

1 **STATE OF NEW HAMPSHIRE**

2 **PUBLIC UTILITIES COMMISSION**

3 **January 18, 2024** - 9:11 a.m.
 4 21 South Fruit Street
 5 Suite 10
 Concord, NH

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 7 RE: **DG 23-087**
 NORTHERN UTILITIES, INC.:
 8 Petition for Expedited Approval
 9 of Empress Capacity Agreements.

10 **PRESENT:** Chairman Daniel C. Goldner, *Presiding*
 11 Commissioner Pradip K. Chattopadhyay
 Commissioner Carleton B. Simpson

12 Alexander Speidel, Esq./*PUC Legal Advisor*

13 Doreen Borden, Clerk

14 **APPEARANCES:** **Reptg. Northern Utilities, Inc.:**
 Patrick H. Taylor, Esq.

15 **Reptg. Residential Ratepayers:**
 16 Donald M. Kreis, Esq., Consumer Adv.
 17 Marc Vatter, Dir./Economics and Finance
 Office of Consumer Advocate

18 **Reptg. New Hampshire Dept. of Energy:**
 19 Mary E. Schwarzer, Esq.
 Paul B. Dexter, Esq.
 20 Faisal Deen Arif, Dir./Gas Group
 Ashraful Alam, Gas Group
 (*Regulatory Support Division*)

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 22
 23 Court Reporter: Steven E. Patnaude, LCR No. 52

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E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
11	Testimony of Marc Vatter, with Attachments {CONFIDENTIAL & PROPRIETARY}	<i>premarked</i>
12	Settlement Agreement {CONFIDENTIAL & PROPRIETARY}	<i>premarked</i>
13	Settlement Agreement <i>[REDACTED - For PUBLIC Use]</i>	<i>premarked</i>

P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good morning.

This is the hearing for the Docket Number DG 23-087, the Commission proceeding for Northern Utilities' Petition for approval of the so-called "Empress Capacity Agreements" between the Company and the Portland and TransCanada pipeline systems, named after the Town of Empress, Alberta, Canada, in the Western Canadian gas fields, where the capacity path originates.

Northern's Petition was filed on October 6, 2023. I'm Chairman Goldner. And I'm here today along with Commissioner Simpson and Chattopadhyay.

This hearing is being held pursuant to the procedural order issued by the Commission on November 16th, 2023. The Office of the Consumer Advocate filed the testimony of its Director of the Economics and Finance, Mr. Dark Matter -- Marc Vatter, regarding the Commission's -- the Company's Petition, on December 13th, 2023. On December 14th, 2023, the Department of Energy filed the Supplement Position Statement of Dr. Arif and Mr. Alam.

1 Following this, after the close of
2 Commission business, on Tuesday, January 16th,
3 2024, Northern filed, on behalf of itself and the
4 DOE, a Settlement Agreement regarding the Empress
5 issues, to which the OCA was not a signatory.

6 Then, after the close of Commission
7 business on January 16th, the Company filed an
8 Updated Joint Exhibit and Witness List, together
9 with proposed Hearing Exhibits 12 and 13, which
10 are the confidential and redacted versions of the
11 Settlement Agreement, to supplement the proposed
12 Exhibits 1 to 11.

13 The Commission issued a procedural
14 order accepting the late-filed Settlement
15 yesterday, January 17th, 2024.

16 Before we take appearances, I would
17 like to offer the following framework for today's
18 proceeding:

19 I would invite the Company, the OCA,
20 and the DOE to make opening statements regarding
21 this proceeding, after appearances. As part of
22 these opening statements, I would ask that the
23 OCA indicate its general position regarding the
24 proposed Settlement Agreement and overall Empress

1 proposal. Also, we would like all of the parties
2 to confirm that they have no objections to the
3 proposed Hearing Exhibits 1 through 13, or any
4 confidentiality related concerns related to the
5 same.

6 If any potentially confidential
7 information is discussed today, I would ask that
8 this be indicated for the benefit of the
9 Commission and the court reporter.

10 Then, I would suggest that the Company
11 witness, Mr. Wells, and the DOE witnesses, Dr.
12 Arif and Mr. Alam, take the stand as a joint
13 witness panel, sponsoring and explaining the
14 Settlement Agreement. Following this, we would
15 invite Mr. Vatter to take the stand on behalf of
16 the OCA, as indicated by the Joint Witness and
17 Exhibit List.

18 Okay. Let's take appearances, starting
19 with the Company.

20 MR. TAYLOR: Good morning,
21 Commissioners. Patrick Taylor, on behalf of
22 Northern Utilities, Inc.

23 CHAIRMAN GOLDNER: Thank you. And the
24 Office of the Consumer Advocate?

1 MR. KREIS: Good morning, Mr. Chairman,
2 Commissioners. I'm Donald Kreis, the Consumer
3 Advocate. And with me today is the
4 aforementioned Marc Vatter, who is our Director
5 of Economics and Finance.

6 CHAIRMAN GOLDNER: Thank you. And the
7 New Hampshire Department of Energy?

8 MS. SCHWARZER: Good morning, Mr.
9 Chairman. Mary Schwarzer, Staff Attorney for the
10 Department of Energy. And with me is my
11 co-counsel and Legal Director, Paul Dexter.

12 CHAIRMAN GOLDNER: All right. Welcome,
13 everyone.

14 So, we'll now move to take opening
15 statements from the parties in the same order,
16 starting with the Company.

17 MR. TAYLOR: Thank you. And good
18 morning, Commissioners.

19 Thank you for the opportunity to
20 present Northern's Petition for Approval of the
21 Empress Capacity Agreements and the Settlement
22 Agreement between the Company and the Department
23 of Energy to the Commission.

24 As Northern explained in its initial

1 Petition, which accompanied the prefiled
2 testimony of the Company's witness, Francis
3 Wells, as well as the Company's robust Empress
4 Capacity Resource Assessment. The Company
5 participated in Pipeline Open Seasons, conducted
6 by TransCanada Pipelines, Limited, which we'll
7 refer to today as "TCPL", and Portland Natural
8 Gas Transmission System, which we'll refer to as
9 "PNGTS", which led to agreements that will
10 provide a firm natural gas pipeline
11 transportation path from Empress, Alberta, to
12 Granite State Gas Transmission interconnects.

13 Specifically, the Company has entered
14 into four agreements: A Firm Transportation
15 Agreement with PNGTS, a 30-year service,
16 commencing April 1st, 2024; a Precedent Agreement
17 with TCPL for service from April 1st, 2024, and
18 October 30 -- to October 31st, 2027, as well as a
19 corresponding Firm Transportation Agreement for
20 that same period with TCPL; the Company has also
21 entered into a Precedent Agreement with TCPL for
22 service beginning November 1st, 2027, and
23 extending through 2054.

24 This new capacity path will add 12,500

1 decatherms a day of incremental capacity to
2 Northern's gas supply portfolio, a service
3 starting April 1st, 2024, for 30 years. This is
4 important, because, as the Company explained in
5 its Empress Capacity Resource Assessment, the
6 capacity will provide access to relatively
7 low-cost supply, while reducing Northern's
8 peaking supply requirements. Northern has a
9 significant unmet peaking supply need, on both a
10 peak day and seasonal basis, and the proposed new
11 capacity will reduce Northern's 2024 to 2025 peak
12 day requirements not met with long-term capacity.
13 It will also reduce Northern's seasonal peaking
14 supply needs not met with long-term capacity.

15 The regional gas supply market
16 continue's to be heavily reliant upon LNG imports
17 during periods of high demand, combined with
18 uncertainty related to the future viability of
19 LNG import facilities. And the Empress capacity
20 path will improve the Company's gas supply
21 portfolio by decreasing the need for peaking
22 supply, while maintaining reasonable pricing.
23 Even with the addition of Empress capacity,
24 Northern will continue to have an unmet need for

1 long-term capacity to meet peaking requirements.

2 As the Commission knows, Northern
3 operates one system over two states, New
4 Hampshire and Maine, and maintains a single
5 portfolio for the benefit of customers in both
6 states. The Company allocates resource costs
7 between the states using the established Modified
8 Proportional Responsibility Allocator, or the
9 "MPRA", which allocates roughly 40 percent of
10 resources and resource costs to New Hampshire,
11 and 60 percent to Maine. This results in 5,007
12 decatherms per day of the proposed capacity being
13 supported by New Hampshire Division customers,
14 and 7,493 decatherms per day of the proposed
15 capacity being supported by Maine customers.

16 For this reason, the Commission -- the
17 Company concurrently filed petitions seeking
18 approval of the Empress Capacity Agreements in
19 New Hampshire and Maine. One week ago, the Maine
20 PUC Hearing Examiners issued a Hearing Examiner's
21 Report, which takes the form of a draft final
22 order, recommending that the Commission finds the
23 Empress Capacity Agreements are a reasonable
24 means of addressing Northern's winter peaking

1 needs, and ensuring energy security for the
2 Company's customers. And that Northern's entry
3 into the Capacity Agreements is prudent and in
4 the public interest, particularly in light of the
5 highly constrained energy infrastructure in the
6 region. The Examiner's Report also recommends
7 that the Maine Commission approve recovery of
8 prudently incurred costs related to the Empress
9 Capacity Agreements through cost of gas rates and
10 capacity assignment.

11 We're pleased to say that both the
12 Department of Energy and the Office of Consumer
13 Advocate submitted position statements or
14 testimony supporting approval of the Empress
15 Capacity Agreements. And that's about as far as
16 I'll go speaking for the Department of Energy and
17 the Consumer Advocate, because they are here
18 today.

19 And, after numerous discussions, we
20 were able to reach a Settlement Agreement with
21 the Department, and that's before you today, in
22 confidential and redacted versions as Exhibit 12
23 and 13, respectively.

24 This Commission, in DG 19-116, approved

1 similar precedent agreements for long-term
2 capacity service with PNGTS, TCPL, and Enbridge
3 in 2019. The agreement with TCPL in that case
4 had terms that were very similar to the terms of
5 the Precedent Agreement with TCPL for service
6 commencing in 2027. Approving a Settlement
7 Agreement among Northern, the PUC Staff, and the
8 Office of Consumer Advocate, the Commission found
9 that Northern's decision to enter into the
10 precedent agreements was prudent, reasonable, and
11 consistent with the public interest.

12 It also found that pre-service and
13 cancellation costs associated with the precedent
14 agreements, approved as of the date of the
15 Commission's order, for which the Company was
16 liable, were reasonable and appropriately
17 recoverable through Northern's rates. And that
18 such costs going forward be allowed for recovery
19 through Northern's rates, if deemed to be
20 prudently incurred.

21 What I'm referring to as "cancellation
22 costs", are the same in this docket, as they were
23 in the DG 19-116 docket. And stated simply, if
24 an event of cancellation occurs, the Company will

1 be liable to pay an allocated portion of certain
2 project development costs accrued by TCPL up to
3 that point, subject to a requirement that TCPL
4 use commercially reasonable efforts to minimize
5 such costs.

6 Such costs may include, but are not
7 limited to, engineering, design, procurement,
8 manufacturing, supply and construction related
9 costs, expenses, and charges, to the extent
10 related to or attributable to Northern's request
11 for service.

12 And, as I just explained, the
13 Commission has authorized recovery of such costs,
14 in the unlikely event that they're incurred,
15 through the Company's rates, if they're prudently
16 incurred.

17 So, there's a clear and recent
18 precedent for granting the Company's request.
19 And I think it's worth noting here that the
20 contract termination costs are not the sort of
21 construction work in progress contemplated or
22 barred for recovery by RSA 378:30-a. The Company
23 is not itself constructing, owning, maintaining,
24 or financing construction work on the Empress

1 Project, nor will any assets related to the
2 Empress Project be placed into the Company's rate
3 base.

4 This Commission has held that RSA
5 378:30-a is a statute with specific application
6 to costs associated with the utility's
7 construction projects. And that's from the
8 Liberty -- the recent Liberty Utilities order in
9 DG 20-105. The Commission further said that, if
10 the statute "prohibited recovery of such
11 attenuated costs as the uncompleted construction
12 work by a utility contracting partner -- the
13 utility's contracting partner utility, the result
14 would be unworkable." And that, "If the statute
15 is to be applied rationally and practically, it
16 must apply, and apply only, to projects that the
17 utility undertakes or contracts to construct its
18 own plant, facilities, and other infrastructure."

19 And, so, I just wanted to point that
20 out as it may be a matter that you want to
21 inquire about today.

22 So, with that said, we look forward to
23 answering any questions that you may have for us
24 today. The Empress Capacity Agreements, the

1 Settlement Agreement are prudent and reasonable
2 and in the public interest, and merit your
3 approval.

4 Thanks.

5 CHAIRMAN GOLDNER: Thank you. We'll
6 turn now to the Office of the Consumer Advocate.

7 MR. KREIS: Good morning,
8 Commissioners, again.

9 Let me just first thank Chairman
10 Goldner for -- he satisfied my curiosity about
11 something this morning. As I was walking down
12 the hall, on my way to the hearing room, I was
13 thinking "What exactly is Empress?", because I
14 hadn't bothered to look that up. And you pointed
15 out that Empress is some Podunk town in the
16 middle of nowhere in Canada that happens to be
17 the delivery point that we're all concerned
18 about.

19 I had assumed as much, but I didn't
20 actually look that up, and now I know. And, so,
21 at least I have learned something today, and I'm
22 grateful for that.

23 It is important for the Commission to
24 keep in mind, as it considers the Company's

1 Petition, that your approval is actually not
2 required for this Company to go forward with
3 these agreements. The reason that this Company
4 is here asking you today for your blessing on
5 these agreements, is that it is seeking to
6 insulate its shareholders from business risk that
7 is of the sort that an investor-owned utility
8 routinely undertakes, because it has a franchise,
9 and therefore an obligation to serve, and
10 therefore an obligation to procure adequate
11 supplies to provide that service. So, that's the
12 backdrop against which we all operate.

13 As Mr. Taylor has already pointed out
14 to you, in general, our position, as the state's
15 Consumer Advocate, is pretty favorable to these
16 agreements, because we've reviewed them, and we
17 basically find that the Company has acted
18 appropriately in acquiring either firm capacity
19 or the rights to future capacity, based on the
20 Precedent Agreements that the Company has signed.

21 We have reviewed the Settlement
22 Agreement that the Department of Energy has
23 entered into with the Company. And there is
24 nothing about any positions that we intend to

1 take that conflicts with anything in the
2 Settlement Agreement.

3 We have really only two, I would
4 characterize them as "minor requests" of the
5 Commission, that you could consider as,
6 basically, additive to the Settlement Agreement,
7 in a manner that I think is calculated to provide
8 some reasonable degree of protection for the
9 residential customers of this utility, in light
10 of the fact that this Company is here asking you
11 today to insulate its shareholders from a fair
12 degree of business risk.

13 So, what are those two additive terms,
14 I guess, or conditions? One is something that
15 Mr. Taylor already alluded to, and that has to do
16 with the anti-CWIP statute, which is RSA
17 378:30-a. Now, you've already heard Mr. Taylor
18 tell you that nothing contained in the Precedent
19 Agreements that the Company is asking you to
20 approve actually would expose the Company to
21 liability for construction work in progress. So,
22 accepting that premise, all we're asking you to
23 do is say that in your order. That "yes, we
24 approve these agreements. But, no, this Company

1 cannot recover any costs associated with
2 construction work in progress."

3 Now, I assume it's true, because Mr.
4 Taylor just told you, that there is language in
5 previous Commission orders that basically says
6 "Well, the anti-CWIP Statute only applies when it
7 is the utility itself that is undertaking the
8 construction." But, regardless of whether there
9 is Commission precedent to that effect, and,
10 frankly, I don't even know whether there is. Why
11 do I not know that? Because the Commission is
12 not bound by its precedents.

13 What the Commission is bound by is the
14 case law of the New Hampshire Supreme Court. And
15 the New Hampshire Supreme Court has never said
16 that "construction work in progress is limited to
17 projects undertaken directly by the utility." In
18 fact, I think it's said several things to the
19 contrary, including, in its most recent decision
20 about the anti-CWIP statute, made only a couple
21 of months ago, in connection with the canceled
22 Granite Bridge Project, that Liberty Utilities
23 proposed, and then withdrew.

24 And, you know, I can offer, I guess, a

1 more elaborate argument to that effect, if
2 necessary, at the conclusion of the hearing, if
3 that turns out to be helpful.

4 I don't understand why this is really
5 an issue. Because, if the Company is right, and
6 there is no potential CWIP at issue here, no
7 potential construction work in progress, then
8 nobody in this room should object if you put in
9 your order some language that says "This Company
10 never gets to recover construction work in
11 progress", because that's what the New Hampshire
12 General Court decided way back in 1979. So,
13 that's our first issue.

14 Our second issue has to do with the
15 condition in the Settlement Agreement that says
16 "Northern will evaluate available hedging
17 strategies and include a report on its evaluation
18 in the Company's cost of gas filings through the
19 execution of the TCPL Firm Transportation
20 Agreement."

21 And we like that condition. We would
22 like to make it a little bit more specific. And
23 Dr. Vatter will explain that to you. And I guess
24 I can address that more precisely in my closing

1 agreement, again, if that is something that seems
2 helpful at the time.

3 I guess the only additional -- well,
4 two additional points. One is, it is true that
5 we, meaning the "OCA", signed the Settlement
6 Agreement that you approved in the 19 -- or, 2019
7 docket that Mr. Taylor alluded to, which has to
8 do with precedent agreements that are similar to
9 the ones that we're talking about here today.

10 So, why am I here taking a position
11 that's contrary to the one that my Office took
12 just a few years ago? Well, two reasons. One is
13 that, to quote one of your predecessors, the
14 legendary Bruce Ellsworth, who I have since
15 discovered was actually quoting Konrad Adenauer,
16 the first Chancellor of West Germany, "I reserve
17 the right to get smarter as I get older." And,
18 in this case, I didn't actually get smarter.
19 What happened is, I hired Marc Vatter, who
20 convinced me that this anti-CWIP issue is
21 something that we should bring forward to the
22 Commission for its analysis here.

23 And, of course, the other reason is
24 that there is recent case law under the anti-CWIP

1 statute, that we didn't have the benefit of back
2 in 2019.

3 Point number two, this the last point I
4 want to make, I couldn't help but overhear, as I
5 was sitting down and getting ready for this
6 morning's hearing, and getting myself organized,
7 that there was some buzzed mumble between the two
8 Settlement parties around what I think is some
9 sort of clarification about the Settlement
10 Agreement that they intend to offer to you. They
11 have done -- they have not done me the courtesy
12 of explaining what that "clarification" is.

13 But I will say this. I was kind enough
14 to agree with the Settling Parties that they
15 could file a late-filed settlement that was only
16 received by you and us, I think, a day or two
17 ago. I decided not to be obstructionist by
18 objecting to that moving forward, even though we
19 are not a signatory to the Settlement Agreement.

20 But, if they are here today making
21 additional changes to the Settlement, and
22 offering them in the form of a "clarification",
23 then I am going to have to ask you to, basically,
24 postpone today's hearing, so that I have a chance

1 to figure out what it is that they're changing
2 about their agreement. And, if I need to do
3 that, then chances are you need to do that as
4 well.

5 So, I think that's all I have to say by
6 way of an opening statement.

7 CHAIRMAN GOLDNER: Okay. Thank you.
8 Let's move to the New Hampshire Department of
9 Energy for its opening statement.

10 MS. SCHWARZER: Thank you, Mr.
11 Chairman.

12 The Department of Energy is here in
13 support of the Settlement Agreement and in
14 support of the Empress Capacity Contracts. In
15 our work, and extensive discovery questions back
16 and forth, which are attached to our Exhibit 7,
17 we carefully reviewed multiple factors, including
18 those summarized by Northern's counsel here this
19 morning.

20 We considered the constraints on the
21 regional pipeline access, the fact that pipeline
22 transportation is infrequently offered and
23 certainly in demand. We considered that the
24 access will enhance the reliability of service

1 for Northern and Northern's customers,
2 reliability being something Northern is legally
3 obligated to address. And, if approved, Northern
4 has demonstrated that its current peak demands
5 will be better met, but still not fully met.

6 We are encouraged and confident in the
7 fact that TCPL has done many of these agreements
8 before, and 98 percent of the time has received
9 regulatory approval. That its shippers have
10 continued as originally identified 96 percent of
11 the time. There is a risk, but it is, we
12 believe, as Northern believes, a small one.

13 With regard to the anti-CWIP provision
14 that the OCA Office has -- Office of the
15 Commissioner -- of the Consumer Advocate recently
16 referenced, we do not believe that the anti-CWIP
17 statute is relevant here. CWIP does not apply.
18 The same order that Northern referenced, Order
19 26,536, from this Commission, regarding Granite
20 Bridge, has very clear language about whether --
21 what the -- the scope of CWIP. As described
22 there, CWIP applies to a utility-owned facility.
23 And, in the Empress Contracts, Northern is not an
24 owner of anything that is being constructed.

1 Moreover, as pointed out in the PUC order, as a
2 matter of policy, were the Commission to decide
3 that no upstream entity could be using funds for
4 construction in progress, it would create a
5 morass of challenges to define where money goes
6 and who is doing what and when they're doing it.
7 It is not good policy to expand the scope of CWIP
8 to apply to the sorts of situations that the OCA
9 seems interested in applying it to.

10 We do not believe that the New
11 Hampshire Supreme Court that we believe he is
12 referencing has language in support of the
13 position he is advocating. In that decision,
14 although it does not directly comment on the
15 interpretation of law that the Commission made in
16 its order, the facts of the case address a
17 facility or a preconstructed facility that was
18 directly owned by the utility. And, as such, any
19 reference to preconstruction activities, such as
20 owning and financing, were directly relevant only
21 to preconstruction activities by the utility
22 doing the construction.

23 Based on our review, we certainly
24 believe, and recommend to the Commission, that

1 approval of these Agreements is just and
2 reasonable, and in the public interest.

3 Thank you.

4 CHAIRMAN GOLDNER: Just to clarify the
5 earlier comment from the Consumer Advocate. Is
6 there any changes to the Settlement, as filed?

7 MS. SCHWARZER: We did discuss a
8 clarification that we would have been happy to
9 share, had the Consumer Advocate been interested.
10 He did not ask us. And I certainly apologize for
11 not turning around and actively inviting him to
12 the clarification.

13 If the Commission would wish to engage
14 in a five-minute recess, we could certainly bring
15 him up to speed?

16 CHAIRMAN GOLDNER: Let's engage in a
17 ten-minute recess, to allow plenty of time. And
18 we'll return at a quarter till.

19 MS. SCHWARZER: Thank you, Mr.
20 Chairman.

21 CHAIRMAN GOLDNER: Off the record.

22 *(Recess taken at 9:37 a.m., and the*
23 *hearing resumed at 9:59 a.m.)*

24 CHAIRMAN GOLDNER: Okay. Let's get a

1 status update after the break. Who would like to
2 update the Commission? The Consumer Advocate?

3 MR. KREIS: I'd be happy to. I'm good
4 to go.

5 The Company and the Department have
6 explained their clarification to my satisfaction.
7 As far as I know, they're not attempting to
8 change any of the terms of the Settlement
9 Agreement. I guess it's up to them if they want
10 to explain what their clarification is. If they
11 do, I will have no objection.

12 CHAIRMAN GOLDNER: Okay. Would anyone
13 like to explain the clarification, or if there's
14 a clarification?

15 MR. TAYLOR: Sure. And I'm happy to do
16 it, and I was going to do it with Mr. Wells on
17 the stand.

18 But, in the Settlement Agreement, there
19 is reference to "pre-service" and "cancellation
20 costs". And there's, on Page -- on Page 5 of the
21 Settlement, it says that those terms are defined
22 within the Exhibit 2 to Mr. Wells's testimony,
23 and it gives the pages. And, within those pages,
24 the pages it's referring to has the definition,

1 it uses the term "termination costs", not
2 "cancellation costs".

3 And, so, for the purposes of clarifying
4 the record, I was going to have Mr. Wells explain
5 that, when we are talking about "cancellation
6 costs" in the Settlement Agreement, they make
7 reference to that particular part of the exhibit,
8 that the term in the contract is "termination
9 costs", not "cancellation costs". And, so, it's
10 merely just clarifying for the record what we're
11 actually talking about here.

12 And, so, we had talked to the DOE about
13 that, and then to the Consumer Advocate, and
14 explained to them. It's also -- it's
15 acknowledged in the DOE's position statement that
16 these are "termination costs".

17 And, so, I think it was really just
18 clarifying for the Commission what it is, and
19 we'll do that with Mr. Wells on the stand.

20 CHAIRMAN GOLDNER: Okay. Thank you,
21 Attorney Taylor. Does the DOE or the OCA have
22 any other comments, before we swear in the
23 witnesses?

24 MS. SCHWARZER: None from the

[WITNESS PANEL: Wells|Arif|Alam]

1 Department, Mr. Chairman.

2 MR. KREIS: Only to say that it was not
3 a waste of time to have the Company explain that
4 to me, because these terms of the contract relate
5 to the issue that I was raising about the
6 anti-CWIP statute.

7 So, it is important, that the
8 clarification that they're attempting to make is
9 a reasonable one.

10 CHAIRMAN GOLDNER: Okay. Okay. Thank
11 you, everyone, for taking care of that.

12 Let's now swear in the witnesses, Mr.
13 Patnaude.

14 *(Whereupon **FRANCIS X. WELLS,***
15 ***FAISAL DEEN ARIF, and ASHRAFUL ALAM***
16 *were duly sworn by the Court Reporter.)*

17 CHAIRMAN GOLDNER: Okay. Thank you.
18 We'll begin with Attorney Taylor, and the
19 Company.

20 MR. TAYLOR: Thank you.

21 **FRANCIS X. WELLS, SWORN**

22 **DIRECT EXAMINATION**

23 BY MR. TAYLOR:

24 Q Mr. Wells, could you please give your name and

[WITNESS PANEL: Wells|Arif|Alam]

1 position with the Company?

2 A (Wells) My name is Francis Wells. I am the
3 Manager of Energy Planning for Unitil Service
4 Corp., on behalf of Northern Utilities.

5 Q Thank you. Have you previously testified before
6 the Commission?

7 A (Wells) Yes.

8 Q Referring to Hearing Exhibits 1 and 2, which are
9 the Company's confidential and redacted Initial
10 Filing from October 6, 2023, the Company's
11 Initial Filing includes prefiled testimony and
12 exhibits that you sponsored, correct?

13 A (Wells) Yes.

14 Q And included among those exhibits is Exhibit
15 Unitil-FXW-2, entitled the "Empress Capacity
16 Resource Assessment", correct?

17 A (Wells) Yes. That is correct.

18 Q Okay. And I think, just to clarify the hearing
19 exhibits, you're aware that Hearing Exhibit 3 is
20 the redacted version of Exhibit Unitil-FXW-2,
21 correct?

22 A (Wells) Yes.

23 Q Okay. And are you aware that was filed
24 separately because it was inadvertently omitted

[WITNESS PANEL: Wells|Arif|Alam]

1 from the Initial Filing?

2 A (Wells) I am aware of that, yes.

3 Q Other than the redactions, does Hearing Exhibit 3
4 differ in any way from the confidential version
5 of Exhibit Unutil-FXW-2 included in Hearing
6 Exhibit 1?

7 A (Wells) It does not.

8 Q Were the prefiled testimony and accompanying
9 exhibits prepared by you or under your direction?

10 A (Wells) Yes.

11 Q Was the Empress Capacity Resource Assessment
12 prepared by you or under your direction?

13 A (Wells) It was.

14 Q Do you have any changes or corrections to your
15 testimony or exhibits that you wish to note on
16 the record today?

17 A (Wells) No.

18 Q Do you adopt your initial testimony and the
19 associated exhibits as your sworn testimony
20 today?

21 A (Wells) Yes.

22 Q Mr. Wells, can you please provide a brief summary
23 of what we are calling the "Empress Capacity
24 Agreements"?

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Wells) Certainly. There are four agreements.
2 The first is a Firm Transportation Service
3 Agreement between Northern and Portland Natural
4 Gas Transmission System, PNGTS, for 30 years of
5 firm transportation service from the interconnect
6 between PNGTS and TransCanada, to the north --
7 the inlet of the Granite system. That that
8 contract commences April 1st, 2024, and ends,
9 well, 30 years thereafter.

10 The receipt point is Pittsburg, New
11 Hampshire. The delivery point is Dracut,
12 Massachusetts. And the capacity volume is 12,500
13 decatherms.

14 Secondly, there is, for TransCanada,
15 the service from TransCanada is actually in sort
16 of two segments. The first is for service from
17 April '24 through October 2027. Those -- the
18 service for that segment of the TransCanada
19 capacity is defined by a Precedent Agreement and
20 Firm Transportation Agreement that are
21 Attachments 4 and 5 to the Empress Capacity
22 Resource Assessment. And, again, that is for
23 12,890 decatherms, with a receipt point of
24 Empress, and a delivery point of East Hereford.

[WITNESS PANEL: Wells|Arif|Alam]

1 And the terms of that service begin April 1,
2 2024, and run through October 31, 2027.

3 The final -- the second segment of the
4 TransCanada capacity begins with the Precedent
5 Agreement, what I refer to in Empress Capacity
6 Resource Assessment as the "2027 TCPL PA", and
7 that is for service beginning November 1, 2027,
8 that is for the 12,890 decatherms of capacity
9 from Empress to East Hereford. The service under
10 that Agreement will -- it will begin November
11 2027, pending the construction of facilities.
12 So, the Precedent Agreement stipulates that
13 TransCanada will build/construct facilities
14 necessary for it to enter into a Firm
15 Transportation Service Agreement beginning
16 November 2027.

17 And, then, the Company is obligated to,
18 amongst other things, ultimately enter into that
19 Firm Transportation Service Agreement, based on
20 the Precedent Agreement. And the term of that
21 Service Agreement would be from November 2027
22 through March 2054.

23 Q Thank you. And can you explain or give a little
24 more detail around why the 30-year term from TCPL

[WITNESS PANEL: Wells|Arif|Alam]

1 is divided into two different service terms?

2 A (Wells) Certainly. So, TransCanada is able to
3 provide service early by entering into an
4 operational arrangement with one of its other
5 customers, allowing it to be able to provide
6 deliveries to East Hereford without -- without
7 construction of new facilities. They have
8 already entered into those arrangements, and are
9 ready to go, and, in fact, are serving, you know,
10 currently serving other customers that are
11 involved in the project.

12 So, but beyond that, beyond that term
13 of October 31st, 2027, TransCanada intends to
14 construct facilities to be able to complete the
15 term of that contract. And, so, for that reason,
16 the -- you know, typically, you would not start
17 service until after the facilities are
18 constructed. But, because they have the
19 operational flexibility that they were able to
20 enter into with a different customer on its
21 system, they were able to provide service
22 earlier, which is a great advantage -- one of the
23 great advantages of this particular capacity
24 arrangement.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q Thank you. And, if you could, could you provide
2 a brief summary of why the Company has entered
3 into these agreements?

4 A (Wells) Yes. So, referring to the Empress
5 Capacity Report -- Resource Assessment that I had
6 prepared as "Unitil-FXW-2", and I apologize in
7 advance, I don't have the -- I probably don't
8 have the Bates page. But, you know, in that
9 report, I provide an overview of the Company's --
10 the Company's resource assess -- or, our resource
11 balance. And that is on Page 36 of the Empress
12 Capacity Resource Assessment.

13 I show that, for the 2024-2025 gas
14 year, that our Design Day Planning Load is
15 projected to be approximately 147,000 decatherms.
16 Our long-term resources are just under 100,000
17 decatherms, with a resource balance of a negative
18 47,000 decatherms.

19 And, so, by adding Empress capacity to
20 our portfolio, we would be able to reduce that
21 exposure to -- or, reduce that deficit in our
22 design day resource balance by 12,500 decatherms,
23 to approximately 35,000 decatherms. So, reducing
24 Northern's reliance on shorter term resources to

[WITNESS PANEL: Wells|Arif|Alam]

1 be able to provide firm service to our customers.

2 Similarly, we have a design year
3 resource utilization and resource balance that I
4 provide on Page 39 of the Empress Capacity
5 Resource Assessment. And, for the same year,
6 '24-25, we show the projected resource balances
7 as a deficit of just over 670,000 decatherms,
8 based on our design year planning load
9 requirement. And, you know, by adding Empress
10 capacity, we would reduce that deficit to 302,000
11 decatherms.

12 And, so, that represents less reliance
13 on our ability to provide shorter term peaking
14 resources. Typically, these off-system peaking
15 supplies are provided by LNG importers. And, so,
16 it is the Company's determination that adding
17 this resource reduces reliance on those shorter
18 term. When we have the contracts for these
19 resources, they're highly reliable. But, you
20 know, as I've noted in other portions of the
21 Empress Capacity Resource Assessment, the
22 long-term viability of those -- those facilities
23 is, you know, not certain. And, so, this
24 provides the Company with access to those

[WITNESS PANEL: Wells|Arif|Alam]

1 resources on a sustainable basis, you know,
2 accessing the Empress capacity -- or, the Empress
3 receipt point, where there are many buyers and
4 sellers of gas, as opposed to buying gas and
5 delivered in New England, where there are fewer
6 buyers and sellers. And, so, there's higher
7 liquidity, and, you know, we believe better
8 reliability for our customers.

9 And, so, we also believe that there is
10 the opportunity for there to be cost savings,
11 because of the low price of gas, or the
12 relatively low price of gas that can be accessed
13 with the Empress Capacity Contracts.

14 Q Thank you. What was the process through which
15 the Company was able to acquire the capacity
16 provided through these agreements?

17 A (Wells) These agreements were -- TransCanada and
18 PNGTS both issued Open Seasons, where they had
19 offered a limited amount of capacity that was
20 available. You know, just as some background,
21 when PNGTS completed its most recent expansion,
22 the WXP Project, that we had discussed at some
23 point before my testimony here today, the
24 construction of that project resulted in

[WITNESS PANEL: Wells|Arif|Alam]

1 additional capacity that had not been sold
2 through the WXP Open Season process. So, PNGTS
3 was able to offer approximately 60,000 decatherms
4 of capacity that did not require construction.

5 And, so, you know, any observer of the
6 New England gas market is probably aware of the
7 difficulty in getting, you know, additional
8 construction approved for natural gas
9 infrastructure into New England. And, so, the
10 opportunity to have facilities -- to be able to
11 contract for some facilities that were already in
12 existence physically, and only required
13 regulatory approval by the FERC, was a great
14 opportunity.

15 So, when PNGTS and TransCanada made
16 that offering, you know, we were aware that
17 the -- of the advantage of not requiring, the
18 facilities were already in existence on the U.S.
19 side. Additionally, the ability of TransCanada
20 to provide service coinciding with the
21 availability of those resources almost
22 immediately was very attractive.

23 And, so, we participated -- Northern
24 participated in the Open Season by submitting the

[WITNESS PANEL: Wells|Arif|Alam]

1 bid that ultimately was awarded by both
2 TransCanada and PNGTS, respectively, that
3 resulted in the agreements that we are seeking
4 approval of today.

5 Q Thank you. Under the PNGTS Agreement, does the
6 Company have the opportunity to cancel the
7 contract, if certain conditions are not met?

8 A (Wells) We do. If the Company does not get
9 regulatory approval that is satisfactory to the
10 Company from the Maine and New Hampshire Public
11 Utilities Commission, we may terminate the
12 agreement, without penalty, prior to
13 February 1st, 2024.

14 Q And you mentioned that regulatory approval must
15 be acquired from both states. Has regulatory --
16 or, has the Maine Commission ruled on the
17 Commission's [Company's?] Petition yet?

18 A (Wells) The Maine Commission has not ruled on our
19 Petition.

20 Q Okay.

21 A (Wells) But we do expect that we will get -- we
22 do expect to receive an order by January 26th of
23 this year, 2024.

24 Q We had spoken about the termination right under

[WITNESS PANEL: Wells|Arif|Alam]

1 the PNGTS Contract. Does the Company have a
2 similar termination right under the TCPL
3 Agreements?

4 A (Wells) No. The TransCanada -- the TCPL
5 Agreements do not have a regulatory out, similar
6 to the PNGTS Agreements. The Company has the
7 option to withdraw from those agreements.
8 However, we would be subject to certain project
9 development costs that are defined in the 2027
10 TCPL PA defined as "termination costs" under that
11 agreement.

12 Q And, Mr. Wells, I'm going to ask, we had spoken
13 earlier on the record about clarifying a term in
14 the Settlement Agreement.

15 A (Wells) Right.

16 Q So, if you could make reference to Page 5, which
17 is also Bates Page 005, of the Settlement
18 Agreement, which has been submitted to the
19 Commission as Hearing Exhibit 12, the
20 confidential version, and Hearing Exhibit 13, as
21 the redacted version. And just let me know when
22 you're at Page 5.

23 A (Wells) I'm there.

24 Q Okay. And, in the second -- or, in, I guess, the

[WITNESS PANEL: Wells|Arif|Alam]

1 first full paragraph, about in the middle of the
2 paragraph, it says: "Effective currently, if the
3 2027 TCPL PA is canceled for any reason, TCPL
4 will have the right to recover pre-service and
5 cancellation costs from Northern, including the
6 portion of the project development costs
7 attributable to Northern's service request at the
8 time of cancellation." Do you see that portion?

9 A (Wells) I do.

10 Q Okay. And, then, after that, it says: "Such
11 costs are defined in Exhibit Unitil-FXW-2,
12 Attachment 6 at 10" -- "at Pages 10, 13, and 14."

13 And I will refer the Commission to
14 Hearing Exhibit 1, Bates Pages 121 to 122. Are
15 you there?

16 A (Wells) Yes.

17 Q Okay. And these are Pages 13 to 14 of Exhibit FX
18 Unitil -- well, of the -- I'm sorry. These are
19 Pages 13 to 14 of Attachment 6 to Unitil-FXW-2,
20 correct?

21 A (Wells) They are.

22 Q And this is the 2027 TCPL Precedent Agreement?

23 A (Wells) Yes.

24 Q Okay. And you see here it says "Payment of

[WITNESS PANEL: Wells|Arif|Alam]

1 termination costs"?

2 A (Wells) Yes.

3 Q Okay. And that's defined on Pages 13 and 14,
4 correct?

5 A (Wells) That is correct.

6 Q Okay. And, so, in the Settlement Agreement, when
7 it makes preference to "pre-service and
8 cancellation costs", the reference is to
9 "termination costs", as defined here in this
10 agreement, correct?

11 A (Wells) That is correct.

12 Q Thank you. Now, is this arrangement that we've
13 discussed similar to the one approved by the
14 Commission in DG 19-116 in connection with the
15 WXP Project?

16 A (Wells) It is.

17 Q And what conditions precedent must be satisfied
18 prior to service commencing in 2027?

19 A (Wells) In order for service to begin prior --
20 for November 2027, as I discussed previously,
21 TCPL must obtain authorization and construct --
22 they must gain approval to construct the
23 facilities that they require to provide service
24 after November 2027.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q Is the Company aware of other shippers that were
2 awarded capacity on the same project during the
3 Open Season?

4 A (Wells) Yes. There are two other shippers on
5 the -- that were awarded capacity through these
6 Open Seasons. The first is Emera Energy, they
7 have a contract of approximately 5,000
8 decatherms, or precisely 5,000 decatherms, and
9 New England Green Gas, their contract is 41,500
10 decatherms.

11 Q Did the Company assess cancellation risk
12 associated with the TCPL Agreements?

13 A (Wells) Yes. We had actually provided, in
14 discovery, some analysis of the risk of
15 TransCanada failing to be able to acquire their
16 authorization. And TransCanada had provided us
17 data on, across its different pipeline systems,
18 in Canada, on the number of applications that had
19 been made, dating from 2000 -- we look at data
20 from 2012 to 2022. We left out data from 2023,
21 because those approvals were still pending. But,
22 over that period of time, there had only been two
23 out of the 189 projects that had been canceled
24 due to failure of TransCanada to acquire its

[WITNESS PANEL: Wells|Arif|Alam]

1 authorization, which translated to approximately
2 1.06 percent of the time. And that was what we
3 estimated to be the likelihood that TransCanada
4 would be unable to acquire its approvals prior to
5 service. And, so, you know, and, additionally,
6 no projects had been canceled since 2014 for that
7 reason.

8 I want to note that we also -- there
9 were about seven projects that did not go into
10 service because the customer had withdrawn their
11 request, prior to service being implemented. So,
12 they did not result in firm agreements, because
13 the customer had withdrawn their request.

14 You know, I would add, you know, we
15 think, in this particular case, because of the
16 scarcity of supply in New England, during cold
17 weather events in particular, we think that the
18 likelihood of cancellation of the other parties
19 to be quite low.

20 MR. TAYLOR: I have a question or two
21 that I'd like to ask Mr. Wells that get into
22 confidential information. So, I would just like
23 to give notice to the stenographer that we're
24 going to ask some confidential questions. And

[WITNESS PANEL: Wells|Arif|Alam]

1 I'll be very clear when we're out of that.

2 And I guess I just want to make sure
3 that there is nobody in the room that would need
4 to leave?

5 CHAIRMAN GOLDNER: I think we're okay
6 to proceed.

7 MR. TAYLOR: Very good.

8 **{BEGIN CONFIDENTIAL SESSION}**

9 BY MR. TAYLOR:

10 Q _____
11 _____
12 _____

13 A (Wells) _____
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[WITNESS PANEL: Wells|Arif|Alam]

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[WITNESS PANEL: Wells|Arif|Alam]

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[WITNESS PANEL: Wells|Arif|Alam]

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MR. TAYLOR: That's the end of my
confidential question.

{END OF CONFIDENTIAL SESSION}

BY MR. TAYLOR:

Q Mr. Wells, did you participate in the negotiation
and drafting of the Settlement Agreement, which
was filed with the Commission on January 16th?

A (Wells) I did.

Q And, then, as a result, are you familiar with the
terms of the agreements, and are you prepared to
discuss and describe those terms?

A (Wells) I can.

Q So, could you -- I was just going to ask, if you
could give a brief overview with respect to the
Parties' Agreement regarding the Empress Capacity
Contracts?

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Wells) I'd be glad to. So, referring to the
2 Settlement Agreement itself. I would point to
3 Page 6 of the Settlement Agreement. It provides
4 an overview of this, or it enumerates the
5 Settlement terms that the Company and the
6 Department of Energy agreed to.

7 The Settlement Term 1 just, you know,
8 we agree that the volume of 12,500 decatherms is
9 reasonable, in light of the Company's planning
10 load requirements, and the allocation of costs
11 between Maine and New Hampshire, and our
12 anticipated needs.

13 Secondly, we agree that the term, the
14 30-year term, of the Empress Capacity Agreements
15 is reasonable.

16 The third term, we agree that, to the
17 extent that there are any pre-service or
18 cancellation costs/termination costs that we had
19 talked about today, that, to the extent that it's
20 determined those are reasonable and prudent, that
21 New Hampshire would only be allocated consistent
22 with the Modified Proportional Responsibility
23 Allocator, which is the way we allocate fixed
24 costs for other, you know, our normal supply

[WITNESS PANEL: Wells|Arif|Alam]

1 costs would be -- demand costs would be allocated
2 using that methodology.

3 The fourth term is that, to the extent
4 that we incur any cancellation costs, it will be
5 through the cost of gas filings, and that it
6 would be recovered from all capacity-eligible
7 customers.

8 The fifth term is that the Company has
9 agreed that it will monitor and evaluate the
10 prudence of continuing with, or terminating, the
11 Empress Capacity Agreements. At certain decision
12 points that we outline in the Agreement, it is a
13 confidential Attachment A, and it provides --
14 confidential Attachment A provides certain
15 milestones that TransCanada has provided us in
16 their regulatory approval process. And, then, we
17 would provide an update, both quarterly and
18 during the cost of gas filing. And, to the
19 extent that we find any new material information,
20 that we would provide that information, you know,
21 outside, you know, in advance of, if new
22 information were to be provided before a
23 quarterly report or an annual cost of gas report,
24 we would provide that right away.

[WITNESS PANEL: Wells|Arif|Alam]

1 And, finally, that we agree -- or,
2 additionally, we agree that, to the extent that
3 the -- that the Commission were to approve this
4 Settlement Agreement, that we agree that the
5 costs that were incurred to this point, or to the
6 point of the order, would be prudent. But that
7 further, you know, costs beyond that point would
8 be subject to a prudency, you know, subject --
9 recoverable subject to a determination that
10 Northern incurred those costs prudently.

11 And, finally, and I think I touched on
12 this, in addition to reviewing those, we have
13 agreed to provide updates to the Department and
14 the Office of Consumer Advocate, that to the
15 extent that is both quarterly, in the cost of gas
16 filing, and to the extent that we find any
17 material change, that we would provide that
18 information as soon as practical.

19 And, then, finally, we've agreed to
20 evaluate available hedging strategies in our cost
21 of gas filings, until such time as the
22 transportation agreement with TransCanada becomes
23 effective, or is executed.

24 MR. TAYLOR: Commissioners, I realize

[WITNESS PANEL: Wells|Arif|Alam]

1 this is somewhat of an unorthodox request. Could
2 I approach Mr. Wells to confer with him briefly,
3 before closing my direct?

4 CHAIRMAN GOLDNER: Yes, please.

5 MR. TAYLOR: Okay.

6 *[Atty. Taylor and Witness Wells*
7 *conferring.]*

8 BY MR. TAYLOR:

9 Q And, Mr. Wells, and I guess speaking only for the
10 Company at this point, and not the Settling
11 Parties, you just made reference to an agreement
12 with respect to hedging strategies. Why would
13 the Company agree to this term, but not the
14 recommendation of Mr. Vatter in his testimony?

15 A (Wells) So, as I understand Mr. Vatter's
16 testimony, he recommends that we specifically
17 look at hedging for the Western Canadian -- or,
18 to target our hedging strategy on the Western
19 Canadian supply. And as he, as I understand his
20 testimony, he notes that the Western Canadian
21 gas, there's been some liquified natural gas,
22 liquefaction capacity that is projected and
23 planned, well into development phases, that will
24 be in service during the time of this Agreement.

[WITNESS PANEL: Wells|Arif|Alam]

1 And his, as I understand his concern, is that
2 that will expose Empress to more volatility,
3 because the pull of that gas to global markets
4 would potentially cause the price of Western
5 Canadian supply itself to become more volatile
6 over the term of the Agreement.

7 And, so, the recommendation of the OCA,
8 as I understand it, is that, in order to assure
9 that the Company achieves the cost savings that
10 we had projected in the pendency of the Empress
11 Capacity Resource Assessment, that we should look
12 at hedging for terms -- outward terms of three
13 years, in order to prevent -- or, prevent
14 exposure to volatility, specifically referring to
15 potential shocks that would be caused by OPEC to
16 the global energy market.

17 Our, you know, our view is that we
18 really see the hedging as more of a "portfolio
19 level" discussion, rather than a "resource level"
20 discussion. And, so, we think that adding, you
21 know, I would note that, you know, the Western
22 Canadian supply will not be the only supply basin
23 that is exposed to LNG, you know, the possibility
24 of LNG exportation impact.

[WITNESS PANEL: Wells|Arif|Alam]

1 It is my personal view that, you know,
2 we have that same, you know, the Gulf of Mexico,
3 where we have some significant supply as well, a
4 similar volume to the Empress, we've got about
5 13,000 of TransCanada -- or, excuse me, Tennessee
6 supply that accesses the Gulf of Mexico. There's
7 probably more LNG exportation in that market than
8 there is in the Western Canadian market.

9 So, at this point, you know, we view
10 the NYMEX, in general, as a greater, you know,
11 source of volatility than, now and in the future,
12 than any one specific supply basin that we may
13 access.

14 You know, that having been said, you
15 know, we've also had hedging programs in the
16 past, and have consistently -- pretty
17 consistently cost customers more money. The
18 Company also has -- we do, however, in light of
19 that, we do currently have a hedging program,
20 which I talk about in the most recent cost of gas
21 filing. But it's more of a short-term program,
22 where we try to create, you know, the objective
23 is cost certainty through the upcoming winter.
24 So, the Company hedges 75 percent of its

[WITNESS PANEL: Wells|Arif|Alam]

1 projected November through March volumes by the
2 combination of injected storage gas, and, to the
3 extent that injected storage gas is not
4 sufficient to meet that 75 percent target, that
5 we then would buy -- lock in the NYMEX portion of
6 other supplies, to the point where we would reach
7 that target threshold.

8 And, you know, we view exposure to
9 those losses as something, you know, hedging
10 losses as something that is, you know, not
11 beneficial to customers. We're looking to look
12 at hedging strategies. You know, we're willing
13 to revisit those conclusions that we made, and
14 that's why we agreed to the Settlement terms.
15 And we'll give a good-faith look at, you know,
16 whether or not -- revisit those discussions that
17 we've had in our more recent experience. But we
18 just don't want to be locked in to having to, you
19 know, look at hedging any one particular supply
20 portion.

21 Now, if, in the pendency of that
22 examination, we determine that, you know, one
23 particular, you know, supply point is worthy of
24 considering additional hedging, like New England

[WITNESS PANEL: Wells|Arif|Alam]

1 supplies, then we would certainly reconsider that
2 and report to you. We just wanted the Settlement
3 to be more broad in what we would look for.

4 You know, additionally, to the
5 Company's perspective, the biggest volatility
6 risk that the Company faces is exposure to New
7 England supplies. So, we believe that the
8 addition of this Empress capacity reduces that
9 exposure, and itself is -- provides a natural
10 hedge against the volatility that really has
11 impacted New Hampshire customers, which is the
12 cost of supply delivered to New England, rather
13 than, you know, just has been much higher than
14 the volatility for the other parts of our
15 long-term portfolio.

16 Q Thank you, Mr. Wells. In your opinion, is
17 Northern's decision to enter into the Empress
18 Capacity Agreements prudent, reasonable, and
19 consistent with the public interest?

20 A (Wells) Yes.

21 Q Is it also your opinion that the Settlement is
22 just and reasonable, and consistent with the
23 public interest?

24 A (Wells) Yes.

[WITNESS PANEL: Wells|Arif|Alam]

1 MR. TAYLOR: And, with that, I will
2 bring my long direct to a close.

3 CHAIRMAN GOLDNER: Thank you. We'll
4 move now to the DOE direct of Dr. Arif and
5 Mr. Alam.

6 MS. SCHWARZER: Thank you.

7 **FAISAL DEEN ARIF, SWORN**

8 **ASHRAFUL ALAM, SWORN**

9 **DIRECT EXAMINATION**

10 BY MS. SCHWARZER:

11 Q Dr. Arif, would you please state your name and
12 position for the record?

13 A (Arif) My name is Faisal Deen Arif. I am
14 employed as the Director of Gas Division of the
15 State of New Hampshire Department of Energy.

16 Q And have you previously testified before this
17 Commission?

18 A (Arif) I have.

19 Q And I'd like to just draw your attention to the
20 exhibits offered in this docket. "Exhibit 5" is
21 a confidential position statement, dated
22 November 3rd, there's a redacted version as
23 "Exhibit 6". "Exhibit 7" is a position statement
24 of the Department dated December 14th, redacted

[WITNESS PANEL: Wells|Arif|Alam]

1 version is "Exhibit 8". And your CV is
2 "Exhibit 9".

3 Do you recognize all those exhibits?

4 A (Arif) I do.

5 Q And did you either draft or review each of those
6 exhibits?

7 A (Arif) It was done under my supervision, yes.

8 Q And, with regard to -- I'll just talk about 5
9 and 7, the confidential ones, but encompassing
10 the redacted versions, are there any corrections
11 or comments you wish to make about those
12 exhibits?

13 A (Arif) Just one simple comment, about the
14 position statement that was issued on December
15 14th. In the "Recommendation" section, --

16 Q Dr. Arif, let me just let people catch up with
17 you.

18 A (Arif) Sorry.

19 Q So, that was Exhibit Number 7, correct?

20 A (Arif) That is correct.

21 Q And the "Recommendation" section would be
22 "Page 13 of 13", also Bates Page 013?

23 A (Arif) That is correct. Thank you.

24 Q Thank you. Please proceed.

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Arif) In that "Recommendation" section, I
2 believe it is the very last bullet point, I
3 apologize, it's not -- it's just in a bullet
4 point, the very last bullet point, that, in our
5 understanding, we have achieved that goal
6 differently.

7 Q You've achieved that goal differently in the
8 Settlement Agreement?

9 A (Arif) That is correct.

10 Q And, so, despite the fact that your
11 recommendation includes that paragraph, that
12 paragraph does not appear in the Settlement
13 Agreement?

14 A (Arif) That is correct.

15 Q Is that the only comment or correction that you
16 wish to make?

17 A (Arif) Yes.

18 Q And do you adopt the Department's position
19 statements as your sworn testimony here today?

20 A (Arif) I do.

21 MS. SCHWARZER: Thank you. Before we
22 do any further questions, I'm going to go to the
23 next witness.

24 BY MS. SCHWARZER:

[WITNESS PANEL: Wells|Arif|Alam]

1 Q Mr. Alam, would you please state your name and
2 position with the Department?

3 A (Alam) My name is Ashraful Alam. And I am
4 employed as an Utility Analyst in the Gas
5 Division.

6 Q And have you testified before the Commission
7 before?

8 A (Alam) No, I didn't.

9 Q Okay. So, let's -- let me ask you a bit about
10 your background and education. Where did you
11 receive your Bachelor's degree?

12 A (Alam) I received my Bachelor's degree in
13 Economics from University of Dhaka in 2014. And
14 I received a Master's degree from the same
15 institution in Economics in 2015.

16 Q And that's Dhaka, Bangladesh, correct?

17 A (Alam) Yup.

18 Q And, in case the Commission wants to follow
19 along, your CV has been marked as "Exhibit 10",
20 is that correct?

21 A (Alam) Yes. It is correct.

22 Q And, returning to your education, did you receive
23 a second Master's degree?

24 A (Alam) I did.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q And where did you receive that degree?

2 A (Alam) So, I completed my second Master's in
3 Analytical Economics from University of New
4 Hampshire last year, and with specialization in
5 Data Analytics, Macroeconomic Consulting,
6 Financial Modeling, and Behavioral Analysis.

7 Q In between your first Master's degree and your
8 second Master's degree, did you work in the
9 utility field?

10 A (Alam) I did.

11 Q And what did you do, briefly?

12 A (Alam) So, I have several years of experience
13 working as an Assistant Director in Bangladesh
14 Rural Electrification Board, specializing in data
15 regulation and policy analysis. I also have
16 extensive experience in tariff compliance and
17 developing cost optimization plans for regulated
18 rural utilities.

19 Q Thank you. Turning to this docket, as a utility
20 analyst, what was your role here?

21 A (Alam) Let me just catch my breath.

22 Q Sure.

23 A (Alam) So, for this docket, I analyzed the
24 Company's filing, and developed the data

[WITNESS PANEL: Wells|Arif|Alam]

1 requests, to analyze further and gain more
2 insight of the contracts. And we conducted
3 numerous technical sessions, and discussed the
4 viability of the project. And reached a
5 Settlement Agreement, which I believe is in New
6 Hampshire public interest.

7 Q And, in your work, in addition to what you've
8 described, you've reviewed all the material that
9 was submitted and attached to Exhibit 7, correct?

10 A (Alam) Yes, I did.

11 Q And, if I can direct your attention broadly to
12 those exhibits, Exhibit 5, which is the
13 confidential version of the initial position
14 statement; Exhibit 6, the redacted version;
15 Exhibit 7, the December 14th position statement;
16 and then Exhibit 8, the redacted version; as well
17 as your CV, Exhibit 10.

18 Do you have any comments or corrections
19 that you wish to make?

20 A (Alam) I agree with the correction that Dr. Dean
21 Arif made. And that's about it.

22 Q Okay. So, do you otherwise adopt all those
23 documents as your sworn testimony here today?

24 A (Alam) Yes, I do.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q Mr. Alam, did you hear Northern's testimony here
2 this morning?

3 A (Alam) I did.

4 Q And do you agree with it?

5 A (Alam) I do.

6 Q Do you -- could you briefly outline the reasons
7 the Department is supporting the Settlement
8 Agreement and the Empress Capacity Agreements?

9 A (Alam) Yes. Sure. So, DOE is supportive of this
10 contract considering --

11 *[Court reporter interruption.]*

12 WITNESS ALAM: I'm sorry.

13 **CONTINUED BY THE WITNESS:**

14 A (Alam) So, the Department is supportive of this
15 contract considering the Company's assessment of
16 its supply needs.

17 BY MS. SCHWARZER:

18 Q I'm sorry. Could you say that last bit a bit
19 more slowly?

20 A (Alam) Supply needs.

21 Q "Supply needs".

22 A (Alam) Yes.

23 Q Thank you.

24 A (Alam) Company's obligation to reliably provide

[WITNESS PANEL: Wells|Arif|Alam]

1 service to its customers, and the options
2 currently available in the market, and
3 considering the New England's current supply
4 constraints.

5 Q Dr. Arif, is there anything you wish to add to
6 that answer? Do you otherwise agree with it?

7 A (Arif) I do.

8 Q Mr. Alam, what is your opinion about the
9 Settlement -- the overall opinion of the
10 Department on the Settlement and the Empress
11 Capacity Agreements?

12 A (Alam) So, from my point of view, and the
13 Department's point of view, I think this type of
14 contract is hard to come by. And it provides --
15 it provides certain flexibility and reliability
16 to Northern's gas supply portfolio, which will
17 assist them to provide reliable service to their
18 customer base.

19 Q What is your opinion with regard to peaking
20 needs?

21 A (Alam) So, even if the contract is approved,
22 Northern's peaking demand will not be met. So,
23 that's why this contract is valuable to them.

24 Q Could I direct your attention to Exhibit

[WITNESS PANEL: Wells|Arif|Alam]

1 Number 7, and Bates Page 000021.

2 CMSR. CHATTOPADHYAY: Can you repeat
3 the Bates Page again? Sorry.

4 MS. SCHWARZER: Yes. It's Bates
5 Page 021, for Exhibit Number 7.

6 And I would ask permission to approach
7 the witness? I believe he's having --

8 CHAIRMAN GOLDNER: Please do.

9 *[Atty. Schwarzer and Witness Alam*
10 *conferring.]*

11 MS. SCHWARZER: Thank you. If the
12 Commission is ready to proceed?

13 BY MS. SCHWARZER:

14 Q Mr. Alam, you heard Northern's testimony
15 regarding their assessment of risk for entering
16 into this contract?

17 A (Alam) Yes, I did.

18 Q And is this the Department's data request and
19 Northern's response where that evaluation
20 occurred?

21 A (Alam) It did.

22 Q And the percentage reflected for TransCanada
23 proceeding -- or, obtaining the regulatory
24 authority is over 98 percent?

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Alam) It is.

2 Q And there's a description in a small footnote
3 about shippers, of some of whom withdrew, the
4 likelihood of all the shippers continuing is in
5 excess of 96 percent?

6 A (Alam) Yes, it did.

7 Q So, I'll ask you closing questions, and then ask
8 the same questions of Dr. Arif.

9 Mr. Alam, in your opinion, is the
10 Settlement Agreement just and reasonable, and in
11 the public interest?

12 A (Alam) It is.

13 Q And, in your opinion, are the Empress Capacity
14 Contracts prudent and reasonable, and in the
15 public interest?

16 A (Alam) It is.

17 Q Thank you. And, Dr. Arif, having -- you heard
18 Northern's testimony this morning, and do you
19 agree with it?

20 A (Arif) I do.

21 Q And you heard Mr. Alam's testimony, and do you
22 agree with that?

23 A (Arif) I do.

24 Q And, in your opinion, is the Settlement Agreement

[WITNESS PANEL: Wells|Arif|Alam]

1 just and reasonable, and in the public interest?

2 A (Arif) It is.

3 Q And, in your opinion, are the Empress Capacity
4 Contracts prudent and reasonable, and in the
5 public interest?

6 A (Arif) It is.

7 MS. SCHWARZER: Thank you. The
8 Department has no further questions.

9 CHAIRMAN GOLDNER: Okay.

10 So, next, we'll move to the Northern
11 friendly cross of Dr. Arif and Mr. Alam, and then
12 the DOE friendly cross, and then the OCA with
13 cross for everyone.

14 So, let's move to Northern friendly
15 cross.

16 MR. TAYLOR: I have no friendly cross
17 for the DOE.

18 CHAIRMAN GOLDNER: Okay. And any DOE
19 friendly cross for Mr. Wells?

20 MS. SCHWARZER: We have no friendly
21 cross either. Thank you, Mr. Chairman.

22 CHAIRMAN GOLDNER: All right.

23 Well, we can move to the cross for the
24 Consumer Advocate.

[WITNESS PANEL: Wells|Arif|Alam]

1 MR. KREIS: Thank you, Mr. Chairman.
2 I'm going to try to be pretty friendly, too, if I
3 can.

4 I believe all my questions are for
5 Mr. Wells.

6 **CROSS-EXAMINATION**

7 BY MR. KREIS:

8 Q Mr. Wells, in your opinion, could your Company go
9 forward with these four agreements without
10 obtaining the approval of the Commission first?

11 A (Wells) In our view, --

12 Q That's a "yes" or "no" question. So, if your
13 answer is "no", please say "no." And, if your
14 answer is "yes", please say "yes."

15 MR. TAYLOR: I object. Mr. Wells can
16 answer the question without the limitation of
17 being just "yes" or "no".

18 MR. KREIS: Well, this, although I do
19 intend to be as friendly as I can, in legal
20 terms, this is hostile cross-examination. And I
21 am entitled to ask witnesses "yes" or "no"
22 questions on cross-examination that is not
23 "friendly".

24 CHAIRMAN GOLDNER: I think the

[WITNESS PANEL: Wells|Arif|Alam]

1 Commission would like to hear -- would like to
2 hear as much elaboration as Mr. Wells would like
3 to provide, also allowing for the opportunity for
4 a "yes" or "no" answer, if appropriate.

5 **BY THE WITNESS:**

6 A (Wells) It is my understanding that the contracts
7 themselves would allow us to go forward. But the
8 Company, due to the nature of the Agreements, and
9 the exposure, the potential exposure to costs, it
10 seems efficient to seek that review of those
11 contracts at this time, so that we, you know, the
12 Company would -- this would be a good opportunity
13 for the Company to know if the -- if there was a
14 preponderance of evidence that the contracts were
15 not approved, it certainly would be more
16 efficient to find that out prior to entering them
17 and finalizing them.

18 But I would concede, the Company would
19 have the option. So, yes, the Company could go
20 forward with the agreements without approval.
21 There's nothing that I'm aware of, in New
22 Hampshire or Maine, that would prohibit such
23 activity by the Company.

24 However, the Company believes, in its

[WITNESS PANEL: Wells|Arif|Alam]

1 management of costs, you know, that the balance
2 of interests between the Company and its
3 customers, it would make sense to get that -- to
4 seek that approval, and to only enter into the
5 contracts with their approval. Because we
6 believe these customer -- excuse me -- these
7 contracts benefit customers, and, so, it would
8 make sense to make sure that, you know, the
9 parties that regulate us agree with that
10 determination.

11 BY MR. KREIS:

12 Q I heard that answer as "yes" to my question,
13 whether the Company could go forward with these
14 contracts without obtaining the approval of this
15 PUC, and the PUC in our neighboring states.

16 My next question is, a hypothetical
17 one, I guess, again, for Mr. Wells. If the PUC
18 were to put out an order saying "Well, we neither
19 approve nor reject these contracts." Would the
20 Company then not move forward with them?

21 A (Wells) I think that, for one, I believe that
22 there would be a question for the entire team,
23 including senior management, of the Company. But
24 we'd have to review the order before -- it would

[WITNESS PANEL: Wells|Arif|Alam]

1 be speculative active of me to answer that
2 question, without seeing an order and discussing
3 it with the entire team.

4 Q Fair enough. Turning your attention to
5 Exhibit 12, which is the confidential version of
6 the Settlement Agreement. On Page 3 of
7 Exhibit 12, there's a statement that the
8 allocation of financial responsibility, which is
9 roughly "60 percent to Maine customers" and
10 "40 percent to New Hampshire customers",
11 "presumes that the Commission and the Maine PUC
12 have both provided Northern with regulatory
13 approval in a form and substance acceptable to
14 the Company by February 1st."

15 Is that 60/40 allocation itself a term
16 of the Settlement Agreement?

17 A (Wells) No. The term of the Settlement Agreement
18 is that "allocation of costs is based on the
19 Modified Proportional Responsibility Allocator",
20 which is subject to change over time.

21 So, to the extent that, you know, Maine
22 and New Hampshire Division demands grow at
23 different rates, that allocation would change
24 over time. However, for -- I think it is useful,

[WITNESS PANEL: Wells|Arif|Alam]

1 I believe, for, you know, entities that are
2 reviewing this, to look at what the current
3 Modified Proportional Responsibility Allocators
4 would indicate for allocation of this capacity as
5 a starting point.

6 Q Are you saying that, if the Commission doesn't
7 approve the Settlement Agreement for some reason,
8 Northern is reserving the right to apply some
9 different allocation percentage to these
10 contracts?

11 A (Wells) No.

12 Q Drawing your attention to Page 5 of the
13 Settlement Agreement, again, Exhibit 12, do you
14 see the sentence in the second paragraph that
15 begins with the words "effective currently"?

16 It's about a third of the way down that
17 page.

18 A (Wells) Yes.

19 Q Okay. What does that phrase "effective
20 currently" mean?

21 A (Wells) My understanding is that "effective
22 currently" means that the term, if the 2027 TCPL
23 PA is canceled for any reason, then TCPL will
24 have the right to recover pre-service and

[WITNESS PANEL: Wells|Arif|Alam]

1 cancellation costs from Northern, including the
2 portion of the project development costs
3 attributable to Northern's service request at the
4 time of cancellation is currently effective, that
5 insofar as we have already signed this agreement,
6 and so that, if we were to terminate this
7 contract right now, we would already be subject
8 to these -- the termination costs that we've
9 discussed today.

10 Q And, so, the Company, in other words, has
11 incurred that obligation without first obtaining
12 the approval of the Commission?

13 A (Wells) That is correct. But, if I may offer
14 some context, there really would not be
15 sufficient time to gain such approval prior to
16 entering into the Open Season, you know, to
17 making those Open Season and signing the
18 Precedent Agreement. Upon award, upon being
19 presented with the Precedent Agreement, the
20 Company only has 30 days to either sign it or not
21 sign it.

22 So, you know, we found that the
23 compressed time schedule for this docket to be
24 challenging. I think a 30-day review period

[WITNESS PANEL: Wells|Arif|Alam]

1 would be -- I don't ever want to say the word
2 "impossible", but darn near it.

3 Q So, continuing with that sentence, after the
4 phrase "effective currently", there's a reference
5 to -- or, it says "if the 2027 TCPL PA", that's
6 the Precedent Agreement with TransCanada, "is
7 canceled for any reason, then TransCanada will
8 have the right to recover" certain costs.

9 Can you describe the foreseeable
10 circumstances that could lead to such a
11 cancellation? I think you talked about some of
12 them in your direct testimony. But I just want
13 to make sure it's clear what these possibilities
14 are.

15 A (Wells) I think the most, you know -- you know,
16 for one, we don't attribute the risk of project
17 cancellation to be high. But the most likely
18 factors that could lead to cancellation would be
19 to the extent that TransCanada is unable to
20 obtain the regulator approvals that it requires
21 to construct the facilities it needs to provide
22 service. Secondly, another, while, in aggregate,
23 not likely outcome, but, you know, relative to
24 this particular question, the other most likely

[WITNESS PANEL: Wells|Arif|Alam]

1 would be that the other customers withdraw from
2 the project, to the point that the -- TransCanada
3 determines that there's no longer sufficient
4 interest or sufficient contract volume for it to
5 be economic for them to proceed.

6 Q So, in other words, would it be fair to say, or
7 correct to say, that TransCanada has really the
8 right to cancel this contract for whatever
9 business reasons, it, in pursuing the interests
10 of its own owners, just is no longer profitable
11 or desirable from the company's -- from that
12 company's perspective?

13 A (Wells) I don't think I would agree with that
14 characterization. I was talking specifically to
15 the terms of withdrawal of customers, not to the
16 overall economics. You know, TransCanada, by
17 entering into these agreements, it has limited
18 its opportunity to terminate the -- to cancel the
19 contracts, stipulated in the Agreement itself.

20 I wouldn't -- I didn't read in there
21 there's a provision that, if they determine the
22 project is felt to be uneconomic, that they could
23 do that without -- without meeting other certain,
24 very specific conditions.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q Your employer, Northern, could also opt to cancel
2 the Precedent Agreement. What circumstances
3 could lead to that result?

4 A (Wells) Well, you know, I don't want -- you know,
5 I don't want to be too -- it's impossible for me
6 to know what circumstances would lead the Company
7 to cancel it on its own. I think the most
8 obvious of which would be if either Maine or New
9 Hampshire Public Utilities Commissions were to
10 reject our request for approval, I think that
11 would be pretty clearly a circumstance in which
12 the Company would terminate the Agreements.

13 But, further, you know, we would have
14 to just monitor the situation, and to understand
15 what -- how the -- you know, the risk and
16 benefits of the Capacity Contracts changed, to
17 the extent that they do, and make a determination
18 at that time. It would be really difficult for
19 me to speculate as to what circumstance might --
20 that might become that would lead the Company to
21 terminate the Agreements, other than for the
22 specific rejection of the contracts or rejection
23 of our requests before the Maine and New
24 Hampshire Public Utilities Commissions,

[WITNESS PANEL: Wells|Arif|Alam]

1 respectively.

2 Q Forgive me, Mr. Wells, but the answer you just
3 gave seems to be somewhat at variance with an
4 answer you gave earlier in my questioning of you.

5 What I think I understood you to say
6 just now is that, in the event both the Maine PUC
7 and the New Hampshire PUC don't approve all of
8 these contracts, Northern will, in fact, walk
9 away from those contracts. Is that what I just
10 heard you say?

11 A (Wells) I wasn't aware that I had said anything
12 that was in conflict with that.

13 Q Well, I'm not trying to trick you.

14 A (Wells) Okay.

15 Q I just wanted to make sure I understand what the
16 Company's position is, or what your position is.

17 A (Wells) I think, realistically, the Company
18 requires approval from both Maine and New
19 Hampshire Public Utilities Commissions.

20 Q In your recollection, have any precedent
21 agreements like this, into which Northern has
22 entered, ever been canceled in the past?

23 A (Wells) I am not aware of any agreement, in my
24 time as a steward of Northern's gas supply

[WITNESS PANEL: Wells|Arif|Alam]

1 portfolio, that such a contract has been canceled
2 in the past. However, it is possible that such
3 contract -- I am aware that Northern had a
4 certain LNG project that it had considered prior
5 to Northern's -- or, excuse me, Unitil's
6 acquisition of the Company, that it would appear
7 that there -- I would expect that there was some
8 development costs associated with, but that
9 project never went into service.

10 Q Turning to Page 7 of Exhibit 12, again, the
11 Settlement Agreement. In Settlement Term
12 Number 4, there is, and you've already alluded to
13 this, there's a sentence that says "The Settling
14 Parties agree that potential cancellation costs
15 shall be recovered from all capacity-eligible
16 customers."

17 Would it be correct to say that all of
18 the Company's residential customers are
19 "capacity-eligible customers"?

20 A (Wells) Yes. They are.

21 Q And would it also be fair to say that not all of
22 the Company's commercial customers are
23 "capacity-eligible customers"?

24 A (Wells) That is correct.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q You testified earlier that the risk of
2 cancellation of the Precedent Agreements is
3 "quite low". That's the phrase that you use.
4 But, as I understand it, that's a risk that the
5 Company's shareholders, although it's quite low,
6 are not willing to undertake. Do I have a
7 correct understanding of that?

8 A (Wells) The Company's position is that customers
9 are the ones who benefit -- get the benefits of
10 the contract, because we don't -- we don't
11 generate any profit off of gas supply. We only
12 recover -- we get a cost pass-through on gas
13 supply. So, where the capacity-eligible
14 customers ultimately will be the parties that
15 enjoy the benefits of these Empress Capacity
16 Agreements, we think it's appropriate that the
17 risk attenuating to those Agreements would be --
18 should be borne by them.

19 To the extent, of course, that the
20 Company acts prudently, as would be the case,
21 really, with all gas supply-related matters.

22 Q So, in other words, your testimony is that the
23 Company is not willing to undertake that risk on
24 behalf of its shareholders?

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Wells) Yes.

2 Q Okay. If the Commission were to decide that some
3 or all of the cancellation risk were to be
4 allocated to the Company's shareholders, would
5 that be a violation of any of the contract terms?

6 A (Wells) Can you repeat that question? I want to
7 make sure I understand it correctly.

8 Q Sure. If the Commission were to decide that some
9 of the cancellation risk were to be allocated to
10 shareholders, which you just testified the
11 Company would not be willing to do, would that be
12 itself a violation of any of the contract terms?
13 Is there anything in either of the -- any of the
14 contracts that would prohibit the Commission from
15 making that decision?

16 A (Wells) I don't believe there is.

17 MR. KREIS: I think those are all of my
18 questions of Mr. Wells. And I don't have any
19 questions of either of the two Department
20 witnesses.

21 CHAIRMAN GOLDNER: Okay. Thank you.

22 We'll turn now to Commissioner
23 questions, beginning with Commissioner Simpson.

24 CMSR. SIMPSON: Thank you, Mr.

[WITNESS PANEL: Wells|Arif|Alam]

1 Chairman.

2 BY CMSR. SIMPSON:

3 Q So, I'd like to start with Mr. Wells. Some
4 questions regarding FXW-2, Hearing Exhibit 3.
5 I'm hoping that you might just frame the current
6 portfolio for Northern's capacity and supply.
7 You have some tables that walk through that.

8 You mentioned the Tennessee Capacity
9 Path that the Company currently has, and how this
10 Empress proposal is roughly the same capacity, in
11 terms of decatherms per day.

12 So, I'm hoping you might just overall
13 highlight what this means for the Company's
14 capacity portfolio, and how it fits within the
15 context of your overall portfolio?

16 A (Wells) Sure.

17 Q And, to go a step further, you mentioned "hedging
18 strategies", and where gas comes from globally,
19 nationally. How this diversifies the Company's
20 portfolio generally, please?

21 A (Wells) Absolutely. Referring to, I believe,
22 what you had mentioned in my Empress Capacity
23 Resource Assessment, it's Attachment 8. It
24 provides a summary of Northern's current capacity

[WITNESS PANEL: Wells|Arif|Alam]

1 contracts. And you can see that, when you add
2 really the pipeline capacity, the storage
3 capacity, and our LNG on the system, that's
4 approximately 99,000 decatherms of capacity that
5 we consider, in the context of this analysis, in
6 our operation, to be our long-term capacity.

7 Adding -- so, you had specifically
8 mentioned the Zone 0 and Zone L, the Tennessee
9 capacity. Our contracts for Tennessee capacity
10 results in approximately 13,109 decatherms
11 deliverable to Northern's system. Compared to
12 the Empress capacity, slightly higher, which is
13 about 12,500 decatherms. So, from a weighting,
14 relative to the Gulf, it's approximately equal,
15 from a high level.

16 Adding Empress capacity to the
17 portfolio, Empress will be about 11 percent of
18 the long-term capacity. Capacity will go up to
19 about 112,000, if that capacity ultimately
20 becomes incorporated into the portfolio. We
21 think that's a really good level of exposure.

22 One thing that I would point, from an
23 overall -- an overall level, you'll notice that
24 the Dawn Hub Storage Path is currently about

[WITNESS PANEL: Wells|Arif|Alam]

1 60,000 decatherms, out of the 100,000,
2 approximately, that we have now. So, roughly,
3 60 percent. You know, if we were to -- if we get
4 approval to add the Empress capacity to our
5 portfolio, that would reduce it from about 60
6 percent to about 55 percent.

7 One thing I want to point out that
8 we've had with discussions with TransCanada is
9 that, you know, even from an operational
10 perspective, we have a lot of exposure to Dawn,
11 not just from a price perspective, but also from
12 a facilities perspective. This Empress capacity,
13 one of the benefits that it offers, is it
14 actually would flow on a different path than --
15 or, a different pipeline segment than the Dawn
16 Hub. So, it provides some operational, not just
17 flexibility, but also diversity. So that it's
18 different facilities that that Empress capacity
19 would be utilizing. So, if there were ever an
20 issue with the Dawn Storage Path, that Empress
21 capacity would not -- would not necessarily be
22 impacted by that. So, it provides additional,
23 you know, in addition to the price diversity, it
24 also provides some diversity of facilities that

[WITNESS PANEL: Wells|Arif|Alam]

1 would actually further enhance the reliability of
2 Northern's portfolio.

3 Q Thank you. In your testimony, you mention that
4 the long-term viability of the portfolio is
5 "uncertain". Would you be able to elaborate on
6 that for us please?

7 A (Wells) Right. So, you know, and we talk in the
8 Empress Capacity Report -- Resource Assessment
9 about the uncertainty related to two LNG import
10 facilities. The first is the Everett Marine
11 terminal. That facility is owned by
12 Constellation LNG. And, historically, in the
13 last few years, the biggest customer of the
14 Everett Marine terminal has been two power
15 plants, Mystic 8 and 9, that are located -- that
16 are directly connected to the Everett Marine
17 terminal. And it's the sole -- was the sole
18 source of supply for Mystic 8 and 9. Those, the
19 Everett Marine terminal, combined with the Mystic
20 8 and 9 generation assets, had -- or, have,
21 currently, a cost of service agreement with the
22 Independent System Operator for New England.

23 That cost of service agreement
24 captures, you know, so that a prorated share of

[WITNESS PANEL: Wells|Arif|Alam]

1 the Everett Marine terminal costs that are
2 utilized by Mystic 8 and 9 are recovered from
3 electric customers. That arrangement ends on
4 May 31st of this year.

5 And the retirement of Mystic 8 and 9
6 will lead to a potential outcome that
7 Constellation LNG no longer has sufficient
8 contractual support for the Everett Marine
9 terminal to be able to continue its operation.

10 And Constellation, you know, mentioned
11 this in -- publicly, in its June -- in its
12 participation in -- the FERC held a forum related
13 to natural gas and -- or, power reliability, and
14 its interrelation with natural gas particularly,
15 back in June, they held a forum in Portland,
16 Maine.

17 So, in the context of that uncertainty,
18 the other -- the other entity that provides LNG
19 into the region, that's imported, is Repsol,
20 using their facility that's located in St. John,
21 New Brunswick, Canada, is Repsol. And their
22 representative, both at that forum and in their
23 post forum comments, were very concerned that, to
24 the extent that Constellation LNG's Everett

[WITNESS PANEL: Wells|Arif|Alam]

1 Marine terminal were to receive some subsidy in
2 order to be able to remain in operation, that it
3 could potentially impact other -- the long term
4 viability of other resources, including the
5 St. John LNG facility.

6 So, those resources, while Northern and
7 Unitil both believe are -- even with the Empress
8 Capacity Agreement, are critical for the New
9 England region, and for Northern Utilities
10 itself, and reliability -- including reliability
11 to New Hampshire customers, we believe that
12 adding Empress is a good diversification from
13 those facilities, due to the uncertain nature of
14 their ongoing -- the ongoing viability of those
15 resources, based solely on, you know, their
16 public discussion of their future.

17 Q Thank you. Within the scope of these four
18 Agreements, can you distinguish what facilities
19 are currently available and what facilities will
20 be built?

21 A (Wells) I do remember there was a -- so, the
22 facilities that are currently available, PNGTS
23 built a compressor station on its system to
24 facilitate its WXP expansion. That facility is

[WITNESS PANEL: Wells|Arif|Alam]

1 being utilized to support increased capacity
2 through this -- through its most recent Open
3 Season.

4 So, those existing facilities on
5 TransCanada -- or, excuse me, those existing
6 facilities on PNGTS will be utilized to
7 effectuate deliveries under the PNGTS firm
8 transportation contract that we're seeking
9 approval of in this proceeding.

10 For TransCanada, there are facilities,
11 I believe there is some compressor station work,
12 there is some work at the East Hereford meter,
13 that would need to be performed, in order to
14 facilitate service on TransCanada after November
15 2027, when their operational arrangement with
16 another shipper would end.

17 Q Thank you. And, then, with respect to Northern's
18 participation in the PNGTS Open Season process,
19 how did the Company arrive at the minimum rate of
20 \$0.82 per decatherm per day for firm
21 transportation service, and the 12,500 decatherms
22 of capacity from Pittsburg?

23 A (Wells) Okay. So, \$0.82 per decatherm per day
24 was the minimum price cited by PNGTS in its Open

[WITNESS PANEL: Wells|Arif|Alam]

1 Season, which is provided as Attachment 1 to the
2 Empress Capacity Resource Assessment. That is
3 the price that the Company ultimately bid for
4 capacity in the Open Season.

5 The volume of 12,500 decatherms, I
6 actually utilized -- in the Resource Assessment,
7 I talk about that, I believe it's in the
8 confidential section. But, suffice it to say, we
9 utilized our Resource Optimization Model that we
10 currently use, which is PLEXOS, thank you.
11 Forgive me for that momentary blank --

12 Q No problem.

13 A (Wells) -- in my memory. So, we utilized PLEXOS
14 to assess what the optimal volume of -- or, we
15 looked at several different volumes, to assess
16 which one would be most advantageous, and then
17 made a, you know, and then used, basically, you
18 know, Company judgment as to what was the best
19 fit for the portfolio.

20 Q Okay. Thank you. And my last question for you,
21 Mr. Wells, you've, in the Settlement, agreed to
22 periodically review hedging strategies. What
23 would you need from this Commission in order to
24 move forward with that in a productive fashion?

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Wells) I think, just approval of the Settlement
2 gets us what we need to conduct that, to conduct
3 that review.

4 CMSR. SIMPSON: Fair enough. Dr. Arif,
5 Mr. Alam, thank you for your testimony. I don't
6 have any questions for you. Your submissions
7 were very thorough. And I appreciate you being
8 here today on the bench.

9 That's all I have, Mr. Chairman.

10 WITNESS ARIF: Thank you.

11 CMSR. SIMPSON: Thank you.

12 WITNESS ALAM: Thank you very much.

13 CHAIRMAN GOLDNER: Thank you. We'll
14 move to Commissioner Chattopadhyay.

15 CMSR. CHATTOPADHYAY: Just before I
16 proceed, because it's a panel, if any one of you
17 want to further elaborate on what somebody else
18 says, feel free to do that. But I think most of
19 my questions are going to be better responded by
20 the Company. But, you know, I'm assuming that
21 the DOE could also add something.

22 BY CMSR. CHATTOPADHYAY:

23 Q So, just to make sure I'm following everything, I
24 want to understand that the price, 82 cents per

[WITNESS PANEL: Wells|Arif|Alam]

1 decatherm, that price is only being applied to
2 the incremental 12,500 decatherms here, right?

3 A (Wells) Yes. That is correct. So, the prices of
4 the other contracts that Northern has with PNGTS
5 would not be disturbed by this Agreement.

6 Q And, so, in the -- in Exhibit 1, on I think Bates
7 Pages -- it's Bates Page 069, there's a bullet.
8 And I'll let you first go there, and let me know.
9 Bates Page 069.

10 A (Wells) Is this in the PNGTS Open Season
11 document?

12 MR. TAYLOR: Fran, this is, if I may
13 just direct him to where it is, this would be the
14 Empress Capacity Resource Assessment, at Page 54,
15 if you don't have the Bates page.

16 WITNESS WELLS: Okay. Thank you.

17 MR. TAYLOR: Sorry, Commissioner, you
18 said "Bates 069"?

19 CMSR. CHATTOPADHYAY: Yes. That's
20 Bates 069.

21 BY CMSR. CHATTOPADHYAY:

22 Q And once you're there, let me know?

23 A (Wells) I am there. Thank you.

24 Q Okay. So, this is prompted also by what the DOE

[WITNESS PANEL: Wells|Arif|Alam]

1 had mentioned in its assessment or technical
2 assessment. So, my -- there's a bullet there,
3 which says: "Has reasonable demand cost
4 mechanisms allowing rolled-in rate treatment of
5 new facilities, rather than rates based on
6 higher, incremental costs." I want to understand
7 that a little bit. So, can you further
8 elaborate?

9 A (Wells) I can. So, that refers to TransCanada.
10 The TransCanada facilities are, in the U.S.,
11 typically, an expansion customer pays the
12 incremental cost of expansion in their rate
13 design. So, you can have pipelines that have
14 legacy rates, and then, basically, several
15 flavors of incremental rates, based on the cost
16 of new facilities.

17 In Canada, it's a pretty much
18 long-established principle that there is no
19 legacy capacity. So, every customer, whether
20 they are a brand-new customer or a brand-new
21 contract, or are an original contract, really pay
22 the same rate from a ratemaking standpoint. So,
23 there is no preferable -- you know, there is no
24 potential for rate preferential treatment of

[WITNESS PANEL: Wells|Arif|Alam]

1 longer term customers versus new customers.

2 And, so, that provides some advantage,
3 because incremental expansion is generally, you
4 know, and incremental capacity is generally more
5 expensive than the average cost of capacity. So,
6 this provides an advantage that, you know, the
7 Company is able to enjoy the average rate of
8 TransCanada service, rather than having to pay
9 the incremental costs of service.

10 Q Thank you. So, give me a sense of what is the
11 annual cost associated with this contract?

12 A (Wells) The demand costs are approximately 12
13 million per year.

14 Q Okay. So, it's just the 0.82 multiplied by the
15 12,000 --

16 A (Wells) No.

17 Q So, can you elaborate for me?

18 A (Wells) Actually, I want to be -- I want to be
19 careful I'm giving you the right -- so, that the
20 TransCanada contract is about 82 cents per
21 decatherm. I want to make sure I -- you know
22 what, I may be better off looking at my filing
23 more carefully, rather than trying to answer
24 based on my memory.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q And, then, of course, I understand it's going to
2 be multiplied by 365 and all of that. But is
3 there any other element that is going into it?

4 CHAIRMAN GOLDNER: And, Mr. Wells, if
5 you could orient us to the page in your
6 testimony, that would be helpful as well.

7 WITNESS WELLS: Sure.

8 **BY THE WITNESS:**

9 A (Wells) So, actually, in the confidential version
10 of this, the model cost analysis provides the --
11 for the five-year period, the increase in fixed
12 costs that would be pursuant to these agreements.

13 CHAIRMAN GOLDNER: I'm sorry,
14 Mr. Wells, if you could give us the exhibit
15 number and page, --

16 CMSR. CHATTOPADHYAY: Which page?

17 CHAIRMAN GOLDNER: -- that would be
18 helpful.

19 And, Attorney Taylor, feel free to jump
20 in, if that would be helpful to Mr. Wells.

21 WITNESS WELLS: It is Attachment 9,
22 Page 1.

23 MR. TAYLOR: That's Bates 151.

24 CHAIRMAN GOLDNER: Thank you.

[WITNESS PANEL: Wells|Arif|Alam]

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CMSR. CHATTOPADHYAY: Exhibit 1?

CHAIRMAN GOLDNER: Exhibit 1.

MR. TAYLOR: And I will note that this is a -- most of the information on this has been designated "confidential". So, I just make that known for the questioners and for the stenographer.

{BEGIN CONFIDENTIAL SESSION}

CONTINUED BY THE WITNESS:

A (Wells) _____

CMSR. CHATTOPADHYAY: Okay.

CHAIRMAN GOLDNER: So, Mr. Patnaude, I think that ends the confidential piece for now.

{END OF CONFIDENTIAL SESSION}

BY CMSR. CHATTOPADHYAY:

[WITNESS PANEL: Wells|Arif|Alam]

1 Q A clarifying question from my end. Going to the
2 issue of cancellation costs or the termination
3 costs, for the contract that is for 2024 through
4 2027, because it's, and I'm just assuming it, it
5 is a totally different situation compared to --
6 excuse me -- what entails the 2027 through 2054
7 contract. Are there any termination costs
8 associated with this shorter contract?

9 A (Wells) No. There aren't termination costs. But
10 I would note that, if, for any reason, the 2027
11 TransCanada Precedent Agreement is canceled, it
12 would trigger a cancellation of the 2024
13 Precedent Agreement and the Firm Transportation
14 Contract. So, that contract would cease to be
15 effective, if we were to -- if there were a
16 cancellation event under the other PA. So, the
17 three TransCanada Agreements are all linked
18 together. There wouldn't be cancellation charges
19 pursuant to the 2024 PA. But there would be --
20 you would have to -- have you to stay in the 2027
21 Precedent Agreement to be able to enjoy the 2024
22 contracts.

23 Q Yes. So, I was simply trying to understand where
24 do those costs originate or reside?

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Wells) Right.

2 Q They reside in the longer contract?

3 A (Wells) Right.

4 Q But, of course, they're all connected.

5 A (Wells) Yes.

6 Q So, that's what you're describing here?

7 A (Wells) That is correct.

8 Q Do you know whether the termination costs could
9 be subject to escalation? Or, do you -- or, are
10 the numbers provided in, I forget, in one of
11 the --

12 A (Wells) Attachment 7?

13 Q Attachment 7, yes. Are those firmed up?

14 A (Wells) Those are subject to actual. So, if we
15 were to actually cancel the contract, you know,
16 we would pay the actual amount that had been
17 spent to date, rather than the estimated amount.
18 And, so, that amount could be higher or lower,
19 depending on what the actual spend was at the
20 time.

21 Q Are you aware of any long-term contracts for
22 which the Company never requested approvals from
23 the PUC?

24 A (Wells) Yes.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q And why is the situation different for this
2 contract, relative to those contracts?

3 A (Wells) So, the contracts that we have entered,
4 you know, I will point out that, you know, we
5 have sought approval of our expansion -- or, the
6 expansion capacity for PXP and WXP, we requested
7 Department -- or, the PUC approval of.

8 We did enter into C2C capacity. And,
9 at that point, there was not really an increase
10 in our capacity, but it was really -- we viewed
11 the C2C as a renewal of an existing -- or,
12 continuation of an existing resource. So, we did
13 not seek approval of that, of that capacity, even
14 though it was a long term, it had, you know, a
15 smaller, but, you know, there was a portion of
16 those contracts that was based on TransCanada did
17 construct some facilities related to a portion of
18 the upstream on the C2C capacity.

19 But, like I said, we viewed that as a
20 continuation of an existing resource. Whereas,
21 subsequent requests were for new resources.

22 You know, I wouldn't say that we would
23 never come to the Commission with a request for
24 an existing resource. But that was the

[WITNESS PANEL: Wells|Arif|Alam]

1 differentiation that we made at the time. You
2 know, so, it -- at the time when we did the C2C,
3 it was really renewing -- mostly renewing
4 capacity that we already had. And, so -- and
5 restructuring it a little bit. As opposed to an
6 increase in the amount of capacity that was
7 deliverable into our system.

8 Q I know you're not a lawyer, but I'm going to ask
9 this question. And, if it needs interjection
10 from the attorney, that's okay.

11 But there is no legal requirement,
12 right, that when you're trying to seek increased
13 capacity, that you have to come to the
14 Commission?

15 A (Wells) No. There's no legal requirement that
16 I'm aware of, based on, you know, our numerous
17 internal discussions, including, you know, of our
18 need -- our request -- our decision to make this
19 request. We just think that it is -- I think
20 it's beneficial for both the Commission, and our
21 customers, and the Company, to request it in
22 advance. It gives everybody a better
23 understanding of what, you know, better
24 predictability of the outcome.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q In -- I'll use the Exhibit 7, if you go to Bates
2 Page 009. And, if you don't have the Bates Page,
3 it's Page 9 of 13. It's really DOE's
4 observations. And, once you're there, let me
5 know?

6 A (Wells) Okay. I am there.

7 Q So, there is a mention, and it's about the
8 transportation path, and it's in the Section 5.2,
9 okay? Where the issue of -- it's mentioned that
10 this "is long relative to other previous
11 contracts". I'm actually trying to understand
12 what that means. So, DOE can also jump in. But
13 are you, you know, simply talking about
14 geographically, like, the pipeline goes long, and
15 that's your understanding?

16 A (Wells) I'll, you know, obviously, I will let the
17 DOE speak for itself.

18 Q Yes.

19 A (Wells) But my understanding of that statement is
20 that the distance traveled, between Empress and
21 East Hereford, or Empress and our system, is
22 longer than the other more recent capacity
23 arrangements that we've made that have been from
24 the Dawn, Ontario, to our system. It's a longer

[WITNESS PANEL: Wells|Arif|Alam]

1 distance traveled.

2 Q So, is it generally true that you travel longer,
3 it's going to cost more?

4 A (Wells) That is generally true.

5 Q Okay.

6 A And, you know, so, the cost is allocated between,
7 on TransCanada's system, based on both distance
8 and usage. And, so, obviously, the distance
9 component is going to be higher for a longer --
10 longer distance traveled.

11 Q So, I'm now going to have a question for the DOE.
12 And same exhibit, Exhibit 7. Let's go to Bates
13 Page 011, or Page 11 of 13, if that helps. Let
14 me know when you're there, DOE?

15 A *[Witness Arif indicating in the affirmative.]*

16 Q Okay. So, there's a mention, in the first
17 paragraph on that page, about, you know, "if
18 there is no cancellation before May 1st, 2027,
19 Northern will not have to pay any termination
20 fees beyond that date to cease purchase and
21 transportation of any gas through TCPL
22 pipelines."

23 So, what I'm -- it just occurred to me,
24 can, for some reason, if everything gets pushed,

[WITNESS PANEL: Wells|Arif|Alam]

1 and the cancellation actually occurs after May
2 1st, 2027, what is the implication for the
3 termination costs?

4 A (Wells) So, relative to, you know, as I
5 understand this statement by the -- in the DOE's
6 position statement, I think, logically,
7 TransCanada will either obtain all of its
8 approvals by May 1, 2027, and build the project,
9 or, if it doesn't, it would cancel the project at
10 that time.

11 You know, the only circumstance I could
12 think of where the project could potentially be
13 canceled after that time would be to the extent
14 that a customer withdrew, and they were unable,
15 after that time, to find sufficient interest or
16 replacement shippers to fulfill the contract.

17 Again, we think that that possibility
18 would be quite low. But, obviously, the later,
19 you know, the implication from a termination cost
20 standpoint, is the later, you know, you
21 terminate, or the later the project is canceled,
22 the higher the termination cost would be.

23 Q So, to clarify, what I'm asking is, that the
24 contract doesn't say that all of the termination

[WITNESS PANEL: Wells|Arif|Alam]

1 costs are really about cancellations happening
2 before May 1st, 2027. Cancellation costs can
3 arise also if the cancellation happens after
4 that. That's what I'm trying to get a
5 confirmation of?

6 A (Wells) Sure. Yes.

7 Q Okay.

8 CHAIRMAN GOLDNER: Commissioner
9 Chattopadhyay, I'll just check in. The
10 stenographer has been on for almost two hours.
11 So, he could probably use a break.

12 Do you want to take a few more minutes
13 or do you need more time?

14 CMSR. CHATTOPADHYAY: I'll just take a
15 few more minutes, because then we can --

16 CHAIRMAN GOLDNER: Okay.

17 CMSR. CHATTOPADHYAY: -- then I will
18 let you decide.

19 CHAIRMAN GOLDNER: Take your time.

20 WITNESS ARIF: Commissioner?

21 BY CMSR. CHATTOPADHYAY:

22 Q Please. Go ahead.

23 A (Arif) If I may, I just wanted to offer this
24 explanation on DOE's behalf. Is that, in our

[WITNESS PANEL: Wells|Arif|Alam]

1 effort to create a sufficient record for the
2 Commission to arrive at a decision, we were
3 trying to highlight the relevant section of the
4 four Agreements that have been mentioned. And
5 the interplay and intricacies between and among
6 those Agreements. And it came to our attention
7 that the observation was basically meant to
8 reflect that.

9 In this particular instant, what you
10 were asking is, in trying, in the TCPL 2027
11 Precedent Agreement, particularly to the two
12 clauses, in terms of Articles 13(h), which is
13 titled as "Sunset Date", and (g), there is an
14 interplay, in DOE's view, which is titled as
15 "Withdrawal". So, read together, within those
16 contexts, we were merely trying to bring it to
17 the Commission's attention.

18 Q Thank you. Does the DOE have any response to the
19 testimony from OCA, from Dr. Vatter, that, you
20 know, there should be some consideration for
21 hedging that, as I understood, relates to the LNG
22 situation? So, do you have any thoughts on that?

23 A (Arif) I would say that Dr. Vatter's testimony is
24 very well thought, and has a significant

[WITNESS PANEL: Wells|Arif|Alam]

1 analytical piece, and I would like to commend him
2 for that.

3 Our observation is that we took his
4 testimony, and the ensuing conversation with the
5 Company, into significant --

6 MS. SCHWARZER: Objection. Just
7 settlements discussions are confidential and
8 privileged.

9 WITNESS ARIF: Thank you, Attorney.

10 **CONTINUED BY THE WITNESS:**

11 A (Arif) We have reflected that, I would just
12 course correct, I was not going to mention the
13 confidential discussion, but made a reflection
14 that we actually got and -- got reflected in the
15 Settlement Agreement, particularly Settlement
16 Agreement Term 8, and, in our view, that is
17 reflected there.

18 BY CMSR. CHATTOPADHYAY:

19 Q In the Settlement, and I'm looking at -- I don't
20 have the exhibit number on this document, but
21 it's Page 8 of that Settlement, as I mentioned,
22 you know, "Northern will evaluate available
23 hedging strategies and include a report on its
24 evaluation in the Company's Cost of Gas filings

[WITNESS PANEL: Wells|Arif|Alam]

1 through the execution of the TCPL Firm
2 Transportation Agreement." Just give me a sense
3 of when should we expect some sort of a report?
4 Like, when is the next Cost of Gas filing that
5 you're targeting?

6 A (Wells) We make an annual Cost of Gas filing in
7 September. And, so, we would be prepared to
8 provide that, the first of these reports, at that
9 time.

10 Q So, another nine months, roughly?

11 A (Wells) Yes.

12 CMSR. CHATTOPADHYAY: Okay. That's all
13 I have. Thank you.

14 CHAIRMAN GOLDNER: Okay. So, let's
15 take a break here. We'll resume with the witness
16 panel after the break, and resume with
17 Commissioner questions.

18 Let's take a one-hour break, resuming
19 at one o'clock.

20 After this panel is done, then we'll
21 ask Dr. Vatter to come to the stand, and that
22 will complete the day.

23 So, thank you. And let's resume at
24 1:00 p.m.

[WITNESS PANEL: Wells|Arif|Alam]

1 *(Lunch recess taken at 11:55 a.m., and*
2 *the hearing reconvened at 1:02 p.m.)*

3 CHAIRMAN GOLDNER: Okay. We'll go back
4 on the record, resuming with Commissioner
5 questions.

6 So, most of my questions are directed
7 at Mr. Wells. But the same as with
8 Dr. Chattopadhyay, if the DOE would like to weigh
9 in, you know, please do on any question.

10 BY CHAIRMAN GOLDNER:

11 Q So, the first question is relative to the Maine
12 arrangement, the State of Maine, to be clear.
13 Were there any differences between the Settlement
14 here in New Hampshire and that arrangement with
15 Maine?

16 A (Wells) So, we have -- there's no settlement in
17 Maine. There is a Hearing Examiner's Report.
18 The other parties in the proceeding have filed
19 exceptions to that. So, it is possible that the
20 final order could change in some material respect
21 from the Examiner's Report.

22 But, insofar as the Examiner's Report
23 is concerned, I view the approval of that Hearing
24 Examiner's Report to be very similar in the

[WITNESS PANEL: Wells|Arif|Alam]

1 approvals that would be consistent with the
2 Settlement Agreement that we presented here
3 today.

4 Q Okay. Okay. Thank you. Relative to how the
5 Agreement works, I just have some questions on
6 the details of how this arrangement works.

7 So, your -- I believe the 12,500
8 decatherms per day is the maximum that Unitil or
9 that Northern can receive, is that right?

10 A (Wells) That is correct.

11 Q Okay. So, if you have available capacity on a
12 certain day, let's say, on a certain day, you
13 only need 1,000, what are your options with that
14 remaining 11,500?

15 A (Wells) So, our plan would be to roll this
16 contract into an asset management agreement.
17 Most likely, it will be the asset management
18 agreement that we already currently use for the
19 Dawn, so combining the Empress and the Dawn
20 capacity paths into a single supply agreement.
21 So, we believe that that will be a way to
22 maximize asset management revenue for the -- for
23 both of those resources. And we think it would
24 be a good complement to one another.

[WITNESS PANEL: Wells|Arif|Alam]

1 So, to the extent that we don't need
2 the capacity on any given day, you know, the
3 suppliers that are bidding on that asset
4 management agreement can put more revenue for the
5 potential for them to be able to do optimization.
6 And, also, and to the extent that that asset
7 management agreement gives us the right to call
8 on supply on a given day, you know, we are
9 actively looking at whether or not there are ways
10 to optimize by utilizing the capacity to
11 effectuate off-system sales to the benefit of
12 customers that would provide a mitigation, both
13 asset management revenue and any off-system sales
14 that we might do with excess capacity, would
15 mitigate demand costs that are ultimately borne
16 by the consumers.

17 Q And, so, maybe said differently, and I don't want
18 to put words in your mouth, but maybe just
19 translating that a little bit, that excess
20 capacity, you could either put that in Dawn, or
21 you could sell it on the market. Are those
22 really the two options?

23 A (Wells) Yes. Yes.

24 Q In layman's terms?

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Wells) Sure.

2 Q And, then -- okay. No, thank you, that's very
3 helpful. That's what I needed to know on that.

4 And, then, you believe, with this
5 capacity deal that you've put together here, that
6 there are opportunities to add capacity over
7 time, or do you believe that this Empress
8 arrangement is sort of finalized/maximized at
9 12,500?

10 A (Wells) You know, we -- for this particular
11 project, the most likely outcome is that we have
12 12,500 decatherms. Now, hypothetically, you
13 know, and we've talked about the possibility of
14 other shippers leaving the project, you know,
15 while we think that's unlikely, if they were to
16 leave the project, you know, we would
17 certainly -- you know, we'd look at the
18 opportunity to see if it would benefit the
19 Company to add additional capacity.

20 But, you know, I -- that would be
21 something that we'd really want to discuss
22 internally as a team, if that situation were to
23 come forth. You know, so that, you know, I just
24 wouldn't want -- the limitations of the project,

[WITNESS PANEL: Wells|Arif|Alam]

1 the project is limited in the amount of
2 decatherms total it would create. The only way
3 we would get more is if another shipper were to
4 reduce its volume. And, so -- but, if that were
5 the case, you know, we would definitely review
6 that opportunity.

7 Q And this might be confidential, and if it is,
8 just please highlight for the court reporter.
9 But, as I understood the graphs and tables you
10 included in your testimony, the Company could
11 have used a lot more than 12,500. Is there --
12 first of all, is that a correct understanding?
13 And, if it is, why didn't the Company chase more
14 capacity?

15 A (Wells) So, we looked at what would be most
16 economic, based on our understanding of the
17 volume of, you know, what the price of
18 alternative supplies would be. Most notably, the
19 way we meet our peaking demand now is through an
20 off-system peaking agreement. You know, that
21 agreement -- and confidentially, I think I want
22 to make sure I'm speaking confidentially here.
23 You know, that off-system peaking provides lots
24 of _____

[WITNESS PANEL: Wells|Arif|Alam]

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So, and then, you know, just generally,
we've tried to take a very incremental approach
to these resource additions, you know, to be --
we want to be proactive in managing that risk.
But we also recognize that our demands could

[WITNESS PANEL: Wells|Arif|Alam]

1 change over time, policies can change over time,
2 and we want to maintain a portfolio that has the
3 overall flexibility to be able to deal with any
4 changes.

5 And, so, I think that, if we went up to
6 and took a much larger position on Empress, it
7 might impede our ability to be able to respond
8 over time. So, while I wouldn't rule out, you
9 know, future capacity additions, if they become
10 available, we thought that 12,500 was a good
11 amount for now, based on what we know about the
12 future, about what we know about the possibility
13 for variance in our own demand profile, and as
14 well as interest in continuing to be able to
15 utilize, you know, and be able to support the
16 St. John LNG and the Everett Marine terminal
17 facilities, because we do think those facilities
18 are still an important and valuable part of the
19 portfolio as well.

20 Q And was the 12,500 the Company's bid? Was it
21 higher or lower? Or, was that exactly what you
22 bid?

23 A (Wells) That is what we bid.

24 Q Okay. Thank you. And, then, I was hoping you

[WITNESS PANEL: Wells|Arif|Alam]

1 could help me, I'm turning back to Exhibit 1,
2 Bates Page 151. It's that confidential table
3 that Commissioner Chattopadhyay was talking
4 about. So, there will be some confidential
5 numbers for the court reporter potentially here.

6 So, I was hoping, Mr. Wells, that could
7 orient me on the fixed versus the variable costs
8 in this contract. I was just trying to
9 understand the table. And I was hoping that you
10 could perhaps walk the Commission through it, to
11 help us understand, if the Company took nothing
12 on a particular day, or a particular year, let's
13 say, or, if the Company took the full capacity of
14 12,500, how does that look, from the Company's
15 point of view, in terms of fixed versus variable
16 costs?

17 A (Wells) Right. So, when I answered that question
18 previously, I was talking only about the fixed
19 costs, and not the, you know, the offsetting
20 lower commodity costs.

21 But, generally speaking, the
22 utilization of Empress capacity in the model, the
23 modeling I performed, is about 70 percent of the
24 capacity over the course of a year. During the

[WITNESS PANEL: Wells|Arif|Alam]

1 winter period, of course, it is used at a much
2 higher utilization factor than it would be in --
3 than is needed in the summer. So, you know,
4 around 70 percent of the time it was used in the
5 modeling that I performed here.

6 And, so, when I determined the dispatch
7 of the portfolio, I didn't try to stipulate, you
8 know -- you know, force it to use any particular
9 resource, because I wanted to get some, you know,
10 the economic -- you know, get a good
11 understanding of what the economic dispatch of it
12 was, as opposed to necessarily try and dictate
13 how we, you know, how we think that it ought to
14 be, based on any other preconceived notions of
15 what made the most sense, and sort of let the
16 model tell us what the dispatch, based on
17 incremental marginal commodity costs, made sense.

18 And, so, you know, Empress is a
19 relatively inexpensive supply. It would be one
20 of the least expensive supplies, from a commodity
21 standpoint, on our system. Obviously, you know,
22 we have -- we would have 112,000 decatherms of
23 capacity availability. You know, our summer
24 demands are much lower than that. So, that, you

[WITNESS PANEL: Wells|Arif|Alam]

1 know, we wouldn't expect, you know, there are
2 very few resources that would, you know, that
3 would actually be necessary to serve all of our
4 demand in the summertime. It's really quite
5 fractional, because you have really all of the
6 heating load, the majority of the demand is
7 heating load, and, obviously, there's very little
8 heating load in the summertime. So, that
9 provides an opportunity for there's excess
10 capacity at that point. So, you know, the
11 economic dispatch of the Empress capacity was
12 lower in the summertime, just because the demands
13 themselves are lower.

14 Q And it looks like, using a confidential number I
15 saw in the filing, you used like a seven-month
16 period for Empress, versus some of your other
17 arrangements were twelve months. Is that what
18 you mean by you "don't really need much in the
19 summer"?

20 A (Wells) Well, in the initial year, is -- the
21 initial year '24, you know, --

22 Q So, it's just a partial year.

23 A (Wells) -- '23 and '24, it doesn't start until
24 April.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q Okay.

2 A (Wells) So, that first year is only seven months.

3 Q Okay. Okay. And, then, just to kind of follow
4 up on that fixed/variable, and I just want to
5 make sure I'm doing the math right, this 82 cents
6 a decatherm per day, 12,500 being your total
7 capacity, 365 days being in a year, this would
8 not be confidential, but is that the right
9 calculation, to get about \$3.7 million per year,
10 in terms of securing that capacity?

11 A (Wells) That's just for the PNGTS capacity.

12 Q Okay.

13 A (Wells) And, then, it would be an additional for
14 the Empress capacity -- or, excuse me, for the
15 TransCanada portion of that capacity.

16 Q And what would that be? Is that confidential?

17 A (Wells) That is not confidential. I apologize if
18 I don't have that cost handy.

19 Q The "82 cents" was prominent in the filing, and
20 then that was really all I saw.

21 A (Wells) Yes, it would have been very handy for me
22 to put in the demand rate for the TransCanada
23 capacity, so I could refer to it very quickly
24 here. But I don't believe I did, because it was

[WITNESS PANEL: Wells|Arif|Alam]

1 just based on the demand rate of the -- because
2 it was the one that was approved by the CER,
3 rather than providing what was currently
4 effective, which would have been very handy for
5 me to have at this very moment.

6 Q We can come back to it, Mr. Wells, if that would
7 be helpful?

8 A (Wells) That would be. Thank you.

9 Q And we can do that. And, then, so that would be,
10 the combination of those two numbers, the 3.7
11 million and the number you'll be searching for
12 here in a bit, is your total fixed costs, and
13 then everything is variable costs. It's the
14 price of gas that you're procuring on a daily
15 basis. And that's the simple way for the
16 Commission to understand the transaction?

17 A (Wells) Yes.

18 Q Okay. Thank you. Are you familiar with the
19 Liberty's Tennessee Pipeline arrangement?

20 A (Wells) I probably know something of it. I
21 wouldn't consider myself to be an expert on
22 Liberty's portfolio.

23 Q No problem.

24 A (Wells) But I do know they have -- I do know that

[WITNESS PANEL: Wells|Arif|Alam]

1 they have a rather large contract from Dracut,
2 and then some exposure to the Tennessee long-haul
3 capacity, and some storage capacity, which is a
4 pretty typical arrangement for a New England LDC.

5 Q You know, I was just hoping you could kind of --
6 to the extent that you know those arrangements,
7 kind of juxtapose the two for the Commission's
8 understanding. I believe it was 40,000
9 decatherms per day, I didn't look it up before we
10 came back in here, but I think that was something
11 around that. And I think the fixed cost was
12 around 2 million per year.

13 But I was just trying to understand it,
14 are costs getting -- is it getting more expensive
15 in the market to procure capacity, or what's
16 really going on here? How should we think about
17 those two agreements?

18 A (Wells) So, you know, with regards to my
19 understanding of Liberty's contract is it's a
20 much shorter haul, right? That is just from
21 Dracut to their system, which is a pretty short
22 area -- a pretty short distance.

23 Q Yes.

24 A (Wells) You know, I would also say that, you

[WITNESS PANEL: Wells|Arif|Alam]

1 know, buying commodity at Dracut is a very
2 different proposition than buying commodity at
3 Empress. And, so, you know, without getting too
4 far into, you know, areas that I'm not expert in,
5 I mean, I think that's basically the difference
6 why the commodity rate would -- or, excuse me,
7 the demand rate would be lower for that capacity,
8 compared to the capacity that we're proposing.

9 Q And I guess where I was trying to go, too, was
10 how do you view the market? I think the Liberty
11 arrangement was a couple of years ago, as I
12 recall, maybe a year and a half. And, then, we
13 have this agreement in front of us here, where
14 you're going a much longer distance to try and
15 secure your capacity.

16 Should we think, with the market, it's
17 getting more difficult, is it getting more
18 expensive to secure the commodity? Or is
19 there -- do you have any comments on that in the
20 market?

21 A (Wells) I certainly do. You know, one thing that
22 has occurred recently, you know, going into the
23 '21-22 winter season, obviously, in the lead-up
24 to that, to that winter season, there was a major

[WITNESS PANEL: Wells|Arif|Alam]

1 global, political event, you know, Russia's
2 invasion of Ukraine, that fundamentally changed
3 the LNG market, the global LNG market, due to,
4 you know, Western European countries basically
5 resupplying their portfolio from importing gas
6 from Russia, to imported gas, you know, importing
7 LNG.

8 And, so, and I think I've stated this
9 previously, you know, New England, because of its
10 reliance on imported LNG, had to -- the price
11 that we paid had to compete with the price that
12 the Europeans were willing to pay in that
13 particular market.

14 You know, the other thing that I talked
15 about earlier today is that, even beyond the
16 supply, you know, the risks inherent on the
17 supply-side of the LNG market, there are some
18 concerns about the viability, the ongoing
19 viability of the LNG importers, Constellation LNG
20 and Repsol. And this is not based on the
21 Company's analysis, but based on their public
22 statements. And I feel very uncomfortable saying
23 "we" -- you know, "we decided that they are at
24 risk." But, when they signal to the market, you

[WITNESS PANEL: Wells|Arif|Alam]

1 know, that they are -- their own uncertainty, we,
2 as, you know, consumers in the market,
3 participants in the market, have to take notice
4 of that.

5 And, so, to us, we thought that, you
6 know, adding another North American supply source
7 to our portfolio provides, you know, a reasonable
8 hedge against those risks that we are currently
9 facing, and really continue to face. You know, I
10 think, in the pendency of this report, the
11 Resource Assessment, you know, we talk about how,
12 you know, this is the resource we're adding now,
13 because it's the one that's available now. But
14 we have more resource need, and we'll continue to
15 pursue options to be able to, you know, reliably
16 and affordably supply our customers'
17 requirements.

18 Q Okay. Thank you.

19 A (Arif) Commissioner?

20 Q Yes. Dr. Arif.

21 A (Arif) Thank you. I just wanted to bring another
22 aspect to this discussion. And, if I understand
23 your question, please correct me if you need
24 further clarification.

[WITNESS PANEL: Wells|Arif|Alam]

1 In DOE's assessment of this, we had
2 multiple factors, and not being very technical,
3 in a technical thing, what we call is "statewide
4 optimization". Where we basically look into the
5 various steps that needs to be met, in order for
6 an optimized outcome to be realized. And, in
7 that context, the legal requirement, as my
8 colleague have already said, in the context of
9 the legal requirement to provide reliable service
10 to the customer, first and foremost, begins with
11 having the option to do so.

12 And, in the context of New England gas
13 supply market, as we all are aware, and maybe I'm
14 somewhat aware, and in light of the discussion
15 that sort of ensued in -- back in, if my memory
16 supports, June of 2023, in the New England gas
17 market, and its interaction with the electric
18 market, the FERC-led conference, where a lengthy
19 discussion was there, in terms of this Everett
20 Marine terminal and all that.

21 So, in that context, and gas being more
22 than 50 percent of the raw material to generate
23 electricity in the New England region, all of
24 those things taken into consideration, and the

[WITNESS PANEL: Wells|Arif|Alam]

1 legal requirement, and the reliability aspect,
2 and the opportunity to be able to bid, all of
3 those went into DOE's analysis. I would just
4 add, which is -- which the outcome of that is in
5 the Settlement Agreement that you have before
6 you.

7 I just wanted to throw in that aspect
8 into this whole discussion.

9 And the very last one, maybe it's a bit
10 farfetched, I would accept that, but, in the very
11 last discussion of "COP28", which is the
12 conference of parties, 28, that held in Dubai, in
13 terms of the climate context, if not for taking
14 anything -- the fact that sort of came out of
15 that is that gas is going to be viewed as
16 "transitional fuel" in the near future. And
17 here, we are talking about future availability in
18 the context of New England gas lines, supply,
19 capacity, and all of that taken together, those
20 are facts, not necessarily -- and observations
21 that sort of did have -- it's a bigger context,
22 we are talking about the bigger context. And I
23 just wanted to put all of those to you, to the
24 Commission's consideration.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q No, thank you for that. And I think -- I think
2 peak oil was always years away, starting in 1880.
3 So, we'll await the forecast results patiently.

4 So, let's move to a comment, and I just
5 wanted to say, and, certainly, Mr. Wells has a
6 very difficult job, right? You can't buy too
7 much, you can't buy too little. It has to be for
8 the right time period, at the right price. So,
9 it's a very complicated job. And we all
10 appreciate the eloquence with which you're
11 explaining the Company's position to us.

12 I wanted to go to this business of
13 cancellations, and the comment I think that there
14 were "two out of 198 failures relative to
15 TransCanada." And, Mr. Wells, you've given some
16 comments earlier on that.

17 I just wanted to understand a little
18 bit more, or to the extent that you can reframe
19 what you said earlier, what were those two
20 failures? And why did they happen? And why
21 shouldn't -- why wouldn't they happen to
22 Northern?

23 A (Wells) So, I know that one of the failures was
24 actually an effort by TransCanada, along with

[WITNESS PANEL: Wells|Arif|Alam]

1 some oil or potential oil customers, to basically
2 repurpose a portion of the TransCanada system
3 from a gas pipeline to an oil pipeline,
4 ultimately bringing oil, you know, bringing oil
5 from the Western Canadian Region, to the
6 provinces, the Eastern, the Maritimes area. And
7 part of that repurposing of that pipeline was
8 going to require a build-out of some natural gas
9 infrastructure to sort of replace capacity that
10 had been -- that would have been converted from
11 oil to gas.

12 And, so, that project was kind of
13 driven by TransCanada, at the time, prior to --
14 well, I believe that was in 2012. It was not a
15 plan that was very well received by the natural
16 gas shippers on its system. And, ultimately, it
17 faced some regulatory challenges as well. And,
18 ultimately, the company withdrew it.

19 The other issue, I believe, I'm less
20 familiar with what the other project was, but,
21 ultimately, that one was, I want to say, in 2012
22 or 2014, it was quite a time ago. I'm not
23 familiar with precisely what the issue was there.
24 I know that TransCanada was invited to refile.

[WITNESS PANEL: Wells|Arif|Alam]

1 There would have been -- it sounded as though
2 there were some -- whatever issue it was, it was
3 plausible that it might have been addressed by,
4 you know, revisiting whatever issue it was. But
5 I -- candidly, I'm not really familiar.

6 But the most significant was the Energy
7 East Project that ultimately was withdrawn by
8 TransCanada.

9 Q And, in that case, if something -- if that were
10 to happen here, would that be borne by Northern's
11 ratepayers or would that be TransCanada's
12 problem, and they would pick up the costs?

13 A (Wells) So, the Company, you know, and this gets
14 into -- the Precedent Agreement that we've
15 entered with TransCanada provides, and I want to
16 make sure I got the citation correct, that is
17 Attachment 6 to the Empress Capacity Report.
18 And, so, Section 13, which is found, and I
19 apologize for not having the Bates Page, but it's
20 "11 of 29" of that attachment.

21 CHAIRMAN GOLDNER: Let's give Mr.
22 Taylor a chance to catch up the room, and so
23 everyone can be on the same page.

24 MR. TAYLOR: I'm sorry, which page?

[WITNESS PANEL: Wells|Arif|Alam]

1 WITNESS WELLS: Eleven (11) of 29.

2 MR. TAYLOR: So, that is Bates

3 Page 119.

4 CHAIRMAN GOLDNER: Thank you.

5 **CONTINUED BY THE WITNESS:**

6 A (Wells) So, that provides the complete list of
7 reasons or that the project might be canceled.
8 So, you know, we feel that, you know, the type of
9 thing that happened with Energy East would not --
10 would not necessarily apply here.

11 We think that it's more likely, you
12 know, like I testified earlier, the most likely
13 causes of cancellation on TransCanada's part
14 would be that they are unable to get the
15 regulatory approvals that they would require.

16 And, obviously, you know, the last time
17 they had these projects, you know, canceled was
18 quite a time ago. So, I feel as though they have
19 a lot of expertise in, you know, understanding
20 those regulatory processes, what's expected of
21 them, and what, you know, and have a good track
22 record of completing those projects. So, we feel
23 pretty good about that, as far as the level of
24 risk that would be incurred.

[WITNESS PANEL: Wells|Arif|Alam]

1 BY CHAIRMAN GOLDNER:

2 Q But it would be fair to say that, even if the
3 issue is on the TransCanada side, they weren't
4 able to get the regulatory approval, something
5 went wrong, that those costs would be borne by
6 Northern ratepayers in that instance, right?

7 A (Wells) Right. So, any event of cancellation
8 allows TransCanada to assess termination costs.
9 And it would be based on prorated costs that they
10 had incurred to secure the capacity to that
11 point, with a duty for them to mitigate any, you
12 know, mitigate costs. So, to the extent that
13 they have purchased equipment that could be used
14 for a future expansion, they would have a duty to
15 repurpose that, those -- that equipment, rather
16 than just charge it off.

17 Q And is that, in your experience, typical in the
18 market, or is this a function of TransCanada's
19 market power?

20 A (Wells) It is pretty typical for Canadian. We
21 had, obviously, in WXP, some exposure to both
22 TransCanada development costs, as well as
23 Enbridge development costs, on the Toronto -- on,
24 excuse me, the Ontario side.

[WITNESS PANEL: Wells|Arif|Alam]

1 It's a little different in the United
2 States. The precedent agreements that I'm
3 familiar with in the United States, typically,
4 after the customer gets their regulatory
5 approvals, then that shifts all of the risk for
6 getting the pipeline approvals to the pipeline.

7 But, in Canada, it works differently.

8 Q Okay. Thank you.

9 A (Arif) Chair Goldner?

10 Q Yes.

11 A (Arif) Thank you.

12 Q Dr. Arif, please proceed.

13 A (Arif) I just wanted to bring it to Commission's
14 attention, the same Precedent Agreement,
15 Article 14, identifies the obligation I believe
16 Mr. Wells was referring to. And that Article 14
17 talks about "Effect of Event of Cancellation".
18 And highlights, in 14(c), what TransCanada, as
19 per the Agreement, Precedent Agreement, have to
20 undertake in order to effectuate the cancellation
21 costs.

22 Q Okay. Okay, thank you. Very good. Just a
23 couple more questions, and one encouragement.

24 On the encouragement, when the Company

[WITNESS PANEL: Wells|Arif|Alam]

1 looks at hedging, it sounds like you're going to
2 take a holistic approach and look at your overall
3 hedging strategy. My encouragement would be to
4 look at both more and less hedging, as opposed to
5 just looking at adding something on and doing
6 more, really looking at it from both, both
7 perspectives. Hedging costs money. And, so,
8 that's, of course, something that is important
9 here.

10 Can you just estimate, Mr. Wells, for
11 us, just roughly, looking at all the
12 spreadsheets, it can get vexing, roughly, your
13 expectation over the next five years, in terms of
14 how much -- how the volume that you'll be taking
15 from this Empress arrangement, versus the rest of
16 your taking? Is it five percent? Ten percent?
17 I couldn't quite capture how much you were
18 expecting.

19 A (Wells) Right. And, before I answer that
20 question, I wanted to provide an answer to your
21 previous question. And the total annual demand
22 cost, for both the PNGTS and the TransCanada
23 embedded into my analysis, and I believe this
24 probably is in somewhat in conflict with

[WITNESS PANEL: Wells|Arif|Alam]

1 testimony I provided earlier today, but it is
2 approximately 10.2 million per year.

3 I had previously testified that it was
4 "about 12 million", just based on my rough
5 recollection. But, digging into my analysis, I
6 see here that it is very clearly less than that.
7 So, to -- I just wanted to make sure that I am
8 providing an accurate assessment there.

9 Q And just to clarify quickly, is that the correct
10 breakout, 3.7, and then the other one would be
11 10.2 minus 3.7? Is that the right way for us to
12 think about it? I just want to make sure --

13 A (Wells) Yes.

14 Q -- that the sum of the parts equals the whole.
15 Okay.

16 A (Wells) Yes.

17 Q Perfect. Thank you.

18 A (Wells) And, then, -- I nearly didn't bring this
19 laptop up with me. Now, I'm glad I validated my
20 decision and changed my mind on that.

21 So, as I had mentioned previously, you
22 know, the typical annual utilization was about
23 70 percent of the capacity factor. That
24 translates to about 3.2 million decatherms per

[WITNESS PANEL: Wells|Arif|Alam]

1 year, out of a potential call it 4.5 million
2 decatherms per year.

3 Q And how does that compare to the overall Northern
4 requirement?

5 A (Wells) So, the overall normal, make sure I'm
6 looking at -- okay, this is design year that I'm
7 looking at right now. Based on a design year,
8 that's about 20 percent.

9 Q Okay. So, just to repeat back. So, the Empress
10 arrangement will -- is estimated to be about 20
11 percent of your total requirements on an annual
12 basis?

13 A (Wells) Right. On a commodity basis.

14 Q Commodity basis.

15 A (Wells) Yes.

16 Q Okay.

17 A (Wells) On a design basis, it would be less.
18 But, because it's a less expensive resource,
19 we'll use it more on a higher rate than the
20 average resource.

21 Q Excellent. Thank you very much. And last
22 question for me, is your utilization profile, and
23 you talked about this a little bit before,
24 Mr. Wells, but I just want to clarify. So, if we

[WITNESS PANEL: Wells|Arif|Alam]

1 break it into four chunks, you know, winter,
2 spring, summer, fall, what do you expect to
3 utilize from this, this load, in those time
4 periods?

5 And it might be 100 percent, you're
6 just going to dump the excess into storage. But
7 I just want to understand what do you think that
8 utilization profile looks like?

9 A (Wells) Right. So, my analysis didn't consider
10 dumping it into storage. It's possible that,
11 when we actually go to implement this, there may
12 be an opportunity to use it for that. So, just
13 to -- but, looking at, you know, generally
14 speaking, you know, I see the utilization of
15 Empress as, and I'll try to break this into
16 summer and winter is -- probably be the best I
17 can do, I hate doing math in my head, especially
18 on the stand. But --

19 Q You can always say "subject to check".

20 A (Wells) Oh.

21 Q That's my least favorite answer, by the way, for
22 the record.

23 A (Wells) Well, I won't do that to you today.

24 Q Thank you, sir.

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Wells) Based on -- it actually looks like the
2 model is using it approximately 70 percent in the
3 summer and 70 percent in the winter. So, it
4 seems pretty consistent that way.

5 I will point out that, you know,
6 modeling results and reality, when Ann and I go
7 to hash it out, I'm sure it will be -- I'm sure
8 we'll refine it, when she tells me I'm wrong, and
9 she's usually right when she does that. So, you
10 know, that's the difference between planning and
11 the actual supply. So, I do my best.

12 But I would say that probably
13 70 percent, you know, over the two seasons, is
14 pretty reasonable.

15 CHAIRMAN GOLDNER: Okay. That's very
16 helpful. Thank you very much.

17 I'll just turn to my fellow
18 Commissioners to see if there's any follow-up
19 questions?

20 Commissioner Chattopadhyay.

21 BY CMSR. CHATTOPADHYAY:

22 Q So, with respect to asset management revenues,
23 for this contract, do you have an estimate of
24 what you would expect would come back? And the

[WITNESS PANEL: Wells|Arif|Alam]

1 number that you provided, \$10.some million, does
2 that already account for it or doesn't it?

3 A (Wells) It does not account for the potential for
4 asset management revenue. I had, in discovery, I
5 had performed an analysis of that. And, so, the
6 way I estimated, it was, you know, asset
7 management revenue is really a function of both
8 the market, how the market values the capacity,
9 but also the amount of residual capacity that we
10 would expect to have. And, so, by adding
11 capacity, you know, rather than trying to
12 attribute it just to this resource, the way I had
13 estimated, it was "Okay, we'll have more, as a
14 portfolio, additional capacity." And I believe
15 that the estimate I came up with, based on an
16 average of, like, the last five years of asset
17 management values, was around \$5 million per
18 year.

19 Now, obviously, the market can change,
20 it's a volatile market, it can change, you know,
21 dramatically. But that was an estimate based on,
22 I thought, a pretty reasonable foundation for the
23 amount of available capacity we would expect to
24 have, and recent market valuations, and that's

[WITNESS PANEL: Wells|Arif|Alam]

1 kind of what I came up with.

2 Q That is --

3 A (Wells) That is not -- that is not accounted for
4 in the Empress Capacity Resource Assessment that
5 I had provided. And, you know, I really
6 appreciate, actually, this is where, you know,
7 the other parties in this case, both in Maine and
8 New Hampshire, have kind of pushed us a little
9 bit to try to quantify some of these other
10 things. You know, even including, you know, the
11 percentage likelihood of cancellation for the
12 TransCanada authorization risk. I think that has
13 been really helpful, in not just, you know,
14 helping to illuminate, you know, the risks and
15 benefits, the costs and benefits of this
16 proceeding, but also to give, you know, and it's
17 helped me broaden my own view quantitatively of
18 how to assess these things going forward.

19 So, you know, to really all of the -- I
20 would say for both the OCA and the DOE, they have
21 been really constructive in their assessments.
22 And I have appreciated it, it's helped to push me
23 a little bit as an analyst. So, I would say
24 that, you know, the reason I can answer that

[WITNESS PANEL: Wells|Arif|Alam]

1 question with -- quantitatively today is because
2 the other people reviewing this have done a good
3 job of asking good questions, and really forcing
4 me to dig a little deeper, and I appreciate that.

5 A (Arif) May I add just a little comment,
6 Commissioner Chattopadhyay, on that one?

7 In our view, we were aware that asset
8 management revenue is not a part of this
9 assessment, which sort of triggered, as you have
10 heard Mr. Wells talk about it, questions from our
11 end.

12 But we were also aware, in the context
13 of cost of gas proceedings, asset management
14 agreements, and the revenue thereof, actually has
15 a negative downward pressure on the overall price
16 that customers at the end of the day pay.

17 So, those were the other factors that
18 sort of made, in our view, their way into the
19 Clause 8 of the Settlement Agreement that you
20 have before you.

21 Q I think you will appreciate that, you know, you
22 were talking about how other analysts helped you
23 to work through the, you know, the issues. I
24 think you also appreciate that the question is

[WITNESS PANEL: Wells|Arif|Alam]

1 coming from an analyst, basically.

2 So, I would like to know, though, and
3 maybe I misunderstood you, that \$5 million is an
4 offset to the total demand cost, of not just this
5 one, not just the one related to this contract?

6 A (Wells) Right. I didn't attempt to attribute
7 asset management revenue solely to this
8 Agreement, but rather to the portfolio. And, so,
9 I would agree that, with your characterization,
10 that this would be a portfolio benefit, as
11 opposed to -- or, a portfolio-based calculation,
12 rather than a resource-based calculation.

13 Q Typically, what has been the, you know, the
14 revenue generated, without the -- without the
15 contract?

16 A (Wells) Yes. The current revenue is
17 approximately \$20 million per year of asset
18 management revenue that we get, that is an offset
19 to demand costs.

20 Q So, you are saying it's totally -- in total, it's
21 \$25 million?

22 A (Wells) What I would project, --

23 Q Yes.

24 A (Wells) -- by adding the Empress capacity

[WITNESS PANEL: Wells|Arif|Alam]

1 resource, --

2 Q Okay.

3 A (Wells) -- that we would expect to see an
4 increase to that level.

5 Q Okay.

6 A (Wells) Assuming, of course, that the valuation
7 of the capacity stays the same. Which, given the
8 current scarcity, I think is a reasonable
9 assumption.

10 Q Okay. And, so, in that 10. -- I forget, was it
11 10.2, 10.3 million, so that is without accounting
12 for that \$5 million, correct?

13 A (Wells) Yes.

14 CMSR. CHATTOPADHYAY: Okay. Thank you.
15 That's all.

16 CHAIRMAN GOLDNER: Okay. We can turn
17 now to redirect, beginning with the Department of
18 Energy.

19 MS. SCHWARZER: Thank you, Mr.
20 Chairman. Just some brief clarification
21 questions I'd like to ask Dr. Arif.

22 It will not be my intent to mention
23 confidential information, but I will be looking
24 at pages that include confidential information.

[WITNESS PANEL: Wells|Arif|Alam]

REDIRECT EXAMINATION

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BY MS. SCHWARZER:

Q So, Dr. Arif, Northern's Exhibit 1, Attachment 7, Bates Page 138, was referenced earlier in Commission questions as estimating termination costs, is that correct?

A (Arif) That is correct.

Q And that page shows a chart with a date of "July 19th, 2023"?

A (Arif) That is correct.

Q Has that information been updated as a result of Northern's response to DOE Data Request 1-10?

A (Arif) It was.

Q And that's part of Exhibit 7, Bates Page 026, correct?

A (Arif) That is correct.

Q Dated "November 14th, 2023"?

A (Arif) Yes.

Q If we turn to Exhibit 12, the Settlement Agreement, and then the confidential attachment to that confidential Settlement Agreement, Bates Page 019, I'm going to wait for everyone to join me. Let me know when you're there?

A (Arif) I am there.

[WITNESS PANEL: Wells|Arif|Alam]

1 Q There's a chart entitled "Estimate of Shared
2 Facility Costs for 2027 Eastern System
3 Expansion". Does this chart update what was
4 originally submitted with the Petition?

5 A (Arif) That is my understanding.

6 Q And it is consistent with the updated answer to
7 DOE 1-10?

8 A (Arif) Yes.

9 Q Staying on this chart, is this chart reflective
10 of estimated termination costs in Canadian
11 dollars?

12 A (Arif) It is. That's our understanding.

13 Q And this represents Northern's estimated risk,
14 correct?

15 A (Arif) That is correct.

16 Q But does this estimate New Hampshire's risk?

17 A (Arif) It is Northern's, as you have stated in
18 your -- in your question, a part of which, based
19 on the allocator that we referred to, would be
20 the New Hampshire's share of that total estimated
21 cost.

22 Q And, if you go to Page 3 of the Settlement
23 Agreement, as I believe the Company's testimony
24 made clear earlier, that percentage varies over

[WITNESS PANEL: Wells|Arif|Alam]

1 time, but, as of the latest design year forecast
2 for 2023-2024, what was the approximate
3 percentage for New Hampshire?

4 A (Arif) Forty (40) percent, approximately.

5 MS. SCHWARZER: Thank you. I have no
6 further questions. Thank you.

7 CHAIRMAN GOLDNER: Okay. Finally,
8 we'll move to Northern redirect.

9 MR. TAYLOR: Thank you. I only have a
10 couple of very brief questions.

11 BY MR. TAYLOR:

12 Q Mr. Wells, if you could please refer to Hearing
13 Exhibit 1, which is the Company's Initial Filing.
14 And, then, if you could go to Page -- well, it's
15 Bates Page 083. If you don't have the Bates Page
16 version, it is --

17 CHAIRMAN GOLDNER: Attorney Taylor, if
18 you could turn on your microphone, I think. Oh,
19 it's on. Thank you.

20 MR. TAYLOR: I'm sorry. I'll try --
21 I'll speak up.

22 BY MR. TAYLOR:

23 Q It is Attachment 2 to your Exhibit Unitil-FXW-2,
24 the PNGTS Agreement.

[WITNESS PANEL: Wells|Arif|Alam]

1 A (Wells) I'm there. Thank you.

2 Q Okay. And you received -- or, you answered a
3 question earlier, and I'll be paraphrasing, from
4 the Consumer Advocate, that basically asked
5 "there is nothing in the Agreements that requires
6 approval by the Commission for the Company to go
7 forward?" Is that correct?

8 A (Wells) That is correct.

9 Q Okay. And I just wanted to direct you to
10 Article VII, Paragraph 1. And in here, it says
11 "Service is subject to regulatory approvals of
12 the Maine Public Utilities Commission and the New
13 Hampshire Public Utilities Commission, in form
14 and substance acceptable to Northern Utilities,
15 Inc. at its sole discretion, by February 1st,
16 2024." Have I read that correctly?

17 A (Wells) You have.

18 Q Okay. So, service under this contract is
19 expressly subject to approval by the Maine and
20 New Hampshire Commissions, correct?

21 A (Wells) Yes.

22 Q There was another question that, again, I'm fair
23 paraphrasing, was essentially something along the
24 lines of "Can TCPL withdraw at any time for any

[WITNESS PANEL: Wells|Arif|Alam]

1 reason?" Do you recall a question like that?

2 A (Wells) I do.

3 Q And, in the agreement -- in the TCPL Precedent
4 Agreement, this is Bates Page 121, and it would
5 be Attachment 6 to FXW-2, Page 13 of the
6 contract. Are you there?

7 A (Wells) Yes.

8 Q And, as I believe the DOE's witness has already
9 pointed out, this actually -- oh, I'm on the
10 wrong page, I'm sorry, Bates Page 119. And
11 there's a section here entitled "Events of
12 Cancellation", correct?

13 A (Wells) That is correct.

14 Q And that sets forth specifically all the
15 different events of cancellation, correct?

16 A (Wells) It does.

17 MR. TAYLOR: Okay. That's actually all
18 I have for redirect.

19 CHAIRMAN GOLDNER: Okay. Thank you.

20 The Settlement witness panel is
21 excused. And we'll invite up Dr. Vatter to take
22 the stand, on behalf of the OCA.

23 Okay. After Dr. Vatter gets settled,
24 Mr. Patnaude, if you could please swear in the

[WITNESS: Vatter]

1 witness.

2 (Whereupon **MARC H. VATTER** was duly
3 sworn by the Court Reporter.)

4 CHAIRMAN GOLDNER: And we'll begin with
5 OCA direct.

6 MR. KREIS: Thank you, Mr. Chairman.

7 Let me begin by administering a bit of
8 free legal advice to my witness. Please, if
9 possible, do not say "subject to check" in any of
10 your answers.

11 WITNESS VATTER: Okay.

12 CHAIRMAN GOLDNER: That was an
13 excellent start, Mr. Kreis. Thank you.

14 **MARC H. VATTER, SWORN**

15 **DIRECT EXAMINATION**

16 BY MR. KREIS:

17 Q Good afternoon, Mr. Vatter. First of all, is
18 this your first opportunity to take the stand in
19 the PUC's hearing room?

20 A Yes, it is. And I'm all alone up here, but I
21 guess I asked for this.

22 MR. KREIS: Rather than take the
23 Commission through the long and very impressive
24 list of qualifications that you bring to the

[WITNESS: Vatter]

1 witness stand with you that qualify you to be an
2 expert, I'll just recommend that the Commission
3 read the recitation of that in your prefiled
4 testimony, which I now draw your attention to,
5 which has been marked for identification as
6 "Exhibit 11".

7 BY MR. KREIS:

8 Q And my first question is, if you -- or, I guess
9 it's now my second, is that the complete and
10 unredacted version of the testimony that the OCA
11 submitted bearing your name on December 13th of
12 last year?

13 A Yes.

14 Q Do you have any corrections to make to that
15 testimony at this time or any updates?

16 A No, I don't.

17 Q So, if I were to ask you all of the questions
18 contained in Exhibit 11 right here in the hearing
19 room, would your answers be identical to the ones
20 that you've provided in Exhibit 11?

21 That's a "yes" or "no" question.

22 A Yes.

23 Q Thank you. So, you adopt, therefore, Exhibit 11
24 as your sworn testimony in this proceeding?

[WITNESS: Vatter]

1 A Yes, I do.

2 Q And drawing your attention to what's been marked
3 for identification as "Exhibit 4", is Exhibit 4
4 identical to Exhibit 11, except for the fact that
5 certain information is redacted from Exhibit 4?

6 A Yes, it is.

7 Q And would it be fair to say that the information
8 that has been redacted from Exhibit 4 is all
9 information that's covered by the Company's
10 Motion for Confidential Treatment?

11 A Yes.

12 Q Broadly speaking, is it your opinion that the
13 Empress Contracts would, if approved by the
14 Commission, or if executed, I suppose, be a
15 prudent expenditure of sums that will presumably
16 ultimately be recovered from ratepayers?

17 A Broadly speaking, I would say, yes, very much so.
18 The Empress Contracts would likely benefit
19 ratepayers, shareholders, and the environment.
20 Ratepayers would pay less for gas, they would
21 benefit that way; and then they would purchase
22 more gas, and this would enable the Company to
23 prudently expand its distribution system, on
24 which its shareholders would earn a greater

[WITNESS: Vatter]

1 return; and bringing more gas to New England
2 would displace some of the coal-fired generation
3 at Merrimack Station, lowering emissions of
4 greenhouse gases.

5 Q So, given what you just said, I take it that you
6 don't entirely agree with Mr. Wells's testimony
7 that the sole beneficiary here is Northern's
8 customers?

9 A I do not.

10 Q And could you elaborate a little bit about, I
11 know you already said why you think that, but I
12 just want to make sure it's absolutely clear why
13 you think there are benefits here that inure not
14 just to ratepayers, but to Northern's
15 shareholders?

16 A Yes, I will. Before I do, I'd just like to add
17 that electric ratepayers will also benefit
18 from --

19 Q That was going to be my next question, sorry.

20 A Okay, the shareholders, then. Well, and Northern
21 has stated that the risk of cancellation is low.
22 If, in fact, costs that we believe would be CWIP,
23 in that event, are CWIP, the risk of having to
24 pay them for the shareholders is low. And

[WITNESS: Vatter]

1 there's a -- there's a concept in economics
2 called the "law of demand", and it's one of the
3 most fundamental concepts in economics. It is
4 one of the first things we teach students, which
5 is that people are willing to buy more of a good
6 when the price is lower.

7 I pulled one estimate of the price, the
8 long run, and we need to be looking at the long
9 run here, the long run price elasticity of demand
10 for natural gas, and it's negative 1.25, which we
11 call "elastic". That means that the percentage
12 increase in sales volume will exceed the
13 percentage drop in rates associated with the
14 contracts.

15 So, there should be a significant
16 expansion of prudent investment in Northern's
17 distribution system associated with the drop in
18 the price of gas associated with these contracts.
19 And their shareholders earn a return on those
20 prudent investments in the distribution system.
21 So, shareholders stand to gain considerably here.
22 I think, if they walked away from this on the
23 grounds that it didn't benefit shareholders, they
24 would be -- they would be incorrect, and it would

[WITNESS: Vatter]

1 be to the detriment of their shareholders, as
2 well as ratepayers, and the environment.

3 Q Thank you. Okay, let's talk about electric
4 ratepayers for a second. There was some
5 testimony about them earlier today.

6 Do you see benefits here for electric
7 ratepayers, if these contracts move forward?

8 A I do. Bringing more gas to New England would
9 also lower the marginal cost of gas for electric
10 generation. And the displacement of coal-fired
11 generation at Merrimack Station would lower the
12 price of RGGI allowances, and that lower price,
13 lower cost of allowances would also be passed
14 through to electric ratepayers.

15 Q Do you perceive any commodity price risks
16 associated with the Empress Contracts that need
17 to be addressed?

18 A Yes, I do. I'd like to give you an extended
19 answer on this?

20 Q Please feel free.

21 A So, --

22 Q As long as you don't say "subject to check".

23 A I shan't. So, you build a pipeline to access
24 gas, because it's cheap, and appropriately risky,

[WITNESS: Vatter]

1 however you want to define that. Now, the
2 assessment looks extensively, and it does a good
3 job of looking at current conditions, and it
4 looks forward five years, but this is a 30-year
5 contract. And, so, now, the Settlement talks
6 about evaluating and reporting on risk management
7 strategies, I would say that, rather than
8 "hedging", as you pointed out, Chairman. But --
9 so, what is that? So, in neither one of those
10 documents is the issue of commodity price risk
11 over the long term addressed. And there was some
12 testimony about "asset risk management", and
13 separating it from the approval of these
14 contracts. But I -- so, forgive me if this is
15 out of order, but, if you, you know, the purpose
16 of building the pipeline and signing a contract
17 for its capacity is to access the gas. And you
18 want to look at the expected cost of the gas, and
19 the risk associated with the gas.

20 Now, clearly, you don't want to do that
21 in isolation. You don't just look at the price
22 risk of Empress gas out of the context of
23 Northern's entire portfolio, or, for that matter,
24 the income profiles of its customers, its

[WITNESS: Vatter]

1 residential customers.

2 But I think we need to look at the long
3 term here. So, what's happening in gas markets
4 is that they're gradually globalizing, the way
5 oil markets already have. And, I mean, this
6 contract is an example of that. And the
7 expansion of pipeline capacity and liquefaction
8 capacity to and in British Columbia is an example
9 of that. A stark example of that was the
10 connection of the Permian Basin, better
11 connection of the Permian Basin to Henry Hub.
12 There was a huge basis there, which was
13 eliminated by expansion of capacity.

14 Basically, whenever a link between two
15 markets, pipeline or liquefaction capacity, or
16 both, is congested, if it's congested enough,
17 that provides incentive to expand the link, and
18 somebody goes in and does that, because it's
19 profitable. And, so, -- and this is already
20 happening in oil markets. They're essentially
21 global, of course, with a few exceptions, and gas
22 markets are on their way there, too.

23 And, so, what does that mean? For your
24 risk management strategy, it means that the risk

[WITNESS: Vatter]

1 management strategy has to shift from being
2 geographic to intertemporal in emphasis. And,
3 so, I think that this intertemporal risk, which I
4 have made a specific suggestion about, and I
5 don't want to ask the Commission to require my
6 specific suggestion, which was buying JKM three
7 years in advance, it's just an idea. There are a
8 lot of ways the Company could do that. They have
9 more expertise in doing this kind of thing than I
10 do, because they trade gas; I forecast gas.

11 But I think -- I think I would ask that
12 the Commission require them to propose and
13 justify something specific, that is comprehensive
14 as it was in 2022, but specifically addresses the
15 expected increased correlation between prices of
16 pipeline gas, including that purchased at
17 Empress, and LNG and crude oil. Because, as the
18 market globalizes, the prices will tend to move
19 up and down more together, and basis will become
20 closer to fixed. And, so, a diversifying basis
21 will become a less effective risk management
22 strategy, and something intertemporal will need
23 to be done.

24 And, even -- and, you know, in 2022,

[WITNESS: Vatter]

1 Northern's customers did comparatively well, but
2 they still experienced a shock. And, so, you
3 know, geographic diversity even now can only do
4 so much. But, in the future, it will be able to
5 do less, because the markets will be better
6 connected.

7 And, so, I mean, this is what I would
8 ask, that they have to propose something, and
9 justify it, and, of course, we can discuss that
10 when they have. And I certainly want to give
11 them time to think it over and come up with
12 something. And they don't have to do what I
13 suggested.

14 Q Let me just observe as an aside, that that is far
15 from the longest answer I've ever heard to a
16 question in this particular hearing room. And I
17 just want to make sure that I completely
18 understood what you just said, though.

19 First of autumn, you mentioned
20 something, I think you said it was "JKM", and I
21 just want to make sure that everybody understands
22 what "JKM" actually is?

23 A "JKM" is "Japan Korea Marker LNG". It's a liquid
24 market in the Pacific. And its volume right now

[WITNESS: Vatter]

1 is extremely high, actually.

2 Q And just so that it's clear to me, if not
3 everybody else, the analysis you just offered is
4 somewhat different than the opinions that
5 Mr. Wells expressed, because he was talking about
6 "geographical diversity", and you, in your
7 testimony just now, have been talking about what
8 you call "intertemporal diversity"?

9 A Or "intertemporal risk management", yes.

10 Q Yes.

11 A Right. Because, I mean, and I think they did a
12 very good job with geographic diversity, because
13 their customers did better than other utilities'
14 customers. But, even, like, as I said, even in
15 2022, their customers still felt a shock. And
16 it's -- my proposal, or my earnest suggestion is
17 that, over time, that strategy should shift
18 towards something that involves more
19 intertemporal risk management.

20 Is that -- is that clear?

21 Q It's absolutely clear to me. And, if it's not
22 clear to anybody else, they will ask you about
23 it.

24 Have you, based on what you have just

[WITNESS: Vatter]

1 said, fully articulated to your satisfaction the
2 recommendation that you have, on behalf of the
3 OCA, for addressing the commodity price risks
4 that your analysis has identified?

5 A I won't say "subject to check". You know,
6 historically, LNG prices and contracts were
7 linked to crude oil prices. And there are
8 reasons why crude oil prices are volatile. This
9 is actually an area of interest of mine. And we
10 have been seeing this since 1973. The volatility
11 in oil markets and the shocks we've seen have
12 been profitable to the Organizations of Petroleum
13 Exporting Countries, and they will continue to be
14 profitable. And we can expect them to be more
15 severe, and we can expect higher prices, because,
16 in general, because the world economy, over time,
17 becomes less oil-intensive, and, therefore, it
18 can tolerate higher prices and more severe
19 shocks. You know, OPEC has to -- has to factor
20 in the effect of their pricing on the world
21 economy, and then the feedback effect onto demand
22 destruction. And that limits how high they can
23 charge, how high price they can charge, and how
24 severe a shock they can visit on the world

[WITNESS: Vatter]

1 economy, because these shocks are damaging to the
2 economy. But, as the economy uses less oil per
3 dollar of GDP, OPEC will be optimally able to
4 charge higher prices and visit more severe shocks
5 on the economy.

6 You know, these shocks usually come at
7 a time when the market is tight for some other
8 reason, and this helps OPEC as well, because the
9 shocks come as a surprise. They don't even know
10 when they're coming. Although, I suppose, if no
11 war has ever occurred, they would have to
12 initiate something. But the wars happen. And,
13 so, when they do, the Saudis cut back even more.
14 And, you know, this is the art of the price
15 shock. When things are tight, you hold back a
16 little bit more, and drive the price through the
17 roof. And they're going to do it again, just
18 like they did in 2022.

19 And, so, I think, as all of the gas
20 markets, including the one in Empress, become --
21 or, in Alberta, become more, better linked to
22 global markets, they will be less insulated by
23 congestion on the links, on the existing links.
24 And, so, those price shocks will require some

[WITNESS: Vatter]

1 intertemporal risk management.

2 Q Now, I'm going to violate the longstanding
3 precept for every lawyer that says "never ask a
4 question that you don't know what the answer is
5 going to lead to." But I will say that, as
6 somebody who is not an expert on these things, my
7 ears perked up when I heard Chairman Goldner
8 suggest to Mr. Wells that "Northern ought to take
9 a look not just at more hedging, but actually
10 less hedging."

11 And I wonder what you made of that
12 suggestion from the Chairman, on the odd chance
13 that he wasn't planning on asking you that
14 himself?

15 A Well, I've actually deliberately used the
16 language "risk management", rather than
17 "hedging", because I don't want to prejudge what
18 the optimal risk management strategy is. I would
19 also add that hedging doesn't always cost money.
20 It depends on what your income profile is
21 relative to what's called "systematic risk".
22 There are people, a few of them, who can actually
23 lower their risk to their own income or
24 consumption profile, and get a risk premium to do

[WITNESS: Vatter]

1 it. And those are the people whose income
2 profiles are countercyclic. But, in general, I
3 would just say "risk management".

4 And, you know, when we look at this, I
5 want to think about the income profiles of
6 residential customers, because they differ from
7 one another, and some of them have, you know,
8 will benefit differently from different risk
9 management strategies. So, that's something we
10 have to look at.

11 But I would -- I would approach it with
12 an open mind.

13 Q Thank you. Okay. Mr. Vatter, have had an
14 opportunity to review Exhibit 12, which is the
15 confidential version of the Settlement Agreement
16 that has been entered into by Northern and the
17 Department of Energy?

18 A Yes, I have.

19 Q Without asking you whether to opine on whether
20 the Commission should actually approve the
21 Settlement Agreement, in your opinion, are there
22 any terms in the Agreement that are inconsistent
23 with your recommendations to the Commission?

24 A As regards to commodity price risk management?

[WITNESS: Vatter]

1 Q Yes.

2 A I wouldn't say that they are inconsistent. But I
3 would emphasize -- reemphasize that they don't
4 require a proposal. And, I mean, a report, an
5 evaluation and a report gets to justification, I
6 suppose. But I think they should -- I think they
7 should have to propose something. I mean, if --
8 I mean, it would be nice to know now what they
9 plan to do. But this is an expedited proceeding.
10 And, if they don't know, I certainly want to give
11 them time to work it out.

12 But we could require them not just to
13 evaluate and report, but propose. Or, you could
14 require them. I can't require them.

15 Q Okay. Now, I want to just touch briefly on the
16 subject of construction work in progress. You
17 heard, I can't remember whether it was in
18 testimony or argument, but the point was made
19 that there are policy arguments against excluding
20 anything that even remotely looks like
21 construction work in progress from rates.

22 And are you aware of the arguments,
23 policywise, pro and con, when it comes to
24 allowing or not allowing construction work in

[WITNESS: Vatter]

1 progress, however defined, into rates?

2 A Well, as I understand it, the cost of
3 construction work in progress is not allowed into
4 rates.

5 Q But that isn't because of any policy opinions
6 that the OCA might have, is it?

7 A Absolutely not. It's a law.

8 MR. KREIS: Thank you. Okay. Just
9 make sure I don't have any other questions for
10 you.

11 I think that's fine. Those are all the
12 questions I have for Mr. Vatter on direct. And,
13 so, I'd be happy to make him available to
14 cross-examination, provided nobody asks him any
15 questions that require him to say "subject to
16 check".

17 CHAIRMAN GOLDNER: That is excellent
18 advice.

19 We'll turn to Northern, as soon as the
20 Company is ready.

21 CMSR. SIMPSON: No one is ever going to
22 forget that.

23 CHAIRMAN GOLDNER: That's important not
24 to forget. Thank you.

[WITNESS: Vatter]

1 MR. KREIS: I actually can think of a
2 few answers that you would like even less than
3 "subject to check", but I won't tell you what
4 they are.

5 CHAIRMAN GOLDNER: Well, the next time
6 somebody says that, they're going to check. So,
7 just a warning to everyone.

8 Mr. Taylor, please.

9 MR. TAYLOR: For what it's worth, I
10 usually tell my witnesses not to say "subject to
11 check".

12 CHAIRMAN GOLDNER: I have noticed
13 that.

14 MR. TAYLOR: I just want to make a note
15 that I'm in agreement that it is not a good
16 answer.

17 CHAIRMAN GOLDNER: Unutil is not a
18 sinner in this category. So, thank you.

19 MR. TAYLOR: I actually have no cross
20 for Mr. Vatter.

21 CHAIRMAN GOLDNER: Okay. Thank you.
22 We'll move to the Department of Energy.

23 MS. SCHWARZER: Thank you. Thank you,
24 Mr. Chairman. A brief question or two.

[WITNESS: Vatter]

CROSS-EXAMINATION

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BY MS. SCHWARZER:

Q Mr. Vatter, you're familiar with the discovery process that we went through in this docket, the opportunity to propose data requests and get responses?

A Yes.

Q And I don't believe you've been here through a cost of gas season, is that correct?

A Correct.

Q But you would likely agree that, annually, there's a cost of gas proceeding, at which discovery occurs, and questions can be posed and answers provided?

A Sure.

Q And is there any reason that the Office of the Consumer Advocate could not seek further clarification or additional information in the next annual cost of gas docket through the discovery process with regard to the concerns that you raise here?

MR. KREIS: Well, let me object.

MS. SCHWARZER: Why?

MR. KREIS: That question is a request

[WITNESS: Vatter]

1 for legal analysis. And Mr. Vatter is not a
2 lawyer, nor is he here as an expert on the law of
3 public utilities, the procedural requirements of
4 the Commission, or anything like that.

5 And, you know, for what it's worth, as
6 an attorney, I can tell you that I agree with
7 counsel for the Department of Energy, that the --
8 that the Office of the Consumer Advocate can, in
9 future cost of gas proceedings, ask discovery
10 questions about the nature of costs that are
11 included in cost of gas rates or charges.

12 **BY THE WITNESS:**

13 A I mean, --

14 MR. KREIS: Well, I objected to her
15 question.

16 WITNESS VATTER: Oh.

17 MR. KREIS: So, the next thing that
18 gets to happen is the --

19 CHAIRMAN GOLDNER: Attorney Schwarzer,
20 would you --

21 MS. SCHWARZER: Well, thank you. I
22 would ask the Chair to overrule the objection. I
23 was not asking for a legal conclusion. I was
24 merely asking if, in Mr. Vatter's opinion, he

[WITNESS: Vatter]

1 could ask questions about the issue close to his
2 heart in a cost of gas proceeding that will go
3 forward in the fall.

4 CHAIRMAN GOLDNER: That seems like it's
5 not a legal question, from the Chair's point of
6 view.

7 Please proceed.

8 **BY THE WITNESS:**

9 A I would be happy to, and I look forward to doing
10 that. But, as I said earlier, one thing I can
11 not do is require them to formulate a proposal.

12 CHAIRMAN GOLDNER: Okay. Thank you.

13 MS. SCHWARZER: No further questions.
14 Thank you.

15 CHAIRMAN GOLDNER: Okay. Excellent.

16 Let's turn to Commissioner questions,
17 beginning with Commissioner Simpson.

18 CMSR. SIMPSON: Thank you. I think I
19 would start with a question for the OCA himself,
20 with respect to the topic of "construction work
21 in progress". And I'll concede, at this point,
22 I'm just not seeing how this proposal in front of
23 us invokes construction work in progress, and the
24 risk that you've articulated.

[WITNESS: Vatter]

1 So, I'm hoping that you might describe
2 that again for me?

3 MR. KREIS: Would you like me to do
4 that right now?

5 CMSR. SIMPSON: If you would, please.

6 MR. KREIS: Okay. This is in the order
7 of legal argument.

8 If you look at Page 112 of Exhibit 1,
9 there is there a definition of "project costs".
10 And, if you follow the pinball through the
11 pinball machine, you see that these project costs
12 are among the costs that could, in certain
13 circumstances, ultimately be paid for by the
14 customers of Northern.

15 And, in the definition of "project
16 costs", in sub sub Subparagraph (B), --

17 CMSR. SIMPSON: Uh-huh.

18 MR. KREIS: -- it says "construction
19 related costs". That tells me, plain as day,
20 that what the Company is potentially reserving
21 the right to do is to take construction costs, on
22 a project that will not be completed and will
23 never benefit New Hampshire customers, and
24 include them in rates.

[WITNESS: Vatter]

1 And, while I agree that there are all
2 kinds of policy arguments, both pro and con, a
3 prohibition like that, the clear language in RSA
4 378:30-a says "Those costs can never ever be in
5 the rates charged by any New Hampshire utility."

6 That's it in a nutshell.

7 CMSR. SIMPSON: Do you have an
8 articulated carve-out of costs before us that you
9 believe should be removed from the rates that
10 would flow through, the contract costs that would
11 subsequently flow through customer rates that
12 you're objecting to here?

13 MR. KREIS: Well, no. Because, to some
14 extent, and this might go to the question
15 Ms. Schwarzer was asking you, I'm not sure, I'm
16 really suggesting that the Commission kind of
17 kick this can down the road, and merely state in
18 its order that this Company cannot include
19 construction work in progress in rates.

20 And, whether that ever actually becomes
21 a live problem, that either the Company or you
22 will have to deal with, and you heard Mr. Wells
23 tell you that that's extremely unlikely, and I
24 agree, it is extremely unlikely. So, given that

[WITNESS: Vatter]

1 the likelihood is extremely low, the Company has
2 told you the risk of that is extremely low, and
3 given that whatever risk there is inherent in
4 that the Company refuses to accept on behalf of
5 its shareholders, I'm just asking you to say in
6 the order, if that comes up in the future, the
7 OCA is free to pop up and say "Wait, that is
8 precluded from inclusion in rates pursuant to RSA
9 378:30-a." That's all I'm asking you to do
10 today.

11 And, frankly, I'm not really sure how
12 objectionable that is within the context of the
13 Settlement Agreement. I mean, there is one
14 sentence in the Settlement Agreement that I think
15 might be problematic, and it is the sentence that
16 says "The Settling Parties agree", this is on
17 Page 7 of Exhibit 12, in Paragraph -- or,
18 Settlement Condition 4. The last sentence says
19 "The Settling Parties agree that potential
20 cancellation costs shall be recovered from all
21 capacity-eligible customers." And you already
22 heard the testimony that says that, basically,
23 "capacity-eligible customers" is "all residential
24 customers, and maybe some commercial customers."

[WITNESS: Vatter]

1 This is why it's of particular interest to
2 residential customers.

3 So, all I'm basically saying is that,
4 to the extent that Settlement term says "We will
5 force ratepayers to eat construction work in
6 progress", you can't approve that term, because
7 it would be illegal under RSA 378:30-a.

8 I hope that's helpful.

9 CMSR. SIMPSON: That is helpful.
10 Wouldn't 378:30-a govern regardless of whether or
11 not we say that in our order?

12 MR. KREIS: That's certainly an
13 argument that you can count on me to make, if it
14 becomes necessary.

15 But I just, as the principal defender
16 of the anti-CWIP statute in this state, just
17 given its long and storied history, I just feel
18 obliged to come before you today and say "This is
19 potentially an issue, and you should know about
20 it now, because this Company is here." Remember,
21 this Company does not need your approval to move
22 forward with these agreements.

23 But, since it is here asking for your
24 approval, I'm asking you not to put anything in

[WITNESS: Vatter]

1 your order that suggests that you're willing to
2 overlook RSA 378:30-a.

3 CMSR. SIMPSON: Thank you. I'll give
4 Attorney Taylor and Attorney Schwarzer an
5 opportunity to respond, if they would like to?

6 MR. TAYLOR: I appreciate that.

7 So, I guess, just trying to think of
8 the order that I want to take this in. I think
9 I'll maybe take it in reverse order from what I
10 just heard.

11 So, I think, if -- we have asked for
12 what I think is a pretty unambiguous approval in
13 the Settlement Agreement and in our Petition,
14 which is a finding from the Commission -- well,
15 two. One, that termination costs accrued up and
16 to the date of a Commission order are prudent and
17 recoverable through the Company's cost of gas
18 rates. And, two, even though the Company will be
19 subject to a continuing requirement to manage
20 these contracts prudently, and follow along with
21 the project and evaluate risk, and provide
22 updates as necessary to the Department, and, if
23 necessary, to the Commission.

24 That, if, in the future, cancellation

[WITNESS: Vatter]

1 costs were incurred, and they were deemed to be
2 prudently incurred, and, again, we would still
3 bear the risk of acting prudently, and not just
4 letting the costs accrue without being mindful of
5 them, that those would be recoverable through
6 rates.

7 If it's left open to, you know, a
8 decision that "we'll decide down the road that
9 it's CWIP", then that introduces a significant
10 amount of risk to the Company. And, as Mr. Wells
11 said earlier, any decision would have to be
12 evaluated with senior management before any sort
13 of a decision was made. But, you know, that
14 could be an intolerable level of risk that would
15 be introduced to a decision. And, so, that would
16 be of a significant concern for us.

17 With respect to policy arguments, I'm
18 mindful of the argument that, you know, this is
19 law, and it applies regardless of the policy
20 arguments that we might make. But I do think
21 that the law pretty clearly applies, I think the
22 Commission has been correct in determining that
23 it applies to construction work by utilities, on
24 utility projects. And I also agree with the

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1 Commission that looking to these attenuated costs
2 becomes unworkable. And it becomes unworkable in
3 this circumstance, because if the Company were
4 only able to enter into these agreements by
5 bearing a significant amount of risk going
6 forward, it simply would not make sense for the
7 Company to do that, and that ultimately is not
8 going to be to the benefit of ratepayers.

9 It's true, the risk is minimal. But we
10 do think that it's fair that the customers bear
11 the risk in this case, because, and I, you know,
12 I heard what Mr. Vatter said, we do believe that
13 the entirety of the benefit of these contracts go
14 to customers. We enter into these contracts,
15 because we have a requirement to, one, maintain a
16 reliable -- a portfolio of reliable gas; and,
17 two, even though the LCIRP statute is now gone,
18 we still have an obligation to make sure that
19 rates are just and reasonable and to keep costs
20 low. That's the framework with which we enter
21 into these agreements.

22 This isn't like utility spending on
23 infrastructure, where shareholder dollars are
24 spent with the expectation that there will be a

[WITNESS: Vatter]

1 return on that money. This is different
2 entirely. This is something where we are
3 spending money to acquire gas resources for
4 customers on a pass-through basis.

5 So, now, I'm going to say right at the
6 outset, or, you know, mid-argument I guess, I
7 have read Mr. Vatter's CV, and I'm aware of
8 his -- of his qualifications. And I will say
9 that I had a single disastrous interaction with
10 an economics class.

11 *[Laughter.]*

12 MR. TAYLOR: So, I'm not going to
13 pretend that I can match him in terms of economic
14 theory.

15 CMSR. SIMPSON: I sit next to an
16 economics professor every day. So, I feel your
17 pain.

18 *[Laughter.]*

19 MR. TAYLOR: I am, however, familiar,
20 you know, generally, with the law of demand. And
21 I want to point out in this case that Northern is
22 a decoupled company. And one of the primary
23 justifications behind revenue decoupling is that
24 it removes the incentive for the Company, both on

[WITNESS: Vatter]

1 the gas and electric side, to sell more. And,
2 for that reason, it has often been held out as
3 something that pairs well with energy efficiency
4 efforts.

5 And, so, simply suggesting that "Well,
6 if it's cheaper, people will buy more of it", and
7 I guess I sort of, just instinctively, I'm not
8 sure about that, because people aren't
9 necessarily going to boil two pots of potatoes,
10 when they can boil one, or heat their house twice
11 as much. But, you know, I also just -- even if
12 we were to sell more, we're not incentivized to
13 do that. We're a decoupled company.

14 And, so, again, I think that the risk
15 is appropriately allocated in this instance.
16 And, so, that's really kind of where the policy
17 argument is.

18 Going back to the legal argument, you
19 know, I think Mr. Kreis -- or, Attorney Kreis had
20 mentioned a Supreme Court case that came out in
21 November of '23, which was after we had made this
22 filing. You know, that is a case that is not
23 inconsistent with your decision in the Granite
24 Bridge -- in the Granite Bridge case. Well, it's

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1 a Granite Bridge case before the Supreme Court.
2 But, in that case, again, this was Liberty
3 spending Liberty money on a Liberty project.

4 This was not an instance where -- we
5 haven't laid out any money. There is no
6 investments. We are not financing anything.
7 This is something where we are going to take --
8 we have committed to this project. And, in the
9 contract, there is what is essentially an "exit
10 fee", if, and, you know, it's not called that,
11 it's called "termination costs", but it's a
12 contract cost. And there are -- you know,
13 through the cost of gas, we pass the costs of
14 these contracts onto customers.

15 And, so, I do think it is appropriately
16 differentiated from what is, I think, typically
17 known as "CWIP" under the anti-CWIP statute.
18 And, you know, I'll even, you know, if you go
19 back, you know, many years to an earlier PSNH
20 case, *Appeal of Public Service*, an order issued
21 in June of 1984, the Supreme Court, in
22 discussing, in the Seabrook costs, noted and just
23 took note of the legislators' -- I'm sorry --
24 Legislature's intent in that case, and said "In

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1 1979 the Legislature enacted RSA 378:30-a, thus
2 culminating opposition to the allowance of CWIP
3 in the rate base that had begun in the 1977
4 legislative session." And, so, clearly, you
5 know, identifying the Legislature's intent as
6 trying to bar CWIP as it pertains to utility
7 projects going into the utility rate base.

8 So, I think there's a very clear
9 differentiation between the two things. And I
10 think that if there was some kind of ambiguity
11 introduced to the Commission's order in this
12 case, I think that's unnecessary. I think it --
13 you know, this is something that the Commission
14 has already approved in DG 19-116. And, you
15 know, I appreciate that -- I don't disagree with
16 the Consumer Advocate that they have the right to
17 take a different position in a different case,
18 that's fine.

19 But I think the Commission should look
20 back at that, as you deemed appropriate before,
21 we think it's appropriate here. And we would ask
22 that there not be any ambiguity introduced to
23 your order that would impair our ability to go
24 forward with the contracts.

[WITNESS: Vatter]

1 CMSR. SIMPSON: Thank you. Attorney
2 Schwarzer, I'll afford you an opportunity to
3 comment, if you'd like?

4 MS. SCHWARZER: Thank you.

5 Certainly, the Department supports
6 Northern's statement, with regard to both the
7 policy argument and the meaning of RSA 378:30-a.
8 I believe this opinion was quoted before. But,
9 to go back to Order Number 26,536, I believe the
10 OCA is seeking to expand the meaning of the
11 anti-CWIP provision to be significantly broader
12 than has been contemplated, even by the PUC in
13 its orders. And to quote, at Page 7, the PUC
14 order says "RSA 378:30-a is a statute with a
15 specific application to costs associated with a
16 utility's construction projects." There is no
17 construction project owned by Northern here at
18 issue in this docket.

19 And the order goes on to say that
20 "Utilities contact" -- excuse me -- "Utilities
21 contract with a multitude of other entities for a
22 wide variety of purposes unrelated to
23 construction. It is well within the realm of
24 possibility that Liberty has paid, for example,

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1 some amount of money to TGP to purchase gas,
2 which TGP used to fund an as-yet incomplete
3 construction project. If RSA 378:30-a also
4 prohibited recovery, such attenuated costs as the
5 uncompleted construction work by a utility's
6 contracting partner utility, the result would be
7 unworkable. If RSA 378:30-a is to be applied
8 rationally and practically, it must apply, and
9 apply only, to projects that the utility
10 undertakes or contracts to construct its own
11 plant, facilities, and other infrastructure."

12 So, in the opinion of the Department,
13 it would be appropriate for the PUC order to
14 continue that line of interpretation, and that's
15 consistent with the statute, and, in the
16 Department's view, that would be good policy, to
17 find that the Empress Capacity Agreements do not
18 violate the anti-CWIP provisions codified in the
19 statute quoted.

20 CMSR. SIMPSON: Thank you.

21 MR. KREIS: I'm going to need to
22 respond to all of that. But I certainly am
23 willing to do that in my closing, if that would
24 be more helpful, or, I can do it right now, as

[WITNESS: Vatter]

1 you prefer.

2 CHAIRMAN GOLDNER: Let me do a quick
3 time check.

4 *[Chairman and Cmsr. Simpson*
5 *conferring.]*

6 CHAIRMAN GOLDNER: So, we'll accept the
7 offer for closing, Attorney Kreis.

8 Commissioner Simpson has a few more
9 questions. And, when Commissioner Simpson
10 finishes his questioning, we'll take a quick
11 fifteen-minute break.

12 CMSR. SIMPSON: I was going to make a
13 "subject to check" joke, but I lost my --
14 *[Laughter.]*

15 BY CMSR. SIMPSON:

16 Q But, in any case, Dr. Vatter, your testimony is
17 really insightful. Appreciate it. I learned a
18 lot from it. So, thank you for filing this. And
19 the OCA is well represented.

20 A Thank you.

21 Q Tell me a little bit about the JKM market?
22 That's the first that I've ever really been
23 exposed to that topic. And, you know, typically,
24 we look at Henry Hub, or Dawn is a pretty

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1 gas-rich market, as you've heard today. Tell us
2 a little bit about that "Marker" as you've
3 mentioned in your testimony please?

4 A So, Japan has been using LNG for a long time, for
5 geographic reasons. It's an island, and they
6 don't have gas. And, so, JKM has been a liquid
7 pricing point for LNG in the Pacific for a long
8 time. It's a very thick market. As I said,
9 recently, the volume has been extraordinarily
10 high, the trading volume. And I would say that
11 it will continue to be important, because the
12 largest growth market for LNG is going to be in
13 developing countries on the east -- on the
14 Western Pacific Rim, you know, Bangladesh, India.

15 And, boy, what else can I tell you
16 about it? Oh, yes. As I said, you know, in the
17 past, contracts for LNG have been indexed to
18 crude oil. But the relationship between prices
19 for LNG and crude oil is fairly tight. I think
20 tighter than the relationship between pipeline
21 gas at Henry Hub and crude oil, although that's
22 not really loose either.

23 Q So, I'm looking at your testimony, on Bates
24 Page 009, and you have a figure, Figure 3, "Long

[WITNESS: Vatter]

1 term history and a forecast of global benchmark
2 fuel prices". And I ask this, recognizing that
3 you've even said earlier today that you're not
4 asking the Company to commit to hedging
5 strategies through any one market, you're asking
6 that there's an evaluation that's done in and
7 process that's put in place.

8 As you look at this trend that you've
9 provided in testimony, what do you see? I'll ask
10 you that. When I look at it, I see a lot of
11 volatility from Title Transfer Facility, I see a
12 lot of volatility from the JKM node.

13 A Uh-huh.

14 Q You know, less volatility from imported crude oil
15 to U.S. refiners, as you've mentioned, there's
16 some tie-in there, and really great stability
17 overall with Henry Hub.

18 What do you see and what would you
19 suggest that we look at?

20 A Well, I would, first of all, suggest that you
21 consider that the crude oil price is graphed
22 relative to the left axis, and the LNG to the
23 right. And I could stretch the crude oil curve
24 as high as I wanted to by changing the maximum

[WITNESS: Vatter]

1 value of the left-hand axis.

2 I would say they're all volatile,
3 including Henry Hub. And I would say that a lot
4 of that volatility is rooted in the crude oil
5 curve, most of it. Really, I think of crude oil
6 as the prime mover in the markets for fuel, if
7 not energy, prices in general.

8 And this crude oil curve, I derived it
9 by measuring the volatility historically, and
10 then choosing something that is comparably
11 volatile or consistently volatile, that is also
12 the most profitable curve to OPEC. That is part
13 of the description of their pricing strategy.
14 They do price shocks, and they make a lot of
15 money that way. And that is why I've included it
16 in my forecast. And those oil price shocks drive
17 gas prices substantially.

18 I mean, what happened in TTF is also a
19 local phenomenon, because Europe got caught up in
20 the past. So, if you look at the -- if you look
21 at the first shock, that's actually historical.
22 That's 2022. That's the highest one there. So,
23 that was partly driven by the oil price shock,
24 and it was partly driven by Russia, by Europe

[WITNESS: Vatter]

1 stopping buying Russian pipeline gas. And, so,
2 that is something that would be resolved over the
3 long term. But the link between TTF and crude
4 oil is -- is fundamental.

5 You know, when I do another version of
6 this, I think I will probably have TTF closer to
7 JKM, but it will still be plenty volatile. And
8 the -- and the LNG pricing point relevant to this
9 proceeding is JKM. Because it's in the Pacific,
10 and that's where -- that's the one that would be
11 linked to Empress, at BC.

12 Q And you note that there's an expectation of more
13 liquefaction capability being developed along the
14 western shores?

15 A Yes. In fact, I mean, the Canadian Energy
16 Regulator has a forecast saying that there will
17 be 5,000 Bcf, but I would not treat that as a
18 hard constraint.

19 Q Uh-huh.

20 A And, in fact, I estimate that that amount of
21 liquefaction capacity would not resolve the gap
22 between JKM and Empress. I think I would expect
23 more than that over sometime within the next 30
24 years.

[WITNESS: Vatter]

1 Q Thank you. And, then, with respect to the topic
2 of "hedging strategies" broadly, as I'm sure
3 you're aware, Term 8 in the Settlement Agreement,
4 before this Commission today, states that
5 "Northern will evaluate available hedging
6 strategies and include a report on its evaluation
7 in the Company's Cost of Gas filings through the
8 execution of the TCPL Firm Transportation
9 Agreement." What more are you looking for there?

10 A A proposal. Not just a report.

11 Q Okay. Okay.

12 A And I understand, if they don't have one, they
13 don't have one. It would have been nice to have
14 one with the evaluation of this -- of these
15 contracts. But I like these contracts. And I'm
16 happy to give them more time, as long as they
17 come up with something.

18 CMSR. SIMPSON: Very good. That's all
19 I have. Thank you.

20 CHAIRMAN GOLDNER: Thank you. Let's
21 take a fifteen-minute break, returning at three
22 o'clock, and resume with Commissioner
23 Chattopadhyay's questions. Off the record.

24 *(Recess taken at 2:46 p.m., and the*

[WITNESS: Vatter]

1 *hearing reconvened at 3:02 p.m.)*

2 CHAIRMAN GOLDNER: Okay. Once
3 Dr. Vatter resumes the stand, we'll begin
4 questions with Commissioner Chattopadhyay.

5 CMSR. CHATTOPADHYAY: Okay. Good
6 afternoon.

7 WITNESS VATTER: Hello.

8 CMSR. CHATTOPADHYAY: Hi. So, don't
9 believe Commissioner Simpson when he says that I,
10 you know, trouble him. No, not at all. He
11 understands everything I tell him.

12 BY CMSR. CHATTOPADHYAY:

13 Q So, I will go to the Settlement document. And
14 Commissioner Simpson was talking about, you know,
15 where the draft says "Northern will evaluate
16 available hedging strategies and include a report
17 on its evaluation in the Company's Cost of Gas
18 filings through the execution of the TCPL Firm
19 Transportation Agreement."

20 That, I'm going to compare that with
21 what you had in your testimony. And, so, I'll go
22 to Bates -- go to your Exhibit 11, Bates Page,
23 just a moment, 013, --

24 A Oh, I'm sorry. I don't have the Bates.

[WITNESS: Vatter]

1 Q Oh, it's "13 of 26". So, it's the same in your
2 own.

3 A Okay.

4 Q Once you're there, if you go down to Line 6, --

5 A Uh-huh.

6 Q -- it says "I recommend that the Commission
7 require Northern to evaluate hedging strategies
8 for commodity price risk long term." Okay? So,
9 you -- I don't see a whole lot of difference
10 between what the Settlement Parties have done and
11 what you're suggesting, except, as I understood
12 now, you are -- you want to also -- you want us
13 to tell the Company that, in its evaluation --
14 sorry, evaluation of hedging strategies, it
15 should not just look at the geographical matter,
16 but also look at the price risk long term. And,
17 when you use that term, I'm assuming you're
18 basically talking about "intertemporal risks".

19 And, so, now that I've discussed what I
20 think you're trying to say, can you verify that I
21 got it right?

22 A First of all, yes, I'll acknowledge that here
23 there is no difference. They have certainly
24 complied with that sentence in the Settlement.

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1 And I can't remember everything else I
2 wrote in this document, but I would, if -- I
3 think I'm at liberty to ask this here, in oral
4 testimony, and I would broaden the language from
5 "hedging" to "risk management". I think it would
6 come down as a hedge, but I don't -- I wouldn't
7 want to prejudge that.

8 And I would say that it should be a --
9 there should be a shift, it should -- they should
10 be looking at, I won't prejudge this either, they
11 should be looking not just at geographic
12 diversity, but intertemporal risk management
13 tools. And, finally, I would like them to issue
14 a proposal, not just a report.

15 Q Okay. And that -- that it's good that we are
16 talking about it, because that wasn't very clear.
17 And, in terms of a proposal, can you, even if you
18 provide a skeleton, can you describe what kind of
19 proposal you have in mind?

20 And I know that there are, when you
21 talk about "strategies", there can be multiple
22 strategies to look at, but, because you're
23 stressing the intertemporal piece, maybe discuss
24 what you have in mind? Whether you've seen

[WITNESS: Vatter]

1 something like that in other places that the
2 Company should consider? And, if so, I think,
3 maybe when that is being done, because it's going
4 to take nine months, the OCA can help in
5 crystalizing the kind of strategies that the
6 Company should take a look at.

7 And I'll let you respond.

8 A Yes. So, I did say something about this here.
9 If you look at Page 13, is that the same page?

10 Q I'm going to go there. Just a moment. Yes.

11 A Lines 15 to 16.

12 Q Yes.

13 A "Given the duration of the JKM futures strip,
14 this could be done by buying in advance in that
15 market." So, that's a suggestion again.

16 Q Yes.

17 A So, go back up, starting on Line 14, "Buying
18 three years in advance, except during upward
19 shocks to price, should suffice: OPEC has not
20 visited a long price shock on the market since
21 the price collapse of 1986. Given the duration
22 of the JKM futures strip, this could be done by
23 buying in advance in that market."

24 So, that's the kind of thing I have in

[WITNESS: Vatter]

1 mind.

2 Q Have you seen anything more -- like, it's pretty
3 simple what you're suggesting here. Anything
4 concrete in other places --

5 A No.

6 Q -- to that effect?

7 A I mean, other utilities?

8 Q Yes.

9 A No.

10 CMSR. CHATTOPADHYAY: Okay. That's all
11 I have for now. Thank you.

12 CHAIRMAN GOLDNER: I just have one
13 question, I think.

14 BY CHAIRMAN GOLDNER:

15 Q From an economic perspective, this CWIP issue
16 that we've been talking about, it seems to me
17 like it's an arm's length transaction. You
18 have -- I don't see a connection to capital
19 investments from the Company, I don't see a
20 connection to anything that's related to CWIP.

21 So, I'm trying to understand,
22 Dr. Vatter, if you also see this as an arm's
23 length transaction?

24 A Yes. I think that it's, I mean, it's an arm's

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1 length transaction between the utility and
2 TransCanada. It's also an arm's length
3 transaction between ratepayers and the utility.
4 I mean, if you wanted to avoid, you know, if all
5 you had to do was sub something out to avoid
6 calling it "CWIP", that wouldn't be hard. You
7 know, if you -- seems like, if that's -- this is
8 where the economics end and the law begins.

9 But, if, I mean, if you, you know, if
10 all you have to do is subcontract or outsource
11 something to avoid the law, I mean, how effective
12 is the law?

13 Q The distinction I think I would make is, if
14 Unutil was building a pipeline, and they were
15 spending, you know, \$10 million or something on
16 the pipeline, that seems to fit the definition of
17 "CWIP". If they're -- if somebody else is
18 building the pipeline, they own it, they put it
19 in rate base, they do all the other stuff, that
20 it seems like that would be an arm's length
21 transaction, it would not be something that where
22 the CWIP statute would be applicable. That's the
23 distinction, I think.

24 A I mean, I really want to leave off my layperson's

[WITNESS: Vatter]

1 opinion about the law. I could give you that,
2 but I shouldn't.

3 Q Well, no, it's not a legal question.

4 A The legal --

5 Q It's an economic question.

6 A The economic, I guess, I mean, I guess, if you
7 say that "an arm's length transaction makes it
8 not CWIP", all I can say about that, as an
9 economist, is that, or the closest I can get to
10 it, is just to say that it would really, you
11 know, undermine, I think, the intent of keeping
12 CWIP out of rates, if all you had to do is turn
13 it into an arm's length transaction.

14 Q Yes. I guess it's two things, right? It's an
15 arm's length transaction, plus the Company is not
16 putting anything in rate base, nor do they
17 propose to put anything in rate base. So, it
18 would be both things in combination, wouldn't it?

19 A Yes, I guess -- I mean, it shouldn't go into
20 rates, you know. I mean, if you want, rate base
21 is the Company's real capital, but rates are what
22 you charge. I think, as I understand it, the
23 anti-CWIP statute prohibits CWIP from going into
24 rates.

[WITNESS: Vatter]

1 Q But this is a pass-through. So, they're not --
2 it's not rates in the sense that the Company is
3 making money on it. It's money in the sense that
4 they're passing it through to customers?

5 A It's not the rate base.

6 Q Right.

7 A It's rates.

8 Q Yes.

9 A Yes.

10 CHAIRMAN GOLDNER: Agree. Okay. Thank
11 you.

12 Okay. Very good. Do my fellow
13 Commissioners have any additional questions for
14 Dr. Vatter?

15 CMSR. SIMPSON: No.

16 CMSR. CHATTOPADHYAY: No.

17 CHAIRMAN GOLDNER: No? Okay. Let's
18 move to redirect, and Attorney Kreis.

19 MR. KREIS: I don't think I have any
20 questions on redirect. Dr. Vatter has done a
21 fabulous job already.

22 CHAIRMAN GOLDNER: Excellent.

23 WITNESS VATTER: Thank you. It's all
24 due to you.

[WITNESS: Vatter]

1 CHAIRMAN GOLDNER: Excellent. Well,
2 thank you. Thank you, Dr. Vatter, for your
3 testimony. You're excused. You may stay where
4 you are, or return to your previous seat,
5 whatever you prefer.

6 And I'll just continue with, having
7 heard no objections, we'll strike ID on Hearing
8 Exhibits 1 through 13 and admit them into
9 evidence.

10 We'll also invite the parties to make
11 brief closing statements, or closing statements
12 as long as you wish.

13 Are there any other issues requiring
14 our attention, other than close?

15 MR. TAYLOR: I have one, one issue that
16 I wanted to raise. And it occurred to me during
17 the course of this hearing, actually.

18 So, at the outset of this case we filed
19 a Motion for Confidential Treatment to cover
20 material contained in our Initial Filing. And,
21 in that, we requested that it cover not just
22 what's in the filing, but to the extent it comes
23 up in discovery and briefing and the like.

24 During the course of the proceeding, we

1 did submit some discovery requests, some of which
2 contained confidential information. And we
3 availed ourselves of the rule that allows you to
4 say that you'll make a motion prior to or at the
5 hearing to keep them confidential.

6 And it occurred to me, and I'm being
7 very candid here, that I did not file that motion
8 prior to or during this hearing.

9 So, two things. One, I would -- I
10 would request that to the -- well, one, I guess I
11 will make the motion orally, and offer to follow
12 up with a written motion in short order, to make
13 sure that it's with the Commission, and I could
14 have that to you by tomorrow.

15 But I did want to make sure that I
16 address that, because it is out there.

17 CHAIRMAN GOLDNER: Okay. Thank you.
18 Yes, I did have some comments on the motions for
19 confidential treatment at the end, but that would
20 be a very good solution.

21 So, just a moment, Attorney Speidel has
22 a question.

23 *[Chairman Goldner and Atty. Speidel*
24 *conferring.]*

1 CHAIRMAN GOLDNER: Yes. Attorney
2 Taylor, we're appreciative of bringing that to
3 our attention. And we'll take your filing, and
4 we'll roll it into the order, the final order.

5 MR. TAYLOR: Okay. I appreciate it.
6 And I apologize.

7 CHAIRMAN GOLDNER: Yes. Thank you.
8 Okay. Anything else, before we move to
9 close?

10 *[No verbal response.]*

11 CHAIRMAN GOLDNER: All right. So,
12 seeing none. Let's take closing, beginning with
13 the Department of Energy.

14 MS. SCHWARZER: Thank you, Mr.
15 Chairman.

16 To address the issue Northern's counsel
17 raised, the Department does not anticipate any
18 concerns, but we'll wait and see what is filed.

19 I'll keep it very brief. And, so,
20 you've heard the Department's position with
21 regard to the anti-CWIP statute.

22 The Department certainly considers the
23 Settlement just and reasonable and in the public
24 interest. We believe the Empress Capacity

1 Agreements are just and prudent and reasonable.
2 And urge the Commission to approve both of those
3 documents.

4 Thank you.

5 CHAIRMAN GOLDNER: Thank you. And I'll
6 just -- I guess I'll just address quickly this
7 business of the filing from the Company relative
8 to confidential treatment.

9 So, Attorney Taylor I think mentioned
10 that he could send that tomorrow. Since the
11 order is due on the 26th, if there's any concerns
12 with that Motion for Confidential Treatment,
13 would the Department and the Consumer Advocate be
14 okay with filing something by, say, the 23rd, to
15 give us time for the final order?

16 MS. SCHWARZER: Certainly. And, if we
17 have an opportunity to review the motion ahead of
18 time, and Attorney Taylor can include our
19 position in what is filed, we'd be happy with
20 that solution as well.

21 CHAIRMAN GOLDNER: Okay. Thank you.
22 Attorney Kreis, any comments on that?

23 MR. KREIS: Only that I don't think
24 this is going to become a big issue. I don't see

1 any issues with what I understand to be the
2 Company's request. I can't imagine anything in
3 Mr. Taylor's written motion will give any alarm.

4 And, so, yes, we'll be happy to
5 cooperate in whatever way you think would be
6 helpful.

7 CHAIRMAN GOLDNER: Thank you. So that,
8 just to make the request specific. So, in
9 working with Attorney Taylor, and the parties can
10 file, you know, a collective motion by close of
11 business tomorrow, that would be very helpful.
12 And, if there are any disputes, if the parties
13 could file that by close of business on the 23rd.
14 So, thank you.

15 So, okay. Without any further ado,
16 let's move to closing, and the Office of the
17 Consumer Advocate.

18 MR. KREIS: Thank you, Mr. Chairman.

19 As I said at the beginning of the
20 hearing, nothing in New Hampshire law requires
21 the Company to come here and get your approval
22 for any of these contracts. And, because of
23 that, my initial inclination was to come here and
24 ask you not to approve them. To just put out an

1 order saying "We have no opinion. The Company is
2 obliged to act prudently. Go forth and be
3 prudent and meet your franchise requirements to
4 make supply able to your customers according to
5 their requirements."

6 But my new Director of Economics and
7 Finance, as you have heard today, is a very
8 persuasive fellow. And he prevailed upon me not
9 to take that position, but instead to come here
10 and urge you that you actually do what the
11 Company is asking you to do, which is to approve
12 the contracts. Why? Because, in his opinion,
13 and he's the expert, and I always defer to my
14 experts, the contracts are good for customers.

15 So, that's my recommendation. And the
16 Settlement Agreement asks you to do exactly that.
17 And, to the extent the Settlement Agreement calls
18 for the Commission to bless these contracts as
19 "prudent", I concur in that request. And, so,
20 there is very little in dispute here.

21 My only asks, and I've said this
22 already, are modest. Ask Number 1, and this goes
23 to Commissioner Chattopadhyay's request that
24 Mr. Vatter clarify what his ask was, my only ask

1 in that regard, our only ask, is that you
2 embellish Condition 8 of the Settlement Agreement
3 slightly, so that it tells Northern that it
4 should propose and justify a risk management
5 strategy that specifically addresses the risk
6 associated with the Empress commodity, rather
7 than just evaluating and reporting on strategies
8 in general, which I think is all that the
9 Settlement language applies.

10 Now, Commissioner Chattopadhyay's point
11 was well-taken. We've moved the ball a little
12 bit, and I just want to acknowledge that. You
13 know, we're asking you to do -- we are asking you
14 to do a little bit more in that regard, or asking
15 you to order the Company to do a little bit more
16 in that regard than what was originally contained
17 in Mr. Vatter's prefiled testimony.

18 Other than acknowledging that, I would
19 say that doesn't preclude you from still agreeing
20 with our request, as we have developed it here in
21 the hearing. And, so, ultimately, that's for you
22 to decide.

23 Then, the second request has to do, of
24 course, with construction work in progress. And

1 I guess I just have a few points to make about
2 that.

3 One, there's been a lot of argument
4 back and forth about the policy implications of
5 not allowing this, or other utilities, to include
6 certain things in rates. And, as Dr. Vatter
7 correctly pointed out, the anti-CWIP statute
8 doesn't talk about "rate base", it talks about
9 "rates".

10 And, so, the policy arguments, pro or
11 con, are -- I don't think they're really
12 relevant, because the statute says what it says.
13 And what the statute actually says is pretty
14 clear and straightforward. In particular, the
15 statute is three sentences long, I'm not going to
16 read all of them, but I will tell you that the
17 second sentence says, and I quote, "All costs of
18 construction work in progress, including, but not
19 limited to, any costs associated with
20 constructing, owning, maintaining or financing",
21 and let me here put the word "financing" in OCA
22 italics, "*financing* construction work in progress
23 shall not be included in a utility's rate base
24 nor be allowed as an expense for rate making

1 purposes until, and not before, said construction
2 project is actually providing service to
3 consumers." That's what the statute says.

4 And we may or not like it, Chairman
5 Goldner may or may not like it, the Company may
6 or may not like it, the Department may or may not
7 like it, but that is the law that has been given
8 to us by the General Court, and all of us are
9 obliged to comply with that law.

10 Now, the Company -- and all I'm asking
11 you to do, given that, is that you include
12 language in your order that says that "To the
13 extent there is anything here that ever could get
14 into rates that could meet the definition of
15 "construction work in progress", we will allow
16 the OCA, or any party, I suppose, to make that
17 argument at the time the Company proposes to
18 include those costs in rates." So, I'm really
19 just asking you to kick that particular can down
20 the road.

21 Now, you've heard the Company talking
22 out of both sides of its mouth about the
23 implications of that. In the very same
24 peroration, Attorney Taylor said "Well, this

1 isn't a big deal. The risk is low. It's not
2 likely to happen. And we're not worried about
3 it."

4 But, then, he told you, in the same
5 peroration, "It's a huge risk. It's very
6 significant. And our shareholders are simply
7 unwilling to undertake that risk, because all of
8 the benefits inure to customers."

9 Well, we have already established, as a
10 matter of fact, that that's not really true, or
11 at least that is a proposition that is not
12 unassailably established on the record. There
13 are benefits to the utility here. Those benefits
14 arise out of the fact that the Company actually
15 has incentives to keep costs down, to sell more
16 gas, and to put more stuff into the rate base
17 that it actually gets to include in rates.

18 And, while I understand that
19 decoupling, as it currently exists, is designed
20 to ameliorate some of those effects, it doesn't
21 ameliorate all of them. These contracts are
22 going to be benefiting both the Company and the
23 customers for a very, very long time. And I've
24 checked my crystal ball during the break, and I'm

1 here to say that decoupling has a very clouded
2 future here in New Hampshire. So that I don't
3 think the Commission can make any decisions based
4 on any assumption that revenues will always be
5 decoupled from sales, and, therefore, this
6 problem goes away. It does not go away.

7 Now, it is true that there are
8 Commission orders that suggest that the only
9 construction work in progress that's ever
10 relevant, for purposes of this statute, are
11 construction projects actually undertaken by the
12 utility itself.

13 But, as I said earlier, decisions,
14 prior decisions of the Commission are not binding
15 precedent, either here or anywhere else. I'm
16 stuck and we're all stuck with the binding
17 precedents of the New Hampshire Supreme Court.
18 And, as far as I know, every decision of the New
19 Hampshire Supreme Court has adopted an expansive,
20 not restrictive, definition of what falls under
21 the statute. And the statute says that "costs
22 associated with *financing* construction work in
23 progress are not allowed to get into rates."
24 That's what the statute says. So, again, we're

1 stuck with that.

2 I'm sorry that people don't agree with
3 it. It's a can I'd like to kick down the road.
4 But that is the OCA's position, and I believe it
5 is the correct one as a matter of law.

6 So, subject to those two, I would
7 argue, minor tweaks to the Settlement Agreement,
8 I would urge the Commission to approve the
9 Settlement Agreement and allow these four
10 contracts to go into effect.

11 Thus concludeth my closing argument.

12 CHAIRMAN GOLDNER: Thank you.

13 And we'll move finally to the Company's
14 close.

15 MR. TAYLOR: Thank you, Commissioners.

16 Fortunately, you know, being given the
17 opportunity to do an opening statement, I've
18 already kind of told you most of my positions.
19 So, I will try to keep it brief.

20 You know, it's been brought up a couple
21 times that we are not required by law to come
22 before you to ask for approval of these
23 Agreements. And that is true, that there's not a
24 rule or statute that requires us to do that, or

1 requires you to rule on it.

2 However, we do believe that it's
3 appropriate for us, in this instance, for a
4 contract of this length, of this significance,
5 for it to be brought to the Commission's
6 attention, not just here, but in Maine as well.
7 And, now, in multiple iterations, both
8 Commissions have acknowledged and understood the
9 prudence of taking a look at these before they go
10 into effect, and before these long-term
11 commitments are actually in the Company's
12 portfolio.

13 And, so, we don't do this all the time.
14 This is the second time we've done it, and the
15 last one was, you know, over four years ago. You
16 know, it is something that we do sparingly. And
17 that we think it is appropriate for the
18 Commission, Department of Energy, the Consumer
19 Advocate to, I think, have a say in what we're
20 doing, and have an opportunity to weigh in and
21 present their positions to the Commission, and
22 for the Commission to give their position on it.
23 And, so, I think it's a good practice. And, you
24 know, I think that we should continue it in this

1 case, and I hope that you do.

2 With respect to -- to CWIP, I've
3 already -- I've made my argument about that, and,
4 so, I'm going to stand largely on the briefing
5 that we did earlier in the hearing.

6 Attorney Kreis singled out the
7 "financing" component of the statute, that says
8 "costs associated with constructing, owning,
9 maintaining or financing construction work". So,
10 it's pretty clear that we're not constructing
11 anything here, we're not going to own any of
12 this, we will not be maintaining anything on the
13 Empress Project. And, so, now it comes down to
14 the question of financing. We are not financing
15 this Project. We have not given the Project any
16 money. We will not -- we have not invested any
17 money in this Project on which we will earn a
18 return. That, when one thinks of financing, if
19 one thinks of investing in a project, putting the
20 money up, you know, possibly owning a piece of
21 it, but getting some kind of a return on your
22 money. We have not done that in this case. This
23 is not a financing.

24 We have committed to take service on

1 the Project. And, in response to that
2 commitment, TCPL is going to build its
3 facilities. And it is a term of the contract
4 that, in the event that, for whatever reason,
5 that that Project does not ultimately go into
6 service, that those costs will be part of, you
7 know, a termination cost that will come through
8 to the Company.

9 And, so, we have not financed it in any
10 way. None of our money is tied up in this
11 Project. And, so, I don't think that you can
12 focus on that part of the statute and say, you
13 know, "Aha, this is the one that covers your
14 project", because it simply doesn't. It's, you
15 know, definitionally, it doesn't come within
16 "financing". So, I just did want to point that
17 out.

18 I also, you know, look, I don't want to
19 suggest that the risk is "no big deal". I didn't
20 say that, and I hope that it didn't come across
21 that way. You know, we think that the risk is
22 small. That's the evaluation that we have done.
23 And, in evaluating that risk, we've determined
24 that it's prudent to go forward.

1 So, you know, the consequences of that
2 risk are indeed potentially significant, but we
3 think that it is a very small and unlikely risk.
4 So, that's, when we talk about it being a
5 "minimal risk", it's really looking at the
6 analysis that our analysts did in terms of the
7 likelihood of something happening. Not, you
8 know, I don't want to suggest anything as to the
9 gravity of it.

10 So, we do think that it's a small risk.
11 But, you know, beyond that, I guess maybe another
12 way is to say "if we thought the risk was larger,
13 perhaps we wouldn't have entered into those
14 contracts." I don't want to speak for Mr. Wells
15 on that.

16 But, in this case, it really is about
17 allocation of risk, and the appropriate
18 allocation of the risk. And, you know, I agree,
19 as a general matter, when a law is clear, policy
20 arguments, you know, kind of fall by the wayside.
21 In this case, I don't think the law, you know, by
22 its terms, applies to what we're doing here.
23 And, so, now, if you want to move over to the
24 policy side, I think, from a risk allocation

1 standpoint, it does make sense that, because
2 customers will benefit from this, that customers
3 should bear the risk of it.

4 And, so, I'm now venturing into the
5 realm of being repetitive, and I'll end there.

6 With respect to the recommendation from
7 the Consumer Advocate, as to hedging, or their
8 preferred term is "risk management", you know, we
9 appreciate -- we appreciate Mr. Vatter's
10 recommendation. Certainly, we appreciate the
11 support that the Consumer Advocate's Office has
12 shown us with respect to the contracts
13 themselves. With respect to the recommendation
14 that our -- well, I think the fact that we have,
15 in our Settlement Agreement, notwithstanding the
16 fact that the Consumer Advocate was not a part of
17 that Settlement Agreement, included a term that
18 largely adopts what he recommended, I think shows
19 that we think that it's a reasonable suggestion,
20 and credit it.

21 Now, we have, as for reasons that
22 Mr. Wells explained, declined to go through with
23 the specificity that Mr. Vatter prefers, with
24 respect to Japan Korea Marker LNG. And, you

1 know, we'll address it more on a strategy basis.
2 I think that what we've proposed here, that we
3 will evaluate and provide a report, is
4 appropriate in the context of this case. I don't
5 think that we should be compelled to make a
6 proposal, because, as a result of our evaluation,
7 we believe a proposal is not necessary.

8 So, I think it's appropriate what we've
9 put in here. I think it strikes the right
10 balance. You know, we did basically say that,
11 even though the Consumer Advocate is not a part
12 of the Settlement, we think this is a reasonable
13 idea, we're going to incorporate it. So, we
14 think we've struck the right balance. And we
15 hope that you do not amend the term as written.

16 So, all that being said, I think the
17 Settlement that comes before you was a product of
18 a lot of discussion, a lot of good discussion
19 between the parties, and, ultimately, between the
20 Department and the Company. And we think that
21 the Settlement itself is just and reasonable, and
22 in the public interest, and that the Empress
23 Capacity Agreements are prudent, reasonable, and
24 in the public interest, and that you should

1 approve them, approve all of them.

2 So, we appreciate your time today, we
3 realize that we've taken up a lot of it. Thank
4 you.

5 CHAIRMAN GOLDNER: Thank you. And just
6 a moment please.

7 *[Chairman Goldner and Atty. Speidel*
8 *conferring.]*

9 CHAIRMAN GOLDNER: Okay. Thank you.
10 So, we'll take the matter under
11 advisement, issue an order no later than
12 January 26, 2024, as requested by the Company.
13 The order will -- oh, actually, I think that's
14 all we need to talk about.

15 So, anything else? Did I miss anything
16 today? Everybody's good?

17 *[No verbal response.]*

18 CHAIRMAN GOLDNER: Okay. Thank you
19 very much. The hearing is adjourned.

20 ***(Whereupon the hearing was adjourned***
21 ***at 3:34 p.m.)***

22

23

24