

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

January 13, 2022 - 9:08 a.m.

21 South Fruit Street

Suite 10

Concord, NH

[Hearing also conducted via Webex]

RE: **DE 21-077**

PUBLIC SERVICE COMPANY OF NEW

HAMPSHIRE d/b/a EVERSOURCE ENERGY:

2021 Energy Service Solicitation.

***(Hearing regarding the recovery
of certain 2020 RPS costs for Class III
RECs over the prevailing ACP rate)***

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

Eric J. Wind, Esq., PUC Legal Advisor

Doreen Borden, Clerk

Corrine Lemay, PUC Hybrid Hearing Host

APPEARANCES: **Reptg. Public Service Company of New
Hampshire d/b/a Eversource Energy, Inc.:**
Jessica A. Chiavara, Esq.

Reptg. Residential Ratepayers:

Donald M. Kreis, Esq., Consumer Adv.

Julianne Desmet, Esq., Staff Attorney

Maureen Reno, Dir. of Rates & Markets

Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:

David K. Wiesner, Esq.

Stephen Eckberg, Electric

(Regulatory Support Division)

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

I N D E X

PAGE NO.

PUBLIC COMMENT BY:

Kelly Buchanan	6
Sam Evans-Brown	6

WITNESS PANEL:

FREDERICK B. WHITE

JAMES G. DALY

JAMES R. SHUCKEROW

ERICA L. MENARD

Direct examination by Ms. Chiavara	8
Cross-examination by Mr. Wiesner	34
Cross-examination by Mr. Kreis	61
Interrogatories by Cmsr. Simpson	82
Interrogatories by Cmsr. Chattopadhyay	116
Interrogatories by Chairman Goldner	132
Redirect examination by Ms. Chiavara	140

WITNESS:

STEPHEN R. ECKBERG

Direct examination by Mr. Wiesner	142
Cross-examination by Ms. Chiavara	158
Interrogatories by Cmsr. Simpson	160
Interrogatories by Cmsr. Chattopadhyay	175
Interrogatories by Chairman Goldner	184
Redirect examination by Mr. Wiesner	192

CLOSING STATEMENTS BY:

Mr. Kreis	202
Mr. Wiesner	206
Ms. Chiavara	213

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
6	Direct Testimony of James G. Daly, James R. Shuckerow, and Frederick B. White (10-08-21)	<i>premarked</i>
7	Attachments to the Direct Testimony of James G. Daly, James R. Shuckerow, and Frederick B. White (10-08-21)	<i>premarked</i>
8	Recommendation of the Department of Energy (09-20-21)	<i>premarked</i>

P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good morning again. I'm Chairman Goldner. And I'm joined by Commissioner Simpson and Commissioner Chattopadhyay.

We're here this morning in Docket DE 21-077 for a hearing regarding Eversource's 2021 Energy Service solicitation, addressing the specific question of whether Eversource should be allowed to recover approximately 1.6 million in costs in 2020 RPS costs for Class III Renewable Energy Certificates over the prevailing Alternative Compliance Payment rate.

I note for the record that this issue was removed from the December 13th, 2021 hearing on Eversource's Default Service solicitation, based on the motion of Eversource, a motion granted by the Commission in Order 26,550, on November 12th, 2021.

Now, let's take appearances.
Eversource?

MS. CHIAVARA: Yes. Good morning, Chair Goldner, Commissioner Chattopadhyay, and Commissioner Simpson. I'm Jessica Chiavara, here

1 on behalf of Public Service Company of New
2 Hampshire, doing business as Eversource Energy.

3 CHAIRMAN GOLDNER: Thank you. Office
4 of Consumer Advocate?

5 MR. KREIS: Thank you. Good morning,
6 Mr. Chairman, Commissioners. I'm Donald Kreis,
7 the Consumer Advocate. And, of course, the OCA
8 is here on behalf of residential customers. And
9 to my left is Maureen Reno, our Director of Rates
10 and Markets, and to her left is Julianne Desmet,
11 who is our Staff Attorney.

12 CHAIRMAN GOLDNER: Very good. And New
13 Hampshire Department of Energy?

14 MR. WIESNER: Good morning, Mr.
15 Chairman, Commissioners. I'm David Wiesner,
16 representing the Department of Energy. And with
17 me is our witness, Stephen Eckberg, who is an
18 Electric Analyst in the Department's Division of
19 Regulatory Support.

20 CHAIRMAN GOLDNER: Thank you. And for
21 preliminary matters, the Clerk has made me aware
22 of requests from members of the public to make a
23 comment. So, we will provide the opportunity for
24 public comment now, starting with Ms. Buchanan

1 and Mr. Evans-Brown, from CENH. If there are
2 other members of the public who wish to comment,
3 but did not notify the Clerk, please notify the
4 Webex host.

5 So, Ms. Buchanan and Mr. Evans-Brown,
6 we'll provide five minutes for your comment.
7 Thank you.

8 MS. BUCHANAN: Thank you, Chairman
9 Goldner. I appreciate the opportunity for a
10 public comment this morning. I would like to
11 pass it on to my colleague, Sam Evans-Brown,
12 Executive Director of Clean Energy New Hampshire,
13 if he has anything to state today. We are here
14 mostly just to listen in to today's proceeding.
15 So, we appreciate the opportunity.

16 Thank you.

17 MR. EVANS-BROWN: Thank you,
18 Commissioner Goldner. Similarly, I just want to
19 introduce myself. I'm Sam Evans-Brown. I'm in
20 the back here taking over as Executive Director
21 here at Clean Energy New Hampshire. And we're
22 simply monitor this proceeding to ensure that the
23 interests of our members are being fairly
24 represented.

1 CHAIRMAN GOLDNER: Okay. Thank you.

2 Next on preliminary matters, for
3 exhibits, 6, 7, and 8 have been prefiled and
4 premarked for identification. All material
5 identified as "confidential" in the filings will
6 be treated as confidential during the hearing. I
7 don't think there is any in this particular case,
8 but I'll just note that for the record.

9 Is there anything else that we need to
10 cover regarding exhibits?

11 *[No verbal response.]*

12 CHAIRMAN GOLDNER: Okay. Seeing none.

13 Are there any other preliminary matters
14 before which we have the witnesses sworn in --
15 or, before we have the witnesses sworn in?
16 Anything else?

17 *[No verbal response.]*

18 CHAIRMAN GOLDNER: No. Good. Okay.
19 Let's proceed with the witnesses. Mr. Patnaude,
20 would you please swear in the panel of witnesses.

21 (Whereupon **Frederick B. White**,
22 **James G. Daly**, **James R. Shuckerow**, and
23 **Erica L. Menard** were duly sworn by the
24 Court Reporter.)

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 CHAIRMAN GOLDNER: Thank you. We'll
2 move to direct examination of the witnesses. For
3 Eversource, I'll recognize Ms. Chiavara.
4 Questions by Ms. Chiavara.

5 MS. CHIAVARA: Thank you, Chair. I
6 have four witnesses here today. I am going to
7 start with Mr. Frederick White.

8 **FREDERICK B. WHITE, SWORN**

9 **JAMES G. DALY, SWORN**

10 **JAMES R. SHUCKEROW, SWORN**

11 **ERICA L. MENARD, SWORN**

12 **DIRECT EXAMINATION**

13 BY MS. CHIAVARA:

14 Q Mr. White, could you please state your name and
15 your title of your role at Eversource?

16 A (White) My name is Frederick White. I'm a
17 Supervisor in the Electric Supply Department at
18 Eversource Service Company.

19 Q And what are your responsibilities in your role
20 at Eversource?

21 A (White) I supervise and provide analytical
22 support required to fulfill the power supply
23 requirement obligations for the Company,
24 including conducting solicitations for the

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 competitive procurement of power for energy
2 service, and for fulfilling Renewable Portfolio
3 Standards obligations. I'm also responsible for
4 ongoing activities with independent power
5 producers and power purchase agreements.

6 Q And have you ever testified before this
7 Commission?

8 A (White) Yes, I have.

9 Q Great. Turning to the October 8, 2021 testimony.
10 Did you file testimony and corresponding
11 attachments as part of the filing on October 8th,
12 2021, marked as "Exhibit 6" and "7"?

13 A (White) Yes.

14 Q Were the testimony and supporting materials
15 prepared by you or at your direction?

16 A (White) Yes, they were.

17 Q And do you have any changes or updates to make at
18 this time?

19 A (White) No.

20 Q So, do you adopt your testimony today as it was
21 written and filed?

22 A (White) Yes.

23 Q Thank you very much. Turning now to Mr. James
24 Daly. Mr. Daly, will you please state your name

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 and title of your role at Eversource?

2 A (Daly) My name is James Daly. I'm Vice President
3 of Energy Supply at Eversource.

4 Q And what are the responsibilities of your role at
5 Eversource?

6 A (Daly) I'm Vice President of Energy Supply at
7 Eversource, with responsibilities for all power
8 and natural gas supply to Eversource customers
9 who do not take supply from competitive
10 suppliers.

11 Q And have you ever testified before this
12 Commission?

13 A (Daly) Yes.

14 Q Did you file testimony and corresponding
15 attachments as part of the filing on October 8th,
16 2021, that's marked as "Exhibit 6" and "7"?

17 A (Daly) Yes.

18 Q And were the testimony and supporting materials
19 prepared by you or at your direction?

20 A (Daly) Yes.

21 Q Do you have any changes or updates to make at
22 this time?

23 A (Daly) No.

24 Q And do you adopt your testimony today as it was

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 written and filed?

2 A (Daly) Yes.

3 Q Thank you. Turning now to Mr. James Shuckerow.

4 Mr. Shuckerow, will you please state your name
5 and your title of your role at Eversource?

6 A (Daly) Jim, you're on mute.

7 A (Shuckerow) Sorry about that. Good morning. My
8 name is James Shuckerow. I'm Director of
9 Electric Supply for Eversource Energy.

10 Q And what are the responsibilities of your role at
11 Eversource?

12 A (Shuckerow) Yes. I am Director of Electric
13 Supply. And basically my responsibilities are to
14 provide the power supply for those customers that
15 have not selected a competitive supplier.

16 Q Have you ever testified before this Commission?

17 A (Shuckerow) Yes.

18 Q And did you file testimony and corresponding
19 attachments as part of the filing on October 8th
20 2021, --

21 A (Shuckerow) Yes.

22 Q -- marked as "Exhibit 6" and "7"?

23 A (Shuckerow) Yes, I did.

24 Q And were the testimony and supporting materials

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 prepared by you or at your direction?

2 A (Shuckerow) Yes.

3 Q And do you have any changes or updates to make at
4 this time?

5 A (Shuckerow) No.

6 Q So, do you adopt your testimony today as it was
7 written and filed?

8 A (Shuckerow) Yes.

9 Q Thank you. And turning now to Ms. Erica Menard.
10 Ms. Menard, will you please state your name and
11 title of your role at Eversource?

12 A (Menard) My name is Erica Menard. I am the
13 Manager of Revenue Requirements for New
14 Hampshire. And I'm employed by Eversource Energy
15 Service Company.

16 Q And what are the responsibilities of your role at
17 Eversource?

18 A (Menard) I am responsible for the implementation
19 and coordination of various rate and revenue
20 requirement calculations presented before this
21 Commission.

22 Q Have you ever testified before this Commission?

23 A (Menard) Yes.

24 Q And did you file testimony and corresponding

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 attachments as part of the filing on October 8th,
2 2021, that's marked as "Exhibit 6" and "7"?

3 A (Menard) No, I did not. However, I am directly
4 familiar with and I handle the RPS annual
5 reconciliation that may be affected pending the
6 outcome of this hearing. So, I am here to speak
7 to that issue, if needed.

8 Q Thank you very much. I'd like to turn to
9 questions now.

10 My first question is for Mr. White.
11 Why is Eversource responsible to meet RPS
12 obligations for Default Energy Service customers?

13 A (White) The 2017 Settlement Agreement in Docket
14 DE 17-113, approved by the Commission, directed
15 Eversource to procure RECs for RPS compliance
16 separately from Default Energy Service
17 procurement. The Settlement Agreement does not
18 dictate a specific methodology, but states that
19 it should be consistent with Commission
20 precedent. The Commission has not questioned
21 Eversource's REC procurement process since its
22 inception in 2017.

23 Q And can you please describe the process that
24 Eversource has been using to procurement RECs for

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 its RPS compliance obligation?

2 A (White) We're required to satisfy RPS obligations
3 for the five REC classes. Purchases for all
4 classes, except Class I, for which we have
5 sufficient supply from other agreements approved
6 by the Commission, are made through RFPs, RECs
7 brokers, or direct purchases. Purchases via RFPs
8 are selected based on the lowest prices received.
9 The purchases are reviewed by the Commission
10 annually in June, when the RPS reconciliation is
11 reviewed, anywhere from 6 to 18 months after the
12 purchases have been completed, and after the end
13 of the compliance year.

14 The procurements for energy supply and
15 for RECs are distinctly different in this way, as
16 approval for energy supply occurs prior to final
17 commitment and purchase of that supply, while
18 RECs purchases are reviewed after the purchases
19 have been made.

20 Q Mr. White, what was the circumstance that gave
21 rise to the issue being considered here today in
22 regards to the \$1.6 million in REC purchases?

23 A (White) The Company conducted an RFP in July
24 2020, which is a typical point in the compliance

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 year where we seek offers for RECs. We received
2 multiple offers at competitive market prices, and
3 purchased 84,500 Class III RECs, out of the
4 115,000 in total that were offered. The 84,500
5 were the lowest prices available. And this was
6 shown in the Company's lead/lag study filed in
7 the Company's June 17th, 2021 Energy Service
8 filing, in Attachment ELM-3, on Page 13 of 15,
9 which has also been entered today as "Exhibit 8"
10 by the Department of Energy on Bates Page 005.

11 Q Thank you. This next question is for Mr. Daly.
12 The Department of Energy conducted a review of
13 the REC purchases just described. Could you
14 explain the Department's conclusion of that
15 review and why Eversource disagrees with that
16 conclusion?

17 A (Daly) Yes. The New Hampshire Department of
18 Energy Staff wrote a Letter of Recommendation
19 dated September 20, 2021 to the Commission
20 recommending disallowance of \$1.6 million
21 associated with the July 2020 purchase of Class
22 III RECs, because they were over the ACP price
23 for the compliance year. DOE asserted that any
24 purchase over the ACP price required a *per se*

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 imprudence determination, meaning that such a
2 purchase is inherently imprudent no matter the
3 context or circumstances surrounding that
4 purchase.

5 The Company respectfully disagrees with
6 that, with this position. As described in our
7 direct testimony, the July 2020 Class III REC
8 purchase was reasonable based on the totality of
9 market conditions as of July 2020. In addition,
10 the Company -- the Company's proactive REC
11 purchasing efforts have saved customers over
12 \$20 million from 2017 through 2020, even
13 including the \$1.6 million purchase at issue
14 here.

15 The \$1.6 million in question should be
16 viewed within the totality of these significant
17 overall savings. The reasonableness of relying
18 on market pricing is borne out by these overall
19 consistent customer savings, and demonstrates
20 that no singular REC purchase can be determined
21 imprudent solely based on the ACP price. It's
22 true that the \$1.6 million at issue did not
23 create savings when compared to the ACP for that
24 year. But Eversource's process for purchasing

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 RECs undeniably and reliably produces savings for
2 customers.

3 The ACP price simply designates a price
4 at which ACPs may be purchased. It doesn't
5 prohibit REC purchases over the ACP, and it
6 doesn't necessarily eliminate the possibility
7 that an over-ACP purchase is reasonable at the
8 time of that purchase.

9 While ACP price is certainly a relevant
10 factor, it is only one factor in determining the
11 overall reasonableness of any REC purchase, and
12 other factors can result in a reasonable over-ACP
13 price for REC purchases.

14 Q Thank you. Mr. Daly, you mentioned the
15 Department of Energy's claim that "there should
16 be a *per se* imprudent standard applied to any REC
17 purchase that is over the ACP price." Do you
18 agree with this standard?

19 A (Daly) No. As I just mentioned, the
20 reasonableness or prudence of an expenditure
21 requires contextual considerations of all
22 relevant factors, the totality of the
23 circumstances and knowledge available at the time
24 of purchase. Here, that includes current market

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 prices for RECs, legislative and regulatory
2 conditions, in addition to the ACP price.

3 Q And why is REC purchasing inappropriate for a *per*
4 *se* imprudence standard?

5 A (Daly) Since RECs can be banked for up to two
6 years, the ACP, for any particular compliance
7 year, cannot be the standard for imprudence.
8 Otherwise, a purchase could change from prudent
9 to imprudent, or vice versa, after the fact,
10 depending on the year to which it is ultimately
11 applied. And prudence isn't determined after the
12 fact.

13 A factor that increases the likelihood
14 of RECs needing to be banked is regulatory
15 adjustments that can and have been made by the
16 Commission to the required quantity of RECs to be
17 purchased, oftentimes very close to the end of
18 the compliance year, when possibly the majority
19 of all RECs for a given class have been
20 purchased. This necessitates the banking of RECs
21 that I just mentioned for application in future
22 RPS compliance years. These regulatory changes
23 to the quantity of RECs required to be purchased
24 are problematic from a compliance entity when

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 determining the correct quantities of RECs to
2 purchase.

3 Q Thank you, Mr. Daly. I'd like to turn again to
4 Mr. White. Mr. White, can you provide an example
5 of a REC purchase that could be influenced by
6 factors that are either unknown or unverified at
7 the time of purchase that could make a reasonable
8 purchase at that time seem unreasonable in
9 hindsight?

10 A (White) The Legislature set that volume
11 requirement for Class III at 8 percent of sales.
12 But the Commission can then alter that
13 requirement any time, right up to the end of the
14 compliance year, and could lower it all the way
15 to zero, but, for this example, let's say it's
16 lowered to 2 percent. Had a compliance entity
17 purchased their 8 percent volume requirement
18 prior to the change to 2 percent, it would render
19 6 percent of that purchase unusable in that year,
20 and has the potential to result in a portion of
21 the purchased quantities to continue to be
22 unusable in the two subsequent years as well,
23 because due to limitations in the allowed usage
24 of banked volumes, or due to further volume

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 requirement adjustments.

2 In this scenario, the RECs may be sold
3 at a loss to prevent a total loss at the end of
4 the two years. During the two bankable years for
5 those RECs, the excess RECs may have to be
6 applied during a year with a lower ACP price, or
7 the RECs could become entirely valueless at the
8 end of those two years.

9 And, additionally, in markets, volume
10 and price are connected through the economic laws
11 of supply and demand. Changing volume
12 requirements at different times during a
13 compliance term can alter market prices, exposing
14 a purchaser to price changes due to market
15 recognition of a surplus or shortage situation
16 and the accompanying supply/demand dynamics. And
17 these dynamics, in relation to RECs, can be
18 affected by both intrastate and interstate market
19 factors, as RECs are sold regionally between
20 states.

21 These are some illustrative
22 circumstances that can make a purchase seem
23 imprudent in hindsight, but do not determine the
24 reasonableness of the information relied upon at

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 the time of purchase.

2 Q Thank you. And are there any other variables
3 that contribute to uncertainty at the time of any
4 given REC purchase?

5 A (White) There's also the additional variable of
6 legislative changes to the ACP price, which has
7 been a factor for Class III ACPs every year since
8 2015, and was certainly a factor in 2020, with
9 the ordinary legislative process being impacted
10 by the pandemic. The Legislature may adjust the
11 ACP price for a given REC class, and this could
12 happen some months into the compliance year.
13 This possibility of an annual change to the REC
14 price, taken in concert with having to use banked
15 RECs from previous years, makes it virtually
16 impossible to guarantee that all RECs will always
17 come in below the ACP price. This is why the ACP
18 price cannot be the definition for what
19 constitutes a reasonable purchase, as it isn't
20 nearly the only determinant involved when making
21 a REC purchase.

22 As I just described, some of the
23 determinants are out of the control of the
24 utilities altogether. And these factors must be

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 considered alongside the ACP price and market
2 prices, in order to reach a proper determination
3 of reasonableness.

4 Q Thank you very much. This question is for Mr.
5 Shuckerow.

6 The salience of market prices for RECs
7 when making a prudence determination has been
8 previously discussed by Mr. White. Can you
9 explain a bit more about market price as a factor
10 to be considered on equal footing with the ACP
11 price?

12 A (Shuckerow) Sure. The combined uncertainty every
13 year in the required amount of RECs being
14 purchased and the ACP price for the compliance
15 year puts the Company in a position where the
16 most reasonable approach to meeting its RPS
17 obligation is to purchase RECs at market-based
18 prices periodically throughout the compliance
19 year, as the market prices reflect all relevant
20 factors influencing REC purchases at the time of
21 sale and purchase. This approach has yielded
22 consistent customer savings every year since we
23 began providing this service. This is why the
24 Company submits that a market-based transaction

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 is a reasonable one.

2 Market prices take into account the
3 complete context of market factors that influence
4 REC prices at a given time. Prices offered
5 through competitive bidding in the market reflect
6 the collective wisdom of all participants in that
7 market, representing the balance point from among
8 many factors impacting the fair market value at a
9 given point in time.

10 When added to the totality of the
11 circumstances needed to determine the
12 reasonableness of any prudent action, the ACP
13 price should only be a factor in that
14 determination, just like market price should also
15 be a factor in that determination.

16 Q And how does this adherence to market price-based
17 purchasing ensure reasonable purchases?

18 A (Shuckerow) We make market-based -- market
19 price-based purchases throughout the year via
20 RFPs or direct purchases similar to dollar-cost
21 averaging, in that purchases are spread over a
22 longer timeframe, rather than making in one --
23 rather than being made in one lump-sum purchase.
24 Dollar-cost averaging is a strategy utilized in

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 financial investing to reduce the impact of price
2 volatility and remove the attempt to time the
3 market.

4 Additionally, if Eversource had
5 departed from its normal practice of regular
6 market purchases to wait for a finality of
7 pending legislation, which could have increased
8 the ACP and hence market prices, Eversource could
9 have been accused of forgoing a lower market
10 price by this departure from its normal
11 procurement strategy, thereby increasing costs to
12 customers.

13 The most reasonable course of action
14 was to adhere to a system that produce
15 consistently favorable results. And overall, the
16 adherence to periodic competitive purchases from
17 the market is what has proven to generate savings
18 for customers.

19 Dollar-cost averaging leads to more
20 consistently predictable results, and is
21 therefore more reasonable to rely upon as a REC
22 purchasing process.

23 Q And, Mr. Shuckerow, according to what regulatory
24 directive was the Company's REC purchasing

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 process for RPS compliance designed?

2 A (Shuckerow) Yes. The Settlement Agreement in
3 Docket Number DE 17-113 directs Eversource to
4 manage its RPS obligation in a manner consistent
5 with the Commission's precedent of regulated
6 utilities in New Hampshire. Eversource adopted
7 its current RPS compliance management obligation
8 of REC purchasing according to that Settlement
9 Agreement.

10 Since implementation, and, in fact,
11 over many years prior to a settlement agreement,
12 the Commission has had no issues with
13 Eversource's REC purchasing activities. So,
14 there are many years precedent for Eversource to
15 follow this process.

16 As mentioned earlier, while this \$1.6
17 million purchase didn't create savings compared
18 to with the ACP price, the process Eversource
19 uses has saved customers \$20 million overall,
20 inclusive of this \$1.6 million, compared with
21 simply purchasing at the ACP.

22 Q Thank you, Mr. Shuckerow.

23 MR. KREIS: Mr. Chairman, I apologize
24 for interrupting. I was really going to wait to

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 make this point, but I think my patience has been
2 exhausted.

3 It is perfectly obvious that everything
4 that we have just heard is based on pre-written,
5 pre-prepared written testimony that these
6 witnesses are reading. And I move to strike
7 every word of it. Because what you are
8 essentially doing, by hearing this testimony from
9 these witnesses, is giving them two shots at the
10 apple, right? They have filed written direct
11 testimony, and we have prepared cross-examination
12 based on that written testimony, and now they are
13 reading to you an entirely different and second
14 set of written, prefiled direct testimony.

15 That is not the way this process is
16 supposed to work, because I don't have the
17 opportunity now to conduct cross-examination
18 based on the second version of their testimony
19 that these witnesses are now in the middle of
20 giving you.

21 So, I think, in fairness, all of that
22 testimony should either be stricken from the
23 record, or the hearing should be recessed, and we
24 and the Department of Energy should have the

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 opportunity to review a transcript of this
2 testimony, and then go back and prepare new
3 cross-examination based on the second very
4 elaborate explanation that the Company and its
5 witnesses are now offering you. It really just
6 isn't fair. And this is not how this process is
7 supposed to work.

8 You could, at the very least, ask these
9 witnesses to confirm that what they are doing for
10 you is reading from a script.

11 CHAIRMAN GOLDNER: Thank you,
12 Mr. Kreis. Mr. Wiesner, any comments?

13 MR. WIESNER: I think I'd like to hear
14 the Company's response before weighing in.

15 CHAIRMAN GOLDNER: Okay. Ms. Chiavara?

16 MS. CHIAVARA: Yes. Thank you,
17 Chairman.

18 While the responses may have been --
19 while the witnesses may be reading from notes,
20 which has been common practice before in hearings
21 before this Commission, I would say that these
22 comments that have been prepared are entirely
23 consistent with the filed testimony, and only
24 intend to highlight certain portions of that

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 testimony that we feel are particularly salient
2 to point out to this Commission.

3 In no way do we feel that this is a
4 second bite at the apple or an additional set of
5 testimony. These are all issues that have been
6 well covered by the prefiled testimony, and are
7 merely highlighting the relevant issues that we
8 feel are most needed for consideration today.

9 CHAIRMAN GOLDNER: Mr. Kreis.

10 MR. KREIS: Well, in that case, at the
11 very -- at most, the Company and these witnesses
12 are wasting the Commission's time, by essentially
13 recapitulating their written testimony.

14 Either this is useful, because it's
15 providing new information, or the Company is just
16 wasting everybody's time by going through its
17 written testimony a second time. Because I can
18 tell you, from having read their written
19 testimony, that they are covering the issues to
20 the same degree of detail, and you know this,
21 because you've presumably read the written
22 testimony as well, they're covering the issues in
23 the same degree of detail that they covered in
24 their written document.

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 And, if this is just a summary, and not
2 a script that these witnesses are reading from,
3 well, that just -- that strains credulity, I
4 would say.

5 CHAIRMAN GOLDNER: Mr. Wiesner.

6 MR. WIESNER: I think I'll just observe
7 that the summary that we've heard this morning
8 from the Company, if that's the way to
9 characterize it, is somewhat more extensive than
10 we often hear during hearings. That said, I
11 don't believe I have heard anything substantively
12 different than what is in the Company's prefiled
13 testimony in this case. So, I'm not sure we have
14 a strong position one way or the other.

15 I do think that we understand the
16 Company's testimony as prefiled, and as
17 summarized this morning. And would encourage the
18 Commission to encourage the Company to let us
19 move on and get to cross-examination and the
20 Department's witness.

21 CHAIRMAN GOLDNER: Ms. Chiavara, would
22 that would acceptable to you?

23 MS. CHIAVARA: Yes. Could I be allowed
24 to at least wrap up with a couple of final

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 questions? And I promise I'll make them brief.

2 CHAIRMAN GOLDNER: Please proceed.

3 MS. CHIAVARA: Thank you very much.

4 BY MS. CHIAVARA:

5 Q So, there is -- there's just two questions for
6 Mr. Daly. Pardon me.

7 Mr. Daly, I'd like for you to describe
8 what the Company has done so far in regards to
9 REC purchasing for the current compliance year,
10 2021?

11 A (Daly) Thank you. And this will be brief. So,
12 the Company has not purchased any RECs at this
13 point for the 2021 compliance year. While this
14 is a deviation from our normal purchasing
15 practices, the matter to be decided here today
16 has created sufficient uncertainty as to how the
17 Company would proceed with RPS compliance. So
18 that Commission guidance is needed before we can
19 reasonably proceed.

20 If the Commission is to allow recovery
21 of the \$1.6 million and confirm the prudence of
22 our REC purchasing process, the Company will
23 resume its purchasing immediately and
24 consistently on a going forward basis, subject to

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 any guidance, recommendations, or modifications
2 ordered by the Commission.

3 Q Okay. Thank you. And, finally, if the
4 Commission were to disallow some or all of the
5 \$1.6 million in above-ACP price REC purchases,
6 what additional action, if any, would the Company
7 request of the Commission?

8 A (Daly) So, ultimately, the Company is seeking a
9 predictable, a workable process to satisfy the
10 RPS obligations, that doesn't subject the Company
11 to a mandated all-risk undertaking. So, should
12 the \$1.6 million be disallowed as an imprudent
13 purchase, the Company would request to shift all
14 RPS compliance obligations to competitive
15 suppliers going forward, as they have the
16 appropriate market structure to include in prices
17 the costs and risks of changes to both the
18 quantity and the ACP prices.

19 Alternatively, Eversource would request
20 approval to purchase all ACPs, rather than RECs,
21 for its RPS compliance requirements on a
22 moving-forward basis, since the Company does not
23 have the ability to add margins to the REC costs
24 to cover the inherent risks in this market that

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 cannot be entirely mitigated, no matter how
2 prudent the judgment of the Company. Thank you.

3 MS. CHIAVARA: Okay. Thank you. That
4 is all I have.

5 MR. KREIS: Mr. Chairman, at this
6 point, I would like to renew my motion to strike
7 all of that testimony, because for the reasons I
8 gave previously. Right after we had our last
9 colloquy, Ms. Chiavara asked Mr. Daly a question
10 that was not contained in their written direct
11 prefiled testimony.

12 So, either this Company has just gone
13 through and given you two versions of the same
14 testimony, or it's gone beyond its written
15 testimony in a way that's not fair to the other
16 parties to the proceeding. And, so, therefore,
17 my motion to strike all of it stands.

18 CHAIRMAN GOLDNER: Thank you,
19 Mr. Kreis.

20 We'll recess for 15 minutes. That will
21 do two things. That will give the Commission
22 time to confer, and it will give the OCA
23 potentially more time to consider the input from
24 Eversource, in case more time was required. And,

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 if more time is required in the end, when we come
2 back, then we'll certainly grant that as well.

3 So, we'll take a 15-minute recess, and
4 return at -- let's just return at 10 o'clock.
5 Thank you. Off the record.

6 *(Recess taken at 9:41 a.m., and the*
7 *hearing resumed at 10:04 a.m.)*

8 CHAIRMAN GOLDNER: Okay. Thank you.
9 We appreciate the OCA's recognition that
10 everyone's time is important. I'm denying the
11 OCA's motion without prejudice.

12 If a party believes that they have
13 identified new information not included in a
14 prefiled testimony and subject to discovery, then
15 that party can submit a written motion.

16 So, we'll move to direct examination of
17 the witnesses -- or, I'm sorry, cross-examination
18 of the witnesses. Mr. Kreis, would you like more
19 time or would you like to proceed?

20 MR. KREIS: I do not need to request
21 more time. I would like to suggest, though, that
22 you allow the Department to conduct its
23 cross-examination before the OCA.

24 Happy to begin and do ours first. But

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 I would remind everybody that this whole issue is
2 triggered by a memorandum that the Department
3 filed with the Commission I think back in
4 September. And I guess I really just want to
5 give them the opportunity to -- how can I put
6 this? I would like to give them, if the
7 Commission is amenable, the opportunity to have
8 the first bite at the Company and its untenable
9 positions in this proceeding.

10 CHAIRMAN GOLDNER: Mr. Wiesner, is that
11 acceptable to you?

12 MR. WIESNER: That is fully acceptable
13 to us, if it's the pleasure of the Commission.

14 CHAIRMAN GOLDNER: Thank you,
15 Mr. Wiesner. Please proceed.

16 MR. WIESNER: Thank you. So, I'll
17 address these questions, and I have a number of
18 them, to the panel as a whole, and invite whoever
19 is best able to provide a response to answer the
20 question.

21 **CROSS-EXAMINATION**

22 BY MR. WIESNER:

23 Q I want to begin on Bates Page 005 of Exhibit 6.
24 This is the joint testimony marked for

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 identification as Exhibit 6.

2 And, in particular, I want to focus on
3 Lines 21 through 26. This is where the Company
4 asserts that it's "saved customers over \$20
5 million [over the period] 2017 through 2020 when
6 compared to just paying ACPs" for REC compliance.

7 So, my question is, is the Company
8 suggesting that it would be reasonable for it to
9 pay ACPs for RPS compliance, even when RECs are
10 available in the market at prices lower than the
11 applicable ACP?

12 A (White) This is Mr. White. I'll start. And just
13 recognition that the matter at issue here is the
14 comparison of a purchase we made at market price,
15 and it's being compared to ACP. So, that seems
16 to be, at least in one viewpoint, a way to look
17 at purchases. And we're simply identifying that,
18 if you apply the same standard over several prior
19 years, it's quite a good outcome for customers, a
20 benefit in which the Company does not participate
21 at all.

22 I'll stop there. I don't know if the
23 rest of my colleagues have any additional
24 comment.

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 A (Daly) Yes. This is James Daly. So, just to add
2 a little to that.

3 I mean, this was an objective -- an
4 objective measure of whether the Company
5 purchasing was beneficial to customers. There
6 were probably other metrics that could be
7 employed that might be more subjective. This was
8 information that was readily available, and could
9 quantify what the benefits were.

10 The question of whether we would
11 purchase at ACP, if that was the policy that came
12 out of this, I think that's to be determined. I
13 mean, that is one of the issues that I've
14 identified in the testimony, is that, if this was
15 disallowed, if the 1.6 million was disallowed,
16 then we would ask either one of two outcomes: Is
17 that we have the competitive suppliers who bid on
18 our Energy Service include the RPS component to
19 be inclusive. We do this, we have vast
20 experience with doing this. We do it in
21 Connecticut. We've done it for 20 years or so.
22 That's the process we use there. So, it's not
23 new to our suppliers. So, we could use that
24 approach as an alternative. If indeed the

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 1.6 million is disallowed, this is what we're
2 asking for, is that we include it in the Energy
3 Service rate. Or, alternatively, that we
4 eliminate the Company judgment as to when it
5 should purchase and whether it's a good -- it's
6 beneficial to customers to purchase or not, and
7 just pay ACP. So, we believe that that
8 appropriately addresses any risk, either of those
9 approaches would address any risk that is
10 inherent now in the current process, and is a
11 logical outcome to what the recommendation in
12 here from DOE is, that we be disallowed the \$1.6
13 million.

14 So, it's a two-part answer to your
15 question. I hope that's helpful. Thank you.

16 Q And is it the Company's proposal then -- or, let
17 me rephrase that. It seems that the Company's
18 analysis that there were \$20 million in savings
19 on a net basis secured through its strategy of
20 purchasing RECs versus paying the ACPs over that
21 time period, the suggestion is that it would have
22 been a reasonable approach to merely pay ACPs,
23 even if RECs were available in the market at
24 prices less than the ACP. I believe that's an

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 implication of the testimony. And I believe the
2 answer we just heard doesn't contradict that
3 implication.

4 Is it the Company's view that that
5 strategy would be a "least cost" alternative,
6 from a ratepayer perspective?

7 A (Daly) Well, that's -- I mean, that's entirely up
8 to the Commission. I mean, the alternative was
9 include it in the Energy Service rate. And, by
10 including it in the Energy Service rate, we allow
11 the supplier to price in the risk. There's
12 considerable risk in this market in trying to
13 administer this program. We are really trying to
14 get a good result for customers here. But where
15 risk is being imposed upon us in a way that we
16 can't cover the risk, because of how we explained
17 both the quantities change and the alternative
18 compliance numbers change year to year, it's
19 impossible to hedge, as we call it, a risk in
20 which both of those are changing. It is really a
21 very, very difficult program to administer, and
22 particularly with our best efforts to administer
23 this by using market-based pricing, which
24 dollar-cost averages, as we say, some of these

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 purchases will be above what you might ultimately
2 have gotten if you waited, or they may be below.
3 But it's a program that we're trying to implement
4 on dollar-cost averaging.

5 But if that results in risk to us,
6 that's uncompensated risk, and that is really a
7 lose/lose situation for us, that that's -- we
8 have to move to a different program. We have to
9 alter this program. And we're being, you know,
10 quite open as to what the -- or, how we perceive
11 the risks of the current program, and then point
12 to solutions.

13 And, you know, if you think that "Well,
14 yes, the \$20 million is a measure of how this
15 would have worked if we did the ACP", I think
16 that's correct. I think that it is a measure of
17 it. But, also, within that program, we wouldn't
18 have lost -- we wouldn't lose \$1.6 million. So,
19 we can't have a program where it's "heads we
20 win/tails you lose" type program. We just can't
21 have that. We have to move to something else.

22 So, I hope, you know, we're being very
23 open here, and we're trying to get to a solution
24 that works for everybody. We're trying to save

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 money for customers. We've demonstrated that we
2 have done that. But we don't think it's fair
3 that we should be tagged with \$1.6 million
4 because of one purchase that didn't work in the
5 customers' favor.

6 So, I mean, that's our perspective. I
7 hope that's helpful.

8 Q So, the Company's witnesses this morning have
9 mentioned the quantity of RECs purchased a number
10 of times, and I just want to make sure it's
11 understood. And, so, I'll ask you to confirm for
12 me that the Department has not challenged the
13 quantity of Class III RECs purchased for 2020,
14 even though the ultimate obligation to meet that
15 class requirement was reduced by the Commission
16 in an order issued in 2021. Is that correct?

17 A (Daly) Rick, can you take that?

18 A (White) Yes. I'm sorry, I missed part of that
19 statement, about the "changing the Class III
20 volume in 2020 from 8 percent to 2 percent".
21 That's what I would confirm. I'm not -- like I
22 say, I might have missed some of your statement.

23 Q Well, acknowledging that that change occurred,
24 the challenge that's been made by the Department

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 and the recommended disallowance of approximately
2 \$1.6 million here, is not based on the quantity
3 of RECs purchased by the Company. It's based on
4 the price paid for some subset of the Class III
5 RECs purchased in 2020. Is that correct?

6 A (White) Well, I mean, the essence of your
7 position is based on the price. But, to get to a
8 dollar amount of 1.6, it's that price times a
9 volume of RECs purchased, in this case, 84,500
10 RECs.

11 Q And I think your answer there touches on what the
12 Company has characterized as the "market view of
13 the value of Class III RECs". So, now I'll move
14 to Bates Page 007 of Exhibit 6. And, at Lines 6
15 through 22 on that page, the joint testimony
16 discusses the "market view" of the value of Class
17 III RECs in July 2020.

18 Now, I believe it was acknowledged
19 earlier by the Company's witnesses, and I'll ask
20 you to confirm it again, that the REC market is
21 regional in New England, and that RECs produced
22 by a generator eligible for New Hampshire Class
23 III may also be eligible in another state, such
24 as, for example, Connecticut Class I. Is that

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 correct?

2 A (White) Yes. That's our understanding.

3 Q And, therefore, the ACP levels and market demand
4 from other states may affect the prices at which
5 electric generators may offer their RECs into the
6 regional market. Is that also correct?

7 A (White) Yes. That's correct.

8 Q And are you aware that the ACP for Connecticut
9 Class I RECs in 2020 was, in fact, \$55?

10 A (White) For Connecticut Class I?

11 Q Yes.

12 A (White) I can't confirm that. I would have said
13 it was "45", but I am not sure.

14 Q So, if we can assume -- I'm sorry.

15 A (White) It's our understanding that the market
16 value of Class III RECs at that point in time was
17 based on the understanding that the New Hampshire
18 ACP was \$55.

19 Q But, if we want to assume, for the sake of the
20 question, that the 2020 Connecticut Class I ACP
21 was \$55, would that potentially affect the market
22 price of any RECs eligible to be sold in either
23 of the two states?

24 A (White) It could. It could, yes. I don't know

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 what the market value for the ACP in Connecticut
2 for Class I was at that time.

3 Q And I think the fundamental point is that it's a
4 regional market, and the market price of RECs at
5 any particular time may affect demand,
6 conditions, eligibility criteria, and ACP levels
7 in other states, besides New Hampshire. Would
8 you agree with that statement?

9 A (White) Yes. We would agree with that.

10 Q Thank you. Still on Bates Page 007, and I'm now
11 looking at Lines 6 through 7. This is more of a
12 detail point. Here the joint testimony states
13 that the July 2020 RFP resulted in the purchase
14 of 84,500 Class III RECs from two separate
15 suppliers at then current market prices "within a
16 \$6 range across 7 tranches". Could you explain a
17 little bit more about the parenthetical phrase
18 "within a \$6 range across 7 tranches"?

19 A (White) Similar to power supply procurements,
20 where suppliers can provide offers in discrete
21 quantity blocks, otherwise known as "tranches",
22 the offers received in the RFP for RECs in July
23 2020, the offers were received also included
24 offers in a tranche format. So, as suppliers

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 offered "X" RECs at a certain price, some
2 additional quantity at another price, and so
3 forth.

4 In total, we may have received maybe 9
5 tranches, and we accepted 7 tranches. So,
6 varying quantities, at varying prices, across a
7 \$6 range as noted, and at 7 discrete purchases,
8 if you will. Does that answer it?

9 Q That's helpful. Thank you. Just to clarify
10 then. When we look at the Company's lead/lag
11 study, and this is included as an attachment to
12 the Department's recommendation for disallowance,
13 which has been identified as "Exhibit 8" for the
14 purposes of today's hearing.

15 A (White) Yes. I have it.

16 Q So, that lead/lag study that was attached to the
17 Department's letter appears to show only two REC
18 purchase transactions, and those two transactions
19 at prices of \$54.03 and \$50.42. And, apparently,
20 that's only a \$3.61 difference, rather than the
21 \$6 difference described in the testimony. Could
22 you please explain further the apparent
23 discrepancy in both the number of REC
24 transactions covered and also the price range for

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 those purchases?

2 A (White) Yes. Be happy to. The 7 tranches came
3 from two suppliers, the two suppliers, as shown
4 on the exhibit you've referenced. The one line
5 item for each supplier in that exhibit represents
6 the total quantity purchased from that supplier
7 across the tranches accepted from that supplier,
8 and the REC price identified is the weighted
9 average price. So, it's simply the individual
10 tranches have been condensed into one total
11 quantity at a weighted average price. Just so,
12 for example, Engie isn't listed two or three or
13 four -- as two or three or four different line
14 items on this exhibit showing each individual
15 tranche.

16 So, that's the discrepancy that I
17 guess you've -- that's an explanation of the
18 differences you've identified.

19 Q So, in fact, all of the tranches are reflected in
20 the specification of the REC purchase
21 transactions that are included in the lead/lag
22 study?

23 A (White) Yes, sir. That's correct.

24 Q Well, thank you for that clarification. I'll

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 move on now to Bates Page 008, Lines 10 through
2 19, again, in Exhibit 6. And this is where the
3 Company expresses its concerns regarding the
4 potential disallowance risk and regulatory
5 uncertainty regarding its RPS compliance
6 strategy. And, of course, we heard more about
7 that this morning.

8 I want to ask, has the Department or
9 PUC Staff prior to July 2021 ever previously
10 recommend a disallowance of any amount expended
11 by the Company for REC purchases or RPS
12 compliance, to your knowledge?

13 A (White) I do not recall a recommended
14 disallowance prior to the current instance.

15 Q And I believe there was testimony to this effect
16 earlier this morning, and I'll ask you to
17 confirm, has the Department or PUC Staff ever
18 objected to the Company's periodic RFPs or its
19 dollar-cost averaging strategy for REC
20 procurement?

21 A (White) No. Our approach and the results of the
22 approach have not been questioned up until now.

23 Q And has the Company ever previously purchased
24 RECs at prices greater than the ACP in effect at

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 the time of the purchase?

2 A (White) I'm not aware of any previous purchases
3 above the ACP.

4 Q So, finally, I'll move on to Bates Page 009 of
5 Exhibit 6. And we heard more about this proposal
6 this morning. This is where the Company is
7 requesting that, if the Commission disallows the
8 REC purchase costs at issue in this hearing, that
9 the Company be authorized to include RPS
10 compliance obligations in its procurement of
11 wholesale power supply for Default Service,
12 thereby shifting RPS compliance obligations to
13 competitive suppliers, and relieving the Company
14 of what it perceives to be downside risks.

15 Does the Company believe that such a
16 change in RPS compliance strategy would lower
17 costs and result in lower rates charged to
18 Default Service customers?

19 A (Daly) I will take a shot at that response, if I
20 may? So, if we incorporate the competitive
21 suppliers providing energy as well as RECs, it
22 will be a competitive outcome. Our Energy
23 Service procurement by the suppliers we have is a
24 pretty competitive process, and including RECs in

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 it would also be a competitive process. That's
2 our premise for suggesting this. So, the outcome
3 would be competitive, and the pricing that the
4 suppliers would incorporate, including the RPS,
5 would be a competitive outcome that reflects the
6 market uncertainties, if you like, that we've
7 been discussing here, around quantities and
8 alternative compliance payments. So, we believe
9 that that's a more appropriate way to incorporate
10 the true price versus what we are under today.

11 So, we think it will be a competitive
12 outcome. And that that's the appropriate price
13 for customers to pay for that service, because
14 the competitive suppliers, as we all know, set
15 their own prices. They're not subject to
16 regulatory review or second-guessing. So, they
17 will incorporate the totality of risks as they
18 perceive them. And that's the appropriate way.
19 So, whatever price comes out of it, that's the
20 appropriate market price.

21 Whether it's higher or lower than the
22 current regime, we couldn't say. But we believe
23 that it's competitive, and that it
24 incorporates -- the price would incorporate the

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 totality of risks that the competitive market
2 sees. And that's an appropriate way to do it.

3 A (Shuckerow) This is Mr. Shuckerow. I could
4 expand on that.

5 The process described by Mr. White and
6 Daly is one that we've been using in Connecticut
7 for 20 years. The procurement of power supply in
8 Connecticut is, in fact, quite similar to what we
9 do in New Hampshire. The number of customers we
10 serve, you know, percentagewise, is very similar.

11 So, basically, what we've done in
12 Connecticut is we've assigned the RPS obligation
13 to that of the wholesale suppliers. We've been
14 doing this for a long time. The rates that we've
15 been getting have been extremely competitive
16 overall. They're definitely based on the market
17 conditions at that point in time and the known
18 variables at that point in time.

19 Simply, the point we're making is that
20 the suggestion we're putting forth is one that
21 we've had great success with in Connecticut.
22 And, if we essentially adopt that approach in New
23 Hampshire, we're confident that will also provide
24 very reasonable market-based results for the New

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Hampshire customers getting their energy supply
2 from Eversource.

3 Q And, in Connecticut, do the wholesale suppliers
4 submit a separate bid related to RPS compliance,
5 as opposed to the balance of the energy,
6 capacity, *etcetera*, requirements, the
7 load-following service that they provide,
8 separate and apart from the RPS requirement?

9 A (Shuckerow) No. It's an all-in price. So, it's
10 inclusive of all the requirements to meet firm
11 requirement service that you're well aware of,
12 and it includes the RPS requirements in
13 Connecticut in their bid price.

14 Q So, it's a single bid that covers all of those
15 obligations. Does the Company have any insight
16 into what portion of the bid reflects the RPS
17 obligation that those suppliers have undertaken?

18 A (Shuckerow) Yes, we do. We can -- honestly,
19 going into any bidding process, we're well aware
20 of the market conditions. We predict what the
21 prices could be based on the market conditions at
22 that point this time.

23 Specific to the RPS requirements in
24 Connecticut, obviously, they differ from what's

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 in New Hampshire. There's essentially three
2 classes: Class I, Class II, and Class III. In
3 aggregate, those prices currently are about, in
4 total, about one cent per kilowatt-hour. And
5 then, we can further differentiate the price by
6 class. It gets complicated, because there is
7 different magnitudes by class. But, in
8 aggregate, it's close to about one cent per
9 kilowatt-hour.

10 I might add, in New Hampshire, the
11 number I believe is a little bit less than that.
12 And Mr. White could give you the specific number.
13 A (White) I don't recall the exact number, but it's
14 approximately 0.8 cents per kilowatt-hour is our
15 RPS adder in the upcoming rate effective February
16 1st.

17 Q And is it fair to say that the Company's
18 preferred approach would effectively shift the
19 downside risks and the market uncertainty that
20 you've discussed this morning to wholesale
21 suppliers and away from the Company?

22 A (Daly) That is correct. Yes.

23 Q And has the Company analyzed the level of risk
24 premiums and administrative and transaction cost

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 adders that wholesale suppliers would add to
2 their bids if that strategy were implemented?

3 A (Daly) No, we have not. That information is
4 simply not available to us. Sorry.

5 Q And I'll ask you to confirm that -- well, I'll
6 ask it this way. Is the Company aware of any
7 other New Hampshire utility that has adopted such
8 a strategy to outsource RPS compliance
9 obligations to wholesale power suppliers?

10 A (Daly) I'm not aware in New Hampshire. I don't
11 know whether our other witnesses are.

12 A (White) I believe that other utilities may at
13 times solicit an RPS coverage from suppliers.
14 And I don't know the outcome, the voracity of
15 that process. But I believe, at least from time
16 to time, one or both of the other utilities have
17 gone to the market looking for that service from
18 suppliers.

19 Q Are those separate procurements that are not
20 bundled with their default service procurements?

21 A (White) I'm hesitant to speak about the details.
22 We're not familiar with all the intricacies of
23 the other companies' approach. I guess my
24 understanding is it's done as a separate -- a

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 separate offer from suppliers from the power
2 supply. But I don't know. They may vary the
3 approach periodically. I'm not intimately
4 familiar with the details.

5 A (Daly) If I -- this is James Daly. If I may add
6 to that? I mean, I think your line of
7 questioning is an interesting one, because it
8 appears that there are differences between the
9 utilities and how they manage these programs.
10 But that there isn't a uniform program for New
11 Hampshire. The language surrounding how the
12 companies are to manage it is somewhat ambiguous.
13 We have a Settlement Agreement that basically
14 says "Do it consistent with how utilities manage
15 their obligations in this marketplace", but
16 that's very -- that's very broad.

17 So, unlike, say, Connecticut, that says
18 "you incorporate it specifically in the
19 competitive energy suppliers' wholesale bids."
20 There isn't a very -- there isn't something
21 that's prescriptive as that in New Hampshire.
22 And, you know, we're certainly open to something
23 that -- that would be more specific, and that
24 would be clearer, so we don't end up in this

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 situation where we're told to go manage these
2 risks. Everybody knows there's no consideration
3 for managing this, meaning there's no margin for
4 error here, and we end up in this situation.

5 So, I think there is ambiguity in New
6 Hampshire. And I think we've operated with that
7 ambiguity, but saved customers, saved \$20 million
8 for customers over the period that we've been --
9 we've done the analysis here and have been
10 managing it.

11 But, you know, I think your line of
12 inquiry is an appropriate one. Is that "Is there
13 a statewide program and what does it say?" There
14 isn't really a specific one. And it's pretty
15 ambiguous what we're operating within. That's
16 why we've ended up here.

17 Q So, I guess I'll just finish up with a line of
18 questions that nails all that down.

19 Are you aware that -- are you aware of
20 any other New Hampshire utility that does not
21 procure RECs for itself through some bilateral
22 transactions or a procurement process, such as
23 RFPs?

24 A (Daly) I'm not aware that, you know, consistent

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 with what I just said, I think the utilities
2 adopted different approaches. As Mr. White says,
3 some of them solicit with RECs included and RECs
4 not included, and take a look at those prices.
5 Others do bilateral transactions, and we do some
6 of those occasionally as well. So, I think
7 there's a mix of how companies approach this in
8 New Hampshire. It's not a uniform approach. So,
9 I -- but we're not familiar with all the
10 intricacies of the other utilities and how they
11 reach their decision-making. You know, we've not
12 seen anything that examines that in great depth
13 either. So, we don't have guidance from what the
14 other utilities do.

15 We designed our own program around
16 dollar-cost averaging, that basically says
17 whatever the market prices these RECs are what we
18 would buy periodically from the marketplace to
19 take out judgment, which is what we thought we
20 were doing with this program and let the market
21 price it in.

22 So, I think there's different programs
23 that are being followed by different utilities.
24 But we don't have insight into all the different

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 ones that the utilities are following.

2 So, I don't know if that's helpful.

3 But that's our view of it.

4 Q That's understood. One final question in this
5 line.

6 Are you aware of any other New
7 Hampshire utility that meets RPS obligations by
8 paying ACPs, even when RECs are available in the
9 market at prices that are less than the ACP
10 level?

11 A (Daly) My conversation with one of the utilities
12 is that they do occasionally pay ACPs. The
13 quantities that they look for, one of the smaller
14 utilities, the quantities that they look for are
15 small. And the market really doesn't -- is not
16 that interested in addressing these small
17 quantities. So, they will pay the ACP, if they
18 don't get any offers.

19 Q But that's a backstop, if there are no offers
20 made to them through competitive procurement
21 initiatives. Is that fair to say?

22 A (Daly) I think that's fair to say. Yes. That's
23 consistent with my understanding.

24 Q And is that a company which is regulated by this

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Commission?

2 A (Daly) Yes, it is.

3 Q Okay. Thank you. What I believe is my last
4 question, does the Company believe that this is
5 an appropriate proceeding in which to request a
6 fundamental change in the longstanding approved
7 strategy for utility RPS compliance?

8 A (Daly) Well, you know, we raised the question as
9 to, you know, whether there is changes required.
10 And we're certainly open to another proceeding
11 that would determine with more specificity and
12 more evaluation of what the complexities of
13 administering this program is.

14 You know, based on our experience
15 across the three states that we serve, operating
16 to try and manage this service in a state where
17 both the quantities required to comply and the
18 ACPs change year to year, and sometimes
19 after-the-fact, as Mr. White stated. I mean, it
20 can be very close to the end of a compliance
21 period when the Commission would reduce the
22 compliance obligations from 8 percent to 2
23 percent. There aren't many markets that you
24 operate in where the quantities you have to

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 comply with change by a factor of four. And yet,
2 you know, you could have a whole load of RECs
3 that you had procured, I'd say prudently, over
4 the period to try and manage that obligation.
5 And then, legislation could intervene and change
6 the ACP price that you made for those purchases
7 under. So, both quantity and ACPs changing in
8 the manner they do, it probably warrants -- I
9 mean, it does warrant a relook at how New
10 Hampshire's utilities comply with this, to come
11 up with something that is more appropriate.

12 I mean, I don't think it's fair to have
13 the utilities manage these programs, and then
14 have only downside risk for them. So that, if
15 it's a "heads we win/tails you lose" kind of
16 proposition for the utilities, I just don't think
17 that's the right program, and, you know, that's
18 why we've ended up here.

19 I mean, with our best efforts and best
20 intentions to manage this for customers, we end
21 up with a recommended disallowance. We think
22 it's grossly unfair, and we don't think it's
23 properly thought through.

24 So, another proceeding that would

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 properly think through this may well be
2 appropriate. I mean, we would certainly support
3 that. Thanks for the question, by the way.

4 Q And one more time, I'll just ask you to confirm
5 again that the quantity of Class III RECs
6 purchased is not an issue in this instant
7 proceeding. It is the price at which those Class
8 III RECs were purchased in excess of the ACP
9 level effective at the time, that is the crux of
10 the matter before the Commission today. Is that
11 correct?

12 A (Daly) I believe that's correct. But, Rick, if
13 you could elaborate, if necessary. Thanks.

14 A (White) Well, I think that is the crux of the
15 issue. But, at the end of the day, we're faced
16 with a \$1.6 million disallowance. And you don't
17 get there on price alone. There's a volume
18 associated with that 1.6 million. So, they have
19 to come along together.

20 But, you know, we would agree that the
21 crux of your position is as you stated. Does
22 that get where you want to be?

23 Q I will leave it there. Thank you.

24 A (White) It's the 1.6 million that we believe is

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 the crux of the issue.

2 MR. WIESNER: I will accept that and
3 not ask any further questions. Mr. Chairman, no
4 further questions from the Department at this
5 time.

6 CHAIRMAN GOLDNER: Thank you,
7 Mr. Wiesner. I'll recognize Mr. Kreis.

8 MR. KREIS: Thank you, Mr. Chairman.
9 Hopefully, my questions will be relatively few in
10 number, because Mr. Wiesner just covered a lot of
11 the relevant territory.

12 And I would like to say, before I start
13 asking questions, that my intention is to ask my
14 questions of specific witnesses of the Company.
15 And what I'm not interested in is tag-team
16 answers to my questions. I want specific answers
17 from the specific witness that I direct my
18 question to. And, if the Company tries to
19 tag-team by giving multiple answers to the same
20 question, I will object. Because, if the Company
21 wants other witnesses than the ones I asked to
22 answer my questions, it can do that as necessary
23 on redirect. So, I just want to put that out
24 right away, so that there's clarity about what I

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 do.

2 And I think that the bulk of my
3 questions are going to be for Mr. Daly.

4 BY MR. KREIS:

5 Q Mr. Daly, is it fair to say that you are, among
6 the Eversource witnesses testifying today, the
7 highest ranking official of the Company?

8 A (Daly) That is correct.

9 Q And, when Mr. Wiesner asked you earlier about the
10 Company having compared in its testimony -- or,
11 the Company having claimed in its testimony that
12 it saved customers a pile of money versus what
13 would have been the alternative compliance
14 payment, you said "other metrics could be
15 employed" to make that comparison. Do you
16 remember when you said that?

17 A (Daly) Yes.

18 Q Well, what other metrics did you have in mind?

19 A (Daly) Well, there are, I mean, there are other
20 sources available, such as broker quotes, for the
21 different classes. But this REC market is pretty
22 liquid and can be, at times, can be oversupplied
23 or not available at all. So, other metrics are
24 -- objective metrics are difficult to come by.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 I think, if we came up with some other
2 metric, I think you would have a lot of questions
3 about, you know, "what are the sources?" and "how
4 were they calculated?" So, we sought to avoid a
5 lot of speculation by just comparing it to the
6 ACP as a pretty objective measure.

7 Q So, basically, you looked for the keys where the
8 lights were, regardless of where you might have
9 dropped them?

10 A (Daly) I can't respond to that analogy.

11 Q Sure. Looking at Exhibit 6, which is, of course,
12 the prefiled direct testimony, and looking at
13 Page 3 of that testimony, I think it's Bates
14 Page 003, there's a bunch of -- and, again, this
15 is a question for Mr. Daly. There's a bunch of
16 italicized testimony there that I believe is a
17 quote from prefiled testimony that the Company
18 made in Docket Number DE 17-113. Is that a fair
19 understanding of what we're looking at here?

20 A (Daly) I'm afraid you're going to have to help me
21 out. Where exactly are you?

22 Q I'm on Page 3 of the prefiled testimony, I think
23 it's Bates Page 003.

24 A (Daly) Okay. Page 3. I'm going to that.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Q And starting on Line 17 and going down to Line
2 27, there's a bunch of italicized text.

3 A (Daly) Okay.

4 Q And I just wanted to confirm that that's a
5 quotation from prefiled testimony that the
6 Company submitted in Docket 17-113?

7 A (Daly) I believe that's correct, yes.

8 Q And down at Line 24, it says "If the Commission
9 approves this process of separate management of
10 RPS obligations, the Company understands that the
11 process as described above would be
12 "pre-approved"," with that phrase in quotes, "and
13 the recovery of resulting costs will not be
14 subject to further prudence review."

15 So, just to confirm, that was the
16 Company's position at the time it filed its
17 testimony in that docket, correct?

18 A (Daly) I believe that's correct, yes.

19 Q And then, down on Line 28, there's a reference to
20 a "Settlement Agreement", and language in the
21 Settlement Agreement, on Line 29, that says
22 "Eversource will manage its RPS obligation in a
23 manner consistent with Commission precedent for
24 other regulated utilities in New Hampshire."

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 That's a quote from the Settlement
2 Agreement. Correct?

3 A (Daly) That's correct. Yes.

4 Q So, doesn't that language from the Settlement
5 Agreement quoted in your prefiled testimony mean
6 that the Company walked away from or willingly
7 abandoned its position that was just described a
8 couple of lines earlier that its REC purchases
9 would be "pre-approved" with respect to their
10 prudence? Is that a fair statement?

11 A (Daly) Well, I think for, you know, for clarity
12 around that, what the Company was looking for and
13 what the Company got were slightly different. As
14 you pointed out here, we were looking for
15 pre-approval. We had strong reservations about
16 managing this program. Our preference was that
17 the competitive suppliers of our wholesale
18 service manage these obligations. We asked for,
19 if we were going to manage it that, and we
20 described this program basically as to how we
21 were going to manage it, that it would be deemed
22 pre-approved.

23 Not surprisingly, we didn't get all of
24 that, as you pointed out. We got rather vague

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 language that says we should do it consistent
2 with what the other utilities do. And, you know,
3 as we testified here today, what the other
4 utilities do varies. We're not privy to all of
5 their transactions. We know they solicit, from
6 Mr. White's testimony, we know they solicit with
7 and without RPS, they do direct transactions, and
8 they pay ACPs. So, there's a broad range of
9 approaches that are consistent with that
10 statement that "we will manage the RPS
11 obligations in a manner consistent with
12 Commission precedent for other regulated
13 utilities in New Hampshire." So, there is a lot
14 of -- there's a lot of leeway.

15 So, if this Commission were to decide
16 to allow the cost recovery of \$1.6 million, I
17 believe that would be not inconsistent with how
18 other utilities are managing these obligations,
19 and is consistent with how we're managing them.

20 So, yes, I think you bring up a good
21 point, is that there are a lot of variability in
22 approach here. We're trying to bring a
23 consistent market-based approach to this. But
24 all market-based pricing after-the-fact can be

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 either higher or lower than another price that
2 you might get later. So, market-based is an
3 acceptance to buy in to "I'm going to pay
4 whatever the market determines at the time", and
5 you're going to forgo what benefits might occur
6 later on, due to changes in, let's say, market
7 demand quantities or, indeed, ACP obligations
8 through changes in legislation. You forgo that
9 opportunity to go avail of a different price
10 later on, because you will have already bought
11 into the market-based approach, which is what we
12 have done.

13 So, what we have done we think is
14 consistent with the language that we got approval
15 for. And that's why we're looking for cost
16 recovery on this. That's why we're here, to
17 explain what we've done and why we think it's
18 consistent with our Settlement Agreement, and
19 with what other utilities do.

20 So, you know, I appreciate you raising
21 the issue --

22 Q Okay. Hold on. Hold on. This is not an
23 opportunity, Mr. Daly, for you to offer a
24 peroration to the Company. I asked you a

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 question, you didn't answer it. So, I'm going to
2 ask you the question again.

3 The question was, in connection with
4 the Settlement Agreement, didn't the Company
5 agree, voluntarily, to walk away from its
6 position that REC purchases ought to be
7 pre-approved, and instead voluntarily agreed to
8 accept a paradigm, about which you are now
9 complaining, in which the Company basically
10 undertook some degree of what you now regard as
11 sort of "heads I win/tails you lose" risk?

12 A (Daly) I think I did answer the question. I
13 explained that we didn't get pre-approval, we got
14 broader language. And we implemented that
15 language.

16 Q Right. And what I'm trying to get you to agree
17 to is that, when you say "we didn't get
18 something", what you really mean is "we agreed to
19 something voluntarily"?

20 A (Daly) I think you're implying something that we
21 don't agree with.

22 Q Did you sign the Settlement Agreement or not?

23 A (Daly) We signed the Settlement Agreement. And,
24 as I said, there was a lot of latitude in how you

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 could determine this. And we went ahead and
2 determined it in a manner that we thought was
3 consistent with that. And we filed for years the
4 costs that derived from that program, and
5 apparently were not a problem. So, this one
6 transaction resulted in higher prices, and that
7 was the subject of a dispute.

8 So, as we know, reasonable people can
9 disagree. And that's what's happening here.

10 Q But it was a voluntary undertaking by the
11 Company, yes or no?

12 A (Daly) We are not -- we are not abandoning --

13 Q Mr. Daly, I asked you a "yes" or "no" question.
14 Would you please answer my question, "yes" or
15 "no"?

16 A (Daly) Some questions cannot be answered "yes" or
17 "no" and be --

18 Q The question was, was --

19 A (Daly) -- and be accurate.

20 Q Hold on. Hold on.

21 A (Daly) I'm sorry, Mr. Kreis. I'm still answering
22 the question.

23 Q I'll let you answer, but you have to let me --

24 A (Daly) I'm still answering the question.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Q Yes. Well, --

2 A (Daly) Some questions cannot be answered "yes" or
3 "no" and be accurate. That's my answer.

4 Q Well, again, if your attorney wants to ask you
5 follow-up clarifying questions on redirect, she
6 may.

7 But my "yes" or "no" question was, is
8 the Settlement Agreement that Eversource signed
9 in DE 17-113 a voluntary undertaking by the
10 Company, or not? Yes or no?

11 A (Daly) It was a Settlement Agreement, yes. So,
12 it was voluntary.

13 Q Thank you. Okay. Turning to Page 4 of Exhibit
14 6, at Line 7, the witnesses say "If the
15 electricity providers are not able to meet the is
16 RPS requirements by purchasing or acquiring
17 Renewable Energy Certificates, they must pay
18 Alternative Compliance Payments." Mr. Daly, how
19 do you know that?

20 A (Daly) Because that's the regulations in New
21 Hampshire.

22 Q Have you read them?

23 A (Daly) Have I read the regulations in New
24 Hampshire relative to our alternative compliance?

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Yes. If they -- if a competitive supplier
2 doesn't comply by buying Renewable Energy
3 Certificates, they have to pay the Alternative
4 Compliance Payments.

5 Q And you know that because you have read the
6 regulations?

7 A (Daly) I'm familiar with the regulations in New
8 Hampshire, yes. That's why we -- that's why
9 everybody -- any entity who operates in that
10 state needs to understand the regulations.

11 Q Sure. But first you said you "read them", and
12 now you say that you're "familiar with them".
13 Which is it? Have you read them or are you
14 familiar with them?

15 A (Daly) I have read them and am familiar with
16 them.

17 Q Okay. Have you read the statute?

18 A (Daly) I can't recall whether I read the statute
19 or the regulations that derive from the statute.
20 It's been some time. These regulations have been
21 in place a long time now.

22 Q Sure. Okay. So, there's a reference there to
23 "Alternative Compliance Payments", Mr. Daly.
24 What is your understanding of the purpose of

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Alternative Compliance Payments, as required by
2 either the regulations or the statute?

3 A (Daly) The Alternative Compliance Payments, as
4 conceived in most of the states we operate or all
5 the states we operate in, is that they will
6 provide an incentive for retail energy suppliers
7 to go purchase RECs, or, if not, then they would
8 pay the Alternative Compliance rate.

9 Q So, you don't consider the Alternative Compliance
10 Payment to be an effective price cap?

11 A (Daly) No. No, we do not. It's not a -- it's
12 not a prescribed price cap. It's more designed
13 as an incentive that, if you don't pay the
14 prevailing REC price, that you have to pay that
15 rate. But it's not a -- it's not a price cap.
16 There's nothing preventing the supplier from
17 paying some other price, including ourselves.

18 Q Looking down now to the question that begins at
19 Line 16 of Page 4 of Exhibit 6, the question was
20 "Are there additional factors affecting the
21 management of RPS compliance obligations beyond
22 the general requirements [that you] discussed
23 above." And then, in the answer, you say that
24 "RECs", this is beginning at the end of Line 18,

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 "RECs purchased may be used for compliance in two
2 subsequent compliance years, by class, in
3 quantities not to exceed 30 percent of a
4 compliance year's volume obligation for that
5 class." Do you see where you made that comment?

6 A (Daly) Yes.

7 Q My question is, has the Company ever accumulated
8 enough RECs in the previous years to exceed that
9 30 percent limit of current compliance year's
10 volume obligation for a particular class?

11 A (Daly) I don't know the specifics to answer that
12 question. Mr. White may.

13 Q Mr. White, do you know?

14 A (White) I believe there have been instances where
15 the amount of RECs carried forward into
16 subsequent years for compliance, where we did
17 carry forward RECs into year two, which implies
18 that the initial quantity carried forward
19 exceeded the 30 percent requirement. And that
20 occurrence, it happened regarding Class I RECs,
21 where, as I think most folks know, we have
22 purchase power agreements from two generators
23 that supply Class I RECs in prescribed
24 quantities, so to say, almost always exceeding

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 our annual volume obligation.

2 So, I believe there have been
3 instances, yes, where we've exceeded that 30
4 percent obligation. I'm going to say, subject to
5 check, that it has not occurred in any class
6 other than Class I.

7 Q With respect to when it has occurred, how do
8 you -- what do you do with that surplus? How do
9 you manage it? I guess this would be a question
10 for Mr. White, because it seems like he's the
11 witness who knows the answer to this.

12 A (White) We're very careful not to carry forward
13 beyond the vintage year for those RECs quantities
14 that would render, at the end of two years, any
15 of those RECs valueless. So, it's a complex
16 analysis, based on forecasted future obligations.
17 Again, assuming regulatory and legislative
18 outcomes, of course, play into that. But the
19 goal was to essentially ensure that we wouldn't
20 be in that position.

21 And the way that's essentially done is
22 fairly simple, that, in the current vintage year
23 that you're in, those RECs are fungible and can
24 be sold. And, so, we would try to ensure that we

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 sold a sufficient quantity such that surpluses
2 carried forward would not back us into that
3 corner. And we did so successfully.

4 Q Okay. Moving ahead now to Page 5 of Exhibit 6,
5 and I guess I'm switching back to Mr. Daly. On
6 the first half of Page 5 of Exhibit 6, there is
7 discussion of the fate of the bill, House Bill
8 1234, that was eventually vetoed by Governor
9 Sununu, and therefore did not cause the increase
10 in the Alternative Compliance Payment to \$55 as
11 that bill would have provided.

12 So, my question for Mr. Daly is, how do
13 you know when -- well, how did you know about the
14 status of House Bill 1234 while it was being
15 deliberated and ultimately vetoed?

16 A (Daly) Well, we follow -- we follow legislative
17 matters as our company -- our company does. We
18 knew that these bills passed both the House and
19 the Senate to change the ACP. We knew that. I'm
20 not exactly sure how we knew it, but we knew it.

21 Q So, your testimony, in other words, is that the
22 people in Eversource whose job it was to make
23 these REC purchases knew that they were doing so,
24 even though the Alternative Compliance Payment

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 had not increased?

2 A (Daly) The legislation had not become final,
3 because it hadn't been signed by the Governor.
4 So, I think we were aware that -- so, we need to
5 be aware what changes are occurring relative to
6 the ACP in order to make sense of what the market
7 is pricing RECs for. So, we were in the
8 marketplace in July soliciting RECs. We needed
9 to understand what the prices coming in had
10 factored in, basically, whether they made sense.
11 And it seemed to be that the market price was
12 assuming that these pieces of legislation would
13 change the ACP to \$55 plus, would occur. So,
14 that's the reason we internalized that into our
15 decision-making that says "Well, the market is
16 factoring in those price changes, so the market
17 expects it to occur. So, it's not unreasonable
18 to buy at these prices."

19 Q So, just so it's clear, your testimony is that,
20 because Eversource actively monitors the
21 legislative process in New Hampshire, the Company
22 made a knowing choice, and not a negligent
23 choice? It knew that that bill had not yet
24 become law, but it expected the bill to become

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 law, and, therefore, the Company made a knowing
2 choice to purchase RECs at above what was then,
3 at that time, the alternative clearing price?

4 A (Daly) Yes. That's what the market had factored
5 in, and we saw the logic in the market factoring
6 that in. What subsequently happened, of course,
7 just for clarity, is that the Governor vetoed
8 that legislation later on. That legislation, I
9 believe those provisions ended up in a much
10 larger omnibus bill that the Governor had issues
11 with, and therefore vetoed that bill, as well as
12 these components. So, that's why it didn't pass.

13 But, you know, I think the question of
14 "should you have known whether the Governor was
15 going to veto that bill or not?" I think that
16 would have been impossible for us, because it, as
17 I said, it ended up in an omnibus bill with a lot
18 of other provisions. So, it would put us in a
19 position, and this is a very good illustration of
20 why we accept the market price, is that you have
21 to make a determination that all those other
22 provisions that go into that omnibus bill were
23 going to be viewed favorably or not by the
24 Governor, and that would be impossible. So, it's

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 a good illustration of why it is that we adopted
2 a market-based approach, and not have to apply an
3 awful lot of judgment to factors that are really
4 outside our understanding, involving not just
5 energy and ACPs, but a lot of other provisions
6 that related to other services in the State of
7 New Hampshire that we have really no insight into
8 at all. So, the market-based approach is one
9 that internalizes a price for all of that risk,
10 and that's why we went with that, rather than
11 make a judgment as to whether those two -- the
12 House and Senate bills would ultimately pass, but
13 assuming they would wasn't unreasonable, because
14 they had in previous years. That was the
15 experience.

16 MR. KREIS: Mr. Chairman, it would help
17 me, and perhaps everybody else at this point, in
18 the interest of not causing this hearing to last
19 five days, if you would instruct the witness to
20 answer the questions that I actually pose to him,
21 rather than launching into perorations that have
22 nothing to do with the questions that I'm asking,
23 because that will save me the trouble of
24 objecting and asking to strike his long-winded

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 answers.

2 CHAIRMAN GOLDNER: Please proceed,
3 Mr. Kreis.

4 MR. KREIS: Thank you.

5 BY MR. KREIS:

6 Q So, Mr. Daly, were you personally aware, at the
7 time that your Company was buying RECs at what
8 was above the alternative clearing price, while
9 that bill, House Bill 1234, was awaiting either
10 signature or veto by Governor Sununu?

11 A (Daly) I do not recall being aware of that
12 specific transaction being dependent on a
13 governor's action. The program, as I said,
14 was --

15 Q Okay. That's all. It was a "yes" or "no"
16 question, and your answer was "No, I wasn't
17 personally aware of it." Mr. Shuckerow, were you
18 aware of it?

19 A (Shuckerow) When we were aware of all the
20 uncertainty, we relied upon the market prices
21 that we received in July, and moved forward and
22 selected the amount of RECs, as Mr. White had
23 described earlier.

24 Q Okay. Moving on to Page 6 of Exhibit 6, I think

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 it is -- yes, down on the question that begins on
2 Line 14, and goes -- the answer to which goes
3 down to Line 28, there is a reference to "Dollar
4 Cost Averaging". And the testimony is that the
5 Company managed its REC purchase obligations in a
6 manner that is similar to dollar-cost cost
7 averaging, or laddering, there's another
8 reference there to "laddering".

9 My question is, does the RPS statute
10 require Eversource to apply dollar-cost averaging
11 or laddering, with respect to its procurement of
12 RECs?

13 This is a question for Mr. Daly. It's
14 a "yes" or "no" question.

15 A (Daly) I'm not aware that the RPS obligations
16 refers to "dollar-cost averaging" or "laddering".
17 It simply states the requirements and the ACPs.

18 Q In that answer, on Page 6, at Line 23, it says --
19 well, beginning on Line 21, it says: "The
20 process utilized by Eversource for RPS compliance
21 has been employed for the Company's ES, Energy
22 Service, customers in New Hampshire over many
23 years and also utilized by Eversource's
24 Massachusetts affiliated companies."

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Does the process for procuring default
2 service power in Massachusetts include the
3 purchase by Eversource of RECs in Massachusetts?

4 A (Daly) No, it does not. We purchase the RECs
5 separately in Massachusetts.

6 Q But that's not the way it works in Connecticut,
7 right? The Company doesn't purchase RECs in
8 Connecticut?

9 A (Daly) That's correct. That's correct. In
10 Connecticut, it's included. The regulations
11 provide for it to be included in the energy
12 price. So, it's a separate -- it's a different
13 process.

14 Q Thank you. Okay. Moving on now to Page 7 of
15 Exhibit 6, I'm almost done. On Line 14, it says:
16 "House Bill 1234 was viewed by Eversource as
17 recurring, routine, legislative activity
18 consistent with prior legislation, and the REC
19 market reflected the same view as evidenced by
20 the market prices for RECs that were supplied in
21 response to Eversource's RFP." Did I get --
22 these are questions for Mr. Daly.

23 First of all, you agree, do you not,
24 that the market prices for Class III RECs in New

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Hampshire are not solely determined by what
2 anybody thinks the Alternative Compliance Payment
3 in New Hampshire is at any given time, correct?

4 A (Daly) That's correct.

5 Q And, at Line 14, it says "House Bill 1234 was
6 viewed by Eversource". That's a passive
7 construction. And, so, I just want to confirm,
8 consistent with the questions I've already asked
9 you, that that's a view that you personally held?
10 You thought that House Bill 1234 was "recurring,
11 routine, legislative activity", correct?

12 A (Daly) That's correct.

13 MR. KREIS: Okay. I think those are
14 all the questions I have, Mr. Chairman. I'm
15 eager to hear what the Commission's questions
16 are.

17 CHAIRMAN GOLDNER: Thank you. We'll
18 take a quick five-minute bathroom break, and then
19 get started with Commission questions. Thank
20 you. Off the record.

21 *(Recess taken at 11:09 a.m. and the*
22 *hearing resumed at 11:15 a.m.)*

23 CHAIRMAN GOLDNER: Okay. We'll go back
24 on the record. Got questions from Commissioners.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 I'll recognize Commissioner Simpson.

2 CMSR. SIMPSON: Thank you, Mr.

3 Chairman.

4 So, I'll similarly direct most of my
5 questions to Mr. Daly, but please feel free to
6 direct any specifics to any of the other
7 witnesses on the panel today.

8 BY CMSR. SIMPSON:

9 Q In terms of compliance with the RPS statute, what
10 are the dates for the compliance year, the first
11 date in a compliance year and the last date?

12 A (Daly) I believe it's -- I believe it's June of
13 each, subject to check, I believe it's June of
14 each year.

15 Q June 1st?

16 A (Daly) June 1st. Yes. Yes, I think so. And
17 it's different in different states, but I think
18 it's June 1st.

19 Q So, that would be June 1st to May 31st of the
20 following year?

21 A (Daly) Correct. Yes.

22 Q And at what date --

23 A (Daly) Sorry. Sorry. May I --

24 CHAIRMAN GOLDNER: Mr. White has

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 something to add.

2 **CONTINUED BY THE WITNESS:**

3 A (Daly) May I have some input from --

4 BY CMSR. SIMPSON:

5 Q Oh, please.

6 A (Daly) Our Program Administrator in New Hampshire
7 is Mr. White. So, he may have more clarity on
8 that. But that's what I recall.

9 A (White) Yes. If I may? And I think "compliance
10 year" can be viewed in many different respects.
11 From a regulatory standpoint, the obligations are
12 calendar year obligations. They are percent
13 requirements for each class, based on a volume of
14 sales to retail customers during a calendar year.

15 However, the trading period, if you
16 will, when most of the business occurs, just a
17 quick example: The first REC in a 2020
18 compliance year are generated on January 1st of
19 that year, if you will. RECs begin being
20 produced. But they aren't -- they aren't
21 recognized in the system of record for the
22 purchase and sale of RECs, known as the "GIS
23 system", which is administered by ISO-New
24 England, they aren't recognized in that system

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 until July 15th. Then, you've got -- and that
2 GIS trading period is open to customers through
3 June 15th of the following year.

4 So, it's sort of on the schedule that
5 Mr. Daly identified. It kind of goes summer to
6 summer, when the trading system of record is
7 available to be used by participating entities.
8 And then, by June 30th of a year, compliance
9 entities are required to submit a compliance
10 filing with the utility commission by June 30th
11 following the prior calendar year.

12 So, when we say "compliance year", we
13 can be referring to a few different time periods.
14 And, you know, admittedly, it's confusing, but
15 people can view a "compliance year" in different
16 respects, with regard to when RECs are produced
17 and obligations are occurred, and when purchases
18 and sales take place over a differing term.

19 So, hopefully, that's helpful.

20 Q So, let me just check my understanding, Mr.
21 White. So, for 2020, January 1st, 2020, a
22 qualifying resource produces electricity on
23 January 1st, 2020, though the associated RECs
24 from that day are not visible until June 15th,

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 2021?

2 A (White) No. Those RECs would be, as you say,
3 "visible" on July 15th, 2020. And they're done
4 on a quarterly basis. So, first quarter RECs
5 become fungible, visible in GIS on July 15th of
6 2020. So, either a six-month or three months,
7 it's fifteen days after the end of the following
8 quarter.

9 But that doesn't mean that parties
10 can't enter into transactions prior to July 15th.
11 Generators are certified by a New Hampshire state
12 entity in their being qualified to produce
13 certain classes of RECs. So that that REC
14 produced on January 1st, parties could agree to a
15 purchase or sale of that REC any time after that,
16 and it may be entered into as a firm or non-firm
17 sale. It's just that the actual consummation of
18 that sale in the system of record could not be
19 recognized until July 15th.

20 So, there's -- so, there's a lot of
21 layers to all this. Hopefully, that's helpful.

22 Q That is. And that's ultimately what I'm trying
23 to understand with this line of questioning, is
24 the mechanics of how the RECs are produced, when

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 they're recognized in a public system.

2 So, going back to your last comment, a
3 REC produced on January 1st of a given calendar
4 year, and the REC produced on March 31st of that
5 same calendar year, would become visible in the
6 ISO-New England system on July 15th. Is that
7 correct?

8 A (White) That's correct. But, as I also stated,
9 counterparties can enter into firm transactions.

10 Q Uh-huh.

11 A (White) We really only enter into firm
12 transactions, which means that the seller commits
13 to providing those RECs, or financial
14 remuneration if they're unable to. So that we
15 would be held harmless, if their generator failed
16 and they didn't have the RECs, they would -- they
17 are -- they would be obligated to provide us the
18 money to go acquire the RECs elsewhere. So, you
19 can enter into transactions. Everyone knows the
20 RECs are being produced. It's just the official
21 system of record that certifies the transfer of a
22 purchase or sale, if you will. You're correct
23 that they become available in that system on
24 July 15th.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Q In your experience in New Hampshire, have most
2 REC transactions been entered into through
3 bilateral contractual agreements or have they
4 been provided into this market, this GIS system,
5 and then purchased subsequent to their visibility
6 on a quarterly basis?

7 A (White) I would say the majority of business
8 occurs on a quarterly basis. July 15th, then,
9 you know, Q2 RECs become available on October
10 15th, January 15th and April 15th for the
11 succeeding quarters. So that, in many respects,
12 prompts some market activity. But that's not to
13 say that there aren't transactions done outside
14 of those periods.

15 And the GIS system itself, for example,
16 that Q1 period that you identified, and I might
17 get these dates exactly wrong, but the GIS system
18 is open from July 15th to September 15th. And
19 that's just an administrative functioning of a
20 highly complex online system administered by a
21 contractor at ISO-New England, so that they can
22 do maintenance on the system, other things. It's
23 just you can't get in there and input info into
24 that system except during those timeframes. But

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 the fact that you can't get in GIS from September
2 15th to October 15th has no impact on market
3 participants making deals, buying and selling
4 RECs among them.

5 Hopefully, that's understandable.

6 Q So, the ISO GIS system that's used for tracking
7 the regional REC market, is that a system that
8 any member, any person in the public has a
9 purview into? Or, do you have to be a registered
10 market participant in order to track the REC
11 market and see the flow of RECs from qualifying
12 facilities/qualifying generators?

13 A (White) Well, the answer to your question is it's
14 not open to the public. It requires user IDs and
15 passwords, authorized by -- I believe you have to
16 be an ISO-New England participant in order to
17 participate in GIS.

18 But I want to be clear, I want to
19 clarify for certain, that it is just a system of
20 record, like an accounting record. It is not a
21 system in which counterparties transact. There
22 is no price information in GIS. It simply tracks
23 volumes that participants hold in their account
24 of various classes among various states. So, it

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 is not a -- it is not a marketplace. It is a
2 record of who has -- who owns the rights to RECs
3 on a volume basis, --

4 Q Is there --

5 A (White) -- or produce RECs as a generator.

6 Q Is there some sort of a dashboard or a publicly
7 available place where REC transaction prices are
8 tracked?

9 A (White) I'm not aware of a -- of like a
10 dashboard. And, in fact, you know, I'm going to
11 say there are some public reports. There may be
12 a public portal of GIS. I'm not familiar with
13 it. But there may be some information available
14 to the general public.

15 We don't utilize the system in that
16 fashion. So, I'm not familiar with it. So, I
17 guess I would qualify that answer. Yes.

18 Q So, when we talk about "market prices for RECs",
19 how does one determine what market prices are on
20 any given day and historically?

21 A (White) Well, for example, in an RFP, it's a
22 competitive solicitation. You get participation
23 from multiple market participants, and it
24 provides insight into the market view of the

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 value of certain products.

2 We also deal with brokers, who are a
3 clearing house for companies participating in
4 RECs markets, either on the buy or sell side.
5 And they provide market price information, from
6 time to time, their best estimate of the value of
7 RECs as we proceed through time.

8 Q So, is your only purview into market prices for
9 RECs what REC suppliers ultimately bid through
10 your competitive RFP processes?

11 A (White) It's not the only, but we do feel that
12 running a competitive RFP, and when you get
13 offers that are clustered, it's a good indicator
14 of market value.

15 Q In Exhibit 6, on Bates Page 003, you mention
16 "daily broker quotation sheets". Can you explain
17 what that is for me?

18 A (White) That's what I just mentioned. We
19 sometimes deal through brokers, REC market
20 brokers. And, at the end of a business day, they
21 typically provide broker quotation sheets, which
22 are their close-of-business estimate of where
23 current REC markets are trading in the various
24 states.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Q So, you have business relationships with brokers
2 that serve to provide a means for REC producers
3 and purchasers to transact for RECs?

4 A (White) Correct.

5 Q And those brokers create an aggregate pricing
6 index on a daily basis for REC transactions that
7 have occurred on that given day?

8 A (White) They do. Recognize that REC markets are
9 not always deep, there's not always a lot of
10 activity. So, those quotation sheets, while one
11 of the few sources of information, may not have a
12 lot of current information in them. In a perfect
13 world, they would represent actual transactions
14 that occurred during that day. And they kind of
15 summarize bid and offer positions, based on their
16 view of the markets during that trading day.
17 There may not be a lot of trading activity for
18 them to evaluate during that day. But they
19 nevertheless most always do their best and
20 provide quotations on their current view of the
21 market.

22 Q In terms of the market for brokers in this REC
23 space, is that a robust market, with many brokers
24 and competitors? Or, is there a fairly small

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 number of brokers that serve this REC market?

2 A (White) I think it's not a terribly robust
3 market. We primarily deal with two different
4 brokers. There may be others. There probably
5 are. But we generally utilize a pair of brokers.
6 And it's -- I don't believe it's a terribly
7 robust market, the RECs markets. They can be at
8 times, but there's not -- there's not always a
9 lot of buying and selling activity. It can be a
10 fairly thin market.

11 A (Daly) If I may add to that? I think, you know,
12 the question is a good one, relevant to what we
13 deal with in terms of this market.

14 So, you have six New England states,
15 and they each have different definitions and
16 different classes for renewable energy and,
17 basically, markets that they want to incentivize.
18 But their definitions are all different, and the
19 quantities are all different, and the supply and
20 demand in each state is all different. So, it's
21 a very, very balkanized market.

22 And, you know, we're talking about REC
23 prices as though they were something you could
24 look up in a public bulletin board or in a paper.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 That's not always the case. And, in some cases,
2 you can't get any quotes at all. So, you have to
3 rely on the market to provide you what the prices
4 are out there, because there haven't been any
5 transactions, there is no visibility into it.

6 So, that's, you know, that's partly why
7 we use the market-based approach. And within
8 that we, you know, we throw out outliers. So, we
9 would go with more clustered bids, and reject
10 ones, as we did in this case, we didn't buy all
11 we were offered. We only bought the ones that we
12 deemed to be close enough to one another to be
13 competitive, and rejected some of the higher
14 priced.

15 So, it is a very balkanized market.
16 You don't have visibility on what the market --
17 the so-called "market price" is at the time, or,
18 indeed, whether there are transactions occurring.
19 So, it's part of the complexity of the program.

20 This program that we're just talking
21 about in New Hampshire, that it's very complex,
22 when you look across the states we deal with, and
23 all of the different definitions of different
24 classes and quantities, and change in regulations

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 that occurs, as well as we have here. So, it's
2 really quite a difficult market to administer.
3 And is really more color on some of Rick's
4 responses, if that's helpful.

5 Q And, Mr. Daly, when you say that you have to
6 "rely on the market", do you mean you have to
7 rely on the transaction history as provided to
8 you by the brokers that you have a business
9 relationship with, in order to gauge REC price
10 conditions?

11 A (Daly) That's one input, yes. We use that as an
12 input to making decisions. But sometimes there's
13 no information there, as I said, because the
14 market is pretty illiquid or there hasn't been
15 transactions. And then, other times there can be
16 quite a bit of information. So, the answer is
17 "yes", when it's applicable.

18 Q The relationships that Eversource has to have in
19 place with these brokers, are those -- or, I
20 should say, do the daily price quotation sheets,
21 "daily broker quotation sheets" as referenced,
22 are those the result of those relationships that
23 you have with brokers?

24 Let me ask it another way. Do you have

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 to have a relationship with a broker in order to
2 receive these daily price -- daily broker
3 quotation sheets?

4 A (Daly) Yes. I mean, they deal -- entities, like
5 ourselves, we sometimes buy and sell through
6 these brokers, but we also use their sheets for
7 price discovery. I think they would want you to
8 be signed up for the service, which we are. They
9 don't just send it out to anybody.

10 Q And do you pay a -- any type of fee to these
11 brokers on an annual basis or a monthly basis?
12 Or, is the fee that they -- if there is a fee
13 that they receive, is that based on transactions?

14 A (Daly) It's based on -- they earn their money
15 through transactions. They may sell other
16 information services as well. And, occasionally,
17 we buy those from people. But, mainly, they
18 exist on buying and selling and making a margin
19 on their transactions.

20 Q And do those brokers share these quotation sheets
21 on a daily basis because you're a client of
22 theirs?

23 A (Daly) Yes.

24 Q That's helpful. Thank you. On Page two, Bates

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Page 002 of Exhibit 6, and this is for Mr. White,
2 you mention that you're "responsible for on-going
3 activities associated with independent power
4 producers and purchase power agreements." Can
5 you explain the relevance of those activities to
6 the REC obligations that Eversource has?

7 A (White) Well, that is really just a general
8 statement. But, with regard to RECs, we have two
9 power purchase agreements I mentioned previously.
10 And, under both of those agreements, contractual
11 arrangements approved by the Commission. Via
12 those contracts, we purchase Class I RECs from
13 those two entities.

14 So, that would be the direct
15 relationship to REC markets. Nothing to do with
16 the Class III RECs.

17 Q Okay. Thank you. Thinking about the
18 participation of out-of-state generators into
19 specific state REC markets, can you explain how
20 out-of-state generators can meet New Hampshire's
21 eligibility requirements for participating in the
22 state's RPS?

23 A (White) My understanding is that they have to
24 present documentation to, I assume, a PUC-related

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 entity, and basically certifying themselves, and
2 the State has to qualify them and certify them as
3 a legitimate provider of whatever class of New
4 Hampshire REC that they produce. So, there is a
5 certification program, if you will, that they
6 enter into in order to be qualified as a provider
7 state by state. My understanding is, most
8 typically, that certification, you know, you go
9 through a recertification on an annual basis.

10 Again, we're not intimately familiar
11 with that, as we don't go through it. We don't
12 own any generation that we have to certify.

13 A (Daly) So, you know, I think a broader
14 perspective is that each state has its own
15 requirement to be qualified. And there's a state
16 entity that oversees that qualification. So,
17 each of the generators has to apply to that
18 particular entity within that particular state to
19 qualify, and then they can sell their RECs into
20 that state and be qualified. The GIS system
21 keeps track of it. But it's the entity itself
22 that gets qualified within a state. So, any of
23 the New Hampshire-compliant ones have to get
24 qualified in New Hampshire, and the same entities

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 could be qualified in Connecticut, for example,
2 and could sell their RECs then into that market,
3 or Massachusetts, or some other market.

4 So, these generators qualify themselves
5 in multiple states, and they have to fit within
6 the regulations of that state to qualify. And
7 New Hampshire has a unique set of qualifications
8 for each of their classes, and so does the other
9 states. So, that's how they are able to qualify
10 and transact in those other states.

11 Q So, I'm looking at the Department of Energy's
12 Exhibit 8, the Energy Service Cash Working
13 Capital Requirements, on their Bates Page 005.
14 The two procurements in question here are from
15 Engie and Bridgewater Power Company, is that
16 correct?

17 A (White) Yes.

18 A (Daly) Yes.

19 Q So, those vendors purchased the number of RECs
20 provided from a variety of Class III qualifying
21 facilities, is that correct?

22 A (Daly) Yes. Go ahead, Rick.

23 A (White) Or produce them themselves.

24 A (Daly) Or produce them, yes.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Q Okay. So, within that batch of RECs, there are
2 multiple Class III generators involved in the
3 production of those RECs, is that correct?

4 A (White) It is possible. I'm going to say, in the
5 case of Bridgewater, that they are -- they
6 generated the RECs. I'm not positive about that.
7 It would take some investigation into the GIS
8 system to see all the nitty-gritty details of
9 from where these RECs came from.

10 I honestly believe that, for both
11 companies, they are internally generated. They
12 may come from several different generators under
13 that corporate or that company umbrella. And,
14 like I say, it would take some investigation to
15 drill down to each REC. But they are traceable
16 to a given quarter of production by a specific
17 generator.

18 Q But it sounds like, when Eversource procures RECs
19 to comply with New Hampshire's Renewable
20 Portfolio Standard, you're not necessarily
21 tracking the individual plant generator that
22 those RECs are produced by, you're just procuring
23 a number of RECs in order to meet your burden, as
24 based on megawatt-hours of electricity delivered

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 in the prior calendar year. Is that correct?

2 A (White) I think it's fair to characterize it that
3 way. And, again, we transact on a "firm
4 transaction basis". So, there are liquidated
5 damages, if our counterparty does not perform.
6 So that, in some respects, we're insulated from
7 the risks of REC production on their side from
8 specific generators, etcetera.

9 Q And this is a question, I think, for Mr. Daly.
10 As an organization, your testimony provided that
11 you participate in REC purchases and compliance
12 in New Hampshire, Massachusetts, Connecticut, is
13 that correct?

14 A (Daly) That's correct. Yes.

15 Q And the generation resources within New England
16 that qualify for various RPS programs, they might
17 qualify for only one state's program or they
18 might qualify for RPS program eligibility in
19 multiple states, is that correct?

20 A (Daly) That's correct. Yes.

21 Q Do you know if any of the Class III RECs at
22 question here, if they would qualify for
23 participation in the RPS programs in either
24 Massachusetts or Connecticut?

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 A (Daly) Yes. I believe that they would qualify in
2 Connecticut, for example. Yes, they qualify in
3 other states. It's up to the producer to
4 qualify -- to get themselves qualified in those
5 states. But, yes, I believe some of the Class
6 III RECs we have here are qualified in other
7 states, including Connecticut, and, in any event,
8 and possibly New Hampshire as well -- or, I mean
9 Massachusetts as well.

10 Q And when you and your team are looking at
11 Eversource Energy's RPS burden across all three
12 states, do you allocate REC purchases on a first
13 day basis or do you competitively solicit your
14 requirements individually for each state?

15 A (Daly) It's the latter, yes. We keep them
16 separate. We competitively solicit for each
17 state's program separately.

18 Q Is there a reason why you wouldn't solicit your
19 RPS requirements on a more regional basis?

20 A (Daly) Yes. I mean, it's much easier to keep the
21 accounting straight, in terms of, you know, what
22 you got offered, what you accepted, and what the
23 costs incurred were, if we keep them separate.
24 And, as I said, the actual classes vary by state

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 as well, as the quantities. So, you're looking
2 for different attributes in each state program
3 and different quantities. And, in Connecticut,
4 for example, it's bundled with the energy rate.
5 So, we don't do -- we don't do separate ones
6 there. In Massachusetts, we do it separately,
7 similar to New Hampshire. So, it's better to
8 keep them separate, from an accounting standpoint
9 and clarity on cost recovery.

10 Q That's very helpful. I'd like to go back to some
11 of the questions about dates of RPS compliance.
12 The discussion that we had earlier was helpful,
13 as it seems that RECs are generally recognized on
14 a quarterly basis throughout New England through
15 the ISO-New England GIS system.

16 For New Hampshire's RPS, at what date
17 do you need to comply with a calendar year's RPS
18 obligation?

19 A (White) We have to file what's known as an
20 "E-2500 Annual Compliance Form" by July 1st of
21 the following year. So, the 2020 E-2500
22 Compliance Form would be filed prior to July 1st
23 of 2021. And that form details the volume and
24 costs incurred of your activities to comply with

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 the RPS regulations. The GIS -- the GIS system
2 for 2020 effectively closes on June 15th of 2021.
3 And most participants in these markets insist or
4 require, in transactions, delivery of the RECs by
5 June 1st. So, we would require any purchases we
6 made for 2020 RECs, under contract, they have to
7 be transferred to GIS by June 1st of the
8 following year. And we may require, for certain
9 transactions, that it be done sooner than that.
10 But, from an annual compliance standpoint, and to
11 ease deadlines bumping against deadlines and
12 administrative burdens, we back up a little the
13 actual dates that we'd like to get things done
14 by.

15 Q So, for compliance year 2020, on what date
16 certain did you have to demonstrate compliance
17 for meeting your obligation?

18 A (White) It has to be done by certain in GIS by
19 June 15th of 2021. We have to submit our
20 Compliance Report to the New Hampshire PUC by
21 July 1st of 2021.

22 Q So, on July 2nd, 2021, is it your understanding
23 that you could meet your 2021 compliance burden,
24 could you pay the ACP on that first date for the

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 compliance year?

2 A (White) No. Typically, ACP payments accompany
3 the E-2500 submittal. So, when we submit our
4 E-2500 form, let's say, on June 30th, we would
5 have, at that point, put in place payment to the
6 PUC of any ACP obligation we were left with for
7 that compliance year.

8 Q And is that a business practice or is that your
9 understanding to comply with the RPS statute?

10 A (White) That's my understanding to comply with
11 the RPS statute.

12 Q In your view, is there a problem with complying
13 under the RPS statute with paying ACP or is it
14 just a second option for compliance?

15 A (White) Well, I think, to the extent you haven't
16 purchased RECs, you are left with an ACP
17 obligation. And that E-2500 form, you know, kind
18 of accounts for RECs purchases and any leftover
19 obligations.

20 A (Daly) So, some suppliers do just choose to pay
21 the ACP. I mean, there's a burden on
22 administering these programs. There's a cost to
23 administer. As you can hear, the complexity of
24 the programs, you need people to do them. Some

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 suppliers just choose to pay the ACPs. That's
2 their cost to comply. So, it's up to the -- it's
3 up to the individual companies how they want to
4 do that.

5 But, when you say "acceptable", I mean,
6 yes, it's acceptable under the program, and it's
7 acceptable to some suppliers to do it that way,
8 because it's their least cost and less
9 complicated way to do it.

10 Q Okay. So, then, how do you know that the
11 suppliers who bid to provide RECs, Class III
12 RECs, to Eversource, for the prices listed here,
13 in the \$50 range, that they did not just pay the
14 ACP?

15 A (Daly) They could have -- well, we're dealing
16 mainly with producers of these RECs. But there
17 are brokers and other people involved as well who
18 have surpluses to sell.

19 We don't question why they want to sell
20 them. As long as they're qualified and meet our
21 requirements, we will buy them. And, as our
22 contracts provide, if they don't provide them,
23 there's liquidated damages. So, there's -- but
24 they could choose different compliance

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 methodologies, such as, "well, we'll sell the
2 RECs we have and we'll pay ACPs?" All of that is
3 within their purview or strategies to pursue,
4 yes.

5 Q So, the suppliers who provide RECs to you, they
6 don't necessarily need to produce or have
7 purchased RECs from plants that produced any
8 class RECs, that they could sell you certificates
9 that ultimately just track back to them paying
10 ACPs?

11 A (Daly) No, they -- well, they have to provide --
12 they have to provide us with the RECs that we
13 purchase. It's the -- and they're generally
14 producers that are doing this. It's the
15 retail -- the retailers have the obligation to
16 either have enough RECs or to pay ACPs for any
17 deficiencies. But that obligation is on the
18 retail suppliers within each state.

19 Q And that only applies to customers on competitive
20 electric supply, not on utility default service?

21 A (Daly) No, it applies to both. It applies to all
22 retail customers, and including the ones that we
23 provide service to. But competitive retail
24 suppliers are also in the state, and they have

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 the same compliance obligations.

2 Q So, then, in a given compliance year, is
3 Eversource purchasing RECs to meet their RPS
4 compliance burden or is there a mix of ACP
5 payments and REC purchases?

6 A (Daly) So, the retail suppliers are responsible
7 for their own compliance obligations for the load
8 that they serve. We're not obligated to meet
9 compliance for their load obligations. We're
10 only -- we're only complying for the load
11 obligations we have.

12 Q Understood.

13 A (Daly) Because the state regulations pertain to
14 any retail supplier, including the utilities.

15 Q But, for your own load obligation, historically,
16 has Eversource purchased RECs that can be
17 attributed directly to plants only or is there a
18 mix of REC purchases from associated generators,
19 along with ACPs, for compliance?

20 A (Daly) It's a mix. But we generally -- we
21 generally avoid ACPs, if there's RECs available.

22 Q So, as a business decision, why would you pay
23 dollar amounts for compliance over the ACP, if
24 your historic compliance with this RPS statute

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 has involved both ACP payments and REC purchases?

2 A (Daly) Right. So, the issue here then is, what
3 has happened in this instance, is that we're
4 administering a program that is premised on, as
5 we call it, "dollar-cost averaging". But the ACP
6 price changes after-the-fact. So, what you have
7 is basically a change in the market situation
8 that occurred after you made the purchase. So,
9 the ACP rate didn't go up as the market
10 anticipated, and you're left with a payment for
11 RECs that's above the ACP.

12 This is a product of having a program
13 being implemented in the manner you've designed
14 it, and then the market turning out to be
15 different later on. It's simply that. The
16 legislation didn't get passed. So, there's a
17 mismatch perceivably between the two. And what
18 the premise of the disallowance here is that, you
19 know, we should eat the difference, because the
20 outcome that the market anticipated didn't occur,
21 and a better outcome occurred in this case. And
22 then, we're saying "Okay, let's recognize the
23 difference in outcome that occurred, but not just
24 on that particular transaction, let's look at all

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 of them." So, this one cost customers \$1.6
2 million. But other ones that we did saved \$20
3 million, including this.

4 So, this is -- you know, if you wanted
5 a different program or if you want the Company to
6 do a different program, we're open to that. And,
7 you know, if the program says "Well, generally,
8 we like what you're doing, because we like the 20
9 million. But, you know, the 1.6 million, we
10 don't like that, because it was above the ACP."
11 You could say "Well, a new rule for you is do
12 what you're doing, but never pay above current
13 ACP." I mean that's a way to say "going forward,
14 here's a clarity of the rule." And, you know,
15 other ways we've suggested is that, you know, we
16 bundle it with the wholesale energy price, is one
17 way to do it, or take us out of this -- and that
18 would take us out of the decision-making, so we
19 don't get second-guessed. And another way of
20 taking us out of the decision-making is to say
21 "Well, whatever your obligations is, pay ACP on
22 it." So, I think that's -- that's potentially
23 the more expensive outcome.

24 But, you know, what we're trying to get

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 at is, an improvement to the program, so we don't
2 end up back here, and a recognition that it can't
3 be all downside for us.

4 So, sorry if I restated the whole case
5 again, but that seemed like a good point to do
6 it.

7 Q So, from the questioning with the Consumer
8 Advocate, we were looking at Bates Page 007 of
9 Exhibit 6, it's the section Line 6 through 22,
10 where you describe historically how, in New
11 Hampshire, the Class III ACP has changed on a
12 legislative basis during different session years?

13 A (Daly) Right. Yes.

14 Q Before July 1st, 2020, House Bill 1234 was still
15 going through the legislative process, and it was
16 not -- it was never -- it never became law. So,
17 there was a period of time when the law said that
18 New Hampshire Class III ACP is "\$34.54". Is that
19 a fair assessment?

20 A (Daly) Yes. That's correct.

21 Q When you received bids for your solicitation for
22 Class III certificates, is it your understanding
23 that the law, the statute still had the ACP set
24 at "34.54"?

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 A (Daly) That's correct. Because it hadn't been
2 enacted into law by signature of the Governor,
3 hadn't been -- hadn't been finalized. That's
4 correct.

5 Q So, when you contracted with the two suppliers
6 for Class III certificates over \$50, you were
7 aware that the ACP was still \$34.54, is that
8 correct?

9 A (Daly) That's correct. And that the market, and
10 to explain that, why we did the higher price,
11 because the market was factoring in that those
12 pieces of legislation would get enacted into law,
13 as they had in previous years.

14 Q So, why would you not take the position of paying
15 the ACPs for your Class III obligation, as
16 opposed to buying significantly higher priced
17 RECs?

18 A (Daly) The decision to -- well, it's the
19 flip-side of what we did. So, what could happen
20 is that, if we decided to forgo this purchase,
21 let's say, and we paid the \$34 ACP, which could
22 be a decision we would take, it would be contrary
23 to our program implementation, to say "No, we're
24 going to judge what the market is. We're going

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 to override what the market is saying, and we're
2 going to pay ACP." We could do that, but that
3 would be contrary to the program we were
4 implementing. And the danger is that, well, you
5 forwent purchases at less than the new ACP,
6 you've forgone those purchases, because you said
7 "oh, we don't think the legislation is going to
8 pass. It's going to stay at 34." Then, if it
9 did pass, so, we're making a bet as to whether
10 the legislation would pass or not. And then, if
11 the legislation did pass, we would be up at 55
12 for ACP. So, now, we would be locked into a 55
13 ACP. And we could be back here with people
14 arguing that "if you had followed your program,
15 you would have bought at \$50 or so, but now
16 you're going to pay 55, and you should be
17 disallowed the difference." So, this is a "heads
18 we win" -- "heads you win/tails we lose" type of
19 argument. So, I think we'd be damned if we did
20 and we'd be damned if we don't, depending on
21 where the legislation would come out. And that's
22 really the conundrum for us.

23 You know, are we always going to guess
24 on the losing side of these decisions? If we do

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 impose decisions, if we do take it upon ourselves
2 to make decisions and bets, if you like, that
3 are -- we're betting they're better than the
4 market, you know. So, that's the crux of this
5 whole issue here.

6 Q So, understanding that your expectation at the
7 time, based on historical legislative changes,
8 was that the Class III REC price was going --
9 ACP, Class III ACP was going to significantly
10 increase into the \$50 range, pursuant this
11 legislation, did you have any conversation or was
12 there any desire to try to meet your 2020 burden,
13 before that legislative change occurred, through
14 ACP payments, so that you could lock in at the
15 lower price and still comply with the statute?

16 A (Daly) No. We couldn't lock in at the lower
17 price. The price we got was the lowest price we
18 could get. The prices we did lock in at were the
19 lowest prices we could get. So, we made the
20 decision, I mean, you're right, we made a
21 decision to comply by not paying ACP, by buying
22 RECs, because the anticipation was that the ACP
23 would go higher, then the market prices would
24 adjust to that, or are already largely adjusted

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 to that. So, with the lower price ACP would have
2 been one that says "the legislation is not going
3 to pass, and we're going to sit on these
4 requirements, and basically guess right as to
5 what's going to happen on the legislation."

6 Hopefully, that answers your question.

7 Q It's helpful. I guess, trying to understand the
8 decision to wait until the statute changed and
9 the ACP for Class III went up, as opposed to
10 trying to lock in your obligation at the time
11 when the Alternative Compliance Payment was
12 significantly lower? Trying to understand the
13 factors that went into that?

14 A (Daly) Yes. Yes. I mean, you know, this is the
15 crux of the matter. So, in order to do that, you
16 have to -- you have to really make a bet as to
17 whether the legislation is going to pass or not.
18 The experience was that it had passed previously,
19 and the market was saying "it's going to pass."
20 So, the program we were implementing relied on
21 the market. So, we accepted those prices as
22 being the ones that, you know, we would have
23 to -- we would have to deal with, or we could buy
24 at the 50 plus dollars, versus paying ACP at 55,

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 so that that was the right decision at that time,
2 that was a prudent decision at that time, versus
3 taking a decision that says "oh, we're going to
4 make a bet that the legislation is not going to
5 pass, and that we're going back to the 34" --
6 "we're going to stay at the \$34." So, you know,
7 that's the -- that's the decision you make.

8 As I said, we could have been faulted
9 for making that decision and forwent the prices
10 under that RFP at \$50 and then subject to the
11 higher price later. So, it's a case of "Damned
12 if you do or damned if you don't." So, you know,
13 that's why we're here, obviously.

14 CMSR. SIMPSON: I don't have any
15 further questions, Mr. Chairman. Thank you.

16 WITNESS DALY: Thank you.

17 CHAIRMAN GOLDNER: I'll recognize
18 Commissioner Chattopadhyay.

19 CMSR. CHATTOPADHYAY: Yes. I have not
20 too many questions, given what Commissioner
21 Simpson has already sort of he's gone through.
22 But I do want to make sure I'm following exactly
23 what you're saying.

24 BY CMSR. CHATTOPADHYAY:

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Q So, the first question I have is, you know, let's
2 think about the 2020 compliance year. And the
3 way, Mr. White, you had described the process,
4 it's really sometime end of June 2021 or
5 beginning of July 2021 that you sort of take a
6 stock of how much of the RECs that you were meant
7 to buy you have bought, and you haven't bought a
8 part of it, and, for that, the ACP applies. So,
9 I'm trying to make sure, when you're taking a
10 snapshot of 2020, and you're sort of saying "I
11 have to pay something as ACP", is the ACP that is
12 valid on, say, June 30th or July 1st or July
13 15th, I forget the dates that you were
14 mentioning, in 2021, are the ACP rates from that
15 period that's going to apply, as far as what you
16 have to pay?

17 And this is a question for Mr. White,
18 I'm assuming, because you are in the
19 nitty-gritties of RECs.

20 A (White) Yes. The ACP at that point in time is
21 what would be factored in to your final
22 Compliance Report.

23 Q Okay. So, --

24 A (White) And, you know, that ACP may have changed

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 during the course of the term. But, yes. I
2 think, whatever is in place at that time is what
3 your ACP payment would be based upon.

4 Q So, let me -- let me just create a hypothetical
5 scenario.

6 Let's say, instead of paying the market
7 clearing price, at the time that you decided to
8 pay that, you had made the call "Okay, you know
9 what, the law hasn't passed yet. The current ACP
10 is" -- I'm just using rough numbers -- "\$35,
11 let's just pay that." But, really, let's say the
12 law ended up like, you know, you ended up getting
13 to the \$55 when the law passed, okay? And, at
14 the end of June 2021, you, because you had sort
15 of locked in \$35 for, you know, a part of your
16 requirement, at that time are you saying that,
17 you know, you still would have to pay \$55 for
18 those ACPs? Or am I misunderstanding the
19 process, you know, can you --

20 A (White) Yes, I think I can answer. I think I
21 understand what you're wondering. One does not
22 have the ability to lock in an ACP price --

23 Q Yes.

24 A (White) -- prior to the point in time when you

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 submit your Compliance Report. So, in your
2 example, any ACP payment would be calculated at
3 the \$55. There's not a way for an entity --
4 there's not a way that we could have locked in to
5 \$35 twelve months earlier. The program is not
6 administered that way.

7 Q Is that a statutory requirement or is that
8 something that you follow as a matter of sort of
9 convenience?

10 A (White) Honestly, I don't know if it's a
11 statutory requirement. I expect it is *de facto* a
12 requirement, that ACPs are calculated at the time
13 you submit your Compliance Report. I don't -- I
14 don't know of any way that an entity could submit
15 an interim report, committing to ACPs, you know,
16 prior to that June timeframe. I'm not aware that
17 that's an available approach.

18 A (Daly) No, I'm pretty sure it's not available. I
19 mean, you don't do your accounting until your
20 final reconciliation for both the load and the
21 quantity of RECs, different classes of RECs that
22 you have, and each of them have different ACPs.
23 So, the determinations at the time you comply,
24 what any deficiencies get applied to the then

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 current for that year ACP. So, if the
2 legislation passed, we would be paying that \$55.
3 There was no way back in July we could lock in 34
4 on ACP. To be very clear, I mean, there is no
5 way you can do that. You're exposed to what the
6 ACP is for the year, which, as we see in this
7 case, the legislation can change partway through
8 the year. So, you were facing a \$34 ACP for part
9 of the year, and then, if the legislation passed,
10 you would be facing the \$55. But, for the entire
11 year, if the legislation passed, because they can
12 apply it retrospectively, that's why we bought at
13 the 50 plus dollar area, is because the
14 expectation is we'd be exposed to \$55 when the
15 legislation passed, as it had done in previous
16 years. But there's no way we could -- I mean,
17 the market wouldn't be bidding over 50, if they
18 thought that we could comply at 34. They just
19 wouldn't be doing that, you know.

20 But your question is important for
21 clarity. That was not -- that avenue was not
22 available to us, and it's not part of the design
23 of the market. It's not unique to us. Nobody
24 can use it that way.

{DE 21-077} {01-13-22}

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Q And, really, I was trying to get clarity. So,
2 that really helps. I'm trying to think through
3 how the process works.

4 So, let's say, again, stick with the
5 hypothetical. So, it's still -- so, you ended up
6 paying \$35. I know this is not how it works, but
7 assume that is how it played out. And then, the
8 price went to \$55. And, in July 2021, that \$55
9 that you're paying, at that point, could it be
10 the issue then, whoever is looking at it for
11 prudence, sort of saying "you paid \$55, while you
12 had prices that were available that were lower
13 than \$55, and, therefore, you know, it's
14 imprudent to go for that. So, we're going to
15 disallow that."

16 A (Daly) Exactly. Yes.

17 Q Is that something that bothered you?

18 A (Daly) Yes, it did. I mean, that is exactly why
19 we locked in the prices we did. Because we
20 thought, well, if we -- if we're going to make a
21 bet on the legislation not passing and the ACPs
22 are going to stay at the 34, if they do go to --
23 if the legislation does pass, and they go to 55,
24 and we have passed up on purchasing at the \$50

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 level, then we could be all here on the argument
2 "Well, you didn't stick with your program, and
3 you could have locked in at a lower price. So,
4 therefore, you should be disallowed the
5 difference between 50 and 55, because you exposed
6 yourself to it."

7 Q So, --

8 A (Daly) Yes, that's the -- that's the risk we
9 would have taken on. And, to make that decision,
10 just to be clear, to make that decision, we would
11 say "Hey, that legislation, even though it passed
12 the House and Senate, is not going to pass", that
13 would seem like a pretty brave decision to make,
14 because it had passed in other years. Of course,
15 we didn't know that it would end up in an omnibus
16 legislation. But, if we did, that the Governor
17 vetoed the whole lot, including all those other
18 provisions that were in that omnibus legislation,
19 that we wouldn't have been able to handicap
20 anyway. So, it would have been a very brave
21 decision to have made that and say "We're going
22 to bet on the Governor vetoing this." So, it's
23 really a very difficult situation we would
24 have -- a very difficult decision we would have

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 had to make, betting against the House and
2 Senate, and figuring out where it went. And we
3 have to do this every year, and every time
4 there's a proposed change in ACPs, you are faced
5 with making a similar decision. How do you apply
6 that year after year after year, and not enough
7 backing in this argument as to "why did you bet
8 against the legislation that passed both the
9 House and Senate?"

10 So, you know, that's the complexities
11 of this program and trying to administer it.

12 Q So, when you decide to buy RECs, you have an
13 annual process, I'm assuming. And you
14 ordinarily, thinking about it as an economist, I
15 would say I have to look at the information that
16 I have at this point, and I'm going to now
17 trigger purchase of something, but I'm going to
18 use the information set that is out there. And,
19 in some ways, one could argue that, you know, at
20 that time the price is \$35, as long as you are
21 given the guarantee that that's -- that you will
22 not face the downside, if it played out the way I
23 described it, and ultimately became \$55, you
24 would be sort of, you know, there could be ways

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 to handle this in a way that it still is
2 reasonable for the Company to do, to take that,
3 to have an approach where it sort of doesn't face
4 this downside.

5 A (Daly) I agree. I mean, one of the -- one of the
6 ways to do it would be to say "Well, regardless
7 of what the market is telling you for prices,
8 don't buy anything above the then current ACP",
9 even if there's legislation passed by the House
10 and Senate, or anybody else, that's not finalized
11 until it's finalized, you don't make any
12 transactions. I mean, you don't make any
13 transactions that's above the then current ACP.
14 You could have that as a rule. But we don't have
15 that here. We don't have that clarity and
16 agreement with the Commission or the Staff. So,
17 this has led us to this situation.

18 But you're right. We could have such a
19 rule going forward. And we'd be, you know, we'd
20 be happy to implement it.

21 Q A lot of the stuff that we had discussed just a
22 while ago, in my questioning, I wish it had come
23 out more clearly in the testimony, in the written
24 testimony, this fact that there is this -- you

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 have to deal with the reality that the ACP is
2 whatever it is in July 2021. That's the one
3 you're expected to pay. So, it might have been
4 helpful, just to comment.

5 I have just one more question. This is
6 purely just trying to understand what you meant
7 by that. So, you said "liquidated damages" when
8 you deal with your parties when you're buying
9 RECs for meeting the requirements. Can you
10 describe what you mean by "liquidated damages"?

11 And I generally know what it is, but
12 just tell me specifically how that would play
13 out?

14 A (Daly) Yes. It's pretty common in energy
15 contracts and in these types of contracts, these
16 REC contracts, is that we contract for a certain
17 quantity of a certain type of REC. If the
18 supplier fails to deliver it, then we would -- we
19 would penalize them under the contract, called
20 "liquidated damages". And the damages are -- the
21 contract needs to be fairly specific. So, the
22 damages calculation is based on the ACP, for
23 failure to deliver, because that's what we would
24 be exposed to when we do our compliance filing,

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 as we discussed earlier. When we do our
2 reconciliation for the load we served in the
3 compliance year that we're reporting on, if
4 there's a deficiency, which would have been
5 caused by a supplier not performing, we would be
6 exposed to the ACP price. Therefore, that's how
7 we calculate the liquidated -- the damages that
8 would occur to us.

9 So, that's how that liquidated damages
10 works under our contracts.

11 Q Can you end up getting damages that exceeds what
12 you needed to be, you know, compensated for? And
13 I'm just curious whether that can happen, and, if
14 so, does that money go to the ratepayers?

15 A (Daly) Yes. All the money goes to the
16 ratepayers, for clarity, on that, on these
17 programs.

18 Q Okay.

19 A (Daly) But you could end up with more than your
20 compliance costs. But that's the formula under
21 the contract with the supplier. So, they don't
22 get to look back, if you like, or look at our
23 compliance obligation. This is simply a way to
24 calculate what the damages might be if we were

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 deficient. And we could be surplus some other
2 way. We could have bought more of a particular
3 class of REC that caused us to qualify, and
4 qualified that way. But still the supplier would
5 be on the hook for liquidated damages to us,
6 based on the ACP.

7 Q Can you sort of go with contracts with the
8 parties in a way that the risk that you're
9 talking about, and I'm going back to my previous
10 questioning, that is their problem? If something
11 like that happens, they are the ones who are
12 going to be making sure you get compensated for?

13 A (Daly) Exactly. Yes. Exactly. And the
14 flip-side of it is that, if the ACP price didn't
15 go up, like here, we have to pay the contract
16 price. So, if we -- if we failed to pay the
17 contract price, we would -- we would, basically,
18 it's to us. So, we have to perform. So that
19 it's just a way of calculating the damages.

20 Q And I was sort of suggesting something else. I
21 was asking whether, in your contracting with the
22 parties, is it possible to make sure that the
23 kind of risk that you're talking about is borne
24 by the parties, and not the utility? And then,

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 and in some ways this also it almost intersects
2 with the other point that you made in your
3 testimony, which is that maybe this should be
4 handled by the -- the RPS thing should be handled
5 by them as well. But I just --

6 A (Daly) Yes.

7 Q I'm saying, can you have a contract where you are
8 ensuring that, if there is any risk, that is
9 handled by them, even though you actually go
10 ahead and purchase the RECs?

11 A (Daly) Yes. You could write a contract, that
12 would be different than the ones that we have,
13 and say "well, the risk is on the supplier, if
14 the ACP doesn't" -- "changes", we'll say, so that
15 your price automatically gets changed. But
16 that's not -- that's not accepted practice in the
17 industry. I mean, we're one buyer out there.
18 There are, you know, there are hundreds of retail
19 suppliers that are all transacting, and the
20 suppliers have choices as to who they send them
21 to.

22 So, the terms in our contract with
23 liquidated damages are pretty conventional, in
24 terms of what they are. And these entities, they

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 are not interested in what the changes in laws
2 are. They are only interested in, if they commit
3 to a price, that we pay it. And, similarly, on
4 the other side, we have the flip of that, is
5 that, wherever markets go, wherever ACPs go, we
6 pay the price under the contract. So, it's a
7 symmetrical arrangement.

8 Q Okay.

9 A (Daly) And we pay the contract price. And, if
10 somebody doesn't perform, they pay liquidated
11 damages under the contract. And then, in this
12 case, it would be "what are our damages?" Would
13 likely be the ACP.

14 So, the answer to your question is
15 "yes", in theory, but it would be pretty
16 unconventional.

17 Q Did you ever think about it? Like, you know,
18 right now you're talking about it. But have you
19 really thought about working on some, you know,
20 contract language that actually addresses this
21 issue? Have you ever thought about it before?

22 A (Daly) Well, we've always been thinking about
23 ways to apportion risks under contracts. That's
24 something, you know, we do all of the time. And

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 that's how we arrived at the current terms, which
2 are pretty conventional.

3 You can always write a contract that
4 will do something else, but you may not get
5 anybody who wants to transact with you on it,
6 which is the risk you run by having such a
7 provision.

8 I'd say the state regulations don't --
9 they don't change as often, in a lot of states
10 they don't change as nearly as much as they do in
11 New Hampshire on ACPs. So, you get a different
12 price for that. If you did put that in, the
13 price under which suppliers would take on that
14 risk, they could factor -- they would factor it
15 into their contracts, and you'd just get a
16 different set of prices for reallocation of the
17 risk, is how it would work.

18 Q Just very quickly, this is my last question. I
19 think it touches upon what Commissioner Simpson
20 was asking. So, it's an offshoot.

21 Let's say your process is somehow dealt
22 with, and you have a uniform approach everywhere,
23 meaning Connecticut, New Hampshire, and
24 Massachusetts, you have the same approach. Do

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 you believe that a regional approach like that,
2 where you have a, you know, even with different
3 class requirements, do you believe that that sort
4 of regional approach can bring more benefits,
5 like, you know, in terms of having a more liquid
6 market, and providing you better, you know,
7 benefits for the ratepayers?

8 A (Daly) Yes. The requirements to meet a certain
9 percentage of load obligations and the types of
10 facilities that qualify for the various classes
11 are state-specific. So, there isn't really a
12 uniform regional approach to either the quantity
13 or the type of facilities that qualify. So,
14 having a regional approach would be difficult to
15 get to.

16 On the compliance for the utility side
17 of things, I mean, we could aggregate demands for
18 the various classes, but we still would be left
19 with these pretty balkanized requirements that
20 are different by state. So, we would have to
21 have, you know, separate products out there in a
22 solicitation. So, I think the only advantage
23 you -- or, one of the advantages anyways you'd
24 get is from a bigger solicitation that might draw

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 more interest.

2 But, then, you have to -- you have to
3 figure out, you know, which, if you got different
4 prices for relatively the same product, we'll
5 say, how do you allocate them to each
6 jurisdiction that we have? That's quite a -- you
7 know, so each state would want the lowest priced
8 tranches for themselves, and they say "you can
9 give the higher priced ones to some other state."
10 So, you have the issue of allocation would be a
11 challenge.

12 So, you know, there's more complexities
13 in doing it that way. It's easier to keep them
14 separate, and there's less, you know, as, you
15 know, we're pretty risk-averse in these programs,
16 because we don't make any money out of them.
17 It's an expense, and its complexity, as we can
18 all hear from this conversation, to administer
19 these markets, and things can go wrong. So, we
20 try to keep them as simple as possible.

21 A regional approach has its attraction
22 on optics, but it would be very difficult to
23 implement and to get to a point where we have
24 assurance of cost recovery. So, it's probably

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 more difficult.

2 CMSR. CHATTOPADHYAY: Thank you. That
3 was it from my end.

4 WITNESS DALY: Thank you.

5 CHAIRMAN GOLDNER: Okay. Thank you. I
6 just have a few questions.

7 BY CHAIRMAN GOLDNER:

8 Q Perhaps a question for Mr. White. When did you
9 file the Compliance Report in question here? Was
10 that July of 2021?

11 A (White) Yes. It was late June 2021.

12 Q Okay. And the legislation in question here, when
13 was it signed by the Governor?

14 A (White) The legislation in question here was
15 vetoed by the Governor on July 29th, 2020.

16 Q I'm sorry, could you say the date again please?

17 A (White) July 29th.

18 Q Of 2020?

19 A (White) Yes.

20 Q Okay.

21 A (White) Actually, on Bates Page 007 of Exhibit 6,
22 "July 28th" is identified as the Governor's veto
23 date.

24 Q Okay. So, it was vetoed in July 2020. Thank

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 you. And then, I'm looking on Exhibit 8, and
2 Exhibit 2 in Exhibit 8, which better said is
3 probably Bates Page 005, there's two -- there's
4 two transactions involving Class III RECs, Line
5 4, I think, and Line 9. And those transactions,
6 I'm not sure I'm reading the table correctly, but
7 looks like those transactions are "August of
8 2020" and "January of 2021"?

9 A (White) Those are the transfer dates. So, those
10 are actually the dates where the RECs moved from
11 the seller's account in GIS to the PSNH account
12 in GIS.

13 The RFP that we ran, just to go through
14 the chronology quickly, House Bill 1234 passed
15 both Houses on July 1st. We issued our RFP on
16 July 8th, 2020. We received responses on
17 July 14th. And we transacted with the two
18 counterparties shown here on July 15th. The
19 dates on this exhibit, the August and January
20 dates, is when ultimately the purchased RECs
21 transferred in the GIS system.

22 And you can see that payment is held
23 until that transfer. So, the payment under each
24 of the contracts was made soon after the GIS

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 transfer date.

2 Q Okay. And I guess I kind of go back to
3 Commissioner Chattopadhyay's question. I guess I
4 don't quite understand why -- with all the
5 uncertainty, why didn't you just wait?

6 A (Daly) Yes. That was the point I was trying to
7 make. Because we needed to stick with the
8 program, because deviation from it would be
9 basically deciding to wait. And, if we decided
10 to wait, the law passed, and the Alternative
11 Compliance went up to 55, we would have been
12 exposed to that number. And we could be faulted
13 for not having bought in the earlier July period
14 at a lower price. The market would certainly go
15 up higher or closer to that ACP price if the law
16 had actually passed.

17 So, we were going to be exposed, and
18 you could be second-guessed in the other
19 direction, if you like. So, we were being
20 second-guessed that "Hey, you should have known,
21 or, well, if you didn't lock those in, you would
22 be at a lower ACP and probably a lower market
23 price, but why did you lock in?" The answer is
24 "Because we expected the legislation to pass.

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 And, if it did, we thought the prices would be
2 higher." And then, people will be back here
3 saying "Well, why didn't you buy it, lock in at
4 the lower price?"

5 So, it's a question of how do you
6 implement the program, and do you stick with it?
7 And, if you deviate from it, what's your
8 exposure? This case is demonstrating that
9 sticking with the program has exposure as well.
10 And, you know, we're saying "Look, we can't have
11 a lose/lose situation for us while we administer
12 these programs", which is the situation we're in
13 right now.

14 Q Yes, I guess I don't quite understand that.
15 Because, if you would have waited, and as I think
16 Commissioner Simpson was alluding to, there's no
17 visibility, unless you're in this market, to go
18 see the fluctuation. So, honestly, the
19 Commission would have no visibility to that
20 market fluctuation. We would have nothing to
21 question you on, because we don't watch or see or
22 have access to that valuation in between time
23 periods.

24 A (Daly) Well, you would have visibility in terms

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 of when we file compliance. If you -- if you
2 asked us "well, I see you paid \$55 in ACP for
3 this, why did you do that?" And we said "Well,
4 we looked at purchases back in July, at a lower
5 price, but we thought the legislation wouldn't
6 pass, and we wouldn't have to pay this \$55." And
7 then, your Staff would be saying "Well, how much
8 could you have bought back at a lower price and
9 why didn't you do that? Why didn't you stick
10 with your program? And why should you expose our
11 customers to now \$55, because you thought that
12 the legislation wouldn't pass when it did? So,
13 why aren't you" -- "why are you paying ACP, and
14 shouldn't you be disallowed this, because you
15 could have bought it at a lower price back in
16 July?"

17 I hope -- I hope that's clearer. We
18 had exposure either way, due to second-guessing,
19 after the legislation passed or didn't pass.

20 A (White) There's a volume component to this as
21 well. Part of our program is to make portional
22 purchases over a longer term. At the time these
23 purchases were made, the requirement was 8
24 percent. And we could have been in a situation,

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 if we hadn't made purchases earlier on, there
2 were no RECs available to buy, and we would have
3 been forced to buy at ACP, and we could be
4 second-guessed to "Why weren't you in the markets
5 earlier making purchases like you always have?"

6 Ultimately, the Commission lowered the
7 requirement to 2 percent. Because I think you
8 all, in your evaluation, determined that there
9 wasn't 8 percent available for compliance
10 entities to procure. So, we could be
11 second-guessed on a volume viewpoint as well.

12 Q Okay. Yes. Thank you both. I just want to ask
13 one question about money flow. If you pay ACP,
14 where does that check go to?

15 A (White) My understanding, if I get the name of it
16 right, the "Renewable Energy Fund", which is
17 administered through the state to promote
18 renewable energy within the state.

19 Q Okay.

20 A (White) That's my understanding.

21 Q Sure. But you would agree that would go to --
22 the check gets cut to New Hampshire in some
23 entity, correct?

24 A (White) It gets cut to the New Hampshire Public

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 Utilities Commission.

2 Q Okay. And, if I look at the table, I'm going
3 back to that same table in Exhibit 8, Bates
4 Page 005, which I understand -- I know is an
5 exhibit from Energy, but, hopefully, you're okay
6 to talk about it. I notice that at least one of
7 the entities, "Engie" or "En-gie", I can't
8 pronounce it, is a Houston-based entity. And I
9 believe what's happening here is that this entity
10 is off purchasing RECs from generators in New
11 England, and you're sort of working with them to
12 sort of consolidate all these different RECs. Is
13 that -- was that a fair summary?

14 A (White) Yes. I think that's a fair summary.
15 They may also own or have ownership interest in
16 REC-producing generation in New Hampshire or the
17 New England region.

18 A (Daly) Yes, I believe they do. I believe they
19 do. They used to -- it used to be Tractebel, and
20 they bought the Tractebel plants. I'm not sure
21 what ones they own in New Hampshire. But they're
22 Houston-based, but they have generation,
23 renewable generation resources in New England.

24 Q Okay. Okay. And I think that you mentioned

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 earlier that you don't -- when you're going
2 through these transactions, you're not tracing
3 whether these RECs are flowing into, you know,
4 Massachusetts or Connecticut or New Hampshire.
5 You're just -- you're purchasing the RECs that
6 have already been verified through this entity,
7 Engie, that you're working with, that's doing
8 kind of like consolidation work for you, correct?

9 A (Daly) Well, they're sourcing the RECs
10 themselves, either through generation plants that
11 they own, and then they transfer them to us, they
12 sell them to us, and then transfer them in the
13 GIS system. So, you have to be qualified in the
14 state in which they sell them, by a state agency
15 within that state, and then the GIS system takes
16 care of the title transfers and settlement of
17 those GIS certificates. And the GIS, Generation
18 Information Systems, the GIS just really tracks
19 what class and who is this buyer and who is the
20 seller. So, it's basically the system of record.
21 The responsibility is on Engie to sell us
22 compliant RECs under the contracts we have.

23 CHAIRMAN GOLDNER: Okay. Okay, thank
24 you. I'll have more questions for the Department

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 of Energy on this later.

2 Okay. Any more questions from the
3 Commissioners? Anything to follow up on?

4 *[No verbal response.]*

5 CHAIRMAN GOLDNER: I notice it's 12:42.
6 And there will be direct from the Department of
7 Energy, correct?

8 MR. WIESNER: Yes. We have Mr. Eckberg
9 as a witness. I think that, if I might suggest
10 that we conclude any redirect of the Company
11 witnesses before we break?

12 CHAIRMAN GOLDNER: Yes. Okay. Thank
13 you. So, we'll go to you, Ms. Chiavara. Do you
14 have any redirect for the witnesses?

15 MS. CHIAVARA: Yes, Chair Goldner.
16 Just a couple brief questions.

17 **REDIRECT EXAMINATION**

18 BY MS. CHIAVARA:

19 Q For Mr. Daly, the OCA said that the Company
20 "walked away from a pre-approval standard for REC
21 purchasing". But is the Company asking for a
22 standard of pre-approval here or are they asking
23 for a determination of prudence for this
24 particular purchase?

[WITNESS PANEL: White|Daly|Shuckerow|Menard]

1 A (Daly) We're asking for a determination of
2 prudence for this particular purchase.

3 Q Okay. Thank you. And the OCA also asked if we
4 made a "knowing or a negligent purchase". Is it
5 your position that we made a knowing or a
6 negligent purchase in this case?

7 A (Daly) I believe we made a knowing, a known
8 purchase in this case.

9 MS. CHIAVARA: Okay. Thank you.
10 That's all I have. Thank you very much.

11 CHAIRMAN GOLDNER: Thank you,
12 Ms. Chiavara.

13 I'll suggest then or let's regroup
14 at -- restart, I should say, at 1:15.

15 Ms. Chiavara, you can release your
16 witnesses. And when we return, we'll start with
17 direct from the Department of Energy.

18 All right. So, off the record, and
19 we'll start back up again at 1:15.

20 *(Recess taken at 12:45 p.m. and the*
21 *hearing resumed at 1:19 p.m.)*

22 CHAIRMAN GOLDNER: Okay. We'll go back
23 on the record.

24 We'll go to direct examination of the

[WITNESS: Eckberg]

1 witness for the Department of Energy,
2 Mr. Wiesner.

3 (Whereupon **Stephen R. Eckberg** was duly
4 sworn by the Court Reporter.)

5 **STEPHEN R. ECKBERG, SWORN**

6 **DIRECT EXAMINATION**

7 BY MR. WIESNER:

8 Q Good afternoon, Mr. Eckberg. For the record,
9 could you please state your full name and your
10 current position with the Department of Energy?

11 A Yes. My name is Stephen Eckberg. And I'm a
12 Utility Analyst with the Department of Energy's
13 Regulatory Support Division.

14 Q And prior to the creation of the Department last
15 July, what other positions did you hold?

16 A Prior to July 1st of 2021, I was a utility
17 analyst with the Electric Division of the Public
18 Utilities Commission. That was a position that I
19 held since August of 2019. And prior to that, I
20 was an analyst with the PUC's Sustainable Energy
21 Division, where I oversaw and helped administer a
22 variety of renewable energy programs, and also
23 oversaw compliance by utilities and competitive
24 energy suppliers with New Hampshire's Renewable

[WITNESS: Eckberg]

1 Portfolio Standard.

2 Q And have you been involved in this docket since
3 it began in June 2021, with Eversource's Energy
4 Service filing, including its prior year
5 reconciliations and updated lead/lag study?

6 A Yes, I have been.

7 Q So, you are familiar then with the issues and
8 details regarding the Class III REC purchases
9 made by the Company in 2020, and the prices that
10 they paid for those purchases?

11 A Yes, I am familiar with that material. Yes.

12 Q And are you also familiar with the proposed
13 reconciliation adjustment letter filed by the
14 Department in September of last year, which has
15 been identified as "Exhibit 8" for purposes of
16 this hearing?

17 A Yes, I am. I provided certain numerical details
18 during the preparation of that letter, and
19 reviewed it prior to its actual filing, to ensure
20 that the proposed disallowance amount was
21 accurately presented in that letter.

22 Q And are you also familiar with the testimony of
23 the Companies' witnesses, Daly, Shuckerow, and
24 White, which has been identified as "Exhibit 6",

[WITNESS: Eckberg]

1 and the attachments included with that testimony
2 identified as "Exhibit 7"?

3 A Yes. I'm familiar with those materials, and I
4 have copies of them here with me.

5 Q Do you have any comments about the Company's
6 joint testimony at this time?

7 A I do have a couple comments, at least on one
8 small part of the testimony, initially, if I
9 could share those with the Commissioners.

10 In Exhibit 6, which is the joint
11 testimony that you referred to, at Bates
12 Page 007, on Lines 25 to 26, the testimony states
13 "We understand prudence in the utility context to
14 be a measure of whether a particular decision was
15 reasonable under the circumstances at the time it
16 was made."

17 And I'd certainly like to agree on the
18 record with that statement. That's exactly the
19 way I understand the prudence decision to be
20 undertaken. And I would say that this is exactly
21 the context that the Department used in reviewing
22 and evaluating the Company's decision regarding
23 the purchase of these Class III RECs in question
24 that we're discussing at great length today, and

[WITNESS: Eckberg]

1 to make our recommendation to the Commission that
2 the costs incurred over and above the ACP rate
3 should be disallowed.

4 The Department is applying only
5 information that was fully available at the time
6 that the REC purchase decision was made by the
7 Company. There is no retroactive use of newer,
8 more current or more complete information to call
9 into question a decision that was made in the
10 past.

11 And, also, on the next several lines
12 right there on Bates Page 007, the witnesses go
13 on to say that "Purchases at market prices are
14 simply purchases; they are not good or bad."

15 And I think I would tend to disagree
16 with that statement by the witnesses. I think
17 that the facts are clear, as we've heard them and
18 as they're presented, that in July 2020, when
19 these Class III REC purchases were made, at
20 prices above \$50 per REC, the public statutory
21 ACP rate in effect at the time was \$34.54 per
22 megawatt-hour. So, in my view, there is good
23 reason why the Company -- there's no good reason,
24 I guess I should say, why the Company should pay

{DE 21-077} {01-13-22}

[WITNESS: Eckberg]

1 a market price that's higher than the ACP. I
2 would say that that represents a bad decision.
3 And the resulting costs over the ACP rate should
4 not be recovered from ratepayers.

5 Q Do you have any other comments on either Exhibit
6 6 or Exhibit 7?

7 A Yes. If we turn to Exhibit 7, which are the
8 attachments to the joint testimony, on -- which
9 page? On I believe it's Bates Page 002, which
10 bears the title "Attachment 2", and it's a table
11 of multiple years' worth of RECs that have been
12 used. And this is where the Company developed
13 its estimate that it spoke of earlier today about
14 "\$20 million in savings". But I'm looking, in
15 particular, at the lower portion of that table,
16 in the "2020" box. And there's some details
17 about the various classes of RECs: "Class I",
18 "I Thermal", "II", "III", and "IV". And, in the
19 row for "Class III", in the center portion, which
20 bears the heading "RECs Used for Compliance", you
21 can see the number "71,570". And that's the
22 number of Class III RECs that the Company used
23 for compliance with its 2020 RPS requirement.
24 That's the 2 percent of energy sales requirement.

[WITNESS: Eckberg]

1 A little over, further to the right, in
2 the next column, you can see that's "RECs Carried
3 Forward". And the number that the Company has
4 there in the table is "12,930". And, if you add
5 those two numbers together, the "71,570" RECs
6 used, and the "12,930" RECs carried forward, you
7 get the total "84,500".

8 And that number is the same total of
9 Class III RECs that the Department discusses in
10 our recommended disallowance letter. And it's
11 the same quantity of RECs that can be seen in
12 that letter, which is Exhibit 8, on Bates Page
13 005, where we have, several times earlier today,
14 we have looked at this schedule, particular at
15 Rows 4 and Rows 9, those are the two Class III
16 purchases on Row 4 there, which we spoke about,
17 those are RECs purchased from Engie Energy
18 Marketing. And, if you look over to the right,
19 you'll see the number of RECs delivered, that's
20 60 -- boy, that's a small number, one moment
21 here, "69,500". And down below, in Row 9, from
22 Bridgewater Power, you'll see "15,000" RECs. So,
23 again, if you add those two numbers together, you
24 get "84,500". So, I just wanted to point out

[WITNESS: Eckberg]

1 that, in both places, we're talking about the
2 same quantity of RECs.

3 However, the -- I'm switching back,
4 sorry if I'm jumping back and forth, but now back
5 to Exhibit 6, the table on Bates -- I'm sorry,
6 that's Exhibit 7, isn't it? Yes, the attachments
7 are "Exhibit 7", excuse me. Exhibit 7, Bates
8 Page 002, in the far right column there, for
9 "2020", column for the "Class III", you see the
10 Company has a number in parentheses of
11 "\$1,348,967". And that is -- they're showing
12 that number there as a negative number, because
13 that's a compliance savings versus ACP, but
14 that's an amount that's actually greater than
15 ACP. This number, the 1,300,000 that the Company
16 has here, pertains only to the over-ACP costs for
17 the 71,570 RECs that they have used in
18 compliance. They're not including any costs
19 related to the 12,930 RECs, the Class III RECs,
20 which are still in the bank and will be used most
21 likely in the next compliance year.

22 So, in our -- in the Department of
23 Energy's recommended disallowance letter, the
24 number which we have proposed, the \$1.6 million,

[WITNESS: Eckberg]

1 approximately, relates to the full amount, the
2 84,500 RECs, the full purchase, and the over-ACP
3 costs related to that full amount.

4 So, I just wanted to point out those
5 specific differences between our recommendation
6 letter and information that the Company has
7 provided here.

8 Q So, the Department is recommending a
9 disallowance, if I understand you correctly, for
10 the full amount of the excess purchase price for
11 Class III RECs purchased in July 2020, even
12 though some number of those RECs may be banked
13 for compliance in future years?

14 A That's correct. Because our -- it's our position
15 that, at the time these RECs were purchased, in
16 July of 2020, or shall I -- as Mr. White has
17 clarified, this is perhaps the date when they
18 were contracted for, not necessarily the date
19 that they were delivered to the Company, that
20 could happen at slightly future times, and, in
21 fact, we see that in this other schedule when
22 those RECs were transferred to the Company. But,
23 at the time the RECs were purchased, because the
24 price was over \$50, significantly greater than

[WITNESS: Eckberg]

1 the ACP price, we're recommending disallowance of
2 all costs for the full purchase amount over the
3 ACP price.

4 Q Thank you for that clarification. With respect
5 to the Department's recommended disallowance
6 letter, marked for identification as "Exhibit 8",
7 do you have any observations you'd like to
8 highlight for the Commission?

9 A Let me turn to that exhibit. Exhibit 8. Yes,
10 there is one thing of note here that I would like
11 to point out, which I think is useful to be aware
12 of, in the -- in the extensive conversation that
13 we've had today.

14 So, this is Exhibit 8, on Bates
15 Page 005, which is, again, this is a schedule
16 that was included in Eversource's lead/lag study
17 originally, back in the Summer of 2021. And we
18 just looked briefly short moments ago at Lines 4
19 and 9 of those Class III REC purchases.

20 But, if we also look further at this
21 schedule, we can see a number of purchases of
22 Class IV RECs. For instance, on Lines 17, 18,
23 19, 20, and 22, we can see purchases of Class IV
24 RECs. And the purchases are for various amounts.

[WITNESS: Eckberg]

1 And over in the column that says "REC Price",
2 which is Column (I), you can see that the prices
3 listed for these transactions are "\$24.00",
4 "\$24.95", "\$25.00", "\$26.00", and "\$29.00", a
5 variety of different prices for each of these
6 quantities and purchases that the Company made.

7 And I think it's important to note that
8 the Department has not identified, not
9 identified, any of these purchases as problematic
10 in any way. The Class IV ACP rate for 2020 was
11 \$29.06. And all of these various purchases of
12 Class IV RECs made by the Company were below that
13 ACP rate. The Department has not made any
14 suggestion that, because the Company bought some
15 Class IV RECs at \$24.00, that the other RECs
16 purchased at \$25.00, \$29.00, etcetera, were
17 somehow improper. The prices that the Company
18 paid for these Class IV RECs were market prices,
19 but they were all below the ACP rate.

20 We understand that market prices
21 fluctuate up and down over the course of the
22 year, in response to a wide variety of factors,
23 including different state RPS requirements,
24 different state ACP levels, as well as the

{DE 21-077} {01-13-22}

[WITNESS: Eckberg]

1 legislative and a regulatory-changing
2 environment. And that different sellers of RECs
3 will ask different prices for the same classes of
4 RECs, depending upon their own economic
5 situations. These are all ongoing factors in the
6 REC market that Eversource, as well as other
7 load-serving entities with an RPS obligation,
8 have to contend with.

9 The only issue that has been identified
10 as an inappropriate cost to pass onto ratepayers
11 is this very specific Company's purchase of Class
12 III RECs at over-ACP prices.

13 Q You mentioned "Class IV REC purchases" as
14 reflected in this table. To your knowledge, did
15 the Company also pay an ACP amount for 2020
16 compliance for Class IV, in addition to the
17 compliance that it effected through its REC
18 purchases?

19 A I can probably answer that question by referring
20 to another document, which I have in my
21 possession, which is not an exhibit. And the
22 answer is "yes". The Company did pay some
23 Class IV ACP compliance amount in 2020. Which
24 indicates that, in spite of its purchases of

[WITNESS: Eckberg]

1 Class IV RECs, it did not find a sufficient
2 number in the marketplace, whether they were
3 available or not available or were available at
4 too high a price, I can't say. I don't know.
5 All I know is that they purchased some RECs and
6 they paid some Alternative Compliance Payment,
7 yes.

8 Q So, with respect to Class IV, the Company's
9 compliance consisted of REC purchases at prices
10 below the ACP, as you noted, although at various
11 prices, and also an ACP payment. And the
12 Department has not challenged any of those
13 purchases or that AC payment with respect to
14 prudence, is that correct?

15 A That's correct. Those actions, collectively, all
16 seem to be I guess I would call them "normal",
17 and expected types of behaviors in RPS
18 compliance. Yes.

19 Q Now, I'll just cover some of the same ground we
20 covered with the Eversource witnesses. I'll try
21 keep to this brief.

22 But would you agree as well that the
23 REC market is regional in nature, and that RECs
24 produced by a generator eligible for New

[WITNESS: Eckberg]

1 Hampshire Class III, may also be eligible in
2 Connecticut or some other New England state?

3 A Yes, I would. Definitely.

4 Q And, if the ACP level in another state or the
5 demand from another state is greater than that in
6 New Hampshire, that would tend to increase the
7 prices at which electric generators may offer
8 their RECs into the regional market. Is that
9 correct?

10 A Yes, it is. For example, I think we heard some
11 discussion earlier that, in 2020, Connecticut
12 Class I ACP was \$55, as compared to the then
13 comparable New Hampshire Class III ACP of
14 approximately \$35. And I compare those two,
15 because, again, the REC market is complicated,
16 and we've heard about renewable generators being
17 qualified in multiple jurisdictions. And just to
18 be clear, generally, the New Hampshire Class III
19 generators would also be -- likely be classified
20 as Connecticut Class I, which is why I
21 specifically compared those two numbers. Yes.

22 Q And can you confirm for us that the ACP level for
23 Connecticut Class I RECs in 2020 was indeed \$55?

24 A Yes, I can. I have confirmed that.

[WITNESS: Eckberg]

1 Q And how did you confirm that?

2 A I was in direct contact with a representative
3 from the Connecticut Public Utilities Regulatory
4 Authority, I think that's their official title,
5 PURA.

6 Q And would that higher ACP in Connecticut
7 potentially increase the market price of RECs
8 eligible in both New Hampshire and Connecticut?

9 A I would certainly think so, yes.

10 Q So, if the REC price, the Class III REC price in
11 July 2020, in the regional market, were in excess
12 of \$50, that does not necessarily represent a
13 market view of the likelihood of passage of
14 pending legislation in New Hampshire. Is that
15 fair to say?

16 A I believe that's fair to say. I believe that
17 that \$50 market price could simply be reflecting
18 the Connecticut ACP price. Yes.

19 Q And, Mr. Eckberg, to your knowledge, has the
20 Department, or PUC Staff prior to July of last
21 year, ever previously recommended disallowance of
22 any amount expended by a utility for REC
23 purchases or RPS compliance?

24 A Not to my knowledge, no.

[WITNESS: Eckberg]

1 Q And has the Department, or PUC Staff, ever
2 objected to Eversource's periodic RFPs or its
3 Dollar-Cost Averaging strategy for RPS
4 compliance?

5 A Not that I'm aware of, no.

6 Q And just to be clear once again, the Department
7 is not challenging and not recommending any
8 disallowance of amounts incurred by the Company
9 based on the quantity of Class III RECs procured
10 for 2020 compliance?

11 A That's correct. Though, as Mr. White has said
12 several times in responding to questions this
13 morning, you know, obviously, the quantity that
14 the Company purchased comes into play in
15 calculating our recommended disallowance. But,
16 initially, the disallowance issue came to our
17 attention based upon the price issue, the price
18 that the Company paid for those RECs, which was
19 in excess of the ACP rate. Yes.

20 Q And, in fact, it's not just the quantity of REC
21 demand from New Hampshire that would drive the
22 regional REC price for Class III eligible
23 facilities, because other states, such as
24 Connecticut demand, would also factor into that

{DE 21-077} {01-13-22}

[WITNESS: Eckberg]

1 pricing. Is that -- is that fair to say?

2 A I think that's certainly a reasonable assessment
3 of market dynamics, yes. And that, you know, it
4 could certainly be possible that the price -- the
5 market price of those Class III RECs would stay
6 relatively high, close to the Connecticut Class I
7 ACP rate, until such time as, you know, the
8 market demand in Connecticut was satisfied, which
9 would then, of course, change market dynamics.
10 And maybe, at that point, then the price would
11 come down. But that's just conjecture on my
12 part.

13 Q Thank you. Appreciate that clarification. Last
14 question.

15 Do you believe that the New Hampshire
16 utility should implement fundamental changes in
17 their approach to REC procurement and RPS
18 compliance at this time?

19 A Certainly not at this time. I don't believe that
20 that's actually a proposal or anything on the
21 table at the moment. No.

22 MR. WIESNER: Thank you. That's all
23 the questions I have on direct for Mr. Eckberg.

24 CHAIRMAN GOLDNER: Thank you. We'll

[WITNESS: Eckberg]

1 move to cross-examination. Mr. Kreis.

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

3 Much as I would love to deliver some withering
4 cross-examination to Mr. Eckberg, I have no
5 questions for him.

6 CHAIRMAN GOLDNER: Thank you, Mr.
7 Kreis. Ms. Chiavara.

8 MS. CHIAVARA: Yes. Thank you. I only
9 have a couple brief questions. Good afternoon,
10 Mr. Eckberg.

11 WITNESS ECKBERG: Good afternoon.

12 **CROSS-EXAMINATION**

13 BY MS. CHIAVARA:

14 Q So, would it be accurate to say that the ACP
15 price was the only determinant factor in making
16 the Department's recommendation for the
17 disallowance of the \$1.6 million?

18 A Well, as I said, that the ACP -- the fact that
19 the Company purchased Class III RECs at a price
20 greater than the ACP was the single factor which
21 caught our attention originally. But, then, in
22 determining a proposed amount for a disallowance,
23 we did have to take into account the quantity of
24 RECs that the Company had purchased.

[WITNESS: Eckberg]

1 Q Okay. So, when making a determination as to
2 whether costs should be disallowed, which is
3 essentially a prudence determination, is it
4 common to use just one factor or one factor, I
5 guess, in conjunction with the quantity to make
6 such a determination?

7 A Well, I think, in this particular situation,
8 where the prudence determination is related to a
9 fairly simple decision, such as to purchase or
10 not to purchase RECs, as far as I can tell at the
11 moment, this is the single most important factor.

12 Now, if we're talking about a different
13 prudence determination, that related to some
14 other more complex utility investment decision,
15 there may very well be a much broader variety of
16 considerations that should be taken into account.

17 MS. CHIAVARA: Okay. Thank you very
18 much. That is all I have. Thank you.

19 CHAIRMAN GOLDNER: Okay. Thank you,
20 Ms. Chiavara.

21 We'll move to Commissioner questions.
22 Commissioner Simpson.

23 CMSR. SIMPSON: Thank you,
24 Mr. Chairman. And thank you, Mr. Eckberg, for

[WITNESS: Eckberg]

1 testifying today on behalf of the Department of
2 Energy.

3 BY CMSR. SIMPSON:

4 Q I had asked some questions of the Company
5 pertaining to the compliance year milestones.
6 Sounds like, in prior roles, you worked with the
7 Sustainable Division of the former PUC, and you
8 worked at the PUC as an analyst, you work at the
9 Department of Energy as an analyst.

10 Can you describe and lay out those
11 annual milestones for RPS compliance, starting on
12 January 1st of any given year?

13 A Well, I can -- I think I can do my best to
14 provide a general description, and maybe there's
15 some other aspects that you then would want more
16 information about, I'll try to fill those in.

17 Q Great. That's exactly what I am looking for.
18 Thank you.

19 A I think we heard a generally accurate description
20 from the Company, as Mr. White described it. The
21 RPS compliance year is a calendar year. So, the
22 RPS requirements of a certain percentage of the
23 different classes, REC classes, apply to the
24 Company's energy sales during a calendar year.

[WITNESS: Eckberg]

1 And the compliance date then, which the Company
2 has to demonstrate compliance, is by July 1st of
3 the following year. So, for the calendar year
4 2020 that we are discussing here, the Company
5 files a report on -- or just -- usually, all of
6 these reports come in just about the day before
7 July 1st of 2021, and that report is the E-2500
8 report, which gets filed with the -- now the
9 Department of Energy's Sustainable -- and, I'm
10 sorry, that would be with the Programs & Policy
11 Division of the Department of Energy.

12 And that report is reviewed. It comes
13 in with a payment to State Treasury. If the
14 load-serving entity, whether that's a utility or
15 competitive supplier, if that entity has not
16 purchased enough RECs to be able to meet all of
17 the specific class requirements, then they will
18 be paying a certain ACP amount. And so, that
19 payment comes in, and eventually gets routed to
20 the Renewable Energy Fund, as Mr. White described
21 it, I believe that was his response earlier. And
22 those ACP funds are used to fund renewable energy
23 development programs, a variety of the programs
24 which are designed to foster additional

{DE 21-077} {01-13-22}

[WITNESS: Eckberg]

1 development in renewable energy.

2 And so, those are the main dates. That
3 we have a compliance year. And throughout the
4 compliance year, and in the six months that
5 follow, into the first half of 2021, there are a
6 number of dates and trading periods. There's a
7 calendar that's available on the NEPOOL GIS
8 website, and that calendar shows all of the
9 dates, some of which were referred to here today,
10 for instance, the energy production, renewable
11 energy production that happens in the first
12 quarter of 2020, those RECs get minted or
13 produced, you might say, electronically,
14 digitally, by the NEPOOL GIS on July 15th of that
15 year. In this case, that would be July 15th of
16 2020.

17 And then, there's a trading period,
18 which lasts for two months, or 60 days. This is
19 all spelled out on a calendar there on the NEPOOL
20 GIS website.

21 The RECs that get minted do each bear,
22 I think it's important to note, that each REC
23 that's created has its own certification number.
24 And we're talking about a lot of numbers here,

{DE 21-077} {01-13-22}

[WITNESS: Eckberg]

1 because each REC corresponds to one megawatt-hour
2 of a certified renewable energy production. And
3 so, those RECs, which are produced, and which are
4 then sold or traded from one entity, either the
5 producer or someone who buys them and then
6 resells them, those RECs are tracked by their GIS
7 number. So, when a utility, such as Eversource,
8 or another load-serving entity, submits their
9 E-2500 report at the end of the compliance
10 period, they also submit a great big list of all
11 of the exact RECs, with the certification
12 numbers, that they are using for compliance.

13 So, the RECs that are used for New
14 Hampshire Class III compliance are not also used
15 for Connecticut Class I compliance. There's no
16 duplicate usage, so to speak. And, so, that's
17 certainly -- that's something that the Company
18 has to manage. We've talked about, you know, the
19 Company having to get enough RECs to meet its
20 Connecticut obligation or its Massachusetts
21 obligation, and its New Hampshire obligation.

22 So, those aren't necessarily date
23 milestones, but those are just some additional
24 details of how the process works. And I think

[WITNESS: Eckberg]

1 they are useful to know about as well.

2 Q That's definitely helpful. So, every REC has a
3 unique certification number?

4 A That's correct. Every REC has a unique
5 certification number. And, if the entity, the
6 load-serving entity, the utility, does not have
7 enough RECs at the end of the year, when they do
8 their compliance, that's when they count up how
9 many RECs they're short, and they multiply that
10 by the ACP rate. And that's the amount that they
11 are liable to pay.

12 Now, the ACP rate is published every
13 year by I believe the date in statute and PUC
14 rule is by January 31st. So, on January 31st of
15 2020, the Commission, then the Commission, the
16 staff of the Sustainable Energy Division, would
17 have calculated and posted on the website for
18 public information the prevailing ACP rate for
19 each of the REC classes. And so, that is public
20 information that's available near the beginning
21 of every year, to help inform entities in their
22 purchasing decisions.

23 Q Is there a unique certification number for every
24 megawatt-hour of energy produced by a qualifying

[WITNESS: Eckberg]

1 generator?

2 A That's an interesting question. I don't think
3 that the energy itself gets a certification
4 number. I think that it's only renewable energy
5 that gets -- that is certified to produce RECs,
6 which gets a certification number. And there
7 are, on that schedule that I mentioned on the
8 NEPOOL GIS website, there's a -- I think there's
9 a column there that says "Last Date for
10 Generators to Input their Generation
11 Information". So, the renewable generators have
12 a deadline by which they need to enter the
13 information into the GIS system. So, a small
14 hydro produced "X" number of megawatt-hours of
15 energy in January, February, March, they have
16 until some date in June or July to enter that
17 into the GIS system. So that, when the system
18 runs a process to create the RECs, they know how
19 much energy has been produced, and then that
20 entity will get one REC for each megawatt-hour of
21 energy that's produced and enter it into the
22 system.

23 Q So, if we think about a hypothetical situation,
24 with a renewable generator that qualifies for an

[WITNESS: Eckberg]

1 RPS class, the generator produced 1,000
2 megawatt-hours of renewable electricity in a
3 given quarter, is there one certification number
4 that would reflect 1,000 RECs produced by that
5 facility or are there 1,000 numbers,
6 certification numbers, for each individual REC?

7 A I believe that there's 1,000 separate numbers,
8 because the producer, who is then the owner of
9 those RECs, until they get sold, can sell those
10 RECs in blocks of 10 or 20, or they could sell
11 942 of them, however many they wanted. So, each
12 REC has its own individual number. The way I've
13 seen the information presented in the GIS system,
14 it's usually listed as sort of sequential number.
15 Like it might be, you know, let's just keep it
16 simple, these are RECs 1 through 1,000, you know.
17 And then, I've got my digital RECs, and I could
18 sell them to Eversource for a price that we
19 agreed on, for example.

20 Q And, for a respective load-serving entity that
21 files a E-2500 report, all of those certification
22 numbers are listed in that report, is that
23 correct?

24 A They come as an attachment or a separate piece of

[WITNESS: Eckberg]

1 documentation. Oftentimes, they are filed as a
2 pdf form, you know, because the load-serving
3 entity will have a listing in a spreadsheet of
4 all the RECs that they have. And the RECs will
5 be, you know, they will have the certification
6 number, they will have a designation of what
7 class they are. You know, this a "New Hampshire
8 Class III REC". And, so, then, you know, the
9 reviewer of the report can, you know, sort and
10 count the number of REC certificates that have
11 been turned in to confirm that that number
12 matches the number that's on the form. You know,
13 if someone claims they're turning in a thousand
14 Class III RECs, we want to make sure that they
15 have a thousand certificates there in that pdf or
16 spreadsheet, however they turn in that
17 information.

18 Q And, from that list of certification numbers,
19 RECs, are you able to identify the specific
20 facility that generated each of those RECs?

21 A I don't recall. I think that -- I don't recall
22 whether that report comes with that piece of
23 information on it, or whether additional
24 information has to be extracted from the GIS in

[WITNESS: Eckberg]

1 order to figure that out. I can't recall.

2 Q Okay. Thank you. I'm just trying to
3 determine --

4 A Uh-huh.

5 Q -- how to track the market of RECs. And a
6 follow-up question would have been "if so, can we
7 identify at what time each REC was generated?"
8 But I'll defer -- I'll hold that question.

9 A Well, I think that -- I think the second question
10 I could probably --

11 Q Please.

12 A -- have a reasonable answer to. I don't think
13 that we know exactly which megawatt-hour of
14 electricity corresponds to which REC. I mean, if
15 we have a -- you know, I used the example of a
16 hydro generating station, if we have the -- that
17 hydro station reports quarterly the total amount
18 of energy that it produced. Now, obviously,
19 there are -- I'm sure that there are data checks
20 and, you know, people can't just claim to produce
21 a certain amount of energy, there's -- somehow
22 that information is verified. But I don't think
23 we would know, for instance, that this REC
24 corresponds to energy from the Contoocook Hydro

{DE 21-077} {01-13-22}

[WITNESS: Eckberg]

1 Station, on February 3rd, from 10:00 a.m. until
2 4:00 p.m. I don't think we have that level of
3 detail. No.

4 Q Okay. And, in terms of the verification of the
5 production of RECs, do you know which entity
6 oversees that?

7 A Well, the production of the RECs happens, as I
8 indicated, when -- it happens on a quarterly
9 basis, when the Administrator of the NEPOOL GIS,
10 whose name I cannot remember right now, I believe
11 it's some giant software company, --

12 Q Uh-huh.

13 A -- that contracts with NEPOOL, who contracts with
14 ISO to administer this system. They produce or
15 mint the RECs on a quarterly basis.

16 And I'm sorry, I lost the genesis of
17 your question.

18 Q Ultimately, who oversees whether RECs that are
19 claimed to have been produced actually have been
20 produced?

21 A I think that all the entities that are purchasing
22 RECs and submitting them for compliance are
23 taking at face value that the RECs, which are
24 created in the NEPOOL GIS system, are genuine.

[WITNESS: Eckberg]

1 So, I'm not sure what sort of market monitor or
2 independent verifier oversees that operation. I
3 don't know the answer to that.

4 Q Thank you. You mentioned that the compliance
5 date to demonstrate compliance with the RPS
6 statute is July 1st of every calendar year, is
7 that correct?

8 A Right. It's July 1st for the prior calendar
9 year, yes.

10 Q So, the compliance period is July 2nd to July 1st
11 of the following year?

12 A Well, I think I would say that the compliance
13 period is January 1st through December 31st,
14 that's the calendar year that the RPS
15 requirements apply to for each year. And then,
16 you have to comply with that year's requirements
17 by demonstrating the following July 1st that you
18 have done so. At least that's the way I would
19 present it.

20 Q Okay. So, would it be possible to meet a RPS
21 compliance burden prior to July 1st of any given
22 calendar year?

23 A I don't think that there's any expectation that
24 such a thing would happen. And I don't think

[WITNESS: Eckberg]

1 that I've ever seen it happen.

2 I'm wondering if perhaps your question
3 is heading in the direction of the questions that
4 I heard this morning, about being able to, for
5 instance, pay a lower ACP price while it was low,
6 before legislation changed it to be a higher ACP
7 price. I'm wondering if that's where you're
8 headed with this line of question. And perhaps I
9 shouldn't be presumptuous in that regard, but --

10 Q I'm ultimately trying to get to the question of,
11 could a load-serving entity submit their E-2500
12 Compliance Report prior to July 1st, along with
13 an ACP check for any unmet purchases? If the
14 compliance date for every given calendar year is
15 July 1st, --

16 A Uh-huh.

17 Q -- for, let's say, 2020. So, 2020 compliance,
18 you have to demonstrate by July 1st of 2021.

19 A Yes.

20 Q Then, the next year, for compliance year 2021,
21 could you say "Okay, it's July 2nd. I believe
22 that the ACP prices are going to go up." Could
23 you submit your annual report much earlier than
24 that July 1st date? Would that be permissible?

[WITNESS: Eckberg]

1 A I think I'd like to defer to -- to try not to
2 answer that question, because it's not a
3 situation that I've ever seen happen before.
4 And, so, I'm not sure that rules prohibit it.
5 But I'm not sure, that there may be some reasons
6 why it simply wouldn't work. I mean, yes, there
7 may be some reasons why it simply wouldn't work,
8 based upon the RPS rules that are in effect.

9 Q And, in your experience, such a paradigm is
10 unprecedented in New Hampshire, under the current
11 RPS paradigm?

12 A Yes. As I say, I've never seen anyone make an
13 effort to comply early, no. And, as I described,
14 you know, the RECs are generally not available,
15 and as the Company witnesses have described, the
16 Company -- I mean, the RECs for -- the 2020 RECs,
17 half of them don't become available in the market
18 until early part of 2021, because there are two
19 minting dates in 2021 that relate to energy
20 production, renewable energy production, in Q3
21 and Q4 of 2020.

22 So, generally, the goal for entities is
23 to try to procure RECs, which will generally be
24 at prices lower than the ACP.

[WITNESS: Eckberg]

1 Q Is it unprecedented for market-based REC prices
2 to be above the ACP?

3 A No, it's not unprecedented. As we've heard
4 today, you know, this is a regional market. And,
5 you know, a REC that qualifies in New Hampshire
6 as -- in one class, may also qualify in another
7 state as another class, and that state has, you
8 know, implemented some particular public policy,
9 which, you know, is -- they want to, you know,
10 they have changed the ACP, basically. So, you
11 know, the ACPs in Connecticut have an impact on
12 the market prices of the RECs in New Hampshire,
13 because the RECs are not only offered for sale in
14 New Hampshire. They're offered for sale, period.

15 And each REC comes with, you might say,
16 it's got a number of different little colored
17 sticky tags on it. "Oh, this REC has got a
18 yellow sticky tag, it's good for New Hampshire
19 Class III. And it's also got a green sticky tag
20 on it, that's good for Connecticut Class I. Oh,
21 and it's also got a red sticky tag on it, it's
22 good for Maine Class IV". I'm just making that
23 up.

24 But each REC is likely to have multiple

[WITNESS: Eckberg]

1 certifications. So, it has -- once the buyer
2 purchases it, it can be used for compliance in
3 any one of those jurisdictions where it has a
4 certification to meet an RPS requirement in that
5 jurisdiction. So, we have a lot of competitive
6 suppliers, for instance, who are operating in
7 each and every New England state. So, they may
8 be looking to purchase RECs, in a very
9 complicated way, to meet a lot of different
10 requirements. And sometimes those RECs may be --
11 well, as we saw these \$50 RECs in question here,
12 these were below the Connecticut ACP, but above
13 the New Hampshire Class III ACP. So, yes. The
14 market is very complicated.

15 Q I believe that earlier you said that the
16 Department of Energy is not recommending any
17 changes to the RPS compliance process at this
18 time, is that correct?

19 A That's correct.

20 Q In your view, do you think it would be prudent to
21 investigate the RPS compliance process statewide?

22 A I see no reason why that couldn't be done or
23 shouldn't be done. If one or more entities feel
24 that there's a need or a value to that process,

[WITNESS: Eckberg]

1 they could certainly make that request of the
2 Commission, or perhaps that request would be made
3 of the Department of Energy. I'm not sure where
4 that jurisdiction would lie at the moment.

5 CMSR. SIMPSON: Thank you, Mr.
6 Chairman. I have no further questions.

7 CHAIRMAN GOLDNER: Commissioner
8 Chattopadhyay.

9 CMSR. CHATTOPADHYAY: Thank you,
10 Commissioner.

11 So, I don't have too many questions,
12 but they're going to be, again, similar to the
13 hypothetical ones that I was asking previously to
14 the Company. Okay?

15 BY CMSR. CHATTOPADHYAY:

16 Q First one is, let's say there is no legislative
17 process going on, and the ACP, in your -- and
18 let's stick to the 2020 compliance year. And I
19 think you mentioned that the ACP is set -- did
20 you mention "1st of January"? That's when it's
21 set?

22 A I believe -- I believe that it's the end of
23 January it gets published.

24 Q End of January, okay.

[WITNESS: Eckberg]

1 A Yes.

2 Q End of January for 2020, we know what the ACP is
3 going to be for 2020. Correct?

4 A Yes. I believe that's correct.

5 Q Okay.

6 A I'd like to -- now, all of a sudden, I want to
7 add a "subject to check" on that. But I believe
8 that that's a correct thing, yes.

9 Q Okay. So, in the first hypothetical situation,
10 there is no legislative process going on, and the
11 number is, I'm just going to use round numbers,
12 \$35. Okay? And, in Connecticut, because of the
13 market dynamics or whatever, because their ACP is
14 \$55, the market, whenever a company goes ahead
15 and tries to procure RECs, the price clears close
16 to \$55, let's say \$53. Okay? In that situation,
17 because there is nothing going on legislatively,
18 and the ACP for New Hampshire being 35, it would
19 be pretty obvious that the utility should not
20 purchase the RECs if they are going to be more
21 than \$35.

22 Is that -- can I -- what would your
23 response be? Like, did I get it right?

24 A Well, I think that my response would be that, if

[WITNESS: Eckberg]

1 the only RECs that are available in the market
2 are \$53, then the load-serving entity in question
3 should not buy \$53 RECs to meet the New Hampshire
4 compliance requirement. That they should simply
5 pay the \$35 ACP.

6 Q Okay. Before I set up the next hypothetical
7 question, I sort of want to understand, you
8 mentioned that January 31st is the date when the
9 ACP is set. So, let's assume, for 2020, the ACP
10 is set on the 31st of January. Right? And let's
11 say there is a legislative process going on, as
12 was the case. And sometime around September, the
13 ACP is, by law, changed to a different level.
14 Instead of \$35, it's bumped up to \$53 or \$55.
15 Okay?

16 A Uh-huh.

17 Q How does the ACP come into effect then? I mean,
18 I'm just trying to clarify or at least get a
19 clarification, is that number set only once a
20 year or it is possible that sometime over the
21 year the number can change?

22 A Well, obviously, I think that it would depend
23 upon the details or the parameters of the
24 specific piece of legislation. If that

[WITNESS: Eckberg]

1 legislation is changing the going-forward ACP
2 price, that would be one thing. If that piece of
3 legislation is seeking to change the ACP rate in
4 the year that it goes into effect, I think that's
5 another, that would have certainly a very
6 different impact on the market.

7 I think that, for example, in the
8 Company's testimony, they described how, in
9 Exhibit 6, I think on Bates Page 007 perhaps it
10 is, where they -- no, this is the current
11 situation. But I believe the Company talked
12 about a prior change in ACP rates that took
13 effect in 2014, for instance, and that piece of
14 legislation I believe was passed in 2013. So, it
15 was a forward-looking piece of legislation. So,
16 it didn't necessarily have any disruptive impact
17 on the then current market, but it impacted
18 things going forward.

19 Q Okay. So, in my example, let's say the ACP went
20 up from \$35 to 55 in September 2020, and going
21 forward from September, you know, 2020. Okay?
22 So, it's a little bit more complicated than your
23 2013-2014 situation.

24 A Uh-huh.

[WITNESS: Eckberg]

1 Q And then, because the process is such that, in
2 July 2021, the Company is required to demonstrate
3 that this is "We purchased these many RECs, and
4 we didn't buy the remaining part that we were
5 required to, and so the ACP is going to apply to
6 it." But we are still talking 2020.

7 A Yes.

8 Q And I guess it would depend on the circumstance
9 how the law goes into effect which ACP applies?

10 A Yes, it would, I believe. And, if, you know, if
11 I understand your example, a company in question
12 would likely be liable to pay a \$55 ACP rate.
13 The company -- I mean, if I understand all the
14 parameters of your hypothetical, the company
15 would not -- there would be no way for any
16 company, in that kind of a situation, to pay a
17 lower \$35 ACP rate, which had been in effect
18 earlier in the year.

19 Q Yes.

20 A Once the ACP changed to \$55, because of
21 legislative intervention in the market, then, if
22 the parameters of that legislation were such that
23 the \$55 prevailed, then that would be the price
24 that the company -- any company would have to

[WITNESS: Eckberg]

1 pay, if they could not find RECs to satisfy their
2 RPS requirement.

3 Q But, in that example, sometime, let's say, as I
4 understood it, in July 2020, that's when they go
5 out and purchase some of the RECs. And, at that
6 point, the ACP that applies is \$35, and the
7 prices may have turned out to be higher than \$35,
8 because some other state is driving the market.

9 A Uh-huh.

10 Q Okay. At that point, it would be a prudent
11 decision to buy -- to go with the ACP of \$35,
12 rather than buying the RECs, right? And, so, I'm
13 a little confused as to the timeline, you know,
14 what happens? Because, in September, the number
15 changes, and you're looking at data in 2021 July.
16 So, I want to get a sense of how you would try to
17 solve that issue?

18 A Well, perhaps I'm not quite grasping all the
19 details in place at a given point in time. But,
20 if the decision point for the load-serving entity
21 is in July, when --

22 Q And can I clarify? July of 2020?

23 A Yes. July of 2020.

24 Q Yes.

[WITNESS: Eckberg]

1 A -- when the ACP rate in effect for a certain
2 class is \$35, but the market price is 50, then my
3 response would be that the load-serving entity
4 should not purchase those RECs, because they
5 could, theoretically, at that point in time, when
6 they made the decision, they could comply with
7 their RPS requirements by paying \$35 ACP rates.

8 But then, again, if I understand
9 correctly, then, later on, the ACP changes to
10 \$55, again, the company would be subjected to
11 that \$55 ACP rate. But, again, from the point of
12 prudence determination, I honestly can say that
13 no one is using, in this current situation, or, I
14 mean, in the hypothetical situation, the only
15 appropriate application of making a prudence
16 determination is to use the information that's
17 available at the time the decision is made. So,
18 if the company made the decision there, in July
19 of 2020, to not buy the \$50 RECs, because the ACP
20 was \$35, then that was the right decision.

21 Q Okay.

22 A But then, circumstances changed, in September, if
23 the ACP rate goes to \$55, maybe the RECs will
24 become -- the price will change to \$53, maybe the

[WITNESS: Eckberg]

1 seller will increase the price a little bit.

2 Well, the utility or the load-serving entity will
3 then have to face the choice of what to do under
4 those circumstances, whether to buy \$53 RECs or
5 make a \$55 ACP, or a blend of those two actions.

6 But, again, the decision criteria that
7 any regulator would look at to determine if the
8 decision was a good one would be the facts that
9 are in place at the time the decision was made.

10 Q Yes. I understand. I mean, that's the approach
11 that would appear to be logical. But the point
12 I'm trying to stress is this: In 2021, July,
13 that's when the company comes and makes its
14 filing. And it has to -- it had already
15 previously decided that it's not going to be
16 buying RECs, instead it went with ACP payments
17 for, you know, these many megawatt-hours, which
18 happened in July 2020, in my example.

19 A Uh-huh.

20 Q So, at that point, when they come and sort of
21 file their numbers, they will be saying "Oh, I
22 didn't" -- "we didn't buy the RECs", okay?

23 A Uh-huh.

24 Q Because \$35 was less than the price of the RECs.

[WITNESS: Eckberg]

1 But, right now, I'm -- you know, when they're
2 filing, are they required to still assume the ACP
3 is \$55, because at that time it is \$55? That's
4 the kind of, you know, --

5 A Yes. It sounds as if, in the example you're
6 providing, that the applicable ACP in the
7 July 2021 would be \$55, if I understood your
8 hypothetical legislative intervention. So, at
9 the time of the E-2500 filing in July of 2021,
10 that \$55 would be the ACP that any load-serving
11 entity would be on the hook for, so to speak, if
12 they didn't have RECs.

13 I hope I've understood the details of
14 your hypothetical correctly.

15 Q Yes. I'm still attempting to make it more clear.
16 So, let's keep doing that.

17 So, the company had actually, you know,
18 instead of buying RECs, paid \$35 for 100
19 certificates, okay? Instead of hundreds, buying
20 100 certificates. Right?

21 So, in 2021, July, because the number
22 has gone up, the ACP has gone up, they have to
23 make -- they have to pay the \$55, rather than the
24 \$35. Right?

[WITNESS: Eckberg]

1 A Yes.

2 Q But, in terms of deciding what they did at the
3 time, in July 2020, that was the right decision.
4 They looked at the, you know, --

5 A Yes. I think I agree. I've said that the, you
6 know, the decision has to be -- the prudence
7 determination has to be based upon the factors
8 that were in place at the time.

9 Q Okay. So, I'm just simply -- I was actually
10 trying to get you to comment on how you view
11 this. And, so, I got the answer now. Okay?

12 A Okay.

13 CMSR. CHATTOPADHYAY: So, that's -- so,
14 I think that's all I have.

15 WITNESS ECKBERG: All right. Thank
16 you, Commissioner.

17 CHAIRMAN GOLDNER: Thank you, Mr.
18 Eckberg. Just a couple of questions, and then
19 we'll go to any redirect.

20 BY CHAIRMAN GOLDNER:

21 Q I just want to understand kind of the legislative
22 history, Mr. Eckberg, to the extent that you can
23 explain the history in New Hampshire. Is that
24 normal? We have this process where the

[WITNESS: Eckberg]

1 Legislature is making sort of retroactive
2 changes, in a way. From the utility's point of
3 view, it's retroactive, right? If they change it
4 from 35 to 55, when they have already purchased
5 vis-à-vis at 35 in July, right, then it's retro.
6 Is that normal?

7 A Well, I'm not sure, if we're talking about a
8 specific piece of legislation. But, you know, a
9 piece of legislation could -- a legislation
10 that's passed right now could have the language
11 that, you know, impacts the current ACP rate, or
12 it could simply say "Starting in 2023, the ACP
13 rate will be". So, --

14 Q But the Legislature has that ability, right?
15 They can make it retroactive back to July 1st of
16 the year, right?

17 A I think they have the ability to, as the saying
18 goes, in their infinite wisdom, to do whatever
19 they wish.

20 There may be a number of complications
21 with any proposed piece of legislation, which is
22 why there's a, you know, a committee process at
23 the Legislature, where committees review proposed
24 legislation, and they get input from

[WITNESS: Eckberg]

1 stakeholders, including perhaps utility
2 participants, who might advise them that "this
3 would be really complicated for what you're
4 proposing, and it would be better if you do it
5 this way, instead of that way."

6 Q Yes. I'm just trying to ask, too -- thank you
7 for that. I understand. Is that typical? I
8 mean, in your experience, you have a long
9 experience with the PUC, and now Department of
10 Energy, when you look back in time, over the last
11 20 years, is it typical or is it unprecedented
12 for it to be retroactive? Or is that -- is that
13 typical or is that abnormal?

14 A I would say it's abnormal. I think the
15 Legislature understands that market disruption is
16 not a good thing for any market, and that they
17 generally try to make the changes that they wish
18 to make in more of a proactive approach, so that
19 the changes can be planned for and anticipated by
20 those stakeholders that it impacts.

21 Q But there is precedent? They have done it
22 before?

23 A And could you be more specific about what the
24 "it" is? They have done just about everything at

[WITNESS: Eckberg]

1 least once, I think.

2 Q So, in terms of changing the dollars for the ACP,
3 has the Legislature ever implemented a
4 retroactive change or has it always been out in
5 time in the future?

6 A I would say that, in my experience, I think it's
7 been more forward-looking. I think that the
8 other market disruptions that we heard about
9 today, from the Company witnesses, had to do with
10 the change in quantity requirements for,
11 primarily, for Class III. And those -- those
12 changes or market disruptions generally sort of
13 happen much more in the program year for which
14 load-serving entities are working to meet the RPS
15 requirements. So, it's those requirements,
16 changes, for instance, the recent change from the
17 8 percent requirement for Class III to 2 percent
18 that we heard about from the Company, that's a
19 fairly disruptive change to the marketplace, and
20 certainly has an impact on the Company's
21 decisions going forward or decisions that it's
22 already made. So, there's disruptions from --
23 potential disruptions from both the Legislature
24 and from the regulators.

{DE 21-077} {01-13-22}

[WITNESS: Eckberg]

1 Q Okay. Thank you. Thank you. And then, I just
2 want to turn to, I just have a couple of more
3 questions, turn to the savings that Eversource
4 achieved on behalf of its customers in this
5 transaction. So, and I'm sorry to find it very
6 small on my machine, let me just make it a little
7 larger.

8 So, the main transaction, we'll just
9 focus on one to make it simple, so was the -- it
10 was Line Number 4, on Exhibit 2 of Exhibit 8, and
11 that was the 69,500 RECs that the Company
12 purchased for 54.03, a total payment of roughly
13 \$3.8 million. So, they saved a dollar, right,
14 54 -- or, 55 minus 54, times 69,000 RECs. So,
15 the savings in that particular transaction,
16 versus just paying ACP, the ACP that they were
17 fearful of, was about \$70,000. Would you agree
18 with my mathematics?

19 A Well, there was no ACP of \$55 at that point in
20 time.

21 Q I'm just saying, to use Commissioner
22 Chattopadhyay's word, I'll use a hypothetical.
23 So, they were fearful of a \$55 ACP, right? They
24 purchase it for 54. It was actually 35, but they

[WITNESS: Eckberg]

1 were fearful of that 55. So, they saved a dollar
2 over what they were concerned about. Is that
3 fair?

4 A I'm not sure I would wish to agree with that
5 statement.

6 Q No problem. Go ahead.

7 A I believe, because I feel like there's some -- I
8 can agree with a certain amount of arithmetic.
9 But I can't necessarily agree to the premise of
10 the arithmetic, which is "being fearful of an
11 ACP". I mean, I might characterize the situation
12 differently than that.

13 Q Okay. Go ahead. No, please clarify, because I'm
14 trying -- this is the place where I'd like to
15 just spend a minute. So, my -- please go ahead
16 and clarify in your own words.

17 A Well, you know, the Company has represented that
18 perhaps they were concerned that a piece of
19 legislation might pass. And, in fact, that it
20 had been approved by the House and the Senate,
21 and was making its way through the legislative
22 process. However, and they have -- I believe the
23 Company has represented that they were concerned
24 about a \$55 ACP coming to pass here in New

[WITNESS: Eckberg]

1 Hampshire.

2 But, I think, as we've also heard
3 today, the Connecticut Class I ACP was already
4 \$55. And that, in my thinking, that is the
5 factor which impacted the market price and
6 created the market prices that we see here, \$54,
7 \$50, rather than the potential passage of a New
8 Hampshire bill. I would say that it was more
9 like the Connecticut reality, rather than the
10 potential of a New Hampshire situation, that
11 caused these market prices to be where they were.

12 And that, you know, for whatever
13 reason, perhaps the Company just didn't pay
14 attention to that issue, or now they're --
15 whatever. This is the reality. They purchased
16 the price -- they purchased these RECs at \$54.03.
17 And that is, I think as Mr. White described it,
18 that actually is -- or, that represents a group
19 or several tranches of RECs combined to make that
20 quantity of 69,500. Yes.

21 Q So, if I could put you in the chair of the
22 trader, and say here -- I think these are the two
23 choices: "You can buy the REC for \$35, might go
24 to 55, but you can buy it for 35. Or, you can

[WITNESS: Eckberg]

1 buy it for" -- "you can buy for 54 and be sure."
2 Right? You know the deal, you know exactly what
3 it's going to cost you. So, you saved a dollar
4 off of the 55.

5 Isn't it that simple? The trader said
6 "Yes, I'm going to save the ratepayers a dollar,
7 versus taking the risk of getting a \$20 savings,
8 but it goes away, and I have to pay 55." Fair?

9 A I don't think that, in the context of a regulated
10 utility, that that's the way things should work,
11 no. I think that, in the context of a regulated
12 utility, the purchaser of the RECs has to look at
13 not just the market price, the Company has said
14 today that they needed to continue with their
15 program of market price purchasing. I don't
16 think that they can keep their blinders on and
17 ignore the realities of the statutory ACP rate,
18 the \$34.54, that was in place at the time they
19 made that purchase.

20 And that's why the Department has
21 proposed that those costs over the 34.54 be
22 disallowed.

23 CHAIRMAN GOLDNER: I understand. Okay.
24 Thank you.

[WITNESS: Eckberg]

1 That's all my questions. Commissioner
2 Simpson or Chattopadhyay, any follow-up with the
3 witness?

4 *[No verbal response.]*

5 CHAIRMAN GOLDNER: No. Any redirect
6 for your witness, Mr. Wiesner?

7 MR. WIESNER: Yes. Just a few
8 questions, Mr. Chairman. And these are I think
9 in the nature of clarifying questions for Mr.
10 Eckberg.

11 **REDIRECT EXAMINATION**

12 BY MR. WIESNER:

13 Q So, Commissioner Simpson asked about the
14 verification of REC production by eligible
15 facilities. And would you agree with me that,
16 for larger facilities, and most Class III
17 facilities are larger, say larger than 5
18 megawatts, that the information that's provided
19 to the NEPOOL GIS Administrator regarding the
20 production of those facilities actually flows
21 directly from the ISO-New England Market
22 Settlement System?

23 A I would be glad to accept that conjecture. I'm
24 not familiar with how it works. But I have no

[WITNESS: Eckberg]

1 reason to disagree with that. I doubt that, for
2 large generating stations, that there's somebody
3 there typing numbers into a screen. So, that
4 sounds very possible.

5 Q Okay. Thank you. And Commissioner Simpson also
6 asked you about the potential, and I think this
7 was more in the nature of a hypothetical
8 question, for a retail electricity provider to
9 make its E-2500 filing as soon as it could in the
10 current compliance year, in effect, before that
11 compliance year was over, and some attempt to
12 lock in an ACP rate before it might increase. I
13 believe that was the gist of the question.

14 In your view, is that possible, where
15 one of the features of the annual Compliance
16 Report is to report the full year's retail sales
17 by the supplier?

18 A Well, that's true. That is the very first box on
19 the E-2500 report is your total annual sales.
20 And, so, you're right. As I think I -- in my
21 response to Commissioner Simpson, I said "perhaps
22 there are some rules or regulations that would
23 prohibit that." And I think you're right, that,
24 based upon the nature of the reporting that has

[WITNESS: Eckberg]

1 to happen, trying to file one's report early,
2 well, one wouldn't have the data needed to do
3 that. It wouldn't have the annual sales volume
4 number. So, I think that probably would mean the
5 report wouldn't work. It wouldn't be
6 appropriate.

7 Q Right. Based on your understanding of the RPS
8 compliance process, there's no opportunity to
9 file interim compliance reports, as opposed to
10 the annual report, which covers the full calendar
11 year?

12 A That's correct. And it's a retroactive looking
13 report, yes.

14 Q And, in fact, would you also agree that paying
15 ACPs is generally seen as a last resort, if there
16 are not RECs available in the market for purchase
17 at prices below the ACP?

18 A I think, for regulated utilities, it is, and it
19 is a last resort. I think we did hear some
20 description today how, perhaps for smaller
21 competitive suppliers, due to administrative
22 burden of going to the market, trying to purchase
23 RECs, having contractual requirements, you know,
24 it could be that some smaller competitive

[WITNESS: Eckberg]

1 suppliers simply say "It's not worth my effort to
2 try and purchase the RECs that I need." And,
3 generally, we would, you know, from having
4 reviewed the E-2500 reports, I think that it is a
5 little bit more common for small competitive
6 suppliers, in some categories, to simply pay an
7 ACP, rather than mess with the market and try to
8 find the few RECs they need. Uh-huh.

9 Q But the competitive suppliers are not
10 rate-regulated, nor are their prices regulated by
11 either the Commission or the Department of
12 Energy, is that correct?

13 A That's absolutely correct.

14 Q So, we would not be looking at their REC
15 purchases from the same standpoint as we would
16 with a regulated utility, which seeks to pass
17 through its costs to its default service
18 customers?

19 A That also is absolutely correct.

20 Q Now, there was a question about the timing of
21 setting the ACP. And you testified that
22 January 31st of each year the ACP is set for that
23 year. But would you agree with me that it is, in
24 fact, the statute that sets the ACP, subject to

[WITNESS: Eckberg]

1 an annual inflation adjustment, tied to, I
2 believe, the Consumer Price Index. And it's, in
3 fact, used to be the PUC, now the Department of
4 Energy that would do that reset on an annual
5 basis?

6 A That is correct also. The methodology is
7 prescribed for how to calculate the ACP. As you
8 say, there's a -- I believe it's one-half of the
9 Consumer Price Index factor is usually applied to
10 each existing rate, unless there are other
11 statutory directives to govern that.

12 And, so, when the prior -- when,
13 previously, the PUC, or currently the Department
14 of Energy will publish those rates, we are not
15 simply making them up or deciding what we want
16 them to be. We're following a statutorily
17 prescribed directives in doing that.

18 Q And yet, that ACP set for the current compliance
19 year is always subject to revision by legislative
20 action?

21 A Yes, it is.

22 Q And then, there was a question about the timing
23 of that legislative action. And you may not be
24 able to answer this, but I'll ask it.

[WITNESS: Eckberg]

1 Are you aware of any situation where
2 the Legislature changed the level of the ACP
3 after the entire compliance year had ended?

4 A I'm not aware of any such situation. No.

5 Q And, with respect to the legislation at issue
6 here, 1234, if that had gone into effect, let's
7 say, in July, that would have been a mid-year
8 change in the ACP rate for the compliance year
9 2020. Is that your understanding?

10 A Yes. That probably would have been the effect.
11 Again, I would want to double-check the language.
12 Because, you know, regardless of when a statute
13 is passed, there can be -- the language of the
14 statute can say when it becomes effective,
15 *etcetera, etcetera.*

16 Q Yes.

17 A But let's just assume, for discussion sake, that
18 it would have impacted that then current year's
19 ACP.

20 Q Understood. And, if it became effective in the
21 middle or thereabouts in a compliance year, there
22 still would have been a significant opportunity
23 for electricity providers to meet the obligation
24 in the REC market or ultimately through paying

[WITNESS: Eckberg]

1 ACPs, is that correct?

2 A Yes. There still would have been significant
3 opportunity going forward, yes.

4 Q Okay.

5 A And, again, because requirements would have
6 changed in the middle of a year, that would be,
7 you know, anyone making a prudence determination
8 would need to be mindful of those changes in
9 criteria.

10 Q And, to some extent, that significant opportunity
11 that we were just discussing is a consequence of
12 the significant lag time between the ability to
13 trade a REC and the time when it was actually
14 created, or the energy produced, I should say?
15 Is that --

16 A I'm sorry, could you repeat.

17 Q I'm sorry. So, you know, we had testimony
18 earlier about what I'll call the "significant lag
19 time" in the REC trading versus when the RECs are
20 actually produced by the generators?

21 A Yes, we did. Yes. Well, the RECs -- the
22 renewable energy is produced by the generator.
23 The RECs get minted by NEPOOL GIS. Perhaps
24 that's a minor difference, but --

[WITNESS: Eckberg]

1 Q So, there is still -- so, there is still a period
2 of many months during the compliance year and
3 into June thereafter --

4 A Yes.

5 Q -- into the succeeding year --

6 A There's approximately a six-month lag, yes.

7 Q -- in which to meet the RPS obligation for a
8 particular compliance year, --

9 A Yes.

10 Q -- even if the ACP level has changed at some
11 point during a compliance year?

12 A Yes. And I think it's reasonable to say that a
13 larger percentage of trading and compliance
14 happens among the load-serving entities and REC
15 sellers in the second half of the year. No one's
16 rushing out to do a lot of things in the first
17 part of the year, because of maybe a lot of
18 different factors that impact the market. So, --

19 Q And this is my last question, and I think I'm
20 just picking up on the hypothetical posited by
21 Chairman Goldner.

22 If the Company had bought 69,500 RECs
23 from Engie, Class III RECs, at \$54.03, and --
24 excuse me. If they had forgone making that

[WITNESS: Eckberg]

1 purchase in July 2020 at that price, and then the
2 legislation was enacted ultimately, and the ACP
3 became 55, and the Company could not buy RECs at
4 a price below the ACP and they ended up paying
5 the \$55, would the Department be recommending a
6 disallowance of the difference between the \$55
7 ACP and the 54.03 forgone purchase price?

8 A Most likely not. I'm not sure that we'd know
9 anything about a purchase that was not made,
10 first off, in the first instance.

11 Q We would know about it, I suspect, only if we did
12 a significant level of discovery?

13 A Right. And, as I pointed out earlier, with the
14 example of the Class IV RECs, we see a whole
15 variety of Class IV REC purchases here on this
16 table, and they're at a variety of different
17 prices, all of which are below the then relevant
18 ACP price. But the Department is not looking at
19 the lowest price and saying "That's the price you
20 should pay for all RECs." We're accepting the
21 fact that there's a variety of prices in the
22 marketplace, and that's the way the marketplace
23 operates. So, whether the Company paid \$29 for
24 some Class IV RECs or \$24 for other Class IV

[WITNESS: Eckberg]

1 RECs, those are all perfectly acceptable
2 situations.

3 MR. WIESNER: Thanks. I have no
4 further questions.

5 CHAIRMAN GOLDNER: Thank you. Thank
6 you, Mr. Eckberg. You're released.

7 *(Brief off-the-record discussion*
8 *between Chairman Goldner and Mr.*
9 *Patnaude on taking a recess.)*

10 CHAIRMAN GOLDNER: Of course. Take
11 five minutes.

12 *(Recess taken 2:45 p.m. and the hearing*
13 *resumed at 2:50 p.m.)*

14 CHAIRMAN GOLDNER: Okay. We'll go back
15 on the record. Mr. Patnaude, you're good to go?

16 *(Mr. Patnaude indicating in the*
17 *affirmative.)*

18 CHAIRMAN GOLDNER: All right. Without
19 objection, we'll strike ID on Exhibit 6, 7,
20 and 8 and admit them as full exhibits.

21 Okay. I just have one comment before
22 closing, and that is to say to Eversource and
23 Energy that work done to make some clean, nice
24 tables, that are easy to read is much

1 appreciated. And that helped today quite a bit.
2 So, thank you.

3 We'll go to closing. OCA.

4 MR. KREIS: Thank you, Mr. Chairman. I
5 am not going to deliver a long closing address.
6 I think I only have about three or four very
7 brief points to make.

8 Number one. The OCA has not heard one
9 single word of testimony today that causes us to
10 change our perspective, which is that the
11 Department of Energy was 100 percent right when
12 it wrote to the Commission back in September and
13 said that "purchases of renewable energy credits
14 above the applicable alternative clearing price
15 are *per se* imprudent and should be disallowed."

16 I can tell you, as somebody who was in
17 the room where it happened, that the whole idea
18 of having an Alternative Compliance Payment
19 specified in the REC statute is that the
20 Alternative Compliance Payment is supposed to be
21 a cap on the price of RECs. That's why the
22 Legislature did that. That's why we have
23 Alternative Compliance Payments. And nobody
24 should be making REC purchases above the ACP,

1 period.

2 A footnote to my closing argument would
3 be that I looked up House Bill 1234, and I got
4 myself to Section 97 of the bill, which is on
5 Page 58 of the bill, and the Commission is more
6 than able to do this itself, and can take, I
7 guess, administrative notice of the text of the
8 bill, which is readily able on the General
9 Court's website. And you see that what the
10 Legislature attempted to do was change the
11 alternative clearing price "beginning January 1,
12 2020". So, that's what the bill said. And then,
13 that section of the bill, if you go all the way
14 to the end of the bill, was to be effective upon
15 passage. Well, as we know, the bill was never
16 passed because the Governor vetoed the bill, and
17 the veto was not overridden, it was sustained.
18 So, that language never went into effect.

19 But, had it gone into effect, the
20 Alternative Compliance Payment for all of the
21 year 2020 would have been \$55. It's not
22 retroactive legislation, though, because, as we
23 have also heard, Alternative Compliance Payments
24 are actually made after the close of the calendar

1 year in question.

2 So, basically, you have one -- the
3 Renewable Portfolio Standard is a bit like the
4 Forward Capacity Market that ISO-New England
5 operates. It covers years, but it all takes
6 place all at once. And, so, the idea that these
7 years are divided into 365 little periods, known
8 as "days", doesn't really make that much of a
9 difference. At the end of the year, you make
10 your ACPs as necessary. And the ACP for this
11 year would have been 55, had the bill been signed
12 into law. But it was not. It was vetoed, and
13 the ACP remained at 50 -- at 35.

14 The very last thing you heard Mr.
15 Wiesner ask Mr. Eckberg was very important,
16 because it undermines one of the central
17 arguments, if not the central argument, that the
18 Company made. Which is, what it did was correct,
19 because, if it hadn't done what it did and make
20 those above-ACP purchases, then the bill could
21 have gone into effect, and then we'd all be here
22 arguing about why the Company didn't buy RECs at
23 a cheaper price when it could have.

24 Well, again, the prudence standard says

1 that we expect utilities to do the prudent thing
2 with the information they have at the time. And,
3 so, the way this would have sugared off in that
4 scenario is that it's very unlikely, if not
5 outright impossible, for anybody to have argued
6 that, if it had gone the other way, the Company
7 adopted a wait-and-see attitude and pay more
8 money for RECs, would have been imprudent. It
9 wouldn't have been good for customers. But that
10 isn't the standard. The standard is prudence,
11 and that would not have been imprudent.

12 I don't buy, and I don't think the
13 Commission should buy, the Company's self-serving
14 claim that, by participating in the REC market in
15 the fashion that it does, it attains no benefits
16 whatsoever. First of all, this is a role that
17 the Company willingly undertook when it signed
18 that Settlement Agreement. It doesn't seem to
19 like the idea that you might view it that way
20 now, but the fact is that, whatever position the
21 Company took when it originally proposed a way of
22 purchasing RECs and Default Energy Service, back
23 in 2017, it signed a Settlement Agreement that
24 said it would do it this way, and subject itself

1 to the kind of prudence scrutiny to which it's
2 being subjected here. It's can't be heard to
3 complain now that that is unfair. That is what
4 this Company agreed to do.

5 And their threat now to take their toys
6 and go home, that should also be ignored.
7 Because this Company knows that it likes the
8 situation just the way it is, because it
9 exercises a significant degree of control over
10 the acquisition of Default Energy Service. That
11 has the effect of minimizing residential
12 migration, which gives the Company, essentially,
13 total hegemony over the retail electricity market
14 for residential customers, and that's good for
15 business.

16 So, that's the situation. And, for
17 that reason, I think the Commission should reject
18 the Company's claims here, and agree with the
19 Department that these REC purchases were *per se*
20 imprudent because they exceeded the alternative
21 clearing price.

22 Thank you.

23 CHAIRMAN GOLDNER: Thank you. Energy.

24 MR. WIESNER: Thank you.

1 There's little dispute about the
2 underlying facts in this matter. In 2020,
3 Eversource made two purchases of Class III RECs
4 at prices that exceeded the applicable ACP set by
5 statute. Those purchases were made at a time
6 when the State Legislature had passed a bill that
7 would have increased the ACP rate to \$55, but
8 that bill had not been signed by the Governor.
9 Ultimately, the Governor vetoed the bill, and the
10 Legislature failed to override his veto.

11 So, the Class III ACP for 2020 never
12 exceeded the statutory rate of \$3,454 -- \$34.54.
13 But Eversource had purchased Class III RECs at
14 prices greater than \$50 per REC as a result of
15 its July 2020 RFP. In the Department's view, an
16 electric utility should never purchase RECs at a
17 price greater than applicable ACP,
18 notwithstanding any pending legislation or any
19 other REC market conditions.

20 The statutory ACP is designed to serve
21 as both a purchase price cap, and I want to
22 emphasize, it's not a price cap on what sellers
23 can offer their RECs for, particularly in a
24 regional market where other states' policies may

1 drive the prices higher than a particular state's
2 ACP. However, it does serve as a price cap on
3 what a purchaser has to pay and should pay, in
4 our view.

5 It's also intended to serve as a safety
6 valve for electricity providers' REC purchase
7 obligations. If certain competitive suppliers
8 don't see it that way, because it's not worth the
9 transaction costs of purchasing RECs, and they
10 instead elect to pay the ACP, that is not a
11 matter which is within the purview of the
12 Commission or the Department of Energy, because
13 the prices that those suppliers charge their
14 customers are not regulated. And, in fact, they
15 don't have captive ratepayers to which they would
16 pass through those costs.

17 I want to talk a little bit about the
18 RPS law itself. Under RSA 362-F:10, Paragraph
19 II, utilities and suppliers may pay ACPs "in lieu
20 of meeting RPS requirements for a given year",
21 and this is important, "if and to the extent that
22 sufficient RECs are not otherwise available at a
23 price below the ACP amount."

24 It is, of course, possible that RECs

1 eligible to meet New Hampshire Class III
2 compliance may be available for purchase only at
3 prices in excess of the applicable ACP rate.
4 That is because New England has a multi-state
5 regional REC market in which a renewable energy
6 generator may have certified its electricity
7 output to produce RECs that are marketable in
8 multiple states, some with higher ACP rates,
9 different demand levels, and different
10 eligibility criteria.

11 The higher ACP rate in another state
12 likely would affect the market price of such dual
13 certified RECs, to the point where the price may
14 be higher than the New Hampshire ACP. In that
15 situation, utilities and suppliers would be
16 expected to make the rational economic decision
17 to comply with their New Hampshire RPS
18 obligations by paying the ACP rate, rather than
19 purchasing Class III RECs at excessive prices.
20 And that is expressly provided for under the RPS
21 law.

22 The Department believes that a
23 regulated utility's purchase of RECs for a cost
24 higher than the ACP is both inconsistent with the

1 RPS law and is imprudent. And that is the case,
2 notwithstanding the uncertain status of pending
3 legislation at any given time. Eversource
4 ratepayers should not be responsible for the
5 excess amount of almost \$1.6 million, which the
6 Company has proposed to be included in its Energy
7 Service rates later this year, where that excess
8 cost was incurred, because Eversource purchased
9 Class III RECs at prices much higher than the
10 applicable ACP rate.

11 I want to be very clear about this.
12 This is not about regulatory micromanagement of a
13 utility's REC purchases. Nor is it a case of
14 20-20 hindsight on market timing. If
15 Eversource's Class III REC purchases were made at
16 a time when prices were higher than they would
17 have been a few months earlier or later, but
18 still less than the ACP, then we probably would
19 not be here today, as Mr. Eckberg testified.

20 But there is no reason that a regulated
21 utility should ever pay more for RECs than the
22 applicable ACP in effect at the time of the
23 purchase. And the customers of that regulated
24 utility should not have to bear the cost of such

1 an imprudent decision.

2 Moreover, the Company's suggestion that
3 it could comply with the RPS just by paying ACPs,
4 even when RECs are available in the market at a
5 lower price, is also unreasonable and
6 inconsistent with the statutory parameters.

7 However, subject to the -- excuse me --
8 subject to those two bright-line limitations, the
9 Company is free to pursue strategies to procure
10 RECs for RPS compliance without undue regulatory
11 second-guessing.

12 I'll just make a comment about the
13 Company's characterization of this as a "bet" on
14 the New Hampshire Legislature. It is certainly
15 true that, in July of 2020, there was great
16 uncertainty about the status of the legislation
17 that would have raised the ACP to \$55. It is not
18 the case that Eversource was required to purchase
19 Class III RECs during that month. It could have
20 forgone the purchase of the two RECs -- two REC
21 transactions that we see in the table in
22 Exhibit 8, and that would have been the prudent
23 decision in our view. They could have forgone
24 that. Instead, they made the choice to place

1 that bet. When they then lost that bet, they
2 want their ratepayers to cover the cost of that
3 bad bet. We think that's an imprudent decision
4 and would lead to an unreasonable result.

5 Therefore, the Department recommends
6 that an adjustment in the amount of \$1,592,755
7 should be made to the reconciliation of related
8 RPS compliance costs in connection with the
9 Company's next Energy Service rate filing. And,
10 relatedly, that the associated calculation of
11 its -- in its lead/lag study should be reviewed
12 to determine how that may be affected by the
13 adjustment.

14 And, finally, I'll just say, to the
15 extent the Company is arguing that a different
16 approach to RPS compliance may be necessary or
17 advisable, the Department believes that any such
18 change should not be directed in this docket,
19 based on the limited record adduced in this
20 proceeding. Instead, as with any potential
21 changes to default service supply procurement,
22 any such potential changes to REC procurement and
23 RPS compliance would be more appropriately
24 addressed through a generic proceeding, such as

1 an IR docket. And that docket should involve
2 other regulated utilities and other stakeholders,
3 such as wholesale suppliers.

4 Thank you.

5 CHAIRMAN GOLDNER: Eversource.

6 MS. CHIAVARA: Yes. Thank you.

7 Ultimately, what's in front of the
8 Commission for a decision here today is the
9 matter of a business case for an investor-owned
10 public utility. While RPS compliance is a legal
11 obligation under RSA Chapter 362-F, there is no
12 such legal obligation for utilities themselves to
13 go to market to purchase RECs in order to satisfy
14 RPS compliance.

15 As you've heard from the witnesses here
16 today, Eversource has developed a process of
17 periodic, competitive market-priced purchasing of
18 RECs, in accordance with a broad and general
19 directive in the Settlement Agreement in Docket
20 Number DE 17-113 for utilities to manage RPS
21 compliance. But Eversource selected this
22 specific process, because it not only satisfies
23 the RPS compliance obligation, but results in
24 overall price stability of REC purchases for the

1 Company and quantifiable savings for Eversource
2 customers. And this is precisely what has been
3 consistently demonstrated in the four plus years
4 that this process has been in place. This
5 consistency and stability is why the Company has
6 and continues to stand by this process, rather
7 than deviate from that proven process to make
8 speculative *ad hoc* determinations on a one-off
9 basis.

10 The customer savings in the tens of
11 millions of dollars exist even with the inclusion
12 of the REC purchase at issue here today, further
13 demonstrating that Eversource's process for REC
14 purchasing is a reasonable one that results in
15 prudent purchases. Disallowance of the \$1.6
16 million establishes a backward-looking *per se*
17 imprudence standard that eliminates significant
18 information and circumstances that impact each
19 REC purchase that Eversource makes, and turns
20 Eversource's process for RPS compliance into a
21 risk-only endeavor that the Company should be
22 under no obligation to continue.

23 The New Hampshire Supreme Court held,
24 in the *Appeal of Conservation Law Foundation*,

1 127 NH 606, at Page 637, that prudence is
2 "essentially an analogue of the common law
3 negligence standard", and that "prudence judges
4 an investment or expenditure in the light of what
5 due care was required at the time an investment
6 or expenditure was planned and made."

7 Further, the Court stated, in
8 *Fitzpatrick v. Public Service Company of New*
9 *Hampshire*, 101 NH 35, that "The test of due care
10 asks what a reasonable person would do under the
11 circumstances existing at the time of a
12 decision."

13 Due care is not exercised in a vacuum,
14 and should not be beholden to any one
15 determinative factor. Prudence needs to be taken
16 in context, and the context here is nuanced.

17 RSA 362-F:10, II, the statute upon the
18 Department's recommendation relies, is a
19 permissive statute that states "electricity
20 providers may" purchase ACPs, and I will
21 reiterate the quote the Department used, "to the
22 extent sufficient certificates are not otherwise
23 available at a price below the amount specified."
24 That is to say that ACPs are allowed, but not

1 required, to be purchased at a given price point.
2 It does not prohibit purchases above the ACP, it
3 only states when ACPs are permitted to be
4 purchased and not to be purchased. The statute
5 should be interpreted as a threshold price at
6 which the ACPs can be purchased, and not a
7 ceiling at which RECs can no longer be purchased.

8 More importantly, ACP price is only one
9 factor of many that influence the REC purchases
10 at issue. The others, such as legislative and
11 regulatory uncertainties, bankability of RECs for
12 future years, the benefits of relying upon
13 competitively purchasing RECs at regular
14 intervals throughout the compliance year, and the
15 consistent savings this process has produced for
16 customers, were equally relevant pieces of
17 knowledge available at that time, as has been
18 detailed by the Eversource witnesses in testimony
19 and today on the stand.

20 Based on the totality of these
21 circumstances that comprise the knowledge relied
22 upon at the time of purchase, and that knowledge
23 led to an exercise of due care and a prudent
24 decision to purchase those RECs, despite the fact

1 that those RECs were applied in a year where they
2 were over that year's ACP price.

3 Disallowance of these RECs in favor of
4 a *per se* imprudent standard makes Eversource's
5 current REC purchase process a wholly at-risk
6 venture, with no possibility of financial benefit
7 to the Company. To continue Eversource's current
8 REC purchasing under these risk-only conditions
9 could easily be viewed as poor business judgment,
10 in violation of the Company's fiduciary
11 obligation to its shareholders.

12 While Eversource maintains that its
13 general REC purchase process and that this
14 specific purchase are both reasonable and
15 prudent, and that the \$1.6 million should be
16 allowed for recovery, we alternatively ask that
17 the Commission, that if the \$1.6 million is to be
18 disallowed, that the Company moving forward
19 either be able to satisfy its RPS obligation
20 entirely with ACPs and RECs at the end of the
21 compliance year, or that it be allowed to have
22 competitive suppliers include REC pricing in
23 their default energy service bids on a
24 moving-forward basis.

1 Either of these modified approaches
2 would still be consistent with the terms of the
3 DE 17-113 Settlement Agreement, and satisfy the
4 legal requirements of RPS compliance, but would
5 justly eliminate what would be a risk-only
6 process for the Company that is inconsistent with
7 reasonable business practices.

8 And I'll just note -- finally note that
9 the Company would be fine, should the Commission
10 decide to do this in this docket, but the Company
11 also would not object to further process to
12 decide the outcome of future REC purchasing
13 processes, either for Eversource or statewide.

14 That is all I have. Thank you.

15 CHAIRMAN GOLDNER: Thank you. Thank
16 you, everyone.

17 We'll take the matter under advisement
18 and issue an order. We are adjourned.

19 ***(Whereupon the hearing was adjourned***
20 ***at 3:10 p.m.)***