



STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

DAY 7 HEARING

RE: DG 17-048

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

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

Sandy Deno, Clerk

APPEARANCES: Reptg. Liberty Utilities (EnergyNorth
Natural Gas) Corp. d/b/a Liberty
Utilities:
Michael J. Sheehan, Esq.

Reptg. Residential Ratepayers:
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Brian D. Buckley, Esq.
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James Brennan, Finance Director
Office of Consumer Advocate

Reptg. PUC Staff:
Paul B. Dexter, Esq.
Alexander F. Speidel, Esq.
Stephen Frink, Dir./Gas & Water Div.
Al-Azad Iqbal, Gas & Water Division

Court Reporter: Susan J. Robidas, NH LCR No. 44

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P R O C E E D I N G S

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

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

Two comments: Two of the data requests attached the same audit report. I only reproduced it once in this package so that you don't have that doubled. And second, Mr. Mullen discussed the broader audit that the Audit Division did of the entire rate case. He mentioned that that was

1 discussed in that audit report. I pulled the
2 pages that just mentioned Keene and attached
3 it to the back of the document. The entire
4 audit report is already in evidence, I think
5 attached to Mr. Frink's testimony, so this is
6 somewhat redundant. I apologize for not
7 having this package Bates-numbered
8 sequentially. My version of Adobe doesn't
9 let me do that. And if Commission accepts
10 and lets me replace it with a numbered
11 package, I can do so. I understand Staff may
12 have some comments as well.

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

17 MR. SHEEHAN: Mr. Dexter and I
18 spoke before the hearing. And Don wasn't
19 part of the conversation. But I have no
20 objection to any of the other marked
21 exhibits, 1 through 77. I understand there
22 is a blank No. 39 in there somewhere that
23 somehow we missed, and Sandy can just
24 indicate "intentionally left blank." But

1 there's nothing that this Company objects to.

2 CHAIRMAN HONIGBERG: Mr.

3 Dexter.

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

19 CHAIRMAN HONIGBERG: I'm going
20 to ask you to come back to it. But let's
21 talk about the various exhibits that were
22 never referenced and never picked up by any
23 party: 4, 5, 6, 7, 15, 19, 20, 21. Those
24 are all testimonies that were never -- no

1 witness came, no one adopted that testimony.

2 It was just here.

3 MR. SHEEHAN: This is an issue
4 that has come up in prior dockets. It's the
5 Company's position that these documents are
6 akin to submitting a data request without the
7 witness to authenticate a particular data
8 request or the like. The Commission has
9 authority to accept what is in effect hearsay
10 evidence. These documents are statements by
11 witnesses who did not appear, and we are
12 submitting them as hearsay evidence. Again,
13 we had this conversation before. We don't
14 believe it requires the affirmative oath of
15 541-A:3. I know in the past Commission has
16 asked for affidavits to satisfy that
17 requirement. Again, we don't think it's
18 necessary. If the Commission orders us to do
19 so, we will collect those affidavits, as to
20 the ones that apply to Company witnesses.

21 CHAIRMAN HONIGBERG: Seven may
22 be wrong. I actually think Mr. Simek and Mr.
23 Therrien may in fact have adopted their
24 testimony. Though, some of the others, is it

1 your view that we need to rely on any of that
2 testimony to approve the settlement?

3 Probably no.

4 MR. SHEEHAN: Correct. I
5 mean, all of that testimony supports the
6 entire rate case filing, and certainly
7 95 percent of this rate case filing was
8 uncontested. Staff chose the issues that
9 they chose, and that's how it usually works.
10 So, theoretically, the testimony supports the
11 rate case filing, which we modified some to
12 the settlement. Is there any particular
13 piece of those testimonies that are in
14 dispute? I don't think so. Again, those
15 pertain to uncontested issues, as a broad
16 statement.

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

19 MR. DEXTER: Yes. I believe
20 all the witnesses that Staff had, all the
21 witnesses that submitted prefiled testimony
22 appeared and adopted it, with the exception
23 of Mr. Cunningham. I believe, you know, the
24 rate case starts with the binder with all the

1 testimonies and moves forward. In this case,
2 it moved forward to a settlement that Staff
3 opted not to sign. I believe it's important
4 for the Commission to have a complete record
5 before it so that it can choose to approve
6 the settlement or not, or approve Staff's
7 position or not. And I'll give you one
8 example.

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

24 CHAIRMAN HONIGBERG: Okay.

1 Tell me what you want to say about 78.

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

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

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

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

22 With respect to the other
23 exhibits, which I think are all testimony, I
24 remain concerned about transcripts being

1 included in the record when there's been no
2 witness to adopt them. I know there's
3 different views on that. I get the argument
4 that you're making about unsworn statements
5 coming in, hearsay and all that stuff. But
6 there's also a statute that we've all alluded
7 to in various conversations about this that
8 may well override that evidence rule. I
9 meant testimony. Sorry. Prefiled testimony.
10 Thank you for clarifying.

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

15 I guess I would ask all of you
16 in your closings to think about something
17 that I've been wrestling with since the
18 beginning of the evidentiary hearing here,
19 which is the existence of the settlement in
20 the middle of three different original
21 positions: The Company's original position,
22 or the modified position from the rebuttal,
23 the OCA's position, and Staff's position, as
24 all of them have evolved to the endpoint

1 before settlement negotiations. If we were
2 to reject any portion of the settlement,
3 consider how we are to analyze the case from
4 that point. Are we then looking at the
5 Company's position, the OCA's position and
6 Staff's position separately from the
7 settlement agreement? If we decide there's
8 elements of the settlement agreement that we
9 disagree with, how do we analyze it from that
10 point? How do we deal with the issues? It
11 seems to me we can try to accept the
12 settlement and modify it as we feel is
13 appropriate, which isn't really accepting the
14 settlement, but it may have elements of that,
15 or we are in the position of taking it as if
16 it were a fully contested case and deciding
17 the case that way, as if it were a fully
18 contested case, with no agreements among any
19 of the parties.

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

22 [No verbal response]

23 CHAIRMAN HONIGBERG: All
24 right. Mr. Dexter, as we talked about

1 yesterday, you're going to lead us off.

2 CLOSING ARGUMENTS

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

12 So we've spent a year
13 examining EnergyNorth's proposal, and we had
14 one goal in mind, and that was to present the
15 Commission with a clear record on which you
16 could decide what are just and reasonable
17 rates appropriately designed in this case.
18 And the objective, as we understand it, is
19 for the Commission to decide rates that would
20 fairly balance the interest of EnergyNorth,
21 all customer classes, and would be consistent
22 with years of regulatory precedent and
23 practice, and if there was a situation where
24 there was a deviation from precedent and

1 practice, to explain why such a deviation was
2 warranted in this case. That's been our
3 overall goal. In the course of doing this
4 goal, we have sought to narrow issues where
5 possible and only present to the Commission
6 issues that we believe were true issues. And
7 the narrowing of the issues has come through
8 discovery, through updates, through
9 settlement. And after all that, we've
10 brought you the issues.

11 The best example of narrowing
12 the issues that I can come up with is the
13 return on equity. As you know, there were
14 various returns on equity presented by the
15 various parties. And at some point in the
16 process, the comprehensive OCA-EnergyNorth
17 settlement was presented, and it included a
18 9.4 percent return on equity. Staff, at that
19 point, had to decide, you know, what to do
20 with this issue. We were not comfortable
21 with the settlement, but were we comfortable
22 with this very significant and complicated
23 issue. And after consultation with our
24 expert witness, we decided that we were, and

1 so we opted as Staff not to contest the
2 9.4 percent settlement and, in fact, urge
3 this Commission to adopt it as just and
4 reasonable. And we did that for two reasons:
5 One was to simplify this proceeding, again in
6 the pursuit of narrowing issues; and
7 secondly, because we felt the result was
8 overall just and reasonable. And that's the
9 basic goal of the entire case, from our
10 perspective, is to present a record that
11 supports just and reasonable rates.

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

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

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

21 Having said all that, I'd like
22 to bring out one other point. All the
23 information that Staff brings to the
24 Commission in these cases, essentially all

1 the information, is provided by the Company
2 or other parties. Staff is not in a position
3 to go out and produce original information
4 about the Company's operations. So, for
5 example, if Staff tells you that 2,756 hours
6 were spent training at the training center by
7 EnergyNorth, it's because EnergyNorth told us
8 2,756 hours. Now, I know there's been
9 discussion about that. But I just want to
10 make the point that the information comes
11 from the Company. When Staff recommends that
12 the payroll allotment in the revenue
13 requirement reflect 3.5 vacancies, it's
14 because the Company has told us that at two
15 points in time there were three vacancies and
16 four vacancies respectively, and we simply
17 averaged those two. We're not in the
18 position to independently verify whether or
19 not those vacancies exist. And maybe I'm
20 stating the obvious. But I just want to
21 point that out.

22 The other thing we try to do
23 with the information that we get from the
24 Company is to present it in a way that's

1 useful to you. And that's, I think, why you
2 hear the expression "apples to apples" so
3 often in the hearing room, because we want to
4 present information that's comparable to
5 other information that we've gotten. And
6 again, the idea is to present clear
7 information.

8 Clear information is designed
9 to produce just and reasonable rates. So
10 what information does the Commission need to
11 decide whether the rates are just and
12 reasonable? It sounds complicated, but it's
13 actually very simple. There's four things
14 that the Commission needs to know in order to
15 set rates: They need to know what the
16 Company's income is; they need to know what
17 the Company's rate base is, and they need to
18 know what a reasonable return on that rate
19 base is. In terms of the reasonable return,
20 all the parties have agreed that 9.4 percent
21 is reasonable. So that leaves us with what's
22 the Company's income and what's their rate
23 base. Income has two components, revenues
24 and expenses. And rate base is a

1 representation of the investment that the
2 Company has made in order to serve customers.
3 That's all that's at issue in this case. And
4 we'll talk a little bit further about the
5 revenues, the expenses and the rate base.
6 But I want to point out that's what's at
7 issue.

8 What's not at issue, in
9 Staff's view, and this was brought up in the
10 Company's rebuttal testimony and the
11 cross-examination of Mr. Frink, is, quote,
12 unquote, how many employees will EnergyNorth
13 have to lay off if Staff's position were
14 accepted; how many growth projects will
15 EnergyNorth have to abandon if Staff's
16 position is accepted; how do EnergyNorth's
17 rates compare to Northern Utilities rates.
18 Those are not issues in this case. The issue
19 is "just and reasonable rates." And in fact,
20 our witnesses went on to address those, to
21 point out that all the recommended revenue
22 requirements allow for a full complement of
23 payroll, with the exception of a couple of
24 vacancies. All the presentations in this

1 case allow for the Company an opportunity to
2 earn 9.4 percent on its investments. So
3 there is no reason to abandon investments.

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

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

21 You want to determine -- you
22 need to determine revenues and expenses and
23 rate base in what's called a "rate effective
24 period," or some people call it "a rate

1 year." And that is because the rates that
2 you are going to set are going to take effect
3 May 1st, 2018. The way, through tradition
4 and precedent, the rate effective period is
5 set is to look at a historical period. The
6 historical period is referred to as "the test
7 year." There's years of precedent as to how
8 you adjust the test year to bring it up to a
9 rate effective period or a rate year and to
10 use that rate effective period to set rates.
11 And that's essentially where most of the
12 issues that we've brought before you fall.

13 There's two things that need
14 to be done to a test year. You can't just
15 accept the Company's historic information
16 because it's not representative of what's
17 going to happen in the rate year. So, some
18 adjustments are made, and they basically take
19 two forms: One is, is the test year
20 representative of a typical year of revenues
21 or expenses or rate base that a Company is
22 going to experience; and secondly, because we
23 know the test year is historically old, are
24 there known and measurable adjustments that

1 can be made to bring that representative test
2 year forward into the future, into the rate
3 effective period. Again, very basic. But I
4 just wanted to start out with this because we
5 start throwing around a lot of numbers, and
6 I'm trying to put them in perspective.

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

15 To my understanding, there is
16 only one issue in this case involving
17 revenues. And again, we need to make sure
18 that revenues are going to be reflective of
19 what the Company experiences in the rate
20 effective period. So we start with the test
21 year. And we don't just use the test year
22 revenues, because the test year revenues may
23 not be reflective of what's going to happen
24 in the rate effective period. The most

1 significant revenue adjustment that every gas
2 company makes is for weather. The test year
3 may have had colder than normal weather, it
4 may have had warmer than normal weather. But
5 we don't just base rates on the test year
6 revenues. We adjust it for normal weather.
7 And that was done in this case, and there was
8 no dispute over the adjustment.

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

1 year revenues need to be adjusted.

2 What is at issue in this case,
3 and it's a fairly significant issue, is what
4 about regular, run-of-the-mill customers that
5 were added during the year? The Commission
6 could just look at the test year amount, but
7 it would ignore the fact that EnergyNorth
8 routinely, historically adds a little over
9 one percent of customers each year. The
10 exhibit in Mr. Therrien's testimony
11 demonstrates that, and Mr. Simek agreed to it
12 when he testified on the stand. So in
13 Staff's view, it's important that the
14 revenues that are laid out in the rate
15 effective period reflect the fact that we
16 have a 10-year history of adding customers.
17 And if we don't make an adjustment for that,
18 the revenues that go into the calculation for
19 rate setting are going to be understated, and
20 therefore the revenue deficiency will be
21 overstated. And there is no controversy as
22 to the number. In fact, as I said earlier,
23 virtually all the numbers in this case come
24 from EnergyNorth. And our revenue

1 requirements witnesses took an adjustment
2 that was calculated by EnergyNorth, and all
3 it does is simply take the year-end number of
4 customers and goes through the math and
5 multiplies it by an average use per customer
6 and adjusts the test year revenues bumped to
7 year end. Not only is that appropriate
8 because we're trying to hit a rate effective
9 period, there is also a symmetry involved in
10 that because we adjust other elements of the
11 equation that I'm going to talk about up to
12 test year-end levels and beyond. And in
13 particular, what you want to look at in this
14 case is the rate base because there's
15 symmetry between rate base and revenues. In
16 other words, when the Company makes rate base
17 investments, it's often to serve new
18 customers. So if the rate base is going to
19 be adjusted forward, then the revenues ought
20 to be adjusted forward as well to create --
21 to keep this symmetry. Way back, 20 years
22 ago or so, this Commission used to use an
23 average rate base for ratemaking purposes.
24 And they would take a 12- or a 13-month

1 average of the plant balances in the test
2 year and base rates -- set rates based on
3 that. Sometime in that intervening period,
4 the Commission has moved to using a year-end
5 rate base. And what that means is you look
6 at the plant in service at year end, and you
7 use that in your rate-setting situation. And
8 so Staff's adjustment simply says, if we're
9 going to use year-end rate base for rate
10 setting, why wouldn't we use a year-end
11 customer count. And again, as I said, I
12 believe that's the only adjustment to
13 revenues that Staff recommends in this case.
14 And that's an issue that the Commission needs
15 to decide in order to set rates.

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

23 First, there's an invoice that
24 was -- there was a payment made during the

1 test year to a consultant by the Company to
2 evaluate the NED pipeline. There is no
3 question as to its prudence or the amount or
4 anything like that. What we're trying to do
5 here is adjust the test year to a
6 representative level. This was a fairly
7 large invoice, I believe in the area of
8 \$40,000. And if one were to include that
9 invoice in the test year without any
10 adjustment, that would be akin to saying,
11 well, the Company will incur that invoice
12 every single year. And Staff adjustment
13 simply says, well, that's an unusual invoice
14 because it involved a pipeline project to the
15 Northeast, which doesn't seem to come along
16 every year, and it's a significant amount.
17 We agree that the Company should recover that
18 invoice. But mathematically, the better way
19 for them to recover that invoice is to build
20 a reasonable portion of that expense into the
21 rates, not put the whole thing in the rates.
22 And because rates are collected every year,
23 we don't want them to collect that invoice
24 three or four times. So, Staff's adjustment

1 simply takes that \$42,000 invoice and
2 allocates one third of it to be collected
3 through the rates. And everyone's talked
4 about a three-year rate case cycle. So at
5 the end of the three years, the Company will
6 recover that \$42,000. So that was an example
7 of adjustment where we made -- to make the
8 test year more representative.

9 Staff has proposed three
10 payroll-related adjustments. One of them is
11 along the same lines. We're trying to get a
12 representative level of payroll built into
13 the rate so that the Company can recover all
14 its reasonable payroll expenses. The
15 Company's presentation did not account for
16 the fact that there are vacancies, that
17 vacancies occur. And if the Staff were -- if
18 the Commission were simply to adopt the
19 payroll as presented by the Company in this
20 case, it would be including expenses related
21 to vacancies. And when positions are vacant,
22 they're not paid. Now, the Company did point
23 out that, you know, sometimes they have to
24 charge overtime and sometimes they have to

1 hire temps. But that would all be included
2 in the test year. So all we're trying to do
3 is simply allow for one level of these
4 vacancies -- payroll associated with these
5 vacancies. We're just trying to avoid doing
6 it twice.

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

23 The Company in this case
24 presented us more of a projected level of

1 payroll. And again, it was different. And
2 except for the vacancies, it seemed to have a
3 reasonable result. And Ms. Mullinax included
4 this in her prefiled testimony and testified
5 to it while she was here, that she did the
6 more traditional calculation as a check, and
7 the number came out reasonable. So we're
8 comfortable with the number as long as it's
9 adjusted for vacancies.

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

16 First has to do with severance pay.
17 There was an amount in the cost of service to
18 cover severance pay for employees who had
19 resigned. And as we learned during the
20 course of the case, it was for employees who
21 had not voluntarily resigned, but had
22 involuntarily resigned, and it had to do with
23 releases issued by the Company. Now, Staff
24 doesn't have information concerning the

1 specifics of the case, so we can't tell you
2 more about the details. I suppose the
3 Company could if they wanted to. But as a
4 general matter, Staff's position is that, if
5 a customer -- if an employee involuntarily
6 resigns and the Company has to sign a -- the
7 employee has to sign a release, there have
8 been circumstances that have taken place that
9 are outside the normal course of providing
10 service in the utility business, and we don't
11 believe that customers should have to pay for
12 those. And again, we can't go further
13 because we don't know the specifics. But as
14 a general matter, that strikes us as costs
15 that should not be passed on to customers.

16 The third aspect of Staff's
17 payroll adjustment has to do with
18 executive -- I'm sorry, not executive -- with
19 incentive pay. And payroll structures are
20 complicated. And we understand that Ms.
21 Mullinax testified that incentive pay is
22 standard in the industry. But when you look
23 at the matrix that's used to determine the
24 long-term incentive pay, there are goals that

1 are used. And the goals are geared towards
2 benefiting shareholders, not customers. And
3 these are the goals that relate specifically
4 to things like income and profit. And there
5 actually could be a situation, and -- we
6 talked a lot of about incentives in the
7 utility industry -- there could be a
8 situation where the goals of shareholders and
9 ratepayers are at odds. In other words, if a
10 Company is trying to increase earnings, one
11 way for them to do that could be at the
12 expense of things that customers value, like
13 customer service and line maintenance and
14 things like that. We're not saying that's
15 the case here. But the framework does allow
16 for that. Again, we talk a lot about
17 incentives. So, Staff's position on the
18 payroll that's associated with goals that are
19 directly beneficial to shareholders and could
20 be detrimental to ratepayers should be born
21 by shareholders and therefore should be
22 removed from the cost of service.

23 In terms of your standard
24 operating and maintenance expenses, those are

1 all the issues that are before the
2 Commission. A significant additional expense
3 that the Commission needs to decide on in
4 this case that we heard a lot about yesterday
5 has to do with depreciation. And there were
6 two issues that Staff brought before the
7 Commission concerning depreciation. One has
8 to do with the average service lives of the
9 plant that gets depreciated. And we had two
10 experts testify on this. Staff's witness,
11 Mr. Iqbal, took I guess what I would classify
12 as a more conservative approach. He looked
13 at the study that Mr. Normand did. And when
14 there was a clear answer in the study to
15 change an average service life, he went with
16 it. Where there wasn't a clear answer in the
17 study, as Mr. Normand indicated a couple of
18 times yesterday, the study doesn't always
19 provide the answers that are reliable, Mr.
20 Iqbal took a conservative approach, which was
21 to leave the average service life as it was,
22 as it had been set in the last rate case.
23 Mr. Normand took a different approach, where
24 he relied on additional information outside

1 the study. Those are two different
2 conclusions. I guess it's up to the
3 Commission to decide which of the experts
4 they found most convincing. I will say,
5 though, as a long-term -- as a general rule
6 in depreciation, which is a long-term,
7 long-looking issue, Staff's general approach
8 is that a conservative approach is the better
9 approach to take.

10 Significantly in the area of
11 depreciation is what to do with this reserve
12 imbalance that's accumulated. It's a fairly
13 significant dollar figure, and it's something
14 that Staff believes the Commission should
15 take a very, very hard look at. In this
16 instance, we're faced with the situation
17 where the Company has under-depreciated as a
18 result of the last study and therefore needs
19 to make up a deficiency of somewhere in the
20 area of \$10 million. Mr. Normand's testimony
21 that was filed in the case recommended that
22 this be amortized over 10 to 12 years. And
23 what that means is we would take the \$10
24 million and charge the ratepayers in this

1 case approximately \$1 million, and that would
2 be built into the rates. And that would
3 carry forward until the rates were changed
4 again. So it would be \$1 million built into
5 the rates annually. The Company would
6 collect that annually.

7 Mr. Mullen took a different
8 view from Mr. Normand's original testimony
9 and said that this should be amortized over
10 three years. So that means you take the \$10
11 million, basically divide it by three and put
12 that figure of, I think it was \$2.7 million,
13 or \$3 million rounding, into the rates, and
14 that would be recovered every year. And we
15 talked yesterday about some reasons why Mr.
16 Mullen did that. And then we asked Mr.
17 Normand if Mr. Normand agreed with that, and
18 he said, well, in this case, my standard
19 recommendation is two depreciation cycles, 10
20 to 12 years. He also referenced another
21 approach which would be even more
22 conservative, which is, if this imbalance
23 falls in the range of 5 to 10 percent, then
24 no adjustment is necessary. Just let the

1 depreciation go forward and have it taken
2 care of in the next case. That wasn't either
3 side's proposal. Staff adopted Mr. Normand's
4 actual recommendation of 12 years. But Mr.
5 Normand did point out that doing nothing is a
6 perfectly legitimate way to address this if
7 the balance is small enough and it falls
8 under that 10 percent, which it does in this
9 case; we calculated it to about 6 percent.

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

21 We believe depreciation is a
22 long-run issue, that a conservative approach
23 should be taken, and that a 10-year -- a
24 12-year amortization, as originally proposed,

1 will allow the depreciation rates to go
2 forward and will be fair to customers.

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

24 The third part of the formula

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

14 The only issue concerning
15 working capital before the Commission, as I
16 understand it, is whether or not the
17 Commission should allow the inclusion of
18 prepayments in rate base so that the Company
19 can earn this return. And Staff's position
20 is, no, you should not because the working
21 capital associated with the prepayments is
22 reflected in the working capital requirement
23 as put forth in the lead/lag study. So why
24 do we say that? And we'll go back to the

1 very first day of hearings when we went
2 through the lead/lag study, page by page,
3 item by item.

4 So, first, what makes up these
5 prepayments? There's basically two factors,
6 a 90-percent factor and a 10-percent factor.
7 The 90-percent factor is property taxes, the
8 10-percent factor is insurance and other O&M.
9 Ninety percent of the prepayments are
10 property taxes. Why are they prepaid?
11 They're paid because the towns require the
12 Company to pay them on a certain date, and
13 often that's in advance of the period. I
14 think everybody who pays a property tax bill
15 knows that, that you don't necessarily pay at
16 the midpoint of the fiscal year. You often
17 pay earlier in the fiscal year, before you're
18 getting the services that the town provides
19 you. So it's booked as a prepayment, and it
20 sits on the books. How should the Company be
21 required -- how should the Company be
22 compensated for the capital it has while this
23 prepayment sits on the books? Well, it could
24 be it's compensated through the lead/lag

1 study. So the lead/lag study looks at
2 various expenses and revenues that the
3 Company -- that are experienced in the
4 Company's operations. And in the case of
5 property taxes, since it's a fairly large
6 cost number, and it's a fairly limited number
7 of bills, the Company studied the property
8 taxes, bill by bill, town by town. And we
9 went through all this on the very first day
10 of hearings. And what we demonstrated is
11 that for all the property taxes that are paid
12 by the Company, from the very day that that
13 bill is received and booked to the very day
14 it's paid, and to the very day that the
15 Company receives payment from the customers
16 to cover this, because customers don't pay
17 their bills the day they're received, all
18 that is taken into account in the lead/lag
19 study. So the entire universe of working
20 capital associated with property taxes is
21 laid out all before you. And because the
22 lead/lag study is so detailed, there's no
23 reason to then also put the property taxes --
24 the prepaid property taxes in rate base.

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

12 Now, the 90 percent -- or the
13 10 percent. The 10 percent is made up of
14 insurance and other O&M expenses. Now, if
15 you go into the lead/lag study, you're not
16 going to find a tab for insurance, but you
17 will find a tab for O&M. And unlike with the
18 property taxes, I don't believe the Company
19 examined every single O&M expense and every
20 single O&M invoice. They took a sample and
21 came up with a reasonable number that could
22 be applied to O&M. And that's what they did.
23 But the theory is the same. Even though it
24 wasn't done on a bill-by-bill basis, all the

1 general O&M leads and lags are accounted for
2 in that study, and that's why we recommended
3 prepayments not be included in the rate base.

4 There's one other thing I want
5 to say about this. This issue actually came
6 up last year in the Company's electric rate
7 case, and it came up in the Unitil electric
8 rate case last year. Ms. Mullinax proposed
9 the same adjustments in the electric cases
10 last year, and both of those cases were
11 resolved by settlement. And since I was
12 involved in that settlement, I can say that
13 was a reasonable allowance for this issue, in
14 Staff's view. And we were happy to accept
15 the settlement. This year, both of those
16 corporations, Unitil and Liberty, filed gas
17 rate cases. And in the Unitil case -- the
18 Northern Utilities case, Northern Utilities
19 opted not to include prepayments in rate base
20 in their case, so it wasn't an issue in that
21 case. It is an issue in the EnergyNorth case
22 because they continue to put the prepayments
23 in rate case. Staff is very interested in
24 the Commission's view on this because we'd

1 like a precedent set that we could apply to
2 other cases, so we have the Commission's view
3 going forward as to what the appropriate
4 treatment is for prepayments.

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

16 It all comes down to the
17 question of prudence, prudent investment.
18 Our understanding of what a prudent
19 investment is, is what a reasonable person
20 would do in a circumstance with information
21 that it has or reasonably should have had
22 when making a decision. And I think if you
23 read precedent, you'll see in the case of
24 utilities, you would look at maybe not a

1 reasonable person off the street, but a
2 reasonably informed utility executive. So,
3 in other words, a person that's familiar with
4 the business, what kind of a decision would
5 they make, what information would they need
6 to make a reasonable decision. And so when
7 this issue came up, we asked what's the basis
8 for the decision, and we were given a
9 business case. And the business case is four
10 years old. And it's unfortunate that so much
11 time has passed. But in fact, this is the
12 case where the training center was put into
13 rate base.

14 Mr. Mullen's talked about
15 other dockets. The first docket was a rate
16 case. And the training center was not built
17 yet and it was proposed as a step adjustment,
18 and that case was ultimately settled with no
19 finding on the training center. The next
20 case was an affiliate docket, which means
21 there was a contract between EnergyNorth and
22 Granite State Electric having to do with the
23 facility. But that's not an appropriate
24 docket to conduct a prudence review. It's an

1 affiliate docket. And last year the issue
2 came up in the electric case, but the
3 electric case didn't have the plant in rate
4 base. The electric case involved the lease,
5 and so there was no opportunity to review the
6 prudence of the facility because it wasn't in
7 the electric company's rate base, only lease
8 payments were included. That case was
9 settled. Again, I was involved in that.
10 From Staff's perspective, I can say there was
11 a reasonable allotment or adjustment in that
12 settlement to cover this issue. But the
13 issue was clearly teed up to be reviewed in
14 this case because this is where the training
15 center has been proposed to be put into rate
16 base.

17 So, with that little bit of background,
18 we asked, "What was the decision to build the
19 training center?" And we were provided with
20 a business case, and it had a fairly simple
21 analysis. It said the training center is
22 going to cost \$1.1 million, and it's going to
23 save us \$400,000 a year because currently we
24 send our employees down to National Grid for

1 training, and that's not going to be
2 available anymore, or that's not the best way
3 to do it, and so a simple three-year payback.
4 And I think anybody probably would reasonably
5 say, well, that sounds like a reasonable
6 thing to do. Spend a million dollars and
7 save \$400,000 a year. No problem. But the
8 business case didn't reflect the information
9 that a reasonable, prudent utility executive
10 either knew or should have known at the time.
11 And we went through with Mr. Mullen the
12 litany of expenses that any person would know
13 would be encountered when building a
14 building. Things like site work and
15 excavation were excluded from the analysis
16 from the very beginning. I'm not going to go
17 through all the costs. They've been examined
18 in detail. You have Liberty Consulting's
19 report that examined it in detail. But
20 suffice it to say there was a substantial
21 list of investments that would have had to
22 have been made in order for this training
23 center to have been built that were not
24 factored into the original decision. And

1 beyond that, the original decision
2 contemplated a one-story building at one
3 million dollars. And if you look at the time
4 frame for the training center, almost
5 immediately it was determined that this would
6 be a two-story building. Obviously, more
7 stories, more costs. And again, I encourage
8 the Commission to go through the analysis of
9 where these costs came up and whether or not
10 in your view you think the utility executive
11 that made this decision knew or reasonably
12 should have known about these costs that came
13 up. One of them is the -- well, I'm not
14 going to go through in detail. We spent a
15 lot of time on it in the hearing.

16 The other side of the equation
17 are the savings, okay. So, again, a fairly
18 simple analysis. We're going to save
19 \$400,000. Over half of that \$400,000
20 involved instructor fees. And as one would
21 expect, when Liberty built its training
22 center, they had to have their own
23 instructors. So they hired two instructors.
24 Again, we don't know what those instructors

1 cost. That's been asked a couple of times.
2 But, you know, we know it's two full-time
3 employees. I think a reasonably informed
4 utility executive would know that if you
5 built a training center, you're going to have
6 to have instructors to put into that training
7 center. Therefore, I shouldn't take that as
8 a savings. So that would change the simple
9 three-year payback analysis quite a bit.

10 And so then the question is:
11 Well, what do you do? You know, the Company
12 said the other day, we understand we can't go
13 back and do a better study four years ago.
14 And we don't want the Commission to look at
15 this with blinders and sort of hang the
16 Company up on this one business case that was
17 put before them. I think you need to take a
18 broader look. So what type of -- what should
19 you do? I think the question was: Should
20 the Company have informed the Staff that
21 there were cost overruns, or, you know,
22 should they have chosen not to extend the
23 road when the city required them to extend
24 the road. What choice did they have? These

1 were all things that I think the Company does
2 have to grapple with. They need to do, in
3 Staff's view, whatever analysis is needed on
4 an ongoing basis to convince themselves that
5 this is a good idea. And Commission Giaimo
6 asked, "Is there a break point where you pull
7 out?" Those are, you know, things that need
8 to be analyzed.

9 Our problem, Staff's problem
10 with this training center is that the only
11 financial analysis that was ever produced was
12 this initial three-year payback. There was
13 no follow-up financial analysis. What we've
14 seen were statements that, well, we had to
15 build a training center. There were no other
16 options. What other utilities do is not what
17 we want to do. We don't think it's
18 efficient. We think it's more efficient to
19 do that. And those all may be very valid
20 points. But as Mr. Iqbal testified, our job
21 is to look at the analyses that the Company
22 did. And the analyses were non-existent.
23 They were simply statements by the Company
24 that this was the only way to go forward. We

1 believe the Company needs to be held to a
2 higher standard than that. We believe they
3 need to be held to a strict, prudent
4 standard, where their decisions both to start
5 a project and complete a project are
6 supported by verifiable, robust financial
7 analysis. Now, we understand that this is
8 not a revenue-producing item. So it's not
9 like the iNATGAS situation, which we're going
10 to talk about in a minute. This is an item
11 that's going to be paid for entirely by the
12 EnergyNorth ratepayers. To the extent there
13 are some savings, that's great, and that's
14 important. But we believe an investment like
15 this requires special scrutiny. We strongly
16 disagree with counsel's statement in the
17 closing hours last night that there's some
18 sort of a presumption of prudence with
19 respect to investments that the Company
20 makes. I've never heard of a presumption of
21 prudence. I don't believe it exists. And in
22 this case, this binder came in with testimony
23 upon testimony, and nothing about the
24 training center. And it wasn't until the

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

21 And lastly, the "rate-basey"
22 item. This is iNATGAS. And I say
23 "rate-basey" because it's a little bit
24 different. Staff's not recommending a

1 hundred percent rate base exclusion in this
2 case. Staff has tailored a recommendation
3 that fits the circumstances that the Company
4 has put before us. The fundamental -- there
5 are two the fundamental differences between
6 iNATGAS and the training center: One is that
7 iNATGAS has the potential to produce
8 revenues, and significant revenues; secondly,
9 that the financial assessment related to
10 iNATGAS was not only passed through senior
11 management of the Company, but it was
12 actually brought before the Commission. So
13 in this case, the analysis that I talked
14 about, what a reasonably informed utility
15 executive would do in the situation, that
16 decision was brought before the Commission in
17 2014 because iNATGAS was going to be taking
18 service under a Special Contract; therefore,
19 it needed special approval. They weren't
20 going to take the tariff rates. So there was
21 a proceeding in 2014 about iNATGAS. And what
22 was brought before the Commission was a --
23 well, let me back up.

24 There were a couple of

1 analyses that were done for iNATGAS at the
2 senior management level. One of them was
3 sort of a simple payback. And then if we
4 pulled out the exhibit, the business case
5 that related to iNATGAS, under financial
6 assessment there was a reference made to the
7 Commission proceeding -- in other words, the
8 financial assessment would be presented to
9 the Commission in the Commission proceeding.
10 And it was in that proceeding that the DCF
11 analysis that we've talked about was done.
12 And before the Commission had been
13 essentially two -- well, I guess three now,
14 as of yesterday, DCF analyses. But basically
15 two. One was put before the Commission in
16 2014, and then the other, which we asked for,
17 Staff asked for, was what would this DCF
18 analysis show now that we know what the plant
19 actually cost. So I want to focus first on
20 the initial analysis that was brought before
21 the Commission in 2014.

22 This analysis indicated that
23 \$2.2 million would be spent and three
24 scenarios of revenues would hopefully be

1 realized. And that analysis showed a
2 reasonable level of benefits that the Staff
3 relied on in recommending that the Commission
4 approve this iNATGAS contract and entered
5 into a settlement with the Company which the
6 Commission ultimately approved. It was based
7 on \$2.2 million, and it had some revenue
8 scenarios. I will note that in the iNATGAS
9 proceeding, I believe the Office of the
10 Consumer Advocate took the opposite view and
11 thought that this contract shouldn't be
12 approved.

13 The \$2.2 million is
14 significant. Most customers -- in most
15 instances, the Company doesn't pay for
16 equipment behind the meter. Usually
17 investments that are made behind the meter --
18 in other words, on the customer's side of the
19 meter -- are paid for by the customer. This
20 \$2.2 million is actually dollars that the
21 Company is going to -- that the Company
22 invested on the customer's side of the meter.
23 And the understanding was that this \$2.2
24 million could be put in rate base and

1 therefore paid for by all other customers.
2 And accordingly, the revenues that came from
3 this iNATGAS arrangement would also be passed
4 on to other customers. So, essentially, the
5 other customers would bear the risk of this
6 arrangement, and the Company would earn a
7 return on its \$2.2 million. And that was the
8 arrangement that was set up. However, what's
9 been shown in this case is that the \$2.2
10 million that was put before the Commission
11 was flawed. I think Mr. Frink used the term,
12 "the analysis was flawed." So why was the
13 analysis flawed?

14 First of all, there were \$1
15 million worth of compressors that were
16 included. And again, I can pull out the
17 exhibit, but I think we all remember the four
18 levels of cost at the top of the exhibit. I
19 asked the witness, "Did that include any
20 labor associated with installing these
21 compressors?" And the witness said, "No,
22 that was just the parts." And then the
23 second line on that chart, in terms of cost,
24 was entitled something like "Piping, meter,

1 survey, et cetera." And I think the third
2 cost was a contingency. And I forget what
3 the fourth cost was. And it all totalled up
4 to \$2.2 million. And as we know, the plant
5 ended up being over \$4 million, almost \$5
6 million, if you include AFUDC.

7 So, in the course of this
8 proceeding, naturally Staff wanted to know
9 how did we get from \$2.2 to \$4.4 million.
10 And one of the things that the Company said
11 was, well, we accelerated. This was supposed
12 to be a two-phase project. And we
13 accelerated the second phase, and that led to
14 some additional costs. And in looking at the
15 original analysis that the Company had put
16 in, it became clear that the three revenue
17 scenarios that they had presented couldn't be
18 achieved without these accelerated costs
19 being spent. And the reason I say that is
20 the three scenarios that were presented on
21 the DCF analysis were called "minimum
22 take-or-pay," "baseline" and "accelerated."
23 And the Company witness stated on the stand
24 that, yes, in retrospect, the costs for the

1 acceleration were not on this sheet, this
2 original DCF analysis. So what that means is
3 the analysis that was presented could never
4 have produced the revenues that were set
5 forth in the third scenario, the accelerated
6 scenario, because the analysis didn't reflect
7 the investments that were necessary to serve
8 that level of load. And when one looks even
9 closer, one sees that the baseline assumption
10 had the very same level of sales as the
11 accelerated scenario. In other words, it
12 didn't have the accelerated scenario, didn't
13 have higher volumes, it had the same volumes
14 as the baseline, just accelerated. But if
15 the plant investment that was needed to serve
16 that level of load was not included in the
17 analysis, that second baseline level of
18 revenues could never have been received
19 either under this analysis. So, our view is
20 that this analysis was significantly flawed.
21 It presented a situation to the Commission
22 that never could have been achieved. Only
23 the take-or-pay scenario could have been
24 achieved. Now, the analysis was presented on

1 sort of a fast-track review back in 2014.
2 The Company asked for a 30-day approval, and
3 I think they got approval in 90 days.
4 Anyway, so the record on that case speaks for
5 itself.

6 So there were other things
7 that led to the cost overruns -- well, the
8 cost increases that got us from 2.2 million
9 to 4.4 million. And again our question was:
10 Could these have been included in the
11 original analysis? What was it about these
12 expenses that prevented the Company from
13 putting these in the original analysis so
14 that a reasonably prudent decision could have
15 been made back in 2014? And again, Mr. Hall
16 went through them in a fair amount of detail,
17 and Mr. Clark in a fair amount of detail.
18 But what I recall from that was a substantial
19 level of expenses for asphalt and concrete.
20 Now, we all visited the facility and we all
21 saw there's an awful lot of asphalt and
22 concrete at the facility. Not that it's not
23 needed, it just happens that that's what
24 struck me when I saw the facility. So if you

1 go back and look at the original analysis and
2 ask -- I think the number was 1.5 million in
3 asphalt and concrete -- and ask, well, where
4 was that in the original analysis? Well,
5 again, we only had the four cost items in the
6 original analysis: Compressors, contingency,
7 land is the fourth one that I couldn't
8 remember, and then this catch-all piping,
9 meters, survey, et cetera, \$650,000. Well,
10 if the asphalt came in at a million or a
11 million and a half, or whatever it came in
12 at, I asked the witness to break it down for
13 me and he couldn't. But I think if you read
14 Mr. Hall's testimony, he mentions asphalt and
15 concrete a couple of times. And both times
16 there was a fairly high number attached to
17 it. It's about a million to a million and a
18 half dollars of asphalt and concrete. Any
19 reasonably informed utility executive would
20 know that this plant can't be built without a
21 substantial amount of asphalt and concrete.
22 Again, it goes back to the original decision.

23 Secondly, the Company decided
24 to what I'll call "weatherize" some

1 components of the equipment. I think they
2 said they took some equipment that was going
3 to be left to the elements and put a canopy
4 over it and took other pieces of equipment
5 that were going to be covered with a canopy
6 and went to a three-sided building. Fair
7 enough. We're not in a position to judge
8 whether or not that sounds like a good idea.
9 Sounds like a good idea to us. But what is
10 it about this design that came up later in
11 the process that couldn't have been
12 discovered or should have been discovered
13 when the original analysis was put together?
14 We don't believe the weather conditions in
15 New England got any worse or anything like
16 that. Our conclusion from all this is that
17 the initial analysis was not a robust
18 analysis, and it excluded many, many expenses
19 and investments that either were known or
20 should have been known. And worse than that
21 is the fact that it couldn't even produce the
22 revenues that were put forth on the page.
23 So, from the outset, like the training
24 center, we feel that the analysis was flawed

1 and produced a flawed result. And again, the
2 Company was hit with some changing
3 circumstances. What are we supposed to do,
4 not build the road? I feel compelled to
5 point out that this case was going on in -- I
6 think the case was filed in April of 2014,
7 and they asked for 30-day approval. I
8 believe the hearing was held June 15, 2014
9 and the decision approving the Special
10 Contract was July 30th, 2014. Mr. Clark
11 testified that the first he heard about the
12 road, needing to extend this road, re-pave
13 the road all the way down to the facility,
14 was something like in an e-mail on something
15 like June 18th, 2014. In other words, it was
16 happening at the same time. Now, do I fault
17 the Company for not coming in and telling the
18 Commission before the decision was entered
19 that things had changed? I guess if it was
20 just the road, you know, and no one -- I
21 don't know. I just want to point that time
22 line out for you and let you decide whether
23 or not you think the Company managed this
24 project appropriately.

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

1 customers. So we think that's the worst-case
2 scenario.

3 And I asked at the end of a
4 very, very long day yesterday if Mr. Mullen
5 would have -- you know, one of the analyses
6 that the Company put in showed that there was
7 a net present value, even with all cost
8 overruns, that there was a net present value
9 of about \$212,000. And I asked Mr. Mullen
10 would he go into senior management's office
11 and recommend that the Company spend \$4.5
12 million to earn \$212,000, and he said he
13 would. And on rebuttal, I think Mr. Sheehan
14 appropriately pointed out that in that
15 \$212,000 was already a return for the utility
16 and that the utility would earn its full
17 return and that the \$212,000 was sort of
18 "extra on top of that." He didn't use those
19 words. Those are my words. When I thought
20 about it, the question I really should have
21 asked Mr. Mullen was: If you were to go to
22 the ratepayers and ask the ratepayers for \$4
23 million, would the ratepayers agree to put up
24 \$4 million with the possibility of earning

1 \$212,000? Because that's what's really shown
2 on that sheet. The Company would get full
3 return on their \$4 million investment, and
4 it's only the excess that's going to be
5 flowed back to customers. I would submit
6 that the ratepayers would say no, we're not
7 interested in putting up \$4 million so that
8 we have the possibility of getting \$212,000
9 back. And then there were other scenarios,
10 and that doesn't include AFUDC. But I'm
11 going to leave that where it is.

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

16 And the next thing that
17 happens in a rate case is once the revenue
18 deficiency is decided, the Commission has to
19 decide who's going to collect this revenue
20 deficiency, how is it going to be spread to
21 customers, over what charges. And that's a
22 process that's referred to as "rate design
23 and revenue allocation." In this instance,
24 the Company put in what I'll call a "fairly

1 traditional" rate design and revenue
2 allocation scheme. They did an allocated
3 cost study, which I believe is either
4 required by rules or precedent. They did a
5 marginal cost study, which is required by
6 rules or precedent. And they presented
7 customer charges, and they went through the
8 standard rate design process. And the
9 underlying principle in rate design in New
10 Hampshire, for I think at least the last 20
11 years, is to balance all the rate design
12 goals that we talked about with Mr. Therrien.
13 But generally speaking, the Company --
14 generally speaking, the studies produced
15 marginal costs to serve that are higher than
16 what the Company's current rates reflect,
17 particularly in terms of customer charges.
18 In other words, they go through the marginal
19 cost study, and they come up with a very high
20 number of the marginal cost to serve. And
21 generally speaking, there is a movement
22 towards marginal cost base rates. And the
23 Company generally proposes not to move
24 entirely towards what the studies show, but

1 to make a gradual movement towards the
2 underlying marginal cost to serve. And it's
3 a great simplification -- I'm sorry. It's a
4 simplification of a complex area, but that's
5 essentially, I believe, what has gone on.
6 And I believe it's what happened in this
7 case. And the Staff had no problem with
8 that. We reviewed the studies. We've seen
9 them before. There was nothing unusual in
10 the rate design or the class allocation
11 issues in this case. And we spent very
12 little time in our testimony talking about
13 that issue.

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

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

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

22 And Staff looked at their
23 decoupling proposal. And their decoupling
24 proposal was presented by Mr. Therrien. And

1 as we went through with Mr. Therrien, it
2 contained an elaborate, detailed history of
3 decoupling in New Hampshire and stated in
4 many, many places that decoupling is needed
5 to sever the link between the utility's sales
6 and earnings so that they would be free to
7 promote energy efficiency. And they would
8 not suffer from this disincentive that is
9 built into the process whereby they make more
10 money if they make more sales. The idea is
11 this way they'll make the same amount of
12 money, irrespective of their sales level.
13 Sever that link so that they will be free to
14 pursue energy conservation. And I think
15 everybody agrees that's what's behind
16 decoupling. That's the goal we're trying to
17 promote.

18 The Staff's -- and I should
19 say that the Staff also proposed a decoupling
20 provision in this case. Mr. Iqbal proposed a
21 decoupling provision in this case. The
22 problem Staff has with the decoupling
23 proposal that ultimately ended up in the
24 settlement is that it incorporated a

1 weather-normalization aspect to it. And I
2 keep being tempted to call it "a wolf in
3 sheep's clothing." In other words, we have
4 this energy efficiency goal and we want to do
5 decoupling. So we'll do decoupling, and then
6 we'll bring in this weather normalization,
7 like a Trojan Horse. But there's nothing
8 inherently evil about this
9 weather normalization. It's not necessarily
10 wrong or necessarily right. So I'm going to
11 call it "a beagle in sheep's clothing." You
12 know, it's got some appeal, okay. But I just
13 want -- again, our goal here is to clarify
14 the record for the Commission. So let's be
15 clear what this is, and let's be clear as to
16 the magnitude of what this is and whether or
17 not it relates to energy efficiency.

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

24 Now, we've gone through this

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

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

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

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

18 So, in a typical rate case, we
19 would be done. We've covered cost of
20 service, rate base. We've had a couple of
21 prudence discussions. We've covered rate
22 design. In this case, we've covered
23 decoupling. But we have one more issue we
24 have to deal with, and that has to do with

1 what to do with the Keene Division.

2 Staff has stated in this case
3 they are proposed to the Company's -- they
4 are opposed to the Company's proposed roll-in
5 of the Keene Division into EnergyNorth for
6 two reasons, primarily. One is the -- two
7 reasons that are related. One is that
8 they're concerned about cross-subsidy. Now,
9 there's been discussion about how big the
10 cross-subsidy is. Is it significant, is it
11 not significant? Should customers in
12 Manchester pay for customers in Keene, and so
13 on and so forth. Our concern here is that
14 there really isn't enough information to know
15 how big a cross-subsidy this is. We know on
16 the basis of the historic test year that the
17 subsidiary was in the area of \$900,000. And
18 I believe there was some provisions in the
19 settlement that would have reduced that
20 subsidiary to \$700,000, or something like
21 that. But we do not know what the actual
22 cost of converting the Keene system is. We
23 do not know how many customers the Company is
24 going to get. We don't know how profitable

1 those extensions are going to be. This is
2 new territory. Taking an existing propane
3 system and putting natural gas -- compressed
4 natural gas or liquified natural gas through
5 it is something that this Commission has no
6 experience with, to my knowledge, and nor
7 does the Company. So we can't sit here and
8 tell you that it's going to be an expensive
9 proposition. But I will say that Staff is
10 concerned about that, and we believe the
11 Commission should be concerned about that.

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

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

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

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

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

17 CHAIRMAN HONIGBERG: Thank
18 you, Mr. Dexter.

19 Let's take a five-minute
20 break.

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

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

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

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

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

20 And finally, Rule PUC 203.20
21 says, in Paragraph (b), "The Commission shall
22 approve a disposition of any contested case
23 by stipulation, settlement, consent order or
24 default, if it determines that the result is

1 just and reasonable and serves the public
2 interest."

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

14 It is also, as far as I know,
15 a historic case. I know of no other
16 proceeding -- and perhaps there is one, but
17 I've never seen it in the 18 years I've been
18 hanging around the agency -- in which all of
19 the parties to a contested case have settled,
20 but without the explicit support and assent
21 of the Commission Staff. How you handle this
22 particular situation will send a message to
23 the utilities, to other litigants, and
24 certainly to my office. The situation throws

1 into sharp relief the role in a proceeding
2 like this of the Commission Staff, of which,
3 as everyone knows, I am a proud alumnus.

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

18 How does it do these things?
19 Well, in most adjudicative organizations,
20 including the four for which I have worked
21 other than this one, the deciders have
22 advisors. But the advisors get to do all of
23 their advising strictly behind closed doors.
24 Had the 2010 EnergyNorth Natural Gas rate

1 case been handled that way by this
2 Commission, the world would never have known
3 that two of the Commission's most senior and
4 respected advisors, Tom Frantz and Mark
5 Naylor, were virulently opposed to revenue
6 decoupling because, and here I'm quoting from
7 Page 4 of their prefiled testimony in that
8 docket, "Traditional cost of service
9 ratemaking has been in place for decades and
10 is not a system that is broken." In our
11 system, when the Commission gets advice like
12 that from its Staff experts, that advice is
13 subject to all of the skeptical scrutiny that
14 discovery and hostile cross-examination from
15 very motivated parties can produce. And we
16 have seen this process at its best here.
17 Your Staff has been forthright and incisive
18 with respect to scrutinizing the terms of the
19 settlement agreement. And the parties have
20 had a full and fair opportunity to expose the
21 flaws in Staff's arguments, which are many.

22 The OCA has made no secret of
23 the fact that revenue decoupling is the most
24 important issue to us in this case. But we

1 did not consider or analyze this question in
2 isolation, and the settlement agreement does
3 not address the issue in isolation either.
4 Prior to signing the settlement agreement,
5 Liberty was requesting a whopping, big
6 revenue increase of \$14.5 million, an
7 outrageously high return on equity of
8 10.3 percent, and a great leap backwards in
9 terms of rate design via massive increases to
10 its fixed charges. Ramping up fixed charges
11 is an anathema to ratepayer advocates
12 everywhere because that punishes customers
13 for doing everything we want and you should
14 want customers to do.

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

24 Now, I have just a few things

1 to say about all of that. Staff likes that
2 9.4 percent ROE, and well they should. But
3 the Commission cannot consider that
4 particular piece of the outcome in isolation.
5 It appears as a specific figure in the
6 settlement because the PUC has made crystal
7 clear that it will not approve "black box"
8 settlements that fail to disclose what return
9 is reasonable for Company shareholders. In
10 fact, I would like to remind everyone that
11 9.4 percent is well north of the ROE
12 recommended by our expert witness of
13 8.4 percent. And our expert witness, Pradip
14 Chattopadhyay, is the very best in the
15 business. The Staff seems to think you
16 should embrace the same compromise we reached
17 with Liberty on ROE and then chip away at
18 some of the other comprises and
19 accommodations to which we agreed. You must
20 not do that.

21 As the settlement agreement
22 specifies on Page 14, "This agreement is
23 expressly conditioned on the Commission's
24 acceptance of all its terms, without change

1 or condition." If the Commission does
2 otherwise, both we and Liberty have reserved
3 the right to withdraw the agreement, at which
4 point we are back to square one. And let me
5 be clear: The OCA takes that right which we
6 reserve for ourselves very seriously. I
7 think I might have heard the Chairman suggest
8 that the options before the Commission are
9 the terms of the settlement agreement or the
10 resolutions proposed by the various parties
11 in their prefiled testimony. I respectfully
12 disagree with that view of the choices that
13 are presently before the Commission because
14 of the way the settlement agreement is
15 structured. If the Commission chooses not to
16 adopt the settlement agreement, we're really
17 back to square one. And we would expect and
18 request the right to appear at further
19 hearings and defend the original positions we
20 took in our prefiled testimony. Anything
21 less raises serious due process issues.

22 We take very seriously our
23 responsibility to look at the revenue
24 requirements a utility is requesting and

1 evaluate it skeptically and thoroughly. As
2 has been amply documented on the record here,
3 this proceeding raises some very serious
4 issues about prudence and about the propriety
5 of simply absorbing the Company's Keene
6 service territory into the Company's greater
7 service territory and consolidating their
8 rates.

9 We all took that field trip
10 over to iNATGAS the other day. The silence
11 there was deafening. Yes, there are issues
12 with the way this Company plans and the way
13 it deploys capital. But poor planning does
14 not automatically equal imprudence. That's
15 not the way it works. My ultimate point
16 about the revenue requirement and the other
17 issues is that we, meaning the OCA, took a
18 hard and thorough look at the evidence on all
19 of the issues that were raised in this
20 proceeding, both the issues focused upon by
21 our witness, Mr. Brennan, and the issues so
22 thoroughly investigated and discussed by the
23 Staff's much vaster army of witnesses. We
24 assessed the litigation risk, and we came to

1 a reasonable compromise with the Company.
2 Any implication that we were not vigilant in
3 defending the interests of residential
4 customers is utterly without basis in fact.

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

23 Which brings me to decoupling.
24 Why is decoupling the most important issue in

1 this case, from our perspective as the
2 advocates for residential utility customers?
3 It's because of the Holy Grail of all
4 cost-effective energy efficiency, the energy
5 efficiency resource standard, which, in my
6 judgment, is the most important thing the PUC
7 can provide for residential utility
8 customers -- indeed, all customers. Energy
9 efficiency is simply the cheapest and best
10 way to meet the next unit of demand. The
11 Commission acknowledged as much in DE 15-137.

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

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

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

22 Indeed, it appears that the
23 only point of contention here is the
24 so-called "real-time weather-normalization

1 mechanism" that is included in the decoupling
2 provisions of the settlement agreement. And
3 let me be clear: It was not Liberty that
4 introduced real-time weather normalization
5 into the conversation. We did that via the
6 prefiled testimony of our witness, Dr.
7 Johnson. And as reflected on Page 15 of Dr.
8 Johnson's prefiled testimony, he got the idea
9 from the Regulatory Assistance Project, the
10 same organization of trusted Commission
11 advisors whose views on decoupling seemed to
12 form the basis of Staff's perspective on the
13 subject.

14 What is wrong with real-time
15 weather normalization, according to Staff?
16 Well, they say, it doesn't make up revenues
17 lost to ratepayer-funded energy efficiency.
18 And they're right. But as the Commission
19 made clear at Page 21 of its January 16, 2009
20 order closing its investigation into energy
21 efficiency rate mechanisms, the so-called
22 "comprehensive approach" to revenue
23 decoupling might be the most sensible
24 approach when proposed as we've done here in

1 a rate case. Moreover, as Mr. Therrien and
2 Dr. Johnson testified, real-time weather
3 normalization is hardly untethered from the
4 broader goal of all cost-effective energy
5 efficiency, a universe that is greater than
6 our relatively modest ratepayer-funded
7 programs. They told you that when revenues
8 are fully decoupled from sales, it can have a
9 transformative effect on the corporate
10 culture of a utility, something we might see,
11 for example, in utility support for improved
12 and more contemporary building codes. As it
13 happens, our state is currently mired in a
14 drastically outdated version of the Energy
15 Efficiency Code, and we desperately need the
16 utilities to go with us to the State House
17 and get that changed.

18 Beyond the unpersuasive claim
19 of no connection to energy efficiency, the
20 Staff's opposition to real-time weather
21 normalization veers into the subjective and
22 even the irrational. The auditors won't be
23 able to figure it out, they complain, without
24 any evidence. It sends the wrong price

1 signals, they say, without producing evidence
2 that any customers would respond to signals
3 embedded in one line of the bill when
4 overshadowed by countervailing fluctuations
5 in the much larger commodity charges. They
6 agreed that the testimony on helpful cash
7 flow effects is correct as a factual matter,
8 but they say it's not really symmetrical
9 because, if I understand Staff correctly, the
10 utility has a lot more cash at stake than any
11 individual customer does. But if that's the
12 way utility regulation worked, then companies
13 would always win because, in proportional
14 terms, they always have more at stake than
15 any individual customer does, except perhaps
16 those in the most abject poverty. Rather
17 than marshal facts in opposition to the
18 weather provisions of our decoupling plan,
19 Staff offered a bunch of adjectives. The
20 Commission should see this for what it is,
21 echoes of the historic opposition to revenue
22 decoupling at the Staff level, so
23 emphatically stated by Messrs. Frantz and
24 Naylor eight years ago. The Commissioners

1 have always led the Staff when it comes to
2 decoupling and other forms of progress in
3 rate design, and you should do so here.

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

20 And by the way, you heard
21 testimony in this case that the Maine PUC
22 recently approved a 9.5 percent ROE for
23 Northern Utilities. We can't say that the
24 difference between that ROE and the ROE in

1 our settlement agreement, 10 basis points,
2 accounts for decoupling, but we can't say it
3 doesn't either.

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

22 Now, it's true that my office
23 represents only residential customers. We do
24 not purport to represent the interests of

1 commercial and industrial customers. But we
2 are not oblivious to those interests. And we
3 note in this case there is not one shred of
4 evidence that the interests of the customer
5 classes diverge in any way. For good or ill,
6 no representatives of commercial or industry
7 customers chose to intervene in this case.

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

23 On behalf of residential
24 utility customers, we therefore urge you to

1 approve the agreement and send a signal to
2 all of the ratepayers and the utilities in
3 this state that we're not stuck in Twentieth
4 Century approaches to utility regulation.
5 Thank you.

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

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

12 The statute that governs your
13 review of this case has been misquoted today,
14 not on purpose. The Commission shall be the
15 arbiter between the interests of the customer
16 and the interests of the regulated utilities.
17 We often use the word "shareholder." Now,
18 certainly regulated utilities include
19 shareholders. But the regulated utilities
20 also include its employees and, frankly, how
21 we treat our customers. Of course, the
22 better the employees work, the happier the
23 customers are. That does benefit the
24 shareholders. But remember, it's the

1 interests of the people here in New Hampshire
2 as well.

3 I fully support what you just
4 heard from Mr. Kreis. As we have done in
5 this case, we have divided tasks. And I
6 think you've heard a commendable defense of
7 our positions on the decoupling and the rate
8 design. I will not go further into that,
9 except to repeat the fact that it was a big
10 move for us to accept the decoupling proposal
11 that you have in front of you and to accept
12 the rate design changes that are accompanying
13 with that. And I repeat, and I will repeat
14 several times how this is a single settlement
15 that you cannot, I submit, carve up. As Mr.
16 Kreis mentioned when quoting the statute, by
17 filing a settlement agreement, we have both
18 in effect given up our opportunity to defend
19 the original filings we made. We are not
20 here defending the \$14.5 million case, which
21 we could have done. We gave up that
22 opportunity to get the benefits that are in
23 the settlement agreement. So I don't think
24 the Commission has the record to take that

1 settlement agreement and carve it up. And in
2 a recent example, say on Issue X, the Company
3 proposed a million dollars, Staff proposed
4 zero, and we are representing to you that
5 there was some accommodation for that in the
6 settlement. And let's assume you conclude
7 that the right number for that is zero. How
8 do you reduce the settlement agreement by
9 some number, not knowing what amount of that
10 million dollars is in the settlement
11 agreement? So you either reduce a million
12 dollars, and we say that was more than was
13 accounted for in the settlement, or you come
14 up with some other number for which there is
15 no support in the record. So I believe, to
16 the Commission Chairman's question, the
17 options you have are Staff's position or the
18 settlement agreement. And if you stray from
19 that, and of course you have the authority
20 to, then Mr. Kreis and I will evaluate
21 whether we exercise our option under the
22 settlement to say that has upset the
23 settlement. We weren't able to defend the
24 million dollars in my hypothetical as we had

1 provided in our initial filing, and we want
2 to do that. So I think that is the framework
3 you have here.

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

24 I analogize to a more typical

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

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

1 distant memory of one of his former
2 colleagues.

3 CHAIRMAN HONIGBERG: How old
4 is Mr. Hall again?

5 MR. HALL: A hundred
6 forty-seven.

7 MR. SHEEHAN: State secret.

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

16 In 2016, we built 5 miles of
17 large pipe north of Concord along Route 106.
18 In dollar terms, that was the largest
19 EnergyNorth project ever. It was budgeted at
20 \$12 million. It came in at \$10 million on
21 time. That project involved years of
22 engineering, years of planning, a full
23 construction season. We had pipe ordered
24 from somewhere in New Jersey. We had

1 horizontal drill companies coming from other
2 places. We had contracts, invoices, purchase
3 orders, timesheets, payments. If we had to
4 prove that \$10 million investment again, that
5 project alone would have taken a week. It's
6 unreasonable. In fact, the Commission
7 doesn't require the Company to do all that
8 information for every item of cost or expense
9 or revenue in its rate case. We include
10 those costs in appropriate schedules with
11 appropriate descriptions, but we don't
12 provide all that backup. There are many
13 other projects in this rate case that would
14 similarly have thousands of pages of support.

15 And this is from Ms. Tisha
16 Sanderson's testimony in this case: Our 2018
17 capital budget was \$64 million, 81 projects;
18 11 of them were over a million dollars. In
19 that \$64 million, our budget variance was
20 \$150,000, .24 percent. In 2017, we had an
21 \$82 million capital budget, 59 projects,
22 again 11 over a million dollars. The budget
23 variance was larger, about 9 percent, largely
24 due to the budgeting we had done for

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

4 And going to the presumption
5 of prudence, what Staff does when they get a
6 filing like ours is they review the whole
7 thing. But Staff similarly can't attack and
8 make us go through the steps of every issue.
9 They will examine, they will focus, and they
10 will pick the issues they think are
11 appropriate for review. Obviously, we know
12 which issues they picked here. And that's
13 when -- so the presumption is the Hi-Line is
14 prudent. Put in our case, we had witnesses
15 swear to the fact it was prudently done. And
16 if Staff does not challenge it, in effect
17 it's presumed prudent. It's those other
18 cases where Staff says wait a minute.
19 Training center. We don't think that's
20 prudent. We put up an argument why it's not
21 prudent, and we offered testimony to that
22 effect. Now the presumption has fallen. Now
23 we do have to step forward and prove it's
24 prudent. We have to present the evidence

1 through the discovery process, rebuttal
2 testimony, whatever. So the presumption of
3 prudence does exist, and it has to exist to
4 make the system work.

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

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

4 So, on the iNATGAS issue.

5 First, in response to some of Mr. Dexter's
6 comments, he spent a lot of time critiquing
7 the initial estimate and the initial DCF. I
8 just want to note that those documents were
9 both before the Commission, before the Staff,
10 before the OCA in that docket and were
11 approved. Yes, there were shortcomings in
12 those documents. Yes, maybe they could have
13 been, and in fact some of them were, explored
14 through discovery in that docket. But
15 remember that the Commission did approve
16 them. And that approval was not limited to a
17 \$2 million project. It was approved for a
18 number of reasons. First, the contract
19 contained a minimum take-or-pay provision.
20 It included that the DCF was positive, even
21 with its shortcomings. It included that
22 iNATGAS provide security. That security
23 included a million plus in escrow; a personal
24 guaranty of Mr. Alizadeh; a corporate

1 guaranty of his company that owns several CNG
2 fueling stations, including one in Nashua,
3 all of which are in use; and ultimately a
4 right to take the station from iNATGAS if
5 they fail. That project has the potential to
6 be a huge winner for both the Company and
7 customers. Mr. Frink was clear that it was a
8 risky project at some level. And with risk
9 you have a risk of a high return and risk of
10 bumps in the road. So far, the only bump in
11 the road has been it's taking a while to get
12 going. It's been on service for a year now.
13 Volumes are starting to ramp up. We all hope
14 for the best.

15 We acknowledge the original
16 estimate was low. We explained the reasons
17 for the higher costs. Mr. Dexter went into
18 some of them. We re-ran the DCF even with
19 the actual costs, and it's still positive.
20 And as we discussed yesterday, that positive
21 number means the Company would not lose money
22 on that project, nor would customers. And in
23 response to Mr. Dexter's argument that the
24 positive was only a couple hundred thousand

1 dollars, remember that's a standard we apply
2 for all our construction projects. Anytime
3 we are doing a line extension, we don't have
4 to show we're going to make a lot of money on
5 that line extension. We have to show it is a
6 net positive for the investment. Our tariff
7 requires, for big projects, a DCF that's
8 positive, and for smaller projects, that we
9 do the formula of six years or eight years of
10 revenue to pay for it. Prudence does not
11 determine whether it was consistent with the
12 estimate but whether the costs incurred were
13 prudent.

14 After explaining all the
15 reasons for the increase cost in iNATGAS,
16 note that Staff presented no contrary
17 evidence. They never said you shouldn't have
18 spent \$400,000 on this item, you should have
19 spent 300. In fact, when Mr. Frink was on
20 the stand, I pushed him on that. He said,
21 "No, I don't have a problem with the cost."
22 There is no evidence in the record that says
23 we spent imprudently on iNATGAS. None. And
24 recall that both Staff and the Audit Division

1 reviewed all those costs. Mr. Frink also
2 acknowledged that the iNATGAS facility is
3 used and useful. By definition, if the costs
4 were "prudent" and it's "used and useful," it
5 should go in rate base at full recovery.

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

17 Also, the figure that Staff
18 used to be removed from the revenue
19 requirement is improper. It was based on
20 year one of the DCF analysis. So, year one
21 is always the worst year. That's the purpose
22 of a DCF analysis is to show early years
23 you're behind, and it's made up in later
24 years. To remove year one number from the

1 entire revenue requirement means we will
2 experience the worst year for every year
3 until that is adjusted again.

4 At the close of Mr. Frink's
5 testimony, counsel, through direct
6 questioning, tried to modify the testimony to
7 say their real argument for imprudence was
8 once the Company understood the costs were
9 higher, there should have been some kind of
10 time-out, re-evaluation, re-look, and that
11 our decision to proceed was imprudent. And
12 this was not part of their testimony but was
13 raised through examination. As you heard
14 yesterday, we did do that. We notified Staff
15 and the Commission about a year after we
16 started the project about the costs, where
17 they were expected to go, which turned out to
18 be almost exactly what they ended up being,
19 just about \$4 million. Staff took no action.
20 Staff made no recommendation. Staff didn't
21 call us back in. Staff didn't file anything
22 with the Commission to say wait a minute,
23 they are going imprudently. It is
24 unreasonable and unfair for Staff now to

1 fault us for not advising them of the
2 progress when we did, and for not suggesting
3 that they would have paused the project, when
4 they did not. There is no factual or legal
5 basis to deny full recovery for iNATGAS.

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

9 Mr. Dexter made a point of
10 defining "prudence" in the context of the
11 training center as "the reasonable utility
12 executive," what did that person know at the
13 time of the training center decision to go
14 forward and as it evolved. In fact, we have
15 in the record the testimony of that
16 reasonable utility executive, and that is
17 Mr. Smith. Mr. Smith was the HR director at
18 the time of the -- he was the force behind
19 the training center. He was in charge of
20 training. And the most concrete example of
21 his thinking is in response to one of the
22 data requests that has been mentioned a few
23 times and is attached to Mr. Mullen's
24 testimony from July of 2017 at Bates 31. And

1 the substance of that response has been
2 carried forth in various different ways. But
3 it is the argument that the analysis was not
4 a spreadsheet analysis; it was what are our
5 options. We need to train our employees. We
6 need to train our employees the way we think
7 they should be trained and the way people in
8 our company think they should be trained. So
9 our options are, and we've been over this in
10 great detail, that we have another building
11 of our own, Manchester as the most obvious,
12 but it didn't work out. We don't have
13 National Grid available anymore. The other
14 companies don't have things that we could
15 piggyback on. And there are no other
16 providers of training in New Hampshire.
17 Mr. Smith includes a specific line in that
18 exhibit. "Liberty also searched the local
19 area for another source of training and found
20 no gas or electric training available that
21 would in any way come close to meeting our
22 needs."

23 So the analysis that Staff is
24 asking us to do in this docket, the

1 comparison cost for Option A to Option B,
2 wasn't done because there were no other
3 options that even came close. And even when
4 I asked Mr. Iqbal, if we could have found an
5 option to measure financially and put it next
6 to the cost for the training center, and if
7 we decided the training center provided the
8 better training, weren't we prudent for
9 picking what's better training? And again,
10 Mr. Iqbal, understandably, as he had to, he
11 does not -- he's not an expert on training.
12 No one has challenged our decisions on what
13 training our employees need, how much
14 training, who should be trained. In this
15 building are certainly Staff members who have
16 that expertise, and they offered no
17 testimony.

18 So, again, how do we prove a
19 negative? How do we move something that has
20 not been raised by Staff and Commission?
21 What we have in this case, by the absence of
22 testimony, is saying our training methods,
23 our training protocols are reasonable. And
24 since what we're doing as training is

1 reasonable, the only way that it could be
2 done is through the training center.

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

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

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

19 On the reserve and imbalance,
20 Staff's position is to recover the
21 approximately \$9 million over 10 or 12 years,
22 which is roughly a million a year. Company's
23 original position was three years, which is
24 approximately \$3 million a year. The

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

14 As an aside, counsel presented
15 a growth chart, I think it was in Mr.
16 Therrien's testimony, showing over the 10
17 years it was a 1-percent equity growth. Of
18 course, that picks up the higher growth
19 years, recent years under Liberty, and the
20 lower growth years under National Grid. In
21 the Company's IRP which was filed last fall,
22 Bates 29 of the initial plan, the CAGR -- and
23 I forget exactly what that acronym stands
24 for -- was projected at 2.7 percent for the

1 next five years. So, for the foreseeable
2 future, there is still going to be aggressive
3 growth, which leads into the concept that the
4 reserve imbalance will grow if we don't do
5 something to address it. The five years in
6 the settlement agreement is a reasonable step
7 towards that. Compound annual growth rate.

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

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

24 The severance pay I think everyone

1 understands well.

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

1 The rate consolidation subsidy is
2 negligible, 25 cents a month for EnergyNorth
3 customers at the beginning. And we have
4 built in protections to make sure we start
5 reducing that immediately, and that's the
6 \$200,000 provisions in the settlement
7 agreement. Commission precedent supports
8 rate consolidations in this exact kind of
9 situation where we have a struggling utility
10 that needs help from a larger utility. And
11 we can bear a subsidy for a while until
12 things get better.

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

20 Does the record contain -- I think this
21 was a question from the Bench -- all the
22 support, all the elements of the Keene rates
23 that are requested in this proceeding? And
24 the answer is yes. If you go through the

1 list of schedules in the permanent rate
2 filing attachments, there is an index of
3 schedules at Bates 37-38. There are 17
4 schedules pertaining solely to Keene, and
5 they're all denoted with a "K" in the
6 description of the schedule, "RR" for revenue
7 requirement, "-K" or dash something. Those
8 are all the financials that would comprise a
9 separate Keene rate case and, in fact,
10 comprise the portions of our requested
11 revenue for Keene. We have the revenue
12 requirement of EnergyNorth. We built the
13 revenue requirement for Keene. We added the
14 two together. All that information is in the
15 record before you.

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

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

22 Staff did object to
23 consolidation. Staff did not object to,
24 specifically object to any part of that

1 revenue deficiency related to Keene, aside
2 for the production costs, if I remember
3 right.

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

1 the ground.

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

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

1 production cost issues in the cost of gas.

2 As discussed yesterday with
3 Mr. Mullen, we included production costs in
4 our filing. The Audit Division reviewed
5 them. Under the so-called "presumed prudent
6 standard," it was then up to Staff to decide
7 whether this would be one of those issues
8 that it would challenge, which would then
9 trigger Liberty's obligation to come forward
10 with all the proof. Even though Staff
11 requested discovery on this, as we
12 illustrated yesterday, and Liberty provided a
13 substantial amount of information in this
14 docket and others, Staff still did not take a
15 position in this case. Staff testimony was
16 the cost, quote, may or may not be, close
17 quote, prudent. Mr. Frink's testimony at 12.
18 Staff never firmed up this "may or may not"
19 into a "is imprudent." So our interpretation
20 would be that the presumption of prudence
21 would arise. Although this is certainly a
22 little grayer than the normal presumption of
23 prudence situation, like the Hi-Line, it
24 should apply. Nonetheless, we have provided

1 more than sufficient evidence on which you
2 could make a specific finding of prudence as
3 to both elements of production costs.

4 There are two prudence
5 questions: Was it prudent to staff the plant
6 24/7? Was it prudent to pay the response
7 costs? There is in the record, regardless of
8 the new exhibit from this morning, evidence
9 from our engineering, gas control personnel,
10 who have decades of experience, supported by
11 senior management, deciding that the risk of
12 an extreme event was still possible, although
13 unlikely, which justified the cost of 24/7
14 coverage. The simple thinking from the
15 Company's perspective: Imagine if this
16 happened again and that someone got hurt. We
17 have actual knowledge that the Keene system
18 could fail. We know it did fail, and we know
19 the consequences of such a failure. Staff
20 presented no competing evidence. Again, the
21 Safety Division was silent in this case.
22 There is nothing in the record that
23 recommends not recovering those 24/7 costs.
24 They just keep raising the issue. You should

1 look at it. You have no expert evidence
2 contradicting Liberty's engineers, and that's
3 no basis on which to find our decision to
4 staff the plant 24/7 as inconsistent --
5 imprudent. I'm sorry.

6 As to the response costs,
7 approximately \$200,000, it's more of a legal
8 argument. RSA 154:8-a required us to pay.
9 It states, "Any person whose act or omission
10 caused the actual or threatened discharge of
11 hazardous materials or toxic wastes which
12 resulted in the reasonable and proportionate
13 response of police, fire, emergency
14 preparedness or emergency response equipment,
15 shall be responsible for payment of the cost
16 of the equipment use or replacement..."

17 The disagreement would be over what's the
18 definition of "hazardous materials." Yes,
19 that could be litigated. It was the
20 Company's judgment that we would lose that
21 argument of whether this is hazardous --
22 whether the release of propane and carbon
23 monoxide, as happened in December, is a
24 release of hazardous material. The statute

1 would have been construed by a state court
2 judge if we refused to pay, and we concluded
3 that a state court judge would likely not
4 accept the interpretation of "hazardous
5 material" as to not include the propane that
6 was released.

7 The other major factor in our
8 decision to pay the response cost was the,
9 for lack of a better word, politics of the
10 situation. Imagine the public relations
11 disaster that it would be if we didn't pay.
12 Remember that after our system failed, very
13 concentrated propane went through our system,
14 causing appliances to burn too rich, causing
15 the release of carbon monoxide and unburned
16 propane, causing a complete shutdown of our
17 system and panicked calls from people all
18 over town. Keene's reaction, not knowing the
19 extent of the danger, called for help.
20 Having found one person unconscious, the fire
21 department, with Liberty's help, went to
22 every single house, knocked on doors to make
23 sure everyone was okay and to re-light their
24 appliances when the event was over. If we

1 refused to pay these costs in a town where we
2 hope to grow and provide service for the
3 coming decades, the \$200,000 we may have
4 saved will just pale in comparison. It's a
5 very small and reasonable cost to pay under
6 those circumstances.

7 Let's go back to the broad
8 outline of this case. The Company proposed a
9 rate increase of \$14 million; Staff, 4. The
10 settlement is at 10.3; Staff has increased to
11 just under 6. I respectfully ask that you
12 resist the temptation to look for hard
13 numbers inside that 10.3, as we discussed
14 before. It's not fair in the settlement
15 process, and it would not be accurate. There
16 is no basis on which you could find any hard
17 numbers within that 10.3 million, even the
18 numbers that seem to be calculable, like the
19 reserve imbalance. Those are all part of a
20 give and take. All parts of the settlement
21 have value, not just the numbers that are
22 easy to isolate, but all the others.
23 Decoupling, rate design, timing of the
24 reserve imbalance, calculation of the reserve

1 imbalance, mechanics of the Keene
2 consolidation, you simply cannot assign a
3 value to each and every component.

4 Remembering that the overall
5 goal of this proceeding is determining just
6 and reasonable rates and not to decide who
7 wins or loses any particular issues, I can
8 offer a few suggestions of how to determine
9 whether it is reasonable. First, look at the
10 guide post of numbers, the starting points of
11 the parties. The settlement number is
12 reasonably within them. In fact, in the
13 14-180 case, where there was a complete
14 "black box" that did frustrate Staff, that
15 was really what they were left with as a
16 measure of the reasonableness: Where's the
17 starting point? And in that case, Staff
18 didn't even file testimony. And the
19 Commission was left with we have a starting
20 point, we have a settled number, and we trust
21 that the parties and Staff did the
22 investigation necessary to come up with a
23 reasonable number.

24 Second, look to the numbers

1 that we did dive into in this case: The
2 \$500,000 for the training center, I submit
3 that that number should not be disallowed at
4 all; the \$400,000 reduction for iNATGAS, I
5 suggest the argument for that is weak as
6 well; the production costs, although a small
7 sample, an example of the Staff's
8 unreasonable positions in this case; the rate
9 design movement; the decoupling proposal.
10 And then remember that the settlement
11 agreement still contains compromises on all
12 these issues. We reduced our revenue
13 requirement by \$4 million a year. You can do
14 the math in many ways to see how we get to
15 that figure with all the issues we discussed.
16 But remember to include a value less than the
17 obvious monetary issues. Our agreement to
18 accept decoupling that is -- I'm sorry. Yes.
19 Remember, in addition to just the monetary
20 concessions, we made agreements to policy
21 decisions and practices that were different
22 from our initial filing, and that's the
23 decoupling, the rate design, the performance
24 metrics in Keene. All of these are thrown

1 into that \$4 million bucket of compromises
2 and concessions we made to reach a settlement
3 with the OCA, and, frankly, to try to reach a
4 settlement with Staff. And last, I do think
5 it's appropriate to compare to Northern.

6 They provide the same service in the same
7 state, with the same employee pool, with the
8 same financial market, and largely the same
9 customer pool, regulated by the same
10 Commission. The rates provided in this
11 settlement agreement, which add about \$5 a
12 month to customer bills, are lower than
13 Northern's rates. Again, that's not the "be
14 all and end all," but it is a measure of
15 reasonableness.

16 To conclude, you face the
17 choice between two resolutions of this case:
18 A settlement agreement which includes all
19 that it includes, and Staff's \$5.7 million.
20 We respectfully submit that Staff's
21 recommendation is unreasonable. I'm not sure
22 why Staff is taking such a position, but it's
23 patently unreasonable. We would be returning
24 monies from the day you issue the order. Nor

1 do I think you have the authority and the
2 record evidence to pick some rate level
3 that's between Staff's and the settlement
4 agreement, as I discussed at the opening.
5 The settlement agreement represents a
6 carefully thought-out, vigorously-negotiated
7 resolution of all issues in this docket. By
8 balancing the interests of the customers who
9 are part of the settlement agreement and the
10 utility, its employees, shareholders and
11 customers, I hope you find that this
12 settlement results in just and reasonable
13 rates. Thank you.

14 CHAIRMAN HONIGBERG: Thank
15 you, Mr. Sheehan.

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

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

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

4 CHAIRMAN HONIGBERG: Thank
5 you, Mr. Kreis.

6 Anything else?

7 [No verbal response]

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

12
13 (Whereupon the Day 7 hearing was
14 adjourned at 12:48 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.

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

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