly large invoice, I believe in the area of $40,000. And if one were to include that invoice in the test year without any adjustment, that would be akin to saying, well, the Company will incur that invoice every single year. And Staff adjustment simply says, well, that's an unusual invoice because it involved a pipeline project to the Northeast, which doesn't seem to come along every year, and it's a significant amount. We agree that the Company should recover that invoice. But mathematically, the better way for them to recover that invoice is to build a reasonable portion of that expense into the rates, not put the whole thing in the rates. And because rates are collected every year, we don't want them to collect that invoice three or four times. So, Staff's adjustment simply takes that $42,000 invoice and allocates one third of it to be collected through the rates. And everyone's talked about a three-year rate case cycle. So at the end of the three years, the Company will recover that $42,000. So that was an example of adjustment where we made -- to make the test year more representative.

Staff has proposed three payroll-related adjustments. One of them is along the same lines. We're trying to get a representative level of payroll built into the rate so that the Company can recover all its reasonable payroll expenses. The Company's presentation did not account for the fact that there are vacancies, that vacancies occur. And if the Staff were -- if the Commission were simply to adopt the payroll as presented by the Company in this case, it would be including expenses related to vacancies. And when positions are vacant, they're not paid. Now, the Company did point out that, you know, sometimes they have to charge overtime and sometimes they have to hire temps. But that would all be included in the test year. So all we're trying to do is simply allow for one level of these vacancies -- payroll associated with these vacancies. We're just trying to avoid doing it twice.

The Company's presentation of payroll in this case was a bit unusual compared to past precedent, and as recently as last year during the electric case. My recollection of the electric case last year is that the Company proposed a more traditional payroll adjustment, which is to look at your test year payroll and adjust it for known and measurable wage increases. This is what Ms. Mullinax testified to when she was here. So you have a test year number. And included in that test year number would be whatever vacancies existed, and then you adjust that on a percentage-wise basis for the known and measurable payroll increases that we know will exist.

The Company in this case presented us more of a projected level of payroll. And again, it was different. And except for the vacancies, it seemed to have a reasonable result. And Ms. Mullinax included this in her prefiled testimony and testified to it while she was here, that she did the more traditional calculation as a check, and the number came out reasonable. So we're comfortable with the number as long as it's adjusted for vacancies.

There were two other payroll adjustments that were included by Staff, and these don't have to do with representative or known and measurable. These have to do with costs that the Company has incurred that in Staff's view should not be passed on to customers.

First has to do with severance pay. There was an amount in the cost of service to cover severance pay for employees who had resigned. And as we learned during the course of the case, it was for employees who had not voluntarily resigned, but had involuntarily resigned, and it had to do with releases issued by the Company. Now, Staff doesn't have information concerning the specifics of the case, so we can't tell you more about the details. I suppose the Company could if they wanted to. But as a general matter, Staff's position is that, if a customer -- if an employee involuntarily resigns and the Company has to sign a -- the employee has to sign a release, there have been circumstances that have taken place that are outside the normal course of providing service in the utility business, and we don't believe that customers should have to pay for those. And again, we can't go further because we don't know the specifics. But as a general matter, that strikes us as costs that should not be passed on to customers.

The third aspect of Staff's payroll adjustment has to do with executive -- I'm sorry, not executive -- with incentive pay. And payroll structures are complicated. And we understand that Ms. Mullinax testified that incentive pay is standard in the industry. But when you look at the matrix that's used to determine the long-term incentive pay, there are goals that are used. And the goals are geared towards benefiting shareholders, not customers. And these are the goals that relate specifically to things like income and profit. And there actually could be a situation, and -- we talked a lot of about incentives in the utility industry -- there could be a situation where the goals of shareholders and ratepayers are at odds. In other words, if a Company is trying to increase earnings, one way for them to do that could be at the expense of things that customers value, like customer service and line maintenance and things like that. We're not saying that's the case here. But the framework does allow for that. Again, we talk a lot about incentives. So, Staff's position on the payroll that's associated with goals that are directly beneficial to shareholders and could be detrimental to ratepayers should be born by shareholders and therefore should be removed from the cost of service.

In terms of your standard operating and maintenance expenses, those are all the issues that are before the Commission. A significant additional expense that the Commission needs to decide on in this case that we heard a lot about yesterday has to do with depreciation. And there were two issues that Staff brought before the Commission concerning depreciation. One has to do with the average service lives of the plant that gets depreciated. And we had two experts testify on this. Staff's witness, Mr. Iqbal, took I guess what I would classify as a more conservative approach. He looked at the study that Mr. Normand did. And when there was a clear answer in the study to change an average service life, he went with it. Where there wasn't a clear answer in the study, as Mr. Normand indicated a couple of times yesterday, the study doesn't always provide the answers that are reliable, Mr. Iqbal took a conservative approach, which was to leave the average service life as it was, as it had been set in the last rate case. Mr. Normand took a different approach, where he relied on additional information outside the study. Those are two different conclusions. I guess it's up to the Commission to decide which of the experts they found most convincing. I will say, though, as a long-term -- as a general rule in depreciation, which is a long-term, long-looking issue, Staff's general approach is that a conservative approach is the better approach to take.

Significantly in the area of depreciation is what to do with this reserve imbalance that's accumulated. It's a fairly significant dollar figure, and it's something that Staff believes the Commission should take a very, very hard look at. In this instance, we're faced with the situation where the Company has under-depreciated as a result of the last study and therefore needs to make up a deficiency of somewhere in the area of $10 million. Mr. Normand's testimony that was filed in the case recommended that this be amortized over 10 to 12 years. And what that means is we would take the $10 million and charge the ratepayers in this case approximately $1 million, and that would be built into the rates. And that would carry forward until the rates were changed again. So it would be $1 million built into the rates annually. The Company would collect that annually.

Mr. Mullen took a different view from Mr. Normand's original testimony and said that this should be amortized over three years. So that means you take the $10 million, basically divide it by three and put that figure of, I think it was $2.7 million, or $3 million rounding, into the rates, and that would be recovered every year. And we talked yesterday about some reasons why Mr. Mullen did that. And then we asked Mr. Normand if Mr. Normand agreed with that, and he said, well, in this case, my standard recommendation is two depreciation cycles, 10 to 12 years. He also referenced another approach which would be even more conservative, which is, if this imbalance falls in the range of 5 to 10 percent, then no adjustment is necessary. Just let the depreciation go forward and have it taken care of in the next case. That wasn't either side's proposal. Staff adopted Mr. Normand's actual recommendation of 12 years. But Mr. Normand did point out that doing nothing is a perfectly legitimate way to address this if the balance is small enough and it falls under that 10 percent, which it does in this case; we calculated it to about 6 percent.

Now, Mr. Normand did say that this Company, that he didn't see at the outset, but sees it now, that this Company has made significant recent investments in mains and that that might warrant a shorter amortization period if that investment strategy was to continue. But Mr. Normand said there are times that this can't go on forever. You know, investments go up and down. So, again, the Commission is left to decide what to do with all this.

We believe depreciation is a long-run issue, that a conservative approach should be taken, and that a 10-year -- a 12-year amortization, as originally proposed, will allow the depreciation rates to go forward and will be fair to customers.

And we feel obligated to point out that this Company was in the very same situation at the time of its last depreciation study. There was an imbalance, roughly the same amount. I think it was $10 million. And in that case, it was the opposite situation. They had over-depreciated, and they needed to return money back to customers. And through settlement that money was returned back to customers over a 13-year period. So witnesses have said, well, that's what got us in this situation in the first place. I think the lesson that Staff would like, the notion that Staff would like to bring forward is let's not do anything drastic. Let's take a conservative approach when it comes to depreciation and amortization. And that's it on the income statement. Those are the issues before the Commission concerning revenues and expenses.

The third part of the formula

that you need to decide is rate base. And again, rate base is the investment that the Company makes in order to provide service. It generally -- not generally. It substantially consists of plant. But there is a working capital requirement. A working capital requirement is designed to allow the Company to get a return on funds that it invests because their money is tied up and they're entitled to a return. Nobody disputes that. A good way to look at this is sort of the opposite -- well, let me withdraw that sentence.

The only issue concerning working capital before the Commission, as I understand it, is whether or not the Commission should allow the inclusion of prepayments in rate base so that the Company can earn this return. And Staff's position is, no, you should not because the working capital associated with the prepayments is reflected in the working capital requirement as put forth in the lead/lag study. So why do we say that? And we'll go back to the very first day of hearings when we went through the lead/lag study, page by page, item by item.

So, first, what makes up these prepayments? There's basically two factors, a 90-percent factor and a 10-percent factor. The 90-percent factor is property taxes, the 10-percent factor is insurance and other O&M. Ninety percent of the prepayments are property taxes. Why are they prepaid? They're paid because the towns require the Company to pay them on a certain date, and often that's in advance of the period. I think everybody who pays a property tax bill knows that, that you don't necessarily pay at the midpoint of the fiscal year. You often pay earlier in the fiscal year, before you're getting the services that the town provides you. So it's booked as a prepayment, and it sits on the books. How should the Company be required -- how should the Company be compensated for the capital it has while this prepayment sits on the books? Well, it could be it's compensated through the lead/lag study. So the lead/lag study looks at various expenses and revenues that the Company -- that are experienced in the Company's operations. And in the case of property taxes, since it's a fairly large cost number, and it's a fairly limited number of bills, the Company studied the property taxes, bill by bill, town by town. And we went through all this on the very first day of hearings. And what we demonstrated is that for all the property taxes that are paid by the Company, from the very day that that bill is received and booked to the very day it's paid, and to the very day that the Company receives payment from the customers to cover this, because customers don't pay their bills the day they're received, all that is taken into account in the lead/lag study. So the entire universe of working capital associated with property taxes is laid out all before you. And because the lead/lag study is so detailed, there's no reason to then also put the property taxes -- the prepaid property taxes in rate base.

That's our position in a nutshell. Now, the Company will tell you that -- well, they agree maybe in theory. But the answers come out differently. Our answer to that is the property -- the lead/lag study is the more detailed, reliable source on which to evaluate its working capital needs. And Staff has no problem recommending that the Company be compensated for its entire working capital needs. We just don't want them to be compensated beyond that.

Now, the 90 percent -- or the 10 percent. The 10 percent is made up of insurance and other O&M expenses. Now, if you go into the lead/lag study, you're not going to find a tab for insurance, but you will find a tab for O&M. And unlike with the property taxes, I don't believe the Company examined every single O&M expense and every single O&M invoice. They took a sample and came up with a reasonable number that could be applied to O&M. And that's what they did. But the theory is the same. Even though it wasn't done on a bill-by-bill basis, all the general O&M leads and lags are accounted for in that study, and that's why we recommended prepayments not be included in the rate base.

There's one other thing I want to say about this. This issue actually came up last year in the Company's electric rate case, and it came up in the Unitil electric rate case last year. Ms. Mullinax proposed the same adjustments in the electric cases last year, and both of those cases were resolved by settlement. And since I was involved in that settlement, I can say that was a reasonable allowance for this issue, in Staff's view. And we were happy to accept the settlement. This year, both of those corporations, Unitil and Liberty, filed gas rate cases. And in the Unitil case -- the Northern Utilities case, Northern Utilities opted not to include prepayments in rate base in their case, so it wasn't an issue in that case. It is an issue in the EnergyNorth case because they continue to put the prepayments in rate case. Staff is very interested in the Commission's view on this because we'd like a precedent set that we could apply to other cases, so we have the Commission's view going forward as to what the appropriate treatment is for prepayments.

There are two other rate base issues in this case. One is a direct rate base issue, the other is what I'll call "kind of a rate-basey" issue. The training center is a rate base issue. I think, as everyone knows, Staff has recommended that the training center be excluded from rate base in its entirety, and we spent a lot of time in this case talking about why. And I'm going to try to summarize it here as quickly as I can.

It all comes down to the question of prudence, prudent investment. Our understanding of what a prudent investment is, is what a reasonable person would do in a circumstance with information that it has or reasonably should have had when making a decision. And I think if you read precedent, you'll see in the case of utilities, you would look at maybe not a reasonable person off the street, but a reasonably informed utility executive. So, in other words, a person that's familiar with the business, what kind of a decision would they make, what information would they need to make a reasonable decision. And so when this issue came up, we asked what's the basis for the decision, and we were given a business case. And the business case is four years old. And it's unfortunate that so much time has passed. But in fact, this is the case where the training center was put into rate base.

Mr. Mullen's talked about other dockets. The first docket was a rate case. And the training center was not built yet and it was proposed as a step adjustment, and that case was ultimately settled with no finding on the training center. The next case was an affiliate docket, which means there was a contract between EnergyNorth and Granite State Electric having to do with the facility. But that's not an appropriate docket to conduct a prudence review. It's an affiliate docket. And last year the issue came up in the electric case, but the electric case didn't have the plant in rate base. The electric case involved the lease, and so there was no opportunity to review the prudence of the facility because it wasn't in the electric company's rate base, only lease payments were included. That case was settled. Again, I was involved in that. From Staff's perspective, I can say there was a reasonable allotment or adjustment in that settlement to cover this issue. But the issue was clearly teed up to be reviewed in this case because this is where the training center has been proposed to be put into rate base.

So, with that little bit of background, we asked, "What was the decision to build the training center?" And we were provided with a business case, and it had a fairly simple analysis. It said the training center is going to cost $1.1 million, and it's going to save us $400,000 a year because currently we send our employees down to National Grid for training, and that's not going to be available anymore, or that's not the best way to do it, and so a simple three-year payback. And I think anybody probably would reasonably say, well, that sounds like a reasonable thing to do. Spend a million dollars and save $400,000 a year. No problem. But the business case didn't reflect the information that a reasonable, prudent utility executive either knew or should have known at the time. And we went through with Mr. Mullen the litany of expenses that any person would know would be encountered when building a building. Things like site work and excavation were excluded from the analysis from the very beginning. I'm not going to go through all the costs. They've been examined in detail. You have Liberty Consulting's report that examined it in detail. But suffice it to say there was a substantial list of investments that would have had to have been made in order for this training center to have been built that were not factored into the original decision. And beyond that, the original decision contemplated a one-story building at one million dollars. And if you look at the time frame for the training center, almost immediately it was determined that this would be a two-story building. Obviously, more stories, more costs. And again, I encourage the Commission to go through the analysis of where these costs came up and whether or not in your view you think the utility executive that made this decision knew or reasonably should have known about these costs that came up. One of them is the -- well, I'm not going to go through in detail. We spent a lot of time on it in the hearing.

The other side of the equation are the savings, okay. So, again, a fairly simple analysis. We're going to save $400,000. Over half of that $400,000 involved instructor fees. And as one would expect, when Liberty built its training center, they had to have their own instructors. So they hired two instructors. Again, we don't know what those instructors cost. That's been asked a couple of times. But, you know, we know it's two full-time employees. I think a reasonably informed utility executive would know that if you built a training center, you're going to have to have instructors to put into that training center. Therefore, I shouldn't take that as a savings. So that would change the simple three-year payback analysis quite a bit.

And so then the question is: Well, what do you do? You know, the Company said the other day, we understand we can't go back and do a better study four years ago. And we don't want the Commission to look at this with blinders and sort of hang the Company up on this one business case that was put before them. I think you need to take a broader look. So what type of -- what should you do? I think the question was: Should the Company have informed the Staff that there were cost overruns, or, you know, should they have chosen not to extend the road when the city required them to extend the road. What choice did they have? These were all things that I think the Company does have to grapple with. They need to do, in Staff's view, whatever analysis is needed on an ongoing basis to convince themselves that this is a good idea. And Commission Giaimo asked, "Is there a break point where you pull out?" Those are, you know, things that need to be analyzed.

Our problem, Staff's problem with this training center is that the only financial analysis that was ever produced was this initial three-year payback. There was no follow-up financial analysis. What we've seen were statements that, well, we had to build a training center. There were no other options. What other utilities do is not what we want to do. We don't think it's efficient. We think it's more efficient to do that. And those all may be very valid points. But as Mr. Iqbal testified, our job is to look at the analyses that the Company did. And the analyses were non-existent. They were simply statements by the Company that this was the only way to go forward. We believe the Company needs to be to held to a higher standard than that. We believe they need to be held to a strict, prudent standard, where their decisions both to start a project and complete a project are supported by verifiable, robust financial analysis. Now, we understand that this is not a revenue-producing item. So it's not like the iNATGAS situation, which we're going to talk about in a minute. This is an item that's going to be paid for entirely by the EnergyNorth ratepayers. To the extent there are some savings, that's great, and that's important. But we believe an investment like this requires special scrutiny. We strongly disagree with counsel's statement in the closing hours last night that there's some sort of a presumption of prudence with respect to investments that the Company makes. I've never heard of a presumption of prudence. I don't believe it exists. And in this case, this binder came in with testimony upon testimony, and nothing about the training center. And it wasn't until the

Commission issued an executive letter in the affiliate case that directed the Company to put in testimony in this case that any testimony at all came in to the training center. The only mention of this training center and the binder that came in when the case started was the four-point-something million dollars plopped into rate base and an adjustment to reflect the lease payments from the electric company. We don't believe that was appropriate. Now, in the Company's fairness, they responded dutifully to the executive director's letter and put in what we believe is a robust record. I don't think we could have asked any more questions about the training center or gotten any information. So, all the information is presented before the Commission to make the decision as to whether or not the training center was a prudent investment.

And lastly, the "rate-basey" item. This is iNATGAS. And I say "rate-basey" because it's a little bit different. Staff's not recommending a hundred percent rate base exclusion in this case. Staff has tailored a recommendation that fits the circumstances that the Company has put before us. The fundamental -- there are two the fundamental differences between iNATGAS and the training center: One is that iNATGAS has the potential to produce revenues, and significant revenues; secondly, that the financial assessment related to iNATGAS was not only passed through senior management of the Company, but it was actually brought before the Commission. So in this case, the analysis that I talked about, what a reasonably informed utility executive would do in the situation, that decision was brought before the Commission in 2014 because iNATGAS was going to be taking service under a Special Contract; therefore, it needed special approval. They weren't going to take the tariff rates. So there was a proceeding in 2014 about iNATGAS. And what was brought before the Commission was a -- well, let me back up.

There were a couple of

analyses that were done for iNATGAS at the senior management level. One of them was sort of a simple payback. And then if we pulled out the exhibit, the business case that related to iNATGAS, under financial assessment there was a reference made to the Commission proceeding -- in other words, the financial assessment would be presented to the Commission in the Commission proceeding. And it was in that proceeding that the DCF analysis that we've talked about was done. And before the Commission had been essentially two -- well, I guess three now, as of yesterday, DCF analyses. But basically two. One was put before the Commission in 2014, and then the other, which we asked for, Staff asked for, was what would this DCF analysis show now that we know what the plant actually cost. So I want to focus first on the initial analysis that was brought before the Commission in 2014.

This analysis indicated that $2.2 million would be spent and three scenarios of revenues would hopefully be realized. And that analysis showed a reasonable level of benefits that the Staff relied on in recommending that the Commission approve this iNATGAS contract and entered into a settlement with the Company which the Commission ultimately approved. It was based on $2.2 million, and it had some revenue scenarios. I will note that in the iNATGAS proceeding, I believe the Office of the Consumer Advocate took the opposite view and thought that this contract shouldn't be approved.

The $2.2 million is significant. Most customers -- in most instances, the Company doesn't pay for equipment behind the meter. Usually investments that are made behind the meter -- in other words, on the customer's side of the meter -- are paid for by the customer. This $2.2 million is actually dollars that the Company is going to -- that the Company invested on the customer's side of the meter. And the understanding was that this $2.2 million could be put in rate base and therefore paid for by all other customers. And accordingly, the revenues that came from this iNATGAS arrangement would also be passed on to other customers. So, essentially, the other customers would bear the risk of this arrangement, and the Company would earn a return on its $2.2 million. And that was the arrangement that was set up. However, what's been shown in this case is that the $2.2 million that was put before the Commission was flawed. I think Mr. Frink used the term, "the analysis was flawed." So why was the analysis flawed?

First of all, there were $1 million worth of compressors that were included. And again, I can pull out the exhibit, but I think we all remember the four levels of cost at the top of the exhibit. I asked the witness, "Did that include any labor associated with installing these compressors?" And the witness said, "No, that was just the parts." And then the second line on that chart, in terms of cost, was entitled something like "Piping, meter, survey, et cetera." And I think the third cost was a contingency. And I forget what the fourth cost was. And it all totalled up to $2.2 million. And as we know, the plant ended up being over $4 million, almost $5 million, if you include AFUDC.

So, in the course of this proceeding, naturally Staff wanted to know how did we get from $2.2 to $4.4 million. And one of the things that the Company said was, well, we accelerated. This was supposed to be a two-phase project. And we accelerated the second phase, and that led to some additional costs. And in looking at the original analysis that the Company had put in, it became clear that the three revenue scenarios that they had presented couldn't be achieved without these accelerated costs being spent. And the reason I say that is the three scenarios that were presented on the DCF analysis were called "minimum take-or-pay," "baseline" and "accelerated." And the Company witness stated on the stand that, yes, in retrospect, the costs for the acceleration were not on this sheet, this original DCF analysis. So what that means is the analysis that was presented could never have produced the revenues that were set forth in the third scenario, the accelerated scenario, because the analysis didn't reflect the investments that were necessary to serve that level of load. And when one looks even closer, one sees that the baseline assumption had the very same level of sales as the accelerated scenario. In other words, it didn't have the accelerated scenario, didn't have higher volumes, it had the same volumes as the baseline, just accelerated. But if the plant investment that was needed to serve that level of load was not included in the analysis, that second baseline level of revenues could never have been received either under this analysis. So, our view is that this analysis was significantly flawed. It presented a situation to the Commission that never could have been achieved. Only the take-or-pay scenario could have been achieved. Now, the analysis was presented on sort of a fast-track review back in 2014. The Company asked for a 30-day approval, and I think they got approval in 90 days. Anyway, so the record on that case speaks for itself.

So there were other things that led to the cost overruns -- well, the cost increases that got us from 2.2 million to 4.4 million. And again our question was: Could these have been included in the original analysis? What was it about these expenses that prevented the Company from putting these in the original analysis so that a reasonably prudent decision could have been made back in 2014? And again, Mr. Hall went through them in a fair amount of detail, and Mr. Clark in a fair amount of detail. But what I recall from that was a substantial level of expenses for asphalt and concrete. Now, we all visited the facility and we all saw there's an awful lot of asphalt and concrete at the facility. Not that it's not needed, it just happens that that's what struck me when I saw the facility. So if you go back and look at the original analysis and ask -- I think the number was 1.5 million in asphalt and concrete -- and ask, well, where was that in the original analysis? Well, again, we only had the four cost items in the original analysis: Compressors, contingency, land is the fourth one that I couldn't remember, and then this catch-all piping, meters, survey, et cetera, $650,000. Well, if the asphalt came in at a million or a million and a half, or whatever it came in at, I asked the witness to break it down for me and he couldn't. But I think if you read Mr. Hall's testimony, he mentions asphalt and concrete a couple of times. And both times there was a fairly high number attached to it. It's about a million to a million and a half dollars of asphalt and concrete. Any reasonably informed utility executive would know that this plant can't be built without a substantial amount of asphalt and concrete. Again, it goes back to the original decision.

Secondly, the Company decided to what I'll call "weatherize" some components of the equipment. I think they said they took some equipment that was going to be left to the elements and put a canopy over it and took other pieces of equipment that were going to be covered with a canopy and went to a three-sided building. Fair enough. We're not in a position to judge whether or not that sounds like a good idea. Sounds like a good idea to us. But what is it about this design that came up later in the process that couldn't have been discovered or should have been discovered when the original analysis was put together? We don't believe the weather conditions in New England got any worse or anything like that. Our conclusion from all this is that the initial analysis was not a robust analysis, and it excluded many, many expenses and investments that either were known or should have been known. And worse than that is the fact that it couldn't even produce the revenues that were put forth on the page. So, from the outset, like the training center, we feel that the analysis was flawed and produced a flawed result. And again, the Company was hit with some changing circumstances. What are we supposed to do, not build the road? I feel compelled to point out that this case was going on in -- I think the case was filed in April of 2014, and they asked for 30-day approval. I believe the hearing was held June 15, 2014 and the decision approving the Special Contract was July 30th, 2014. Mr. Clark testified that the first he heard about the road, needing to extend this road, re-pave the road all the way down to the facility, was something like in an e-mail on something like June 18th, 2014. In other words, it was happening at the same time. Now, do I fault the Company for not coming in and telling the Commission before the decision was entered that things had changed? I guess if it was just the road, you know, and no one -- I don't know. I just want to point that time line out for you and let you decide whether or not you think the Company managed this project appropriately.

But I will say that there was some talk yesterday about a worst-case scenario and whether or not the take-or-pay revenues which are contractually guaranteed is the worst-case scenario. And Mr. Frink was very clear about this in his testimony. The worst-case scenario in this instance is that iNATGAS just doesn't continue to do business. And there were some protections built into the original agreement through the original case, I believe after consultation with Staff, that would protect EnergyNorth and the customers in a worst-case scenario that may have involved an escrow account that has a limited time frame and that the escrow account is succeeded by a personal guaranty from someone from iNATGAS. But those are personal guarantees. It's just that. It's a personal guaranty. And the Company has said, well, if all goes wrong, we'll end up owning the facility. Staff doesn't find that to be very comforting because the Company would then end up owning the facility, and the reason it's closed is because there's no customers. So we think that's the worst-case scenario.

And I asked at the end of a very, very long day yesterday if Mr. Mullen would have -- you know, one of the analyses that the Company put in showed that there was a net present value, even with all cost overruns, that there was a net present value of about $212,000. And I asked Mr. Mullen would he go into senior management's office and recommend that the Company spend $4.5 million to earn $212,000, and he said he would. And on rebuttal, I think Mr. Sheehan appropriately pointed out that in that $212,000 was already a return for the utility and that the utility would earn its full return and that the $212,000 was sort of "extra on top of that." He didn't use those words. Those are my words. When I thought about it, the question I really should have asked Mr. Mullen was: If you were to go to the ratepayers and ask the ratepayers for $4 million, would the ratepayers agree to put up $4 million with the possibility of earning

$212,000? Because that's what's really shown on that sheet. The Company would get full return on their $4 million investment, and it's only the excess that's going to be flowed back to customers. I would submit that the ratepayers would say no, we're not interested in putting up $4 million so that we have the possibility of getting $212,000 back. And then there were other scenarios, and that doesn't include AFUDC. But I'm going to leave that where it is.

I believe that completes our issues on rate base. So what we've gone through are the revenue issues, the expense issues and rate base.

And the next thing that happens in a rate case is once the revenue deficiency is decided, the Commission has to decide who's going to collect this revenue deficiency, how is it going to be spread to customers, over what charges. And that's a process that's referred to as "rate design and revenue allocation." In this instance, the Company put in what I'll call a "fairly traditional" rate design and revenue allocation scheme. They did an allocated cost study, which I believe is either required by rules or precedent. They did a marginal cost study, which is required by rules or precedent. And they presented customer charges, and they went through the standard rate design process. And the underlying principle in rate design in New Hampshire, for I think at least the last 20 years, is to balance all the rate design goals that we talked about with Mr. Therrien. But generally speaking, the Company -- generally speaking, the studies produced marginal costs to serve that are higher than what the Company's current rates reflect, particularly in terms of customer charges. In other words, they go through the marginal cost study, and they come up with a very high number of the marginal cost to serve. And generally speaking, there is a movement towards marginal cost base rates. And the Company generally proposes not to move entirely towards what the studies show, but to make a gradual movement towards the underlying marginal cost to serve. And it's a great simplification -- I'm sorry. It's a simplification of a complex area, but that's essentially, I believe, what has gone on. And I believe it's what happened in this case. And the Staff had no problem with that. We reviewed the studies. We've seen them before. There was nothing unusual in the rate design or the class allocation issues in this case. And we spent very little time in our testimony talking about that issue.

Now, in this instance, the settlement produces a significantly different result. Again, I just want to point this out to the Commission. The customer charges in the settlement, at least with respect to residential customers, reversed that movement that I've been talking about, which has been the rate case precedent for the last 10 or 20 years, and it significantly reduces customer charges to the residential class. And it also flattens the two blocks of the rates.

And Staff is not taking a position whether that's a good idea or a bad idea. We just want to point that out to you, that the settlement contains a significant change in rate design policy and precedent, in that it moves in the opposite direction of what the underlying studies show.

Now, coupled with the rate design proposal in this case is a decoupling proposal. And these have been lumped together because they are linked. And the Company, as they were not quite required to do, I think, but I think they took the opportunity that the Commission provided in the EERS docket and provided a decoupling mechanism. I believe it's the first time that any utility has proposed the decoupling provision in this case, although, as I say that, I'm reminded of what Mr. Kreis told us about from 2008. So maybe it's not the first time. It's the first time since EERS.

And Staff looked at their decoupling proposal. And their decoupling proposal was presented by Mr. Therrien. And as we went through with Mr. Therrien, it contained an elaborate, detailed history of decoupling in New Hampshire and stated in many, many places that decoupling is needed to sever the link between the utility's sales and earnings so that they would be free to promote energy efficiency. And they would not suffer from this disincentive that is built into the process whereby they make more money if they make more sales. The idea is this way they'll make the same amount of money, irrespective of their sales level. Sever that link so that they will be free to pursue energy conservation. And I think everybody agrees that's what's behind decoupling. That's the goal we're trying to promote.

The Staff's -- and I should say that the Staff also proposed a decoupling provision in this case. Mr. Iqbal proposed a decoupling provision in this case. The problem Staff has with the decoupling proposal that ultimately ended up in the settlement is that it incorporated a weather-normalization aspect to it. And I keep being tempted to call it "a wolf in sheep's clothing." In other words, we have this energy efficiency goal and we want to do decoupling. So we'll do decoupling, and then we'll bring in this weather normalization, like a Trojan Horse. But there's nothing inherently evil about this weather normalization. It's not necessarily wrong or necessarily right. So I'm going to call it "a beagle in sheep's clothing." You know, it's got some appeal, okay. But I just want -- again, our goal here is to clarify the record for the Commission. So let's be clear what this is, and let's be clear as to the magnitude of what this is and whether or not it relates to energy efficiency.

If the Commission had wanted to insulate the Company from the impacts of weather, I think the Commission would have issued a series of orders that said let's insulate the Company from the impacts of weather.

Now, we've gone through this

before at length in the hearing. But rates are set on normal weather. And in colder winters, gas utilities make more revenues, and in warmer winters they make a lower level of revenues. And those swings have been -- have fallen in the lap of the Company. The Company has had to manage those swings. This "beagle in sheep's clothing" will remove that and allow them to adjust up and down, depending on what the weather is. Again, nothing inherently wrong with that, but let's at least be clear about what we're doing.

If the Commission wished to sever the link between sales and earnings and thereby promote energy efficiency, the Commission could accomplish all that by adopting Mr. Iqbal's decoupling provision, because it does all the things that Mr. Therrien -- that the settlement provision does, but it does not weather-normalize. So I'm going to leave it at that.

You have two choices to take before you in decoupling. One keeps the weather situation status quo; that's Mr. Iqbal's.

The settlement makes a fairly significant shift in years of precedent concerning who bears the risk of weather. And I will point out that when we asked the witnesses several times which is the bigger impact, they all agreed that the weather-normalization adjustment on the bill -- we had a sample bill -- was going to be significantly larger than the other aspect of the decoupling mechanism, such so, that the weather normalization would be on the bill and be done every month to smooth out the fluctuations. And the other portion of the decoupling, which we believe would take care of the energy efficiency disincentive, would just be included in the LDAC, like all the other charges.

So, in a typical rate case, we would be done. We've covered cost of service, rate base. We've had a couple of prudence discussions. We've covered rate design. In this case, we've covered decoupling. But we have one more issue we have to deal with, and that has to do with what to do with the Keene Division.

Staff has stated in this case they are proposed to the Company's -- they are opposed to the Company's proposed roll-in of the Keene Division into EnergyNorth for two reasons, primarily. One is the -- two reasons that are related. One is that they're concerned about cross-subsidy. Now, there's been discussion about how big the cross-subsidy is. Is it significant, is it not significant? Should customers in Manchester pay for customers in Keene, and so on and so forth. Our concern here is that there really isn't enough information to know how big a cross-subsidy this is. We know on the basis of the historic test year that the subsidiary was in the area of $900,000. And I believe there was some provisions in the settlement that would have reduced that subsidiary to $700,000, or something like that. But we do not know what the actual cost of converting the Keene system is. We do not know how many customers the Company is going to get. We don't know how profitable those extensions are going to be. This is new territory. Taking an existing propane system and putting natural gas -- compressed natural gas or liquified natural gas through it is something that this Commission has no experience with, to my knowledge, and nor does the Company. So we can't sit here and tell you that it's going to be an expensive proposition. But I will say that Staff is concerned about that, and we believe the Commission should be concerned about that.

We also have concerns based on our review of things like the training center and iNATGAS. We are weary of long-term capital cost projections. And so, based on those concerns, Staff has recommended that this consolidation not take place at this time, that the Company present a fully allocated -- and when I say "allocated," allocated between the divisions -- a fully stand-alone, typical cost of service, rate base, revenue deficiency calculation for the Keene Division, and present a detailed business plan that will demonstrate that

Keene has the opportunity to make a profit all the time -- over time. And even over a long term is appropriate, like the DCF analyses are done, to show that there is some opportunity, a reasonable opportunity for this cross- shifting to be minimized.

Secondly, we also believe that the Keene customers should be protected from this expansion, similar to what was done up in the other areas of the expansion. The protection -- and by that I mean Lebanon and Hanover. The protection that's built into this settlement agreement is a protection to limit the cross-subsidy. And we think that -- Staff thinks that's an important aspect. In other words, it does provide some protection to the existing EnergyNorth customers that they not be required to over -- that they not be required to cross-subsidize the Keene customers. But in our view, what's lacking from the settlement is any protection from the Keene customers as this project gets rolled out and costs are incurred.

So, those complete my comments. In closing, I would ask that the Commission carefully review the 75-plus exhibits that we put before you over the course of these past two weeks. We, Staff, in our expert opinion, recommend that you not adopt the settlement that was entered into by the Consumer Advocate and the Company, again, because taken as a whole, we believe it will not produce just and reasonable rates.

We thank the Commission for their time over these past couple weeks. We appreciate the effort that was put into the case by the Company and by the Consumer Advocate. And we wish you well in your deliberations and decisions. Thank you.

CHAIRMAN HONIGBERG: Thank you, Mr. Dexter.

Let's take a five-minute break.

(Brief recess was taken at 11:29 a.m., and the hearing resumed at 11:43 a.m.)

CHAIRMAN HONIGBERG: Mr. Kreis, you're up.

MR. KREIS: Thank you, Mr. Chairman, and thank you to all three Commissioners and all the parties for their thoughtful attention to this proceeding as it has been unfolding over the last few days. It's been quite an odyssey.

RSA 541-A:31, Paragraph V(a) says, "Unless precluded by law, informal disposition may be made of any contested case at any time prior to the entry of a final decision or order by stipulation, agreed settlement, consent order or default."

RSA 541-A:38 says, "Except to the extent precluded by law, informal settlement of matters by non-adjudicative processes is encouraged. This section does not require any party or other person to utilize informal procedures or to settle a matter pursuant to informal procedures."

And finally, Rule PUC 203.20 says, in Paragraph (b), "The Commission shall approve a disposition of any contested case by stipulation, settlement, consent order or default, if it determines that the result is just and reasonable and serves the public interest."

This is a contested case within the meaning of the Administrative Procedure Act and the Commission's rules that has been presented to you as a settlement within the meaning of the provisions I have just quoted. All of the parties to the case have agreed upon a resolution of all of the issues, and the record adduced at hearing amply demonstrates that the result is just and reasonable and serves the public interest.

It is also, as far as I know, a historic case. I know of no other proceeding -- and perhaps there is one, but I've never seen it in the 18 years I've been hanging around the agency -- in which all of the parties to a contested case have settled, but without the explicit support and assent of the Commission Staff. How you handle this particular situation will send a message to the utilities, to other litigants, and certainly to my office. The situation throws into sharp relief the role in a proceeding like this of the Commission Staff, of which, as everyone knows, I am a proud alumnus.

Rule PUC 203.01, that's the very beginning of the Commission's rules on how it handles adjudicative proceedings, says, and I quote, "When participating in an adjudicative proceeding, the Commission Staff shall be subject to the rules in this part in the same manner and to the same extent as a party." This teaches us in plain English that the Staff of the Commission is not a party. It's just subject to the rules and must abide by its limitations as if it were a party. This, of course, helps those of us who are parties, or representatives of parties, and it helps the Commission.

How does it do these things? Well, in most adjudicative organizations, including the four for which I have worked other than this one, the deciders have advisors. But the advisors get to do all of their advising strictly behind closed doors. Had the 2010 EnergyNorth Natural Gas rate case been handled that way by this Commission, the world would never have known that two of the Commission's most senior and respected advisors, Tom Frantz and Mark Naylor, were virulently opposed to revenue decoupling because, and here I'm quoting from Page 4 of their prefiled testimony in that docket, "Traditional cost of service ratemaking has been in place for decades and is not a system that is broken." In our system, when the Commission gets advice like that from its Staff experts, that advice is subject to all of the skeptical scrutiny that discovery and hostile cross-examination from very motivated parties can produce. And we have seen this process at its best here. Your Staff has been forthright and incisive with respect to scrutinizing the terms of the settlement agreement. And the parties have had a full and fair opportunity to expose the flaws in Staff's arguments, which are many.

The OCA has made no secret of the fact that revenue decoupling is the most important issue to us in this case. But we did not consider or analyze this question in isolation, and the settlement agreement does not address the issue in isolation either. Prior to signing the settlement agreement, Liberty was requesting a whopping, big revenue increase of $14.5 million, an outrageously high return on equity of 10.3 percent, and a great leap backwards in terms of rate design via massive increases to its fixed charges. Ramping up fixed charges is an anathema to ratepayer advocates everywhere because that punishes customers for doing everything we want and you should want customers to do.

Via the settlement agreement, Liberty gets the proverbial "haircut." Nearly a third of their requested revenue increase is gone. The ROE is down to a just and reasonable 9.4 percent. And to the Company's great credit, it has agreed to reduce fixed charges to a level that is $2 lower than the current fixed charge for R-1 customers.

Now, I have just a few things

to say about all of that. Staff likes that 9.4 percent ROE, and well they should. But the Commission cannot consider that particular piece of the outcome in isolation. It appears as a specific figure in the settlement because the PUC has made crystal clear that it will not approve "black box" settlements that fail to disclose what return is reasonable for Company shareholders. In fact, I would like to remind everyone that 9.4 percent is well north of the ROE recommended by our expert witness of 8.4 percent. And our expert witness, Pradip Chattopadhyay, is the very best in the business. The Staff seems to think you should embrace the same compromise we reached with Liberty on ROE and then chip away at some of the other comprises and accommodations to which we agreed. You must not do that.

As the settlement agreement specifies on Page 14, "This agreement is expressly conditioned on the Commission's acceptance of all its terms, without change or condition." If the Commission does otherwise, both we and Liberty have reserved the right to withdraw the agreement, at which point we are back to square one. And let me be clear: The OCA takes that right which we reserve for ourselves very seriously. I think I might have heard the Chairman suggest that the options before the Commission are the terms of the settlement agreement or the resolutions proposed by the various parties in their prefiled testimony. I respectfully disagree with that view of the choices that are presently before the Commission because of the way the settlement agreement is structured. If the Commission chooses not to adopt the settlement agreement, we're really back to square one. And we would expect and request the right to appear at further hearings and defend the original positions we took in our prefiled testimony. Anything less raises serious due process issues.

We take very seriously our responsibility to look at the revenue requirements a utility is requesting and evaluate it skeptically and thoroughly. As has been amply documented on the record here, this proceeding raises some very serious issues about prudence and about the propriety of simply absorbing the Company's Keene service territory into the Company's greater service territory and consolidating their rates.

We all took that field trip over to iNATGAS the other day. The silence there was deafening. Yes, there are issues with the way this Company plans and the way it deploys capital. But poor planning does not automatically equal imprudence. That's not the way it works. My ultimate point about the revenue requirement and the other issues is that we, meaning the OCA, took a hard and thorough look at the evidence on all of the issues that were raised in this proceeding, both the issues focused upon by our witness, Mr. Brennan, and the issues so thoroughly investigated and discussed by the Staff's much vaster army of witnesses. We assessed the litigation risk, and we came to a reasonable compromise with the Company. Any implication that we were not vigilant in defending the interests of residential customers is utterly without basis in fact.

I should also point out, recalling fondly the rather pointed colloquy I had with the Chairman on this subject several days ago, that the settlement agreement contains the standard language about the non-precedential effect of its terms. I agree that the settlement agreement implicitly asks you to make prudence determinations about expenditures that may not have been entirely prudent. I agree that we won't want to be re-litigating iNATGAS and the training center in perpetuity. But I guarantee you that when this Company is back for its next rate case, as it has promised to do after the 2020 test year at the latest, we will look anew at everything this Company has in its rate base, and we hope you will do the same.

Which brings me to decoupling. Why is decoupling the most important issue in this case, from our perspective as the advocates for residential utility customers? It's because of the Holy Grail of all cost-effective energy efficiency, the energy efficiency resource standard, which, in my judgment, is the most important thing the PUC can provide for residential utility customers -- indeed, all customers. Energy efficiency is simply the cheapest and best way to meet the next unit of demand. The Commission acknowledged as much in DE 15-137.

The settlement agreement in Docket DE 15-137 was a caesarean birth. And one of the concessions we had to make in that case was the adoption of the so-called "LRAM," the lost revenue adjustment mechanism. The utilities insist on being made whole for the revenue they lose by promoting energy efficiency. But the LRAM is frankly an awful mechanism. It is itself a form of revenue decoupling -- that is, it severs the connection between sales and revenues. But it is a classic example of "heads I win, tails you lose" regulation.

The LRAM simply assumes the utilities lose a certain amount of revenue, requires them to prove absolutely nothing, and never provides relief to customers even if the Company's sales actually increase. Fortunately, we at least managed to get the utilities to agree to propose some kind of alternative to the LRAM. But they aren't required to do so until their first rate case after 2020. To its great credit, Liberty beat the deadline by at least three years and proposed a decoupling mechanism here.

You have heard ample testimony here that decoupling is a sound concept and should be adopted in this case. Our witness, Dr. Johnson, Liberty's witness, Mr. Therrien, and Staff's witnesses, Mr. Iqbal and Mr. Frink, have all agreed that decoupling is a symmetrical mechanism that is the right thing to do so as to eliminate the so-called "through-put incentive."

Indeed, it appears that the only point of contention here is the so-called "real-time weather-normalization mechanism" that is included in the decoupling provisions of the settlement agreement. And let me be clear: It was not Liberty that introduced real-time weather normalization into the conversation. We did that via the prefiled testimony of our witness, Dr. Johnson. And as reflected on Page 15 of Dr. Johnson's prefiled testimony, he got the idea from the Regulatory Assistance Project, the same organization of trusted Commission advisors whose views on decoupling seemed to form the basis of Staff's perspective on the subject.

What is wrong with real-time weather normalization, according to Staff? Well, they say, it doesn't make up revenues lost to ratepayer-funded energy efficiency. And they're right. But as the Commission made clear at Page 21 of its January 16, 2009 order closing its investigation into energy efficiency rate mechanisms, the so-called "comprehensive approach" to revenue decoupling might be the most sensible approach when proposed as we've done here in a rate case. Moreover, as Mr. Therrien and Dr. Johnson testified, real-time weather normalization is hardly untethered from the broader goal of all cost-effective energy efficiency, a universe that is greater than our relatively modest ratepayer-funded programs. They told you that when revenues are fully decoupled from sales, it can have a transformative effect on the corporate culture of a utility, something we might see, for example, in utility support for improved and more contemporary building codes. As it happens, our state is currently mired in a drastically outdated version of the Energy Efficiency Code, and we desperately need the utilities to go with us to the State House and get that changed.

Beyond the unpersuasive claim of no connection to energy efficiency, the Staff's opposition to real-time weather normalization veers into the subjective and even the irrational. The auditors won't be able to figure it out, they complain, without any evidence. It sends the wrong price signals, they say, without producing evidence that any customers would respond to signals embedded in one line of the bill when overshadowed by countervailing fluctuations in the much larger commodity charges. They agreed that the testimony on helpful cash flow effects is correct as a factual matter, but they say it's not really symmetrical because, if I understand Staff correctly, the utility has a lot more cash at stake than any individual customer does. But if that's the way utility regulation worked, then companies would always win because, in proportional terms, they always have more at stake than any individual customer does, except perhaps those in the most abject poverty. Rather than marshal facts in opposition to the weather provisions of our decoupling plan, Staff offered a bunch of adjectives. The Commission should see this for what it is, echoes of the historic opposition to revenue decoupling at the Staff level, so emphatically stated by Messrs. Frantz and Naylor eight years ago. The Commissioners have always led the Staff when it comes to decoupling and other forms of progress in rate design, and you should do so here.

Staff characterized in its closing argument that the weather-normalization provision of our decoupling plan is a "beagle in sheep's clothing." In reality, it's actually "the dog that didn't bark." The basis for real-time weather normalization has been succinctly summarized by the Regulatory Assistance Project. The benefit for consumers is that rates go down and usage and bills go up, so sharp bill increases are moderated somewhat. The benefit to the utility is that rates go up when usage goes down, which tends to stabilize earnings and allow a lower capital structure that ultimately saves money for customers.

And by the way, you heard testimony in this case that the Maine PUC recently approved a 9.5 percent ROE for Northern Utilities. We can't say that the difference between that ROE and the ROE in our settlement agreement, 10 basis points, accounts for decoupling, but we can't say it doesn't either.

My last point about decoupling is similar to the meta point I previously made about the settlement agreement in general. You can't consider the decoupling provisions in the agreement in isolation. They are part of a comprehensive approach to designing rates so they are fair and are conducive to progress. The Company quite reasonably sought a hefty increase in fixed charges because that's how utility shareholders like to make up revenue lost to energy efficiency. But that is the wrong approach. Decoupling is the right approach. And so we persuaded this forward-thinking utility to give ground on fixed charges and embrace an approach to rate design, comprehensive decoupling, that is a win-win for customers and shareholders alike.

Now, it's true that my office represents only residential customers. We do not purport to represent the interests of commercial and industrial customers. But we are not oblivious to those interests. And we note in this case there is not one shred of evidence that the interests of the customer classes diverge in any way. For good or ill, no representatives of commercial or industry customers chose to intervene in this case.

So, as to the settlement that is before you, the only conclusion the record allows you to draw is that the customers and shareholders are united here. The decoupling plan and the settlement overall is just and reasonable and serves the public interest. As you know, Commissioners, the Commission is tasked by statute with serving as the arbiter of the interests of utility shareholders and the interests of utility customers. There is nothing to arbitrate here. Before you is a reasonable agreement, the result of hundreds of hours of hard work, subjected to the rigorous scrutiny it deserves, first from your Staff and now from you.

On behalf of residential utility customers, we therefore urge you to approve the agreement and send a signal to all of the ratepayers and the utilities in this state that we're not stuck in Twentieth Century approaches to utility regulation. Thank you.

CHAIRMAN HONIGBERG: Thank you, Mr. Kreis. Mr. Sheehan.

MR. SHEEHAN: I know it's not the custom in this building, but I have no objection to questions if the Commissioners have any.

The statute that governs your review of this case has been misquoted today, not on purpose. The Commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities. We often use the word "shareholder." Now, certainly regulated utilities include shareholders. But the regulated utilities also include its employees and, frankly, how we treat our customers. Of course, the better the employees work, the happier the customers are. That does benefit the shareholders. But remember, it's the interests of the people here in New Hampshire as well.

I fully support what you just heard from Mr. Kreis. As we have done in this case, we have divided tasks. And I think you've heard a commendable defense of our positions on the decoupling and the rate design. I will not go further into that, except to repeat the fact that it was a big move for us to accept the decoupling proposal that you have in front of you and to accept the rate design changes that are accompanying with that. And I repeat, and I will repeat several times how this is a single settlement that you cannot, I submit, carve up. As Mr. Kreis mentioned when quoting the statute, by filing a settlement agreement, we have both in effect given up our opportunity to defend the original filings we made. We are not here defending the $14.5 million case, which we could have done. We gave up that opportunity to get the benefits that are in the settlement agreement. So I don't think the Commission has the record to take that settlement agreement and carve it up. And in a recent example, say on Issue X, the Company proposed a million dollars, Staff proposed zero, and we are representing to you that there was some accommodation for that in the settlement. And let's assume you conclude that the right number for that is zero. How do you reduce the settlement agreement by some number, not knowing what amount of that million dollars is in the settlement agreement? So you either reduce a million dollars, and we say that was more than was accounted for in the settlement, or you come up with some other number for which there is no support in the record. So I believe, to the Commission Chairman's question, the options you have are Staff's position or the settlement agreement. And if you stray from that, and of course you have the authority to, then Mr. Kreis and I will evaluate whether we exercise our option under the settlement to say that has upset the settlement. We weren't able to defend the million dollars in my hypothetical as we had provided in our initial filing, and we want to do that. So I think that is the framework you have here.

That being said, we have spent a lot of time on the component elements of this case, and I think it serves to illustrate the reasonableness of the settlement. As we go through each of these topics, you can see where Staff had recommended disallowances or removals of costs to get to their number, and we hope through the cross-examination and presentation of our case we showed you that those disallowances are not proper. Those reductions are too high. And if you do the back-of-the-envelope math that you certainly can do, you'll say, oh, the numbers in the settlement agreement are reasonable. Are they perfect? Are they exactly what we would have done as a Commission if we had gone line by line? Perhaps not. But that's not your job. It is to come up with a just and reasonable settlement.

I analogize to a more typical

settlement where the Staff has joined, as was the case in the Granite State rate case just a year ago. In that case, we effectively said we've agreed on a number, and we as a group politely said you don't have to look under the hood to see how we got to that number. We're all here saying it's a just and reasonable number. We're all here saying we've done our homework. We're comfortable with it. And yes, you asked questions. But there was not an analysis of, well, how exactly did you get to that number. I submit that the agreement we have here today should be deserving of the same kind of deference, if you will.

I used the phrase "presumption of prudence" yesterday. And although I agree with Mr. Dexter that that does not appear in Commission orders, as far as I could find, the concept is obvious, and I will use it today. As an aside, I did find it mentioned in some far away states long go, so it's not a totally foreign phrase. I believe Mr. Hall dug it out of his distant memory or the distant memory of one of his former colleagues.

CHAIRMAN HONIGBERG: How old is Mr. Hall again?

MR. HALL: A hundred forty-seven.

MR. SHEEHAN: State secret.

We don't file all the support for every number in our rate case, obviously. If we did so, the rate case filing would literally be hundreds of boxes of documents. What we do is we file all the schedules that have all that component data rolled up into sort of high-level numbers. And I use the Hi-Line project as an example.

In 2016, we built 5 miles of large pipe north of Concord along Route 106. In dollar terms, that was the largest EnergyNorth project ever. It was budgeted at $12 million. It came in at $10 million on time. That project involved years of engineering, years of planning, a full construction season. We had pipe ordered from somewhere in New Jersey. We had horizontal drill companies coming from other places. We had contracts, invoices, purchase orders, timesheets, payments. If we had to prove that $10 million investment again, that project alone would have taken a week. It's unreasonable. In fact, the Commission doesn't require the Company to do all that information for every item of cost or expense or revenue in its rate case. We include those costs in appropriate schedules with appropriate descriptions, but we don't provide all that backup. There are many other projects in this rate case that would similarly have thousands of pages of support.

And this is from Ms. Tisha Sanderson's testimony in this case: Our 2018 capital budget was $64 million, 81 projects; 11 of them were over a million dollars. In that $64 million, our budget variance was $150,000, .24 percent. In 2017, we had an $82 million capital budget, 59 projects, again 11 over a million dollars. The budget variance was larger, about 9 percent, largely due to the budgeting we had done for

Hanover-Lebanon, which didn't pan out in '17. Again, none of that is in detail in this filing, but it's all in the filing.

And going to the presumption of prudence, what Staff does when they get a filing like ours is they review the whole thing. But Staff similarly can't attack and make us go through the steps of every issue. They will examine, they will focus, and they will pick the issues they think are appropriate for review. Obviously, we know which issues they picked here. And that's when -- so the presumption is the Hi-Line is prudent. Put in our case, we had witnesses swear to the fact it was prudently done. And if Staff does not challenge it, in effect it's presumed prudent. It's those other cases where Staff says wait a minute. Training center. We don't think that's prudent. We put up an argument why it's not prudent, and we offered testimony to that effect. Now the presumption has fallen. Now we do have to step forward and prove it's prudent. We have to present the evidence through the discovery process, rebuttal testimony, whatever. So the presumption of prudence does exist, and it has to exist to make the system work.

The two largest capital projects that Staff focused on here, of course, were the training center and the iNATGAS project. I'll note that both of these projects started in or before 2014, at a time when we admitted we were having problems with some of our estimating, some of our budget approvals and the like. Those have been the subject of Liberty Consulting's initial report and continues to be the subject as we addressed these particular problems. I do note, also, from those numbers I gave you about 2016 and 2017, that we are doing really well on these topics now. To the extent Staff has raised questions about our ability to estimate and budget and run projects going forward, I think our recent record in '16, '17 and this year is proving that that's less of a concern, and should frankly be less of a concern for the

Commission going forward, understanding you will still look over our shoulder every step of the way.

So, on the iNATGAS issue. First, in response to some of Mr. Dexter's comments, he spent a lot of time critiquing the initial estimate and the initial DCF. I just want to note that those documents were both before the Commission, before the Staff, before the OCA in that docket and were approved. Yes, there were shortcomings in those documents. Yes, maybe they could have been, and in fact some of them were, explored through discovery in that docket. But remember that the Commission did approve them. And that approval was not limited to a $2 million project. It was approved for a number of reasons. First, the contract contained a minimum take-or-pay provision. It included that the DCF was positive, even with its shortcomings. It included that iNATGAS provide security. That security included a million plus in escrow; a personal guaranty of Mr. Alizadeh; a corporate guaranty of his company that owns several CNG fueling stations, including one in Nashua, all of which are in use; and ultimately a right to take the station from iNATGAS if they fail. That project has the potential to be a huge winner for both the Company and customers. Mr. Frink was clear that it was a risky project at some level. And with risk you have a risk of a high return and risk of bumps in the road. So far, the only bump in the road has been it's taking a while to get going. It's been on service for a year now. Volumes are starting to ramp up. We all hope for the best.

We acknowledge the original estimate was low. We explained the reasons for the higher costs. Mr. Dexter went into some of them. We re-ran the DCF even with the actual costs, and it's still positive. And as we discussed yesterday, that positive number means the Company would not lose money on that project, nor would customers. And in response to Mr. Dexter's argument that the positive was only a couple hundred thousand dollars, remember that's a standard we apply for all our construction projects. Anytime we are doing a line extension, we don't have to show we're going to make a lot of money on that line extension. We have to show it is a net positive for the investment. Our tariff requires, for big projects, a DCF that's positive, and for smaller projects, that we do the formula of six years or eight years of revenue to pay for it. Prudence does not determine whether it was consistent with the estimate but whether the costs incurred were prudent.

After explaining all the reasons for the increase cost in iNATGAS, note that Staff presented no contrary evidence. They never said you shouldn't have spent $400,000 on this item, you should have spent 300. In fact, when Mr. Frink was on the stand, I pushed him on that. He said, "No, I don't have a problem with the cost." There is no evidence in the record that says we spent imprudently on iNATGAS. None. And recall that both Staff and the Audit Division reviewed all those costs. Mr. Frink also acknowledged that the iNATGAS facility is used and useful. By definition, if the costs were "prudent" and it's "used and useful," it should go in rate base at full recovery.

Staff's recommendation, of course, is to remove about $400,000 from the revenue requirement, which is roughly half, and that Staff could come back -- I mean the Company could come back in its next rate case and recover the difference. Again, there is no provision in regulatory law, ratemaking law, that allows for such a path in rate base, half out of rate base, or partially in and partially out. Staff proposed no mechanism that would allow that to happen.

Also, the figure that Staff used to be removed from the revenue requirement is improper. It was based on year one of the DCF analysis. So, year one is always the worst year. That's the purpose of a DCF analysis is to show early years you're behind, and it's made up in later years. To remove year one number from the entire revenue requirement means we will experience the worst year for every year until that is adjusted again.

At the close of Mr. Frink's testimony, counsel, through direct questioning, tried to modify the testimony to say their real argument for imprudence was once the Company understood the costs were higher, there should have been some kind of time-out, re-evaluation, re-look, and that our decision to proceed was imprudent. And this was not part of their testimony but was raised through examination. As you heard yesterday, we did do that. We notified Staff and the Commission about a year after we started the project about the costs, where they were expected to go, which turned out to be almost exactly what they ended up being, just about $4 million. Staff took no action. Staff made no recommendation. Staff didn't call us back in. Staff didn't file anything with the Commission to say wait a minute, they are going imprudently. It is unreasonable and unfair for Staff now to fault us for not advising them of the progress when we did, and for not suggesting that they would have paused the project, when they did not. There is no factual or legal basis to deny full recovery for iNATGAS.

The other capital project, of course, is the training center. Of course, I'm shifting order midstream. I apologize.

Mr. Dexter made a point of defining "prudence" in the context of the training center as "the reasonable utility executive," what did that person know at the time of the training center decision to go forward and as it evolved. In fact, we have in the record the testimony of that reasonable utility executive, and that is Mr. Smith. Mr. Smith was the HR director at the time of the -- he was the force behind the training center. He was in charge of training. And the most concrete example of his thinking is in response to one of the data requests that has been mentioned a few times and is attached to Mr. Mullen's testimony from July of 2017 at Bates 31. And the substance of that response has been carried forth in various different ways. But it is the argument that the analysis was not a spreadsheet analysis; it was what are our options. We need to train our employees. We need to train our employees the way we think they should be trained and the way people in our company think they should be trained. So our options are, and we've been over this in great detail, that we have another building of our own, Manchester as the most obvious, but it didn't work out. We don't have National Grid available anymore. The other companies don't have things that we could piggyback on. And there are no other providers of training in New Hampshire. Mr. Smith includes a specific line in that exhibit. "Liberty also searched the local area for another source of training and found no gas or electric training available that would in any way come close to meeting our needs."

So the analysis that Staff is asking us to do in this docket, the comparison cost for Option A to Option B, wasn't done because there were no other options that even came close. And even when I asked Mr. Iqbal, if we could have found an option to measure financially and put it next to the cost for the training center, and if we decided the training center provided the better training, weren't we prudent for picking what's better training? And again, Mr. Iqbal, understandably, as he had to, he does not -- he's not an expert on training. No one has challenged our decisions on what training our employees need, how much training, who should be trained. In this building are certainly Staff members who have that expertise, and they offered no testimony.

So, again, how do we prove a negative? How do we move something that has not been raised by Staff and Commission? What we have in this case, by the absence of testimony, is saying our training methods, our training protocols are reasonable. And since what we're doing as training is reasonable, the only way that it could be done is through the training center.

The other thing to remember about the training center is, just like iNATGAS, Staff conceded that it does not have a problem with any of the component costs. It has a vague objection to it being too much. But again, they did not point to a single line item of cost we spent that we should not have spent. So, again, the combination of reasonable costs, that it is used and useful, that it is used for prudent training, there's no legal or factual basis to deny recovery of the training center.

Going to a couple of the accounting issues. First, depreciation. I also will not spend too much time on this. Mr. Normand described the process he used for each category of years. It is part mathematical model, it is part experience, it is part judgment. Altogether it equals the depreciation study. The purpose of doing a depreciation study is to align your depreciation with what it should be.

Mr. Iqbal's critique was, when the mathematical model didn't work or didn't come up with a good, comfortable number, he defaulted to what was already in place. Our response is it's not just a mathematical model that dictates. Our depreciation is judgment, the experience that goes along with it. So, each time Mr. Normand had to go through that process -- and you heard what he went through. He certainly isn't a radical trying to get a particular result. And his examples of the electronic meter gizmos and computer software, his average lives are still on the conservative end. And again, remember that the settlement agreement did not adopt wholesale Mr. Normand's numbers. We did moderate some of the changes closer to Staff's position.

On the reserve and imbalance, Staff's position is to recover the approximately $9 million over 10 or 12 years, which is roughly a million a year. Company's original position was three years, which is approximately $3 million a year. The compromise in the settlement agreement is five years, which is approximately $2 million a year. It is roughly halfway between the original proposal and Staff's proposal. It is a reasonable compromise of this issue. And the reason for that compromise, and you heard it from Mr. Normand, if we do nothing, given the Company's growth, the reserve imbalance will grow. And in three years, when we're back, it won't be 9 or 10 million, it will be 10 or 12 or 14, whatever it turns out to be, and we will simply have kicked that issue down the road.

As an aside, counsel presented a growth chart, I think it was in Mr. Therrien's testimony, showing over the 10 years it was a 1-percent equity growth. Of course, that picks up the higher growth years, recent years under Liberty, and the lower growth years under National Grid. In the Company's IRP which was filed last fall, Bates 29 of the initial plan, the CAGR -- and I forget exactly what that acronym stands for -- was projected at 2.7 percent for the next five years. So, for the foreseeable future, there is still going to be aggressive growth, which leads into the concept that the reserve imbalance will grow if we don't do something to address it. The five years in the settlement agreement is a reasonable step towards that. Compound annual growth rate.

Some of the other accounting-type adjustments that Staff made, one is the year-end customer count. There are basically two ways to figure the Company's revenue for a rate case. We did one method, Staff proposes a different method. They're just two ways to cut the apple. What we propose is reasonable. Yes, there's another way to do it, and yes, they may come up to a different number. But there's nothing inherently wrong with what we did. It's what's often done in rate cases.

The NED costs are insignificant. The argument is we routinely hire experts. The fact that this one was tied to a particular project that failed is irrelevant.

The severance pay I think everyone

understands well.

That leaves us with Keene. Two issues in Keene, of course: The consolidation and the production costs. In 14-155, when Liberty acquired Keene, it was common knowledge that we intended to do a couple things. One was a rate consolidation that's here before you now, and a second was to grow Keene through conversion to CNG and LNG. We want to grow Keene. There's a lot of growth potential there. Mr. Hall -- Mr. Clark testified that three of the obvious, reachable customers will triple the output alone. But we cannot continue with the propane-air system. It's old. It's on land we don't own. It has a lease that will expire. And frankly, it's not the best fuel. Rate consolidation is necessary for this growth and the long-term viability of Keene. These infer not having a sufficiently detailed business plan as was testified. We can't go to customers until we know what we're charging them. It's a "cart before the horse" problem.

The rate consolidation subsidy is negligible, 25 cents a month for EnergyNorth customers at the beginning. And we have built in protections to make sure we start reducing that immediately, and that's the $200,000 provisions in the settlement agreement. Commission precedent supports rate consolidations in this exact kind of situation where we have a struggling utility that needs help from a larger utility. And we can bear a subsidy for a while until things get better.

And last, there are no other options for Keene. We filed a rate case. The rates are going to jump. I forget the numbers testified to, but substantially. If we do nothing, then we just continue to lose money on Keene, or a wind-down, which is in no one's interest.

Does the record contain -- I think this was a question from the Bench -- all the support, all the elements of the Keene rates that are requested in this proceeding? And the answer is yes. If you go through the list of schedules in the permanent rate filing attachments, there is an index of schedules at Bates 37-38. There are 17 schedules pertaining solely to Keene, and they're all denoted with a "K" in the description of the schedule, "RR" for revenue requirement, "-K" or dash something. Those are all the financials that would comprise a separate Keene rate case and, in fact, comprise the portions of our requested revenue for Keene. We have the revenue requirement of EnergyNorth. We built the revenue requirement for Keene. We added the two together. All that information is in the record before you.

COMMISSIONER BAILEY: Mr. Sheehan, can you tell me what exhibit that is?

MR. SHEEHAN: It's in the Dane-Simek permanent rates testimony, one of the early ones.

Staff did object to consolidation. Staff did not object to, specifically object to any part of that revenue deficiency related to Keene, aside for the production costs, if I remember right.

We ask that you approve the rate consolidation with the risk-sharing provision that we have. This is truly a risk-sharing mechanism. We're at risk for recovering if we don't grow. And in return, we received an agreement in the settlement agreement to consolidate. We respectfully submit that no further conditions or mechanisms are supported by the evidence with regard to Keene or are necessary. One of the reasons stated by Staff for further conditions is, again, the historic problems we may have had with estimating and carrying through projects. Our recent history shows that is not a concern. And also, understand that both iNATGAS and the training center were kind of one-offs for the Company. Those were new kinds of projects we didn't have experience with. Putting pipe in the ground we do all the time. We're really good at it. That's what Keene will be is putting pipe in the ground.

In Keene, as in everywhere else, we are governed by our line extension policies and our tariff which requires certain analyses to be done, and precludes us from starting construction until we have certain customer commitments. Those certainly benefit us. We're certainly not going to go forward with projects we don't have the comfort that we will meet the revenue going in.

Production costs. Although a small dollar item, it's also caused and occupied a lot of time here. The Commission directed that the Keene production costs, which are the response costs for the 2015 event and the 24/7 costs -- that's not all of them, but that's the lion's share -- should be addressed in this rate case. "We will address the issue of the prudence of an amount of deferred production costs if and when Liberty-Keene seeks recovery of those costs as part of a delivery rate filing." That's Order 26,048, the settlement of the production cost issues in the cost of gas.

As discussed yesterday with Mr. Mullen, we included production costs in our filing. The Audit Division reviewed them. Under the so-called "presumed prudent standard," it was then up to Staff to decide whether this would be one of those issues that it would challenge, which would then trigger Liberty's obligation to come forward with all the proof. Even though Staff requested discovery on this, as we illustrated yesterday, and Liberty provided a substantial amount of information in this docket and others, Staff still did not take a position in this case. Staff testimony was the cost, quote, may or may not be, close quote, prudent. Mr. Frink's testimony at 12. Staff never firmed up this "may or may not" into a "is imprudent." So our interpretation would be that the presumption of prudence would arise. Although this is certainly a little grayer than the normal presumption of prudence situation, like the Hi-Line, it should apply. Nonetheless, we have provided more than sufficient evidence on which you could make a specific finding of prudence as to both elements of production costs.

There are two prudence questions: Was it prudent to staff the plant 24/7? Was it prudent to pay the response costs? There is in the record, regardless of the new exhibit from this morning, evidence from our engineering, gas control personnel, who have decades of experience, supported by senior management, deciding that the risk of an extreme event was still possible, although unlikely, which justified the cost of 24/7 coverage. The simple thinking from the Company's perspective: Imagine if this happened again and that someone got hurt. We have actual knowledge that the Keene system could fail. We know it did fail, and we know the consequences of such a failure. Staff presented no competing evidence. Again, the Safety Division was silent in this case. There is nothing in the record that recommends not recovering those 24/7 costs. They just keep raising the issue. You should look at it. You have no expert evidence contradicting Liberty's engineers, and that's no basis on which to find our decision to staff the plant 24/7 as inconsistent -- imprudent. I'm sorry.

As to the response costs, approximately $200,000, it's more of a legal argument. RSA 154:8-a required us to pay. It states, "Any person whose act or omission caused the actual or threatened discharge of hazardous materials or toxic wastes which resulted in the reasonable and proportionate response of police, fire, emergency preparedness or emergency response equipment, shall be responsible for payment of the cost of the equipment use or replacement..." The disagreement would be over what's the definition of "hazardous materials." Yes, that could be litigated. It was the Company's judgment that we would lose that argument of whether this is hazardous -- whether the release of propane and carbon monoxide, as happened in December, is a release of hazardous material. The statute would have been construed by a state court judge if we refused to pay, and we concluded that a state court judge would likely not accept the interpretation of "hazardous material" as to not include the propane that was released.

The other major factor in our decision to pay the response cost was the, for lack of a better word, politics of the situation. Imagine the public relations disaster that it would be if we didn't pay. Remember that after our system failed, very concentrated propane went through our system, causing appliances to burn too rich, causing the release of carbon monoxide and unburned propane, causing a complete shutdown of our system and panicked calls from people all over town. Keene's reaction, not knowing the extent of the danger, called for help. Having found one person unconscious, the fire department, with Liberty's help, went to every single house, knocked on doors to make sure everyone was okay and to re-light their appliances when the event was over. If we refused to pay these costs in a town where we hope to grow and provide service for the coming decades, the $200,000 we may have saved will just pale in comparison. It's a very small and reasonable cost to pay under those circumstances.

Let's go back to the broad outline of this case. The Company proposed a rate increase of $14 million; Staff, 4. The settlement is at 10.3; Staff has increased to just under 6. I respectfully ask that you resist the temptation to look for hard numbers inside that 10.3, as we discussed before. It's not fair in the settlement process, and it would not be accurate. There is no basis on which you could find any hard numbers within that 10.3 million, even the numbers that seem to be calculable, like the reserve imbalance. Those are all part of a give and take. All parts of the settlement have value, not just the numbers that are easy to isolate, but all the others. Decoupling, rate design, timing of the reserve imbalance, calculation of the reserve imbalance, mechanics of the Keene consolidation, you simply cannot assign a value to each and every component.

Remembering that the overall goal of this proceeding is determining just and reasonable rates and not to decide who wins or loses any particular issues, I can offer a few suggestions of how to determine whether it is reasonable. First, look at the guide post of numbers, the starting points of the parties. The settlement number is reasonably within them. In fact, in the 14-180 case, where there was a complete "black box" that did frustrate Staff, that was really what they were left with as a measure of the reasonableness: Where's the starting point? And in that case, Staff didn't even file testimony. And the Commission was left with we have a starting point, we have a settled number, and we trust that the parties and Staff did the investigation necessary to come up with a reasonable number.

Second, look to the numbers

that we did dive into in this case: The $500,000 for the training center, I submit that that number should not be disallowed at all; the $400,000 reduction for iNATGAS, I suggest the argument for that is weak as well; the production costs, although a small sample, an example of the Staff's unreasonable positions in this case; the rate design movement; the decoupling proposal. And then remember that the settlement agreement still contains compromises on all these issues. We reduced our revenue requirement by $4 million a year. You can do the math in many ways to see how we get to that figure with all the issues we discussed. But remember to include a value less than the obvious monetary issues. Our agreement to accept decoupling that is -- I'm sorry. Yes. Remember, in addition to just the monetary concessions, we made agreements to policy decisions and practices that were different from our initial filing, and that's the decoupling, the rate design, the performance metrics in Keene. All of these are thrown into that $4 million bucket of compromises and concessions we made to reach a settlement with the OCA, and, frankly, to try to reach a settlement with Staff. And last, I do think it's appropriate to compare to Northern. They provide the same service in the same state, with the same employee pool, with the same financial market, and largely the same customer pool, regulated by the same Commission. The rates provided in this settlement agreement, which add about $5 a month to customer bills, are lower than Northern's rates. Again, that's not the "be all and end all," but it is a measure of reasonableness.

To conclude, you face the choice between two resolutions of this case: A settlement agreement which includes all that it includes, and Staff's $5.7 million. We respectfully submit that Staff's recommendation is unreasonable. I'm not sure why Staff is taking such a position, but it's patently unreasonable. We would be returning monies from the day you issue the order. Nor do I think you have the authority and the record evidence to pick some rate level that's between Staff's and the settlement agreement, as I discussed at the opening. The settlement agreement represents a carefully thought-out, vigorously-negotiated resolution of all issues in this docket. By balancing the interests of the customers who are part of the settlement agreement and the utility, its employees, shareholders and customers, I hope you find that this settlement results in just and reasonable rates. Thank you.

CHAIRMAN HONIGBERG: Thank you, Mr. Sheehan.

All right. Before we wrap up, I'll just restate the situation with exhibits. You've all agreed to strike I.D. on Exhibits 3 through 77; 1 and 2 were from the hearing last June. With respect to 78, there's an objection pending which we'll rule on in due course.

Is there anything else we need to do before we close the hearing?

MR. KREIS: I just want to say, Mr. Chairman, for the record, that we have no objection to the admission of No. 78.

CHAIRMAN HONIGBERG: Thank you, Mr. Kreis.

Anything else?

[No verbal response]

CHAIRMAN HONIGBERG: All right. With that, we'll close the hearing and take the matter under advisement and issue an order. Let's go of the record.

(Whereupon the Day 7 hearing was adjourned at 12:48 p.m.)

C E R T I F I C A T E

I, Susan J. Robidas, a Licensed Shorthand Court Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

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Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
N.H. LCR No. 44 (RSA 310-A:173)

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