

BEFORE THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

In the matter of:

Liberty Utilities (EnergyNorth Natural Gas) Corp.)	
d/b/a Liberty Utilities)	DG 14-091
Special Contract and Lease Agreement with)	
Innovative Natural Gas, LLC dba iNATGAS)	

Direct Prefiled Testimony

of

Stephen R. Eckberg

Utility Analyst

on behalf of

the Office of Consumer Advocate

Dated: June 4, 2014

1 **I. Introduction**

2 **Q. Please state your name, business address and position.**

3 A. My name is Stephen R. Eckberg. I am employed as a Utility Analyst with the Office
4 of Consumer Advocate (OCA). The OCA is located at 21 South Fruit Street, Suite
5 18, in Concord, NH. The OCA is charged by RSA 363:28 to represent the interests
6 of residential ratepayers in matters before the New Hampshire Public Utilities
7 Commission (Commission), as well as in other forums. I include as Attachment
8 SRE-1 to my testimony a statement of my education and experience.

9
10 **Q. Have you previously testified before the Commission?**

11 A. Yes, I have testified on behalf of the OCA on a number of occasions in proceedings
12 involving electric, natural gas, water, and telecommunications utilities. A listing of
13 my previous testimonies is included with Attachment SRE-1.

14
15 **Q. What is the purpose of your testimony?**

16 A. The purpose of my testimony is to provide and explain the OCA's recommendation
17 regarding Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities
18 ("Liberty") request for Commission approval of a special contract with Innovative
19 Natural Gas LLC, d/b/a iNATGAS (iNATGAS).

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1 **Q. What is your recommendation on behalf of the OCA?**

2 A. As explained further in my testimony, the OCA recommends that the Commission
3 deny Liberty's request for approval of the special contract as filed.
4

5 **Q. Please provide a brief summary of Liberty's proposed special contract and**
6 **associated lease agreement with iNATGAS.**

7 A. The special contract and lease agreement relate to iNATGAS' development of a
8 compressed natural gas (CNG) filling and fueling facility on Liberty's property
9 located on Broken Bridge road in Concord, New Hampshire. In general, iNATGAS
10 will pay to use both Liberty's real property as well as a to-be-constructed CNG
11 compressor station financed by Liberty's ratepayers and included in Liberty's rate
12 base for ratemaking purposes. Liberty's compressor station, also to be constructed
13 on its Broken Bridge property, will be connected directly to Liberty's existing take
14 station on the Concord Lateral pipeline, but it will be situated on iNATGAS' side of
15 the meter and will be operated and maintained by iNATGAS. After passing through
16 iNATGAS's meter, the natural gas will be compressed up to 3600 PSI¹ and delivered
17 to the adjacent iNATGAS facility.
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1 PSI = Pounds per Square Inch. The OCA understands that the pipeline pressure as delivered to Liberty is approximately 700 PSI.

1 **Q. Please summarize iNATGAS' business plans.**

2 A. iNATGAS plans to construct, own, and operate a CNG filling station, a storage
3 vessel, a CNG vehicle fueling station, and associated fuel management systems on
4 Liberty's property on Broken Bridge Road in Concord. iNATGAS anticipates
5 seeking end use customers who wish to take delivery of CNG as well as allowing
6 access to other CNG providers to supply their customers with CNG. In addition to
7 tanker filling capacity, the vehicle fueling station will be capable of fueling city, state,
8 municipal and private CNG fueled vehicle fleets. iNATGAS is an affiliate of
9 Alternative Vehicle Service Group (AVSG) which is also in the business of owning
10 and operating both public and private access CNG refueling stations.

11

12 **Q. Does the special contract require Liberty to make any investments as part of**
13 **the construction of this proposed CNG facility?**

14 A. Yes. The filing explains that Liberty will be responsible for construction of the
15 compressor station including site preparation, purchase and installation of up to six
16 compressors, electrical transformers required to provide power to the 300hp
17 compressors, and other permanent site improvements. A listing of the "Landlord
18 Improvements" is included as Exhibit C to the special contract on Bates p. 49 of the
19 filing.

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1 **Q. What is the total amount of investment required from Liberty?**

2 A. Liberty witness Hall included in his testimony Attachment SRH-1 page 1 of 3 (Bates
3 p. 7) which shows the total investment to be \$2,245,000. Liberty is proposing that
4 this amount be included in its rate base, which will earn a return for shareholders,
5 with a corresponding first year annual revenue requirement of \$366,152. This
6 amount decreases each year going forward as the assets placed in service depreciate.

7

8 **Q. Has Liberty provided a calculation of the revenue requirement related to its
9 capital investment in this proposed CNG station?**

10 A. Yes, it has. Attachment SRH-1 to Mr. Hall's testimony (Bates p. 7) provides Liberty's
11 calculation showing the proposed \$366,152 annual revenue requirement.

12

13 **Q. Does the OCA have any comment on Liberty's calculation of this annual
14 revenue requirement?**

15 A. The calculation appears to generally conform to accepted ratemaking principles. The
16 only specific comment I would offer is Liberty does not appear to have used the
17 half-year convention commonly used in the calculation of depreciation expenses. I
18 recommend that this adjustment be included in Liberty's calculation if the
19 Commission rejects the OCA's recommendation and approves the special contract.

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1 **Q. Please explain what you mean by the half-year convention.**

2 A. It is common in rate calculations to allow only 50% of the annual depletion in the
3 first year that new capital assets are placed into service to account for the variability
4 of in-service date of those assets. In other words, some assets may be placed in
5 service early in the year (January) and would therefore reasonably accrue one full year
6 of depreciation during their first year of service to customers. Other assets may be
7 installed very late in the year (December) resulting in only a small fraction of a full
8 year's use in service to customers and corresponding small fraction of one year's
9 depreciation. To account for this variability of in-service dates of assets, a common
10 approach is to allow only one-half year's depreciation for the first year in service to
11 represent the average in-service date of the mid-point of the calendar year. Using
12 the half-year convention in this case would reduce the first year revenue requirement
13 by \$34,084 (see line 38 of SRH-1 p. 1 of 3) if the Commission were to reject the
14 OCA's recommendation and were to approve this contract and permit Liberty's
15 investment to be included in rate base.

16
17 **Q. What are the standards that you have considered in developing your**
18 **recommendation to the Commission regarding Liberty's request for approval**
19 **of the special contract?**

20 A. The Commission's Order of Notice dated April 14, 2014 in this Docket identified
21 several issues related to RSA 378:18 to consider which include: 1) whether Liberty's
22 investigation and analysis of the risks and benefits of constructing, owning, and

1 operating a CNG station is reasonable; 2) whether entry into the long term supply
2 agreement with iNATGAS is prudent and in the public interest and; 3) the
3 Commission also identified RSA 378:28 and the issue of whether Liberty's
4 investment in the CNG facility is prudent. These are the issues I have considered in
5 my review of the special contract and in the development of my recommendation.
6

7 **Q. Is Liberty's evaluation of the risks and benefits of its investment in this CNG**
8 **filling station reasonable?**

9 A. Liberty witness Clark presented a discussion of risks and benefits to other ratepayers
10 that could occur if it were to proceed with the investments described in the proposal.
11 I do not agree with Liberty's conclusion that the benefits outweigh the risks.
12

13 **Q. Please explain your own evaluation of the risks and benefits.**

14 A. Under this agreement, Liberty would purchase approximately \$2.2 million of
15 compressors, pipes, meters, transformers, etc., to facilitate service to a single
16 customer and asks its other ratepayers to pay for that equipment and a return to
17 shareholders on the value of that equipment. As described in petitions to intervene
18 in this proceeding as well as later in my testimony, this ratepayer investment in
19 compression equipment is analogous to expenditures which other companies are
20 making without ratepayer funds – the private or non-utility market is currently
21 attracting the capital to develop CNG filling stations and market the product to a
22 customer market segment that is comparable to the market that iNATGAS seeks to

1 serve. However, the operation of this equipment and the financial success of
2 iNATGAS' facility are not in the utility's hands; that responsibility remains with the
3 private owner and marketer of the CNG product – iNATGAS. While Liberty has
4 included certain terms in the contract which would allow it to acquire the CNG
5 filling station assets in their entirety should iNATGAS not succeed with this venture,
6 such an acquisition has limited value to ratepayers. The utility does not have
7 experience in owning, operating and or marketing a successful CNG filling station.
8 So the possible acquisition does not represent a high-value safeguard to ratepayers.

9

10 **Q. Are there other risks and benefits you have considered?**

11 A. Yes. There are some elements of the contractual obligations which appear unclear –
12 a situation which concerns me. For example, Exhibit C to the special contract,
13 “Landlord Improvements” (see Bates p. 49), states that the Landlord (Liberty) will,
14 “Perform all permanent site preparations at the CNG facility, including but not
15 limited to: concrete pad(s), protective 3-sided structure for compressors, concrete
16 dispenser island(s), canopy(ies), driveway, fencing, fencing permahedge, access gates,
17 trenches, lighting (perimeter, canopy, equipment area), and paving.” However, in
18 Liberty's petition for approval of the Contract at page 2, numbered paragraph 3, it
19 states that “...iNATGAS will construct, own and operate a CNG filling station,
20 canopy, storage vessels, and a CNG vehicle fueling dispense and associated fuel
21 management system on [Liberty's] property...in Concord.” In my reading of these
22 two sections, there appears to be a conflict about whose responsibility it is to

1 construct certain aspects of the facility – canopies, for instance. It is clear that
2 iNATGAS will be the “owner” of the facility to be built on Liberty’s property but it
3 is not clear who will be the “constructor” of certain aspects of the facility. This
4 uncertainty creates additional risk to ratepayers as any lack of clarity in or conflict
5 between the special contract’s terms could result in increased costs, including
6 litigation costs, borne by Liberty’s other customers.

7

8 **Q. Are there any additional areas of concern related to the special contract’s**
9 **risks and benefits?**

10 A. Yes. The proposed ownership structure of the natural gas and the compressor
11 facilities appears to be unique and unusual. Such an arrangement creates, I believe,
12 additional risks for ratepayers.

13

14 **Q. Please explain what you mean.**

15 A. My understanding of the arrangement is that Liberty will be delivering natural gas at
16 transmission pipeline pressure to a metering point at the Broken Bridge Road site
17 with iNATGAS purchasing gas² and taking ownership of that gas on the
18 downstream (or customer) side of the meter. The next step in the process is that
19 this natural gas – now owned by iNATGAS - will pass through the compressor
20 station – compressors to be included in Liberty rate base and paid for by ratepayers

² Under the terms of the special contract, Liberty will provide firm transportation of compressed natural gas to iNATGAS’ CNG fueling station for a term of 15 years and iNATGAS will be a sales customer of Liberty for one year. See Petition at page 4 paragraph 7.

1 that are, however, “operated” by iNATGAS – and the compressed gas will then pass
2 through additional piping to CNG tankers and/or storage vessels to be used for
3 vehicle fueling. This seems to be an unusual situation as generally the demarcation
4 point of natural gas utility ownership is the utility meter – beyond the meter, the
5 customer owns the natural gas, the pipes, and appliances which use the gas. I am
6 concerned that the unusual ownership structure poses additional uncertainty and risk
7 to ratepayers in the event of disputes, accidents or other issues involving questions
8 of financial liability.

9
10 **Q. Do you have any other observations related to the special contract?**

11 A. Yes. In Liberty’s Petition at page 4, paragraph 7, it states that “Under the proposed
12 Special Contract, Liberty will provide firm transportation of compressed natural gas
13 to iNATGAS’s CNG fueling station for a term of 15 years and iNATGAS will be a
14 sales customer of [Liberty] for one year”(emphasis added). It may just be a matter
15 of interpretation of language presented in the petition, but it is my understanding
16 that Liberty is providing “firm transportation” of natural gas non-compressed to
17 iNATGAS, not “compressed natural gas” as stated in the Petition. As explained
18 earlier, although Liberty will own (and earn a return on) the compressor station
19 equipment beyond the meter, once the natural gas flows through the meter (and
20 before it is compressed), iNATGAS will be the owner of the gas.

21

1 **Q. What about the personal guarantee that is offered as security for the failure of**
2 **iNATGAS to fulfill its financial obligations under the terms of the special**
3 **contract? What value did you ascribe to that in your evaluation of the risks**
4 **and benefits?**

5 A. I did not ascribe value to the personal guarantee in my evaluation of the special
6 contract's risks and benefits. The proposed financial guarantee extends for five years
7 from the commencement of the lease and the special contract and is offered to
8 provide financial protection to the Company's ratepayers in the event that financial
9 hardships experienced by iNATGAS limit or prevent iNATGAS from fulfilling its
10 responsibilities under the special contract. Such guarantees do not protect the
11 ratepayers from the other risks I've discussed in my testimony. The unsecured
12 personal guarantee is also less than certain in that the resources underlying it may not
13 be available at the time the guarantee is needed. Additionally, it is possible that
14 implementing the provisions of the guarantee could involve extensive, costly legal
15 process, for which ratepayers may be asked to pay (i.e., additional risk).

16
17 **Q. What conclusion do you reach in your own evaluation of the risks and**
18 **benefits to Liberty's ratepayers?**

19 A. As I discussed above, I believe that there are unnecessary financial risks for
20 ratepayers, there are uncertainties related to construction and ownership
21 responsibilities, and there are risks created by the unique arrangement of product
22 and property ownership and use. My conclusion, therefore, is that the risks outweigh

1 the benefits and it is not reasonable or in the public interest for Liberty's other
2 ratepayers to take on the significant financial responsibilities and risks associated with
3 the special contract.

4

5 **Q. Besides the inherent risks and costs to Liberty's other customers, is there**
6 **another reason the OCA believes that Liberty's investment in this CNG filing**
7 **station is not in the public interest?**

8 A. Yes. The development of CNG filling stations to fill tankers which can be
9 transported to private business locations to be used as a process and/or heating fuel
10 thus reducing the operating costs of very large energy consumers for whom such an
11 undertaking makes economic sense is already occurring in the private market,
12 without financing by utility ratepayers. In fact, one or more of the intervenors in
13 this proceeding are doing just that. Recently, the Concord Monitor newspaper
14 reported the imminent opening of such a privately-funded facility in Pembroke, NH
15 – less than two miles from Liberty and iNATGAS' proposed facility under
16 consideration in this docket. See Attachments SRE-2 and SRE-3. The tanker and
17 vehicle fueling facility being developed in Pembroke using private capital is owned by
18 Clean Energy and there is no investment of ratepayer funds from any regulated
19 utility.

20

21

1 **Q. Are there any other issues that you have considered in developing your**
2 **recommendation?**

3 A. Yes. Liberty has indicated that it anticipates it will file a distribution rate case later in
4 2014. It is likely that such a rate case will include proposed cost increases to all tariff
5 classes including those in the G-54 rate group which would include iNATGAS
6 absent this special contract. See testimony of Clark at Bates p. 16 line 5. This raised
7 for me the question of whether the Special Contract would allow for any price
8 increases for any reason over its 15 year term.

9

10 **Q. Do the terms of the special contract allow for price increases as a result of a**
11 **general distribution rate case or any other reason?**

12 A. I have reviewed the contract materials provided and find no terms which would
13 allow for price increases or escalations for any reason. In fact, in testimony, Liberty
14 witness Clark clearly states, “[t]he fixed delivery charge ...for all therms metered at
15 the delivery point [] will remain in effect for the term of contract and will not be
16 subject to *any* adjustments.” [emphasis added].

17

18 **Q. Does this fixed price with no provision for rate adjustments for the full 15**
19 **years of the contract concern the OCA?**

20 A. Yes, it does. Over the course of 15 years, it would not be unreasonable to expect 3
21 to 5 distribution rate cases. It is troubling to consider that Liberty’s potentially
22 largest user of the distribution system would be totally exempt from the effects of

1 increases in costs experienced during this extended period while all of its other
2 customers could face the cumulative impacts of rate increases over the 15 year term
3 of the special contract. It is understandable that the provisions of a special contract
4 might limit a company's ability to pass on certain rate increases during the contract's
5 term, but it seems highly unusual that there are no provisions for price escalations of
6 any type for the entire 15-year period of the proposed special contract. It is also not
7 unreasonable to believe that over the course of time, Liberty's marginal costs to
8 provide service may change and therefore it would be reasonable for Liberty and its
9 ratepayers to safeguard the ability to adjust prices in any special contract so they do
10 not drop below the marginal cost to serve. (In fact, such a safeguard is typically
11 required by the Commission.) Were marginal costs to exceed the special contract
12 rate during the contract's term, Liberty's other ratepayers would be required to
13 subsidize the costs to serve iNATGAS. While iNATGAS has agreed to pay a special
14 contract rate that is now higher than the G-54 rate, there is no assurance that this
15 higher rate will remain appropriate (in relation to marginal costs to serve iNATGAS)
16 over the 15-year term of the contract. Consequently, absent any price escalation
17 clause, the OCA believes the special contract presents an undue risk and is not
18 consistent with the public interest.

19

20 **Q. Is the term length of the special contract reasonable?**

21 A. I have reviewed a number of special contracts between regulated utilities and certain
22 large customers in the course of developing my recommendation in this Docket and

1 find that the fifteen (15) year term of this special contract is significantly longer than
2 the term of other special contracts. While some of those special contracts have now
3 been in place for fifteen years, the actual contract terms are generally for periods of
4 five years or less, with options to renew the contract.

5

6 **Q. You've discussed various risks of the special contract. Do you have any**
7 **comments about potential benefits to ratepayers of the special contract?**

8 A. Of the potential benefits discussed in the testimony of Mr. Clark, one stands out as
9 not unique to this special contract or the customer, iNATGAS. Specifically, that the
10 special contract requires, if it opts to switch from firm sales service to firm
11 transportation service after the first year, iNATGAS to take or pay 100% of the
12 costs associated with that capacity. See testimony of Clark at Bates p. 15. Based on
13 discussion at the technical session held on May 15, 2014, the sale of Liberty's
14 capacity to other entities in the CNG business at 100% of its value – or more – is
15 possible. In fact, at least one intervenor stated that their Company would also be
16 willing to purchase capacity from Liberty at 100% of its value if it were made
17 available. If this is the case, then the recovery of 100% of the capacity value rate is
18 not a unique benefit of this special contract. Consequently, I did not give this
19 benefit much weight in my analysis.

20

1 **Q. Earlier, you mentioned “prudence” as one of the standards to be considered**
2 **in the development of your recommendation. Do you have any specific**
3 **comments on that topic?**

4 A. Yes, I did mention prudence earlier as one of the issues for consideration that the
5 Commission included in its Order of Notice in this Docket: “issues related to RSA
6 378:18 and ...whether entry into the long term supply agreement with iNATGAS is
7 prudent...” and RSA 378:28 and whether Liberty’s investment in the CNG facility is
8 prudent...” With regard to the former issue – the prudence of the special contract
9 – I’ve interpreted “prudence,” on the advice of counsel, as synonymous with the
10 “public interest” standard in RSA 378:18. Consequently, my recommendation that
11 the Commission reject the special contract as not in the public interest applies. With
12 regard to the latter issue – the prudence of the investments pursuant to RSA 378:28
13 - the OCA reserves its right to take a position until the Company’s next distribution
14 rate case, at which time the Commission and parties will review the prudence of
15 capital investments placed in service since the Liberty’s last rate case.

16

17 **Q. Based on all the issues you have considered, what is your recommendation to**
18 **the Commission regarding the proposed special contract?**

19 A. The special contract between Liberty and iNATGAS (as filed) requires Liberty’s
20 other customers to invest \$2.2 million in utility plant to serve and be used
21 exclusively by one customer who may well be able to privately finance the
22 purchase of such equipment. Although paid for by customers and owned by the

1 utility, this utility plant will be operated and maintained by the special contract
2 customer. The ownership arrangement is highly unusual, not clearly defined in
3 Liberty's filings in this proceeding and could result in disputes between Liberty
4 and iNATGAS and additional financial burden on Liberty's other ratepayers. The
5 fixed rate, while currently exceeding the G-54 tariff rate, may not appropriately
6 capture the actual costs to serve iNATGAS during the 15-year contract period,
7 already an unusually lengthy contract term. Consequently, the special contract
8 presents unnecessary risks to ratepayers that outweigh any potential benefits and,
9 as such, the special contract and the ratepayer investment required is not prudent
10 or in the public interest. Therefore, I recommend that the Commission deny
11 Liberty's request for approval of the special contract with iNATGAS.

12

13 **Q. Does that conclude your testimony?**

14 A. Yes.