

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

January 10, 2020 - 10:12 a.m.
Concord, New Hampshire

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**RE: DG 19-161
LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS)
CORP., D/B/A LIBERTY UTILITIES REQUEST FOR
CHANGE IN RATES
(Prehearing Conference)**

PRESENT:

Chairwoman Dianne Martin
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Doreen Borden - Clerk

APPEARANCES:

Rptg. Liberty Utilities (EnergyNorth)...
Michael J. Sheehan, Esquire

Rptg. Residential Ratepayers:
D. Maurice Kreis, Esquire
Office of Consumer Advocate

Rptg. PUC Staff:
Paul Dexter, Esquire

COURT REPORTER: Susan J. Robidas, N.H. LCR No. 44

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ISSUE: ARGUMENT AND EVIDENCE ON WHETHER THE
COMMISSION SHOULD EXERCISE ITS DISCRETION
UNDER RSA 378:7 TO PERMIT LIBERTY'S RATE
FILING AND TO INVESTIGATE PROPOSED RATES.

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P R O C E E D I N G S

CHAIRWOMAN MARTIN: All right.

We're here this morning in Docket DG 19-161, which is the Liberty Utilities (EnergyNorth Natural Gas) Corporation, d/b/a Liberty Utility's Petition for Permanent and Temporary Rates. Before we do anything else, can we take appearances?

MR. SHEEHAN: Good morning. Mike Sheehan for Liberty Utilities (EnergyNorth Natural Gas). And I'd like to introduce the team because it's the first the Chair has seen any of them. You will see most of them frequently from now on.

Next to me is Steve Mullen. He's the Director of our Regulatory Department. The next row are Dave Simek and Kathy McNamara, who are in the Regulatory Department. The next row, from left is Heather Tebbetts and Missy Samenfeld, also with the Regulatory Department. You have pretty much the entire Regulatory Department here. And behind me is Brian Frost, who is our senior gas engineer. Thank you.

1 CHAIRWOMAN MARTIN: Thank you.

2 Good morning.

3 MR. KREIS: Good morning. I am D.
4 Maurice Kreis, the Consumer Advocate. I'm
5 here on behalf of residential utility
6 customers, and I have a substantial
7 percentage of my team here with me today as
8 well. To my immediate left is our staff
9 attorney, Christa Shute, and to her left is
10 the Assistant Consumer Advocate, Pradip
11 Chattopadhyay.

12 CHAIRWOMAN MARTIN: Welcome.

13 MR. DEXTER: Paul Dexter, appearing
14 on behalf of the Commission Staff. Joining
15 me at the table today is Steve Frink,
16 Director of the Gas & Water Division, and
17 Iqbal Al-Azad from the Gas & Water Division.

18 CHAIRWOMAN MARTIN: Thank you.
19 Okay. Do we have any preliminary matters
20 that we need to address? Otherwise, I think
21 maybe I'll just describe how we envision this
22 process today.

23 MR. SHEEHAN: That's fine with us.

24 CHAIRWOMAN MARTIN: Okay. We had

1 two items contained in the Order of Notice.
2 The first was to take argument and evidence
3 on whether the Commission should exercise its
4 discretion under RSA 378:7 to permit
5 Liberty's rate filing and to investigate
6 proposed rates. And so we will take that up
7 first, and then we will permit the parties to
8 present their preliminary statements. So if
9 everyone is comfortable with that, let's
10 proceed.

11 MR. SHEEHAN: The other thing that
12 was in the secretarial letter was the waiver
13 request, which I think the Commission had
14 deferred until today. We had asked certain
15 filings to be -- a waiver of some of our
16 filing requests.

17 CHAIRWOMAN MARTIN: My recollection
18 is that was granted.

19 MR. SHEEHAN: I'm sorry. You're
20 right. It was whether we needed to file a
21 so-called "split-year annual report," which
22 was not part of the filing, and that was left
23 open for today.

24 (Commissioners confer off the record.)

1 CHAIRWOMAN MARTIN: I think we'd
2 like to proceed at this point with the two
3 items that we discussed. And we will
4 probably address that depending upon the
5 resolution of whether we take up the case.
6 So let's proceed with the argument and
7 evidence on discretionary status.

8 MR. SHEEHAN: Sure. Would you like
9 me to go first?

10 CHAIRWOMAN MARTIN: Yes, please.

11 MR. SHEEHAN: Thank you. I would
12 first like to disagree with the Commission's
13 characterization of the issue. Whether the
14 Commission has discretion to accept a case is
15 the second question. The first question is
16 whether this filing is within the two-year
17 period of the statute. If it's not within
18 the two-year period of the statute, there is
19 no discretion and the Commission must accept
20 the case. So I suggest that the first
21 inquiry is looking at the statute, the law,
22 the history, all of which was laid out in the
23 memorandum I filed yesterday, and conclude
24 this filing is outside of the two-year

1 period; therefore, there is no discretion,
2 and that makes that whole issue moot. I
3 won't repeat in detail the argument that we
4 filed yesterday. But briefly, the statute
5 does not define the beginning and end of a
6 two-year period that it applies to directly.
7 The language of the statute immediately
8 preceding the two-year rule does suggest that
9 the important dates are the rate orders, not
10 any other dates or events.

11 In the Supreme Court, the
12 Pennichuck case, clearly gives a definition
13 of the two-year period as applying to rate
14 increases. Again, not any other event of the
15 two cases.

16 Last, or almost last, we
17 reviewed -- we don't know what Staff's or the
18 OCA's argument is as to what dates should be
19 looked at in determining whether we're inside
20 or outside the two-year rule.

21 So the rate changes in this case
22 will be outside two years. The rate
23 change -- the temporary rates in the prior
24 rate case were the summer of '17. These will

1 be, roughly now, early '20, which is 2-1/2
2 years separated.

3 The permanent rate order, to the
4 extent that's a different rate change,
5 arguably all reconciled back to temporary
6 rates so it doesn't matter, but the permanent
7 rate order in the last case was the spring of
8 '18. This one will be late in '20. This
9 case will likely resolve November, December
10 of 2020, which is again 2-1/2 years.

11 The only way you get inside two
12 years is to look at a later event in the
13 prior rate case, 17-048. And the later
14 events related to the motion for rehearing
15 that was filed and litigated and resulted in
16 three orders over the summer and fall of
17 2018. If you use those kinds of dates, it
18 adds a level of arbitrariness as to when one
19 company can come back for a rate case after
20 two years versus another. If one case is
21 tied up tightly with the permanent rate order
22 and the effective date of those rates, then
23 they'll be coming back sooner than the next
24 rate case where there is some lingering

1 issue, like the ones in our last rate case,
2 that may drag on for a year or two or three,
3 and that company won't be able to come back
4 in for a rate case for four or five years.
5 And I don't think the statute intends that
6 kind of arbitrariness.

7 Second, we looked through the
8 docket book, which goes back to 2008, to find
9 how many cases were filed less than two years
10 after the prior case ended, and we found a
11 dozen pairs where EnergyNorth filed one case,
12 second case, where the last order in the
13 first case was less than two years before the
14 next filing. A dozen times. Not one of --
15 only one of those cases even raised this
16 issue, and in that case the Commission
17 rejected it out of hand. So there's a clear
18 practice of the Commission to basically
19 follow what we think the law is, that the two
20 years measures the distance between rate
21 changes. And that includes cases that were
22 filed exactly two years apart, where the rate
23 changes are exactly two years apart and the
24 order in the prior case is only six or seven

1 or eight months before the next filing.

2 Again, without comment, and I can
3 give you the list of all those dockets and
4 all those dates, the only case that it was
5 raised in was the argument was over rate case
6 expenses. The OCA filed a motion -- this is
7 in one of the water cases. The OCA filed a
8 motion saying -- or an objection to the rate
9 case expenses, saying they should be reduced
10 to discourage the Company from coming back so
11 soon for a rate case. And they timed it up
12 not with the rate changes, but with the prior
13 final order in one case. And the Commission
14 said no, that's not how we do it. We measure
15 rate changes. And that was order number --
16 it was a Pennichuck water case, Order 25,278,
17 October of 2011. Only nine months had passed
18 from the finishing of the prior case to the
19 filing of that case. Again, the rates -- the
20 effective changes were two years apart or
21 better. So the Commission found that the
22 rule doesn't apply and it's outside the two
23 years.

24 So, for all those reasons, we think

1 it's very clear that the two years that you
2 measure under RSA 378:7 is from the dates of
3 rate changes. The Supreme Court's made it
4 clear. The Commission's followed that
5 practice regularly. And in this case, we are
6 at least 2-1/2 years between rate changes
7 from 17-048 and this docket. So the
8 Commission does not have discretion whether
9 to accept this case or not. So we would
10 object to evidence coming in on that topic
11 because we don't think the Commission should
12 get there.

13 Of course, the other was two pieces
14 to the secondary argument. If you're looking
15 at discretion, there's two pieces to it:
16 Simply, is it a good idea to take this case
17 now? And the second part is: Is there a
18 constitutional requirement to take the case?
19 And as we put out in the motion, we believe
20 that if you are examining that question, a
21 refusal to take this case would trigger the
22 constitutional requirement, given the return
23 on equity that the Company has suffered with
24 over the last two years; given some of the

1 authority that I cite in that memo that, once
2 again, you're required to take this case as a
3 constitutional matter. But again, that's a
4 secondary question. I think we really need
5 to get through the first one of what is
6 measuring two years. The law is clear, and
7 we are outside of two years.

8 CHAIRWOMAN MARTIN: Thank you. So
9 I want to start with your first point, which
10 is that the two-year period has already been
11 met, and just ask how do you address the
12 plain language of the statute when it refers
13 to "investigation"?

14 MR. SHEEHAN: Well, it doesn't
15 define what "investigation" is. It says, "No
16 rate matter shall be investigated within two
17 years." Well, what does that mean? Does
18 that mean the filing of a case? Does that
19 mean the discovery of a case? Does that mean
20 in the 17-048, the litigation of a rehearing?
21 We understand the Commission granted a
22 rehearing and found there were things that
23 needed to be addressed in its order after the
24 fact. Is that all investigation? We don't

1 know. It's interesting that, again, what
2 caused the 17-048 case to extend much longer
3 was a granted Motion for Rehearing. There
4 were some issues that had to be resolved.
5 That's not the Company's fault. That was an
6 order. There was some confusion, or whatever
7 you want to call it. And because of that, if
8 that's the endpoint of the investigation of
9 the last rate case, you're introducing this
10 element of arbitrariness between one case to
11 the next. And again, the Supreme Court's
12 description of what should be measured, rate
13 changes, makes clear that that's what they
14 consider to be the period of investigation.
15 I grant that if there was no history, if
16 there was no case law, we could talk a lot
17 about what "investigate" means. But we have
18 the history, we have the case law, so I think
19 that has been answered.

20 CHAIRWOMAN MARTIN: I'm going to
21 recognize Commissioner Bailey to follow up on
22 that.

23 COMMISSIONER BAILEY: Don't you
24 think investigation has something to do with

1 the balancing between use of the Commission
2 resources and the Company's opportunity to
3 earn a reasonable rate of return? And
4 also -- well, I'll stop there.

5 MR. SHEEHAN: Again, I think the --
6 if we're outside of two years, none of that
7 matters. We have the right to come back in
8 for another rate case. And so it does come
9 back to, and I'm not trying to be circular,
10 the statute does say "shall not be
11 investigated within two years." The Court
12 has told us what that means. So I don't
13 think it is for us to say it means something
14 that the Court said it doesn't mean or
15 something that the Commission has said it
16 doesn't mean in the past. We have history.
17 We have precedent. We need to follow that.
18 At least that's our position. So, yes, in a
19 different world with a different history,
20 could the statute have been interpreted to
21 mean something different? Maybe. But that's
22 not the world we have now. And again, I'm
23 sure you've read it. But the line from the
24 Court is the statute locks the utilities into

1 a two-year period between rate increases.
2 That has nothing to do with motions for
3 rehearing or dates of filing or anything.
4 It's looking at the dates of rate increases.
5 That's what's "investigation," means
6 according to the Court.

7 CHAIRWOMAN MARTIN: I want to
8 follow up on if we were to reach the question
9 of the constitutionality, you said the return
10 of equity that -- and I may not get the quote
11 exactly right -- which suffered under, that's
12 obviously a conclusion. Can you walk me
13 through -- and I don't have the history
14 here -- what you mean by that, and what
15 supports that position?

16 MR. SHEEHAN: Sure. In each rate
17 case, one piece that comes out of it is the
18 Commission approves a return on equity
19 number. And for right now, it's 9.3 percent.
20 The utilities raise money two ways. Of
21 course, we spend millions of dollars on
22 projects, and then we come back and ask that
23 the Commission let us recover for those
24 expenditures. The two sources of money are

1 debt and shareholder money, for lack of a
2 better word. Debt is typically cheaper. Our
3 rate of debt is about 4-1/2 percent. Capital
4 is typically higher. Again, the Commission
5 approved a rate of 9.3 percent. That's the
6 Commission's determination that that's the
7 percentage that shareholders should be
8 able -- have the opportunity to earn to
9 encourage them to invest in utilities. If we
10 were paying 2 percent on our shareholders,
11 they wouldn't give us any money. They'd take
12 their money elsewhere and do something else
13 with it. And that's the whole argument over
14 return on equity which has been litigated
15 here, although often parties do agree on a
16 rate. The rates in this Commission have been
17 in the low to mid 9 percent for some years
18 now. So that's the Commission saying that's
19 a fair return that investors should get for
20 investing with a utility.

21 So we came out of the last rate
22 case with that number, 9.3 percent, on the
23 shareholder portion of our money and the
24 actual 4 percent on the debt, and rates were

1 based on that. So if nothing changed, the
2 rates we received after the rate case would
3 have been enough to pay off our debt at 4
4 percent, all our expenses, and our
5 shareholders at 9. Of course, the day after
6 a rate order is issued, we're continuing to
7 spend money on our system, and we're not
8 getting recovery for that until the next rate
9 case. So, typically the day after a rate
10 order, or even before it's issued, we're
11 starting to slide off of that 9.3 percent.
12 And in this case, it's been 2-1/2 years of
13 investment. I forget the exact number, \$40
14 million, \$50 million we've spent on the
15 system that we're not recovering for. So the
16 money we're bringing in pays our expenses,
17 pays our debt, and what's left over isn't
18 enough to make 9.3 percent. Right now it's
19 five-point something percent. So that's --
20 the taking is that we're not able to pay the
21 shareholders what the Commission said they
22 have the opportunity to pay.

23 Now, it's well known that this is
24 the life of the utility, that this is what

1 happens. But that's why we come back in for
2 rate cases. If this case were dismissed and
3 we had to refile some months from now, that
4 would be another three or four months of not
5 getting the full return, and it would erode
6 further. So the number might be lower by the
7 time we come back in for not a sufficient
8 reason. That's the constitutional argument
9 is that you are taking money without the
10 appropriate process.

11 CHAIRWOMAN MARTIN: Thank you. I
12 understood the constitutionality argument. I
13 was just looking to get sort of the
14 evidentiary basis for you to claim that in
15 this case.

16 MR. SHEEHAN: And that arises from
17 the testimony in this case. I referenced it
18 in the memo I filed yesterday. In this case,
19 we had testimony by Mr. Simek, and I can't
20 remember the consultant's name, for both
21 temporary rates and permanent rates that
22 weighs out all those details, including the
23 rate of return numbers that I referenced and
24 what's actually occurring today.

1 CHAIRWOMAN MARTIN: I guess a point
2 of clarity then. Are you asking us to rely
3 on the prefiled testimony in the rate case
4 for purposes of this argument?

5 MR. SHEEHAN: I guess I am. And if
6 we need Mr. Simek to say, "I adopt my
7 temporary rate testimony," we can -- that
8 would be evidence we could easily put on.

9 (Commissioners confer off the record.)

10 CHAIRWOMAN MARTIN: I think if
11 you'd like to rely on that as evidence today,
12 you should put it in as evidence. And we
13 also do have questions from both of the
14 Commissioners to follow up with as well.

15 MR. SHEEHAN: With the witness or
16 with me?

17 CHAIRWOMAN MARTIN: With you. And
18 to the extent you're going to rely on
19 evidence or a witness, I think we should get
20 that in, and then you can ask your questions.

21 MR. SHEEHAN: Mr. Simek.

22 CHAIRWOMAN MARTIN: Actually,
23 Commissioner Bailey would like to just ask
24 you on your argument first.

1 MR. SHEEHAN: Sure.

2 CHAIRWOMAN MARTIN: The witness can
3 take a seat, though.

4 STATEMENTS/QUESTIONS BY COMMISSIONERS:

5 COMMISSIONER BAILEY: It sounded to
6 me like your argument about the
7 constitutional taking boils down to you have
8 a right to the guaranteed authorized rate of
9 return. And my understanding has always been
10 that you have the opportunity to earn that
11 return.

12 Do you think the Company has any
13 obligation to make good investments, to
14 operate the Company efficiently and keep
15 costs at a certain level in between rate
16 cases, or you get authorized a rate of
17 return, and if you don't make that in six
18 months, you're back in here for another rate
19 case?

20 MR. SHEEHAN: It is well
21 established that it's not a guaranteed rate
22 of return. I was careful to say that it's
23 the opportunity to earn that. And part of
24 the rate case is to determine those questions

1 you just mentioned: Has the Company been run
2 well since the last rate case? I will point
3 out that roughly our operating expenses from
4 this case are roughly the same as the last
5 case. So in 2-1/2 years, our O&M costs have
6 stayed relatively flat, which means we are
7 continuing to grow, continuing to do more,
8 but with the same people and the same costs.
9 What is driving this rate case, again at a
10 high level, is the tens of millions of
11 dollars -- and simply, 'cause I don't
12 remember the numbers, it's \$30 or \$40 million
13 that we have spent on our system since the
14 last rate case. That's money we've laid out
15 and are not recovering. Property taxes have
16 gone up substantially. That is something we
17 don't have control over. We have a little
18 control over, but not much. And there's some
19 adjustments we think need to be made to the
20 decoupling mechanism that was approved in the
21 last case. That's what's driving this case.
22 It's not like we hired 150 people that we
23 can't pay for. That's not the case. So,
24 yes, if we spend money on capital projects

1 and the rates aren't enough to recover those
2 and the Commission does not allow us to
3 increase those rates, that is a
4 constitutional taking. The 9.3 percent is
5 certainly a target. It's what we're allowed
6 to earn. And it's a measure. If we were
7 earning 9.1 percent, we wouldn't be here, and
8 you would be right; that's not enough. There
9 is no bright line when the actual return
10 automatically becomes a taking. But this
11 change, the gap from 9.3, which is authorized
12 to I think it's 5.8, was the effective rate
13 on return on equity in the rate case is
14 substantial. And if you go through rate
15 cases here, there have been many cases that
16 have been in that situation. So here we are
17 outside of the two years asking for rates.
18 And if the Commission says no, that runs a
19 risk of a finding of a taking.

20 COMMISSIONER BAILEY: So,
21 basically, then, it all depends on the level
22 of investments that you've made and --

23 MR. SHEEHAN: That's certainly the
24 main driver. Correct.

1 COMMISSIONER BAILEY: And property
2 taxes are an increase in expenses; right?

3 MR. SHEEHAN: Fair enough. Yes. I
4 guess I would characterize what I said before
5 by expenses that we have control over, how
6 many people we hire, how many paper clips we
7 buy and that kind of thing. Property taxes,
8 again, we can challenge them to a point. But
9 towns do a pretty good job. So there's
10 limited room there to keep property taxes
11 flat.

12 COMMISSIONER BAILEY: And just one
13 more follow-up on something that you said
14 about the 12 times in the docket book that
15 you found that the Commission investigated
16 rates within two years of an order or
17 whatever. Don't you think that it's possible
18 that the Commission used its discretion in
19 those instances?

20 MR. SHEEHAN: Obviously it did.
21 But I can tell you I read those orders. This
22 statute, the two-year rule, was not mentioned
23 once, except for that one order I referenced.
24 Every other time -- I read through the Order

1 of Notice, the Temporary Rate Order, the
2 Final Rate Order. Not one mention of we are
3 consciously exercising our discretion to let
4 them come in inside of two years. So that's
5 all I can say is that it's silent.

6 CHAIRWOMAN MARTIN: Commissioner
7 Giaimo.

8 COMMISSIONER GIAIMO: Thank you.

9 So I left the 17-048 hearing thinking a
10 future rate case wouldn't happen until 2020,
11 for effect in 2021. At least that's my
12 recollection. Is my recollection flawed?
13 Did the Company suggest coming in in three
14 years and not the 2-1/2 years you suggested?

15 MR. SHEEHAN: You are correct. And
16 conditions changed. Simple as that. But you
17 are correct.

18 COMMISSIONER GIAIMO: Thank you.

19 CHAIRWOMAN MARTIN: Okay. Ms.
20 Robidas, can you swear in the witness,
21 please.

22 (WHEREUPON, DAVID B. SIMEK was duly
23 sworn and cautioned by the Court
24 Reporter.)

1 DAVID B. SIMEK, SWORN

2 DIRECT EXAMINATION

3 BY MR. SHEEHAN:

4 Q. Mr. Simek, could you state your name and
5 position with the Company.

6 A. David Simek, and I'm a manager within the
7 Rates and Regulatory Affairs Department.

8 Q. And how long have you been with Liberty
9 Utilities?

10 A. Six and a half years.

11 Q. And has it been in the Rates and Regulatory
12 Department the entire time?

13 A. Yes.

14 Q. Did you prepare testimony that was filed in
15 this docket?

16 A. Yes.

17 Q. And your name is on at least two pieces of
18 testimony, the testimony of Dave Simek and
19 Ken Sosnick in support of temporary rates,
20 and you and Mr. Sosnick in support of
21 permanent rates; is that correct?

22 A. Yes, it is.

23 Q. Focusing on the first, your testimony appears
24 at Bates Page II-001 and thereafter; is that

1 correct?

2 A. Yes.

3 Q. And can you give me a high-level description
4 of what the purpose of that testimony is?

5 A. The purpose of this testimony was to request
6 temporary rates that would allow the Company
7 to achieve the return that was approved in
8 DG 17-048.

9 Q. And your testimony includes a number of
10 tables, and towards the last 30 or 40 pages,
11 tariff pages red-lined; is that correct?

12 A. Yes.

13 Q. And what are the red-lined changes in the
14 tariff that are attached to your temporary
15 testimony? Let me ask it a direct way.

16 Those are the rate changes that are
17 proposed in your testimony that are
18 incorporated into the tariff; is that
19 correct?

20 A. Yes.

21 Q. You heard the discussion between me and the
22 Commission just now about the approved rate
23 and ROE, return on equity, and the actual
24 ROE. Do you recall that?

1 A. Yes.

2 Q. Can you tell me what the Company's ROE was at
3 the time the test year ended? Well, first
4 question: When did the test year for this
5 rate case end?

6 A. The test year ended on June 30th, 2019.

7 Q. And is it correct to say that at that point,
8 your testimony takes a snapshot of where the
9 Company is and builds its rate case on that?

10 A. Yes.

11 Q. And so it doesn't include events that have
12 happened since then.

13 A. Correct.

14 Q. And did you calculate the actual ROE the
15 Company was earning as of the end of the test
16 year?

17 A. Yes.

18 Q. And what was that?

19 A. Five point one four percent.

20 Q. Is that the ROE or is that the blended ROE
21 and debt?

22 (Witness reviews document.)

23 A. Yes, I'm sorry, that is the return on rate
24 base.

1 Q. Was I correct in saying that that figure, the
2 5.1 percent you just -- let me back up.

3 We referred to two numbers in this
4 arena. One is the return on rate base. And
5 does that number include both the payment of
6 the debt and the payment to shareholders?

7 A. Yes, it does.

8 Q. And the payment to each of those are
9 different numbers?

10 A. Correct.

11 Q. And there's one debt number and one return on
12 equity number; correct?

13 A. Yes.

14 Q. And you mentioned -- or what was the approved
15 ROE as of the filing of this case?

16 A. Nine point three percent.

17 Q. And let me ask it in two pieces then. What
18 was the combined return on rate base that
19 includes both the ROE and the payment of the
20 company's debt?

21 (Witness reviews document.)

22 A. As of the end of the test year?

23 Q. Correct.

24 A. That was 5.14 percent.

1 Q. And what would the approved return on rate
2 base have been if you took the approved
3 9.3 percent return on equity and the actual
4 cost of debt? So we're at 5.14. What,
5 quote, unquote, should we have been at?

6 A. Six point eight six percent.

7 Q. Now, if you pull out the ROE portion of that,
8 we have the opportunity to earn 9.3 percent.
9 What were we actually earning as of the close
10 of the test year?

11 A. That's what I'm still trying to find.

12 Q. Okay.

13 (Witness reviews document.)

14 Q. I'm advised by the smart person to my right
15 that it's actually not carved out of the
16 filing, that we don't actually break out the
17 return on equity from the combined rate of
18 return. Does that sound correct?

19 A. Yes.

20 Q. And is that a number, the number that I said
21 in my legal argument of I think 5.8 percent,
22 is that something that can be calculated from
23 what is in the filing?

24 A. I believe so, yes.

1 Q. Okay. I won't ask you to do it now because
2 that breaks all the rules of testifying. But
3 could you do a calculation and present it to
4 the Commission as sort of a record request
5 that confirms what the actual return on
6 equity portion of the rate of return was at
7 the end of the test year?

8 A. Yes.

9 MR. SHEEHAN: I have no further
10 questions.

11 CHAIRWOMAN MARTIN: Thank you.
12 Commissioner Bailey.

13 That's right. Does anyone else
14 have questions for this witness? Mr. Kreis.

15 MR. KREIS: Thank you, Chairperson
16 Martin. Just a few questions for the
17 witness.

18 CROSS-EXAMINATION

19 BY MR. KREIS:

20 Q. Good morning, Mr. Simek.

21 A. Good morning.

22 Q. I want to refer back to the colloquy that
23 took place a few minutes ago between
24 Commissioner Giaimo and your attorney. Did

1 you hear that colloquy?

2 A. Yes.

3 Q. And as I recall, Commissioner Giaimo asked
4 Attorney Sheehan about what changed or why
5 the Company decided that, even though it
6 hadn't planned on filing a rate case until
7 2020, for effect in 2021, the Company has
8 filed a rate case sooner than it had
9 previously anticipated. And when
10 Commissioner Giaimo said why did that happen,
11 Mr. Sheehan's answer, as I recall, was
12 "Conditions changed." Do you recall him
13 saying that?

14 A. Yes.

15 Q. What conditions changed?

16 A. The rate that the Company was not earning its
17 fair share continued to grow. And it grew
18 faster based on -- driven primarily based on
19 our capital investment, and it came quicker
20 than we had initially thought that we would
21 be at at that stage.

22 Q. Well, at the risk of being argumentative,
23 that is a description of the results of
24 conditions that might have changed, isn't it?

1 A. I'm not sure I understand the question.

2 Q. Well, just to recap, Mr. Sheehan said
3 "Conditions changed." And I asked what
4 conditions changed, and the answer you gave
5 was, well, the Company isn't earning its
6 allowed rate of return. So my question is:
7 What really drives the fact that the Company
8 is not earning its allowed rate of return?

9 A. A large portion of that has to do with the
10 capital investments that the Company had
11 made.

12 Q. Okay. Capital investments. Thank you for
13 raising that issue. It is true, is it not,
14 that in Docket No. 17-198, this Company filed
15 a petition in late 2017 that, if granted,
16 would have resulted in the recoverable rate
17 base in the Commission -- for this utility,
18 more than doubling?

19 MR. SHEEHAN: Objection. That
20 refers to the Granite Bridge Project. That
21 has not been built, and it has not been
22 requested to put in rates. And frankly, it
23 has nothing to do with our current earnings.

24 MR. KREIS: Well, okay. At the

1 risk of again sounding argumentative, one
2 point I would like to make to the Commission,
3 and I don't know whether it needs to be made
4 via this witness or not, is that one of the
5 conditions that changed is this: The Company
6 filed a proposed --

7 CHAIRWOMAN MARTIN: Can I just
8 interrupt? Are you responding to the
9 objection?

10 MR. KREIS: Yes.

11 CHAIRWOMAN MARTIN: Okay.

12 MR. KREIS: I guess you could say
13 it's on the order of an offer of proof.

14 The Company filed a proposed
15 procedural schedule in Docket 17-198 that
16 would have led to a hearing in November of
17 2018. Now, I know the Commission sometimes
18 takes a while to issue orders. But I'm
19 guessing that, had the Commission held a
20 hearing on the Granite Bridge Project in
21 November 2018, we would have a decision by
22 now, which means potentially the Company
23 would have experienced a large increase in
24 its recoverable rate base. That would have

1 changed the financial picture of the Company
2 pretty significantly; right? So that docket
3 is now in limbo, to be charitable. And so
4 the Company has experienced, I think, a
5 drastic revision in its future financial
6 prospects, and I think that's part of what
7 must be driving it back here to file a rate
8 case far earlier than it previously
9 anticipated. I think these things are
10 germane to the question of whether you
11 exercise your discretion to allow this
12 company to litigate a rate case sooner than
13 two years after it litigated the last rate
14 case.

15 MR. SHEEHAN: In response, even if
16 the hearing had gone forward in Granite
17 Bridge in December and an order approving it
18 came out today, that project would probably
19 not be built for three or four years because
20 we still had to go through the Site
21 Evaluation Committee. So we wouldn't be back
22 here asking for rates related to Granite
23 Bridge until 2024 or 2025. So it's simply
24 speculative and not relevant to the arguments

1 we're making here today.

2 (Commissioners confer off the record.)

3 CHAIRWOMAN MARTIN: Sorry for that
4 delay. Obviously, I don't have the history
5 that the other commissioners do on this. And
6 the Commission believes that it has what it
7 needs on that point and you've made your
8 point. And if you could move on, that would
9 be appreciated.

10 MR. KREIS: Thank you.

11 BY MR. KREIS:

12 Q. Mr. Simek, has the interest rate climate in
13 the national economy changed since the
14 conclusion of its last rate case?

15 A. I believe interest rates have climbed up,
16 yes.

17 Q. How significantly have they climbed up?

18 A. I don't know. I don't have that information
19 in front of me.

20 Q. Okay. Are you familiar with the Commission's
21 final order in the last rate case, 17-048?

22 A. I'm familiar with it, yes.

23 Q. Were there any aspects of that order that the
24 Company was displeased with or disagreed

1 with?

2 A. I believe there were parts of the order that
3 the Company felt wasn't exactly what we were
4 hoping to get, yes.

5 Q. Can you give me an example or two?

6 MR. SHEEHAN: Again, I'm not sure
7 the relevance of what parts of the prior
8 order we liked and didn't like. And the
9 record's pretty clear. We reached a
10 settlement agreement with the OCA, and the
11 order that came out was different than that
12 settlement order. So it's really not -- I
13 don't see the relevance of asking Mr. Simek
14 the Company's position and thoughts on a
15 prior rate case order.

16 MR. KREIS: Well, the relevance is
17 this: The Company relies on a New Hampshire
18 Supreme Court case called "Appeal of Gas
19 Service, Incorporated" that was reported at
20 Page 602 of Volume 121 of the New Hampshire
21 Reports. That's a case that was decided in
22 1981, a time, by the way, at which this
23 country was experiencing its highest interest
24 rates in its history. And we are not in such

1 a period now. But more to the point, one of
2 the issues in the Appeal of Gas Service case
3 was the claim that what the Company in that
4 case was doing back in 1981 was essentially
5 filing a rehearing motion late. It didn't
6 like certain things about the preceding
7 decision of the Public Utilities Commission.
8 Rather than file a rehearing motion that was
9 timely, it basically waited and then filed a
10 whole additional rate case. And that created
11 a certain degree of displeasure, I think
12 certainly on the part of my predecessor, and
13 I think at the Commission, too.

14 I think that there's at least an
15 argument to be made here. And again, you
16 know, the problem or the issue is that this
17 is a question consigned to your discretion.
18 So we're not here today to litigate the rate
19 case that this company has filed. We will go
20 through the investigation, we'll conduct
21 discovery, we'll test the veracity of the
22 claims made in Mr. Simek's testimony. I'm
23 not prepared to cross-examine him today on
24 the details of his testimony about either

1 permanent or temporary rates. The question
2 really is what issues are germane to your
3 exercise of discretion to let this company in
4 for a rate case sooner than you are required
5 to let them in under the statute. And I
6 think that there is an element here of this
7 company simply not liking some of the things
8 that you did to it, in addition to the
9 concessions they made in the settlement
10 agreement back in 17-048. I think those
11 questions are germane to your exercise of
12 discretion.

13 CHAIRWOMAN MARTIN: I'm going
14 overrule the objection.

15 MR. KREIS: So I think the question
16 for Mr. Simek is what specific aspects of
17 17-048, again, the Commission's decision,
18 were you unhappy with -- "you" meaning the
19 Company.

20 MR. SHEEHAN: And again, if I can
21 interject one more objection. Mr. Simek does
22 not speak for the Company. He is an employee
23 of the Company that may have thoughts or
24 opinions about the rate case order, but he is

1 really not the one qualified to say what the
2 position of the Company was in response to
3 the last rate case order.

4 And again, this is -- the Gas
5 Service Case rejected the arguments that Mr.
6 Kreis just recited. They did not find that
7 the second rate case was a rehashing of the
8 prior one. The argument was made, but that
9 was rejected by the Gas Service case. In
10 fact, they said that's not the case. These
11 people are subject -- this company is subject
12 to a constitutional taking, and they made an
13 order accordingly.

14 MR. KREIS: Well, you know, again,
15 as I just pointed out, I think that case
16 arose in a vastly different economic climate
17 than the one that we experience today. I
18 mean, in 1979 and 1980 and 1981, interest
19 rates were climbing by the minute. So there
20 was a much greater possibility that, even
21 within a period of weeks, you know, rates
22 could become confiscatory in some sense.
23 You're looking at a scenario where interest
24 rates at some point in 1979 were, you know --

1 this is the federal funds rate -- were below
2 10 percent, and then mid-1981, right about
3 the time when the Supreme Court was making
4 its decision, they were above 22 percent. So
5 of course you have a scenario there where the
6 Court might have looked at the way the
7 Commission exercised its discretion
8 differently than the way the Court would look
9 now.

10 As to the question of whether Mr.
11 Simek is qualified to answer the question
12 that I just posed, well, I didn't choose to
13 put Mr. Simek on the stand as the
14 representative of the Company. If he is in a
15 position -- if he is not in a position to
16 articulate what it is about the previous rate
17 case order the Company doesn't like, then I
18 would respectfully suggest the Commission ask
19 Mr. Sheehan to put a witness on the stand who
20 is prepared to answer that question.

21 MR. SHEEHAN: Again, I don't see
22 the relevance. If you want to find at a
23 hearing someone that could speak for the
24 Company of what they didn't like about the

1 past rate case, I don't know where that gets
2 you, but Mr. Simek's not the person.

3 CHAIRWOMAN MARTIN: Well, I think
4 what might be helpful is just to remind Mr.
5 Simek that he should testify to information
6 and evidence that he has. And if he can't
7 answer a question, he should say that.

8 WITNESS SIMEK: Okay.

9 CHAIRWOMAN MARTIN: Would you
10 restate the question, and then we can see if
11 the witness can answer it from his own
12 evidence.

13 MR. KREIS: Thank you.

14 BY MR. KREIS:

15 Q. The question was what aspects of the
16 Commission's determination in 17-048, the
17 previous rate case, does the Company disagree
18 with?

19 A. Just following Mr. Sheehan's suggestion, I
20 don't believe I'm the right person to speak
21 for the Company.

22 Q. But --

23 CHAIRWOMAN MARTIN: Do you want to
24 rephrase your question?

1 BY MR. KREIS:

2 Q. Chairperson Martin just reminded you that
3 your obligation is to answer questions based
4 on what you know. Do you know what aspects
5 of 17-048 have displeased your employer?

6 A. I'm aware of the methodology that we used to
7 calculate the year-end customer count within
8 that case, that we didn't agree that the
9 methodology was the appropriate way to do
10 that calculation.

11 Q. So I want to make sure I understand the
12 interest -- the answer you just gave.

13 You, meaning Liberty Utilities or
14 EnergyNorth Natural Gas, d/b/a Liberty
15 Utilities, disagreed with or didn't like the
16 way that the Commission ordered you to
17 determine the customer count for purposes of
18 your rates?

19 A. Correct. We felt that there was a better way
20 to do that calculation.

21 Q. So you just simply -- you, meaning Liberty,
22 disagreed with that decision of the
23 Commission.

24 A. Well, we agreed with the Commission because,

1 again, we followed the order. We just felt
2 that there may have been a better way to do
3 it.

4 MR. KREIS: Okay. I don't think I
5 need to belabor this point with this
6 witness --

7 CHAIRWOMAN MARTIN: Thank you.

8 MR. KREIS: -- particularly because
9 you just made the Chairperson smile. And I
10 think those are all the questions I have.
11 Thank you, Mr. Simek.

12 CHAIRWOMAN MARTIN: Thank you.

13 Mr. Dexter.

14 MR. DEXTER: I have a few questions
15 for the witness since I have the opportunity.

16 CROSS-EXAMINATION

17 BY MR. DEXTER:

18 Q. Mr. Simek, Attorney Sheehan mentioned a
19 figure of \$50 million in investments, and I
20 think he said since the last rate case. And
21 I think he said since the test year in the
22 last rate case -- well, let me ask you. And
23 then he also said he wasn't sure it was
24 \$50 million. I'd like to ask a little bit

1 about that.

2 Do you know what the actual figure is
3 and what the time period is that Mr. Sheehan
4 was referring to?

5 (Witness reviews document.)

6 A. I'm just looking through a little bit of the
7 testimony from the Furey, Frost and Tebbetts
8 testimony, where I would think the number, if
9 it's found anywhere, would be there.

10 MR. SHEEHAN: I'm hearing that my
11 client -- that my witness does not know the
12 answer to the question. And I respectfully
13 ask that we have -- again, if Mr. Dexter
14 wants to get an accurate number, he finds
15 somebody else to provide the right number.
16 So I object.

17 CHAIRWOMAN MARTIN: Do you have
18 anyone present today who can answer that
19 answer?

20 MR. SHEEHAN: Ms. Tebbetts is here
21 today. And if that number is in her
22 testimony, and I don't know that because this
23 is certainly not what we expected to do
24 today, she would be able to pull that number

1 out of her testimony.

2 MR. DEXTER: For the record, it
3 appears that the number is on Bates Page
4 Roman Numeral II-175.

5 (Commissioners confer off the record.)

6 CHAIRWOMAN MARTIN: Then I think we
7 agree with Attorney Sheehan that we need to
8 put on the other witness.

9 MR. DEXTER: I'm happy with -- Mr.
10 Frink has found the number for me in the
11 record, and he was going to testify about it
12 anyway. So I'm happy to move forward without
13 having Ms. Tebbetts take the stand.

14 CHAIRWOMAN MARTIN: Okay. Thank
15 you.

16 BY MR. DEXTER:

17 Q. So of the \$50 million in investments, or
18 \$49.9 million in investments, would that
19 include investments in the Company's Cast
20 Iron and Bare Steel Program, commonly
21 referred to as "CIBS"?

22 (Witness reviews document.)

23 A. It appears by reading what's on that page,
24 Volume II-175, that of that amount,

1 \$12,293,905 was related to the CIBS program.

2 Q. And isn't there in fact a separate rate
3 mechanism for recovering CIBS investments
4 outside of general rate cases?

5 A. Currently there is, yes.

6 Q. And the last CIBS increase took effect
7 July 1st, 2019; is that correct?

8 A. Yes.

9 Q. And the Company's planning on making a CIBS
10 filing for effect July 1st, 2020; is that
11 correct?

12 A. Yes.

13 Q. Okay.

14 (Mr. Dexter and Mr. Frink conferring.)

15 Q. I have one more question on this. And I
16 recognize this is not your testimony, but on
17 that page we were referencing, it says
18 12.2 million of the CIBS program was not
19 included in the proposed revenue requirement
20 as it's recovered separately. The sentence
21 before that says that the total
22 expenditures -- investments during the test
23 year are 24.4 million.

24 So do you know, of the 12 million, is

1 that the test year number, or is that out of
2 the 49.9 million number?

3 A. It appears that that came out of the
4 24.4 million.

5 Q. And that's typically been the Company's
6 annual investment in CIBS, been in the \$10-
7 to \$12 million range; correct?

8 A. Correct.

9 Q. Does that \$50 million also include
10 investments related to growth projects?

11 A. I believe the sentence above that says that
12 it's non-growth-related capital investments.

13 CHAIRWOMAN MARTIN: Mr. Dexter,
14 since we are getting into the testimony of a
15 witness who is present, I think it would be
16 preferable to have her join as a witness on
17 the stand.

18 MR. DEXTER: Okay. That was the
19 last question I had, and I'm ready to move on
20 to another topic. But if the -- but I have
21 no objection to the actual witness taking the
22 stand. That's fine.

23 (Commissioners confer off the record.)

24 MR. DEXTER: Chairwoman, I think we

1 do have additional questions, having
2 conferred with Mr. Frink. I would like to
3 clear up this question of whether or not the
4 \$50 million includes growth projects.

5 MR. SHEEHAN: And I object. The
6 purpose of putting the witness on the stand
7 was to get into evidence the 5.86 percent
8 number I mentioned, and now we have detoured
9 into essentially some rate case conversations
10 about other topics. And I'm not sure the
11 relevance of that to whether our case was
12 filed within two years under the statute.

13 MR. DEXTER: May I respond?

14 (Commissioners confer off the record.)

15 CHAIRWOMAN MARTIN: The Commission
16 would find it helpful to have this witness
17 on. You hadn't object before, and the
18 Commissioners do have questions based upon
19 the questions leading up to this and the
20 reference of this witness to the testimony of
21 the other witness. So I understand your
22 objection and would ask that you reconsider
23 your objection and put this witness on, as
24 you had indicated you would before.

1 MR. SHEEHAN: You mean the other
2 witness.

3 CHAIRWOMAN MARTIN: Yes.

4 MR. SHEEHAN: Ms. Tebbetts.

5 CHAIRWOMAN MARTIN: Yes, because
6 your witness is relying on some of her
7 testimony --

8 MR. SHEEHAN: Correct.

9 CHAIRWOMAN MARTIN: -- and we would
10 like to have the opportunity to ask questions
11 about that. And these other commissioners
12 also have questions.

13 MR. SHEEHAN: Okay.

14 CHAIRWOMAN MARTIN: So we would ask
15 that the witness, Ms. Tebbetts, also come to
16 the stand.

17 MR. SHEEHAN: So we're not done
18 with Mr. Simek?

19 CHAIRWOMAN MARTIN: I think it may
20 be helpful to have them both at the same
21 time --

22 MR. SHEEHAN: Fair enough.

23 CHAIRWOMAN MARTIN: -- since they
24 seem to inter-relate and rely on each other's

1 testimony, which puts all of this out of
2 order. I understand. But I think it would
3 be most helpful.

4 MR. SHEEHAN: Ms. Tebbetts.

5 May I approach?

6 CHAIRWOMAN MARTIN: You may.

7 (WHEREUPON, HEATHER M. TEBBETTS was
8 duly sworn and cautioned by the Court
9 Reporter.)

10 HEATHER M. TEBBETTS, SWORN

11 MR. SHEEHAN: I guess I should
12 introduce her, even though I don't have
13 questions for her.

14 CHAIRWOMAN MARTIN: We'll go back
15 to you, Mr. Sheehan.

16 MR. SHEEHAN: Sure.

17 DIRECT EXAMINATION

18 BY MR. SHEEHAN:

19 Q. Ms. Tebbetts, your name, please, and your
20 position at Liberty?

21 A. (Tebbetts) Yes. My name is Heather Tebbetts,
22 and I'm the manager of Rates and Regulatory
23 Affairs at Liberty Utilities.

24 Q. How long have you been with the Company?

1 A. (Tebbetts) Five years.

2 Q. And have you been in the Regulatory
3 Department those entire five years?

4 A. (Tebbetts) Yes.

5 Q. That's all I have.

6 CHAIRWOMAN MARTIN: Okay. If you
7 can proceed with your questions, then we'll
8 find out if Mr. Kreis has any follow-up
9 questions for this witness.

10 MR. DEXTER: Thank you.

11 CROSS-EXAMINATION

12 BY MR. DEXTER:

13 Q. So, Ms. Tebbetts, we were discussing Roman
14 Numeral II-175 of your testimony, and I was
15 simply using this to shed some light on the
16 \$50 million of capital investments that
17 Attorney Sheehan had mentioned. And I had a
18 pending question for Mr. Simek which was:
19 Does the \$50 million that was invested since
20 the last rate case include growth-related
21 investments?

22 (Witness reviews document.)

23 A. (Tebbetts) And the question you're asking me,
24 I hate to say this on the stand because

1 you've asked me to come up here, I have to go
2 back and look at my calculations on that. I
3 can tell you that the 24.4 million that was
4 noted earlier does not include growth. So I
5 just need to go back and look. I don't have
6 that in front of me, the full calculation of
7 the 49.9.

8 Q. If I directed you to Pages 178 and 179, where
9 there's a paragraph called "Growth," would
10 that help?

11 A. (Tebbetts) I'm there, but let me just quickly
12 review, please.

13 Q. Sure.

14 (Witness reviews document.)

15 A. (Tebbetts) The description of these projects
16 just provides information about what we've
17 done, main replacements. What I can do is I
18 can offer to find that number for you today.
19 Again, I don't have it in front of me at the
20 moment. And so I can take that certainly as
21 a record request today and get that back to
22 you if that would work for the parties here.

23 MR. DEXTER: I would be happy to
24 have the answer as a record request. And it

1 appears to me, anyway, that the information
2 on Pages 178 and 179 deal with 2018, I think.
3 My reading of the testimony is that it
4 includes main extensions and plastic mains to
5 support growth. So I think the answer is
6 yes. But if the witness needs to verify
7 that, that's fine.

8 I also would point out that on
9 Pages 181 and 182, there's another section
10 for 2019 that's labeled "Growth" that talks
11 about growth projects. But Mr. Frink will
12 testify to the point as well, but --

13 CHAIRWOMAN MARTIN: Do you have a
14 question that you think might help get the
15 witness there? Otherwise, we can take it as
16 a record request.

17 MR. DEXTER: Well, I'm simply
18 trying to establish the point that, of the
19 investments that the Company has -- the
20 Company mentioned three reasons for this rate
21 case coming in when it did, one of which was
22 primarily they said capital investments. My
23 point is that the CIBS investments have a
24 special rate mechanism recovery and that

1 growth investments generate revenue which the
2 Company keeps between rate cases. So I just
3 wanted to make that point, and I was trying
4 to do it through the witnesses. But Mr.
5 Frink will make the point, and I think we can
6 move on.

7 CHAIRWOMAN MARTIN: Okay. Thank
8 you.

9 BY MR. DEXTER:

10 Q. The third item that Attorney Sheehan
11 mentioned for the reasons for the rate case
12 had to do, and maybe it was Mr. Simek that
13 said it -- it was characterized as something
14 like "problems with the decoupling
15 mechanism." Maybe I don't have that wording
16 exactly right. But do you recall Mr. Sheehan
17 saying that, that the third reason was some
18 issues, I think he said with the calculation
19 of the decoupling mechanism?

20 A. (Simek) I must have missed when Mr. Sheehan
21 said that. But if he did, okay.

22 MR. DEXTER: Okay. Well, I don't
23 want to put a third witness up, but I think
24 it's in Mr. Mullen's testimony. And I can

1 point to the page.

2 Let me ask Mr. Simek this question,
3 which doesn't need to get into the substance
4 of that. If I can point out that that was an
5 issue, I can ask him a question without
6 getting into the substance of the issue.

7 So there is a section in Mr.
8 Mullen's testimony, starting at Page 210,
9 entitled, "Timing of Rate Case Filing," and
10 there's a discussion there about the
11 interplay between the year-end customer
12 adjustment and the Company's decoupling
13 mechanism. And what it says specifically is,
14 "In addition to those factors, there are
15 financial impacts related to the
16 implementation of decoupling that have
17 negatively impacted the Company." And I
18 don't need to get into the substance of the
19 issue regarding the implementation of
20 decoupling, but I wanted to ask Mr. Simek
21 that decoupling --

22 BY MR. DEXTER:

23 Q. The effects of decoupling are collected
24 through the LDAC; correct?

1 A. (Simek) Correct.

2 Q. So that if there were a problem with the
3 mechanism of the decoupling mechanism, that
4 could be addressed in an LDAC proceeding
5 rather than a base rate proceeding; correct?

6 A. (Simek) Correct.

7 Q. Mr. Simek, your temporary rate testimony,
8 we're talking about what the Company earned
9 versus what they were allowed. And I'll find
10 the schedule in a minute. It's Roman Numeral
11 II-113. The last number in the bottom
12 right-hand corner of that page is 6.06. And
13 I think you characterized that -- 6.86. And
14 I think you characterized that as what the
15 Company was allowed to earn on rate base as a
16 result of the last rate order; is that right?

17 A. (Simek) Which page?

18 Q. Roman Number II-13. It's your calculation of
19 the temporary rate deficiency -- or the
20 temporary rate increase request, I should
21 say.

22 (Witness reviews document.)

23 A. (Simek) Correct. To your question, yes.

24 Q. Okay. The order in DG 17-048 at Appendix 1

1 has the allowed rate of return at
2 6.80 percent rather than 6.86 percent. Can
3 you explain the difference between those two
4 numbers?

5 A. (Simek) Correct. Yes, the Company had used
6 the actual debt rate that we're at now with
7 the approved 9.3 percent ROE that was
8 approved in 17-048.

9 Q. And what capital structure was used?

10 A. (Simek) The same capital structure that was
11 approved in 17-048 of 50/50.

12 Q. So you simply updated it for latest debt
13 costs.

14 A. (Simek) Correct.

15 Q. Okay. Thank you.

16 MR. DEXTER: That's all I have for
17 Mr. Simek. Thanks.

18 CHAIRWOMAN MARTIN: Okay.

19 MR. DEXTER: And Ms. Tebbetts.

20 CHAIRWOMAN MARTIN: Thank you. We
21 have to go a little bit out of order here
22 because Mr. Kreis has not had an opportunity
23 to address Ms. Tebbetts.

24 MR. KREIS: I have no questions for

1 Ms. Tebbetts.

2 CHAIRWOMAN MARTIN: Excellent.

3 Thank you.

4 MS. TEBBETTS: If I may have the
5 opportunity to address Mr. Dexter's, excuse
6 me, question, I believe I have found the
7 answer, if you would like to address it now
8 versus later?

9 MR. DEXTER: I would be happy to
10 get an answer now.

11 CHAIRWOMAN MARTIN: Okay. That
12 would be great.

13 MS. TEBBETTS: Okay. Thank you.

14 I just want to pull the testimony
15 on that page. Excuse me.

16 (Witness reviews document.)

17 MS. TEBBETTS: Okay. As I look
18 back in what we put together for information
19 for this filing, noted on Line 5 of Bates
20 Volume II-175, we note, "Since then, the
21 Company has spent \$49.9 million on capital
22 investments during calendar year 2018." That
23 is the amount we've spent in 2018, which
24 included growth.

1 I think the sentence reads
2 awkwardly, and it probably should be revised,
3 because we spent \$24.4 million in the first
4 six months of 2019, which is the second half
5 of our test year, and that also includes
6 growth. So what I provided for information
7 was 18 months of information, primarily to
8 provide the view of what we've done since our
9 last rate case, essentially, although our
10 test year is a split test year from July 2018
11 through June of 2019. I hope that answers
12 your question.

13 MR. DEXTER: Can I ask a follow-up
14 clarification on the 24.4 million?

15 CHAIRWOMAN MARTIN: You may.

16 MR. DEXTER: What exact period is
17 the 24.4 million related to?

18 MS. TEBBETTS: It is the first six
19 months of 2019; so, January 1, 2019 through
20 June 30th, 2019.

21 MR. DEXTER: Okay. Thanks. That's
22 helpful. And I think that obviates the need
23 for the record request, from my perspective,
24 anyway.

1 CHAIRWOMAN MARTIN: Okay. Great.
2 Commissioner Bailey.

3 STATEMENTS/QUESTIONS BY COMMISSIONERS:

4 BY CMSR. BAILEY:

5 Q. I'm sorry. I missed that last colloquy, and
6 so I may be repeating the question. But it
7 looks to me like the testimony says that you
8 spent about 50 million total during calendar
9 year 2018 and the first six months of 2019.
10 Is that right?

11 A. (Tebbetts) Yes, that's what the testimony
12 says.

13 Q. Is that incorrect?

14 A. (Tebbetts) Yes.

15 Q. So you spent, between 2018 and the first six
16 months of 2019, almost \$75 million in capital
17 investment?

18 (Witness reviews document.)

19 A. (Tebbetts) Yes. That includes growth.

20 Q. Because the way I read it was you spent
21 49 million over 18 months, but for the test
22 year, the split test year that you have, you
23 counted 24 million of that.

24 A. (Tebbetts) I understand that is how the

1 testimony reads. You're correct. But that
2 is not the information that I am looking at
3 here. To give an idea, our annual budget for
4 EnergyNorth is approximately \$50 million,
5 \$40- to \$50 million. So these numbers are
6 reasonable with regards to how we budget
7 annually for our company.

8 Q. So then the test year should have \$50 million
9 in it in investment. You spend \$50 million
10 every year on capital investments for the gas
11 company.

12 A. (Tebbetts) Not every year. It's just a
13 ballpark, \$40- to \$50 million --

14 Q. Okay.

15 A. (Tebbetts) -- as a ballpark. And yes, it
16 does. It's just that I provided 18 months of
17 data in my testimony. So, approximately --
18 we spent about half in the first six months
19 of the year. So that would be 24.4 million
20 plus, we'll say 25 or so, for the last six
21 months of 2018. So about \$50 million. It's
22 approximate. I don't have the exact numbers.
23 I apologize. I don't have the exact numbers
24 in front of me for what we spent January 1,

1 2018 to July -- June 30th, 2018, which would
2 be that other half of the \$49.9 million.

3 Q. Okay. Do you know if the \$50 million that
4 you spent in 2019 includes the investment to
5 serve the Monadnock marketplace?

6 A. (Tebbetts) So the \$50 million that I've
7 noted, the 49.9 that you're referring to, is
8 for 2018.

9 Q. No, that's not what I'm referring to.

10 A. (Tebbetts) Oh, okay.

11 Q. You said you spent 49.9 million in 2018 and
12 you think you spent about another \$50 million
13 in 2019.

14 A. (Tebbetts) Oh, okay. Yes, I understand. I
15 don't know the answer to that off the top of
16 my head. I just don't have the breakdown of
17 the projects for 2019.

18 Q. Do you know if any of the investments in the
19 Monadnock marketplace is included in rate
20 base in this filing?

21 A. (Tebbetts) I do not know when it went -- I
22 don't know if it's in service. And if it is
23 in service, I do not know when it went into
24 service. So if it did not go into service by

1 June 30th, 2019, then it would not be in rate
2 base. I just don't know when it went into
3 service, if it did.

4 Q. Okay.

5 A. (Simek) I can answer that question. Those
6 costs are currently sitting on a balance
7 sheet right now and are not included in this
8 rate case at all.

9 Q. Okay. Thank you.

10 All right. I have a number of
11 questions. I went through the orders in
12 17-048 and searched for the phrase "next rate
13 case," and there were a number of items that
14 were supposed to be included when you filed
15 your next rate case. And so I want to ask
16 you if those -- to show me where those are in
17 the filing.

18 So did you provide a review of the
19 depreciation reserve imbalance?

20 A. (Simek) That is currently ongoing as we
21 speak.

22 Q. So, no.

23 A. (Simek) We addressed it in the filing that
24 it's currently ongoing --

1 Q. Okay. Well -- okay.

2 A. (Simek) And that we plan on providing an
3 update to this case once it's been concluded.

4 Q. When do you think it will be concluded?

5 A. (Simek) Hopefully within the next couple
6 months.

7 Q. So if you had filed your rate case based on
8 test year 2019 in April, it would have been
9 concluded, and you could have included that
10 in this case.

11 A. (Simek) Well, the reserve imbalance -- part
12 of the timing issue with this is because it's
13 outsourced to a consultant as well. So I
14 don't know if we would have had similar
15 timing issues if there was a different test
16 year or not.

17 Q. Okay. How much of the iNATGAS investment is
18 included in rate base in this filing?

19 A. (Simek) I think we have to take a record
20 request for that. I don't know that off the
21 top of my head, and I don't believe it's
22 included in any of the documents here.

23 COMMISSIONER BAILEY: Okay. Can we
24 make a record request for that, Madam

1 Chairwoman?

2 CHAIRWOMAN MARTIN: Yes. How much
3 of the --

4 COMMISSIONER BAILEY: How much of
5 the iNATGAS investment is included in rate
6 base in this filing.

7 BY CMSR. BAILEY:

8 Q. Did you include or provide an updated
9 discounted cash flow analysis regarding the
10 iNATGAS investment in this filing?

11 A. (Simek) I don't believe so.

12 Q. Has load from new customers in Keene
13 increased?

14 A. (Simek) I would assume so. I don't have that
15 information in front of me, but I would
16 assume it probably has.

17 Q. Would that have been included in this filing,
18 the revenue from that increased load?

19 A. (Simek) But the increased load, I guess I'm
20 thinking more of what was related to the CNG,
21 and that all is cost of gas. They already
22 were distribution customers prior to --

23 Q. Okay.

24 A. (Simek) -- the case. So that wouldn't be

1 increased load necessarily for distribution
2 purposes.

3 Q. Okay. Well, actually, I think I conflated
4 two different ideas. There was an analysis
5 required about the amount of load increase
6 that affected the DCF analysis for the Keene
7 investments, and then there's also the
8 question of whether you included revenue from
9 increased sales based on new customers.

10 A. (Simek) Okay. Now I think that we're maybe
11 referring to what I believe we call the
12 "Phase 2" part of the investment for Keene,
13 which is the LNG facility, which hasn't been
14 placed in service. We're still -- we haven't
15 even -- I'm not even sure if we found the
16 site that it's going to go to yet. So I
17 think we may be premature to have to provide
18 some of that analysis. What we've actually
19 placed in service was the CNG.

20 Q. All right. Let's move on from that.

21 There was a list of information that was
22 supposed to be filed in the next rate case to
23 assist the Commission in evaluating Liberty's
24 decoupling. The amount of revenue collected

1 or passed back through the mechanism by year,
2 was that included?

3 A. (Simek) That was included in our cost of gas
4 filing. I'm not sure it's -- I don't believe
5 it was included in this case.

6 Q. An account of any measurable impacts
7 decoupling had on Liberty's utility-sponsored
8 energy-efficiency programs?

9 A. (Simek) Yes, there was information filed on
10 that.

11 Q. Whose testimony is that in?

12 A. (Simek) I believe it was under Mr. Mullen's.

13 Q. Okay. A detailed list of all efforts the
14 Company made to promote its own
15 energy-efficiency programs and to promote
16 other energy-efficiency measures, such as
17 lobbying for stricter building and energy
18 codes?

19 A. (Simek) All that would be under Mr. Mullen's
20 testimony.

21 Q. An account of efforts taken to educate
22 builders about energy efficiency?

23 A. (Simek) Same area.

24 Q. A detailed list of meetings with state and

1 local officials and associations to promote
2 energy efficiency? All in Mr. Mullen's?

3 A. (Simek) All in Mr. Mullen's, yes.

4 Q. Customer feedback resulting from decoupling
5 as implemented through the rate design?

6 A. (Simek) Mr. Mullen's as well.

7 Q. Any changes in the Company's credit rating?

8 A. (Simek) I believe that's all also in Mr.
9 Mullen's.

10 Q. Okay. Thank you.

11 There was a -- in the Order for
12 Clarification, there was a direction or
13 requirement that you explain how each piece
14 of software is assigned an average service
15 life regarding depreciation. Did you do
16 that?

17 A. (Simek) Yes.

18 Q. And whose testimony is that in? Do you know?

19 A. (Simek) The software life, it's going to be
20 found in a few different areas. But it most
21 likely will be described in our depreciation
22 consultant's feedback when we receive -- when
23 we do the update to the filing with that
24 information.

1 Q. So it's not in the filing yet?

2 A. (Simek) Well, we have referenced there will
3 be places that we are using the life for the
4 software between the three, five and ten
5 years. But as far as -- and the process that
6 we use for that was how we worked with
7 operations and different folks who actually
8 came up with what the correct life should be
9 between the three-, five- and ten-year
10 bucket. That is the case. Then we gave that
11 feedback to the consultant for his analysis
12 on the reserve balance, and then he's
13 addressing that.

14 Q. So is he going to explain how each piece of
15 software is assigned an average service life?

16 A. (Simek) We can provide that to you. I don't
17 know if he's going to go through each piece,
18 no, but we have that information.

19 Q. Okay. Well, that was a requirement in the
20 clarification order for the next rate case.

21 A. (Simek) Okay.

22 Q. How much did this software upgrade to
23 implement decoupling actually end up costing?
24 Anybody know?

1 A. (Simek) I don't know that off the top of my
2 head.

3 Q. Was it more than \$50,000?

4 A. (Simek) I believe it was.

5 Q. Are those costs included in the rate case,
6 those additional costs?

7 A. (Simek) I'm not sure.

8 Q. Okay. Did you calculate your return, your
9 rate of return at the end of 2019 year-end?

10 A. (Simek) Yes.

11 Q. What was the calculation at year-end?

12 A. (Simek) I don't have that in front of me. I
13 don't know.

14 Q. Was it higher or lower than --

15 A. (Simek) Unfortunately, I'm not aware. It's
16 part of a filing requirement that we need to
17 do with the Commission, and I just don't have
18 that in front of me. Actually, we may not --
19 now that I -- I take that back. We probably
20 haven't calculated that just yet because I
21 don't believe that filing is due for another
22 month.

23 Q. It probably isn't. But I would think that
24 would be interesting information for the

1 Company to have.

2 A. (Simek) Well, I can only talk from the
3 perspective of how we do it in the Regulatory
4 Department. I'm sure that most likely the
5 accounting group is well aware of where it's
6 at.

7 COMMISSIONER BAILEY: Okay. All
8 right. That's all I have. Thank you.

9 CHAIRWOMAN MARTIN: Thank you.
10 Mr. Giaimo.

11 COMMISSIONER GIAIMO: I have what I
12 think are two questions.

13 STATEMENTS/QUESTIONS BY COMMISSIONERS:

14 BY CMSR. GIAIMO:

15 Q. The decoupling software that Commissioner
16 Bailey just talked about, my understanding
17 was the decoupling went into effect
18 November 2018.

19 A. (Simek) Correct.

20 Q. And so now I'm struggling how that wouldn't
21 find its way into the test year.

22 A. (Simek) Well, if the test year -- the work --
23 I just don't know because it depends how the
24 cost actually hit on the P & L and what

1 months the work was done and all that.

2 Q. Okay. So that was my one question. Here's
3 my second question: Attorney Sheehan
4 suggested in our earlier colloquy that this
5 is the result -- or the Company's seeking an
6 expedited time frame for the rate case
7 because things changed.

8 So if you did everything you did in
9 calculating the under-collection with the
10 split-year test year, do you have any idea
11 how that calculation would look with just the
12 2019 test year?

13 A. (Simek) I don't have that information yet,
14 no.

15 Q. Back of the envelope, did things improve for
16 the Company by adding the last six months of
17 November -- the last six months of 2019?

18 A. (Simek) No. I would assume that just by
19 adding more capital into the system over a
20 longer period of time, that our return on
21 equity would just continue to slide down.
22 But that's the back-of-the-envelope thought
23 process, I guess.

24 Q. Okay. So your gut tells you that if you

1 change the test year from a split 2018 to
2 2019 to just 2019, that the position -- that
3 the Company would look even worse than --

4 A. (Simek) Correct.

5 Q. Okay.

6 A. (Simek) And one thing I do want to point out.
7 We were asked earlier what the current equity
8 rate was for the test year, and it's at
9 5.86 percent. That was a record request we
10 were going to take, but we were able to come
11 up with that information. So, again, the
12 Company has an approved equity of 9.3
13 percent, but during the test year it earned
14 5.86 percent.

15 Q. Five point eight six?

16 A. (Simek) Correct.

17 Q. And earlier you said 6.86. Is that --

18 A. (Simek) No, I said I didn't have that
19 information and we were going to take a
20 record request for it.

21 Q. Okay. That's my questions. Thank you.

22 A. (Simek) You're welcome.

23 CHAIRWOMAN MARTIN: Mr. Sheehan,
24 any follow-up?

1 (Mr. Sheehan and Mr. Mullen confer.)

2 MR. SHEEHAN: Nothing further.

3 Thank you.

4 MR. DEXTER: May I raise an
5 issue --

6 CHAIRWOMAN MARTIN: You may.

7 MR. DEXTER: -- before Mr. Simek
8 leaves the stand? I know calculations on the
9 stand can be difficult. And you had made a
10 record request for the calculated return on
11 equity. I would recommend that the Bench
12 keep the record request in place so that we
13 can see the calculation that arrives at the
14 5.86 percent. I'm not able to do it off the
15 top of my head, and I don't think Mr. Frink
16 is either. So I would just like to see
17 the -- I'd like to have the backup into the
18 record, please.

19 (Commissioners confer off the record.)

20 CHAIRWOMAN MARTIN: If there's no
21 objection to that, I think we would like to
22 have that.

23 MR. SHEEHAN: That's fine. That's
24 a fairly simple calculation.

1 CHAIRWOMAN MARTIN: Thank you. I
2 guess the discussion here is whether now is a
3 good time to take a break -- and I'm seeing a
4 nod in front of me -- and whether it should
5 be a 10-minute break or whether we'd like to
6 break for lunch at this point. Any
7 preference?

8 MR. KREIS: Ten-minute break. Kind
9 of depends how you see this going from here.
10 We certainly, meaning the OCA, would
11 certainly like to make some argument,
12 particularly about the Company's
13 misinterpretation of the meaning of the words
14 in the statute.

15 CHAIRWOMAN MARTIN: And Mr. Dexter,
16 how long do you think you've got?

17 MR. DEXTER: Well, I have a similar
18 argument, as I understood the OCA was going
19 to go next and we would go after that. And
20 in addition, I want to put Mr. Frink on to
21 discuss elements of the proposed filing as
22 compared to the last filing and things along
23 those lines. So I think my whole
24 presentation would probably take about an

1 hour.

2 CHAIRWOMAN MARTIN: Off the record.

3 (Discussion off the record.)

4 CHAIRWOMAN MARTIN: Okay. We'll
5 take a 10-minute break and then see where we
6 get to.

7 (Brief recess was taken at 11:38 a.m.,
8 and the hearing resumed at 11:54 a.m.)

9 CHAIRWOMAN MARTIN: Okay. Take
10 your seats. We're back on the record. And
11 if you're all set, we will proceed with Mr.
12 Kreis.

13 MR. KREIS: Thank you, Madam
14 Chairperson. I don't have any witnesses to
15 call. But I am happy to do now whatever
16 would be helpful to you. I'd be happy to lay
17 out my argument about what I think you ought
18 to do today with respect to this issue, or
19 I'd be happy to just wait and hear what Mr.
20 Frink's testimony is going to be. Totally
21 your pleasure.

22 CHAIRWOMAN MARTIN: I think we'll
23 take your argument -- sounds like you don't
24 have evidence on this issue -- and move

1 forward.

2 MR. KREIS: Correct. So I'll do
3 this: Let me just say, first, that I
4 disagree rather emphatically with the way the
5 Company interprets the plain meaning of the
6 relevant language from RSA 378:7. The
7 statute says the Commission, quote, Shall be
8 under no obligation to investigate any rate
9 matter which it has investigated within a
10 period of two years, but may do so within
11 said period at its discretion. So I
12 basically see three issues here. The first
13 is: Is the Company asking the Commission to
14 investigate rates within a two-year period?
15 And the answer is yes. And it's intuitively
16 obvious. We're sitting here in the
17 Commission's hearing room conducting a
18 prehearing conference on January 10th, 2020.
19 That is less than two years after May 1st,
20 2018, which was the effective date of the
21 Commission's previous order resolving Docket
22 17-178 [sic]. That was Order 26,122 issued
23 on April 27th of 2018.

24 The next question would be: Is

1 there a reason for the Commission to exercise
2 its discretion to entertain a rate case
3 within that two-year window? And the answer
4 to that question is no.

5 And then the third question is:
6 Even if the Commission [discretion] would
7 lead it to require the Company to waive the
8 two years, are the current rates
9 confiscatory, which, in effect, would amount
10 to a determination that that provision of RSA
11 378:7 and its discretionary authority
12 conferred on the Commission is
13 unconstitutional? And I think the answer to
14 that is no.

15 There are almost no New Hampshire
16 Supreme Court cases on point, and the
17 Commission is not bound by its own precedent.
18 So any old PUC decisions or inferences you
19 can draw about any Commission failures in
20 other cases to invoke RSA 378:7 and the
21 discretionary authority are irrelevant.

22 Both the Petition and the Order of
23 Notice in this case reference a rate
24 effective date of February 1st, 2020. So I'm

1 really confused about why the Company's
2 memorandum refers to a date of November of
3 this year as the relevant date for computing
4 the two-year period. It's fundamental under
5 RSA 378:29 that at the end of a rate case,
6 the revenue increase is reconciled backwards
7 to the beginning of the rate case. The
8 potential rate shock of doing otherwise is
9 the whole reason we bother with temporary
10 rates. The dicta referenced by the Company
11 in its memorandum notwithstanding, the
12 statute doesn't talk about the time between
13 rate increases; it talks about investigations
14 within a two-year period.

15 The issues involving your
16 discretion and the possibility of
17 confiscatory rates are interrelated. The
18 reality is that, to the extent this company
19 is unable to make its allowed rate of return,
20 the fault lies with utility management and
21 not the PUC. The Commission should use its
22 discretion to send this utility a message
23 that it needs to tighten up its ship. Two
24 years ago, the plan was to assure a steady

1 flow of revenue to shareholders by more than
2 doubling the Company's rate base via building
3 the Granite Bridge Project. But as of now,
4 Granite Bridge is in the fridge, which is to
5 say, the project has faced massive opposition
6 from all of the intervenors in that docket,
7 as well as Staff, and thus, the whole thing
8 is on hold at the Company's request. So last
9 time when you made your rate decision in the
10 spring of 2018, the Company was planning on
11 having a hearing on Granite Bridge Project by
12 the end of 2018, and we would be well on our
13 way to the path for that massive increase in
14 the Company's rate base. That would change
15 the financial picture of the Company pretty
16 significantly.

17 The real reason that we are here so
18 soon, and here I'm relying on the testimony
19 that Mr. Simek gave, is that the Company
20 didn't like a determination that you made at
21 Pages 9 and 10 of the Commission's order in
22 17-048. And that issue had to do with how
23 you -- what customer count you applied to the
24 Company's revenue requirement. At the urging

1 of your Staff, not the OCA, the Commission
2 decided to use end-of-year customer counts.
3 And of course this is a company whose
4 customer count is growing, so it makes a
5 difference to the company. They didn't like
6 that, and they didn't like it from the
7 get-go, and that is what prompted them to
8 come back here so soon. I don't begrudge the
9 Company the right to disagree with or dislike
10 or ask you to do something different this
11 time around. But what I'm telling you,
12 because it's relevant to whether you exercise
13 your discretion to waive that two-year
14 stay-out period, is that this is very similar
15 to the scenario in Appeal of Gas Service,
16 where the Company is effectively filing kind
17 of a rehearing motion about the last rate
18 case. And that is a compelling argument for
19 you to exercise your discretion and not hear
20 the current rate case so quickly.

21 The Appeal of Gas Service Company
22 case was argued at a time, as I pointed out
23 earlier, when interest rates were rising
24 literally by the minute, as far as I could

1 tell. And so the Supreme Court's perspective
2 on when rates become confiscatory and how
3 quickly they become confiscatory between rate
4 cases would have been drastically different
5 in 1981 than it would be here in 2020. And
6 for that reason, I think the actual result in
7 the Appeal of Gas Service is something that
8 can be readily distinguished from the
9 situation here.

10 So, despite what this and every
11 utility would have you believe, as
12 Commissioner Bailey cogently pointed out, the
13 standard here does not guarantee whatever
14 rate of return is deemed to be just and
15 reasonable. The constitution simply requires
16 the Commission to provide utilities with a
17 reasonable opportunity to make that return.
18 This company has had such an opportunity, and
19 I think it squandered that opportunity.
20 That's why the Company's memorandum is all
21 about dates and precedents that aren't
22 binding, because a look at the facts makes
23 this a textbook case for you to exercise your
24 discretion not to hear a rate case within two

1 years.

2 As for what the Commission should
3 do, I think the right answer is to instruct
4 EnergyNorth Natural Gas to refile its rate
5 case using a calendar 2019 test year, because
6 as everybody in this room knows, the
7 Commissioners, the Staff, the Company,
8 certainly us, using a test year that is a
9 blend of two calendar years makes this whole
10 undertaking vastly more onerous, complicated,
11 and draining of the limited resources that
12 the Office of the Consumer Advocate has, and
13 certainly the Commission has.

14 So, instructing the Company to file
15 a new rate case using a calendar 2019 test
16 year is the best path to an efficient and
17 reasoned determination of just and reasonable
18 rates, as opposed to using a jumble arising
19 out of a test year that doesn't coincide with
20 the calendar. That's what I have to say.

21 CHAIRWOMAN MARTIN: Thank you.

22 Mr. Dexter.

23 MR. DEXTER: Thank you,
24 Commissioners, for the opportunity to address

1 this question. I agree, I think, with
2 everything the OCA said, including his
3 ultimate recommendation. But I have to go
4 through it step-by-step, so I will.

5 I also went back to the statute
6 that the OCA read -- or that the Consumer
7 Advocate read into the record, and I think
8 there were four words that are key in the
9 statute. The first is "rate matter." I
10 don't think there's any dispute that the rate
11 matter before the Commission here, gas
12 distribution rates, is the same rate matter
13 that was before the Commission in 17-048.

14 Secondly, "investigate." What does
15 that mean? In the Staff's view, the
16 investigation begins when a case is filed.
17 This case was filed on November 27th, 2019.

18 And "a period of two years," what
19 does that mean? Well, two years ago was
20 November 27th, 2017. And if you go back and
21 look at what was happening on November 27th,
22 2017, there was a lot going on. On
23 November 30th, three days later, the OCA and
24 the Staff filed testimony, a combination of,

1 I think, eleven -- no, nine witnesses on
2 November 30th, 2017 in the Company's last
3 distribution case. Discovery followed that
4 testimony. Rebuttal testimony followed that
5 testimony. Liberty Utilities, on
6 January 25th, 2018, filed rebuttal testimony
7 of, looks like five or six or seven different
8 witnesses. After that came some settlement
9 talks and a settlement that was filed between
10 the Company and the OCA. That came in late
11 February or early March of 2018. And after
12 that came hearings because the Commission did
13 not adopt the settlement, but instead tried
14 the case on the underlying record. Those
15 hearings spanned a couple weeks in March.
16 Took seven or eight days: March 6th,
17 March 14th, March 21st, March 22nd, March
18 23rd, March 26th, March 27th. It's hard to
19 argue that that's not an investigation. So
20 that's what was going on about two years ago.

21 The case concluded, so we thought,
22 with an order on April 27th, 2018. And then
23 there was a rehearing. And the rehearing was
24 not simple. It was complicated. It took

1 significant time and resources and resulted
2 in several orders, two more hearings, and a
3 significant rate change, effective
4 November 1st, 2018. That was based on the
5 record of the rehearing.

6 The date of November 1st, 2018 is
7 also significant because that was the date on
8 which the Company's decoupling mechanism that
9 was approved back in April was implemented,
10 the real-time decoupling mechanism. And then
11 a year later, the first annual adjustment
12 under the decoupling mechanism took effect;
13 so that's November 1st, 2019.

14 So in the Staff's view, one could
15 reasonably argue that the Commission has done
16 nothing but investigate the distribution
17 rates over the last two years. And to
18 suggest that an investigation hasn't been
19 going on doesn't make any sense to the Staff.
20 So we believe the issue is clear that you
21 have the discretion to investigate.

22 The parties have mentioned the case
23 involving EnergyNorth's predecessor, Appeal
24 of Gas Service, back from 1981, as to whether

1 or not that case applies. And the decision
2 is short. And what it concludes is that the
3 Commission's decision exercising its
4 discretion -- well, let me back up a little
5 bit.

6 This case involved a rate case that
7 was filed on June 1st -- I'm sorry --
8 June 1st, 1979, and an order was issued on
9 February 21st, 1980. And then six months
10 later, on August 1st, 1980, Gas Service filed
11 another rate case, and that was the case that
12 was at issue in the Supreme Court case. So
13 when the Supreme Court issued its decision,
14 it was June 26, 1981. And the Court ordered
15 that it was time for the PUC to entertain the
16 rate case. And at the date of that decision,
17 16 months had passed since the last rate case
18 had ended. In other words, the order was
19 issued February 21st, 1980. Sixteen months
20 later, on June 26, 1981, the Supreme Court
21 issued a decision saying that the case is
22 remanded to the PUC for a hearing and the
23 taking of additional evidence, which, again,
24 to me is what constitutes the investigation.

1 If we were to go 16 months from the date of
2 the Commission's order on rehearing, which
3 was November 2018, that would take us to
4 about March 1st, 2020, which would allow the
5 Company to file its rate case using a
6 calendar-year test year, which Staff, like
7 the OCA, supports as a simpler way to process
8 a rate case.

9 So having said all that, it's my
10 way of saying that I believe that the
11 Commission is in a position to exercise its
12 discretion. The two years has not passed
13 since it last investigated Liberty's base
14 distribution rates. So the question is,
15 then: Should you exercise your discretion?
16 And my reading of the EnergyNorth predecessor
17 case, the Appeal of Gas Service, Inc., was
18 that the Supreme Court decided that the
19 current rates were confiscatory. And so I
20 want to address that, but I want to do that
21 through a witness, which I will get to in a
22 minute.

23 I agree with the Consumer Advocate
24 that regulatory lag was a significantly

1 greater issue in 1980. Not only were
2 interest rates rising, rates of return on
3 equity were significantly higher than they
4 are right now. In fact, in the EnergyNorth
5 case that was decided in 1980, the return on
6 equity allowed was 14 percent. There were
7 more limited pipeline supply options in New
8 England in 1980, and therefore growth
9 opportunities were limited. And inflation
10 was double digit at the time in the 1980-1981
11 period, in the 11 percent range. So there
12 were significant pressures on cost increases
13 back in that time period and limited
14 opportunities for growth. So I believe the
15 EnergyNorth predecessor Gas Service, Inc.
16 case is distinguishable on the facts from the
17 Company's current situation.

18 I have a number of questions I'd
19 like to ask Mr. Frink which will address some
20 of the things that were brought up this
21 morning, in terms of what's in the current
22 case versus what was required to be in the
23 current case, as well as some things that
24 Staff believes were not included in the

1 calculations of return on rate base and
2 return on equity that the Company's witnesses
3 talked about this morning. So I would ask at
4 this time that Mr. Frink be allowed to take
5 the stand.

6 CHAIRWOMAN MARTIN: Please take the
7 stand, Mr. Frink.

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1 (WHEREUPON, STEPHEN P. FRINK was duly
2 sworn and cautioned by the Court
3 Reporter.)

4 STEPHEN P. FRINK, SWORN

5 DIRECT EXAMINATION

6 BY MR. DEXTER:

7 Q. Would you please state your name and position
8 with the Commission, please.

9 A. My name's Stephen Frink, and I'm the Director
10 of the Gas & Water Division.

11 Q. Mr. Frink, were you involved in DG 17-048,
12 the Company's rate case that was filed in
13 2017?

14 A. Yes, I was.

15 Q. And have you been able to conduct a
16 preliminary review of the case that's at
17 issue in this docket, 19-161?

18 A. I have done a preliminary, very limited
19 review, yes.

20 Q. Do you have concerns about the current rate
21 filing?

22 A. I do have a major concern, in that there were
23 a number of issues raised in Liberty's last
24 rate proceeding, 17-048, and in other Liberty

1 proceedings as well, that should have been
2 addressed in this rate filing and was not.
3 That last rate case was fully litigated, with
4 the exception of return on equity. And those
5 adjustments that the Commission required to
6 set just and reasonable rates were
7 precedent-setting. And so those adjustments
8 should have been made going forward, should
9 have been part of the Liberty rate filing,
10 and they're not.

11 Q. So before we get into those specific
12 adjustments, there was some discussion this
13 morning about the Company's actual earned
14 return on rate base being in the low
15 5 percent range and their actual return on
16 equity being the high of 5 percent range.
17 The adjustments that you're talking about,
18 would they affect those numbers?

19 A. Yes, they would.

20 Q. Okay. So why don't we go forward. And
21 please indicate, if you would, one by one,
22 the adjustments that you believe should have
23 been included in the Company's rate request
24 in this case, based on the Company's case

1 from last year, as well as some things you
2 might have learned from the pending electric
3 case, which is Liberty's sister company,
4 Granite State Electric.

5 A. Right. So I did something similar to what
6 Commissioner Bailey did. I went through the
7 order, the last rate order, 26,122. And on
8 the first issue, that ruling was -- the
9 Commissioners made a ruling on year-end
10 customer count versus average customer count.
11 And quoting from the order on Page 10, quote,
12 Many aspects of the revenue deficiency
13 calculation in this case have been updated to
14 reflect known and measurable changes during
15 and beyond the test year. Staff's adjustment
16 better matches plant investments with the
17 revenues realized from those investments and
18 therefore produces a more accurate picture of
19 Liberty's revenues in the period when rates
20 will be in effect, end quote.

21 In that order, the Commission added
22 \$929,000 -- \$929,551 to test-year revenues to
23 account for customer growth. That's a pretty
24 significant adjustment. In this current

1 filing, Liberty has testified that it adds
2 approximately two to three percent to its
3 customer base each year. So, despite the
4 continued customer growth and the Commission
5 ruling, Liberty failed to make that
6 adjustment. So that has a bearing on the
7 revenue deficiency that's been calculated by
8 Liberty in this rate filing.

9 Q. Mr. Frink, have you quantified what that
10 adjustment would be in this case?

11 A. I have not.

12 Q. Okay. And then on Page 11 of Order 26,122,
13 the Commissioners made a ruling regarding
14 vacancies. Quote, Vacancies are a fact of
15 doing business and should be accounted for
16 when calculating a payroll figure for
17 ratemaking purposes, end quote.

18 A. So as pointed out, the Granite rate filing --
19 Granite, Liberty or affiliate companies --

20 Q. Granite State Electric.

21 A. Granite State Electric, yes. And they're
22 currently before you in a rate case. That
23 would be Docket DE 19-064. And recently,
24 Staff put in testimony based on our review.

1 Now, the Granite and Electric [sic] are
2 two New Hampshire utilities, sister
3 utilities. They share facilities. They
4 share employees. They share many costs.
5 EnergyNorth is the bigger of the two; 70
6 percent of shared costs go to EnergyNorth
7 versus 30 percent to the electric company.

8 So in this instance, too, the Granite
9 rate case has a test year ending 12 months,
10 12/31/18; the EnergyNorth rate filing has a
11 test year ending 6/30/19. So there's an
12 overlap in test year of six months, the same
13 months. And they're shared costs, shared
14 employees. So some of the findings in
15 Granite would be indicative of what you might
16 expect to find in the Liberty rate filing.

17 So, regarding vacancies specifically, in
18 the last EnergyNorth rate order, where the
19 Commission said you need to account for
20 vacancies, there were only 3.5 vacancies for
21 EnergyNorth in the test year out of over 300
22 employees.

23 Well, in the Granite rate case, there
24 were 37 vacancies. And some of those are

1 shared, some are specific to Granite. So
2 Staff recommended an adjustment reducing the
3 payroll by \$592,565. A \$600,000 adjustment
4 reduction in expenses is a pretty significant
5 adjustment. I would expect it to be similar
6 or higher for EnergyNorth, given they have
7 more employees and more of the shared costs,
8 but --

9 Q. And it's your understanding that in the
10 filing before us, in 19-161, there is no
11 reduction in payroll expense to account for
12 vacancies; is that right?

13 A. That's correct. I found no adjustments there
14 for vacancies.

15 And then in 26,122, on Page 12, the
16 Commission rules on, instead of base pay, the
17 Commission noted the amount of earnings tied
18 to earnings-based incentives were quite
19 small, but stated on Page 12, quote, If the
20 percentage of compensation based on net
21 earnings or stock price are higher -- were
22 higher, we would take a harder look at the
23 amounts to be included.

24 In the last rate case, Liberty

1 (EnergyNorth) rate case, the incentive pay
2 was about 50,000 that we were talking about.
3 In the Granite rate case, Staff identified
4 \$532,455 of incentive paid tied to
5 earnings-based incentives and recommended
6 Granite's revenue requirement be adjusted
7 accordingly. Again, the shared costs goes
8 70 percent to EnergyNorth. I would expect a
9 similar adjustment in the -- for EnergyNorth.
10 Again, I haven't done the investigation yet.
11 But the Commission, in setting just and
12 reasonable rates, said they were going to
13 look at that if it was significant. Clearly,
14 it was significant to Granite. And I would
15 have expected Liberty to have addressed that
16 in the filing. They did not.

17 On Page 13 of Order 26,122, the
18 Commission ruled on severance pay, and I
19 quote, Ratepayers should not bear severance
20 costs related to employees who resigned to
21 avoid being fired.

22 In the Granite rate case before the
23 Commission, Staff reduced severance costs by
24 \$26,324. Again, that's probably 30 percent

1 of the severance costs, assuming that
2 employee was a shared employee. That
3 employee could have been, or employees could
4 have been fired or let go in the first half
5 of 2018. But it could have been a second
6 half. There could have been other severance
7 payments in the preceding six months that I'm
8 not aware of that wasn't in Liberty's filing.

9 MR. DEXTER: And I just want to
10 interject and say I'm the attorney on the
11 electric rate case, and there is some
12 late-breaking information recently filed by
13 the Company on severance costs. I believe
14 that number -- I believe Staff's
15 recommendation will go down slightly in the
16 electric case, something Mr. Frink wouldn't
17 be familiar with.

18 BY MR. DEXTER:

19 Q. But the point is, Mr. Frink, that the
20 Commission ruled on severance pay in the gas
21 rate case last time around. And this time
22 the Company made no adjustment for severance
23 pay; correct?

24 A. That is correct.

1 Q. Okay.

2 A. Moving on, the Commission ruled on the
3 amortization of depreciation reserve
4 deficiency on Page 18, quote, Direct the
5 Company to prepare and present in its next
6 rate case a review of the reserve imbalance,
7 a thorough explanation of the cause of any
8 imbalance, and a proposal for amortizing the
9 reserve imbalance.

10 The Company in this filing, the current
11 filing, states that this review has not yet
12 been completed and expects to provide that
13 during the course of the proceeding.

14 In the last rate case, the Company and
15 the Commission approved a depreciation
16 reserve. It was a deficiency of 12.4 million
17 that was being returned to ratepayers --
18 being recovered from ratepayers over six
19 years. The depreciation, the reserve prior
20 to that in the last study had been a \$12.4
21 million surplus that was being returned over
22 12 years. So that's a \$2.6 million swing in
23 annual expenses based on the depreciation
24 reserve and the amortization of that reserve.

1 That could have a huge impact on the
2 Company's earnings. They were required to do
3 that as part of this filing, and it should be
4 part of this filing, and it wasn't.

5 Q. And there's no way for you as a Staff member
6 to quantify the impact of that missing
7 adjustment at this time, correct, because the
8 study hasn't been done?

9 A. Right. Without that information, it's
10 impossible to say what the revenue deficiency
11 is as of 6/30/19.

12 The Commission, in Order 26,122,
13 addressed the iNATGAS issues, ruled on it.
14 On Page 31, I quote, "Full exclusion of the
15 cost of the facility would be justified under
16 a strict prudence examination, end quote.

17 But the Commissioners noted that the
18 facility had the potential to provide net
19 benefits to customers in the future and
20 therefore didn't exclude the full recovery.

21 The Commissioners did say, on Page 32,
22 and I quote, We will re-evaluate this
23 investment in Liberty's next rate case, end
24 quote. The Commission adjustment in the last

1 rate case was to reduce the revenue
2 requirement by \$400,000.

3 Despite the Commission's stated
4 intention to re-evaluate the iNATGAS
5 investment in Liberty's next rate case,
6 Liberty did not address this issue in the
7 filing.

8 Q. Now, Mr. Frink, before you leave iNATGAS,
9 there were some questions from the Bench
10 today about whether or not the investment in
11 the iNATGAS facility is in rate base in the
12 pending case, 19-161. In your view, do you
13 believe it's included in the proposed rate
14 base?

15 A. It is included in the proposed rate base.
16 The way we handle the disallowance -- the
17 Commissioners handled the disallowance in the
18 last rate order was to leave those, the full
19 \$5 million, maybe a little more, of rate base
20 for iNATGAS in rate base and to adjust the
21 revenue requirements after the fact. So the
22 \$5 million is in there. They didn't want the
23 Company having to write that off until I
24 looked at it further down the road to see if

1 in fact it does benefit customers. That was
2 an issue that was going to be addressed in
3 this -- in Liberty's next rate filing.

4 Q. So in other words, the facility was booked to
5 plant several years ago because it's in
6 service.

7 A. Yes.

8 Q. And in order for it not to be in rate base in
9 the proposed case, there would have to be a
10 specific adjustment taking it out of the
11 plant; correct?

12 A. That is correct.

13 Q. And did you find such an adjustment?

14 A. No, there is no adjustment for that.

15 Q. Okay.

16 A. Getting back to -- oh, let me just finish
17 iNAT.

18 Okay. So then, also in Order 26,122,
19 the Commission addressed the consolidation of
20 the Keene rates with the EnergyNorth rates
21 and approved consolidation. In that order,
22 the Commission required a Keene-specific cost
23 of gas which was to include production costs.

24 Liberty has -- in Liberty's last Keene

1 summer -- in DG 19-068, which is Liberty's
2 filing for the Keene Summer Cost of Gas,
3 Liberty sought to recover production costs.
4 They weren't allowed to recover production
5 costs. We were instructed to sit down, the
6 OCA, Staff and the Company, and to look at
7 that issue and see if production costs were
8 in the delivery rates that were approved in
9 17-048. Production costs were in the
10 delivery rates that are currently being
11 charged. And the Company, the OCA and Staff,
12 agreed that in this rate case they would
13 remove those costs from the delivery rates
14 and recover them through the Keene cost of
15 gas rates. They did make an adjustment in
16 this filing, but it consists of one sentence.
17 It says we made an adjustment to remove Keene
18 production costs of 180,679. And they
19 provided a proposed tariff for permanent
20 rates that includes one sentence regarding
21 the Keene cost of gas, which says, to permit
22 the Company to charge its customers in the
23 Keene Division with the cost of gas purchased
24 or produced.

1 To avoid a double recovery of Keene
2 production costs, and to reduce or eliminate
3 subsidies to the Keene customers, or
4 non-Keene customers, the issue needs to be
5 addressed in detail. And the proposed tariff
6 should be explicit on what costs, production
7 costs are recovered through the Keene cost of
8 gas.

9 Q. So in this instance, the Company made the
10 adjustment as directed. But you feel there's
11 insufficient detail to describe the \$180,000,
12 as to whether or not those represent all of
13 Keene production costs; is that right?

14 A. That's correct.

15 Q. Okay.

16 A. It is also worth noting that the Company's
17 filing does not update the indirect costs,
18 gas costs recovered through the EnergyNorth
19 cost of gas rates, even though the Company
20 performed both a marginal and functional cost
21 study.

22 The indirect gas costs were implemented
23 back when the Company -- when the Commission
24 unbundled rates. So customers can take

1 transportation service. Customers taking
2 transportation-only service pay to have their
3 gas delivered by EnergyNorth. They purchase
4 the gas, they bring it up to Liberty North's
5 [sic] system, and they -- Liberty North [sic]
6 delivers it to their site. There are peaking
7 plants and other facilities that are specific
8 to providing supply. If they didn't exist,
9 the delivery -- the transportation customer
10 would still get their gas. Those need to be
11 identified and removed from the delivery
12 rates and reflected in the cost of gas rates.
13 That is what is -- that should be done in
14 each rate case. Those are set at the time.
15 As you can expect, there are changes in the
16 peaking plants, changes in the property taxes
17 associated with that, the return from each
18 rate case. There's maintenance that's been
19 done, new plant added. There are employees
20 that work -- that go out and purchase gas
21 supplies, that run those plants. That should
22 not be getting charged to transportation
23 customers.

24 Q. When was the last time the indirect gas costs

1 were updated?

2 A. Prior to Liberty's acquisition of
3 EnergyNorth.

4 Q. So it hasn't been addressed in any of the
5 rate cases that Liberty has filed since the
6 acquisition; is that right?

7 A. Right. There's the two full rate cases since
8 the acquisition and the current one, and
9 those costs have not been adjusted.

10 Q. So, Mr. Frink, you've listed six or seven or
11 eight adjustments that you believe should
12 have been made to the Company's proposed
13 revenue deficiency, based on the order in the
14 last case. Several of those were
15 significant, weren't they?

16 A. Yes, they were.

17 Q. Which are the ones that are the most
18 significant money-wise?

19 A. Well, the revenue adjustment for the year-end
20 customer count was close to a million
21 dollars. That would have been the biggest.
22 Actually, I take that back. The change in
23 the amortization of the depreciation was a
24 \$2.6 million swing. So that would have had a

1 very significant impact on rates, I would say
2 a million dollars. And then -- well,
3 vacancies weren't a big number in the last
4 rate case. It obviously was a big number in
5 the Granite rate case that's currently before
6 the Commission, and that's likely to be a
7 very large number, something north of
8 \$600,000 would be my guess, just based on my
9 reading of the Granite testimony, Staff
10 testimony.

11 Q. Would you expect the iNATGAS issue to be
12 significant?

13 A. At this point I can't really say because
14 there's nothing in the filing to tell us how
15 much revenue the iNATGAS is generating. The
16 concern back in the last rate case was, one,
17 they spent double, more than double what they
18 were planning to spend on that investment
19 when they made that investment; and then two,
20 they weren't really getting any revenue from
21 it. So there's the issue of should any of
22 that be in rate base. If they're getting a
23 sufficient return now from iNATGAS, if
24 they're getting the revenues that they were

1 anticipating when they first entered that,
2 that might actually justify recovery of some
3 or all of the -- a return on some or all of
4 the rate base on iNATGAS.

5 Q. Was it significant in the last case?

6 A. Yes, 400,000 after -- to the revenue
7 requirement after return on rate base was a
8 significant number.

9 Q. And the iNATGAS issue and the depreciation
10 reserve issue were called out specifically in
11 the Commission's order in 17-048 as something
12 the Company -- that would be investigated in
13 their next case; correct?

14 A. Yes.

15 Q. And you didn't -- just to make this point
16 clear, you didn't find anything in this
17 current case that addressed those two issues?

18 A. Yes, that is right.

19 Q. Okay. I know you have some comments you want
20 to make on decoupling as well, and as well as
21 the -- well, on decoupling. But I wondered
22 if you'd sum up those items that have a
23 direct -- all of those items that you're
24 talking about have a direct impact on the

1 Company's revenue deficiency calculation;
2 correct?

3 A. Yes, it would. Yes, it does.

4 Q. So you had some comments to make on the
5 Company's response to the decoupling order,
6 so please go ahead with that now.

7 A. Okay. And again, Commissioner Bailey has
8 already touched on this, that in
9 Order 26,122, decoupling, the Commission
10 required Liberty to report on seven specific
11 areas in its next rate case to assist in
12 evaluating decoupling. And I'll quote from
13 that order on Page 46: The above list is not
14 intended to be exhaustive. In short, we
15 require the Company to demonstrate that
16 decoupling has allowed the Company to remain
17 an effective champion of energy efficiency
18 and has unlocked its ability to
19 enthusiastically support energy efficiency
20 policy goals.

21 Q. And the Company did make an attempt to
22 address those requirements in the testimony
23 of Mr. Mullen; correct?

24 A. It did.

1 Q. Did Mr. Mullen make the statement that
2 recovery of some of the -- reporting back on
3 some of those issues was premature?

4 A. He did in his testimony on Bates Page Volume
5 II-208. It says, quote, It is premature at
6 this time to determine any reasonable [sic]
7 impacts that the existence of decoupling has
8 had on the Company's energy-efficiency
9 programs.

10 And then there's also testimony on
11 Page 215, and I quote, In terms of any
12 measurable impacts of decoupling has had on
13 the results of the Company's sponsored
14 energy-efficiency programs, the 2019 program
15 is not yet finished, and the compilation of
16 final results will not be completed until
17 early 2020.

18 Staff agrees that you can't draw a
19 conclusion until you have the results. And a
20 filing that uses a 2019 test year would
21 enable the Company to have those results and
22 provide that evaluation.

23 Q. Because the energy-efficiency implementation
24 year isn't done yet, or wasn't done yet. It

1 just completed 12/31/19, and the filing was
2 made before that.

3 A. Yes.

4 Q. So you were here this morning, and I think
5 you read Mr. -- or the Company's filing on
6 the issue, that there were three reasons that
7 were given for the Company filing earlier
8 than they had indicated in the last case.
9 And those were: Capital investments,
10 property taxes and the financial impacts
11 related to decoupling --

12 A. Actually, if I may interrupt?

13 Q. Sure.

14 A. I had one more item that I wanted to bring up
15 as not having been addressed in their filing.

16 Q. Okay.

17 A. So in DG 15-362, the Pelham Expansion, the
18 Commission issued an order, Order 25,987,
19 that required -- there was a settlement that
20 required a risk-sharing mechanism that had to
21 be performed in the next rate filing -- well,
22 any rate filings within five years of the
23 in-service date of the Pelham distribution
24 system.

1 So they did that calculation. Mr.
2 Mullen has that calculation in his testimony.
3 He identifies a revenue shortfall of 168,000
4 and says that they didn't make that
5 adjustment in the revenue requirement
6 calculation because it could change during
7 the course of the proceeding, and they'll
8 take care of it then. Well, the
9 Commission -- the settlement and the
10 Commission order requires them to make that
11 adjustment when they make their filing. And
12 even though it may not be a large number,
13 \$84,000, it would still have an impact on the
14 Company's earnings.

15 So with that, that wraps up my --

16 Q. And in fact, all the adjustments that you've
17 listed that you've been able to quantify,
18 based on the information in the filing, would
19 have the effect of decreasing the Company's
20 requested revenue increase; correct?

21 A. Yes. That's my assumption, based on my
22 preliminary review.

23 Q. I had asked Mr. Simek a question, if the
24 financial impacts of decoupling -- if there

1 was some sort of problem or flaw with the
2 newly implemented decoupling mechanism,
3 whether or not that could be handled through
4 an LDAC proceeding rather than a base rate
5 case. And he answered "Yes." Do you agree
6 with that assessment?

7 A. I do agree with that assessment. I also
8 would like to say we have been discussing
9 that error that Liberty suggests is contained
10 in the decoupling -- the implementation of
11 decoupling. And we have -- there have been
12 informal discussions between Staff and the
13 Company. And we don't agree that there's a
14 problem there. But we're still waiting for
15 further response from the Company on our
16 position. And the Company filing doesn't
17 really, it doesn't demonstrate what that
18 error is, the impact of that error, and how
19 it should be corrected. It does say, you
20 know, we think we can work this out with the
21 Company and Staff.

22 Q. And again, another issue that we touched on
23 this morning, we talked a lot about the
24 Company's actual return on overall rate base

1 being 5.14 percent on the test year. And I
2 had a discussion with Mr. Simek about rate
3 increases that occur annually related to the
4 CIBS program. You're familiar with the CIBS
5 program and those rate adjustments; correct?

6 A. Yes, I certainly am.

7 Q. Do you see anything in this case that adjusts
8 for those CIBS increases, in other words,
9 takes them into account when the Company
10 calculated its test-year return on rate base
11 of low 5 percent?

12 A. So the test year would have reflected the
13 revenue increase. So the Company has spent,
14 since the end of 2017, from the testimony it
15 appears they spent 50 million. But based on
16 what we heard this morning -- from the
17 written testimony, it sounded like
18 50 million. From what I heard this morning,
19 it could be 70 million. But the rate base in
20 the test year would have included the CIBS
21 investments through November up to July 1,
22 2019. There's a CIBS adjustment every
23 July 1. And so the July 1 --

24 Q. Let me just interrupt. You said it would

1 reflect the investments. It should be
2 through June 30th, 2019; correct?

3 A. Correct.

4 Q. Okay. Go ahead.

5 A. So there was a CIBS increase on July 1, 2017,
6 which was after the implementation of the
7 permanent rates in the rate case. And that
8 would be --

9 Q. And there was an increase on July 1st of
10 2018; correct?

11 A. Right.

12 Q. And there was an increase on July 1st, 2019;
13 correct?

14 A. Right. But I'm saying the first increase
15 would have been -- the revenue associated
16 with that would be in the test year. So that
17 increase, the revenues in the test year,
18 would have included a full year of the 2018
19 and 2017 increase. And then this last one --
20 and there was a second one that, again,
21 depending on the timing, some of it would
22 have been in the test year that they used to
23 calculate the 5.14.

24 Q. Right. But the test year ends June 30th,

1 2019; correct?

2 A. Yes.

3 Q. There's a revenue increase that went into
4 effect July 1st, the very next day, 2019;
5 correct?

6 A. That is correct.

7 Q. Is it your understanding that that revenue
8 increase was included in their revenue
9 deficiency calculations?

10 A. It was in the -- it wasn't included in the
11 5.14. That CIBS adjustment added \$10
12 million, roughly, to rate base and added a
13 million dollars to the annual revenues.

14 Q. So is there anything else you want to add to
15 the analysis?

16 A. Regarding the justification for the early
17 filing?

18 Q. Well, the reason we went through all these
19 questions was to sort of get an idea as to
20 whether or not a rate increase in this case
21 is warranted under the argument that the
22 current rates are confiscatory. And I think
23 you've gone through and pointed out seven or
24 eight or nine different items that, in your

1 view, should have been reflected in their
2 calculation to even be able to make that
3 determination as to whether or not the
4 current rates are confiscatory. Would you
5 agree with all that?

6 A. I do agree with that.

7 Q. And based on what you've been able to see, do
8 you believe that Staff can make a
9 determination that the current rates are
10 confiscatory?

11 A. No, I don't think you can make that
12 determination, given the requirement that
13 those are adjustments that should have been
14 made in a rate filing to produce just and
15 reasonable rates.

16 Q. And lastly, the Consumer Advocate indicated
17 that he recommended that the Commission
18 require EnergyNorth to file a rate case based
19 on a 2019 test year. Do you support that
20 recommendation?

21 A. Yes. It was our expectation from the
22 Company's representation since the last rate
23 case that they would be filing a rate case
24 using a 2019 test year. And we never

1 objected to that, and we do not object to
2 their doing so. This was originally
3 intended, expected. And I would only ask
4 that when they make that filing, assuming
5 they make that filing, that they make the
6 adjustments that the Commission expected and
7 required and address the issues that the
8 Commission wants them to address in the next
9 rate filing.

10 MR. DEXTER: Thanks. That's all
11 the questions I have.

12 CHAIRWOMAN MARTIN: Mr. Sheehan.

13 MR. SHEEHAN: Thank you.

14 CROSS-EXAMINATION

15 BY MR. SHEEHAN:

16 Q. At a high level, Mr. Frink, what you've done
17 for the last hour or so was give a preview,
18 admittedly after a review of the case, not a
19 study of the case, of what Staff's position
20 may be in this rate case should it go forward
21 on various issues.

22 A. Well, I was pointing out things that the
23 Commission required of the Company to make in
24 its filing, in addition to what, right,

1 Staff's position is likely to be going
2 forward.

3 Q. And some of the topics you suggested what
4 Staff's position may be included the customer
5 count issue -- I'm sorry -- included how the
6 iNATGAS may be treated.

7 A. Yes.

8 Q. And some other financial issues, like
9 vacancies and severance pay, you were
10 basically suggesting that Staff may
11 ultimately recommend a smaller number than
12 the Company put in its filing.

13 A. I'm suggesting the Company didn't put that
14 number in the filing.

15 Q. There was a number for the severance, for
16 example; correct?

17 A. I saw no adjustment for vacancies, and I
18 don't recall seeing a severance. There's a
19 list of the adjustments, it's not very long,
20 that we could look at, but --

21 Q. I guess my point is, these are Staff's
22 positions, and they may or may not prevail as
23 we go through a rate case. Fair enough?

24 A. No, because the Commission made a ruling in a

1 fully litigated rate case that set a
2 precedent. Those adjustments are necessary
3 to set just and reasonable rates. That was
4 the Commission ruling.

5 Q. And some of those adjustments and the facts
6 behind them may change, and the Commission
7 has every right to look at it and say is this
8 adjustment still required or not.

9 A. Yes, they do have that right.

10 Q. And the customer count is an example. If the
11 Commission were to be presented with evidence
12 that says the way that we, the Commission,
13 approved it last time isn't working, we're
14 going to change it, that's something the
15 Commission could do.

16 A. Right. If the Company were to put in some
17 proposal that more accurately reflected what
18 that is, I would think they'd adopt that.

19 Q. And similarly with all the other topics that
20 you were suggesting would result in a lower
21 revenue requirement for the Company, the
22 Commission may disagree with what you've just
23 said and say no, I think we can find a middle
24 ground or adopt the Company's position on

1 these topics.

2 A. Well, going back to the customer count, it's
3 not a question of whether you make an
4 adjustment for the customer count because
5 your customer base is growing. You're saying
6 the issue is really how it's done. The
7 Commission said there needs to be an
8 adjustment for customer count. You didn't
9 make an adjustment. That's a deficiency in
10 the filing that I feel should have been
11 there. We can argue about how you make that
12 adjustment, and I'm certainly open to that,
13 but it's not -- it's an adjustment that needs
14 to be made when you have a growing customer
15 base.

16 Q. You suggested that the changes or adjustments
17 to the decoupling mechanism belong in the
18 LDAC part of the cost of gas.

19 A. I said it could be addressed through the
20 LDAC.

21 Q. In fact, the Commission asked that it be
22 addressed in the next rate case; correct?
23 I'm not trying to play gotcha.

24 On the Commission order, Page 46, it

1 says the settlement would have required
2 Liberty to file the next rate -- sorry. The
3 settlement would have required Liberty to
4 file its next rate case to reset the test
5 [year] revenues in light of decoupling. We
6 agree that such a reset is well advised, and
7 we adopt such a requirement.

8 So the Commission did ask us to include
9 any fixes to the decoupling in this next rate
10 case.

11 A. Okay.

12 Q. The issue -- these are just examples. The
13 issue regarding vacancies is something that
14 is fact-specific, meaning you could look at
15 the particulars of the vacancies in this
16 filing and say these make sense. There don't
17 need to be any more vacancies, like Staff has
18 recommended in the electric case; correct?

19 A. Again, the Commission, in Order 26,122, says
20 you have to account for vacancies. We could
21 agree, again, similar to the year-end
22 customer count, that needs to be put forward.
23 You could do it -- you may have a different
24 interpretation as to what that adjustment

1 should be, but that adjustment needs to be
2 presented and explained. And that wasn't
3 done here.

4 But yes, you're right. I have read the
5 Granite Staff testimony, and they have a very
6 specific way to calculate it, based on
7 response from the Company as to what the
8 vacancies were, the length of the vacancies.
9 So I expect we'll go down that road here.
10 But the Company, given the ruling in the last
11 proceeding, should have discussed what the
12 vacancy situation was during the test year.

13 Q. In your comparison to the electric rate case,
14 what you were referring to was, again,
15 Staff's testimony in that case with various
16 critiques of the Granite State filing.

17 A. Correct.

18 Q. Again, those have not been adjudicated. They
19 may or may not turn out the way Staff
20 recommended; correct?

21 A. That is correct.

22 Q. And same with your recommendations here
23 today. Those are recommendations of your
24 view of the filings and their deficiencies.

1 And the Commission may or may not agree that
2 those are in fact deficiencies, or bad
3 numbers, for lack of a better word.

4 A. Well, I go back to the last rate case. It
5 was fully litigated, and there was a
6 precedent set that you need to account for
7 vacancies. So, hard to imagine that the
8 Commission, in the Granite rate case, is
9 going to say no, you don't need to make an
10 adjustment for vacancies, because they've
11 ruled on that in a fully litigated
12 proceeding. So, again, what the Commission
13 proposed -- what the Staff proposed and what
14 the Commission decides obviously can be two
15 very different things. But the Commission
16 precedent, that this needs to be included to
17 set just and reasonable rates, I have to
18 think there's going to be a decision that
19 there's going to be some adjustment for
20 vacancies.

21 Q. And that's typically what happens in rate
22 cases. We conduct discovery, have
23 conversations and either settle or not settle
24 those kinds of adjustments.

1 A. You're correct. Yes.

2 Q. You're suggesting that at a high level, the
3 Company should refile this rate case when?

4 A. Using a 2019 test year. So you've done a lot
5 of the work already. Perhaps it wouldn't
6 take you four months. You've got to
7 obviously close your books and prepare a
8 filing. So, for the last one, the last rate
9 case came in in April, I believe late April.
10 So I would expect a filing somewhere in the
11 first three to four months of 2020.

12 Q. Such a filing would be far less than two
13 years after the last order in the prior rate
14 case; correct -- meaning the November 2008
15 [sic] order on rehearing?

16 A. Yes.

17 Q. And it would be maybe even less than two
18 years after the prior rate order of late
19 April 2018.

20 A. Okay.

21 MR. SHEEHAN: That's all I have.
22 Thank you.

23 CHAIRWOMAN MARTIN: Thank you.

24 Mr. Kreis, do you have any

1 questions?

2 MR. KREIS: I have no questions of
3 Mr. Frink. And thanks.

4 CHAIRWOMAN MARTIN: Thank you.
5 Either Commissioners? And I also have no
6 questions.

7 So at this point I think we have
8 remaining -- we can excuse the witness.

9 THE WITNESS: I'll sit here until
10 you're done.

11 CHAIRWOMAN MARTIN: Okay. I think
12 what remains is the preliminary statements.
13 And so I'm not sure to what extent you have
14 additional things to say, but --

15 MR. DEXTER: Madam Chair, I had
16 intended to sum up --

17 CHAIRWOMAN MARTIN: Oh, I
18 apologize.

19 MR. DEXTER: -- after Mr. Frink's
20 testimony was concluded.

21 CHAIRWOMAN MARTIN: I'm moving
22 along too quickly.

23 MR. DEXTER: His testimony is now
24 completed, and so I will just sum up and say

1 very quickly that I believe we have
2 demonstrated that, under the facts of this
3 case and the statute, that we are in the
4 arena of the Commission being able to
5 exercise its discretion under 378:7, and for
6 the reasons that Mr. Frink pointed out, which
7 were deficiencies in this filing that weren't
8 reflected in the calculations that the
9 Company made, that you should exercise your
10 discretion and find that there is no basis to
11 determine that the current rates are
12 confiscatory because of the number of items
13 that were not submitted in the current case.
14 And on the basis of that finding, we
15 recommend that you order the Company to file
16 a rate case with a test year no earlier than
17 calendar year 2019. And that concludes my
18 argument.

19 CHAIRWOMAN MARTIN: Thank you. And
20 I apologize for that.

21 MR. DEXTER: No problem.

22 CHAIRWOMAN MARTIN: So, Mr.
23 Sheehan, do you have something else, or did
24 you want to --

1 MR. SHEEHAN: I did. When I spoke
2 to the two-year issue at the outset, I did
3 not know what Staff's and OCA's position was
4 yet. And I said so. No one told me how they
5 were going to count two years. I had
6 suspicions, but I never heard it articulated.
7 We've since heard that they have alternately
8 used the date of the April 2018 rate order in
9 the last case and the November date of the
10 order that -- the last order in the prior
11 case. And I need to emphasize the Commission
12 rejected that argument in the Commission
13 order I cited before. So if we were to use
14 those dates, the rate case that they are
15 suggesting we file would still be within two
16 years. So it seems inconsistent that they're
17 saying we're too early, but then go ahead and
18 file the rate case again too early. I
19 understand the Commission could accept that,
20 but it seems an inconsistent position.

21 And I also ask the Court -- the
22 Commission, and I'm sure you will, to read
23 the Gas Service case carefully. The two-year
24 issue is not part of that order. The

1 Commission had thrown out the filing because
2 of the two-year order. In fact, that case
3 was filed six months after the prior,
4 conclusion of the prior case, saying it was
5 too soon. The Supreme Court said not that
6 the two-year rule was misapplied, but that it
7 was a constitutional issue of a taking. So
8 if you're looking to interpret the two-year
9 period, Gas Service doesn't help. It's the
10 Pennichuck case, and that's the one that I
11 relied on.

12 Again, I need to emphasize that
13 this Commission's practice has followed
14 Pennichuck's interpretation of the two-year
15 period. It has allowed, routinely, rate
16 cases to be measured by the effective dates
17 of rates and nothing else. So when you look
18 again and again and again at cases that are
19 filed exactly two years after the previous
20 one, but it's got a two-year gap in rates.
21 So you'd have a filing on Day 1, a decision a
22 year later, and the next filing one year
23 later because the effective rate of the
24 temporary rates on Day 1. So just as an

1 example: July 1, 2006 [sic] temporary rates,
2 July 1, 2017 permanent rates, a new filing on
3 July 1, 2018 with the new temporary rates.
4 So there's overlap more so than there is in
5 this case. And there are a dozen times since
6 2008 where that has happened, again, with no
7 comment from the Commission suggesting that's
8 the right way to do it. We are outside of
9 those time lines. We have complied with the
10 two-year rule. And the one time someone
11 tried to argue that the measuring period is
12 the last order in the prior case, the
13 Commission said no, that's not what it means.

14 So I go back to the beginning,
15 where we don't get to the issue of
16 discretion. We are outside of two years
17 because the rate dates, whether you measure
18 them by temporary rates or by permanent
19 rates, will be separated by roughly 2-1/2
20 years. And the filings themselves are
21 separated by 2-1/2 years.

22 So, that being said, I can give --
23 the sequence is supposed to be the statement
24 of our case. I can keep it very simple and,

1 in effect, repeat what's in the Petition for
2 Permanent and Temporary Rates, and that is,
3 we have made a filing with testimony by many
4 of our people that support the numbers in
5 that filing. I didn't come here today
6 prepared to defend the filing as much as it
7 turned out, which clearly I might have been
8 better off doing. But we have sworn
9 testimony supporting the numbers. We have
10 sworn testimony supporting the 5.86 percent.
11 I understand Staff has concerns about that,
12 but this isn't the point to adjudicate that.
13 We are making a good-faith filing saying that
14 our rates need adjustment. The numbers that
15 we're requesting are in the filing, but we
16 ask that temporary rates effective February 1
17 and permanent rates effective November 1.
18 The Commission suspended the rates by order
19 of December 24th, so that started the
20 12-month clock. So that would be the
21 overriding schedule determining here.

22 So we are convinced that we can
23 convince either the parties through
24 settlement or you through hearing that our

1 rates do need adjustment along the lines that
2 we put in our case, and we ask that you find
3 that we are outside the two-year rule and
4 begin the substance of this case. Thank you.

5 CHAIRWOMAN MARTIN: Thank you.

6 Commissioner Bailey has a question for you.

7 COMMISSIONER BAILEY: Mr. Sheehan,
8 can you tell me what order the Commission
9 said that the two-year rule is not based on
10 final orders?

11 MR. SHEEHAN: Yes. It's Order
12 25,279. It's a Pittsfield Aqueduct case,
13 October 21, 2011. And to fully understand
14 the order, it's necessary to read the OCA's
15 motion that prompted the order, which was
16 filed a couple months before.

17 COMMISSIONER BAILEY: Thank you.

18 CHAIRWOMAN MARTIN: Mr. Kreis, do
19 you have a preliminary statement?

20 MR. KREIS: I do. I'm not sure how
21 preliminary it is at this point.

22 I would just like to point out that
23 the Pennichuck case on which the Company
24 relies only describes a two-year period

1 between rate cases in dicta. So I don't
2 really think that there is a binding New
3 Hampshire Supreme Court precedent on what --
4 on when the two-year period referenced in RSA
5 378:7 actually applies. And I really think
6 that all of the plain-meaning rules that
7 courts and commissions typically apply to
8 statutory interpretation lead you inexorably
9 to conclude that as of today, we are still
10 within that two-year period. It's a matter
11 of your discretion, and therefore, to some
12 degree, I think Staff of the Commission is
13 entitled to suggest to you how you might
14 exercise that discretion. And I guess we are
15 authorized to do that, too. So the fact that
16 we have suggested that if the Company simply
17 re-files with a calendar 2019 test year, and
18 does that on whatever time line it wants to
19 allow it to make the kind of rate case filing
20 it needs to file, that we somehow undermined
21 our argument about applying RSA 378:7 doesn't
22 make a lot of sense.

23 That bleeds into the preliminary
24 statement issue, in the sense that I think

1 the system here is pretty overwhelmed with
2 rate cases. It's no secret that this company
3 has another pending rate case that's in about
4 the seventh or eighth inning on the electric
5 side. We're pretty focused on that, as is
6 Staff and the Commission. They have another
7 huge rate case pending from the state's
8 biggest electric utility. And when these
9 rate cases pile up, it really constrains the
10 ability of both the Staff and the Commission,
11 and certainly my office, to deal with them.
12 That is why you have the kind of discretion
13 that RSA 378:7 grants you. I'm still in the
14 process of hiring consultants to help me with
15 this rate case. So I'm not in a position to
16 tell you now that the Company's rate case
17 request and all the positions that it has
18 taken are unreasonable. In a garden-variety
19 rate case, I would come before you at the
20 prehearing conference and say we look forward
21 to the opportunity to review and analyze the
22 Company's filing, and in due course we will
23 look forward to the opportunity to submit
24 testimony if necessary that provides a more

1 consumer-friendly look at the financial
2 reality this company confronts. So I don't
3 know what else to say at this point, so I
4 guess that's all I'll say.

5 CHAIRWOMAN MARTIN: Thank you.

6 Mr. Dexter.

7 MR. DEXTER: Yes. Concerning our
8 preliminary position, what you heard from Mr.
9 Frink today is not Staff's preliminary
10 position on those issues as Liberty may have
11 characterized. What Staff was doing today
12 was pointing out seven or eight items that we
13 believe, based on precedent and based on
14 specific direction from the Commission in the
15 last gas rate case, should have been included
16 in this filing and were not. So, just to be
17 clear, we don't have a preliminary position
18 on the customer count issue because the
19 customer count issue wasn't presented. We
20 don't have a preliminary position on the
21 iNATGAS issue because the iNATGAS issue
22 wasn't presented, and so on and so forth.
23 Like the Consumer Advocate, I would
24 ordinarily at a prehearing conference

1 indicate to you the issues that I thought
2 would raise concern. And I'll try to do that
3 right now.

4 Top of the list is always return on
5 equity. So if this case goes forward now or
6 next spring, Staff will be looking
7 specifically at the return on equity that's
8 been presented by the Company at
9 10.0 percent. We will look at the rate
10 design that's been proposed and see how that
11 comports with Commission precedent, as well
12 as Staff's recommendations. And we will go
13 through the \$50- to \$75 million in plant
14 investments that have been made that are in
15 the proposed rate base to see whether or not
16 they were made in a prudent fashion and
17 whether or not those investments were used
18 and useful, as well as go through the various
19 other adjustments that are proposed by the
20 Company.

21 So we don't have a preliminary
22 position at this point, other than to
23 indicate that we are willing to go forward
24 and look at this case when it is presented to

1 us fully. Thank you.

2 CHAIRWOMAN MARTIN: Thank you.

3 Okay. I think we've covered the issues that
4 were noticed. I do want to do a couple of
5 housekeeping things. I think that we have
6 two record requests at this point, one about
7 the iNATGAS --

8 MR. SHEEHAN: I believe Mr. Frink
9 answered that, that in fact all of the costs
10 are in rate base, and there was an adjustment
11 to the revenue requirement made in the last
12 proceedings.

13 CHAIRWOMAN MARTIN: And that
14 request came from Commissioner Bailey, so
15 I'll just ask her to confirm whether she --

16 COMMISSIONER BAILEY: So are you
17 stipulating that it is included in rate base
18 fully?

19 MR. SHEEHAN: Yes.

20 COMMISSIONER BAILEY: Okay. Thank
21 you. Then we don't need that record request.

22 CHAIRWOMAN MARTIN: Okay. We can
23 strike one record request.

24 The second was the calculation of

1 return on equity.

2 MR. SHEEHAN: And that's what
3 Mr. -- we helped Mr. Simek, and he testified
4 to it at the end of his session, at 5.86.

5 CHAIRWOMAN MARTIN: I agree that
6 was the testimony, but there is still the
7 outstanding request for the calculation.

8 MR. SHEEHAN: Correct. We will do
9 that.

10 CHAIRWOMAN MARTIN: Okay. So we
11 will identify that and hold the record open
12 for Exhibit 1, which will be the record
13 request for calculation.

14 Anything else?

15 MR. DEXTER: Yes. There's one
16 matter that's pending. Early on in this
17 docket, Staff had recommended that if the
18 Company's case was permitted to go forward as
19 presented with the split test year -- in
20 other words, not a calendar test year -- that
21 the Company be required to submit a PUC
22 report, the equivalent of an annual PUC
23 report that coincides with the test year. So
24 in this case, they would file a PUC annual

1 report ending June 30th, 2019. In the
2 secretarial letter that was issued earlier in
3 this case, there was a statement that said
4 that the Commission would rule on Staff's
5 request when it decides whether or not this
6 case goes forward, because obviously if this
7 test year doesn't end up being litigated,
8 there's no reason for that request; there's
9 no reason for that split-year annual report.
10 So I just wanted to remind the Commission
11 that that's an outstanding issue.

12 CHAIRWOMAN MARTIN: Thank you for
13 the reminder. And if I'm understanding the
14 condition, it was that if we make a ruling
15 that we would move forward with the filing,
16 then we would also make a ruling on that.
17 And I think that that still makes sense.

18 MR. SHEEHAN: Would you like to
19 hear our side of that now, or is that
20 something that would come up later?

21 CHAIRWOMAN MARTIN: I don't think
22 we noticed it for argument today. But
23 depending on how brief --

24 MR. SHEEHAN: Two minutes.

1 CHAIRWOMAN MARTIN: We will hear
2 from you.

3 So the annual report obviously has
4 lots of financial information from us to
5 which Staff typically looks to tie numbers
6 from our annual report to our rate case
7 filing. It's a useful tool for them for
8 understandable reasons.

9 MR. KREIS: It's also useful to us.

10 MR. SHEEHAN: And anyone else who
11 has an interest in the case.

12 Part of our filing that's in the
13 case now includes balance sheets and income
14 statements for the two years before our
15 filing, and quarterly income statements for
16 the two years before our filing, plus the
17 filing itself, the financials. Those are all
18 in spreadsheet form. They were filed as a
19 PDF. But certainly we would provide the
20 parties with spreadsheet form. Those
21 documents have more information than the
22 annual report. They're monthly numbers
23 rather than annual numbers. They have more
24 detail than the annual report, and they're

1 already in the record. And because they are
2 spreadsheet-based, it is very simple for
3 Staff or whoever, the OCA, who wants to look
4 at an annual test year number to simply grab
5 the numbers from those existing documents.

6 To prepare the formal annual report
7 in a test year June to July -- July to June
8 test year is a huge undertaking on our end
9 with the accounting folks who have to not
10 simply do what I said, regroup the numbers,
11 but there are many other accounting practices
12 that typically are year-end things that would
13 have to be created for the mid-year.

14 So it goes back to a question. To
15 the extent Staff is looking for the dollars
16 that tie or don't tie to our rate case, they
17 have that information, and the split-year
18 annual report's not necessary. To the extent
19 they want the annual report for something
20 else, we're happy to listen and see if
21 there's another way we can do it other than
22 having to create this one-off annual report.
23 So that's our response.

24 CHAIRWOMAN MARTIN: Mr. Kreis, do

1 you have anything to say about that?

2 MR. KREIS: I agree with Staff on
3 this question.

4 CHAIRWOMAN MARTIN: Commissioners?

5 [No verbal response]

6 CHAIRWOMAN MARTIN: Okay. Thank
7 you. Anything else?

8 [No verbal response]

9 CHAIRWOMAN MARTIN: All right.
10 Then I think that we have covered everything,
11 and we will adjourn for today.

12

13 (Hearing adjourned at 1:16 p.m.)

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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.

(ORIGINAL CERTIFICATION FILED WITH
PUBLIC UTILITIES COMMISSION)

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

	[sic] (7) 79:22;97:1;107:5; 5;112:6;127:15; 132:1	additional (5) 39:10;50:1;72:6; 89:23;128:14	27:7;52:23	amount (6) 47:24;60:23;68:5; 24;80:9;98:17
\$		address (13) 6:20;8:4;14:11; 59:23;60:5,7;85:24; 90:20;91:19;103:6; 111:22;120:7,8	affect (1) 94:18	amounts (1) 98:23
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