

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

April 13, 2016 - 1:35 p.m.  
Concord, New Hampshire

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RE: DE 16-241  
EVERSOURCE ENERGY:  
Petition for Approval of Gas  
Infrastructure Contract with  
Algonquin Gas Transmission, LLC.  
(Prehearing conference)

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

Sandy Deno, Clerk

APPEARANCES: Reptg. Eversource Energy:  
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Reptg. Algonquin Gas Transmission, LLC:  
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Emilee M. Scott, Esq. (Robinson & Cole)  
  
Reptg. Repsol Energy:  
Robert Neustaedter, Esq.  
  
Reptg. Tennessee Gas Pipeline:  
Susan S. Geiger, Esq. (Orr & Reno)  
  
Reptg. NextEra:  
Christopher Roach, Esq. (Roach Hewitt)  
Amie Jamieson, Esq. (NextEra)  
  
Reptg. ENGI Gas & LNG, LLC:  
Thaddeus Heuer, Esq. (Foley Hoag)

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

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**APPEARANCES:**     *( c o n t i n u e d )*

**Reptg. the Coalition to Lower Energy Costs:**  
Anthony Buxton, Esq. (Preti Flaherty)  
Robert (Benji) Borowski, Esq. (Preti...)

**Reptg. the Conservation Law Foundation:**  
Melissa E. Birchard, Esq.

**Reptg. N.H. Municipal Pipeline Coalition  
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**Reptg. the Merrimack Citizens Group:**  
Mary Beth Raven

**Reptg. the Office of Energy & Planning:**  
Meredith A. Hatfield, Director

**Reptg. Residential Ratepayers:**  
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Alexander F. Speidel, Esq.  
George R. McCluskey, Electric Division

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**P R O C E E D I N G**

1  
2 CHAIRMAN HONIGBERG: We're here this  
3 afternoon in Docket DE 16-241, which is Public Service  
4 Company of New Hampshire doing business as Eversource  
5 Energy's Petition for Approval of a Gas Capacity  
6 Contract with Algonquin Gas Transmission, LLC, Gas  
7 Capacity Program Details and Distribution Rate Tariff  
8 for Cost Recovery.

9 The Order of Notice, which I will not  
10 read, states that we are going to do this in two  
11 phases. The first phase is going to be about the  
12 legality of entering into an agreement of this nature.  
13 I know we have a lot of intervenors who have filed.

14 The next thing we're going to do is take  
15 appearances. What I'm going to ask is that you -- if,  
16 at this point, if you're identifying yourself, it's  
17 only if you have already filed to intervene. If there  
18 are others here today who feel they want to participate  
19 in some way, I'll ask you to wait until we've gotten  
20 through the folks who have already filed to intervene.

21 So, let's take appearances.

22 MR. FOSSUM: Good afternoon,  
23 Commissioners. Matthew Fossum, here on behalf of  
24 Public Service Company of New Hampshire doing business

1 as Eversource Energy.

2 MR. BALDWIN: Good afternoon,  
3 Commissioners. Kenneth Baldwin, with my colleague,  
4 Emilee Scott, of Robinson & Cole, on behalf of  
5 Algonquin Gas Transmission, LLC.

6 MR. BUXTON: Good afternoon, Mr.  
7 Chairman, the Commission. Tony Buxton, of Preti  
8 Flaherty, here with Robert (Benji) Borowski,  
9 representing the Coalition to Lower Energy Costs.

10 MR. ROACH: Good afternoon, Mr. Chairman  
11 and Commissioner. I'm Chris Roach, from Roach Hewitt  
12 on behalf of NextEra Energy Resources, and with me is  
13 Amie Jamieson, Senior Counsel to NextEra.

14 MR. HEUER: Good afternoon. Thaddeus  
15 Heuer, on behalf of ENGIE Gas & LNG, LLC, from Foley  
16 Hoag.

17 MS. GEIGER: Susan Geiger, from the law  
18 firm of Orr & Reno, representing Tennessee Gas  
19 Pipeline, LLC.

20 MR. NEUSTAEDTER: Robert Neustaedter,  
21 with Repsol Energy North America Corporation.

22 MS. HATFIELD: Good afternoon,  
23 Commissioners. Meredith Hatfield, for the Office of  
24 Energy & Planning.

1 MS. BIRCHARD: Good afternoon, Chairman  
2 and Commissioner. I'm Melissa Birchard with  
3 Conservation Law Foundation.

4 MS. RAVEN: Mary Beth Raven, with  
5 Merrimack Citizens for Pipeline Information.

6 CHAIRMAN HONIGBERG: Have you filed a  
7 motion to intervene?

8 MS. RAVEN: I believe so.

9 CHAIRMAN HONIGBERG: What's your last  
10 name?

11 MS. RAVEN: Raven, R-a-v-e-n. My letter  
12 was on your website.

13 CHAIRMAN HONIGBERG: Then, you probably  
14 filed. I probably didn't see it yet.

15 MR. KANOFF: Good afternoon. Richard  
16 Kanoff, appearing on behalf of the New Hampshire  
17 Municipal Pipeline Coalition, and also submitting in  
18 the afternoon a petition to intervene on behalf of Pipe  
19 Line Awareness Network for the Northeast.

20 MR. KREIS: Good afternoon,  
21 Mr. Chairman. I am Donald Kreis, of the Office of  
22 Consumer Advocate, here on behalf of residential  
23 utility customers.

24 MR. SPEIDEL: Good afternoon,

1 Commissioners. Alexander Speidel, representing the  
2 Staff of the Commission. And I have with me the  
3 Assistant Director of the Electric Division for  
4 Wholesale Matters, George McCluskey.

5 CHAIRMAN HONIGBERG: Ms. Raven, I'm  
6 looking at what we -- what our system has docketed as  
7 the list of comments and I see your name there. So, we  
8 definitely have it.

9 MS. RAVEN: Okay. Thank you.

10 CHAIRMAN HONIGBERG: Can you tell me the  
11 name of the organization you're representing again?

12 MS. RAVEN: Merrimack Citizens for  
13 Pipeline Information.

14 CHAIRMAN HONIGBERG: Is that the Town of  
15 Merrimack or the county? Okay.

16 MS. RAVEN: The town.

17 CHAIRMAN HONIGBERG: All right. Are  
18 there others here who intend to participate in this  
19 docket in some way, other than as commenters?

20 Is Mr. Husband here?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: Oh, I should  
23 probably go through the other intervenors. I'm going  
24 to go through the list. And I know I'm -- I'm going to

1 do them all, just to make sure I don't miss anybody.

2 But Algonquin is here, correct?

3 MR. BALDWIN: Correct.

4 CHAIRMAN HONIGBERG: Sunrun? Is anyone  
5 here for Sunrun?

6 *[No verbal response]*

7 CHAIRMAN HONIGBERG: I'll take that as a  
8 "no".

9 NextEra is here. Mr. Husband is not  
10 here. TransCanada or PNGTS? Anybody here for one of  
11 them?

12 *[No verbal response]*

13 CHAIRMAN HONIGBERG: No. Exelon?

14 *[No verbal response]*

15 CHAIRMAN HONIGBERG: I heard the  
16 Coalition to Lower Energy Costs. Yes. Tennessee is  
17 here. The Municipal Pipeline Coalition and PLAN are  
18 here. Repsol is here. OEP is here. CLF is here.  
19 ENGIE? ENGIE is here, right? Yes.

20 All right. So, we are missing some  
21 intervenors. How careless of us.

22 All right. The Order of Notice set a  
23 briefing schedule. So, we don't need to be talking  
24 about that. There is no technical session scheduled



1 for after this, as far as I know.

2 Is that right, Mr. Speidel?

3 MR. SPEIDEL: That's correct, Mr.  
4 Chairman. And one of the intervenors had informed me  
5 that, due to personnel difficulties, they weren't going  
6 to be able to send a representative to this prehearing  
7 conference. But, of course, all their papers for  
8 intervention stand, and I think that's true of a lot of  
9 these folks.

10 I heard through the grapevine that  
11 there's a legislative hearing on this topic downtown.  
12 So, that might explain some intervenors not being here.

13 CHAIRMAN HONIGBERG: Competition between  
14 the Executive Branch and the Legislative Branch, and we  
15 apparently have lost, in some people's eyes. Well,  
16 they write the laws, we just execute them.

17 We're going to ask for people to state  
18 their preliminary positions. This is not an invitation  
19 to give us your full argument. We want to see how  
20 people line up and the types of arguments they expect  
21 to make. If we're here for long on this, then you've  
22 done it wrong. And I will ask you to stop, if you're  
23 going on too long on these issues.

24 We do have a lot of petitions to

1 intervene. Mr. Fossum, do you know yet your position  
2 on all of these interventions? Have you filed anything  
3 yet?

4 MR. FOSSUM: Yes. We filed a few --  
5 well, I can run through the list, and it wouldn't be  
6 that long. I will say that, for -- at least for  
7 Ms. Raven, I did receive an e-mail from her. I  
8 understood that the Commission treated that as a public  
9 comment, not as a formal request to intervene. So, I  
10 didn't treat it that way. I'm not saying that I object  
11 or take a position. I'm saying, right at the moment, I  
12 have no response whatsoever, because I didn't read it  
13 as a request to intervene. So, I would reserve the  
14 right to respond at some point, if appropriate.

15 As for all of the others, the Company  
16 did file, about three or four hours ago, a couple of  
17 objections, in addition to the one relative to Sunrun  
18 that had been filed a few weeks ago. The objections  
19 that we filed were -- there was a specific objection to  
20 CLF, in light of the characterization of its  
21 participation that it had included in its petition.  
22 And there were partial objections submitted relative to  
23 the Coalition to Lower Energy Costs, to PLAN, and to  
24 the Municipal Coalition. Primarily, because it was not

1 clear to us, from their petitions, exactly what  
2 interests they were here to represent or what they  
3 would be doing. And, so, our objections state that  
4 we -- we don't object to them generally speaking, but  
5 would request that they be required to further define  
6 the scope of their participation.

7 Other than that, we support the  
8 intervention of Algonquin, as the contract  
9 counterparty. I think that they're essential to this  
10 process.

11 And, as to the other intervenors that I  
12 haven't mentioned in the last few moments, the Company  
13 has no position on their requests to intervene.

14 CHAIRMAN HONIGBERG: I think, for the  
15 purposes of the first phase of this, it's less  
16 important, frankly, because anyone who wants to file a  
17 legal memorandum on the issue is going to be allowed  
18 to. And they will all have -- if you're really  
19 persuasive, it doesn't matter if you're an intervenor  
20 or not. The idea is to get this one right,  
21 understanding that someone who is aggrieved can  
22 certainly take it up to the Supreme Court.

23 So, we'll review the intervention  
24 situation and issue an order as appropriate at some

1 point.

2 Is there anything else we need to do,  
3 Mr. Speidel, before hearing from the parties and  
4 prospective intervenors?

5 MR. SPEIDEL: I did pull out from my  
6 files Ms. Raven's letter or e-mail. It's relatively  
7 short. It doesn't mention her agency's or her  
8 organizational name. But it does refer to some general  
9 comments that she's made regarding her point of view of  
10 the filing made by Eversource.

11 So, I think it was correctly filed as a  
12 public comment, rather than a motion for intervention.  
13 There's no mention of the word "intervention" that I  
14 can find here.

15 CHAIRMAN HONIGBERG: Ms. Raven, is there  
16 anything else you sent in, other than that e-mail?

17 MS. RAVEN: No. So, I did not follow  
18 the process appropriately.

19 CHAIRMAN HONIGBERG: Okay. Anything  
20 else, Mr. Speidel?

21 MR. SPEIDEL: I think that would be all,  
22 before the initial positions are taken.

23 CHAIRMAN HONIGBERG: All right. Why  
24 don't we proceed then. Mr. Fossum, you get to go

1 first.

2 MR. FOSSUM: Thank you. I think that  
3 the position of Eversource is succinctly set out in the  
4 petition that was filed that led to the opening of this  
5 docket.

6 We have entered into what we believe to  
7 be an economic and beneficial contract for the  
8 procurement of -- well, to assist, essentially, in the  
9 procurement of necessary natural gas pipeline capacity  
10 to serve the electric generation needs of this region  
11 and of this state. It's our position that this  
12 contract is economic and ultimately beneficial to  
13 customers.

14 This contract is in line with the  
15 activities of similar entities taking place throughout  
16 the region. There is a very active docket in  
17 Massachusetts. There's a -- well, I hesitate to call  
18 it "active", but nonetheless a state process going on  
19 in Connecticut. There are other processes going on  
20 that I'm aware of in Rhode Island and Maine. This is a  
21 regional issue. And the contract that is before you,  
22 put before you by the Company, is part of a regional  
23 solution.

24 It's our position that we properly and

1 appropriately evaluated the terms and conditions of the  
2 contract, and we did so in line with the expectations  
3 of the PUC, following the review that this Commission  
4 conducted on its own motion in IR 15-124, and that this  
5 Commission has itself recognized that there is an  
6 underlying problem to be addressed, and that we believe  
7 that this contract addresses it.

8 We would ask that the Commission review  
9 this contract efficiently, that it keep an appropriate  
10 scope. And that it find that this contract is  
11 reasonable, it's legal, it's an appropriately designed  
12 solution for the region's issues and for the state's  
13 issues, and that this Commission approve the Petition  
14 before it before -- on or by October 1st of this year,  
15 so that all of the other schedules that go along with  
16 the underlying project may be adhered to.

17 And, that's our position.

18 CHAIRMAN HONIGBERG: Let's go off the  
19 record for a second.

20 *[Brief off-the-record discussion*  
21 *ensued.]*

22 CHAIRMAN HONIGBERG: All right. Thank  
23 you. Mr. Baldwin.

24 MR. BALDWIN: Thank you, Mr. Chairman.

1                    *[Court reporter interruption and brief*  
2                    *off-the-record discussion ensued.]*

3                    MR. BALDWIN: Thank you, Mr. Chairman.

4                    I can be brief, as instructed at the beginning of this  
5                    proceeding. Algonquin Gas Transmission, LLC, adopts  
6                    the positions taken by Eversource. We do believe that  
7                    what Eversource has done is fully concurrent with New  
8                    Hampshire statute and we support the filing.

9                    We would like to emphasize, however,  
10                   something that I'm sure the Commissioners understand  
11                   already, but I think important to state again. This is  
12                   a regional problem and this is a proposed regional  
13                   solution. Anything that happens here in New Hampshire  
14                   is affected by and will be affected by other  
15                   proceedings in the other New England states, either  
16                   that are a little bit ahead of New Hampshire right now  
17                   or are not far behind. And we want to make sure that  
18                   there is consistency amongst the state and amongst the  
19                   region in this proceeding.

20                   And we would also emphasize, as I did in  
21                   the more recent letter, our desire to see that this  
22                   matter be expedited as much as possible. We are  
23                   cognizant of the October 1st deadline, as Eversource  
24                   stated, and we would support that position also.

1 Thank you very much.

2 CHAIRMAN HONIGBERG: All right. Who was  
3 next? Mr. Buxton, I think.

4 MR. BUXTON: Thank you, Mr. Chairman.  
5 The Coalition to Lower Energy Costs advocates a  
6 solution on a regional basis of two pipelines with at  
7 least 2 BCF of capacity to mitigate or entirely  
8 eliminate the basis differential for New England  
9 electric and gas consumers.

10 The filing before us is a step in the  
11 right direction. We are concerned that Eversource is  
12 incorrect, may be incorrect, that it is an  
13 appropriately designed solution for a regional  
14 solution. The causes of that are not important. What  
15 is important is that this proceeding evaluate whether  
16 it is an appropriate solution on a regional basis.  
17 And, if not, indicate what would need to be done on the  
18 part of the State of New Hampshire and its utilities to  
19 accomplish that regional solution.

20 Thank you.

21 CHAIRMAN HONIGBERG: Mr. Roach.

22 MS. ROACH: Yes. Thank you, Mr. Chair.  
23 Most of what we've heard so far from the Petitioner and  
24 Algonquin, and indeed from the Coalition, has to do, I



1 think, with issues that ought to be addressed at Phase  
2 2, which is whether or not this particular contract is  
3 a good contract, an economical contract, a beneficial  
4 contract.

5 Our own view at this point, on behalf of  
6 NextEra, is that that's not what Phase 1 is about.  
7 Phase 1 is about whether or not this is lawful under  
8 state and federal law. Our firm position is that it is  
9 not lawful under either state law, under the  
10 Restructuring Act, nor did we find persuasive any of  
11 the arguments that have been posed by any other party  
12 in writing, in terms of 374-A or 374:57 dealing with  
13 capacity contracts that was promulgated back in the  
14 bankruptcy of PSNH.

15 Again, our view is I think pretty  
16 straightforward. It violates both the Restructuring  
17 Act and federal law, and it should be rejected.

18 Thank you.

19 CHAIRMAN HONIGBERG: Mr. Heuer, is that  
20 how you pronounce your name?

21 MR. HEUER: Yes. Tad Heuer, on behalf  
22 of ENGIE Gas & LNG, LLC. We similarly take the  
23 position as articulated by NextEra in some substance.  
24 As the Commission has noted, this is a two-phase

1 proceeding. The first phase is legality, and the  
2 second phase goes to the specific contract at issue.  
3 Our position is a similar belief that this is contrary  
4 to both state and federal law, for the reasons  
5 Mr. Roach had just mentioned.

6 NextEra has also participated actively.  
7 As we've heard, this is a regional issue and they're  
8 seeking a regional solution. We've participated in the  
9 proceeding before the Massachusetts Department of  
10 Public Utilities, where we have objected to the  
11 Department's similar response in what is the equivalent  
12 of their Phase 1, that was their order of 15-37. And  
13 we are currently appealing that to the Massachusetts  
14 Supreme Judicial Court. That argument will be held  
15 there on the 5th of May.

16 So, we similarly believe that the issues  
17 before the Commission right now are those dealing with  
18 legality. Certainly, if the Commission found that this  
19 was permissible under New Hampshire law, we would be  
20 intending to participate actively in Phase 2, as to the  
21 merits of the contract, and particularly, as we noted  
22 in our Petition to Intervene, the effect of these  
23 proposals on the energy markets, and particularly  
24 ENGIE's participation therein.

1 CHAIRMAN HONIGBERG: Ms. Geiger.

2 MS. GEIGER: Thank you, Mr. Chairman.

3 TGP understands that the first phase of this proceeding  
4 is devoted to an examination of the legal issues raised  
5 in the Order of Notice. And I won't be providing any  
6 detailed comment on those, only to note that we will be  
7 filing a brief in this docket by the deadline indicated  
8 in the Order of Notice.

9 But, in summary, TGP believes that the  
10 Commission does have the legal authority to approve an  
11 Eversource contract for gas pipeline capacity in  
12 support of electric reliability and lower energy costs  
13 for New Hampshire customers, and that such a contract  
14 does not violate the Restructuring principles of RSA  
15 374-F, or any other New Hampshire law or federal law.

16 In addition, TGP believes that a  
17 long-term gas transportation and storage contract  
18 tariff is permissible under RSAs 374-A, 374:57, and  
19 378. Although, we have not had time to examine the  
20 particular tariff that has been filed by Eversource to  
21 determine whether or not the rates expressed therein  
22 are just and reasonable.

23 The Order of Notice also raises another  
24 very important issue, and that is whether the RFP and

1 bid evaluation process employed by Eversource, in  
2 reaching a contract with Algonquin, complies with the  
3 requirements of the Commission's Order 25,860, issued  
4 in IR 15-124. In that Order, the Commission made clear  
5 that an EDC's bid evaluation and selection process must  
6 be undertaken by entities unaffiliated with the project  
7 sponsors.

8 Eversource's filing in this docket  
9 clearly reveals that it participated in the evaluation  
10 and selection process that led to the Algonquin  
11 contract, which is for service on a pipeline in which  
12 Eversource's parent company has an ownership interest.  
13 We do not believe that this process comports with the  
14 Commission's order that bid evaluation and selection be  
15 undertaken by entities that are unaffiliated with the  
16 project that submitted bids in response to the RFP for  
17 transportation service.

18 Although TGP believes that Eversource's  
19 failure to comply with the Commission's order  
20 constitutes dismissal of Eversource's Petition, we  
21 believe that another approach could be taken in lieu of  
22 that. The Commission's website indicates that the  
23 Commission is seeking proposals from consultants to  
24 assist the Commission Staff in conducting an

1 independent evaluation of the bids received in response  
2 to the RFP that Eversource issued in Massachusetts.  
3 That effort is being pursued simultaneously with the  
4 Commission's examination of the legal issues in this  
5 docket, and TGP believes that that course of action is  
6 appropriate and consistent with Eversource's request  
7 that the Commission issue an order by October 1st.

8 Another issue that TGP would note is  
9 that Staff and OCA have commenced discovery in this  
10 docket. TGP believes that it should be allowed to  
11 conduct discovery as soon as possible for the purpose  
12 of verifying the information attributed to TGP in the  
13 documents that Sussex and Eversource reviewed in  
14 evaluating bids provided in response to the Mass. RFP.  
15 Assuming that this docket proceeds to Phase 2, TGP  
16 believes that discovery on other relevant issues should  
17 occur as soon as possible.

18 And, although the Commission's Order of  
19 Notice did not provide for a technical session to  
20 discuss a procedural schedule for Phase 2, TGP believes  
21 that such a session should be scheduled soon and need  
22 not wait until after the legal issues are decided.

23 And, lastly, related to the issue of  
24 discovery, is the outstanding confidentiality pleadings

1 that have been filed in this docket. TGP would request  
2 that the Commission rule on them as soon as possible,  
3 so that the parties can gain a better understanding of  
4 what information they will be able to access and use in  
5 this proceeding, as well as the scope of any protective  
6 orders that will be issued to protect information from  
7 public disclosure. In addition, TGP would note that it  
8 needs access to as much information as possible to  
9 meaningfully participate in this docket.

10 Thank you.

11 CHAIRMAN HONIGBERG: Mr. Neustaedter.

12 MR. NEUSTAEDTER: We don't take a --

13 *[Court reporter interruption.]*

14 MR. NEUSTAEDTER: At this time, Repsol  
15 doesn't take any position with regard to the legality  
16 of the contract. However, as a owner of capacity in  
17 the Canaport LNG facility and majority owner of  
18 capacity on Maritimes & Northeast Pipeline, we believe  
19 that the use of existing transportation -- or, pipeline  
20 facilities into the region, along with the imported or  
21 the use of imported LNG, is a better solution for New  
22 Hampshire's gas needs, rather than the construction of  
23 new and expensive pipeline facilities.

24 CHAIRMAN HONIGBERG: Ms. Hatfield.

1 MS. HATFIELD: Thank you, Mr. Chairman.  
2 The Office of Energy & Planning does not have a  
3 position on the legality of the proposal at this time,  
4 but we will participate in the process. Thank you.

5 CHAIRMAN HONIGBERG: Ms. Birchard.

6 MS. BIRCHARD: Thank you, Mr. Chairman.  
7 CLF believes that the Eversource contract is illegal  
8 under state and federal law. New Hampshire's electric  
9 utility restructuring law is premised on the  
10 foundational principles of an unambiguous purpose of  
11 establishing competitive markets, in which electric  
12 generation is separated from transmission and  
13 distribution services.

14 Indeed, in furtherance of this purpose,  
15 Eversource is currently moving towards divestiture of  
16 its remaining generation assets. The Restructuring law  
17 provides no allowance or exception for the kind of  
18 arrangement that Eversource now asks the Commission to  
19 approve.

20 CLF also takes the position that  
21 approval of this contract would violate federal law and  
22 the project should be rejected.

23 CLF would ask to reserve the right to  
24 comment on other aspects of the Eversource proposal at

1 a later time. Thank you.

2 CHAIRMAN HONIGBERG: Mr. Kanoff.

3 MR. KANOFF: Good afternoon. On behalf  
4 of the Coalition, we don't believe that the proposal is  
5 consistent with statutes or precedents. We don't  
6 believe that there's a regional need for new pipelines.  
7 And we don't believe that electric ratepayers should  
8 pay for gas infrastructure.

9 With respect to Pipe Line Awareness  
10 Network for the Northeast, they take a similar  
11 position.

12 CHAIRMAN HONIGBERG: Hardly surprising.  
13 Mr. Kreis.

14 MR. KREIS: Thank you, Mr. Chairman. On  
15 behalf of residential utility customers, the Office of  
16 Consumer Advocate emphatically and unambiguously  
17 opposes this Petition. Twenty-eight years ago, a  
18 bankrupt New Hampshire electric utility went before the  
19 New Hampshire Supreme Court to argue the absurd  
20 proposition that, thanks to the utility's obdurate  
21 refusal to abandon its dream of nuclear grandeur, its  
22 shareholders were entitled to a whopping 19 percent  
23 return on equity. The Court's opinion, authored by a  
24 soon-to-be-very-famous jurist by the name of David



1 Souter, emphatically and unambiguously rejected the  
2 utility's argument. The Company's logic, wrote Justice  
3 Souter, "would provide the Company not with a  
4 reasonable rate of return, but the plenary  
5 indemnification" --

6 CHAIRMAN HONIGBERG: Mr. Kreis, slow  
7 down just a little. Mr. Patnaude needs to be able to  
8 keep up with you.

9 MR. KREIS: Understood. Justice Souter  
10 said that "that return on equity would provide the  
11 Company, not with a reasonable rate of return, but with  
12 plenary indemnification, nothing less than a shifting  
13 of the entire risk from the investors to the  
14 ratepayers."

15 We won the battle in 1988. But, since  
16 then, we, residential electric customers, have been  
17 losing the war. The Rate Agreement, the Restructuring  
18 Agreement, the Scrubber, and now here we are again.

19 This time, the request for plenary  
20 indemnification comes in the form of Eversource's  
21 request to double down on natural gas for 20 years and  
22 guarantee that consumers will cover the costs no matter  
23 what. No matter that, when this possibility first came  
24 before the Commission last year, Eversource was touting

1 this idea as an important reliability initiative. Now,  
2 the justification is no longer reliability, but  
3 wholesale price effects.

4 The Eversource Petition asks the  
5 Commission for a finding that its proposed Access  
6 Northeast deal "is in the public" -- "will provide net  
7 benefits at a reasonable cost to Eversource customers  
8 in the form of lower electric retail prices." We  
9 believe the Company will not be able to sustain its  
10 burden of proof when it comes to such a proposition.

11 Like other parties here today, we will  
12 argue strenuously that Eversource lacks the authority  
13 under New Hampshire law to impose this 20-year burden  
14 on its customers. We will further demonstrate that,  
15 even if the Commission could approve what Eversource is  
16 requesting here, as a matter of law, such action would  
17 be preempted by both the Federal Power Act and the  
18 Natural Gas Act. We look forward to presenting that  
19 issue in due course to the New Hampshire Supreme Court,  
20 even if Justice Souter isn't there anymore.

21 We share the concerns of many in this  
22 room that have to do with how competitive a  
23 solicitation and selection process Eversource could  
24 possibly have conducted, given the breathtaking speed

1 with which it unfolded. And, of course, the fact that  
2 the chosen project happens to be one in which  
3 Eversource has a 40 percent ownership interest.

4 And, of course, for the reasons OCA has  
5 now twice stated in writing, we are concerned about the  
6 request of the two contracting parties to treat  
7 essentially all of the important information in this  
8 docket as secret.

9 Twenty years after the adoption of the  
10 Restructuring Act, it looks like the customers of the  
11 Company, formally known as "Public Service Company of  
12 New Hampshire", are finally going to be served by a  
13 truly restructured utility. Consumers have paid dearly  
14 to get PSNH to that point. And, now, Eversource is  
15 here asking to replace competition with more of the  
16 same old 1980s style plenary indemnification, this time  
17 in the guise of a firm natural gas transportation deal.  
18 It's illegal, it's unjust, and it's unreasonable.

19 CHAIRMAN HONIGBERG: Mr. Speidel.

20 MR. SPEIDEL: Thank you, Mr. Chairman  
21 and Commissioners. We certainly, as Staff, look  
22 forward to filing a legal memorandum, as specified in  
23 the Order of Notice, by April the 28th. With some  
24 level of forbearance, we'd like to delve a little bit

1 into some Phase 2 type matters.

2 CHAIRMAN HONIGBERG: You wouldn't be the  
3 only one who did. So, feel free.

4 MR. SPEIDEL: I appreciate that. Thank  
5 you very much, Mr. Chairman.

6 Just on the basis of what is out there  
7 and current and what's of interest to Staff, and I  
8 think of all the parties. A letter was filed by the  
9 Governor dated April the 13th, meaning today, regarding  
10 this instant docket. And I thought that was worthy of  
11 mention. I don't know if the Commissioners have had a  
12 chance to read it or not. It just came in around  
13 noontime.

14 CHAIRMAN HONIGBERG: Mr. Speidel, if it  
15 came in today, the chances of it having made it to us  
16 are really pretty slim.

17 MR. SPEIDEL: Well, I can give you a  
18 little bit of a sneak preview.

19 CHAIRMAN HONIGBERG: I can't wait.

20 MR. SPEIDEL: So, the Staff agrees with  
21 the Governor that it is appropriate and required that  
22 the filing party, in this instant proceeding, to some  
23 level compare its proposal with alternatives, in order  
24 to demonstrate that the proposed solution is most

1 cost-effective for consumers. And the Governor's  
2 letter refers to RSA 378:38, the Least Cost Integrated  
3 Resource Plan statute. And Staff agrees with that  
4 approach. We think it's very much appropriate and  
5 necessary.

6 In turn, we would hope and expect that  
7 the various entities that have filed to intervene in  
8 this proceeding, upon receiving intervention, or in the  
9 form of pleadings that they might make in the legal  
10 memorandum section, they should advocate for  
11 alternative approaches that interest them. I think  
12 that's important. And they should do so with  
13 specificity.

14 We are fully supportive of having these  
15 entities file detailed alternative proposals that would  
16 be of use for the Commission and the Staff in examining  
17 the Petition made by the Company in this proceeding.  
18 So, we think that could be a very effective means of  
19 gauging the cost-effectiveness of this proposal, and  
20 for making sure that no stone left is unturned in  
21 making sure that alternatives are considered fairly.

22 In this way, we can meet the record  
23 burden for this proceeding, not only on the terms that  
24 are elucidated within the public interest standard that

1 is being considered, but also in terms of the Least  
2 Cost Planning statute. So, we believe that's useful.

3 And, also, even in this early phase, as  
4 mentioned by one of the parties, I think it was  
5 Ms. Geiger, on behalf of TGP, the Staff is seeking the  
6 services of an independent consultant. I think Mr.  
7 McCluskey could give a little summary of what Staff's  
8 thinking is on that.

9 Thank you.

10 CHAIRMAN HONIGBERG: Mr. McCluskey.

11 MR. McCLUSKEY: Thank you,  
12 Commissioners. The order issued by the Commission in  
13 IR 15-124 does not require New Hampshire EDCs to  
14 purchase capacity from project developers. Rather, the  
15 order details the Commission's preferred acquisition  
16 process should an EDC decide to procure gas capacity  
17 for ultimate benefit of its customers. Under that  
18 process, any acquisition of gas capacity by a New  
19 Hampshire EDC is to be undertaken through a competitive  
20 solicitation, with the evaluation, selection of  
21 competing projects administered by entities that have  
22 no affiliation with any of the project developers.

23 That expectation has not been met in the  
24 instant proceeding. The capacity contract submitted

1 for Commission approval in this docket is the product  
2 of a competitive solicitation issued by Eversource's  
3 Massachusetts EDCs, in which evaluation and selection  
4 were conducted not by an independent entity, but by  
5 Eversource's EDCs, even though the parent company of  
6 those EDCs holds a 40 percent stake in one of the  
7 competing projects.

8 Rather than recommend that Eversource's  
9 filing be thrown out on the ground that it's not  
10 compliant with the Commission's order, the Staff  
11 recommends that the bids submitted in response to the  
12 Massachusetts RFP be reevaluated by an independent  
13 consultant working under Staff's direction. An  
14 independent evaluation of the bids is also supported by  
15 a review of Eversource's evaluation materials in this  
16 docket, which we believe lack objectivity.

17 Thank you.

18 CHAIRMAN HONIGBERG: Mr. Speidel,  
19 anything else?

20 MR. SPEIDEL: Well, in summary, Staff  
21 would like to express its opinion that it does not  
22 object to any of the motions for intervention, if they  
23 were to be granted intervention on Subpart II grounds.

24 Certainly, in the case of -- I would

1 recommend that Ms. Raven, if she wishes to have a late  
2 filing for intervention, she still has a window to do  
3 so, and it would be under the Commission's discretion  
4 to entertain it or not. But it would have to  
5 essentially state the grounds for her intervention.

6 CHAIRMAN HONIGBERG: Ms. Raven, is it  
7 your desire to intervene and participate in this  
8 proceeding or is it your desire instead to be -- to  
9 follow it, observe, and provide comment?

10 MS. RAVEN: At this point, I think  
11 providing comment would be the most appropriate thing.

12 CHAIRMAN HONIGBERG: Thank you. And you  
13 can certainly -- you can speak with Mr. Kanoff, you can  
14 speak with Mr. Speidel about what your options are in  
15 that regard.

16 MS. RAVEN: Okay.

17 CHAIRMAN HONIGBERG: Mr. Fossum, since  
18 you are the moving party here and ultimately the burden  
19 of proof, is there anything you want to add at this  
20 point?

21 MR. FOSSUM: Only just one thing. There  
22 were a few mentions in the room relative to the  
23 confidential treatment or the outstanding request  
24 therefore and objections to it. The only comment I



1 would make on that is that I don't believe that that is  
2 an issue that, at the Phase 1 part of this, really  
3 needs to be addressed by the Commission.

4 I think the Commission has made quite  
5 clear, both in its order in 15-124 and the Order of  
6 Notice here, that, if the legality hurdle is not  
7 overcome, then the Petition would be dismissed, and,  
8 essentially, everything that was filed would become a  
9 moot point anyway.

10 So, my only suggestion is that, at this  
11 point, that there's no cause for the Commission to take  
12 up that issue, and that it can be done down the road,  
13 once there's a better idea whether this proceeding will  
14 actually continue.

15 CHAIRMAN HONIGBERG: All right. I know  
16 there's a group of people in the back, and I'm not sure  
17 if they are just here to watch the festivities or if  
18 someone back there is interested in participating in  
19 the proceeding. If there is someone back there who  
20 wishes to intervene and become part of this, I would  
21 encourage you to, again, approach Mr. Speidel, or one  
22 of the other lawyers in the room who are experienced,  
23 Mr. Kreis, for example, about what the options are for  
24 participation.

1 I know we have -- oh, Mr. Speidel.

2 MR. SPEIDEL: Yes. If I may? There is  
3 a sign-up sheet. I would invite anyone who would like  
4 to have some level of marking down as a commenter or as  
5 an intervenor or as a potential intervenor, please sign  
6 up this sheet, if you wouldn't mind, by the close of  
7 today. Thank you.

8 CHAIRMAN HONIGBERG: The next step is  
9 for people to file legal memoranda. I mean, we have  
10 other things we can do, and I've heard -- we've heard  
11 the recommendations from some of you about things we  
12 can do in the interim, and I understand those.

13 Certainly there are a lot of people in  
14 this room who agree with others in the room. There is  
15 nothing preventing you from signing onto one legal  
16 memorandum or two legal memoranda that take the same  
17 positions. I mean, there appears to have been some,  
18 you know, some cooperation in advance, because I think  
19 most of you gave your adverbs and adjectives to  
20 Mr. Kreis before we started today.

21 And, so, I mean, if you want to  
22 formalize some of that, and reduce the number of  
23 filings, we would certainly have no objection to that.  
24 But, of course, you all have the positions that you

1 want to articulate regarding legality, some of you are  
2 going to want to talk preemption, some of you are going  
3 to want to focus on state law. There's lots of  
4 different ways to talk about this, and they're all  
5 significant and all potentially important for us to  
6 hear and understand.

7 But, again, if you can cooperate and  
8 reduce the number of filings, that could be a very good  
9 thing, because your voice can be just as powerful when  
10 multiplied that way.

11 Is there anything else that we need to  
12 do? Mr. Kreis.

13 MR. KREIS: Thank you, Mr. Chairman.  
14 Lest my silence deemed to be acquiescence, I would like  
15 to express a concern about the Petitioner's insistence,  
16 and we heard articulated by Algonquin as well, that  
17 this proceeding be reduced to a final order by  
18 October 1st. I do not believe that it is possible to  
19 conclude this docket by October 1st. And I think that  
20 is an issue that we ought to confront sooner, rather  
21 than later.

22 CHAIRMAN HONIGBERG: Well, I think the  
23 typical way of setting schedules is for the parties to  
24 discuss a schedule in a technical session. And, if

1 they can't agree, then they seek the assistance of the  
2 Commissioners. I think it's premature for us to weigh  
3 in on that.

4 I understood Mr. Fossum's and  
5 Mr. Baldwin's -- I think your word was "insistence", I  
6 hear those as requests. I understand them to be  
7 requests. And, as we go, we will see how things are  
8 proceeding.

9 I know that Staff has been working on  
10 things that are going to be relevant or would be  
11 relevant to Phase 2, if we get there. Others certainly  
12 can as well, and I expect are preparing things that  
13 they would be using in Phase 2, should we get there. I  
14 think, to the extent that we can advance the ball in  
15 ways, we will discuss that with Staff and see if we can  
16 do other things.

17 So, I heard Ms. Geiger's suggestion that  
18 a technical session be scheduled, that may well be a  
19 good idea, and we'll discuss that with Staff as well.

20 MR. KREIS: I think, Mr. Chairman, that  
21 probably is a good idea. The reason I raise this now  
22 is the fact that there is not presently a technical  
23 schedule -- a technical session schedule, so the  
24 ordinary conversation that would take place as soon as

1 we're done here will apparently not take place. And  
2 I'm concerned that October 1st is very, very soon.

3 CHAIRMAN HONIGBERG: Now, I understand  
4 we didn't notice a technical session. So, those who  
5 would be interested in participating might feel left  
6 out if they were not present. It sounds like some of  
7 them wanted to be at the Legislature anyway.

8 But there's nothing preventing parties  
9 from discussing with each other an appropriate schedule  
10 and being prepared when the technical session starts to  
11 do have something like that.

12 Mr. Speidel.

13 MR. SPEIDEL: In light of that, there  
14 was some level of informal understanding that quite a  
15 few of the parties might not be able to make it all the  
16 way up to New Hampshire to just talk in a room about a  
17 procedural schedule.

18 What Staff was going to do, given the  
19 framework that we have at hand, number one, we have to  
20 file the legal memoranda first and foremost. So,  
21 that's going to be a lift, that's going to take some  
22 time. Whatever schedule features we've got, they're  
23 going to take place after the April 28th deadline for  
24 that. And, on top of that, once we have an idea of

1 who's intervening and who will be granted intervention,  
2 who will be on the service list, we can simply send out  
3 emails to the service list inquiring as to whether  
4 folks would like to sign on to a procedural schedule.  
5 And that would include folks that are in Maryland and  
6 other parts of the country that can participate in such  
7 an effort remotely, rather than being here in person.

8 CHAIRMAN HONIGBERG: Understood. Yes,  
9 Mr. Roach.

10 MS. ROACH: Thank you, Mr. Chairman. I  
11 just wanted to note for the record, NextEra objects to  
12 delaying the issuance of an order on the  
13 confidentiality issues. I think, in the prior order  
14 from the Commission, the Commission said "We are not  
15 going to rule on the legality of any proposal in the  
16 hypothetical. We want an actual application that can  
17 be reviewed in detail by the parties, and then  
18 submission of legal memoranda." We also have the  
19 parties suggesting a very rapid procedural schedule  
20 here.

21 And, I think, in light of both of those,  
22 we would request to be able to see that information  
23 sooner rather than later.

24 CHAIRMAN HONIGBERG: I understand the

1 request. Were you quoting from the order in what you  
2 just said, because I don't think you were?

3 MR. ROACH: I believe that the prior  
4 order, not the Order of Notice --

5 CHAIRMAN HONIGBERG: I know which order  
6 you're referring to. But were --

7 MR. ROACH: The prior order said --

8 CHAIRMAN HONIGBERG: Mr. Roach, let me  
9 talk right now.

10 MR. ROACH: Certainly.

11 CHAIRMAN HONIGBERG: Were you quoting  
12 from that order?

13 MR. ROACH: I was not. I was quoting  
14 from -- I was reciting from memory.

15 CHAIRMAN HONIGBERG: Yes. I think, if  
16 you pull that order, I'm not 100 percent sure it says  
17 exactly what you think it said. I think it said we  
18 would "wait for an actual petition to be filed". And I  
19 think, without parties to contest each other, it's like  
20 the sound of one hand clapping, and I think that's what  
21 we're looking for. I'm not sure it went quite as far  
22 as you think it went in the sentence that you were  
23 paraphrasing.

24 And I could be wrong. I don't have it

1 in front of me, and I may be misremembering what's in  
2 that order. But I think we're going to get some good  
3 quality legal memoranda on this, and that's what we're  
4 going to need to decide the initial issue.

5 We'll issue an order on confidentiality  
6 as soon as we feel it's appropriate to do so.

7 MR. ROACH: Thank you.

8 CHAIRMAN HONIGBERG: Is there anything  
9 else that needs to be brought to our attention or need  
10 to deal with? Mr. Fossum.

11 MR. FOSSUM: Just one last thing on the  
12 confidentiality. In light of the fact that this is one  
13 of a number of similar proceedings going on in the  
14 region, a good many of those issues have been addressed  
15 at some length elsewhere, particularly in the  
16 Massachusetts proceeding. And I'd simply encourage the  
17 Commission to review what has happened down there  
18 relative to confidentiality, and potentially see that  
19 as a -- I won't say a "model", but as something that  
20 could be brought to New Hampshire.

21 CHAIRMAN HONIGBERG: Instructive.  
22 You're saying it would be instructive?

23 MR. FOSSUM: Yes. And which a great  
24 many of the folks in this room are already familiar.



1                   CHAIRMAN HONIGBERG: Okay. Anything  
2 else that anyone wants to bring to our attention at  
3 this time? Yes.

4                   MR. BALDWIN: Mr. Chairman, just one  
5 other thing. I did hear you mention that, for the  
6 purposes of Phase 1 of this proceeding, certainly  
7 anyone who's expressed interest in intervening will be  
8 granted that ability.

9                   Does the Commission anticipate the  
10 ability of the parties to speak further on perhaps  
11 opposition to those requests, as and if we get to Phase  
12 2?

13                   CHAIRMAN HONIGBERG: I'm not sure I  
14 understand the question.

15                   MR. BALDWIN: Well, I guess, to the  
16 extent that the Commission has already determined that  
17 those who are seeking party or intervenor status in  
18 this proceeding are going to be allowed to file a brief  
19 in Phase 1. That said, there may be some -- or, I  
20 guess the question is, will there be an opportunity to  
21 oppose intervention requests at Phase 2, if we get  
22 there?

23                   CHAIRMAN HONIGBERG: I think it depends  
24 on how we deal with the intervention requests at this

1 time. I think it's quite possible that we will rule on  
2 the intervention requests with both phases in mind.  
3 That would be the plain vanilla way that we would deal  
4 with intervention requests in the normal course. We  
5 would assume that the matter was going to proceed all  
6 the way through all of its phases and grant  
7 intervention as appropriate, if there needs to be  
8 limitations on people's participation or if people need  
9 to be denied intervenor status.

10 If we do something else, then I think it  
11 will probably invite those who are concerned about  
12 levels of participation in Phase 2 to raise those  
13 concerns at that time.

14 Mr. Kreis, you look like you want to say  
15 something? Oh, sorry. Is that -- all right.

16 MR. BALDWIN: It is. Thank you.

17 CHAIRMAN HONIGBERG: Anything else that  
18 people want to bring to our attention at this time?

19 *[No verbal response]*

20 CHAIRMAN HONIGBERG: If not, thank you  
21 all. We will adjourn.

22 ***(Whereupon the prehearing conference was***  
23 ***adjourned at 2:20 p.m.)***