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

1  
2 CMSR. SIMPSON: Good morning, everyone.  
3 Welcome. I'm Commissioner Simpson. I will be  
4 presiding over today's proceeding as Commissioner  
5 Goldner is unavailable. I'm joined by  
6 Commissioner Chattopadhyay.

7 So, we're now on the record in this  
8 rehearing of Order Number 26,577, issued on a  
9 *nisi* basis on February 4th, 2022, in Docket  
10 DE 22-004, the Clean Energy Fund matter. This  
11 matter arises from the Settlement Agreement by  
12 the Commission in DE 11-250 and DE 14-238, in  
13 Order Number 25,920, the Restructuring and Rate  
14 Stabilization Agreement pertaining to Public  
15 Service Company of New Hampshire's generation  
16 divestiture. Per the Settlement Agreement, PSNH  
17 agreed to capitalize the Clean Energy Fund using  
18 shareholder monies not recovered from ratepayers.

19 The Settlement Agreement provided that  
20 details regarding the Clean Energy Fund will be  
21 established via a collaborative propose overseen  
22 by Commission Staff and the Office of Energy &  
23 Planning. During the stakeholder process, the  
24 Office --

1                   *[Interruption due to the activation of*  
2                   *the building's fire alarm.]*

3                   CMSR. SIMPSON: Off the record.

4                   *(Due to the activation of the fire*  
5                   *alarm, the hearing was recessed at*  
6                   *9:05 a.m., and the hearing resumed at*  
7                   *9:25 a.m., without incident.)*

8                   CMSR. SIMPSON: On the record. So,  
9 apologize for that, the fire drill that  
10 interrupted our hearing. I'm going to start back  
11 at my prelude, if you will.

12                   This matter arises from the Settlement  
13 Agreement approved by the Commission in DE 11-250  
14 and DE 14-238, in Order Number 25,920, the  
15 Restructuring and Rate Stabilization Agreement  
16 pertaining to PSNH's generation divestiture. Per  
17 the Settlement Agreement, PSNH agreed to  
18 capitalize the Clean Energy Fund using  
19 shareholder monies not recovered from ratepayers.

20                   The Settlement Agreement provided that  
21 details regarding the Clean Energy Fund will be  
22 established via a collaborative process overseen  
23 by Commission Staff and the Office of Energy &  
24 Planning (Settlement at 24). During the

1 stakeholder process the Office of Energy &  
2 Planning became the "Office of Strategic  
3 Initiatives", or "OSI".

4 On December 23rd, 2019, former  
5 Commission Staff and OSI offered a Recommendation  
6 to the Commission for the use of the Clean Energy  
7 Fund. This Recommendation was subsequently  
8 updated on August 3rd, 2020. The Commission held  
9 a public hearing pertaining to the matter on  
10 November 10th, 2020, to receive public comment.  
11 Subsequently, on April 14th, 2021, Commission  
12 Staff and OSI filed a proposal for use of the  
13 Clean Energy Fund for approval by the Commission.  
14 Since this time, Commission Staff and OSI have  
15 merged to become the "Department of Energy",  
16 pursuant to New Hampshire RSA 12-P.

17 On February 4th, 2022, the Commission  
18 issued Order Number 26,577 *nisi*, approving in  
19 part and denying in part the April 14th, 2021  
20 Joint Proposal. On February 15th, 18th, and  
21 24th, the OCA, DOE, and PSNH, respectively, filed  
22 letters requesting a public hearing pertaining to  
23 Order Number 26,577. These parties, as well as  
24 Clean Energy New Hampshire and Conservation Law

1 Foundation, filed a Motion for Rehearing of  
2 Order Number 26,577 on March 21st, 2022. The  
3 Commission approved the Motion for Rehearing on  
4 March 31st, 2022, in Order Number 26,600,  
5 scheduling this hearing today.

6 I'll note that the Commission  
7 appreciates the opportunity to hear from the  
8 moving parties today, to gain further perspective  
9 on the stakeholder process that led to the Joint  
10 Proposal and receive further comment.

11 Let's take appearances. And I will  
12 start with the Office of Consumer Advocate.

13 MR. KREIS: Thank you, Commissioner  
14 Simpson. Good morning to you. Good morning to  
15 Commissioner Chattopadhyay.

16 I am Donald Kreis, the Consumer  
17 Advocate. As everybody knows, we represent the  
18 interests of residential utility customers. With  
19 me today is our Staff Attorney, Julianne Desmet.

20 CMSR. SIMPSON: Thank you. New  
21 Hampshire Department of Energy?

22 MR. WIESNER: Good morning,  
23 Commissioners. David Wiesner, representing the  
24 Department of Energy this morning.

1 CMSR. SIMPSON: Thank you. Public  
2 Service Company of New Hampshire, doing business  
3 as Eversource Energy?

4 MS. CHIAVARA: Yes. Good morning,  
5 Commission. Jessica Chiavara, Counsel for Public  
6 Service Company of New Hampshire, doing business  
7 as Eversource Energy.

8 CMSR. SIMPSON: Thank you. And I'll  
9 note that Clean Energy New Hampshire and the  
10 Conservation Law Foundation were parties to the  
11 Motion for Rehearing, but I do not see them in  
12 the room today.

13 Are there any preliminary matters that  
14 folks would like to discuss?

15 MR. WIESNER: No preliminary matters,  
16 Commissioner Simpson. But I do believe the  
17 parties would like to make opening statements.

18 CMSR. SIMPSON: Yes. Thank you. I  
19 don't believe we have any witnesses in the room  
20 today. Is that correct?

21 MR. WIESNER: We had thought of this as  
22 an opportunity to present oral argument before  
23 the Commission, and respond to any questions from  
24 the Bench.



1 CMSR. SIMPSON: Very good. So, I would  
2 like to move to opening comments. And I would  
3 ask the OCA if he would like to begin?

4 MR. KREIS: The OCA would love to  
5 begin. Thank you, Commissioner Simpson.

6 The Office of the Consumer Advocate,  
7 the Department of Energy, and Eversource are all  
8 of one mind with respect to the administration of  
9 the Clean Energy Fund, and the need for the  
10 Commission to revisit some of the determinations  
11 previously made in Order Number 26,577.

12 Like the Department and Eversource, we  
13 commend the Commission for its commitment to  
14 vigilant oversight of the Fund. The \$5.2 million  
15 is not a gift or a windfall to ratepayers. It  
16 was the result of intense bargaining of an  
17 agreement in which the ratepayers of the state's  
18 largest utility made significant concessions in  
19 the interest of finally completing the  
20 restructuring process after many, many years. In  
21 these circumstances, believe me, nobody is more  
22 committed to the productive use of the Fund, and  
23 our objective is to see that not a dime of it is  
24 wasted. Obviously, the Commission shares that

1 perspective, which is great.

2 As I think both Eversource and the  
3 Department will also tell you, the task of  
4 overseeing the Fund does not fall within the  
5 Commission's RSA 363:17-a role as the arbiter  
6 between shareholder interests. The Commission  
7 faithfully discharged that responsibility when it  
8 approved the Restructuring Agreement in 2016.  
9 Now, I know that I previously suggested that  
10 maybe the scales were tipped back then a bit too  
11 in favor of the shareholders, but, in reality, I  
12 can't be heard to criticize the Commission's  
13 approval of that Agreement inasmuch as my  
14 predecessor signed it and urged your predecessors  
15 to approve it.

16 I tend to think that the problem we  
17 confront now, such as it is, has to do with  
18 effectuating the intent of the parties who struck  
19 the bargain the Commission approved in 2016.  
20 Back then, there was just no notion that the old  
21 PUC would be split into two organizations, one of  
22 them strictly a quasi-judicial decision-maker and  
23 the other a policy shop that would be combined  
24 with what was then known as the "Office of Energy

1           & Planning". So, when the parties tasked the PUC  
2           Staff and the Office of Energy & Planning with  
3           figuring out how the Fund would be spent and  
4           assuring its responsible oversight, they were  
5           turning back then to entities that were well  
6           suited to the task because of their  
7           administrative acumen as administrators of other  
8           funds and because their policy insights were not  
9           locked behind an *ex parte* wall.

10                       Now, it's true that along the way, and  
11           make no mistake, it has taken us way to long for  
12           us to get to this point, the PUC Staff decided it  
13           was uncomfortable with exercising its authority  
14           under the Restructuring Agreement absent the  
15           explicit *imprimatur* of their ultimate bosses, the  
16           Commissioners. Speaking for the OCA, I'll just  
17           say that we went along with that as a matter of  
18           comity, that's "comity" with a "t", but without  
19           believing it was a legal necessity. Those same  
20           people now report not to you, the Commissioners,  
21           but to the Commissioner of Energy.

22                       Nevertheless, as I read Pages 4 and 5  
23           of the Commission's Order Number 26,600, issued  
24           on March 31st, which granted rehearing and

1 brought us here today, the Commission is  
2 essentially asking: "Hey, parties, if you people  
3 thought administration of the Clean Energy Fund  
4 didn't require Commission approval, then why did  
5 you voluntarily participate in literally years of  
6 proceedings in which you, among other things,  
7 asked for an order requiring Eversource to put  
8 the \$5 million in an interest-bearing account,  
9 and then asked the Commission for approval of the  
10 proposed uses of the programs?"

11 The answer, from the perspective of the  
12 OCA, is that we pick our battles. The Commission  
13 Staff insisted that we handle it this way, and we  
14 have neither the time, the resources, nor the bad  
15 judgment to seek to vindicate our position every  
16 time we don't agree with something done by the  
17 Commission, the former Commission Staff, or the  
18 new Department of Energy. Also, in the Summer of  
19 1944, the legendary Federal Appeals Judge Learned  
20 Hand famously observed that the spirit of  
21 liberty, by which he meant, I think, the spirit  
22 of good government in a democracy, is the spirit  
23 which is not too sure that it is right. So, I  
24 can't argue about everything with you good people

1 in this room, even when I might be right and you  
2 might be wrong.

3 At Page 5 of Order 26,600, the  
4 Commission states "a hearing is warranted to  
5 further develop the record and hear from the  
6 parties with respect to jurisdictional matters  
7 regarding the Clean Energy Fund." I'm hoping  
8 that reflects a somewhat imprecise use of  
9 language. Jurisdictional matters don't require a  
10 record, or, indeed, evidence. Jurisdiction is a  
11 question of law.

12 That said, I don't think New Hampshire  
13 law precludes the Commission from exercising  
14 plenary oversight of the Clean Energy Fund. You  
15 have, after all, plenary oversight of the state's  
16 public utilities totally by statute. But I think  
17 the wiser course of action would be to  
18 acknowledge that you now share that plenary  
19 oversight with the Department of Energy, which I  
20 believe will tell you today that it is well  
21 suited, in practical terms, to do the work of  
22 making sure that this money is well spent.

23 Now, as I've already pointed out in  
24 writing, maybe more than once, this money has

1           been sloshing around in the bilge of Public  
2           Service Company of New Hampshire for nearly four  
3           years. Maybe a better analogy would be to say  
4           that we all feel like we're in a Formula 1 race,  
5           perpetually in its formation lap, waiting for the  
6           warmup to end so the race can finally begin.

7                       Eversource's ratepayers have held up  
8           their end of the restructuring bargain, literally  
9           hundreds of millions of dollars, on top of an  
10          even bigger amount forked over in connection with  
11          the first phase of restructuring more than two  
12          decades ago. If there have been any benefits to  
13          Eversource's residential utility customers that  
14          have arisen out of all of this so far in  
15          restructuring, I have somehow failed to detect  
16          them. The \$5.2 million Clean Energy Fund, only  
17          about half of which I note will be targeted to  
18          the customer class that we represent at the OCA,  
19          is modest recompense indeed. The Commission  
20          should not hold up its deployment further, its  
21          good intentions notwithstanding.

22                      I think that's all I have to say, at  
23          least as an initial matter. And I'm eager to  
24          hear what the other parties have to say, and, of

1 course, eager to answer your questions from the  
2 Bench.

3 CMSR. SIMPSON: Thank you, Mr. Consumer  
4 Advocate. I'll recognize the New Hampshire  
5 Department of Energy, and Attorney Wiesner.

6 MR. WIESNER: Thank you, Commissioner  
7 Simpson. I have the unenviable task of following  
8 a persuasive and eloquent argument made by the  
9 Consumer Advocate. I'll do my best. And I'll  
10 try to avoid redundancy, both with the very  
11 detailed summary that you gave at the outset and  
12 the arguments that you just heard from the OCA.

13 So, first, I do want to thank the  
14 Commission for providing this opportunity to  
15 address questions regarding Clean Energy Fund  
16 oversight and the related issues of  
17 jurisdictional authority.

18 The Clean Energy Fund was created under  
19 the approved Settlement Agreement that led to  
20 Eversource's divestiture of generation assets.  
21 That happened many years ago, but only now is the  
22 Fund ready to be deployed to support programs  
23 that will provide real-world benefits to  
24 Eversource customers. And that's the case, even

1           though certain details of two programs remain to  
2           be further developed.

3                       Because of the unique features of this  
4           Fund, shareholder-provided, it's not necessary  
5           for the Commission to exercise any level of  
6           oversight over its future administration and  
7           implementation or the programs it will support.  
8           The Department is prepared to work with the  
9           Company, the Consumer Advocate, and other  
10          parties, to provide the necessary level of  
11          oversight over the Fund and related program  
12          implementation, consistent with the Department's  
13          legislative mandate and the Settling Parties'  
14          expectations.

15                      As noted in the rehearing motion, the  
16          approved Settlement Agreement set certain  
17          parameters for deployment of the Fund and the  
18          high-level standards/guiding principles it must  
19          meet. But it leaves the details of that  
20          deployment to be established through a  
21          collaborative process overseen by then PUC Staff  
22          and the Office of Energy & Planning, as a result  
23          of last year's agency reorganization, the PUC  
24          Staff and the OEP, which became "OSI", is now



1 combined within the Department of Energy.

2 So, effectively, the Department of  
3 Energy stands in the shoes of both of those two  
4 stakeholders. And now that the Commission has  
5 made its initial findings, that the proposed fund  
6 allocations and programs meet the high-level  
7 standards specified in the Settlement Agreement  
8 and the related four guiding principles, it's  
9 time for the DOE and other parties to work out  
10 the details, so that the available funds can be  
11 put to work in a timely and productive manner.

12 Now, as has been noted in the rehearing  
13 order, the Commission noted a few prior instances  
14 where the parties did seek PUC approval of  
15 certain proposals related to the Fund. And I  
16 think Attorney Kreis's characterization that PUC  
17 Staff subject -- believing itself to be subject  
18 to the supervision of the Commissioners, erred on  
19 the side of caution in seeking PUC endorsement of  
20 certain features of the Clean Energy Fund design.  
21 In particular, for example, in December 2019, the  
22 PUC Staff recommended that the Commission direct  
23 Eversource to capitalize the Fund by depositing  
24 the \$5 million in an interest-bearing account,

1 given the passage of time since the divestiture  
2 closing. Eversource subsequently committed to  
3 provide a one-time supplement to the Fund of an  
4 additional \$200,000, in lieu of depositing the  
5 money in an interest-bearing account. So, that  
6 issue was resolved without any action taken by  
7 the Commission, notwithstanding the filings that  
8 were made with the PUC.

9 In August 2020, as noted, PUC Staff and  
10 the OSI recommended that the Commission approve  
11 high-level fund allocations to certain program  
12 categories consistent with the four guiding  
13 principles applicable to Fund deployment.  
14 Following the public comment hearing and  
15 additional stakeholder process, in April 2021,  
16 PUC Staff filed a Consensus Proposal that had  
17 been developed to that point, for use of the  
18 Fund, and describing at a high level the programs  
19 to be supported, while noting that two of those  
20 programs were not yet sufficiently developed for  
21 a final determination. That Recommendation asked  
22 the Commission to approve the Joint Proposal by  
23 order *nisi*, and also to establish an ongoing  
24 stakeholder process to administer and, if

1           necessary, modify or further develop the  
2           programs. It's fair to consider that  
3           Recommendation to represent a request for  
4           assurance that the basic parameters of the  
5           proposed Fund deployment would be consistent with  
6           the Settlement Agreement provisions and the  
7           related guiding principles.

8                       Then, nearly ten months later, in  
9           February of this year, the Commission approved  
10          that Recommendation, while indicating it would  
11          exercise further oversight of the Fund and  
12          associated programs through this new docket.

13                      Forgive me. The Commission stated that  
14          the -- excuse me. The Commission also indicated  
15          that program development and implementation --  
16          I'm sorry.

17                      CMSR. SIMPSON: Take your time.

18                      MR. WIESNER: The Commission indicated  
19          it would review and assess program development  
20          and implementation on an annual basis for  
21          prudence of costs and allocation of funds. And  
22          the PUC stated that the first such review would  
23          occur "in one year's time to assess the  
24          administrative costs of the active programs,

1 levels of interest from ratepayers, and whether  
2 funds and/or programs should be re-evaluated."  
3 Commission also imposed detailed reporting  
4 requirements on the Company, and directed it to  
5 accrue interest at the prime rate on the funds it  
6 administers that have not yet been disbursed to  
7 customers.

8 As noted in the rehearing motion, and  
9 as noted by the Consumer Advocate this morning,  
10 "events have overtaken" the circumstances that  
11 prevailed at the time that Recommendation was  
12 filed in April 2021. The PUC was fundamentally  
13 reorganized, with its role narrowed to serve  
14 primarily as an adjudicatory body, while the  
15 Department of Energy was created to be, among  
16 other things, the policy-making and program  
17 administration agency, which is better positioned  
18 to nimbly interact directly with stakeholders  
19 without *ex parte* concerns. So, it seems this  
20 would be an appropriate time to revisit the  
21 division of labor between the relevant state  
22 agencies in the novel context of the Clean Energy  
23 Fund.

24 The rehearing motion, and the Consumer

1 Advocate this morning, also highlighted the  
2 Settling Parties' expectation that PUC Staff and  
3 OEP, both now with DOE, would superintend an  
4 informal process applicable to Fund allocation,  
5 program development, and oversight over fund  
6 deployment. The Settling Parties did not intend  
7 that the Fund would be spent or overseen through  
8 any type of "formal, quasi-judicial  
9 administrative proceeding" as established in the  
10 Commission's order *nisi*. Those expectations of  
11 the Settling Parties should be recognized and  
12 given full effect by the Commission, in our view.

13 And I'll also reiterate a key point  
14 emphasized in the rehearing motion and by the OCA  
15 this morning. Which is that the Clean Energy  
16 Fund was created with shareholder funding, and  
17 not ratepayer funding. In effect, private funds  
18 are used to support the programs, and not  
19 ratepayer monies. Therefore, no related program  
20 expenditures involve ratepayer costs, and no  
21 recovery of those costs will be sought through  
22 utility rates. Therefore, the balancing of  
23 interests required under RSA 363:17-a does not  
24 apply in this case. No balance must be achieved

1           between customer and utility interests, because  
2           no ratepayer dollars are implicated in either the  
3           funding or the implementation of the Fund. And  
4           no prudency review is necessary, because there  
5           will be no opportunity for disallowance of  
6           utility cost recovery through customer rates. In  
7           effect, the Clean Energy Fund involves a  
8           contribution of private funds to support  
9           beneficial customer programs.

10                        Because no ratepayer funds are  
11           involved, and the amount of private funding is  
12           limited, any additional administrative,  
13           accounting, reporting, and oversight conditions,  
14           such as those included in the Commission's order,  
15           are unnecessary, and actually may be  
16           counterproductive in these specific  
17           circumstances. In fact, those additional  
18           requirements may adversely affect the Clean  
19           Energy Fund and the potential impacts of its  
20           supported programming. It's a basic principle of  
21           the Fund deployment that the limited amount of  
22           money in the Fund must cover all administrative  
23           costs associated with its management and the  
24           programs it supports. That principle serves to

1 insulate Eversource customers from rate impacts  
2 related to Fund expenditures, but it also means  
3 that any incremental administrative, accounting,  
4 and reporting expenses will decrease the amount  
5 of funding available to support the programs.  
6 Effectively, any dollar spent on administration,  
7 monitoring, tracking, and reporting will not be  
8 available for programs designed to provide the  
9 real-world benefits to Eversource customers.

10 The Department acknowledges, as did the  
11 Consumer Advocate, that the Commission's order  
12 demonstrates a sincere intention to optimize the  
13 value and impact of the Fund. However, the level  
14 of additional oversight contemplated is  
15 incompatible with the absence of ratepayer  
16 exposure and the potential diminution --  
17 diminution of available program funding. The  
18 DOE, as a separate agency, now standing in the  
19 shoes of the PUC Staff and the OSI, is willing  
20 and able to perform any needed oversight of the  
21 Fund and its program design and expenditures, and  
22 to do so more efficiently and directly,  
23 consistent with the reasonable expectations of  
24 the original Settling Parties in the prior

1 dockets.

2 So, with all that said, be happy to  
3 take any questions from the Commissioners with  
4 respect to the details.

5 CMSR. SIMPSON: Thank you, Attorney  
6 Wiesner. I'll now recognize Attorney Chiavara,  
7 for Eversource.

8 MS. CHIAVARA: Those are two difficult  
9 acts to follow, but I will do what I can.

10 There is certainly going to be a  
11 certain amount of reiteration of the larger  
12 themes articulated by the Department of Energy  
13 and the Office of the Consumer Advocate, as  
14 Eversource agrees with both statements that were  
15 just made. But, nonetheless, the Company would  
16 like to provide its perspective on the issues at  
17 hand.

18 Eversource appreciates the Commission  
19 creating this opportunity to reevaluate the  
20 jurisdictional, administrative and oversight  
21 implications at issue in this matter, so that an  
22 efficient and impactful path forward may be  
23 established for the Clean Energy Fund.  
24 Eversource is eager to deploy the money for the



1 Clean Energy Funds to implement its programming  
2 and to advance clean energy in New Hampshire.  
3 But the Company would like to briefly expand upon  
4 the practical implications of implementing  
5 Commission Order Number 26,577.

6 But, as a first matter, Eversource  
7 agrees with the statements made by DOE and OCA,  
8 and reiterates that RSA 363:17-a does not apply  
9 here. There is no balance to strike between  
10 customer and utility interests, because no  
11 customer dollars are implicated in either the  
12 funding or the administration of the Clean Energy  
13 Fund.

14 Eversource agrees with the Commission  
15 that the parties to the 2015 Settlement  
16 Agreement that comprised the stakeholder group  
17 requested the Commission's approval for the  
18 approved [proposed?] programs, and so it makes  
19 sense that the Commission would approve or deny  
20 those programs according to the four tenets  
21 established in the 2015 Settlement Agreement.

22 However, approving the programs and  
23 directly the parties to work together to fully  
24 develop the remaining programs satisfies what the

1 parties sought from the Commission, consistent  
2 with the Settlement Agreement. The additional  
3 administrative, accounting, reporting, and  
4 oversight elements contained in Order 26,577 are  
5 misapplied in this instance, given the attendant  
6 circumstances surrounding the Fund, and those  
7 additional requirements would detrimentally  
8 impact -- detrimentally affect the Fund and the  
9 potential impact of its programming.

10 The Company agrees that minimization of  
11 costs to Eversource customers, as noted in  
12 Order 26,577, should normally be taken into  
13 consideration, but, fortunately, in the matter at  
14 hand, we are dealing only with private funding,  
15 so that there are no cost implications to  
16 Eversource customers. This is, as has already  
17 been mentioned, one reason why it's more  
18 appropriate for the DOE to oversee administration  
19 of the CEF. As a privately-funded program, the  
20 DOE is in a position to more effectively -- or,  
21 efficiently oversee program development and  
22 implementation in its non-adjudicatory role,  
23 through its Policy and Programs Division,  
24 minimizing both costs and efforts associated with

1 Fund and program administration.

2 What's more, the guiding principles  
3 provided for in both the original Staff  
4 Recommendation for the Fund and the August 3rd,  
5 2020 Amended Recommendation for the Fund  
6 submitted by the then-Office of Strategic  
7 Initiatives and then-Commission Staff, now both  
8 part of the DOE, were designed based on the State  
9 Energy Plan, legislation, and letters received  
10 from legislators and stakeholders to support  
11 cost-effective and efficient use of the Fund.  
12 One of those principles is that the Clean Energy  
13 Fund monies cover all administrative costs  
14 associated with management of the Fund and  
15 associated financial instruments and programs.  
16 This principle ensures that Eversource customer  
17 dollars are not implicated in the administration  
18 of the Fund, but also encourages nimble  
19 management of the Fund from an administrative and  
20 oversight perspective to avoid depleting funds  
21 that would otherwise be available for CEF  
22 programming.

23 Not all of the costs of the  
24 requirements laid out in Order 26,577 have been

1           calculated at this time, but Eversource estimates  
2           that an additional full-time employee would be  
3           required to comply with the Order's various  
4           administrative, reporting, accounting and  
5           auditing requirements as they now stand. And, as  
6           a general principle, the more administrative,  
7           audit and reporting requirements, the higher  
8           cost -- the higher the cost to administer the  
9           Fund, which means fewer Fund dollars available to  
10          spend on the programs themselves. However, if  
11          the Commission were to refrain from further  
12          oversight and leave ongoing administration and  
13          oversight to the DOE, eliminating the formalized  
14          reporting requirements and adjudicative process,  
15          Eversource anticipates it can cover  
16          administration of the Fund with existing staffing  
17          resources and incur minimal, if any, incremental  
18          costs.

19                        The Company also notes that annual  
20          audits and prudency reviews are inappropriate to  
21          apply to the Fund as they would have no  
22          actionable effects. There are no disallowances  
23          for the Commission to make, because in no event  
24          would Eversource be seeking rate recovery for any

1 costs, as all costs are covered by the Fund.

2 As a final matter, Eversource would  
3 like to note that the Company committed to  
4 providing a defined dollar amount of \$5 million,  
5 to which the Company later agreed to add a second  
6 discrete dollar amount of \$200,000. This  
7 satisfies the Company's obligations under the  
8 2015 Settlement Agreement. There is no provision  
9 in the Settlement Agreement for any kind of  
10 carrying charges to be applied to the CEF funds,  
11 and it is not appropriate to apply one.

12 Carrying charges are applied when  
13 monies are to be collected from, or returned to  
14 customers. In this case, the \$5.2 million  
15 settled contribution amount was not collected  
16 from customers, nor is it owed to customers.  
17 Rather, it is a settled dollar amount, defined in  
18 accordance with the terms of the approved  
19 Settlement Agreement. In that way, the  
20 Commission's Order may be seen to inappropriately  
21 alter the Commission-approved terms reached in  
22 the 2015 Settlement Agreement.

23 Eversource believes that Order 26,577  
24 was well-intentioned to ensure maximum impact of

1 the Clean Energy Fund. Unfortunately, if  
2 enforced as written, the practical application of  
3 the terms of the Order will unnecessarily deplete  
4 the Fund, and lead to inefficiencies in Fund  
5 administration.

6 For the reasons just described,  
7 Eversource recommends that the Commission  
8 relinquish any ongoing oversight of the Fund and  
9 its supported programs, and let the DOE assume  
10 full responsibility for future oversight of  
11 administration and implementation of the Fund and  
12 the programs it supports. The Company also  
13 recommends that the reporting, auditing, and  
14 accounting provisions, as well as the prudency  
15 review requirements, of the Order be eliminated,  
16 so that a greater amount of CEF funding may be  
17 dedicated to the programs, and the Fund may  
18 maximize its impact of clean energy programming  
19 for New Hampshire.

20 That is all I have. Thank you.

21 CMSR. SIMPSON: Thank you.

22 So, I will recognize Commissioner  
23 Chattopadhyay for any questions that he might  
24 have.

1 CMSR. CHATTOPADHYAY: Good morning. As  
2 you know, I kind of come into the process much  
3 later. So, I'm going to ask some questions that  
4 are more in the nature of making sure I  
5 understand what's at stake here.

6 So, I would like to start with DOE.  
7 And I would go to the letter written on the 14th  
8 of April 2021. And let me know when you're  
9 there.

10 MR. WIESNER: Okay. I have that.  
11 Thank you.

12 CMSR. CHATTOPADHYAY: Yes. And I, of  
13 course, understand that the split happened after  
14 this letter was written. But, nevertheless, I  
15 just want to make sure I'm following this letter.

16 So, on the second page, where you start  
17 listing these six points, you start off by saying  
18 "Accordingly, on behalf of the Participants,  
19 Staff requests that the Commission take the  
20 following actions:" You see that?

21 MR. WIESNER: Yes.

22 CMSR. CHATTOPADHYAY: So, you agree  
23 that the Commission did what you had asked us in  
24 Point Number 2, which says --

1 MR. WIESNER: "Approve the allocation".

2 CMSR. CHATTOPADHYAY: Yes. "Approve an  
3 equal allocation".

4 MR. WIESNER: Yes.

5 CMSR. CHATTOPADHYAY: Okay. And Number  
6 3 is where you have those programs that are  
7 relatively well developed, and the Commission has  
8 approved those as well. Do you agree with that  
9 assertion?

10 MR. WIESNER: Yes.

11 CMSR. CHATTOPADHYAY: Okay. Number 4  
12 actually says "Determine that the two additional  
13 programs outlined in the Proposal are not yet  
14 sufficiently developed for a determination that  
15 they conform to the four objectives specified in  
16 the 2015 Settlement Agreement." And the two  
17 programs are listed below that.

18 So, I want to understand is the DOE's  
19 position that, by denying those programs without  
20 prejudice, essentially, it may be just a matter  
21 of language, but what we were trying to do was  
22 exactly what you had asked here. But I would  
23 admit that, you know, language can be an issue.

24 So, we were simply looking at this



1 point. And we were saying "okay, you're saying,  
2 the DOE, or, at that time it was the PUC Staff,  
3 that the proposals are not yet sufficiently  
4 developed." So, that's the determination that we  
5 were supposed to make, for a determination that  
6 they conform to the four objectives specified in  
7 the 2015 Settlement Agreement.

8 So, I just want to understand, do you  
9 agree with the way we ordered it or was we -- we  
10 missed something?

11 MR. WIESNER: Well, I would say that  
12 the order in question goes well beyond just a  
13 final determination with respect to those two  
14 programs which are not fully developed. And I  
15 think that is one of the primary focuses of the  
16 Motion for Rehearing and the discussion you've  
17 heard today.

18 CMSR. CHATTOPADHYAY: Can you try and  
19 explain how, if we -- if the Commission had said,  
20 because you had asked for -- you basically said  
21 that those programs "are not sufficiently  
22 developed", and, you know, they're not ready "for  
23 a determination that they conform to the four  
24 objectives specified in the Settlement

1 Agreement", how is our determination not doing  
2 that, and to what extent it's not addressing this  
3 question appropriately?

4 MR. WIESNER: I think, if the  
5 Commission's Order only said "stakeholders spend  
6 more time on these two programs which are not  
7 fully developed, and then bring them back for a  
8 final determination", we might not be here this  
9 morning.

10 CMSR. CHATTOPADHYAY: Thank you. That  
11 is helpful. Because that's why I mention it's  
12 about the language.

13 Because, to be clear, I'm just speaking  
14 on my behalf, I think the idea behind the Order  
15 really was to make sure that the money that has  
16 been lying there is being used, because -- and  
17 it's not a great thing to have a fund sitting  
18 there and it's not being used. So, the intention  
19 was to let that happen.

20 So, as you -- so, it's a matter of  
21 language, as I understand now. That you  
22 interpreted it differently than how I was  
23 thinking about it. And it's a question of sort  
24 of going back and thinking about it.

1                   Number 5 says --

2                   CMSR. SIMPSON: May I offer a question?

3                   CMSR. CHATTOPADHYAY: Sure. Yes.

4                   CMSR. SIMPSON: Or, maybe a comment and  
5 a question, with respect to Number 4 in the April  
6 14th, 2021 letter.

7                   The request here is somewhat puzzling,  
8 and was somewhat puzzling for the Commission,  
9 with respect to making a determination regarding  
10 something that hasn't been developed.

11                  Would you be able to elaborate on what  
12 was intended by that request? And what your  
13 expectation was from the Commission?

14                  MR. WIESNER: I think, unfortunately,  
15 the three people you have here this morning were  
16 not directly involved, and perhaps Attorney Kreis  
17 has more institutional memory than I do, in the  
18 stakeholder sessions that generated the Consensus  
19 Proposal. I came into it somewhat late.

20                  I believe that it was determined that,  
21 in April of '21, that some of the programs were  
22 ready to be implemented, the basic allocations  
23 had been set. There were some details left  
24 outstanding. But there was a consensus among the

1 stakeholders that it was time to get whatever  
2 assurance was required or deemed to be  
3 appropriate from the Commission, and then go  
4 forward and implement what could be implemented,  
5 start funding some of the programs, and then  
6 follow up with further development of the two  
7 which were not fully developed at the time.

8 CMSR. SIMPSON: So that it sounds as if  
9 your impression was that the stakeholders were  
10 hoping to work in phases. That you had agreement  
11 with respect to the proposed programs, and  
12 allocation in 2 and 3. But you, as the  
13 stakeholder group, had not reached consensus with  
14 respect to Number 4. And you were hoping to  
15 begin a first phase with 2 and 3, and, in  
16 parallel with that roll out, to continue the  
17 stakeholder process and develop a second phase of  
18 programs pertaining to the items listed in  
19 Number 4. Is that a reasonable understanding?

20 MR. WIESNER: I think it's fair to say  
21 that there was a great interest in seeing the  
22 programs that were ready to be implemented  
23 implemented in the near term, and then complete  
24 development of the details for those additional

1 programs, and then have them implemented as soon  
2 as possible.

3 I'm not sure there was a conscious  
4 decision to be made with respect to "phasing".  
5 But, practically speaking, that's not an  
6 inaccurate characterization.

7 MR. KREIS: Might I leap in?

8 CMSR. SIMPSON: Please.

9 MR. KREIS: I agree 100 percent with  
10 Attorney Wiesner, as somebody who was directly  
11 involved at the time. I think you all have it  
12 exactly right. There was an intense eagerness,  
13 even at that point, when was that, a year ago, or  
14 more than a year ago, to get the Fund moving and  
15 the money actually doing some good. There was  
16 agreement that those two aspects of the Fund, I  
17 mean, it took us a long time to come to an  
18 agreement as a bunch of stakeholders on what to  
19 do about the Fund. It was actually, I think, a  
20 much more difficult process than the drafters of  
21 the original Restructuring Agreement thought it  
22 would be. And, you know, I could go into all of  
23 my personal theories about why that was so hard.  
24 It just was.

1           And, so, I think that, as you look at  
2           that letter that Attorney Wiesner filed back in  
3           2021, and you puzzle over Item 4, you have to  
4           then look at it in the context of his Item  
5           Number 5, which says to the Commission "could you  
6           please open a new non-adjudicative docket for the  
7           conduct of the ongoing collaborative process."

8           So, the idea -- and remember, at this  
9           point we knew that the Governor was proposing to  
10          create the Department of Energy. But it was a  
11          controversial proposal, and it was far from  
12          certain that any of those changes would occur.  
13          So, all any of us could do at the time was just  
14          assume that the status quo, meaning a PUC that  
15          had a big staff and had a lot of policy functions  
16          associated with it, would continue to work. And  
17          this collaborative process was overseen at the  
18          Staff level by the Electric Division of the  
19          Commission, in collaboration with the Office of  
20          Strategic Initiatives.

21          So, this letter is saying to the  
22          Commission, in effect, "Look, we're not done yet.  
23          We're almost there. We have agreement on most of  
24          what we want to do with this money. We have two

1 other ideas that need developing further. And we  
2 would like to continue to work together to do  
3 that. And the only way we really know how to  
4 lodge that is for you, the PUC, to open up a new  
5 docket that would be non-adjudicative so that  
6 that collaboration could continue."

7 You know, again, as I said earlier, I'm  
8 not sure that the Commission was, back then,  
9 obligated to open a new docket every time it  
10 wanted to do anything. The opening of dockets,  
11 under the old rubric, was pretty, I don't know  
12 how you would put it, profligate or liberal. I  
13 mean, consider that a docket is really just a  
14 Redwell [Redweld?] folder in the Commission's  
15 file room, right? It doesn't have any legal  
16 significance. So, I think what the Commission  
17 Staff was saying at the time was "we just need a  
18 folder for this to continue, because the work  
19 isn't done."

20 So, I don't think there was any real  
21 legal significance. To the extent there was  
22 legal significance, what the Staff was telling  
23 the Commission at the time is "this doesn't need  
24 to be adjudicated, it just needs to continue to

1 be superintended."

2 MR. WIESNER: And I'll agree with that  
3 summary of what the stakeholders' thought was at  
4 the time. I believe that's correct. And, in the  
5 old structure, where the PUC was an integrated  
6 agency, the Staff would have been interested in  
7 having a docket opened, really to provide public  
8 transparency of what was going on with the Fund,  
9 the further development, the high-level  
10 expenditures, any changes that might occur.

11 And I think that is the primary  
12 motivation behind what you see here as Items 5  
13 and 6 in the letter, is to provide that public  
14 transparency through the vehicle of a PUC docket,  
15 given that it was the Commission Staff who were  
16 charged, with other parties, in furthering the  
17 development and implementation of the Clean  
18 Energy Fund programs.

19 CMSR. SIMPSON: Thank you. And thank  
20 you, Commissioner Chattopadhyay, for letting me  
21 jump in there.

22 CMSR. CHATTOPADHYAY: No problem.

23 So, as I -- so, going back to Number 5,  
24 the issue really is whether the new docket should



1 be an adjudicative docket or a non-adjudicative  
2 docket. Is that a -- is that a fair way to  
3 understand what was being said just a while ago,  
4 by you, as well as the Consumer Advocate?

5 CMSR. SIMPSON: And I just want to  
6 note. No notice of adjudicative proceeding has  
7 been issued in this docket, DE 22-004.

8 CMSR. CHATTOPADHYAY: Okay. That is --  
9 thank you for the clarification. Because I asked  
10 today, in the morning, and I wasn't sure that was  
11 the case. So, that's good.

12 So, but, in here, it says that there's  
13 going to be a new docket, right?

14 MR. WIESNER: Well, I'll say that  
15 there's two components to Number 5. It's a  
16 non-adjudicative docket and it's a Commission  
17 docket, because the Commission was the only game  
18 in town at the time. Commission was an  
19 integrated agency. So, the PUC Staff, as one of  
20 the designated participants in the program  
21 development and Fund oversight role, subject to  
22 this ultimate supervision of the Commissioners,  
23 and the processes that were in place at the PUC  
24 at the time.

1           So, again, I think the primary focus  
2 here was public transparency of further  
3 initiatives with respect to the Clean Energy Fund  
4 in a docket, which would clearly not be an  
5 adjudicative process.

6           What's changed since is the PUC Staff  
7 is now a separate agency. And the Department of  
8 Energy has every opportunity and every capability  
9 to recreate the public transparency through its  
10 own website, let's say, through its own docket,  
11 although we might not call it that.

12           And, so, I think that that, to the  
13 extent that that was a prime mover behind the  
14 request that you see in 5, and in 6, quite  
15 honestly, it doesn't necessarily need to be a  
16 Commission docket. I think what you're hearing  
17 this morning is that there is a consensus view,  
18 at least among these three parties, that it would  
19 be better to leave that further development to  
20 the Department of Energy.

21           MR. KREIS: In other words, if I might  
22 leap in again? Now, a year later, more than a  
23 year later, that non-adjudicative docket could  
24 just as easily and arguably better be opened and

1 administered and resolved by the Department of  
2 Energy.

3 At the risk of saying something, I  
4 don't know, impertinent or maybe not helpful, if  
5 you go back to April of 2021, there was a lot of  
6 skepticism back then inside the New Hampshire  
7 Public Utilities Commission about whether there  
8 should be a New Hampshire Department of Energy.  
9 And, so, I would think, and, you know, I wasn't  
10 in Attorney Wiesner's head, and certainly not in  
11 the heads of any of his colleagues, but I think  
12 the expectation, or maybe the hope at the time,  
13 was that the Commission of 2022 would basically  
14 be the same Commission we all knew and loved back  
15 in April of 2021. And the only mechanism they  
16 had at the time administratively for carrying  
17 something like this forward would be for the  
18 Commission to open a non-adjudicative docket.  
19 The need for that "non-adjudicative docket" is  
20 still there. It's just that it would be better,  
21 as a matter of policy, and certainly consistent  
22 with New Hampshire law now in effect, for that  
23 non-adjudicative proceeding to happen under the  
24 Department of Energy umbrella, rather than the

1 PUC umbrella.

2 CMSR. CHATTOPADHYAY: Thank you. So,  
3 also confirm that Number 6 basically says that  
4 "Eversource was required to have an annual  
5 reporting as to the performance and levels of  
6 participation in each individual program."  
7 Correct?

8 MR. WIESNER: Right. It says that.  
9 And I think that, again, that the thrust of that  
10 is public transparency as to, at least at a high  
11 level, as to how the funds are being used or how  
12 the programs are being implemented.

13 When it says "reporting to occur in  
14 that new docket", as we've just been discussing,  
15 at the time, the only vehicle for establishing  
16 such a docket as a repository of publicly  
17 available information regarding this important  
18 Fund, would have been a PUC docket. I think  
19 it's -- in April 14th -- on April 14th of 2021, I  
20 think it's fair to say that it was the  
21 expectation of the stakeholders that the  
22 Commission would have issued an order *nisi*  
23 perhaps in the month of May of that year, and the  
24 *nisi* periods would have run, and a new docket

1 would have been established all before June 30th.

2 And, also, all of those  
3 recommendations, except for perhaps the final  
4 determination regarding the two additional  
5 programs, would have been implemented before the  
6 split in the agencies occurred. Another question  
7 would be, "Well, the PUC has this docket. Does  
8 it belong in the PUC or is that something that  
9 should shift over to the Department of Energy?"  
10 That would have been an interesting question.

11 But, you know, we didn't have an  
12 opportunity to deal with it then. We're  
13 addressing it now.

14 CMSR. CHATTOPADHYAY: So, again, I'm  
15 not a lawyer, but I would say that, when the  
16 Commission looked -- ended up writing its Order,  
17 we -- I can speak for myself, I was certainly  
18 trying to address all of these requests. And,  
19 so, the real issue here, and that's what I was  
20 trying to understand, is really about the  
21 jurisdiction. So, you know, if I want to boil  
22 down to something, as a nonlawyer, that, you  
23 know, I can understand. So, it's about -- so,  
24 that's why I just wanted to go through these

1 points to ensure that I understand what we did,  
2 where -- where is the real issue.

3 So, thank you.

4 MR. KREIS: I would say, Commissioner,  
5 that, as a nonlawyer, perhaps because of all the  
6 years you have spent rubbing elbows with lawyers,  
7 you have that exactly right.

8 CMSR. CHATTOPADHYAY: Thank you.

9 CMSR. SIMPSON: Would you mind if I  
10 continue -- had a quick follow-up question  
11 referring to that letter.

12 CMSR. CHATTOPADHYAY: Yes. Go ahead.

13 CMSR. SIMPSON: So, with respect to  
14 Number 5 on the letter, the second part of the  
15 sentence "require that stakeholder process to be  
16 followed by Commission review and approval of new  
17 programs developed and proposed in that new  
18 docket." So, it sounds as if the stakeholders in  
19 the room no longer feel that that request is  
20 appropriate. Is that -- can that be confirmed?

21 MR. WIESNER: I mean, I don't want to  
22 speak for the others. I will say that I would  
23 emphasize that we're talking about new programs  
24 here. So, if there was a brand-new program that

1           was proposed that is different from those that  
2           had been considered by the Commission in making  
3           its determination about Fund allocations and  
4           compliance, if you will, with the four guiding  
5           principles, that that might have been another  
6           opportunity for the PUC, as an adjudicatory body,  
7           to speak to that. Although, even the legal  
8           requirement for that, as you heard from Attorney  
9           Kreis, is not crystal clear.

10                        But that is -- that is the implication,  
11           in my mind, of the second part of Paragraph 5.  
12           So, if the programs as outlined, and the two  
13           additional programs which required further  
14           development, once those were approved by the  
15           Commission, the process would shift to  
16           implementation and funding, with public  
17           transparency through the vehicle of a new docket  
18           and some level of reporting requirement.

19                        You know, one of the challenges that  
20           we've had since the split in the two agencies is  
21           determining when, in the old world, it said  
22           "Commission", whether that properly now falls to  
23           the PUC, as a primarily adjudicatory body, or to  
24           the Department of Energy, which is the successor

1 to the PUC in many important respects.

2 And I think we can all be forgiven for  
3 not finding perfect clarity in that division.

4 CMSR. SIMPSON: And I would say that  
5 that's a question that we often ask ourselves as  
6 well as the Commission. And when we are  
7 confronted with situations where the directive  
8 has been for the Commission to do something, that  
9 we continue to assume that responsibility, absent  
10 other direction, from either the Legislature or  
11 another stakeholder with relevant jurisdiction.

12 MR. WIESNER: And this is -- and this  
13 is another point where I'll just emphasize the  
14 unique nature of this Clean Energy Fund.

15 CMSR. SIMPSON: Uh-huh.

16 MR. WIESNER: It's not ratepayer money.  
17 And it was, I mean, as Attorney Kreis said, it  
18 was "hard bargaining for", and there were  
19 concessions essentially made in the context of  
20 the Settlement. But that's historical at this  
21 point.

22 It's private funding for programs that  
23 are intended to provide real benefits to  
24 Eversource customers. And I think we're all



1 frustrated that it's taken so long to get to this  
2 point where the money can be effectively spent.

3 CMSR. SIMPSON: And then, I'd like to  
4 ask about Number 6, "annual reporting", and Order  
5 26,577?

6 MR. WIESNER: I would characterize that  
7 as an interest of the stakeholders in maintaining  
8 a level of public transparency into the  
9 implementation of the Fund and the success of the  
10 programs.

11 Again, when the question is "which  
12 agency should oversee that reporting?", I think  
13 that's a fair discussion to have. And I think  
14 what you're hearing from the parties today, who  
15 are the successors to at least some of the  
16 parties that joined in the original Settlement,  
17 is that the Department of Energy is the better  
18 agency to oversee that reporting.

19 CMSR. SIMPSON: In the Department's  
20 view, are the reporting requirements, as ordered,  
21 not in line with how the Department might pursue  
22 reporting, if they were responsible for it?

23 MR. WIESNER: Here I might defer to  
24 Attorney Kreis, because he was directly involved.

1 I'm not sure there was thought to the level of  
2 detail as to what exactly would be required in  
3 those, in that reporting obligation for the  
4 Company.

5 CMSR. SIMPSON: And, if I may just read  
6 it, it's on Page 11 of the Order: "FURTHER  
7 ORDERED, that Eversource shall report to the  
8 Commission in DE 22-004 annually on May 1st  
9 concerning the financial status of the Clean  
10 Energy Fund and customer participation levels in  
11 the approved programs supported by fund monies."  
12 So, --

13 MS. CHIAVARA: Could I?

14 CMSR. SIMPSON: Please. Attorney  
15 Chiavara.

16 MS. CHIAVARA: Thank you. I can speak  
17 of it to what the Company had had in mind, just  
18 from speaking with Company staff who were  
19 involved with the stakeholder process. In that  
20 it wasn't intended to be quite such a formalized  
21 and rigorous reporting requirement. It was meant  
22 to be, I think, more to keep those -- those who  
23 were administering the Fund, to keep them abreast  
24 of the developments, and make sure, stay "close

1 to the ground", as it were, with the Fund's  
2 deployment, and make sure it was being done  
3 effectively and efficiently.

4 But the idea was, from a Company  
5 perspective, that we could fold it in using --  
6 just fold it into existing resources and existing  
7 programs, so we could absorb that without, like,  
8 incurring any costs, since the costs are also to  
9 be borne by the Fund itself. So, we were going  
10 to try to just absorb it within existing staffing  
11 resources. So, we were trying to keep, from what  
12 I understand, we were trying to keep that  
13 administration to a minimum.

14 CMSR. SIMPSON: From the Company's  
15 perspective, the Order clause that I just read,  
16 how does the Company perceive that to be overly  
17 rigorous?

18 MS. CHIAVARA: As far as -- well, as  
19 far as the annual audits, and -- I mean, I can't  
20 say word-for-word what the reporting requirements  
21 were expected to be. But I can say that they  
22 were going to be somewhat less formal, and they  
23 weren't going to involve annual audits or  
24 prudence reviews, and things of that nature.

1 CMSR. SIMPSON: Attorney Kreis.

2 MR. KREIS: Thank you. I would say, on  
3 behalf of the OCA, that throughout this process,  
4 or at least throughout my involvement in this  
5 process, since taking office in early 2016, so,  
6 shortly before the Commission actually approved  
7 the existence of this Fund, we've been keenly  
8 aware that \$5 Million is not a lot of money in  
9 the grand scheme of things. And, so, our hope  
10 all along is that we wouldn't end up consuming a  
11 substantial amount of that money on what, in  
12 another context, would be called "evaluation,  
13 monitoring, and verification".

14 So, I don't know that, from the OCA's  
15 perspective, we had a detailed plan in mind for  
16 exactly what degree of oversight would be  
17 necessary. I heartily endorse what Attorney  
18 Wiesner has said about the desirability of some  
19 degree of public transparency and accountability.  
20 Because, even though the money is in the bilge of  
21 PSNH, it is money that, in a sense, belongs to  
22 the ratepayers. And, so, obviously, it's not an  
23 occasion for just "Trust me, we'll spend the  
24 money wisely. Don't bother us."

1           But, subjecting the use of the Fund to  
2           the same degree of rigor the Commission typically  
3           applies in its plenary prudence oversight of  
4           utilities, that wouldn't be appropriate either,  
5           for the reasons that Ms. Chiavara of Eversource  
6           has laid out for you.

7           So, we, typically, at the OCA, we  
8           depend on the Department of Energy, which has an  
9           Audit Division and lots of really smart analysts  
10          to be able to get the information they need from  
11          utilities, to make sure that utilities are not  
12          going off-track. And I think that's what we  
13          assumed would happen here, on a pretty informal  
14          basis, I would say.

15          CMSR. SIMPSON: Thank you. And I  
16          think, speaking for myself, my perspective on  
17          these clauses was that we would get an annual  
18          report on the status of the Fund, and the  
19          Department of Energy would be responsible for  
20          conducting the effort and ensuring prudence.

21          Commissioner Chattopadhyay, thank you  
22          again for allowing me to ask a few questions.

23          CMSR. CHATTOPADHYAY: No problem.

24          So, I think when one starts talking

1 about "prudence", and sort of say, you know, and  
2 people assume that there's a different standard  
3 that they were thinking of, to me it's hard to  
4 know exactly what standards are you talking  
5 about. But let it be clear that we -- I,  
6 personally, wasn't very comfortable in terms of  
7 having this money lying there and not being used.  
8 So, there was that urgency that, you know, like  
9 "okay, this money needs to be used for the people  
10 that they were" -- "that you, the Company, was  
11 supposed to use it for."

12 And, so, the question then becomes, and  
13 I understand the balance issue, that's not here,  
14 but, when the utility is actually  
15 administrating -- administering the funds,  
16 including in your proposal initially, there  
17 are -- I think there's some costs that you had  
18 said would be spent on administrating the other  
19 programs, you had some estimates there.

20 So, I mean, even though that money is  
21 going come from the Fund itself, it is important  
22 that the Fund is being used very  
23 cost-effectively, meaning that the utility's  
24 effort towards administering it is not taking

1 away all of the money that's out there. It's not  
2 a lot of money.

3 So, I think, in that sense, it is  
4 important for us to know how it's being  
5 administered. And, so, it's -- clearly, it's not  
6 the kind of review that one goes into in rate  
7 cases, but there's that question that we were  
8 interested in.

9 And, I mean, I'm saying, I understand  
10 the point about the jurisdiction issue, but I'm  
11 just -- keep that out of the context right now,  
12 just understand what I'm saying. Which is, even  
13 when the utility is managing the Fund, where the  
14 utility is doing it, we want to ensure that the  
15 administration is not bloated, okay? So, that's  
16 where we were going.

17 CMSR. SIMPSON: And if I may, I think,  
18 in this ordering clause that I read, we provided  
19 deference to the Department of Energy to conduct  
20 and continue to evaluate the prudence of the  
21 investments from the Fund. That was my  
22 expectation.

23 CMSR. CHATTOPADHYAY: And so was mine  
24 as well. We talked about it before, yes.

1           MR. KREIS:  If I might leap in?  I hope  
2           we don't end up getting too hung up in, like,  
3           what standard applies to the Company as it  
4           superintends this Fund.  I mean, what one could  
5           argue, "prudence", as you all know, as everybody  
6           knows, is sort of a term of art in the field of  
7           utility law.  One could argue that an even higher  
8           standard applies here, because, essentially, this  
9           \$5.2 million is being held by a private company  
10          almost in a fiduciary capacity, right?  So, maybe  
11          the standard is even more rigorous.

12                 But the question really, as  
13          Commissioner Chattopadhyay just suggested, is  
14          really "who is in the better position to make  
15          sure that Eversource does the right thing?"  And,  
16          so, it's jurisdictional.

17                 MS. CHIAVARA:  And this -- this might  
18          not be neither here nor there, but the Company  
19          would have been completely content writing checks  
20          and just getting the money out there for the  
21          programs.  We didn't have to -- we would have  
22          been fine not incurring any costs for  
23          administration.

24                 But, I believe, during the stakeholder



1 process, there was some interest in the Company  
2 administering some of these funds because of the  
3 experience of Eversource administering programs  
4 on this scale.

5 So, the Company is just as motivated in  
6 keeping the administrative costs to a minimum.  
7 We want these funds to go to the programs. So, I  
8 think we're all on the same page, as far as, you  
9 know, how we want the funds used.

10 MR. KREIS: That's a true statement.  
11 We didn't, for example, try to convince  
12 Eversource to write a \$5.2 million check payable  
13 to the State Treasurer, so that it would be out  
14 of this business altogether.

15 MR. WIESNER: And I think it's also  
16 fair to say that, you know, I am comfortable that  
17 the Department of Energy, the Consumer Advocate,  
18 and other parties will be highly sensitive to,  
19 you know, any potential for the Company to impose  
20 excess administrative costs on this limited  
21 funding. I think there's a general interest,  
22 including the Company, in seeing that the maximum  
23 amount of the funds possible are put to good,  
24 productive use for the benefit of Company

1 customers.

2 CMSR. CHATTOPADHYAY: What happens if  
3 you have a dispute regarding that?

4 So, let's say you're not happy with how  
5 the Fund is being, you know, administered. And I  
6 understand what Eversource had just said. I  
7 mean, don't take it as, you know, as I'm -- I'm  
8 just probing. What happens if a party says that  
9 "the Fund is not being administered properly?"  
10 And -- yes.

11 MR. WIESNER: I mean, there is a  
12 stakeholder process that is contemplated, and was  
13 always contemplated by the Settlement Agreement,  
14 that really put the PUC Staff and, you know, what  
15 was then "OEP", became "OSI", is now a part of  
16 the Department itself, to monitor that program.

17 And, you know, it's not entirely clear  
18 exactly what authority the Department of Energy  
19 would have. But I think there is, you know,  
20 there is shared regulatory authority in many  
21 cases under the statutes for the two agencies  
22 with respect to public utilities. And I think  
23 there may be an opportunity to exercise that, if  
24 necessary, to correct what might be seen as an

1           imbalance in Fund expenditures, if that were to  
2           occur. I'm fairly confident that it will not.  
3           And I know that parties will be keeping a close  
4           eye on it.

5                        I think we all have an interest in  
6           seeing that the money is spent soon and spent  
7           well, to do what it was originally intended. And  
8           it's been far too long as it is. And I think our  
9           concern is that additional administrative burden,  
10          whatever the source of that, is counterproductive  
11          to the ultimate aim of all, which is to put that  
12          money to work in the community.

13                      CMSR. CHATTOPADHYAY: Just speaking for  
14          myself, I am not sure if one is cost-effectively  
15          administering this Fund, just because it's --  
16          and, you know, and the PUC gets involved, that's  
17          going to be too different, or, you know,  
18          perceptively different. It's a matter of just,  
19          you know, in my head, as an economist, I'm just  
20          "will you do it?" And that way would be -- that  
21          I'm not 100 percent sure that adding the PUC into  
22          the mix would add too much of a cost for the  
23          Company. That's just my personal opinion.

24                      But, you know, let's move on with some

1 other questions that I have.

2 CMSR. SIMPSON: I'll just note, we  
3 definitely support broad stakeholder involvement  
4 throughout the process.

5 CMSR. CHATTOPADHYAY: This is -- this  
6 is a somewhat of a -- it has baffled me a bit.  
7 So, I'm going to ask again, for the DOE, that the  
8 letter was written on the 14th of April 2021.  
9 And, after the split, if the DOE thought that  
10 this now is really not for the PUC to decide on,  
11 then why didn't the Department, you know,  
12 immediately sort of file something after the  
13 split happened, you know, due to SB 2, that "Hey,  
14 from here on, it's our responsibility; the PUC  
15 doesn't need to get involved"?

16 MR. WIESNER: I don't necessarily have  
17 a good answer to that. I don't think we  
18 expected -- I think -- I think, you know,  
19 arguably, we were reactive, when we should have  
20 been proactive. But I don't think you should  
21 read anything into that, that it was a concession  
22 on issues of jurisdiction or authority, or you  
23 should do what.

24 I do think that the Commission's Order

1 imposes some very detailed reporting requirements  
2 that I believe you've heard are seen as  
3 unnecessary and arguably excessive, and costly,  
4 in terms of administrative burden, from the  
5 Company's perspective, and that that will eat  
6 into the Fund and diminish its impact in  
7 supporting community-based programs.

8 So, I think that that's a concern that  
9 we might not have anticipated, and didn't  
10 proactively seek to head off.

11 CMSR. SIMPSON: So, the Department's  
12 perspective is that an annual report, with  
13 respect to financial status and customer  
14 participation levels, is overly burdensome?

15 MR. WIESNER: I think some of -- I  
16 think, as you've heard from the Company, some of  
17 the details in the reporting, auditing  
18 requirements go beyond what was ever contemplated  
19 by the parties. Although, as I said earlier, I'm  
20 not sure there was, you know, a detailed template  
21 in mind for what that reporting might involve.

22 MS. CHIAVARA: And pardon me, I might  
23 have -- I believe I mentioned this in my opening  
24 statement, but I did speak with internal

1 Eversource Staff. And they assessed what was in  
2 the Order, and did a high-level estimate of these  
3 requirements. And the estimate was that one  
4 additional full-time employee would be required  
5 to comply with everything from the reporting, to  
6 the auditing, to the prudency review.

7 Whereas, with the way we had laid it  
8 out with the stakeholder engagement process and  
9 the more informal administration and oversight,  
10 we were just going to fold that into existing  
11 resources. So, there would not be incremental  
12 costs. These would all be nominal administrative  
13 costs.

14 CMSR. CHATTOPADHYAY: When you say  
15 "existing resources", are you essentially saying  
16 that they will be used to administer the Fund,  
17 and whatever the cost is would be picked up by  
18 those employees that's part of your regulatory  
19 setup already? Is that what you're saying?

20 And as opposed to the way the  
21 Commission had asked you? So, you sort of went  
22 back and did some analysis. You asked your folks  
23 to give us an estimate -- come up with an  
24 estimate, that was like you need an additional

1 employee to take care of all of this?

2 MS. CHIAVARA: Correct. Yes.

3 CMSR. SIMPSON: Can you provide that  
4 analysis to us?

5 MS. CHIAVARA: I don't have it, I do  
6 not have it with me. This was a high-level  
7 estimate. But I can certainly take it back and  
8 ask folks to put something together, if that's  
9 what you'd like?

10 CMSR. CHATTOPADHYAY: I would  
11 appreciate that analysis to be done.

12 And we talked about the "prudence"  
13 issue, I think I have enough to at least  
14 understand where the disconnect was.

15 So, this, again, to Eversource, very  
16 similar question to what I, you know, similar  
17 question to what I asked DOE. The split happened  
18 in July 2021. The letter that we've had talked  
19 about initially was written in April, on April  
20 14th, and then nothing happened.

21 So, I'm just curious why PUC --  
22 sorry -- why Eversource did not also let us know  
23 that "wait a second, with the SB 2, hereon it's  
24 really the DOE's responsibility, not the PUC's

1 responsibility"? Did anybody think about it?

2 Because I did see there were these  
3 service list updates being filed January 24th,  
4 2022. So, you know, why wasn't the issue that  
5 I'm raising addressed?

6 MS. CHIAVARA: And I don't know that I  
7 have a much better answer than Attorney Wiesner.  
8 I will say that, with the split, I believe there  
9 was a lot of learning on one's feet, from the  
10 Company perspective, and perhaps from, I won't  
11 speak for the Department of Energy or the OCA,  
12 but I believe that it was a learning process,  
13 because the DOE sort of "popped up" overnight.  
14 And I think there was a lot to consider.

15 It certainly would have been better had  
16 we proactively made some adjustments to this  
17 filing, to make it more clear what we were asking  
18 for the Commission here. I believe that having  
19 the Commission approve or deny the programs was  
20 still a proper adjudicative role. But, then,  
21 given the fact that the DOE has a Policy &  
22 Programs Division, the rest of the requirements  
23 in the April 14th letter do seem more appropriate  
24 to be administered in that division that was



1           created July 1st of last year.

2                       As to why Eversource didn't take any  
3           action, I think you can chalk that up to the fact  
4           that we were still trying to ascertain what the  
5           regulatory landscape was with now two sets of  
6           regulators, as opposed to one unified regulator.

7                       MR. KREIS:   Could I comment on that?  I  
8           mean, I was here.  I had a front-row seat here in  
9           the Walker Building for all of this change.  And  
10          I would attribute any of the uncertainty that  
11          we're grappling with here now around what  
12          happened before and after July 1st of last year,  
13          frankly, to the "fog of war".

14                      I mean, it was not clear, when Mr.  
15          Wiesner wrote that letter on April 14th, far from  
16          clear, that there would even be a Department of  
17          Energy.  I mean, literally, I think it was about  
18          ten days before July 1st, when it became clear,  
19          because of the way the Legislature dealt with the  
20          Governor's budget, that, in fact, there would be  
21          a Department of Energy on July 1st.

22                      If you recall, the Governor had trouble  
23          finding a Commissioner of Energy.  He appointed  
24          an Interim Commissioner, and eventually he made

1 the Interim Commissioner the permanent  
2 Commissioner.

3 So, there was, I think, a tremendous  
4 amount of uncertainty. There were vacuums, I  
5 would say, in terms of leadership. I mean, and  
6 this is no criticism of anybody. This literally  
7 was the "fog of war", as all of us were dealing  
8 with vast uncertainties, in which a paradigm that  
9 had prevailed with respect to utility regulation  
10 in this state for decades was suddenly tossed  
11 right out the window. And, really, it's a wonder  
12 that -- it's a wonder that the lights stayed on,  
13 literally, as of July 2nd. There were much,  
14 much, much, much bigger matters and uncertainties  
15 that all of us were grappling with on the day  
16 that the "Department of Energy" came into  
17 existence.

18 I mean, huge personnel changes. You  
19 know, if you look at the letterhead at the top of  
20 that piece of paper that is that letter from  
21 April 14th, I mean, every single name on that  
22 letterhead is no longer an employee of the State  
23 of New Hampshire. Those were the top leaders of  
24 the Public Utilities Commission. All of them

1           were gone as of July 1st. You know, Ms. Howland  
2           stayed on, but her role was unclear.

3                       So, all of this uncertainty, and  
4           deliberate in exactitude, I might add, because,  
5           in order to get the SB 2 through the Legislature,  
6           representation -- two representations were made  
7           to the Legislature: One, that the transition  
8           could be accomplished without any additional  
9           personnel being hired, and that, frankly, was  
10          unrealistic; and, two, that there were a lot of  
11          details that would have to be sorted out, likely  
12          through remediative or corrective or updating  
13          legislation, and, in fact, we've seen that  
14          happen. And, even though that legislation has  
15          now been put in place, there are still issues  
16          that are coming up as we figure out exactly how  
17          all this happened.

18                      So, this \$5.2 million, though  
19          important, was, understandably, not even in the  
20          Top 10 things that everybody was worried about at  
21          the birth of the Department of Energy. So, I  
22          don't think there's any fault to be assigned by  
23          the fact that neither the Department, nor  
24          Eversource, nor the OCA, for that matter, were,

1           you know, filing a letter with the Commission on  
2           July 2nd saying "Hey, by the way, this Clean  
3           Energy Fund is really a Department of Energy  
4           problem now, not a PUC problem."

5                        I think the best way to approach this  
6           is less about the minutia of who did what or who  
7           didn't do what in July of 2021, and more about  
8           making sure that we make good decisions now, that  
9           will set the right precedents now, for how the  
10          PUC and the Department of Energy are going to  
11          coexist, hopefully, over a very long time. And,  
12          in general, things that are policy- and  
13          administration-oriented are best consigned to the  
14          Department of Energy, which is, essentially, a  
15          policy and administrative shop, and things that  
16          generally require adjudication under the  
17          Administrative Procedure Act, because somebody  
18          has a right to a hearing before a decision gets  
19          made, that's really the realm of the Public  
20          Utilities Commission. And, as you folks know, at  
21          least as well as I do, there is plenty to be done  
22          in that realm, without taking on additional  
23          business that isn't really best discharged by the  
24          PUC.

1           And it's not, I should add, a matter of  
2           who is best qualified to do the work. I mean,  
3           the PUC is as well-endowed as any agency here in  
4           the Walker Building, with really smart people,  
5           who have all kinds of experience, who could do  
6           all of the regulatory work of all types. Really,  
7           if it was a matter of qualifications, then the  
8           PUC would still be doing everything. But that's  
9           not what the Legislature decided. It took a lot  
10          of what used to be the PUC's responsibility and  
11          moved it over to the newly created Department of  
12          Energy.

13                 CMSR. SIMPSON: May I ask, can you  
14                 comment on why the Office of the Consumer  
15                 Advocate didn't sign on to either of the  
16                 Recommendations or the Joint Proposal that was  
17                 submitted?

18                 MR. KREIS: I'm trying to remember now  
19                 exactly which of my peevish attitudes was  
20                 prevailing about this at the time.

21                 I think that I was -- I was, frankly,  
22                 concerned about the amount of time that it took  
23                 to get to the point where we were -- that the  
24                 Department and the Company were prepared to make

1           those recommendations. To me, it just took way  
2           too long. There was way too much of a  
3           discussion, disagreement, bureaucracy,  
4           uncertainty, muddle. I just wanted to get the  
5           money out the door.

6                       And I think that failing to sign on was  
7           just a way of communicating a certain measure of  
8           displeasure, without communicating outright  
9           opposition.

10                      CMSR. CHATTOPADHYAY: Commissioner  
11           Simpson -- so, Commissioner Simpson actually  
12           addressed one of the questions, you know, he  
13           asked one of the questions that I was going to  
14           ask the OCA.

15                      CMSR. SIMPSON: Sorry to steal your  
16           thunder.

17                      CMSR. CHATTOPADHYAY: No, it's okay.  
18           And I think you -- the Consumer Advocate also,  
19           just taking the queue from the previous two  
20           questions to DOE and Eversource, responded to the  
21           same question which I would have asked. So,  
22           thank you for that.

23                      So, I think I'm just going to make  
24           sure, before I stop with my questions, how

1           quickly can you give us the analysis that I  
2           requested? And I'm asking Eversource now.

3                   MS. CHIAVARA: That is a fair question.  
4           And I don't have a fair answer. But I can  
5           certainly -- I can reach out right now, in  
6           real-time, and see if I can get an answer right  
7           now.

8                   But I honestly don't know how long it  
9           would take to get that analysis. I would imagine  
10          we could get it in the next couple of days, if I  
11          had to guess.

12                   CMSR. SIMPSON: The timing is good,  
13          because my next step would be to take a break, to  
14          give the stenographer a break, and everybody else  
15          a moment. So, --

16                   CMSR. CHATTOPADHYAY: Okay. I think --  
17          thank you. I just, you know, I would like to  
18          know when that can happen.

19                   CMSR. SIMPSON: You're all set,  
20          Commissioner?

21                   CMSR. CHATTOPADHYAY: Yes.

22                   CMSR. SIMPSON: Okay. I'd like to just  
23          take a -- let's say a ten-minute break. So, it's  
24          11 -- or, excuse me, it's 10:45 right now. Let's

1 reconvene at 10:55. Thank you. Off the record.

2 *(Recess taken at 10:45 a.m., and the*  
3 *hearing resumed at 11:06 a.m.)*

4 CMSR. SIMPSON: On the record. So,  
5 before I ask any questions, is there anyone that  
6 would like to offer any comments?

7 *[No verbal response.]*

8 CMSR. SIMPSON: Okay. So, and I would  
9 open this up for discussion, with respect to  
10 House Bill 2, how do folks perceive that the  
11 Commission's plenary authority has been changed  
12 with respect to oversight of the utilities?

13 Please.

14 MR. KREIS: Couldn't you start with an  
15 easier question?

16 CMSR. SIMPSON: I mean, ultimately, I'm  
17 struggling here. Because I look at the record  
18 that was available to us when we issued our  
19 Order, and it seems that the legislation that  
20 resulted in the Eversource Divestiture  
21 Settlement, and the record from the stakeholder  
22 process, all of the proposals that were made with  
23 respect to these funds, all asked the Commission  
24 to approve the program.



1           And I certainly recognize that we now  
2 exist in a somewhat different environment, with  
3 the creation of the Department of Energy,  
4 pursuant to House Bill 2. But I didn't have  
5 anything in the record at the time to consider  
6 with respect to delegating responsibility for  
7 approval of the Fund.

8           And I'm hoping that someone might be  
9 able to articulate, based on what was in the  
10 record at the time or in statute, to demonstrate  
11 how we got it wrong, and what we've asked for and  
12 required is outside of the requirements for the  
13 Commission?

14           MR. KREIS: Can I try to answer that  
15 question, Commissioner?

16           CMSR. SIMPSON: Please.

17           MR. KREIS: And I'll be frank, because  
18 I think this has implications that maybe  
19 transcend or will outlast whatever you end up  
20 deciding in this particular case.

21           I don't think that you got it wrong as  
22 a matter of law. If your decision to open this  
23 docket and, you know, continue to exercise  
24 detailed and plenary oversight over the Clean

1 Energy Fund, I think, if that is -- if that is  
2 where this ends up finally, I do not think that  
3 you should worry that there will be an appeal to  
4 the New Hampshire Supreme Court, or, if there  
5 were for some reason, that you would lose. I  
6 don't think that what you have done thus far is  
7 inconsistent with New Hampshire law and outside  
8 your authority, as it's been delegated to you by  
9 the Legislature.

10 In a perfect world, the way the  
11 Department of Energy would have been created, and  
12 the PUC would have been reconstituted, is by a  
13 bunch of really smart people, sitting down in a  
14 conference room somewhere, with a blank screen or  
15 a blank piece of paper, and writing a brand-new  
16 statute that laid out, in very rigorous and  
17 logical form, what the Department of Energy is  
18 supposed to do and what the Public Utilities  
19 Commission is supposed to do.

20 But that isn't the way it works in the  
21 real world, especially the piece of the real  
22 world known as the State of New Hampshire. And,  
23 so, what the Legislature did was it made various  
24 piecemeal amendments to the PUC's enabling

1 statutes, which themselves are a creation over  
2 many, many decades of New Hampshire history, and  
3 it made some amendments to other statutes. And,  
4 so, what we get is a very iteratively crafted set  
5 of statutory prescriptions that the Legislature  
6 knew full well were imperfect, because there was  
7 a deadline, because we needed a State budget on  
8 July 1st of last year.

9 So, the Commission -- so, the  
10 Legislature did its best, with a limited amount  
11 of time, knowing at the time that it was making  
12 mistakes or leaving questions unanswered. And,  
13 so, one of the things the Legislature did was  
14 take the statute that says "Hey, the PUC shall  
15 have plenary authority over the utilities", and  
16 it added the Department of Energy and said "Now,  
17 the PUC and the Department have plenary  
18 authority." Well, that's not a very helpful  
19 directive either to you or to the Department.  
20 But it's a kind of a "kick the can down the road"  
21 sort of legislative determination, because it  
22 leaves to you and to the Department, you know,  
23 sort of working out the details of that; and this  
24 is one of those details.

1           So, I think the best way for the  
2           Commission to approach this decision is  
3           thinking -- thinking about it from a "good  
4           governance" standpoint, like "which agency is  
5           best suited to do this particular kind of work?"  
6           And I think another question that you are  
7           well-advised to chew over, is "what would the  
8           people who signed the Settlement Agreement that  
9           created this have wanted" -- "what would they  
10          have said, if they had known that this was going  
11          to happen, there was a going to be a Department  
12          and a Commission?"

13                 And my answer to both of those  
14                 questions is that it -- that good government  
15                 suggests that this is a Departmental task, not a  
16                 PUC task. And I think that is what the  
17                 signatories to the Settlement Agreement would  
18                 have preferred. But I readily concede I wasn't  
19                 there. I wasn't Consumer Advocate at the time.  
20                 My predecessor signed the Agreement. She was in  
21                 the room when this Fund was invented; I was not.  
22                 And I haven't talked with her about this, so I  
23                 don't know what she would have said about that or  
24                 what she would say.

1           So, you can't make a decision that any  
2 authority higher than you will tell you was  
3 wrong. And, in that sense, you're acting  
4 lawfully regardless of what you decide. My  
5 appeal is to notions of good government  
6 ultimately, and also to the intent of the  
7 parties.

8           I can also say, because the rules of  
9 statutory construction notwithstanding, I spoke  
10 with the drafters of the relevant provisions of  
11 SB 2 at the time, and I know what they had in  
12 mind was the model of the way energy is regulated  
13 at the federal level. So, they knew and know  
14 that the Federal Energy Regulatory Commission is  
15 nominally sort of embedded in or a part of the  
16 federal Department of Energy. And it has certain  
17 explicit regulatory authority that's sort of  
18 lodged within the bigger rubric of the federal  
19 Department of Energy.

20           I, personally, tend to think that what  
21 the General Court did a year ago was make, and I  
22 say this very hesitatingly, what they actually  
23 did was make New Hampshire a lot more like  
24 Vermont. I know that might be a dirty word in

1           some circles. But Vermont has a Department of  
2           Public Service, and what's now known as the  
3           "Public Utilities Commission". And I worked for  
4           a year at the Public -- what was then the  
5           "Vermont Public Service Board". So, I'm  
6           comfortable, because of experience with that  
7           rubric, where you have regulator and a executive  
8           branch agency, that are as physically close  
9           together as these two agencies are, and have  
10          relatively few disagreements over which sphere  
11          belongs to which agency. But that's because  
12          those two agencies have now coexisted for several  
13          decades.

14                        I wasn't around when that split  
15          happened. And I'm sure that they went through  
16          the same difficult period that -- or, challenging  
17          period, I guess, that New Hampshire is now  
18          experiencing.

19                        Something Mr. Wiesner has stressed,  
20          that heartily agree with, is that this particular  
21          situation is unique. It's *sui generis*, right?  
22          There aren't a lot of other funds like this one  
23          for anyone to administer. To me, the best  
24          analogy is the various other funds that the

1 Department of Energy administers that have to do  
2 with money that comes from RGGI, for example. As  
3 an agency, it's just well-placed to oversee the  
4 deployment of money in a way that the PUC is not.

5 So, I don't know if that's helpful to  
6 you.

7 CMSR. SIMPSON: Uh-huh.

8 MR. KREIS: But I do want to reassure  
9 you that whatever you decide is not going to  
10 subject you to rigorous and skeptical and  
11 withering appellate scrutiny, at least not from  
12 me.

13 MR. WIESNER: I think I would agree  
14 with that. And also emphasize that, you know,  
15 even if the Legislature had taken the time to do  
16 a deep and detailed review, and perhaps even a  
17 rewrite of the statutes that are applicable to  
18 the two agencies and to utility regulation in the  
19 state, I can't imagine that they would have  
20 covered a situation like this with the Clean  
21 Energy Fund. It really is a special animal.

22 And, so, I think I would be reluctant  
23 to address the higher-level issue of where the  
24 boundaries of the Commission's jurisdiction may

1 be, its authority with RPS to utility regulation.  
2 I think perhaps the Legislature, to the extent we  
3 can read into their intent, may have purposely  
4 left that vague in the -- left that vague in the  
5 first instance, and let experience be a teacher  
6 and a guide, in terms of how that will be  
7 ultimately resolved. And that's part of what  
8 we're struggling with today.

9           However, we're struggling with it in  
10 the context of a unique fund, shareholder money,  
11 the product of a settlement. It's been sitting  
12 around, unfortunately, for years now, and it's  
13 poised to be deployed. And I think our priority  
14 is to make sure it can be deployed quickly,  
15 efficiently, and effectively, without undue  
16 administrative burden or further delay.

17           And I'll also sort of maybe pithily  
18 paraphrase what the Consumer Advocate was  
19 suggesting, which is, in terms of good  
20 governance, even if you can do something, it  
21 doesn't mean that it's the best thing to do in  
22 context. And I think this is a place where  
23 Commission restraint and abstention, if you will,  
24 is warranted, given the special features of this



1 particular Fund.

2 CMSR. CHATTOPADHYAY: This is purely  
3 out of curiosity. Attorney Wiesner, I'm just, as  
4 far as the Settlement is concerned, which  
5 happened in, I think, 2015 maybe, were you  
6 involved in it at all, or even peripherally?

7 MR. WIESNER: I was not personally  
8 involved in that.

9 CMSR. CHATTOPADHYAY: Okay. And can  
10 you also tell me, I know that you wrote the  
11 letter, were you consulting with others in the  
12 Commission then, who had more firsthand  
13 experience with the Settlement?

14 MR. WIESNER: As I recall, the answer  
15 is "yes". Now, the Settlement doesn't spill a  
16 lot of ink on the Clean Energy Fund.

17 CMSR. CHATTOPADHYAY: Agreed.

18 MR. WIESNER: And what we're looking at  
19 now is the product of a long and, you know,  
20 protracted and, you know, at times difficult  
21 stakeholder process, to figure out exactly what  
22 to do with a limited pot of money, but to put it  
23 to the best use. And, obviously, the first group  
24 of stakeholders may have very different views as

1 to how that should be implemented.

2 CMSR. CHATTOPADHYAY: The folks that  
3 you talked to, are they still there, with the DOE  
4 right now?

5 MR. WIESNER: In terms of the people  
6 who negotiated the original Settlement?

7 CMSR. CHATTOPADHYAY: No, no. I'm  
8 asking, because you took some -- in writing your  
9 letter, which is dated April 14th, 2021, I'm just  
10 trying to understand, at that time were you  
11 consulting with folks who had participated in the  
12 Settlement? And then, also I'm asking, are those  
13 people still there?

14 And, you know, if you don't know,  
15 that's fine. I'm just curious. That's why I  
16 started off by saying that.

17 MR. WIESNER: I mean, I think the  
18 record in the prior dockets, 11-250 and 14-238,  
19 would demonstrate that the Agreement was  
20 negotiated by a designated team of PUC Staff  
21 personnel, Tom Frantz and Anne Ross, in  
22 particular. Anne is now, as you know, with the  
23 Commission, and Tom is the Director of the  
24 Regulatory Division at the Department of Energy.

1 CMSR. CHATTOPADHYAY: Thank you.  
2 That's helpful.

3 CMSR. SIMPSON: I think Attorney  
4 Wiesner had raised a point with respect to  
5 "potential disputes" and how they might be  
6 adjudicated. I often think about stakeholder  
7 process, and that our public duty is to ensure  
8 that people have the right to be heard and have  
9 the opportunity to participate.

10 And I would not imply that the Company  
11 would have any intent of not abiding by the  
12 Agreement and make the investments that they have  
13 stated here. But, certainly, it's my view that  
14 the Commission is in a unique position to require  
15 the Company to make investments that they say  
16 they're going to make.

17 And when I personally looked at the  
18 proposal, I would agree that these are  
19 investments that are important for the state, and  
20 important for Eversource customers, following a  
21 long history of issues that ultimately led to the  
22 creation of the Clean Energy Fund, including  
23 legislation.

24 So, I guess I just continue to look to

1 the parties here today for perspective and basis  
2 for how we should feel comfortable stepping away  
3 from the responsibility to oversee the Company in  
4 reviewing the proposals subject to the Clean  
5 Energy Fund?

6 MR. KREIS: I'll leap in. I would  
7 suggest, respectfully, that the Commission take a  
8 look at the U.S. Supreme Court's decision in  
9 *Mathews versus Eldridge*, which sets out a bunch  
10 of principles that I think the New Hampshire  
11 Supreme Court has also adopted, that really have  
12 to do with what "due process" really means in the  
13 administrative context. And, you know, the  
14 50,000-foot view or the 10,000-foot view is that  
15 there is a continuum, right? I mean, it's true  
16 that government should be transparent and  
17 accountable, and people should be treated fairly,  
18 and they certainly shouldn't be deprived of  
19 property interests, without some opportunity for  
20 notice and an opportunity to be heard. But  
21 there's a continuum.

22 And this particular question of "how to  
23 spend that \$5.2 million?", is on the side of the  
24 continuum that is relatively -- the amount of due

1 process that the public, including the  
2 constituency that I represent, is entitled to is  
3 relatively low. I mean, this isn't -- and nobody  
4 goes to jail as the result of decisions that get  
5 made about the Clean Energy Fund, nobody is --  
6 nobody's income is taxed, nobody's house is taken  
7 from them, and, you know, devoted to public use,  
8 that sort of thing. This is a "gift", if you  
9 want to call it, that the utility made, as a way  
10 of completing the restructuring deal.

11 So, the idea that you would have to  
12 have a full-blown public hearing, with lots of  
13 opportunity for the public to share its views  
14 about how to spend the money, I just don't think  
15 that's a practical necessity.

16 And one of the *Mathews'* factors is, you  
17 know, basically, "what's the risk of people being  
18 erroneously deprived of their rights?" And the  
19 risk here is relatively, in fact, it's so small  
20 that it's almost nonexistent.

21 So, you just have to remember that all  
22 of this exists on a continuum, and that your  
23 desire to be public and transparent and  
24 accountable is very laudable. But the answer to

1           that imperative isn't the same in every situation  
2           that any of us confronts.

3                   CMSR. SIMPSON:   So, if the Commission's  
4           approval and oversight isn't needed, then why are  
5           we even here today?   Why haven't the dollars  
6           already been spent?

7                   MR. KREIS:   That's a really good  
8           question.   And I think that that, too, is  
9           attributable to the "fog of war".   Or, maybe an  
10          improvident bit of last-minute Settlement  
11          Agreement drafting that took place in 2015,  
12          right?   And here I'm speculating, but I think  
13          it's pretty educated specification, right?   I  
14          mean, the parties were trying to get to an  
15          agreement that involved hundreds of millions of  
16          dollars in what I suppose were referred to at the  
17          time as "stranded costs".

18                   And, so, in order to get to "yes", the  
19          Company says "all right, we'll throw \$5 million  
20          down on the table.   And we don't have time now to  
21          figure out how we're going to spend that  
22          \$5 million.   But we'll just throw it down on the  
23          table, we'll write that check when restructuring  
24          is completed."   And it took a long time for that

1 to happen. "And, at that point, we'll just  
2 assume that the stakeholders who reached this  
3 agreement will then be able to come to some  
4 agreement about how to spend the money."

5 I think that's what the expectation was  
6 at the time. Maybe it was an unrealistic  
7 expectation. Maybe that wasn't the smartest  
8 decision to have made at the time. But my  
9 predecessor saw \$5 million on the table, and said  
10 "All right, we'll take that." And that's what  
11 got all the parties to "yes", or a part of what  
12 got all the parties to "yes".

13 CMSR. SIMPSON: Do you see the PUC as a  
14 stakeholder in this process?

15 MR. KREIS: No. I would have answered  
16 that question "yes" in 2015 or 2016, but that was  
17 a different PUC than the one we have now. I  
18 think that that stakeholder interest that was  
19 lodged in the PUC at the time is now lodged in  
20 the Department of Energy.

21 And you see that, frankly, with the  
22 migration of Mr. Frantz, in particular, from the  
23 PUC to the Department. I mean, he was part of --  
24 he was part of the team that negotiated the

1           Restructuring Agreement. He was a key player in  
2           terms of figuring out what to do about the Fund  
3           when the task was the PUC's to figure out how  
4           to -- or, to superintend the process of figuring  
5           out how to spend, and now he works for the  
6           Department of Energy. It's not about him  
7           personally, it's about the role that -- it's  
8           about the role that he discharges in state  
9           government.

10                   CMSR. SIMPSON: So, if the PUC, in your  
11           view, is not a stakeholder at this time, do you  
12           view the agreements, with respect to the Clean  
13           Energy Fund, as a contractual matter between the  
14           parties that were involved?

15                   MR. KREIS: I want to be careful about  
16           how I answer that question, because I honestly  
17           don't know whether a breach of that Agreement  
18           would result in somebody being able to sue  
19           somebody else for breach of contract. I'm not --  
20           I guess I would say I'm skeptical about that.

21                   But I do think that principles of  
22           contract law should govern the interpretation of  
23           that Agreement.

24                   CMSR. SIMPSON: And, Attorney Wiesner,



1           how would you foresee the Department moving this  
2           process forward?

3                         MR. WIESNER: Well, I think that the  
4           stakeholder process would come back to life, once  
5           there's clarity on the path forward. And, at  
6           that point, you know, that it's probably the case  
7           that some of these programs can just be  
8           implemented. Others need some further  
9           development, and the stakeholders would take the  
10          first crack at that. I think the Department of  
11          Energy is perfectly positioned to facilitate that  
12          process and move it forward.

13                        And, you know, if there's -- you raised  
14          a question about "dispute resolution". And I  
15          guess, if there were a scenario where the  
16          stakeholders were deadlocked, and there was one  
17          group that wanted to move in a particular  
18          direction, and another group said "that's  
19          inconsistent with the fundamental Settlement  
20          Agreement terms and the guiding principles", yes,  
21          that might be a scenario where the PUC would be  
22          asked to resolve the dispute, as the adjudicatory  
23          body, which it's designed to be. It's hard for  
24          me to imagine that happening, but it's not

1           theoretically impossible.

2                       I think there are also potentially  
3           dispute resolution mechanisms that might be  
4           implemented within the Department of Energy to  
5           try to break that logjam and be able to move  
6           forward. But I think that is somewhat  
7           speculative at this point.

8                       I think, you know, once there's greater  
9           clarity on the Commission's role, and on the  
10          administrative requirements that will apply going  
11          forward, I think it's perfectly in order for the  
12          stakeholders to reconvene and say "Okay, let's  
13          get these programs going. And let's finish the  
14          work that's necessary on the two programs where  
15          further details need to be developed."

16                      CMSR. SIMPSON: So, -- please.

17                      MR. KREIS: I would just say, with  
18          respect to Mr. Wiesner, I'm not sure I agree with  
19          what he just said. I actually think that, if  
20          that kind of dispute arose, I actually think that  
21          it would be within the authority of the  
22          Commissioner of Energy to resolve it.

23                      CMSR. SIMPSON: And what would be your  
24          basis for that?

1 MR. KREIS: I think that is what is  
2 the -- I think that formulation is what most  
3 fully comports with what the intent of the  
4 signatories to the Settlement Agreement was.

5 MR. WIESNER: And to be clear, I'm not  
6 disagreeing with that. It's not entirely clear.  
7 I mean, the parties in 2015, and the parties in  
8 2021, quite honestly, didn't really contemplate  
9 the split in the two agencies and exactly what  
10 that might mean.

11 I'll offer now that I think that, even  
12 if in July of last year we had given some deeper  
13 thought to the pending Clean Energy Fund proposal  
14 before the PUC, I think we would have revisited  
15 the letter that I wrote in April of that year,  
16 and looked at the first four items and said  
17 "Well, you know, there's not a general consensus  
18 that that is now outside the purview of the  
19 Commission. Let's let the Commission decide."

20 And, as we discussed earlier, 5 and 6  
21 are really forward-looking, once that initial  
22 determination is made by the PUC. And that's  
23 really where we are now.

24 CMSR. SIMPSON: So, with respect to

1           Number 4 in your letter, the additional programs  
2           that had not been fully developed at the time, I  
3           think it's fair to say that we, as the  
4           Commission, approved Numbers 1, 2, and 3, and we  
5           denied your request in Section 4. Moving  
6           forward, if the Department of Energy were to  
7           conduct a stakeholder process to more fully  
8           develop and coalesce around programs that conform  
9           to the 2015 Settlement Agreement, with respect to  
10          low-and-moderate income for residential and  
11          financing program for C&I customers, would you no  
12          longer expect to request Commission action for  
13          approval on such programs, as has been done in  
14          Section 3?

15                   MR. WIESNER: I think there's a  
16                   legitimate question about whether Commission --  
17                   the Consumer Advocate raised this earlier.  
18                   There's a legitimate question about whether  
19                   Commission approval was ever necessary. The  
20                   choice was made at a time when the PUC Staff was  
21                   under the supervision of the Commissioners to  
22                   seek that approval, and, as I characterized it,  
23                   an assurance, as much as anything else. And I  
24                   think we've received that.

1           There is some further work to be done  
2           on those two programs, as is acknowledged. And  
3           the stakeholder process would continue that  
4           development.

5           I don't want to speak definitively  
6           about whether it would be necessary to come back  
7           to the Commission and seek approval of the final  
8           details of those two programs. I think there  
9           actually may be a difference of opinion among the  
10          Settling Parties.

11          CMSR. SIMPSON: If the Commission were  
12          to remove ourselves from oversight and approval  
13          of the Clean Energy Fund, how can we have  
14          confidence that the program would be implemented  
15          as required?

16          MR. WIESNER: And, again, the  
17          Settlement Agreement language is not typical,  
18          I'll say, and private funding of a limited, but  
19          significant, amount of money to further program  
20          development is also not the norm. So, I think,  
21          even when the PUC was an integrated agency, there  
22          was always a question about exactly what level of  
23          approval was necessary. And I think that that's  
24          even more of an open question, now that the

1 agencies have been split, without perfect  
2 clarity, let's say, but primarily along the lines  
3 that the Commission is an adjudicatory body that  
4 makes decisions based on the record developed by  
5 parties in contested cases, and that the  
6 Department of Energy is the prime mover for  
7 policy making and program implementation in the  
8 state. And it does seem that, you know,  
9 effective and efficient and timely use of private  
10 funds put aside in a Settlement Agreement to fund  
11 customer-beneficial programs in the state falls  
12 more neatly within the DOE's purview, rather than  
13 the PUC.

14 CMSR. SIMPSON: If the Commission were  
15 to decide to not remove ourselves completely from  
16 administration of the Clean Energy Fund, what  
17 recommendations would the stakeholders here today  
18 have, in order to ensure the timely and efficient  
19 administration of funding from the program?

20 MR. WIESNER: I mean, I guess I can let  
21 other parties speak for themselves. I think  
22 there is a general interest in seeing this move  
23 forward and having the money spent soon, and  
24 effectively. And I don't think there's anyone

1 among the key stakeholders here that would be  
2 dragging their feet to prevent that from  
3 occurring.

4 CMSR. SIMPSON: And I would say that  
5 the Commission aligns with that perspective. And  
6 that's why, in our Order, we asked for the  
7 parties to submit proposals with respect to  
8 Number 4 in your letter by May 1st of this year.

9 MR. KREIS: Could I address some of  
10 this?

11 CMSR. SIMPSON: Please.

12 MR. KREIS: I want to go back to the  
13 "How can we have confidence?" question. I have  
14 two answers to that question.

15 One reason that you can have  
16 confidence, if you forbear or abstain, that the  
17 fund will be administered in a responsible and  
18 appropriate fashion, is I think it's appropriate  
19 for the Commission to assume the good faith and  
20 vigilance of its counterpart agency and its  
21 leadership.

22 CMSR. SIMPSON: Which we do.

23 MR. KREIS: Of course. And, as a  
24 practical matter, the people who work at the

1 Commission, at least its leaders, are personally  
2 acquainted with many of the people at the  
3 Department of Energy. So, you know -- you have  
4 direct experience of the integrity, good faith,  
5 and capabilities of the people who are leading  
6 the Department of Energy.

7 But I think the Commission, and this is  
8 where, although I agree with Mr. Wiesner that  
9 this question about the Clean Energy Fund is *sui*  
10 *generis*, and, so, therefore, doesn't necessarily  
11 have implications for all time. But there are  
12 questions here that do relate to, at the meta  
13 level, what the proper role of the PUC is and  
14 what the proper role of the Department of Energy  
15 is.

16 And, you know, the PUC used to be an  
17 example of Heisenberg's uncertainty principle,  
18 right? You were -- the PUC was a particle  
19 sometimes and a wave other times, depending on  
20 where you were looking at it. Sometimes it was a  
21 decider, like a court; and, at other times, it  
22 was a policymaking body, with a certain policy  
23 agenda that it was advancing. And those two  
24 things were very -- they were incompatible in



1           some ways. A thing can't really be a particle  
2           and a wave at the same time. And, so, the  
3           Legislature split those two things up.

4                        So, I think, and I say this cautiously  
5           and carefully, a certain degree of humility is  
6           called for, right? Just like I, as the Consumer  
7           Advocate, do not know how to run a public  
8           utility, and shouldn't substitute my judgment for  
9           the judgment of the management of the  
10          investor-owned utilities of this state. So, too,  
11          the Commission has to be mindful of what -- how  
12          much -- how vigilant and how involved and  
13          entangled it needs to be in what utilities do.

14                       You, Commissioner Simpson, asked  
15          earlier "do I think of the PUC as a stakeholder?"  
16          And my answer is always going to be "no". The  
17          PUC is no longer a stakeholder in anything. It  
18          is now a decider. You should really, although  
19          you have some policy discretion, because of the  
20          way you're constituted, the PUC's job is now to  
21          function as a decider.

22                       To the extent the PUC was ever a  
23          "stakeholder", that stakeholder responsibility  
24          and authority has now migrated to the Department

1 of Energy. So, in a way, the answer to your  
2 question "how can we be completely confident that  
3 this Fund will be well spent?" is "maybe you  
4 can't", because maybe you shouldn't. Not because  
5 you don't have the capability or the intelligence  
6 or the dedication or the insight, but because  
7 that isn't really your role anymore.

8 And that's -- the need to acknowledge  
9 that is the part and parcel of a certain amount  
10 of humility as a regulatory agency, and, in part,  
11 the spirit that I invoked earlier of Learned  
12 Hand's advice, not to be too sure that you're  
13 right.

14 MS. CHIAVARA: And sorry, revisiting  
15 your question once again, you were asking what  
16 elements to keep and which -- which elements of  
17 the Order to keep, as far as the administration  
18 and oversight?

19 CMSR. SIMPSON: Well, I'm very mindful,  
20 I think, of the ethos of what the Consumer  
21 Advocate just stated, with respect to recognizing  
22 the responsibilities that the Legislature has  
23 gendered to the new Department of Energy, and the  
24 changes with respect to the Public Utilities

1 Commission.

2 And I am hopeful that the Commission  
3 can convene and take this hearing as an  
4 opportunity to reflect on what we've directed in  
5 our prior order, 26,577, to ensure a timely  
6 allocation of the Clean Energy Fund.

7 MS. CHIAVARA: If I could speak to a  
8 couple of elements of Order 26,577, in that case.  
9 And this is not -- I'm not directing, trying to  
10 put my thumb on the scale of a particular order,  
11 but just speaking to how, I guess, given that  
12 these are private funds, and to be a  
13 privately-funded administered program, looking at  
14 Page 8 of Order 26,577, Letter B, is part of the  
15 reporting requirement, that there should be "A  
16 discussion of any overlap with Renewable Energy  
17 Fund programs, NHSaves initiatives, or the  
18 Triennial Plan for Energy Efficiency Resource  
19 Standards, and the benefits and detriments to  
20 combining or managing those programs together."  
21 Those are all ratepayer-funded programming. And,  
22 so, I believe that those two don't mix. I think  
23 those should probably be separated. And this  
24 would be an inapplicable -- I believe it would be

1           inapplicable to the Clean Energy Fund and the  
2           administration of it.

3                       Likewise, the annual auditing  
4           requirement and the prudency review, again, the  
5           Company is not sure what a "prudency review"  
6           would result in, as the Company would not ever be  
7           seeking disallowances. We've already fully  
8           committed to turning these funds over, and the  
9           commitment has been made. So, we're not -- that  
10          seems -- that seems like an inefficiency that  
11          could be eliminated.

12                      CMSR. SIMPSON: So, I think I asked  
13          Attorney Kreis this question. From the Company's  
14          perspective, why hasn't the Company made these  
15          investments? If they're outside of the purview  
16          of the Commission, why are we still in a position  
17          where the promise made by the Company to make  
18          these investments hasn't been realized?

19                      MS. CHIAVARA: And that is still a fair  
20          question. I know the Company has dedicated the  
21          funds, and would have liked to have seen them  
22          spent and employed sooner than now. But there  
23          were a lot of moving pieces to this.

24                      You know, there was the Settlement

1 Agreement, and then the stakeholder process.  
2 And, during the course of the time that this was  
3 developing, the PUC had a much different function  
4 of both policy and decision-maker, and that  
5 process was being navigated. I mean, there were  
6 several filings that were made to this Commission  
7 over the last two years. So, I can't say for  
8 sure why.

9 It wasn't entirely the Company's  
10 discretion to just distribute the funds. Nobody  
11 wanted the Company to just cut a check and send  
12 it into the ether, as it were.

13 So, there was a desire by all  
14 stakeholders to come up with a comprehensive  
15 plan, so that these funds would be administered  
16 most responsibly and deliver the most impact,  
17 programming impact. And, so, I believe that  
18 process took a while.

19 You know, I don't think it's any one  
20 particular thing. I think it's a combination of  
21 several factors.

22 MR. KREIS: I think there might be  
23 maybe an erroneous assumption in your question,  
24 Commissioner. And I don't mean to put words in

1 the mouth of Ms. Chiavara or her client, but I  
2 think, having worked with Eversource throughout  
3 this process, Eversource thinks of itself as the  
4 bank here. I mean, it has the money, it's ready  
5 to write the checks. But it doesn't consider  
6 itself responsible for figuring out how to spend  
7 the money. So, this isn't a garden variety  
8 utility expenditure in the sense that you just  
9 used that term. They're just a -- they're the  
10 repository of the money. And they are ready,  
11 willing, and able to spend that money as the  
12 stakeholders would like them to.

13 I want to cycle back and answer your  
14 question about what I would recommend, assuming  
15 the Commission decides that it is not ready to  
16 relinquish its role in the administration of the  
17 Fund.

18 And I guess what I would say about that  
19 is, that the frustration, from my perspective, is  
20 that the Commission has at its disposal something  
21 that feels like an unreasonably blunt instrument  
22 here, which is to say the "contested case"  
23 procedures that are described in the Puc 200  
24 rules, and that would apply in an adjudicative

1 context. That is a very complicated process that  
2 is unduly complicated here.

3 And, so, what I would suggest to the  
4 Commission, in the event that it wants to  
5 maintain its role as the ultimate overseer of  
6 this Fund, is that some more informal process  
7 should be available to the parties, to give the  
8 PUC the information it needs, and, if necessary,  
9 get the PUC to make the decisions that it should.

10 You know, how that would work? I don't  
11 know. One thing I think is often helpful is  
12 exactly what we're doing here today. You know,  
13 it was interesting that the PUC sort of seems to  
14 have struggled a little bit with how to  
15 characterize this particular event, right? It  
16 was -- you know, there are references in the  
17 Order to this being a "hearing", and that there  
18 being "a record that would be developed" today.

19 But that's not really what we're doing  
20 here today. We're really having something like  
21 an informal workshop, where we're just having a  
22 on-the-record public discussion of something that  
23 is little bit like an argument, oral argument, a  
24 little bit like a hearing, but it's really just a

1 conversation.

2 And the ability to have that kind of  
3 informal back-and-forth with the Commission would  
4 be helpful in a variety of settings, certainly,  
5 in this context, if this is going to continue to  
6 be a PUC matter.

7 CMSR. CHATTOPADHYAY: Before -- excuse  
8 me -- I lose the thread here, I think we were  
9 talking about, you know, the "annual reporting",  
10 and I'm addressing this question to Eversource.

11 If you look at the letter, it says  
12 "Require annual reporting by Eversource as to the  
13 performance and levels of participation in each  
14 individual program." Right? And that, you know,  
15 I'm assuming the Company knew that that was  
16 expected. So, there will be an annual reporting.

17 And, so, my question to you is, what is  
18 your sense of what the Company understood as to  
19 what the performance and levels of participation  
20 metrics would be? You know, what -- I mean, so,  
21 just do you have a sense of what was actually  
22 assumed to be the kind of stuff that the Company  
23 would be required to, you know, address?

24 MS. CHIAVARA: Yes. I don't believe



1 the stakeholder group had itemized what should be  
2 included on the reports exactly, you know, at a  
3 certain level of granularity.

4 But, if I had to make an educated  
5 guess, I would say it would be something along  
6 the lines of what's in Order 26,577, Page 8,  
7 Letter A. Which is "The summary of actual and  
8 projected administrative costs over the life of  
9 the program, sources of administrative costs,  
10 estimates", it goes on to say, you know, it's a  
11 summary of the administrative costs, and I would  
12 assume also, you know, a summary of program  
13 performance as well.

14 Again, this was -- it wasn't quite as  
15 formal a process. You know, we hadn't formalized  
16 it that much. But that was the assumption.

17 CMSR. CHATTOPADHYAY: So, is it fair me  
18 to assume that this document that you referred  
19 to, all those points, you will be comfortable,  
20 the Company would be comfortable, you know,  
21 providing that kind of information annually?

22 MS. CHIAVARA: We assume that -- we  
23 assume that we would have to, of course, report  
24 to one of our regulators or both of our

1 regulators, to -- the idea was that it would be  
2 not an overly burdensome reporting requirement,  
3 but something enough to provide transparency on  
4 how the programs are being administered, and the  
5 effectiveness of the programs, if they are on the  
6 right track. And I think those two things,  
7 basically, the administration of the programs and  
8 if the programs are succeeding.

9 CMSR. CHATTOPADHYAY: So, would DOE be  
10 comfortable with something like that?

11 MR. WIESNER: Again, this is somewhat  
12 speculative, because I don't think the parties at  
13 the time went into that level of detail. But  
14 that sounds like an appropriate level of detail  
15 to include in an annual reporting requirement.

16 Again, there's the further question of  
17 "whether that report is submitted to the  
18 Commission or whether that's something that would  
19 be provided to the DOE, in its role as, you know,  
20 the chief facilitator of the stakeholder  
21 process?"

22 I think there are two fundamental  
23 questions here as I see it: What level of  
24 regulatory oversight is warranted for this

1 special body of private funds? And also, then,  
2 whatever level of regulatory oversight is  
3 required, which agency is best positioned to do  
4 it, and which agency is -- which agency's level  
5 of oversight is most consistent with the original  
6 parties' -- Settling Parties' intentions?

7 CMSR. CHATTOPADHYAY: I understand your  
8 points. I do have my own way of thinking about  
9 what is private, what is not. But let's not go  
10 there right now.

11 CMSR. SIMPSON: All right. So,  
12 we've -- I think, looking at the letter, Attorney  
13 Wiesner's letter from April 14th, 2021, I think  
14 everybody is on the same page with respect to  
15 Number 1, 2, and 3. So, now, we're looking at  
16 moving forward.

17 If the Commission were to reevaluate  
18 the reporting requirements as requested, and ask  
19 the Department of Energy to develop a framework  
20 for annual reporting, in lieu of the Commission  
21 prescribing a methodology for reporting, would  
22 that be amenable to the Department of Energy?

23 MR. WIESNER: I don't see why not. I  
24 think, if the Commission had not included the

1 additional level of detail, in terms of the  
2 ongoing oversight in the Order in question, that  
3 that would have been a natural fallout from the  
4 further stakeholder process. "Okay, we're going  
5 to start spending this money. The Company is  
6 going to incur administrative costs to implement  
7 the programs. And, you know, we want some at  
8 least annual check on how that's going, whether  
9 the programs are successful, you know, whether  
10 the eligibility criteria, for example, for  
11 customer participation should be revisited, what  
12 the administrative costs are, and whether  
13 they're, you know, deemed to be reasonable in  
14 context."

15 I think I'm comfortable saying that we  
16 would be well positioned to take on that role,  
17 and work with the stakeholders to develop an  
18 annual reporting requirement, that's not overly  
19 burdensome on the Company, but seeks to inform  
20 all relevant stakeholders as to the program  
21 implementation and the Fund deployment, so it can  
22 be best utilized.

23 CMSR. SIMPSON: And would the  
24 Department be adverse to sharing the results of

1 those reviews with the Commission, if you had the  
2 responsibility to conduct such reviews?

3 MR. WIESNER: So, if the question is,  
4 if an annual reporting obligation is established  
5 for the Company, that is, you know, appropriate  
6 and provides the correct level of public  
7 transparency, and insight into how the programs  
8 are being implemented and the funds deployed,  
9 whether that annual report could also be made  
10 available to the Commission? I don't see a  
11 problem with that.

12 CMSR. SIMPSON: And that was my  
13 question.

14 And, then, with respect to the two  
15 additional programs that, at the time of the  
16 letter, were not sufficiently developed, and  
17 presumably would be the result of a stakeholder  
18 process, would the Department be opposed to  
19 endeavoring on that stakeholder process to  
20 develop such programs for LMI residential  
21 customers and C&I customers?

22 MR. WIESNER: I mean, we would actively  
23 participate in the stakeholder process that would  
24 flesh out those details.

1 CMSR. SIMPSON: Would you guide that  
2 stakeholder process under those circumstances?

3 MR. WIESNER: I mean, to the extent  
4 necessary. I think it's a -- I'm not sure we  
5 have preconceived notions as to how those details  
6 should be developed. I think it's a discussion  
7 among interested stakeholders, including the DOE,  
8 in it's, you know, limited regulatory role, if  
9 you will, and, in particular, in its role as  
10 specified in the Settlement Agreement itself, to  
11 move that process forward and develop those  
12 details.

13 CMSR. SIMPSON: And, if the Commission  
14 were to ask the Department to endeavor on that  
15 process, would the Department be opposed to  
16 coming back to the Commission with the product of  
17 those efforts for final approval, as the  
18 Commission has provided with respect to Number 3?

19 MR. WIESNER: Well, I don't know if  
20 others have a different opinion. I think you  
21 could fairly read the request that was made in  
22 April of last year that, when those further  
23 details are further developed for those two  
24 programs, that it would not be out of line for

1 the Commission to make a final determination that  
2 those two programs, as better defined, were,  
3 themselves, consistent with the four guiding  
4 principles related to the Settlement Agreement.

5 MR. KREIS: I guess I'd like to leap in  
6 and answer that question on behalf of the OCA.

7 CMSR. SIMPSON: Please.

8 MR. KREIS: If that's the decision that  
9 the Commission makes as a result of these  
10 proceedings today, I can tell you that I am not  
11 going to file a Notice of Appeal and object. It  
12 is not the answer that I'd prefer that you give.

13 And, if that is the answer that you  
14 give, and this becomes one of those situations  
15 where I end up, you know, waiting 316 days, or  
16 something like that, for the Commission to issue  
17 its approval, I will be a very unhappy camper. I  
18 mean, that's -- that is one of my persistent  
19 concerns about bringing matters before the PUC.

20 You know, time and again, the  
21 legitimate stakeholders agree on some outcome,  
22 it's presented to the Commission. We get tons of  
23 skeptical, hostile questions from the Commission.  
24 And then, it takes a really long time for the

1 Commission to tell us what we did wrong.

2 That's not the way this is supposed to  
3 work.

4 CMSR. SIMPSON: Thank you. I  
5 appreciate that concern, and we're mindful of the  
6 desire to move forward quickly.

7 Attorney Wiesner, if the Commission  
8 were to ask the Department of Energy to open a  
9 proceeding under the Department of Energy, is  
10 that, in your view, an appropriate forum to have  
11 a stakeholder process to continue this effort?

12 MR. WIESNER: I guess I think, if one  
13 agency is going to defer to another, then it's  
14 not necessary to prescribe the specific  
15 parameters of that deference. Again, I think  
16 what you've heard this morning is that, in this  
17 unique case, the Settling Parties had a  
18 particular vision, which may not have been fully  
19 fleshed out at the time, and may not have been  
20 until we started talking about it today. But it  
21 doesn't involve a heavy amount of process or  
22 regulatory oversight by any state agency.

23 And, to the extent that the PUC had a  
24 more robust role to play before the agency



1 reorganization, much, if not all, of that has now  
2 transferred to the DOE.

3 CMSR. SIMPSON: Okay. Thank you.  
4 Ms. Chiavara, did you have anything to add?

5 MS. CHIAVARA: I do. Thank you,  
6 Commissioner Simpson. I do have something to  
7 add, and there's no real graceful way to do this,  
8 but there is a Company issue that we have not  
9 been discussing that I do want to raise, since we  
10 are having a sort of "open forum" type  
11 discussion. And that is the application of the  
12 prime interest rate to accrue to any unspent  
13 funds.

14 I just wanted to reiterate that it's  
15 the Company's position that this was not part of  
16 the 2015 Settlement Agreement. There were no  
17 provisions for carrying charges. It was a  
18 one-time, and then a two-time contribution, so a  
19 total of \$5.2 million. And the Company believes  
20 that that should be the money certain, the dollar  
21 amount certain, that's contributed for the Fund.

22 CMSR. SIMPSON: Okay. Thank you. Any  
23 comments from the parties on that issue, other  
24 parties?

1           MR. KREIS: I think the record should  
2 reflect that I sighed when I heard that, because  
3 I understand why the Company takes that position.  
4 You know, obviously, I would love to see the Fund  
5 return a lavish interest rate, you know,  
6 because -- because, look, you know, prices are  
7 increasing palpably, probably while we've been  
8 sitting here. So, I mean, we're in a period of  
9 hyperinflation. What \$5 million would have  
10 bought on the day that the restructuring process  
11 was concluded, in 2018, is very different than  
12 what \$5.2 million is going to buy today, or  
13 whenever this money in this fund is finally  
14 deployed. I mean, that's a reality.

15           But I can't disagree with Ms. Chiavara,  
16 when she says that the Restructuring Settlement  
17 Agreement doesn't contain any provisions for  
18 interest accruing at any rate, much less the  
19 prime rate.

20           So, you know, that's a question for the  
21 Commission to decide, if it retains jurisdiction.  
22 It's a question for the Commissioner of Energy to  
23 decide, if he ends up with jurisdiction. I guess  
24 I've been worn down about this.

1           I mean, that's another issue that I can  
2           promise you will not end up in front of the New  
3           Hampshire Supreme Court, regardless of who  
4           decides what.

5           CMSR. SIMPSON: And I'd just like to,  
6           on the record, ask the Company that, if the  
7           Department of Energy were responsible for  
8           administering the specific dollars and allocating  
9           monies from the Clean Energy Fund to specific  
10          programs, that it's the Company's intent to  
11          conform to the directives of the Department of  
12          Energy?

13          MS. CHIAVARA: Yes, it would be.

14          CMSR. SIMPSON: And, if the Commission  
15          were to take -- or, I should say, to continue to  
16          have a role in overseeing the Fund, that the  
17          Company would do the same for the Commission?

18          MS. CHIAVARA: "Would the Company abide  
19          by Commission oversight?" Is that the question?

20          CMSR. SIMPSON: Yes.

21          MS. CHIAVARA: The Commission -- or,  
22          the Company would certainly abide by Commission  
23          oversight.

24          CMSR. SIMPSON: Okay. Thank you.

1           I don't have any further questions. Do  
2 you, Commissioner Chattopadhyay?

3           CMSR. CHATTOPADHYAY: Nope.

4           CMSR. SIMPSON: So, this has been a  
5 great opportunity to discuss the matter with the  
6 parties. I would invite any of the parties to  
7 offer any closing thoughts, if they have any at  
8 this time? And I'd start with the Consumer  
9 Advocate.

10          MR. KREIS: Thank you. This whole  
11 thing has felt more like a cricket match than a  
12 Formula 1 race; slow, perhaps even endless. I'm  
13 just eager to get this decided, and I want the  
14 money to hit the streets where it can do good for  
15 the people who are the intended beneficiaries.

16          I've already explained, in some detail,  
17 why I think this is an appropriate occasion for  
18 the Commission to forbear and basically consign  
19 the oversight of this Fund to the Department of  
20 Energy. That said, I'm thinking that there's at  
21 least some inclination not to agree with me on  
22 the part of the Commission.

23          And, if that is the case, I think the  
24 Commission's questions about what the Commission

1           might do to be a good overseer of the Fund were  
2           pertinent. And, you know, we've answered those  
3           questions for you. And I think the imperative,  
4           again, is to allow for the Fund to be deployed as  
5           efficiently and expeditiously and as wisely as  
6           possible.

7                         This has been a very frustrating  
8           experience for all involved. And a lot of those  
9           frustrations aren't the fault of the Commission,  
10          and I want to make that clear. And I just want  
11          to express an eagerness to get this thing done  
12          and this whole process rolling.

13                        Thank you.

14                        CMSR. SIMPSON: Thank you, Mr. Consumer  
15          Advocate. Attorney Wiesner, for the Department  
16          of Energy.

17                        MR. WIESNER: And I'll echo those  
18          comments and keep any closing remarks brief.

19                        I do want to thank the Commission for  
20          providing the opportunity to have this, you know,  
21          unusual, but productive, on-the-record discussion  
22          this morning about some very complicated issues.

23                        I think that there are higher-level  
24          issues about the roles of the two agencies. But

1 those may be best deferred to another time and  
2 another place, another context.

3 With respect to the Clean Energy Fund,  
4 I think we share the Consumer Advocate's concern  
5 that the priority now should be achieving full  
6 clarity in the path forward, and then getting on  
7 that path and moving forward, so the money could  
8 be spent and put to work to do good things in the  
9 community and the state.

10 CMSR. SIMPSON: Thank you. And  
11 Attorney Chiavara.

12 MS. CHIAVARA: Yes. Eversource concurs  
13 with both the Consumer Advocate and the  
14 Department of Energy.

15 The Company would like to see this  
16 money start going to good use as soon as  
17 possible, and reiterates the comments that it  
18 opened with, not verbatim here, but supports the  
19 comments that were just made.

20 And we appreciate the Commission taking  
21 the time to have a thorough examination of the  
22 issues at play here.

23 CMSR. SIMPSON: Thank you, everyone.  
24 We'll take the matter under advisement and issue

1 a timely order. We're adjourned. Off the  
2 record.

3 ***(Whereupon the rehearing on Order***  
4 ***26,577 was adjourned at 12:06 p.m.)***

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