STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

REBUTTAL TESTIMONY

OF

WILLIAM J. CLARK

AND

STEVEN E. MULLEN

April 29, 2021

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ATTACHMENTS

Attachment	Title
WJC/SEM-1	Liberty's Response to Staff TS 3-8
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WJC/SEM-4	October 20, 2020, Rebuttal Testimony of Steven E. Mullen in Docket No. DG 20-152

I. INTRODUCTION AND BACKGROUND

Q. Please state your names, positions, and business addresses.

A. (WJC) My name is William J. Clark and my title is Senior Director, Business Development. My business address is 116 N. Main Street, Concord, New Hampshire.

(SEM) My name is Steven E. Mullen and my title is Director, Rates and Regulatory Affairs. My business address is 15 Buttrick Rd., Londonderry, New Hampshire.

Q. By whom are you employed and in what capacity?

A. We are both employed by Liberty Utilities Service Corp., which provides services to Liberty Utilities (EnergyNorth Natural Gas) Corp. ("Liberty" or "the Company") and Liberty Utilities (Granite State Electric) Corp.

Q. On whose behalf are you testifying today?

A. We are testifying on behalf of Liberty.

Q. Have you previously submitted testimony in this proceeding?

A. Yes. We both submitted testimony as part of the Company's July 31, 2020, filing for an increase for distribution rates. Our educational backgrounds, professional backgrounds, and qualifications are contained in those prior testimonies.

Q. What is the purpose of your testimony?

A. Our testimony provides rebuttal of certain issues described in the testimony filed on behalf of the Commission Staff by Stephen P. Frink. Specifically, we will address Staff's comments with respect to the Pelham franchise risk sharing adjustment, the Company's investment in the iNATGAS compressed natural gas ("CNG") fueling facility, and certain issues with respect to the Keene franchise.

II. <u>PELHAM FRANCHISE RISK SHARING ADJUSTMENT</u>

Q. Please briefly describe the risk sharing agreement that arose from a settlement agreement in Docket No. DG 15-362, the Windham and Pelham franchise docket.

A. As discussed in that docket, the Company is serving customers in Pelham via a newly constructed take station on the Concord Lateral that is owned by Tennessee Gas Pipeline. Customers in Pelham are served under Managed Expansion Program rates in order to help pay the cost of the take station. Also in that docket, the Commission approved a settlement agreement that, in part, included a "risk sharing" mechanism whereby, as applicable to this rate case filing, the Company is required to prepare a discounted cash flow ("DCF") analysis that compares the revenue requirement of the take station with the anticipated annual revenue from new Pelham customers. If there is a shortage in the average anticipated annual revenue over a three-year period following the date of implementation of permanent rates, as compared to the average annual revenue requirement over the same three-year period, the Company is required to absorb one-half of that shortfall.

Q. In accordance with the settlement agreement in that docket, what is considered as "anticipated revenue?"

A. The settlement agreement in that docket defined "anticipated revenue" as follows: "For purposes of this risk sharing section, anticipated revenue will include committed revenue plus Estimated Annual Margin as defined in EnergyNorth's main extension provision in its tariff."

Q. What is meant by "committed revenue?"

A. "Committed revenue" has consistently been demonstrated over the years with respect to various tariff provisions as being evidenced by a signed Service Line Agreement ("SLA").

Q. Did Liberty prepare the required analysis described above?

A. Yes. Attachment SEM-2 to Mr. Mullen's July 31, 2020, direct testimony presented the required analysis which resulted in an average annual shortfall of revenue as compared to revenue requirement of $129,165, with one-half of that amount being $64,583. The $64,583 was included as an adjustment to the Company's calculated revenue requirement.

Q. Did Staff take issue with that calculation?

A. Yes. Staff recommended removing anticipated revenue from a large industrial customer as that customer signed an SLA in 2016 and has not yet taken service. In Staff's view, "it is unreasonable to assume…that Liberty will realize those revenues and projected revenues should be adjusted accordingly."[1] Staff supported that position by stating "[t]he

[1] March 18, 2021, Direct Testimony of Stephen P. Frink at Bates 000037, lines 8–10.

customer has no financial obligation to take service from Liberty and the customer has been unable to resolve issues that would allow for gas service from Liberty."[2]

Q. Did Liberty provide any information in this proceeding that would lead to the conclusion that "the customer has been unable to resolve issues that would allow for gas service from Liberty?"

A. No. To the contrary, Staff was informed in Liberty's response to Staff TS 3-8 that the customer "is expected to take service within the next one or two years" once it completes a necessary project.[3] There is no factual basis for Staff's statement.

Q. Does the customer still have a valid SLA?

A. Yes.

Q. As the risk sharing provision is forward looking in terms of anticipated revenue, is the customer expected to take service during the relevant future period?

A. Yes. As such, Staff's recommended adjustment would unfairly penalize the Company for a customer-related delay and would violate the terms of the DG 15-362 Settlement Agreement with respect to the use of committed revenue.

[2] Id., lines 6–8.

[3] See Confidential Attachment WJC/SEM-1.

Q. Is there any language in the Settlement Agreement that establishes a time limit for a customer to take service following its execution of an SLA, or after which anticipated revenue from a customer is no longer considered committed revenue?

A. No. In fact, Staff was asked to identify any reference in the Settlement Agreement, the Commission's order in DG 15-362, or any other document supporting Staff's position that provides for such a time limit. Staff did not identify any such reference.[4] As such, Staff's recommended adjustment is arbitrary and adverse to the stated terms of the Commission-approved Settlement Agreement. The Company could understand the reasoning for such an adjustment if the customer had subsequently notified Liberty that it no longer would be seeking service or if the failure to take service was somehow the fault of the Company, but neither is the case.

Q. Did Liberty indicate in its original filing in this rate case that the risk sharing calculations would be updated during the course of the proceeding?

A. Yes. Specifically, the Company stated, "It is expected that during the course of this proceeding additional sales opportunities will materialize, thus reducing the estimated shortfall."[5]

Q. Have any new customers taken recently taken service?

A. Yes. A commercial customer account signed up to take service on February 23, 2021, and the meter was activated on April 12, 2021. The annual gross profit margin for the

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[4] Attachment WJC/SEM-2, Staff's response to LU 1-20.

[5] July 31, 2020, Direct Testimony of Steven E. Mullen at Bates II-213, lines 1–3.

customer is $5,424. Adding that revenue to the risk sharing calculation drops the anticipated revenue shortfall by $5,424 to $123,741, with the resulting 50 percent calculation dropping by $2,712 to $61,871.

Q. Did Staff have any other comments regarding the Pelham and Windham docket?

A. Yes. Mr. Frink criticized the cost and revenue forecasts used in that proceeding as not being "accurate." Putting aside the fact that forecasts, by their nature, are estimates, Staff's comments ignore the changes in costs and customer circumstances that can happen over time. Indeed, although the franchise docket was filed in 2015, the Pelham plant was placed in service and customers began taking service in 2018. However, recognizing the changes that could occur over time, Staff and the Company agreed to the risk sharing provision to protect against a situation where either costs changed or the revenues were slower to materialize than expected. That is the bargain Staff and the Company agreed to; Staff's comments are unwarranted.

With respect to the Town of Windham, the Company had a signed SLA from a developer in 2016 for a development that would include 400 individually metered residential units. Unfortunately, that development did not come to fruition, a fact acknowledged by Staff.[6] Given that acknowledgement, there are no actual costs or revenues with respect to Windham against which to compare the original projections, so Staff's comments that the cost and revenue projections for Windham were not accurate are also unwarranted.

[6] Frink Testimony at Bates 000035, lines 16–18.

III. iNATGAS

Q. Did Staff propose an adjustment to Liberty's revenue requirement associated with the iNATGAS investment?

A. Yes. Staff proposed a reduction to Liberty's revenue requirement of approximately $300,000.

Q. How did Staff justify and determine its recommended adjustment?

A. Staff stated that the proposed adjustment would put customers in the same position as they would have been if the actual amount of capital investment had been the same as the amount that was estimated at the time of the special contract approval in Docket No. DG 14-091.

Q. Was that the same methodology as Staff's proposed adjustment that was adopted by the Commission in Docket No. DG 17-048?

A. Yes.

Q. Does the Company believe such an adjustment to be appropriate or necessary?

A. No. The Company did not agree that such an adjustment was appropriate or necessary at that time, nor is it appropriate or necessary now.

Q. Why is that?

A. First, as acknowledged by Staff, the Company prepared an updated DCF analysis that resulted in a positive net present value. Staff reviewed this analysis, did not note any problems with the calculations, and used it as the basis for its own calculations. Second, Staff does not appear to give any value to the financial protections that were built into the underlying agreements.

Q. What assumptions did Staff make in its DCF analysis?

A. Staff assumed a strong possibility that iNATGAS will default on the contract and future revenues will be limited to what can be recovered through the escrow agreement.[7] Using those assumptions, Staff's DCF analysis ran out for the remaining length 15-year term of the special contract and assumed no revenue after Year 6.

Q. Is such a scenario likely?

A. No. Staff's assumptions regarding future developments are based solely on speculation. Second, even in the event of a default by iNATGAS, Staff's analysis ignores the value of the financial protections that were built into the underlying agreements. If a default were to occur, Liberty would seek to enforce those financial protections immediately rather than just let the special contract run its course without any revenue.

Q. What are those protections?

A. Liberty has a Guaranty Agreement, which holds assets of iNATGAS's sister company (AVSG) and the personal assets of its principal. Under a hypothetical default scenario, Liberty could access this collateral to recover amounts owed from the annual "Take or Pay" requirements for the term of the special contract. In addition, in the event of default, Liberty has the right to purchase the iNATGAS's assets at the facility. If that

[7] Id. At Bates 000015, lines 2–4.

were to happen, Liberty then would have the ability to lease, sell, or otherwise receive value for the facility. Staff's analysis takes none of this into consideration, but if it is going to assume default will occur, then it needs to follow that path and determine the potential financial implications.

Q. Does AVSG have assets whose value could be accessed in satisfaction of its financial guarantee?

A. Yes. Attachment WJC/SEM-3 is Liberty's response to Staff TS 3-3, which provides a list of CNG facilities owned by AVSG in New Hampshire and Massachusetts, with the value of those assets in excess of the net book value of Liberty's plant investment at the Concord, New Hampshire, facility.

Q. What would happen if, through those financial protections or through the potential ownership and/or sale of the facility, Liberty was able to obtain financial remedies in excess of the amount of its investment?

A. Given the Commission reduction of Liberty's revenue requirement in DG 17-048, and if Staff's recommendation in this case is adopted, as a matter of equity Liberty should be allowed to retain a portion of any excess proceeds as it has not been allowed to recover the full amount of its investment through customer rates.

Q. Staff argues that by including further discussion regarding the prudence of its additional iNATGAS investments, Liberty is attempting to re-litigate issues the Commission decided in DG 17-048. Please comment on that statement.

A. In DG 17-048, the Commission stated, "We will re-evaluate this investment in Liberty's next rate case and may consider putting more of the investment in rate base at that time."[8] This statement was subsequently clarified in Order No. 26,156 (July 10, 2018) and the words "putting more of the investment in rate base" were replaced with "allowing a greater level of cost recovery." As the Commission has fully allowed Liberty's operation and maintenance expenses associated with the facility, a greater level of cost recovery can only come from the capital investments. Thus, it was certainly appropriate for the Company to include testimony in this proceeding about those additional capital costs.

IV. <u>KEENE-RELATED ISSUES</u>

Q. Did Staff propose any adjustments related to Liberty's Keene franchise?

A. Yes. Staff proposed three adjustments. The first two adjustments relate to what is referred to as "Phase I," although that title has had different meanings in different documents, and the third adjustment is a minor adjustment related to production costs. That third adjustment is addressed in the joint rebuttal testimony of Messrs. Simek and Sosnick.

[8] Order No. 26, 122 (April 27, 2018) at 32.

Q. Please describe what "Phase I" refers to and how it has been used differently in different documents.

A. The whole concept of phases first came into the discussion related to potential expansion of the Keene distribution system, assuming the existence of a permanent facility on Production Avenue at the site where the temporary CNG is currently located. Specifically, in joint rebuttal testimony filed in Docket No. DG 17-048,[9] Mr. Clark and Stephen R. Hall described "growth potential" for the Keene system and described future areas of potential expansion through five phases.[10] Phase I of that expansion pertained only to adding a few additional customers between the location of the temporary CNG facility and the Monadnock Marketplace, where the existing propane-air customers were to be converted to natural gas, as well as a few customers at the Marketplace. Subsequent to that testimony, orders by the Commission included the installation of the temporary CNG facility and related other construction activities as part of "Phase I," even though those activities were not expansion-related. Needless to say, those differing definitions of Phase I have led to differing understandings of issues over years, particularly between the Company and Commission Staff.

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[9] https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-048/TESTIMONY/17-048_2018-01-25_ENGI_RTESTIMONY_CLARK_HALL.PDF. At Bates 057–058 and 076–093.

[10] The Company notes that those same five phases were described in the Safety Division's October 3, 2018, Adequacy Assessment filed in Docket No. DG 17-068.

Q. How did those differing uses of the Phase I terminology arise as issues in this proceeding?

A. During the course of discovery, Staff requested an updated DCF analysis for "Phase I," and referred to the expansion-related attachments to the Clark/Hall rebuttal testimony in DG 17-048. As the "Phase I" attachment to that testimony only included the estimated costs and revenue associated with potential *additional* customers in that phase (as opposed to conversion of the existing Marketplace customers), which new customers were never added due to delays in the in-service date of the temporary CNG facility, there were no costs or revenues to provide, because the Company never embarked on "Phase 1" as described.

Q. Did Staff take issue with not receiving an updated DCF analysis?

A. Yes, and that demonstrates how the differing definitions of Phase I have led to unintended complications. On Bates 000020 of his testimony, Mr. Frink stated that the Phase I analysis in the Clark/Hall DG 17-048 rebuttal testimony "significantly understated the projected costs and the projected revenues" of the "Phase I conversion." In support of that statement, he compared the $112,500 estimated cost to connect new customers with the approximated $1 million of cost involved with the installation of the temporary facility, converting the existing customers in the Monadnock Marketplace, and other associated costs. This is clearly an apples-to-oranges comparison as it applies a later-determined definition to Phase I as to what was included in that testimony.

Q. Why is it important to understand the history of the Phase I definition?

A. It is important because Phase I's inclusion in the risk sharing mechanism is the basis for Staff's first two proposed adjustments, one for a reduction of $21,736 (50% of $43,472) to the test year revenue requirement, and the other for a reduction of $44,148 (50% of $88,297)[11] as part of the 2021 step adjustment. The Company obviously does not agree with those adjustments as the conversion of the Monadnock Marketplace was not designed to acquire new customers. It was designed to address problematic blowers at the propane-air plant and be able to retire them from service. In addition, at the time the Commission clarified that Phase I was to be included in the risk sharing assessment, that was after it was already apparent that the conversion did not result in new customer additions. The Company had always intended to include the cost of the temporary CNG facility and the related conversion costs as part of the first expansion phase that would take place after the installation of a permanent supply facility. Consistent with that approach, and given the lack of clarity with respect to the timing and opportunity for cost recovery related to the activities that have taken place regarding the conversion of the limited subset of Liberty's customers to natural gas, the costs that were intended to be included in rate base as of the end of 2020 (the subject of Staff's $44,148 adjustment

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[11] Although the Company disagrees with both adjustments, Staff made the Company aware that the proposed $21,736 adjustment amount was not reflected at its 50% value in Ms. Mullinax's testimony although it should have been (Mullinax Testimony at Bates 000006). The Company further notes that even at the incorrect 100% value, the amount in Ms. Mullinax's Table 1 reflects $43,742 rather than $43,472. Regarding the second adjustment, although it referenced as a rounded $44,000 on Bates 000050 of Ms. Mullinax's testimony, Staff made the Company aware that the amount reflected in Ms. Mullinax's Schedule 4 on Bates 000089 was incorrectly included at the full 100% amount of $88,297.

discussed above) have remained in a deferral account on the Company's books and the Company has not yet sought recovery of those costs because the Company has not begun what it initially described as Phase 1.[12]

Q. Staff also had comments regarding the recovery of incremental CNG commodity costs. Could you please comment on Staff's position?

A. Yes, although Staff's position is a bit hard to follow. At different places in his testimony, Mr. Frink states that the incremental CNG costs should be subject to a prudence determination (Bates 000030, line 9) and that they should be subject to a risk sharing provision (Bates 000031, lines 14–16). First, with respect to a prudence review, it is unclear as to whether that is in reference to the prudence of the physical conversion of the customers in the Monadnock Marketplace and the installation of the temporary CNG facility, the prudence of the costs associated with those actions, or the prudence of the CNG commodity costs related to the underlying supply contract. Regarding the recommendation of a risk sharing provision, it is unclear why there would be a need for a risk sharing provision as it is assumed a prudence determination would be a prerequisite to determining the recoverability of incremental CNG costs.

[12] In reviewing the discovery response Staff used as the basis for its proposed adjustments, it was determined that items that were shown on that response as being included in plant in service as of December 31, 2020, were actually still included in a deferral account as of that date and not yet part of plant in service, consistent with the preceding discussion.

Q. Is the current treatment of CNG supply costs unique from the Company's perspective?

A. Yes. This is a unique situation where the CNG supply costs can be allowed to be included in a six-month seasonal rate charged to customers, but then following the season they can either be allowed in full—if the costs turn out below or at propane supply costs level—or retroactively not allowed in part if they turn out to be higher than propane supply costs. As described in further detail in Mr. Mullen's rebuttal testimony included as Attachment WJC/SEM-4, the Commission provided the authority to convert the customers in the Monadnock Marketplace and recognized that those customers would no longer have the option to take propane service, so it results in a case of a hypothetical situation attempting to be applied to reality. It would be beneficial to clear this up going forward.

Q. Do you have any final comments regarding the Keene franchise?

A. Yes. In Mr. Mullen's October 20, 2020, rebuttal testimony in Keene's Winter 2020/2021 Cost of Gas proceeding,[13] he discussed many Keene-related topics and concluded with the following:

> **Q. Does the Company have any other recommendations?**
> A. Yes. Liberty believes it advisable that the Company, Commission Staff, and the Office of the Consumer Advocate schedule a meeting in the near future to make sure everyone gets on the same page in terms of understanding the numerous Commission rulings with respect to Keene, the status of the Company's plans with respect to Keene, and other issues related to the future conversion of the system to natural gas. It has become obvious that, in some cases, people are talking past each other

[13] Attachment WJC/SEM-4.

> with slightly different perspectives on past decisions, meetings, discussions, and so forth. There have been many developments over the years, and it would be in everyone's best interest to perhaps clear the air a little and iron out any differences to improve the path forward.

Following the review of Staff's testimony in this rate case proceeding, we believe this recommendation makes as much sense now as it did then. Topics like what constitutes Phase I, how any incremental CNG costs should be treated, and related topics all need to be clarified. Such discussions could go a long way to making sure parties are on the same page and have consistent understandings as we look toward the future in Keene and determine what is in the best interest of Liberty's customers. There are still many things to be determined with respect to the future of the Keene system—siting and cost of a permanent CNG/LNG facility chief among them—and clarifying existing issues will help all better understand what lies ahead.

Q. Does this conclude your testimony?

A. Yes, it does.