

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Docket No. DG 20-105

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities
Distribution Service Rate Case

DIRECT TESTIMONY

OF

WILLIAM J. CLARK

AND

MARK R. STEVENS

July 31, 2020

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1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q. Please state your full names, positions, and business addresses.**

3 A. (WC) My name is William J. Clark and I am the Senior Director, Business Development.
4 My business address is 116 North Main Street, Concord, New Hampshire.

5 (MS) My name is Mark R. Stevens and I am a Business Development Professional. My
6 business address is 116 North Main Street, Concord, New Hampshire.

7 **Q. Please state by whom you are employed.**

8 A. We are employed by Liberty Utilities Service Corp. (“Liberty”), which provides services
9 to Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities
10 (“EnergyNorth” or “the Company”) along with other regulated utility affiliates, including
11 Granite State Electric.

12 **Q. Please describe your educational and professional background.**

13 A. (WC) I graduated from St. Anselm College in Goffstown, New Hampshire, with a
14 Bachelor of Science degree in Financial Economics in 1991. I have twenty-five years of
15 experience in the natural gas and electric utility industries with roles in Operations, Sales,
16 Marketing, and Business Development. I joined Liberty in 2012 as a Key Account
17 Manager and progressed into my current position as Senior Director, Business
18 Development East Region. In this role I am responsible for strategic investment
19 opportunities including acquisitions, emerging technologies and organic growth.

20 (MS) I graduated from Saint Anselm College in Goffstown, New Hampshire, with a
21 Bachelor of Science degree in Business in 2000. I have approximately five years of

1 experience in the natural gas utility industry with roles in Sales and Business
2 Development. I joined Liberty in July 2015 as a Sales Account Manager and have been
3 in my current position as a Business Development Professional since January 2019. In
4 my current role I am responsible for strategic growth and expansion opportunities for
5 both EnergyNorth and Granite State Electric.

6 **Q. Have you previously testified in regulatory proceedings before the New Hampshire**
7 **Public Utilities Commission?**

8 A. (WC) Yes, I have previously testified before the New Hampshire Public Utilities
9 Commission (the “Commission”) with respect to EnergyNorth’s various growth
10 initiatives such as the Managed Expansion Program (Docket No. DG 16-447), the
11 Windham and Pelham Franchise Expansion (Docket No. DG 15-362), the Liberty
12 Utilities and Concord Steam Joint Petition for Approval of an Asset Purchase Agreement
13 (Docket No. DG-16-770), and the Company’s special contract with the New Hampshire
14 Department of Administrative Services (“NHDAS”) (Docket No. DG 17-035).

15 (MS) No, I have not previously testified before the Commission.

16 **Q. What is the purpose of your testimony?**

17 A. Our testimony provides status updates regarding two special contracts approved by the
18 Commission in Docket Nos. DG 14-091 and DG 17-035, including information in
19 support of the Company’s request for recovery of certain costs associated with these
20 contracts that are not already being recovered through rates.

1 In Docket No. DG 14-091 the Commission approved a lease and special contract between
2 EnergyNorth and Innovative Natural Gas (“iNATGAS”) related to the construction of a
3 compressed natural gas (“CNG”) facility on Company-owned property.¹ The iNATGAS
4 contract is discussed in more detail in Section II of our testimony.

5 In Docket No. DG 17-035, the Commission approved a special contract between
6 EnergyNorth and the NHDAS for temporary gas boiler installation at certain state office
7 buildings in Concord, New Hampshire.² The NHDAS contract is discussed in more
8 detail in Section III of our testimony.

9 **II. iNATGAS SPECIAL CONTRACT UPDATE**

10 **Q. Please describe the iNATGAS Special Contract.**

11 A. In Docket No. DG 14-091, EnergyNorth filed a petition for approval of a special contract
12 and lease agreement with iNATGAS related to construction of a CNG facility.

13 In order to facilitate the transaction with iNATGAS, EnergyNorth agreed to lease land to
14 iNATGAS for locating the CNG fueling station. Pursuant to the terms of the lease
15 agreement, iNATGAS agreed to pay rent to EnergyNorth during the term of the lease.
16 The lease agreement also outlined the construction obligations of iNATGAS and
17 EnergyNorth. iNATGAS was required, at its sole expense, to construct a CNG fueling
18 station facility. EnergyNorth was required to undertake certain obligations in support of
19 the CNG facility supported by financial considerations outlined in the special contract,

1 See Orders No. 25,694 (July 15, 2014) and No. 26,002 (Apr. 16, 2017).

2 See Order No. 26,018 (May 15, 2017).

1 including: (1) construct the compressor station; (2) conduct all site work and site
2 preparation; (3) extend a transmission grade natural gas service line to the compressor
3 station; (4) provide a 1250 KVA 3-phase step-down transformer and related electrical
4 connections; (5) install gas conditioner equipment and up to six electric motor-driven
5 compressors; (6) pay the property taxes and costs of snow removal at the compressor
6 station and CNG fueling station; and (7) prepare and submit all necessary permitting with
7 the City of Concord and State of New Hampshire.

8 The special contract outlined the terms by which EnergyNorth provides firm
9 transportation of CNG to the iNATGAS CNG fueling station. The special contract runs
10 for a term of 15 years and provided that iNATGAS would be a sales customer of the
11 Company for the first year of the special contract. Under the special contract, iNATGAS
12 pays a fixed delivery charge for all therms metered at the delivery point. This charge will
13 remain in effect for the 15-year term of the special contract and is not subject to
14 adjustment. iNATGAS agreed to pay this charge, which was at the time in excess of the
15 Company's tariff, in order to compensate EnergyNorth and its customers for its
16 construction costs and permitting obligations outlined in the lease.

17 **Q. Please describe the projected sales analysis relied on by the Company for approval**
18 **of the special contract.**

19 A. iNATGAS provided annual sales volume projections for the facility. Using these
20 projections, EnergyNorth developed a cost analysis that considered the benefits
21 associated with three scenarios: a minimum analysis (based on the volumes required

1 under the take or pay obligation discussed below); a baseline analysis; and an accelerated
2 sales analysis. EnergyNorth estimated that it would incur costs between \$1.8 and \$2.2
3 million associated with its construction and permitting obligations associated with the
4 lease and special contract.

5 Based on the projections provided by iNATGAS and the Company's cost estimates, the
6 Company determined that it would be able to recover its investment in 5.5 years under
7 the minimum revenue projection scenario. The Company's analysis also calculated
8 recovery of the investment in as few as three years and four months under the accelerated
9 projection analysis, using data from iNATGAS. EnergyNorth determined that the project
10 was financially beneficial for the Company and its customers based on this analysis
11 because the 5.5 year recoupment timeline was less than the 6-year revenue test required
12 for similar investments under the Company's tariff at the time. Other benefits associated
13 with the arrangement were projected to occur based on the provision in the special
14 contract that iNATGAS would become a sales customer for at least the first year of the
15 special contract, because this would lead to increased off-peak demand on the Company's
16 system allowing EnergyNorth to spread out its fixed costs across greater volumes and
17 thereby reducing the average unit cost to all sales customers.³

3 See Order No. 25,694, at 9.

1 **Q. Did the special contract include any provisions to ensure that these benefits to**
2 **customers would in fact accrue?**

3 A. Yes. iNATGAS agreed to purchase certain minimum quantities of gas over the 15-year
4 term of the special contract (the “minimum take or pay” obligation). The minimum take
5 or pay obligation was set at 300,000 dekatherms (“Dth”) of natural gas per year for the
6 first two years of the special contract term; 500,000 Dth for the third and fourth years of
7 the special contract term; and 1,300,000 Dth per year for the remainder of the special
8 contract term (years five through fifteen).

9 iNATGAS guaranteed its minimum take or pay obligation through personal and
10 corporate guarantees, and by depositing \$1.22 million into an escrow account to be used
11 as a backstop in the event payments were not received from iNATGAS pursuant to the
12 minimum take or pay obligation. This escrow amount represented the net present value
13 of the special contract’s minimum take or pay obligation over the first five years of the
14 agreement.

15 The Commission approved the special contract finding that EnergyNorth’s investments
16 were more than offset by the anticipated revenues and were similar to upfront
17 investments in physical plant that the Company has made to serve other large customers.⁴

18 The CNG facility was built and placed into service on December 1, 2016.⁵ The

4 Order No. 25,694, at 8–10.

5 The Commission approved certain clarifying amendments in Order No. 26,002 (2017).

1 Commission's approval of the special contract included review of the Company's cost
2 estimate related to its investment under the terms of the lease.

3 **Q. Did EnergyNorth incur costs in excess of the original estimates to facilitate the**
4 **project?**

5 A. Yes. As referenced above, EnergyNorth incurred costs that were in excess of the original
6 estimates due to the following factors: (1) the Company determined that it was in the best
7 interest of customers to construct a full capacity facility from the start, instead of limiting
8 construction to the proposed phased approach, based on changed market circumstances
9 (approximately \$700,000); (2) the City of Concord imposed additional road construction
10 and paving requirements (approximately \$600,000); (3) the Company determined that
11 design changes were necessary to ensure protection of the equipment at the facility
12 (approximately \$200,000); (4) the Company incurred increased costs for asphalt and
13 concrete work together with minor design changes (approximately \$600,000); and (5) the
14 Company's project estimate included only direct costs and therefore did not account for
15 Allowance for Funds Used During Construction ("AFUDC"), overheads, and burdens
16 associated with the project (approximately \$435,000). These incremental costs totaled
17 approximately \$2.5 million.

18 **Q. How did the Commission address cost recovery for this project in EnergyNorth's**
19 **2017 rate case?**

20 A. The Commission previously considered cost recovery of the Company's investment
21 related to the CNG facility in Docket No. DG 17-048, EnergyNorth's 2017 rate case, and

1 approved recovery of the plant up to \$2,296,307 consistent with costs projected in Docket
2 No. DG 14-091, but did not allow inclusion of the incremental costs that were not
3 included in the original estimate.⁶ The Commission's order in the 2017 rate case did not
4 preclude recovery of these additional costs, subject to a future determination that the
5 special contract could provide customer benefits.⁷ The Company has performed an
6 updated discounted cash flow analysis, discussed below and provided as Attachment
7 WJC/MRS-1, that demonstrates there are positive customer benefits even with the
8 additional costs, and that recovery of the total project costs is thus justified. The
9 Company now seeks approval for recovery of the incremental costs associated with the
10 special contract that were not included in the original approval.

11 **Q. Why did the Company decide to move forward with completion of the full capacity**
12 **facility instead of adhering to the phased construction plan?**

13 A. The original cost estimate was for a first phase of construction that would not have
14 accommodated the accelerated growth model beginning in years 4 and 5, and therefore
15 these costs would have been necessary later in the contract term under the proposed
16 phased construction plan. The decision to build a "full capacity" facility at the outset
17 (instead of following the original phased construction plan) was made following the
18 2014/15 winter that included polar vortex conditions. Due to these extreme weather
19 conditions during the 2014/15 winter, spot prices for natural gas soared and oil and

6 The Commission denied recovery of these costs by implementing a downward adjustment to the Company's requested revenue requirement which was based on a one-year analysis of the revenue requirement associated with the actual plant investment as compared to the \$2,296,307 of capital costs allowed, rather than based on a multi-year discounted cash flow analysis used to approve the contract.

7 Order No. 26,122, at 31.

1 propane prices were also extremely high. By proceeding with the full capacity
2 construction, the iNATGAS CNG facility would become the only CNG facility in the
3 Northeast with firm capacity on an interstate pipeline capable of providing customers
4 with a cost-effective alternative to oil, propane, or spot gas. Large CNG providers were
5 also announcing frequent new customers at that time. Based on these conditions,
6 EnergyNorth determined that additional customer benefits would be realized if the
7 facility were built at full capacity from the outset.

8 In order to enable the benefits associated with a full capacity facility, the Company
9 incurred costs of approximately \$700,000 that were incremental to the original project
10 cost estimate. It is important to note that these costs were always going to be incurred in
11 order to facilitate the minimum take or pay obligation volumes starting in year five of the
12 special contract; the Company's decision to move forward with the full capacity build out
13 was a timing decision and should not be viewed as a project cost overrun.⁸

14 **Q. Please explain the additional requirements imposed by the City of Concord and why**
15 **these costs were not included in the project cost estimate.**

16 A. Increased costs were attributed to new conditions imposed by the City of Concord related
17 to reconstruction and paving on Broken Bridge Road where the facility is located. It was
18 after the Commission's order was issued approving the special contract that EnergyNorth

8 EnergyNorth identified these additional costs related to the full capacity facility needs through discovery in Docket No. DG 14-091. See, e.g., Response to Staff 2-8 in DG 14-091 ("At full build out, the station capacity for thermal/filling applications, will be approximately 2,300,000 dth's per year. To achieve this build out, two additional compressors will be required as well some minor extensions of the canopy at the CNG station. Liberty's expected cost for this would be approximately \$600,000-\$700,000")

1 was informed for the first time of these new conditions, which included a requirement by
2 the City to install a new water line from the top of Broken Bridge Road to the driveway
3 of EnergyNorth's LNG facility, to reconstruct and repave the length of Broken Bridge
4 Road from the pet crematorium to the end of the public road, and to construct a public
5 turnaround point. Because there is little traffic on Broken Bridge Road other than
6 EnergyNorth (there is one other business and only two homes), and since EnergyNorth
7 has been using the road for decades (its Concord LNG facility is located there), the
8 Company had no reason to believe the City would require an upgrade of almost the entire
9 road, and installation of water service as part of the iNATGAS project. This incremental
10 work required by the City accounted for approximately \$600,000 in mandated costs that
11 were incremental to the original estimate.

12 **Q. Please explain why design changes were necessary.**

13 A. The design changes implemented by EnergyNorth were made to better protect the
14 Company's investment in the facility. These design changes were also made to optimize
15 facility run time, which can enhance distribution revenues. The design changes included
16 housing the compressors and control systems within a full, three-sided building, rather
17 than beneath an open canopy, the construction of roof protections over the meters and
18 regulators, and additional equipment behind the compressor building. Making these
19 design changes ensured that the equipment owned by the Company (an investment in
20 excess of \$1.3 million) would be better protected, recognizing that damage to this
21 equipment would be the financial responsibility of the Company. Further, by
22 constructing these protections the Company anticipated more available run time at the

1 facility due to the increased reliability and service associated with protection from
2 weather. The other design changes that resulted in incremental costs were minor.

3 **Q. Please explain the additional costs for asphalt and concrete work.**

4 A. The Company incurred costs of \$635,000 for additional asphalt and concrete work.
5 These costs were necessary for timely completion of the project. The actual costs (in
6 response to a competitive request for proposals) were higher than projected, likely due to
7 the fact that the work was done at the end of the construction season when asphalt plants
8 were closing for the winter.

9 **Q. Please explain why the Company did not include known, indirect costs including**
10 **AFUDC in its original cost estimate for the project?**

11 A. The Company agrees that including these indirect costs would have provided a more
12 complete cost estimate. However, as discussed below, even if these costs had been
13 included it would not have changed EnergyNorth's determination that the investment
14 would provide benefits to customers. The Company has also updated its internal
15 processes to ensure that indirect costs are included in all cost-benefit analyses.

16 **Q. Is the special contract beneficial to customers even with the additional costs?**

17 A. Yes. Even with the additional costs incurred by the Company to complete the facility,
18 the project provides positive benefits to customers based on the minimum take or pay
19 obligations over the term of the contract. The minimum take or pay obligation was
20 specifically included in the special contract to ensure benefits to EnergyNorth's
21 customers. The Company has prepared an updated analysis (discussed below) that sets

1 forth these benefits, which analysis is provided as Attachment WJC/MRS-1 and shows a
2 positive net present value (“NPV”), even if revenues do not exceed the minimum take or
3 pay obligation.

4 **Q. Has the Commission previously reviewed the costs associated with the iNATGAS**
5 **special contract?**

6 A. Yes. As stated above, the Company sought recovery of its total investment
7 (\$4,956,658)⁹ in its 2017 rate case. The Commission’s Order allowed EnergyNorth to
8 recover the plant associated with its investment up to the level of costs presented in
9 Docket No. DG 14-091 of \$2,245,000, but did not foreclose recovery of the additional
10 costs upon a showing of customer benefit.¹⁰

11 **Q. Did the Commission state a reason why it did not approve the Company’s total**
12 **investment in its 2017 base rate case?**

13 A. The Commission determined that the Company’s initial analysis in support of its
14 projected investment amount was incomplete as presented in Docket No. DG 14-091
15 because the original project costs did not include the incremental costs described above.¹¹

9 See Attachment WJC/MRS-1. The DCF analysis included in the attachment is provided on the same basis as Exhibit 46 in Docket No. DG 17-048, i.e., the amount used in the analysis is exclusive of burdens which brings the adjusted total to \$4,815,594, the amount reflected in the DCF analysis.

10 See Order No. 26,122, at 31.

11 Order No. 26,122 at 28-29.

1 The Commission also questioned whether the benefit analysis presented in support of the
2 project was reliable if it did not account for the costs associated with construction of the
3 complete facility (instead of just the costs associated with the first phase of the project).¹²

4 Finally, the Commission raised concerns about when the Company became aware of the
5 increased paving and construction requirements imposed by the City of Concord and the
6 increased costs related to design changes. The Commission stated that if these increased
7 costs were known to EnergyNorth prior to approval of the special contract an updated
8 analysis should have been provided.¹³

9 These concerns led the Commission to initially approve recovery of only the plant
10 associated with the original cost estimate in the 2017 base rate case.

11 **Q. Has EnergyNorth addressed the Commission's findings in the 2017 base rate case?**

12 A. Yes. The Company has updated its analysis for this project to account for these
13 incremental costs, Attachment WJC/MRS-1. This analysis shows that there are still
14 benefits even with the incremental costs. Further, the additional costs incurred by the
15 Company were prudent and were not known at the time that approval of the special
16 contract was requested (or received). The Company provided cost estimates in its filing
17 based on the best information available at that time. The Company now provides a clear
18 justification for each category of increased costs above. The increased costs for paving
19 and materials account for approximately \$1,200,000 of the increased costs and were

12 See Order No. 26,122 at 31.

13 See Order 26,122 at 29.

1 outside of the Company's control. EnergyNorth was required to comply with the
2 requirements of the City of Concord related to paving and road construction.

3 Further, it was prudent to incur the additional costs associated with the accelerated
4 buildout. As discussed above, after approval of the special contract there was a change in
5 market conditions. This change in market conditions resulted in increased demand due to
6 very cold weather conditions during the winter of 2014/15 coupled with increased prices.
7 Accelerated and expanded buildout of the facilities was prudent in light of these changed
8 market conditions because by building the complete capacity facility, the Company
9 positioned itself to take advantage of these market conditions for the benefit of its
10 customers.

11 **Q. Is the iNATGAS contract currently providing benefits to customers?**

12 A. Yes. Although the CNG facility has seen low actual volumes and iNATGAS purchases
13 have been below the minimum take or pay obligation, EnergyNorth remains entitled to
14 payments for the full minimum take or pay obligations as outlined in the special contract,
15 and has received such payments. iNATGAS has compensated EnergyNorth through a
16 combination of direct payments and through withdrawals from the escrow account that
17 was established under the terms of the agreement. Further, it is EnergyNorth's
18 understanding that iNATGAS is actively pursuing customers to utilize the CNG
19 compression facilities.

1 **Q. Have you prepared an updated Exhibit 46 from Docket No. DG 17-048, and if so**
2 **what are the results of that analysis?**

3 A. Yes. Exhibit 46 included an NPV analysis based on the actual EnergyNorth construction
4 costs and overheads of the CNG facility over the 15-year term of the contract under three
5 different revenue scenarios, as well as an NPV analysis using the original estimated
6 project costs. Those three revenue scenarios were (a) receipt of the annual take or pay
7 minimum, (b) a baseline scenario of volumes anticipated at the time of the negotiated
8 special contract, and (c) an accelerated volume scenario under a high oil price scenario.
9 Please see Attachment WJC/MRS-1 for the updated analysis of Exhibit 46. The updated
10 results demonstrate a positive NPV based on the 15-year contract term, using the final,
11 actual construction costs of the facility, and under the contracted minimum take or pay
12 scenario.

13 **Q. Does the special contract contain protections for the Company related to the ability**
14 **of iNATGAS to make payments as required during the remaining contract term?**

15 A. As detailed above, the Company negotiated, and the Commission approved, several
16 provisions in the special contract that are designed to ensure that EnergyNorth receives
17 payments under the contract and/or that the Company has appropriate recourse options.
18 These protections include the escrow account, corporate guarantees, and forced
19 liquidation of iNATGAS assets. Although the Company does not anticipate a default
20 event by iNATGAS, if such an event were to occur, EnergyNorth would take all
21 appropriate steps to enforce the payment provisions of the special contract for the benefit
22 of its customers.

1 **Q. Does the Company have any additional information relevant to the Commission's**
2 **prior review of the project costs?**

3 A. Yes. The Commission's order in the 2017 rate case proceeding and the resulting rates
4 relied on an analysis performed by Commission Staff that did not account for the
5 increasing minimum pay or take obligation that is set forth in the special contract. As
6 discussed above, iNATGAS' obligation increases pursuant to a set schedule. Starting in
7 year 5 of the special contract, its obligation increases to 1,300,000 Dth. The analysis
8 relied on in the 2017 rate case used the lower minimum take or pay obligation applicable
9 for years 1 and 2 of the contract, which was only 300,000 Dth, and not the higher
10 minimum obligations in subsequent years. As a result, the rates approved for recovery of
11 the costs associated with this special contract should, at a minimum, be updated to reflect
12 the current minimum take or pay obligation. Without this adjustment, the Company will
13 not be collecting an amount that is consistent with the investment approved by the
14 Commission in Docket No. DG 17-048. In fact, when the take or pay obligation
15 increases under the special contract, the Company will begin over-collecting if an
16 adjustment is not made.

1 **III. NEW HAMPSHIRE DEPARTMENT OF ADMINISTRATIVE SERVICES**

2 **SPECIAL CONTRACT UPDATE**

3 **Q. Please describe the circumstances that led to the special contract with the New**
4 **Hampshire Department of Administrative Services (“NHDAS”) that was the subject**
5 **of Docket No. DG 17-035.**

6 A. The special contract with NHDAS resulted from the wind down of Concord Steam and
7 the Company’s agreement to assist NHDAS in connection with that event. Concord
8 Steam was the utility that provided steam service to a number of state-owned buildings in
9 Concord, New Hampshire. In the fall of 2016, Concord Steam announced that it would
10 go out of business, and the Commission authorized Concord Steam to terminate service
11 as of May 31, 2017.¹⁴ The termination of service by Concord Steam meant that its
12 customers, including NHDAS, had to convert to an alternative heating source over a
13 relatively short period of time.

14 NHDAS is the agency responsible for managing State-owned buildings, including the
15 buildings that were served by Concord Steam. At the time that the Commission
16 authorized termination of service by Concord Steam, NHDAS lacked sufficient time or
17 budget to convert the impacted buildings to another heating source ahead of the May 31,
18 2017, termination date. NHDAS thus developed a plan to install temporary steam boilers
19 to heat the impacted state buildings until such time as NHDAS could implement a
20 permanent conversion. NHDAS approached EnergyNorth for assistance with obtaining
21 and financing the temporary boilers. EnergyNorth agreed to assist NHDAS, and the

14 Order No. 25,966 (Nov. 10, 2016).

1 provisions of the agreement were set forth in the special contract approved in Docket No.
2 DG 17-035.

3 **Q. Why did EnergyNorth enter into this contract?**

4 A. EnergyNorth agreed to the terms of the special contract to assist NHDAS and facilitate
5 Concord Steam's wind down of operations because, absent the special contract, NHDAS
6 (Concord Steam's largest customer) would not have had the ability to heat its buildings.
7 This likely would have jeopardized Concord Steam's termination of service and could
8 have resulted in extraordinarily high rates for NHDAS, if all other Concord Steam
9 customers had converted away from steam and NHDAS was the last Concord Steam
10 customer, solely responsible for all of Concord Steam's costs.

11 **Q. Please describe the basic terms of the contract.**

12 A. The special contract required EnergyNorth to arrange for contractors to design and install
13 the temporary steam boilers, all subject to NHDAS approval. Under the special contract,
14 EnergyNorth was also the party responsible for payment of the contractors subject to later
15 reimbursement from NHDAS. The contractors performed all construction work,
16 EnergyNorth provided natural gas services to the temporary boilers, and the project was
17 managed by NHDAS personnel.

18 The special contract did not include a set price for the work; instead, the contract
19 contained a "not-to-exceed" price. A not-to-exceed price was necessary because exact
20 costs were unknown at the time that the special contract was executed and NHDAS, as a
21 state agency, is prohibited from entering open-ended time and materials contracts. The

1 exigent circumstances required this approach. The parties agreed to a not-to-exceed
2 amount of \$2,725,000, based on contractor estimates. Pursuant to the terms of the
3 contract, NHDAS agreed to repay EnergyNorth for these contractor costs through a
4 surcharge on the monthly utility bills related to the temporary boiler accounts.

5 Lastly, the special contract contained the following provision that obligated NHDAS to
6 seek additional funds if the actual costs exceeded the not-to-exceed amount: “If the costs
7 that Liberty reasonably incurs ... are greater than the not-to-exceed amounts ... then
8 NHDAS agrees to take all reasonable steps to obtain the funds necessary to reimburse
9 Liberty, including, but not limited to, seeking Governor and Executive Council approval
10 ”

11 **Q. Did the contractors complete the work by the May 31, 2017 deadline?**

12 A. Yes, the temporary boilers were installed, connected to EnergyNorth’s natural gas system
13 and to the existing steam pipes, and in service by May 31, 2017.

14 **Q. How long did the temporary boilers provide steam service?**

15 A. The boilers at the state office campus on Pleasant Street in Concord provided service for
16 two winters. The boilers located in downtown Concord provided service for three
17 winters, through the 2019–2020 winter. The boilers are no longer in use and thus all
18 costs have been incurred related to this special contract.

1 **Q. Were the final costs for installation and removal of the boilers in excess of the not-**
2 **to-exceed amount?**

3 A. Yes. Although the temporary boilers in downtown Concord were installed with few
4 issues and within the contractor's budget, installation of the boilers behind the
5 Department of Corrections Building, adjacent to the former Concord Steam plant,
6 encountered many difficulties. The contractor encountered conditions that were
7 unknown when the contractor prepared its cost projections. These conditions included
8 unknown tunnels, unknown infrastructure in the tunnels, an empty underground cistern,
9 unplanned removal of a building, the repeated need to re-route various piping, and other
10 issues. As a result of these unknown and unforeseen conditions, the total contractor costs
11 were above the not-to-exceed amount by \$1,716,593 million.

12 **Q. Did NHDAS reimburse EnergyNorth for the costs incurred that were in excess of**
13 **the not to exceed limit under the agreement?**

14 A. Not in their entirety. After significant negotiation between EnergyNorth and its
15 contractor, the contractor reduced its bill by \$100,000. This left \$1,616,593 in
16 unreimbursed costs. NHDAS agreed to seek Governor and Executive Council approval
17 for payment of an additional \$569,004, which was paid to EnergyNorth in early 2020.¹⁵
18 EnergyNorth has not been reimbursed for approximately \$1,047,589 in contractor costs
19 incurred to complete this project.

15 The additional payment was the result of extensive negotiations between the Company and NHDAS.

1 **Q. Does EnergyNorth propose to recover the outstanding costs in this proceeding?**

2 A. Yes. While the impetus for the special contract with NHDAS was to assist NHDAS,
3 there are benefits for all EnergyNorth customers. When NHDAS made the decision to
4 leave the Concord Steam distribution system and convert the majority of the State of New
5 Hampshire buildings to natural gas, it meant that Concord Steam's business model was
6 no longer viable, that Concord Steam would have to close, which would necessitate the
7 conversion of all Concord Steam customers to alternative fuels. EnergyNorth viewed the
8 conversion of all Concord Steam customers, including NHDAS, as a single large
9 conversion opportunity.¹⁶ The Company performed the financial analysis required for
10 investments over \$1 million per the EnergyNorth tariff based on a portfolio approach,
11 treating all the former Concord Steam customers as a single project. As a result, the
12 Company is seeking to recover the outstanding costs associated with the NHDAS
13 conversion in this proceeding. By adding the NHDAS connections to EnergyNorth's
14 distribution system, the Company was able to increase its customer base and throughput
15 over which to recover its fixed costs, thereby providing a benefit to all other customers.
16 The Company's updated¹⁷ analysis is provided as Attachment WJC/MRS-2.

17 **Q. Would recovery of these costs harm other EnergyNorth customers?**

18 A. No. As shown in Attachment WJC/MRS-2, there are benefits to EnergyNorth customers
19 as a result of this contract and the Concord Steam customer conversions. The costs

16 Note that EnergyNorth successfully executed on this opportunity, acquiring over 97% of the former Concord Steam customers. The load from these customers was the equivalent of acquiring over 2100 new residential customers.

17 See Docket DG No. 16-770 for original DCF analysis.

1 incurred by the Company are similar to a line extension where EnergyNorth makes an
2 upfront investment in order to serve a large customer and there is a benefit that accrues to
3 the Company's other customers. The current EnergyNorth tariff requires a discounted
4 cash flow analysis be performed for projects which require an investment over \$1
5 million. A 10-year NPV analysis is then performed and if the result is positive the
6 investment is considered to be a benefit for all customers. As the analysis shows in
7 Attachment WJC/MRS-2, there is a substantially positive NPV result in the amount of
8 \$875,710, including recovery of these costs as proposed by the Company, which will
9 flow through to all EnergyNorth customers.

10 **Q. Is EnergyNorth seeking a return on the NHDAS costs?**

11 A. No. As shown in the "Revenue Requirement" column, rows 1, 2, and 3 of Attachment
12 WJC/MRS-2, EnergyNorth is simply seeking reimbursement of the funds it advanced for
13 NHDAS' benefit three years ago, with no carrying charge, amortized over three years.

14 **IV. CONCLUSION**

15 **Q. Does this conclude your testimony?**

16 A. Yes.