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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

September 20, 2011 - 10:07 a.m.
Concord, New Hampshire

NHPUC OCT03'11 PM 1:11

RE: DRM 11-023
RULEMAKING:
Puc 100 - Organizational Rules and
Puc 200 - Rules of Practice & Procedure.

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: (No appearances taken)

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

ORIGINAL

I N D E X**PAGE NO.****STATEMENTS PROVIDED BY:**

Mr. Speidel 4, 47

Mr. Eaton 27

Ms. Geiger 36

Ms. Hatfield 38, 50, 52

Ms. Hollenberg 42, 49

QUESTIONS BY:

Cmsr. Below 7, 18

Cmsr. Ignatius 9, 14, 22, 24, 29, 50

Chairman Getz 12, 42, 45

P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the rulemaking hearing in Docket DRM 11-023. On July 28, 2011, the Commission voted to initiate a rulemaking for New Hampshire Code of Administrative Rules Part Puc 100, Organization rules, and Part Puc 200, rules of practice and procedure. A number of items are amended in the initial proposal, including a definition of "routine filings", sections governing requests for public access and for confidentiality, and release of confidential documents, and sections governing general filing requirements. There was an order of notice issued on August 26 setting the hearing for today, and, among other things, noted that a rulemaking notice was filed with the Office of Legislative Services on August 15. And, that the deadline for submission of materials in writing are due October 3. There was also an additional order of notice issued on the same day, indicating that an amendment would clarify Puc 201.05, concerning waivers of rules, to make clear that the Commission may seek waivers of rules on its own motion.

I'll note that there's a quorum present today pursuant to RSA 541-A. And, that the affidavits of publication of the notices have been filed.

{DRM 11-023} {09-20-11}

1 So, with that, unless there is some
2 summary or other statement from Staff, I would be prepared
3 to turn to comments from the public. Mr. Speidel, do you
4 have anything or --

5 MR. SPEIDEL: Yes, Mr. Chairman. The
6 Staff would like to draw the Commission's attention to the
7 fact that it has received a number of internal Staff
8 comments, and also informal comments from members of the
9 regulated public related to the roll out of these rules
10 under the interim format. They were very recent, and most
11 of the comments have come in after the opening of our
12 final rulemaking proceeding that has been noticed. As
13 part of that, Staff has gathered all the comments related
14 to what it thought to be the most germane matters that
15 required attention, and has created a written summary of
16 suggested edits that it would like to present to the
17 Commission as a comment in this proceeding.

18 I would like to have it noticed, if I
19 may approach the Bench --

20 CHAIRMAN GETZ: Please.

21 MR. SPEIDEL: -- and just provide copies
22 for you. I have provided copies to certain participants
23 here in the hearing room that were here.

24 (Atty. Speidel distributing documents.)

1 MR. SPEIDEL: And, I would also request
2 that this be noticed as "Exhibit 1", Staff
3 recommendations. And, I would be happy to discuss these
4 specific line edits as compared with the original version
5 of the Initial Proposal, if you'd like now, or I may do so
6 in writing, at your election.

7 CHAIRMAN GETZ: Okay. Why don't --
8 first thing is, I don't think we need to mark it as an
9 exhibit, but we will include it as a filing by Staff with
10 a date. And, you know, it might be easier for
11 completeness of the record that, actually, if you had like
12 a cover letter and a memo, and then we could do that.
13 And, if you want to highlight anything orally, then you
14 could do that as well.

15 MR. SPEIDEL: That would be great. I
16 would approximate happy to submit a memo and a letter.
17 But, just in the interest of going over what Staff had
18 been interested in doing, I can go over certain of these
19 edits, beginning on Page 1. We had created essentially a
20 definition of "routine filings" that drew upon the
21 legislative history of the enactment to our organic
22 statutes, charging us with creating procedures for the
23 confidential treatment of documents in routine filings.
24 And, you can see that, under Puc 102.19, there is a

1 definition provided, "routine filings" means documents
2 submitted, on a recurrent basis, by a utility to the
3 Commission." Now, there had been a list prepared and
4 approved by the Legislative Committee on Rules under
5 201.06, under Subpart (a), that included two items;
6 specifically, Items number (25) and (29). And, there had
7 been a little bit of ambiguity as to whether these
8 filings, which often arise in the context of adjudicated
9 proceedings, certainly within the initial phases of those
10 proceedings, as to whether they would be appropriately
11 listed as "routine filings". And, the ultimate decision
12 is that those are appropriately included because they are
13 very recurrent filings, but it has to be clarified that
14 the definition of "routine filings" is more related to the
15 recurrency of a filing, as opposed to its adjudicative or
16 non-adjudicative basis. So, that's worth keeping in mind.
17 And, the specific subparts are (25) and (29) of the list
18 (a).

19 Everything else, I have been advised,
20 are generally provided in the context of non-adjudicative
21 proceedings. But, to have a little bit more consistency,
22 we have the suggested edit to Puc 102.19.

23 In the field of errata, we've included a
24 readoption with amendment of Puc 103.01. And, this would

1 be recommended by Staff to the Legislative Committee on
2 Rules as an errata correction. I've been advised that the
3 telephone number provided in subpart (k) for the Consumer
4 Affairs Division was incorrect. So, I have pulled that
5 into this proceeding. And, it's essentially under the
6 jurisdiction of JLCAR to say "yes" or "no" to this. But,
7 I believe, in terms of informing the public as to proper
8 connections with our Consumer Affairs Division, it would
9 be advisable to have this little errata fixed. Going
10 onward, --

11 CMSR. BELOW: Can I ask, on that point,
12 is there a reason to delete the non-800 number as well?

13 MR. SPEIDEL: Well, I -- actually, I had
14 been looking through our internal telephone directory, and
15 wasn't certain as to whether that's a good number. And,
16 we have the 800 number advertised on our website. So, for
17 consistency -- without the 603 number. So, I thought
18 that, for consistency, it would be better to have the
19 1-800 number listed alone.

20 CMSR. BELOW: Okay.

21 MR. SPEIDEL: Continuing on, to Puc
22 201.04, on Page 3 of the Summary of Suggested Changes, you
23 can see that, under subpart (b), there's been a
24 clarification added. And, members of Staff and also

1 members of the regulated public have indicated that they
2 were a little bit confused by the statutory reference to
3 RSA 91-A:5, IV, within subpart (b), in that there is an
4 enumeration, referring specifically to RSA 91-A:5, IV.
5 And, apologies about some of these spacing issues. That's
6 related to the printer, doesn't show up in the original
7 document. But the enumeration under subpart (2), read in
8 conjunction with the original version of subpart (b), led
9 to confusion as to whether subpart (b) is only related to
10 Item (2).

11 Now, an earlier version of the rules had
12 been more expansive in its definition of what constituted
13 "confidential material". Of course, the root of all
14 confidentiality claims is subpart (4) under 91-A in nearly
15 every instance. There are a couple of other, such as
16 under subpart (1), there is an independent basis for
17 confidentiality, statutorily speaking. But this
18 clarification inserted into (b) is designed to indicate to
19 regulated entities that you have essentially, and also to
20 members of the public, that you essentially have all of
21 these subparts under (a) subsumed into (b), because it
22 reads "described in Section (a) above". It's just an
23 additional clarification.

24 Also, under subpart (b) of 201.04, in

1 part (2), the redaction format, we had received initially
2 not much feedback on this. But it snowballed quite a bit
3 from both staffers, including internal staff responsible
4 for document handling, and also regulated entities and
5 other parties, have indicated that the prescriptive
6 definitions for proper redaction have been very
7 problematic in certain instances. And, I believe certain
8 parties would be able to elucidate that a little bit more.

9 But what this provides is a little bit
10 of flexibility by indicating, in subpart (2), after the
11 requirement that the "REDACTED" legend be included in all
12 these documents, an indication that all confidential
13 segments in any manner that clearly indicates the scope of
14 the material redacted. That goes to the substantive
15 desire on the part of the Commission and other parties to
16 make sure that we have clear redactions that aren't
17 necessarily difficult to follow along and aren't
18 necessarily unclear. But providing that level of
19 flexibility would enable various stakeholders to more
20 efficiently produce documents for review.

21 CMSR. IGNATIUS: Mr. Speidel, as I
22 recall the early development of these rules, there was a
23 concern about marking for confidentiality, that it had
24 become too lax on some people's parts. And, we were

1 getting 30-page documents with a "confidential" stamp on
2 the cover, as if that thereby made the entire document
3 confidential, or every page would say "confidential", even
4 if it was a copy of a photograph, you know, a photograph
5 of an advertisement that had been in the newspaper,
6 clearly something that wasn't confidential.

7 And, so, as I recall, there was a real
8 effort to be very specific here, to make clear to people
9 that that kind of blanket stamping of materials or just
10 writing the word wouldn't work anymore. How do we make
11 sure, by giving flexibility, that we don't go back to the
12 problem we were seeing before?

13 MR. SPEIDEL: Yes, Commissioner. That
14 essentially goes to my next point. Which is, for
15 starters, you do have the requirement that the redacted
16 legend be indicated on every page. That has remained.
17 There are some adverse comments regarding that. But, I
18 think Staff, in the main, believes it to be a very useful
19 thing to have to avoid confusion.

20 And, second, there is, under this
21 revised version of (2), a suggestion that we have some
22 requirement that the scope of the material redacted is
23 clearly indicated. And, in order to fill the interstices
24 of that, for most instances, Staff is recommending that we

1 would offer a practice guide to practitioners on our
2 website, and ultimately provide a number of acceptable
3 redaction formats, and encourage practitioners to contact
4 us if they have an alternative format in mind, so that we
5 do give initial feedback on it.

6 I believe that would take care of
7 98 percent of the filings that we receive. And, for that
8 2 percent where there are ambiguities related to technical
9 issues, for example, Excel format filings, we would be
10 able to work with filers to ensure transparency in
11 redaction.

12 CMSR. IGNATIUS: I think that's an
13 interesting suggestion that makes sense. Another idea,
14 have you thought about returning the materials or sending
15 notice back to someone who files something that's just
16 clearly beyond the scope of what should be protected by
17 just stamping everything "confidential", to notify them
18 that it's not in compliance and sort of give them one more
19 chance or tell them that it won't be protected because
20 it's not acceptable?

21 MR. SPEIDEL: I believe that had been
22 under consideration. But, after a careful analysis of RSA
23 91-A, I believe the determination was made that only the
24 Commission, as a decision maker, can issue a ruling on

1 confidentiality scope. And, so, this procedure creates a
2 time line. In most instances, under motion practice, the
3 Commission's decision on confidentiality is nearly
4 contemporaneous with the motion under consideration. In
5 this instance, it is triggered, this decision-making
6 process is triggered by a request from the public under
7 the "routine filings" rubric.

8 So, it's hard to get around the fact
9 that at some point the Commission must issue a decision.
10 And, Staff, I believe -- I hesitate to use the term "abuse
11 of discretion", but it might be overstepping the
12 boundaries of Staff's authority to engage in such
13 analysis. Because, for every instance where Staff had the
14 right idea, it might have the wrong idea. And, there's
15 also notice and due process issues to consider there under
16 91-A, and also administrative efficiency and resources.
17 These filings are coming in on a daily basis. And, Staff
18 has strongly indicated to me that it's uncomfortable with
19 having to contemporaneously with essentially processing
20 these documents into the Commission and getting them out
21 to the public in various fora, making snap decisions on
22 91-A. So, that was considered, but I think, ultimately,
23 we decided against that.

24 CHAIRMAN GETZ: Well, it seems like

1 we're going in two different directions. Then, if there's
2 like a difference between a substantive defect and a
3 procedural defect that Staff would be in the position of
4 having to make some kind of judgment about. So, I guess
5 that gets you down to, the more complicated we make the
6 rule, from a procedural perspective, the easier it is for
7 Staff to say there's a procedural defect and send it back,
8 the more general we make it, in terms of ways to comply,
9 do we get down the path of Staff having to exercise
10 discretion? And, it sounds like what's going on here is
11 that the filers of information are basically saying "this
12 is too complicated a way of handling this specific thing,
13 and maybe there's a better way."

14 MR. SPEIDEL: I believe that is the
15 case. They can speak to their own point of view on this.
16 We luckily have a few folks that have come in and will
17 probably speak their mind about it. But, from what I had
18 gathered, the issue at hand is that these prescriptive
19 redaction formats might work for certain types of
20 documents, but not for others. Where there could be
21 completely equivalent, as far as substantively noticing
22 members of the public with public versions of the document
23 in hand as to what has been redacted, that don't
24 necessarily fit in the rubric. So, you have numbers of

1 permutations of alternatives starting to grow. And, I
2 think we are able to -- Staff is able to apply a fairly
3 good yardstick to what constitutes, in the context of the
4 practice guide, what constitutes a reasonable method of
5 redaction. And, beyond that, as far as the scope of
6 redactions are concerned, that analysis is triggered by a
7 91-A balancing test that the Commission engages in. We
8 can't necessarily do that. But we can certainly
9 ministerially enhance the redaction format that is
10 selected by a given filer. If it's defective in the sense
11 that it's unclear or confusing or would tend to provide
12 members of the public with less information than they need
13 about the scope itself, not necessarily a judgment on the
14 scope, but just an indication, information flow. That's
15 what we're looking for. So, the practice guide, in
16 conjunction with informal Staff feedback in the outlier
17 situations, I think would take care of that.

18 CMSR. IGNATIUS: Another thought. Have
19 you thought about the idea of a statement inserted into
20 the rule that says something to the effect that "a blanket
21 stamp of confidentiality over an entire document is not an
22 acceptable method of redaction", something like that?

23 MR. SPEIDEL: I think the hesitancy
24 there is that there might be instances where a document is

1 substantively confidential in its entirety. If you could
2 imagine a very simple database list printed out or an
3 electronic form of customer names and Social Security
4 Numbers, for example, credit reports, something along the
5 lines of that. Something that's very sensitive. It's
6 better to give an inherent flexibility in that it's
7 indicated that redaction is the method of choice for
8 submission of public versions of confidential documents
9 versus *in toto*. And, I think practitioners also they're
10 aware that the farther out they go from settled precedent
11 on 91-A, the more risk they expose themselves to. So,
12 there is a level of discretion on the part of the
13 practitioner. They have to apply good judgment and good
14 prudence on how they submit documents. And, through this
15 rule, we have indicated that, for routine filings, there
16 is a 91-A balancing test that's triggered upon a member of
17 the public requesting the information. Now, if a member
18 of the public doesn't request the information, it's a moot
19 point after however many years. But, if someone does, a
20 balancing test comes into play. And, the reasonableness
21 of redactions in their scope can be assessed by the
22 Commission independently.

23 And, I would point you to a specific
24 provision of our rules that we've integrated. Let's see.

1 You can take a look at Page 6, (g). That's subpart (g) of
2 Puc 201.07. And, again, there's a silly space, but it's
3 not in the original version of the document. Under (2),
4 there's an indication that the Commission, acting pursuant
5 to RSA 91-A:5, may "approve the partial release of the
6 requested documents, subject to redactions approved by the
7 Commission."

8 Now, inherent in that is the fact that
9 the Commission, if it were to believe the redactions
10 prepared by the Company in its filing, as part of the
11 "routine filings" provisions, would be overbroad in its
12 redactions, the Commission could cure that at its own
13 election.

14 So, I think, in our practice guide,
15 certainly, in filling in the interstices of these rules,
16 we're going to be very specific about urging parties to
17 redact whenever possible, and to avoid blanket claims for
18 confidential treatment, because, truthfully, if you have a
19 means of redaction, you should use that. And, even if you
20 have a simple heading that reads "this is what was in this
21 document, and the rest truly was confidential", again,
22 Social Security Numbers and *etcetera*, you should try to do
23 that. So that there is a little bit of notice of what's
24 out there in the public records.

1 But, on a day-to-day basis, I think that
2 parties have indicated that they are ready to engage in
3 redactions under this "routine filings" statute and
4 rulemaking, because they really have received a little
5 bit, from the Legislature, a little bit of regulatory
6 relief, in that they don't have to file a motion in every
7 instance for these categories of filings. So, there's a
8 bit of give-and-take there.

9 CMSR. IGNATIUS: One final thought. I
10 respect you've thought a lot about this, and everybody is
11 trying to find the right level of exactitude and
12 flexibility, which is very difficult. But I'd ask you to
13 think again about the future we're heading to. All of the
14 rules, the suggestion that "if no one in the public ever
15 asks to see these, we don't really have to take it up",
16 and then we can determine if the redaction is appropriate
17 or not. That works when we're dealing with hard copies in
18 file cabinets. But, if we're getting to an increasingly
19 electronic world and posting a lot of the materials that
20 we have automatically on file, the amount of information
21 that should be posted should not be overly redacted.
22 That's a very bad sentence, isn't it? The hope would be
23 that most of the documents that are being posted have
24 careful redactions only to the extent that the submitter

1 truly believes are appropriate under New Hampshire law,
2 and some of these are companies that may have different
3 policies in other parts of the country, that they are
4 appropriate under 91-A. And, if there's a dispute about a
5 particular issue, and people want to see more than has
6 been publicly available, obviously, we'll take that up.

7 But I, and perhaps your practitioner's
8 guide and outreach will solve that, and that I think it's
9 a very good suggestion to help people understand the
10 importance of this. Maybe trying to go further in the
11 rule is not worth further thought. But, I guess, just
12 think that through one more time and see if anything
13 further comes to anyone as a way to make absolutely clear
14 what our concern is. Thank you.

15 CMSR. BELOW: Well, I'd be curious to
16 see an example of a document for which one of these two
17 prescriptive approaches doesn't work. But, supposing
18 there are documents or issues with one of these two
19 prescriptive approaches, I'm also wondering if another way
20 to resolve this might be to change the either (a) or (b),
21 in this subparts (b)(2) and (c)(2), to either (a), (b) or
22 (c), and make (c) the third element, retain the two
23 prescriptive ways of showing confidential and indicated
24 redactions, but, in (c), (a), (b) or (c), in (c) say "or

1 indicate all confidential segments in a manner that
2 comparably clearly -- comparable to (a) and (b), in a
3 manner that is comparable to (a) and (b), clearly
4 indicates the scope of the material redacted." And, then,
5 in (c)(2), it might say "indicates", you know, (a) or (b)
6 or (c) "indicates all redactions in a manner that -- in a
7 manner that comparably clearly indicates the material
8 redacted in the redacted version." Something like that,
9 where you maintain the two prescriptive approaches, but
10 say, if for some reason that doesn't fit, a third approach
11 that is comparable to the first prescriptive approaches
12 could be an alternative.

13 MR. SPEIDEL: This is a little bit
14 secondhand, but I can sort of convey what I had heard were
15 the big problems with these prescriptive approaches. The
16 first problem was that folks were in a state of confusion
17 where they didn't understand that these were alternative
18 approaches. So, they were trying to do both. They were
19 having "END CONFIDENTIAL", "BEGIN CONFIDENTIAL", and the
20 black line, both. And, it tend to lead to -- it could
21 lead to some confusion on their part as to whether which
22 approach was appropriate and what combination of
23 approaches was appropriate.

24 The second issue that I heard was

1 related to the fact that many documents are not being
2 generated by the filers themselves. In the sense that
3 there are documents that are being prepared or submitted
4 by a law firm on behalf of a client. So, there's one
5 degree of separation. And, then, the client itself, the
6 regulated entity, in most instances, would have contracts,
7 other materials that are being sent in from third party
8 sources. So, for example, if a utility has a gas contract
9 with someone, gas supply contract, this material is being
10 provided in paper format. Instead of being able to take a
11 black mark and simply X through it, in one fashion or
12 another, you know, that's not necessarily a problem. But,
13 then, how do you highlight things in gray on one of those
14 documents?

15 CMSR. BELOW: A blue highlighter will
16 typically reproduce as gray. But --

17 MR. SPEIDEL: But it's not quite as
18 automatic. And, it takes an awful lot of resources,
19 that's what I've been told.

20 CMSR. BELOW: Well, what have you heard
21 the alternative to that would be? Might they underline
22 it? I mean, I guess that might be an alternative
23 approach. If it's a secondhand document that you're
24 manually marking up, still do the black line for showing

1 the redaction, I mean, that's typically how it's done,
2 they black out what they want to redact. And, then,
3 instead of a gray highlight, you could perhaps underline
4 it or circle it.

5 MR. SPEIDEL: I think the practitioners
6 that I've heard from have indicated that there's different
7 ways of doing things, different ways of skinning the cat.
8 That, when you're creating an enormous filing, with
9 hundreds of pages, and you might have quite a bit of
10 redaction going on, it's better to sort of "play it as it
11 lies", depending on what you're filing. So, for an Excel
12 file, something might be appropriate for that. And, I've
13 heard that these, in particular, for tables and other
14 spreadsheet-type items, and we get a lot of spreadsheets
15 here, this is a little bit of a tricky methodology, both
16 alternatives. And, then, for ordinary testimony, maybe
17 one version. But, as long as it's clear and it's
18 consistent. And, so, that a thinking person, one party or
19 another party, might be able to pick it up and fairly
20 quickly figure out "oh, this is redacted, and this is what
21 was redacted." I think the idea is to give practitioners
22 a little more flexibility when they're in the trenches and
23 trying to get all of this in to us, since document
24 production issues might start to snowball going forward.

1 And, we hadn't heard from folks for a while. But, after
2 some time, they have begun to let us know that they have
3 tricky situations that arise in day-to-day work that they
4 really weren't prepared for.

5 So, again, it's a small leap of faith,
6 but this is a fairly hard standard. Clearly indicates the
7 material redacted in the redacted version for the
8 confidential piece under subpart (c) and under subpart
9 (b), "in any manner that clearly indicates the scope of
10 the material redacted." Again, if Staff gets something
11 where the redactions are completely unclear, uncertain,
12 don't fall within the "safe harbor" delineations of the
13 practice guide where we indicate best practices, and we're
14 looking at this thing, and we know that we can't make
15 heads or tails of it, we would ask the practitioners to
16 step up to the plate and improve that. But I think that
17 would tend to be the exception rather than the rule.

18 And, this is certainly a change that has
19 given everybody notice that they have to take redactions
20 more seriously. And, our practitioner community is pretty
21 small. So, I think they're getting the message that they
22 have to have a sharper pencil for that.

23 CMSR. IGNATIUS: Mr. Speidel, one more
24 thing in that section, just a minor editing note, when

1 you're putting together the final clean version of this.
2 On Page 4, (c)(2), you need to remove the -- either (a),
3 which is taken out of the parallel section, --

4 MR. SPEIDEL: Yes.

5 CMSR. IGNATIUS: -- and (b), the prior
6 page. It just needs to come out of this one as well.

7 MR. SPEIDEL: Yes, I will certainly do
8 that. I'm going on to, I think, we have, in our comments,
9 we would like to clarify under parts (25) and (29),
10 there's a parallel construction. Where it reads
11 "submitted in connection with cost of gas proceedings,
12 including responses to data requests." Ditto on (29). We
13 wanted to make clear that you could include responses to
14 other parties' data requests. And, then, under subpart
15 (b), there's an edit where we've suggested that "those
16 parties submitting documents pursuant to Puc 201.06 shall
17 indicate that they're relying on Puc 201.06 and Puc 201.07
18 in their request for confidential treatment." This
19 indication could be in the form of a simple cover letter
20 or, for electronic filings, it could be in the form of a
21 check mark on a PUC form. Just something that gives
22 guidance to folks that this is being relied on.

23 There's also a clarification here added
24 at the suggestion of Staff that, "For paper filings

1 pursuant to this rule, parties shall file one public copy
2 and one confidential copy. For electronic filings, both a
3 public and a confidential version shall be prepared."

4 That clarifies the fact that, for routine filings, we
5 don't really need the motions practice number of copies.
6 It's a little -- it's a little much. And, if somebody
7 wants to get ahold of these materials, they could request
8 it from the Commission and photostats could be prepared
9 per the usual procedures. And, of course, public versions
10 would be fairly simple to disseminate one way or the
11 other, electronically or through hard copy format upon
12 request.

13 CMSR. IGNATIUS: Can I ask you a
14 clarifying question? On that Section (b), the first of
15 the edits say that, "if you're relying on Section 201.06,
16 you should so state." What is the problem that that edit
17 is trying to resolve?

18 MR. SPEIDEL: Well, again, we heard from
19 some practitioners that they just felt a little bit
20 uncomfortable tendering something without a firm rule
21 telling them that they need to ask for this. I know that
22 sounds a little odd, but we have folks out there that are
23 pretty fastidious in terms of how they prepare their
24 filings. And, they like to be able to have a paper trail

1 indicating "this is what we filed this under." So, it's
2 just a little bit of a -- a little bit of a handhold
3 there. But I think it's something ministerial that could
4 be added without too much fuss. And, it actually is
5 helpful for Staff as well, in that we would be able to
6 have something to go back to see "Aha. On April the 15th,
7 this was filed pursuant to the routine filings
8 confidentiality rules."

9 CMSR. IGNATIUS: Thank you.

10 MR. SPEIDEL: And, going on to Puc
11 203.02, Page 7. And, there's a little bit of
12 clarification. And, since we do have a vehicle here that
13 has been noticed, we're just trying to have our clerk's
14 office's ideas implemented for improvements in filings and
15 reduction of excess paper. Here there's an indication
16 under subpart (a)(1) of 203.02, where we say that, if
17 you're filing a motion for confidential treatment, you're
18 going to file one public copy, which will, of course, will
19 be disseminated electronically to the whole world on our
20 docketbook vehicle, and then seven confidential copies
21 that could be used by Staff, *etcetera*, to review. So,
22 that reduces the amount of paper that's being floated
23 around.

24 Also, under (c), and similarly under Puc

1 203.04(a)(1), (c) is, essentially, it's a little bit of a
2 ticket hook that we can get the probably less redundant
3 change under 203.04(a)(1) happen under this particular
4 rulemaking, we ask that documents filed pursuant to these
5 rules be printed double-sided to reduce paper and help
6 solve some of our storage issues.

7 And, then, finally, if you were to turn
8 to Page 9, we have 203.22, the "Exhibits" changes. And,
9 just as a reminder, the black line changes that are
10 underlined are what has been proposed thus far in the
11 current rulemaking. And, what we have added in red is a
12 clarification that "the noticing of previously submitted
13 filings would be limited to the current docket", to avoid
14 a collateral problem where ancient filings from other
15 dockets might be pulled in without careful inspection and
16 notice to the other parties. The idea is, you want to
17 avoid redundant filings where you have things noticed as
18 exhibits and then you have seven copies filed within the
19 hearing room. But, for efficiency sake, you can simply
20 ask and request that these be noticed, and the Commission
21 is the ultimate arbiter of that. And, of course,
22 objections could be raised by any party participating at
23 that point if they feel that's inappropriate.

24 So, that's essentially the summary of

1 Staff's suggested changes, beyond what has already been
2 proposed in black line underline. And, I think, with
3 these changes, these rules could become very helpful and
4 useful and efficient for parties and for the general
5 public. And, I would like to thank you for your time.
6 And, also, I'd like to thank all the different
7 practitioners that have weighed in on these over the last
8 several months. And, I think it's very helpful and
9 useful, whenever we have early comments, late comments,
10 whatever sort of comments, it really is useful, because
11 sometimes, when you're creating something, you don't
12 really know how it operates until it's road tested, and
13 many hands make light work and that sort of thing.

14 So, thank you again. And, I would like
15 to cede the floor for whoever would like to speak about
16 these. Thank you.

17 CHAIRMAN GETZ: Is there any further
18 examination of Mr. Speidel?

19 (No verbal response)

20 CHAIRMAN GETZ: Okay. Then, let's turn
21 to public comment. Mr. Eaton, do you have something?

22 MR. EATON: Yes. Yes, I do. Thank you,
23 Mr. Chairman. For the record, my name is Gerald Eaton.
24 And, I am Senior Counsel for Public Service Company of New

1 Hampshire.

2 We agree with the change to the
3 definition of "routine filings", and I'll explain. There
4 are certain routine filings that we make in the context of
5 Energy Service dockets that are almost standard questions
6 that are asked by the Staff, and that we have, I've looked
7 back at my records, and we have filed a motion for
8 protective order since at least 2008. And, these include
9 renewable energy certificate purchase plans in the context
10 of the docket, where we look back at the results of the
11 previous year REC sales results and REC purchase results.
12 There are generation station maintenance schedules that
13 are requested each time and have been afforded protective
14 treatment by the Commission after filing -- after filing a
15 motion for protective order. And, the changes to the list
16 of routine filings in Section 201.06(a)(29) take into
17 account power supply contracts, which are asked for from
18 time to time. But I think also what could be added to
19 that is fuel prices. Sometimes fuel prices are requested
20 without the whole contract. And, I think those would be
21 categorical.

22 Now, certain questions may arise in the
23 future that become routine. In other words, how many
24 motions should a company file? I don't know what the

1 request would be. But, in these categories I listed, I
2 know I have filed on behalf of Public Service Company
3 motions for protective order for four years in a row.
4 And, we'll probably do it again this fall, if the rules
5 are not effective. But I don't think the Commission ought
6 to -- or, the Commission may want to have some general
7 language in here that "after two motions for protective
8 order have been filed and approved on the same subject
9 matter, that matter can become a routine -- a routine
10 filing." Perhaps Legislative Services won't approve of
11 something of that sort, but it's a thought.

12 CMSR. IGNATIUS: Mr. Eaton, are you --
13 your opening comment about things that routinely are
14 requested in your Energy Service dockets, I couldn't tell
15 if you were saying you think that the draft that
16 Mr. Speidel circulated will cover those or there should be
17 language added in order to cover those items?

18 MR. EATON: And, as the state of that
19 particular regulatory action is concerned, I would request
20 that the items that I listed be added to Item Number 29.
21 Item 29 looked like it was written for the companies that
22 don't generate their own electricity, and simply, not
23 "simply", but they solicit bids for power supply
24 agreements. And, we have power supply agreements as well,

1 but we also generate. And, some of the issues that are
2 routinely requested in Staff data requests are
3 confidential and have been approved, after PSNH has filed
4 a motion for protective order.

5 And, for instance, in the upcoming
6 Energy Service docket, the Staff's -- one of Staff's
7 standard question is "what are your plans for producing
8 and purchasing renewable energy certificates in 2012?"
9 That would give away some strategies of we want to buy --
10 we think the prices are currently low and we want to buy
11 them all in the last quarter of 2011. That, if that were
12 public, then there would be, you know, we would have less
13 bargaining positions.

14 But these are items where Public Service
15 Company has requested protective treatment through motions
16 for protective order. And, if the same questions are
17 asked as they have been before, and they usually --
18 Mr. Mullen has the list in the technical session following
19 the procedural hearing, and says "Here's the standard
20 questions." We say "Thanks. We'll get working on them."
21 They become routine. Like -- it's not quite like the 1600
22 rules, but it's standards -- it's standard questions that
23 we get asked each year, and the Commission has made a
24 determination that that information should be protected.

1 CMSR. IGNATIUS: Well, it would be
2 helpful if you could propose actual language to insert
3 into looks like Section (25) and Section (29).

4 MR. EATON: Yes.

5 CMSR. IGNATIUS: And, it would be
6 interesting to hear from others here, that's beginning a
7 broadening of the rules, once you start getting into
8 adjudicative cases, there -- would there be changes as
9 well people would want in rate cases, let's say? That's
10 something that there are often the same sorts of
11 information requested. It seems to me we're getting
12 further and further away from what was intended by the
13 "routine filing". But some of the description of things
14 we see in the Cost of Gas proceedings and the Energy
15 Service/Default Service proceedings, I'm sympathetic to
16 that they are routine, and having this procedure in place
17 might make good sense. But I'm worried that we are going
18 to vastly expand what's considered "routine", because over
19 the course of a number of years we see them more than a
20 few times.

21 So, it would be interesting to see your
22 list of actual language, how you would define those
23 additional items that you think should be included.

24 MR. EATON: The other item that I would

1 -- that Public Service Company would very much like to see
2 added to this list is perhaps something that isn't
3 routine, but should always be confidential. And, that is
4 critical -- diagrams or descriptions of critical utility
5 infrastructure. I'm reminded, when the rules about
6 confidential information were first introduced, the head
7 of Engineering sent the Commission's Chief Engineer a copy
8 of our sabotage plan, how PSNH would protect against
9 sabotage. And, it was just a simple request that a Staff
10 member of the Commission made of a staff member at Public
11 Service Company, and did not -- and did not go through the
12 Legal Department. It wasn't part of any docketed
13 proceeding. But, according to the Commission's rules, it
14 passed the Commission's door, it was a public document,
15 and really shouldn't be.

16 Now, these -- I can't represent that
17 these are "routine filings". But anything that would
18 describe critical utility infrastructure, and I believe
19 that's the term that the Federal Energy Regulatory
20 Commission has defined, and I will get the definition for
21 the Commission. You may need to -- you may need to note
22 it or adopt it into the "Definitions" section. But that's
23 something that, if nothing else, it should perhaps be a
24 signal to the Staff that something like that should not be

1 posted on the Commission's website if it's submitted.

2 One issue that was brought up in the
3 discussions, which had to do with items from the electric
4 company perspective, Items Number (26), (27), and (28),
5 and the requirement that the company submit both a public
6 version and a redacted version, and whether that might
7 become difficult or cumbersome on a regular basis. I have
8 an example of one report that is filed confidentiality --
9 confidentially and electronically, and a suggestion as to
10 how that might be handled most efficiently. If I could
11 approach?

12 (Atty. Eaton distributing documents.)

13 MR. EATON: This is a recent copy of
14 Public Service Company's Form E4. And, it's an Excel
15 spreadsheet that is -- that's populated by Public Service
16 Company. And, I represent that, under the column
17 "Customer's Name and Address", were names and addresses of
18 the actual customers who made the -- who made the request
19 for a meter complaint or meter test. And, it shows the
20 results of the meter tests, which is not a confidential
21 matter, but the names and addresses of the customers are
22 confidential. We would suggest that, in order to continue
23 to keep the process most efficient and electronic, that
24 the Staff could come up with a separate form that

1 eliminates the column of "customer name and address". It
2 could be "Form E4-Redacted". And, that the person who
3 fills this out, and it's certainly not me every month,
4 it's someone in the Meter Department who enters
5 information into this report, could enter the same
6 information again into a Form E4-Redacted, and nothing
7 would appear in the customer name and address, and except
8 for the heading could say that "customer name and address
9 are redacted for the public version of the document."

10 In the case of voltage complaints, I
11 looked at that form. And, I think, after the case of
12 *Appeal of Brian Lamy*, that form does not contain any
13 customer-specific information currently. It's merely
14 identified on what circuit it's on and what district the
15 voltage complaint comes from.

16 I wasn't able to look at any accident
17 reports. But, if I had or Public Service Company has any
18 suggestions concerning accident reports, number (28) on
19 the list, we will submit those with our written comments
20 on October 3rd.

21 There's a couple of comments I'd like to
22 make about your discussion with Attorney Speidel. I
23 believe under the Administrative Procedure Act, there are
24 certain timeframes where the Commission can either accept

1 or reject a filing. And, I think, as the questions that
2 Commissioner Ignatius had concerning something that's
3 clearly not all confidential, and that the company really
4 took much too easy an approach to it by marking the whole
5 thing or redacting every line of the document, the
6 Commission could reject that as something that was not in
7 compliance with these rules, it was not a good faith
8 effort to comply with the rules. And, there are
9 timeframes, I believe, in that, in the Administrative
10 Procedures Act for addressing that.

11 On the other side, I believe some of the
12 -- there may be documents that are truly very, very
13 voluminous, populated with both public and confidential
14 information, that may be very, very hard or very, very
15 cumbersome or burdensome to redact. And, I think that the
16 process in that fact would be to -- or, in that instance,
17 if the utility really thought it was very difficult to
18 comply with the rules, and burdensome, that it could
19 submit a confidential copy with a -- and with a
20 description of how difficult it would be to redact that,
21 that particular document, I'm thinking of an Excel
22 document, with lots of data in different places, and
23 request for a waiver of the rules. And, one of the
24 standards, I think, for a waiver is it's burdensome to the

1 party to comply. And, I don't think you need to say that
2 "any document over 20 pages" or "any document that has
3 10,000 data points and 3,000 are confidential." It's
4 something that I think, in good faith, a company ought to
5 file a request for a waiver in that particular instance as
6 to why it would be burdensome to comply with the rules.

7 Other than that, I have no further
8 comments.

9 CHAIRMAN GETZ: Ms. Geiger.

10 MS. GEIGER: Yes. Thank you, Mr.
11 Chairman and members of the Commission. For the record,
12 I'm Susan Geiger, from the law firm of Orr & Reno. I
13 represent Unitil Energy Systems, Inc. and Northern
14 Utilities, Inc. And, I would like to thank Staff for
15 convening a very productive work session yesterday, at
16 which several Staff members and representatives of the
17 utilities and other practitioners attended and provided
18 comments, that are largely reflected in the revised draft
19 that Mr. Speidel has furnished this morning. I think it
20 was a very good effort. And, I think that, ultimately,
21 the process worked. Attorney Speidel did some very good
22 outreach to members of the Bar, through the Bar Section,
23 telecommunications, energy, and utilities. And, I think
24 there was a good showing there yesterday.

1 Unitil will continue to monitor this
2 rulemaking and may file comments by the deadline on
3 October 3rd. I think a lot of the issues that we
4 originally had have been addressed by Staff in the revised
5 document that you have before you.

6 The only areas that I'd like to provide
7 a few comments on, just to help the Commission perhaps
8 understand a little bit better about where some of the
9 practitioners were coming from and Staff as well
10 yesterday.

11 In terms of specifically enumerating or
12 describing the method by which redaction should occur or
13 highlighting or shading should occur on the unredacted
14 confidential documents, at least for Unitil, the Company
15 has found that, in providing that gray highlighting that
16 had been set forth in the interim rules, that, in some
17 cases, copying of the document resulted in a complete
18 obliteration of the data. So that what you ended up with,
19 basically, was two redacted versions of the same material.

20 So, I think that Commission's Below's
21 suggestion is well taken, and as well as the version of
22 the language that appears in this draft, where the filer
23 would get some flexibility to designate, in the unredacted
24 confidential version of a document, those portions of the

1 information that should be maintained as confidential.

2 I think the other thing that the
3 Company, Unitil, had been concerned about was making sure
4 that the "routine filings" definition was not just limited
5 to things outside of an adjudicative proceeding. The
6 "outside of an adjudicative proceeding" has now been
7 eliminated in this version, in the most recent version
8 provided by Staff, so I think that that is very helpful.

9 I will take back to my client all of the
10 others comments that have been made here to today. And,
11 again, we may be providing some additional written
12 comments, in addition to those I've just given you. And,
13 I'd also like to thank the Staff again for working with
14 the companies and other practitioners to develop a set of
15 rules that I think will serve everyone well. Thank you.

16 CHAIRMAN GETZ: Ms. Hatfield.

17 MS. HATFIELD: Thank you, Mr. Chairman.
18 I'd like to begin by stating our objection to the fact
19 that a meeting was held yesterday that the OCA was not
20 made aware of. And, we wonder if there were actually any
21 members of the "public" that Attorney Speidel referred to,
22 because it sounds like it was a utility meeting.

23 We are going to file written comments,
24 but I did want to make just a couple comments today. One

1 is with respect to, on Page 2 of the document that was
2 handed out this morning that the OCA did just see for the
3 first time at approximately 10:00 a.m., on Page 2, under
4 Puc 104.01(e), you will see that there are two types of
5 information that the Commission shall not be required to
6 release. Number (1) is "confidential" and Number (2) is
7 "not a matter of public record". And, the OCA is not
8 aware that there is a difference between those two things.
9 So, we don't know what type of document would be not
10 confidential, but also not a matter of public record.

11 On Page 3, under Puc 201.04, we oppose
12 the changes in this document. The OCA has been complying
13 with this approach since at least 2007, when we worked
14 with other parties in the FairPoint case to develop this
15 approach. It's been extremely workable. And, since the
16 Commission put the interim rules in place, we have been
17 following the interim rules with absolutely no problem.

18 In fact, Attorney Hollenberg just made a
19 filing in the PWW/Nashua case, where she was able to apply
20 the confidential markings in the document and use the
21 shading in an Excel spreadsheet with absolutely no
22 problem. And, the only issue that I'm aware that has
23 arisen with compliance with the interim rules has actually
24 been Staff not complying with them.

1 We are likely to have comments regarding
2 the list of items that begin on Page 4, under Puc 201.06.
3 It's our recollection that the legislative discussions
4 about the statute that required this rulemaking intended
5 that routine filings would be reports and things that
6 companies file routinely. And, for the most part, that
7 list does include those types of reports. But the types
8 of things that Attorney Eaton is proposing seem to us to
9 go beyond the intention. And, we would agree with what I
10 think I heard Commissioner Ignatius saying, that some of
11 these suggestions are getting further away from what was
12 intended to be routine. And, we'll specify that in
13 writing.

14 And, one specific thing I would note
15 under that section, subparagraph 29, it states "and
16 purchase power supply agreement materials". That seems
17 very broad. And, you know, I would just note that the
18 Commission has recently ruled, in at least one case, that
19 purchased power agreement materials actually were public
20 materials.

21 On Page 7, under Puc 203.02, under
22 "filing requirements", we will provide in writing
23 suggested language related to filers being now required
24 under the OCA statute, 363:28, that they must provide

1 confidential copies of filings to the OCA. And, it would
2 certainly be helpful to our office if language to that
3 effect were included.

4 And, we want to thank Staff for adding
5 the requirement that documents be two-sided. That
6 certainly will help reduce paper in the OCA's offices as
7 well.

8 And, the last thing that I wanted to
9 say, before Ms. Hollenberg speaks, is I just wanted to
10 refocus perhaps some of the discussion, and cite to a case
11 that the Commission cited to in Order Number 25,168, that
12 it issued in DE 10-195 on November 12th, 2010. Where the
13 Commission cited the *Lambert versus Belknap County*
14 *Convention* case from 2008. And, they said "The purpose of
15 the Right-to-Know law is to ensure both the greatest
16 possible public access to the actions, discussions, and
17 records of all public bodies and their accountability to
18 the people. We resolve questions regarding the
19 Right-to-Know law with a view to providing the utmost
20 information."

21 And, we note that that again is from a
22 Commission order. And, the Commission, we think, has been
23 very carefully considering issues under the Right-to-Know
24 law recently. And, so, the tone of our comments will be

1 certainly to try to preserve the public's right to know,
2 while also trying to make it easier for utilities and
3 other filing parties to comply with the rules. Thank you.

4 MS. HOLLENBERG: And, if I just might
5 make one comment. I think that it seems to me that the
6 focus has gone away from the underlying purpose of the
7 Right-to-Know law, in that it's really going to be the
8 Commission's job to produce documents to the public if
9 they're requested. And, if they're receiving documents
10 that the utilities have a broad deal of discretion to
11 redact or not redact, it will be the very Commission Staff
12 that you're seeking to avoid work for or burdening them
13 with the redaction process, who will then have to follow
14 up with the utilities and get a redacted version of the
15 documents.

16 So, just because a document is filed
17 with the Commission, it's really about -- it's about the
18 public's access to that document. And, if it's not
19 redacted at the utility, the Commission's staff is going
20 to do the redactions. And, if it's difficult for the
21 utility, I imagine that it would be even more difficult
22 for the Commission Staff to be doing the redactions to the
23 documents filed by utilities. Thank you.

24 CHAIRMAN GETZ: How would that play out?

1 Then, are you --

2 MS. HOLLENBERG: If you -- so, if you
3 receive a document filed by a utility that's stamped
4 "confidential" or is not properly redacted, and you get a
5 request from a member of the public for --

6 CHAIRMAN GETZ: Could you stop right
7 there. So, you mean "not properly redacted" means like
8 "too much is redacted"?

9 MS. HOLLENBERG: Right. Right.

10 CHAIRMAN GETZ: Okay.

11 MS. HOLLENBERG: And, you get a request
12 from a member of the public, it's going to be you and your
13 staff that will have to ascertain whether or not the
14 redactions are appropriate. I mean, you're going to have
15 to do -- there's a lot of work that goes into redacting.
16 We do it all the time. Someone's got to do it. Do you
17 want the Commission to do it or should the utilities have
18 the burden of doing it?

19 And, I guess it's our view that it's the
20 utility's burden to provide the Commission with documents
21 that can be available to the public without more work.

22 CHAIRMAN GETZ: Yes, I was -- well, I'm
23 trying to think this through. It sounds like there's a
24 presumption that what's filed is not appropriate. So,

1 every document is suspect. And, for us to release every
2 document, then we would have to undertake a process to see
3 if the document was appropriately redacted before we
4 release it.

5 MS. HOLLENBERG: Without clear rules,
6 and rules that do not enable a significant amount of
7 discretion, the more discretion you give to utilities, in
8 terms of redaction, the more work will be for the
9 Commission, in terms of ascertaining whether or not the
10 redactions are appropriate. I guess my view is that the
11 more tailored the rules are, and you make the utilities
12 own the responsibility and burden of carefully redacting,
13 the less the Commission and its staff have to do, in terms
14 of making sure that documents are available and ready to
15 be received by the public.

16 CHAIRMAN GETZ: And, this you're drawing
17 from what's the proposal on Page 3 of what Mr. Speidel has
18 circulated?

19 MS. HOLLENBERG: I guess, up until this
20 point, you know, until this morning, our understanding of
21 the proposed rule was that it was going to set forth a
22 manner in which redactions would occur. We've been
23 battling in cases, since at least 2007, so, within the
24 context of proceedings, we've been having to deal with

1 getting properly redacted documents, and -- so that our
2 office has them available to provide to the public, to the
3 extent that we receive a request under 91-A.

4 I think that, and we're going to have to
5 take this back, this is something that we're just seeing
6 now, but I do believe that the more discretion that you
7 give to interpretation of these rules, the more you're
8 going to be doing to manage them in-house, within the
9 context of the Commission.

10 CHAIRMAN GETZ: Well, and this is the
11 first I've seen of this document as well, and maybe I'm
12 misunderstanding, and maybe Mr. Speidel or somebody else
13 can react to this. But what I was taking from this, these
14 proposed changes, and I think, you know, Commissioner
15 Below may have had even an improvement to it, was is there
16 -- it's not so much what gets -- substantively, what
17 should be redacted, but is there a easier technological
18 manner for redacting what needs to be redacted? That's
19 how I was -- am I off on this, Mr. Speidel?

20 MR. SPEIDEL: No, no. Precisely, Mr.
21 Chairman. The ultimate arbiter of the 91-A balancing test
22 within the context of the Commission is the Commission.
23 So, the Staff is not in a position to preapprove
24 redactions on the basis of scope. They can give advice to

1 filers, be they internal filers from Staff or be they the
2 OCA or be they the companies, that a redaction method
3 within this Staff-suggested framework, this is not in
4 force right now, I'd like to clarify, this Staff-suggested
5 change would allow a little bit more flexibility in terms
6 of methodology for administrative efficiency. Because I
7 have heard from our team down in the Clerk's Office, I've
8 heard from our Legal team and others that, internally, and
9 then, also, yes, from regulated entities, that there are
10 potential problems with a prescriptive approach, in that,
11 as you're preparing a 3 or 400-page document for
12 redaction, what might work for Pages 0 through 50, might
13 not work for Pages 51 through 60, or 61 through 110. The
14 methodology would be consistent, in that the redactions
15 would be plainly indicated and clear. That is the
16 standard under this Staff suggestion. But it doesn't
17 really matter as to which path you take for the different
18 types of material you're submitting. It would be a level
19 of clarity that any person who would pick up the material
20 afresh, and not having a first look at it, would be able
21 to tell "Aha, this is what was redacted from this segment
22 of the material." And, that's really the answer for that.

23 I think that behind this is that the
24 initial submission is not governing, as far as

1 confidentiality goes, vis-a-vis the public. Because the
2 moment a member of the public files a request under 91-A
3 for the material, the Commission is charged with the
4 balancing test analysis under the Supreme Court and other
5 standards that we have established in this state. So,
6 this is not a -- this is not an automatic system. It's a
7 system by which the Commission is able to administer its
8 responsibility for RSA 91-A balancing in an efficient and
9 appropriate manner.

10 CHAIRMAN GETZ: So, what may be
11 presumptive coming out of the "routine filing" statute may
12 not necessarily be presumptive for what gets released to
13 the public under a Right-to-Know law request, that's what
14 you're saying?

15 MR. SPEIDEL: That is correct.
16 Essentially, you have a system by which you've filed the
17 material, with redactions, without redactions, two
18 versions. And, given that these are routine filings, and
19 the level of public interest in these is relatively low,
20 that was, I believe, the Legislature's judgment, that an
21 enormous volume of these filings is being tendered to the
22 Commission in a given year, the level of public interest
23 is low. And, so, pendency of a Right-to-Know request,
24 what you have involved there is that you keep the material

1 securely. But the minute someone comes to the door,
2 whoever it is, and asks for it, that's when the Commission
3 is required to engage in the procedures that you have
4 under 07, 201.07, Puc 201.07, and have a balancing test,
5 and then release the material appropriately, or maintain
6 its confidentiality, if appropriate, or suggest
7 alternative redactions, if appropriate.

8 I think, to some extent, we are getting
9 ahead of ourselves, in that we forget that the reason the
10 Legislature passed this law is because they recognized the
11 fact that there was a tremendous volume of material that
12 did not attract interest of outside parties, and, in some
13 instances, had confidential material attached to it. This
14 is a fair solution to the problem. And, it was developed
15 by the Legislature, who, in turn, is responsible for the
16 creation of the 91-A scheme. It's important to keep that
17 in mind. And, I don't think substantive rights are being
18 harmed. Because what you have is, at the very first
19 instance when someone requests this material, full
20 protections under 91-A are in play, and the full precedent
21 that the Commission has so doggedly developed over these
22 years is in play. So, I just wanted to make that clear.

23 And, also, if I could just make a couple
24 of statements for the record. The first statement would

1 be that this proceeding, this rulemaking proceeding, has
2 complied with all requirements of the New Hampshire
3 Administrative Procedure Act. It was properly noticed.
4 That is why we have this public hearing today.

5 The second thing I would like to state
6 for the record is that, in Staff's view, Staff has the
7 right to receive information from various channels with a
8 great deal of discretion, and to seek opinions of members
9 of the public in the fora that it finds appropriate. That
10 could be informal, that could be formal. And, it's very
11 important to administrative effectiveness to be able to
12 get information from different sources.

13 CHAIRMAN GETZ: Well, I interrupted
14 Ms. Hollenberg. But let me say one thing, turning back to
15 OCA. It sounds like there's not a complete meeting of the
16 minds. We have October 3rd, I believe, is the deadline
17 for written comments. If there's some way to bridge what
18 gap there may be here, that would be useful. Or, if we
19 need, you know, additional procedures, then I guess we
20 could consider that.

21 But, Ms. Hollenberg, did you have
22 something further?

23 MS. HOLLENBERG: I guess I would just
24 remark that I think that my comments earlier had more to

1 do with the suggestion that Mr. Eaton made, which was
2 that, to the extent that there were burdensome redactions
3 that were necessitated or voluminous documents that would
4 be too difficult to redact, the fact that they would be
5 filed confidential only, without redactions, would, in
6 turn, cause the Commission to have to prepare redacted
7 versions, if they were requested. And, I think that
8 Ms. Hatfield has an additional comment to make.

9 MS. HATFIELD: Mr. Chairman, thank you
10 for referring to Commissioner Below's suggestion. I do
11 think that that is -- one way to deal with this is to
12 retain the suggested redaction approaches in the rules,
13 and then have a Subsection (c) that said something to the
14 effect of something, you know, "if complying with (a) or
15 (b) is not possible, you know, other approaches are
16 appropriate", as long as they, you know, are tailored to
17 only redact those materials that are necessary.

18 CHAIRMAN GETZ: Is there anything
19 further?

20 CMSR. IGNATIUS: I did have one
21 follow-up question on language that isn't new today, but
22 was raised by the OCA. And, that was on Page 2, 104.01,
23 Section (e), number (2). The OCA asked "what would be an
24 example of something that is "not a matter of public

1 record" and yet --

2 CMSR. BELOW: That's something that's in
3 the existing rule.

4 CMSR. IGNATIUS: Yes.

5 CMSR. BELOW: But I think we haven't
6 really focused on that, because it was existing language.
7 And, I don't know, if the Right-to-Know law, in the same
8 section that talks about what is "not a public record", I
9 know that one of the clauses refers to is "confidential
10 financial information". But it may be that personnel
11 records are confidential, but they may be described in the
12 Right-to-Know law as not -- I don't know. But that bears
13 looking at.

14 MR. SPEIDEL: Commissioner Below, if I
15 might respond to that. I had looked into that, and,
16 actually, some questions had come along. I believe that
17 the two-part formulation is related to precedent on 91-A
18 that the Supreme Court has generated. And, I think that
19 "not a matter of public record" refers primarily to, now I
20 hesitate to say this 100 percent definitively, but I
21 believe that it refers to statutory carve-outs under 91-A,
22 where the Legislature has spoken in terms of specific
23 categories of information, such as customer records and
24 personally identifiable information of that sort. Where

1 you have the general 91-A scheme, but, then, of course,
2 the Legislature has elected to protect certain categories
3 of information from the purview of 91-A.

4 CMSR. BELOW: Like Social Security
5 numbers.

6 MR. SPEIDEL: Precisely. There are
7 certain RSAs where certain categories of information are
8 not subject to 91-A, because of the specificity of that
9 statute providing protection categorically.

10 CHAIRMAN GETZ: Ms. Hatfield, did you
11 have something?

12 MS. HATFIELD: I think, if that is --
13 that section, Subsection (e) does refer to "91-A:5". So,
14 if the items that are not a matter of public record are
15 defined there, then perhaps then that section may be okay.
16 But, if those aren't defined there, it might be possible
17 to just say "not a matter of public record pursuant to",
18 and then insert the citation. Because it is a good point
19 that, you know, things like personnel records or other
20 personal information, if those are specified in law, it
21 would just be good to clarify that it doesn't mean utility
22 filings, unless they meet that definition.

23 CHAIRMAN GETZ: Anything else this
24 morning?

1 MS. HATFIELD: I'm sorry, I had one
2 further thing. If the Commission's interim rules expire
3 before the final rules are adopted, will the Commission be
4 issuing further guidance to practicing parties to follow
5 that format, you know, until the rules are final or have
6 you thought about that?

7 CHAIRMAN GETZ: I think that's a good
8 issue to take under advisement.

9 MS. HATFIELD: Okay.

10 CHAIRMAN GETZ: Is there any
11 disagreement?

12 (No verbal response)

13 CHAIRMAN GETZ: Hearing none, anything
14 else this morning?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. Then, we will
17 close this rulemaking hearing and wait for the filing of
18 written comments. Thank you, everyone.

19 (Whereupon the hearing ended at 11:27
20 a.m.)

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