

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

November 17, 2022 - 10:02 a.m.
21 South Fruit Street
Suite 10
Concord, NH

RE: **DRM 22-055**

RULEMAKING: N.H. Code of
Administrative Rules, Puc 200,
Rules of Practice and Procedure.
***(Public hearing to receive advance
public comment)***

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

Eric Wind, Esq. (*PUC Sr. Legal Advisor*)

Doreen Borden, Clerk

APPEARANCES: (*No appearances taken*)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

PAGE NO.

PUBLIC COMMENTS BY:

Ms. Chiavara 4

Mr. Kreis 7

QUESTIONS BY:

Cmsr. Simpson 15

Cmsr. Chattopadhyay 25

Chairman Goldner 40

COMMENTS ON PROCESS MOVING FORWARD BY:

Chairman Goldner 45, 47

Mr. Kreis 46

P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. It's 10:02.

I'll call the meeting to order. Welcome everyone. And I'm Commissioner Goldner. I'm here with Commissioner Simpson and Commissioner Chattopadhyay.

We're here in Docket DRM 22-055, which is a rulemaking proceeding regarding the Chapter 200 rules relating to Commission practice and procedure. We're here for a pre-process public comment hearing prior to the Commission's preparation of an Initial Proposal for Rulemaking.

This hearing was noticed through an Appendix II-A in the Rulemaking Register, which was also distributed to the service list in this docket. We have received advance written comments from the joint electric and gas distribution utilities, Pennichuck, New Hampshire Legal Assistance, the OCA, and the DOE.

Has everyone had the opportunity to sign in on the sign-in sheet?

[Multiple parties indicating in the affirmative.]

1 CHAIRMAN GOLDNER: Okay. Very good.

2 All right. I have the sign-in sheet.

3 I'll call names in the order where I see

4 indications of a desire to speak. I'll try to

5 call the name of the person who are expecting to

6 speak, and then the next name, so that people can

7 be ready.

8 Okay. So, I've got -- so, I have

9 Attorney Chiavara, Eversource, that wishes to

10 speak, and then Attorney Kreis, the Consumer

11 Advocate. Is that correct?

12 *[Atty. Chiavara and Atty. Kreis both*

13 *indicating in the affirmative.]*

14 CHAIRMAN GOLDNER: All right. So, two

15 speakers today. So, we have the order. Okay.

16 Well, let's get started, and we'll

17 begin with Attorney Chiavara.

18 MS. CHIAVARA: Thank you, Chair. And

19 there might have been a little bit of false

20 advertising. I mainly put "yes" because I

21 just -- we generally stand by the comments that

22 we filed previously. And we were ready to answer

23 questions, if need be, but didn't have anything

24 formal to say.

1 CHAIRMAN GOLDNER: Okay.

2 MS. CHIAVARA: Thank you.

3 CHAIRMAN GOLDNER: Is there anything
4 you would like to emphasize in your comments?
5 They were -- we do appreciate the comments
6 received, and they were very extensive and
7 complete. But is there anything you would like
8 to emphasize or any areas of particular
9 importance to Eversource?

10 MS. CHIAVARA: I believe that one area
11 of importance would be the role of -- bringing
12 back the role of what was traditionally held by
13 the Executive Director, someone to fill that
14 role, and the functions that that position did.
15 I think that that would help all parties that
16 interact with the Commission, I think that would
17 help us a great deal.

18 CHAIRMAN GOLDNER: And was that mostly
19 around communication on scheduling and this kind
20 of thing? Or what was the primary focus?

21 MS. CHIAVARA: Right. Yes, partially
22 that. Sometimes like typographical corrections
23 on orders or, you know, timing of things. So,
24 yes, scheduling was a big part of it, but a few

1 things. I think we cited to each of the rule
2 provisions that cites to the Executive Director
3 function.

4 CHAIRMAN GOLDNER: Okay. Yes. I just
5 didn't know if there was any areas of particular
6 interest?

7 MS. CHIAVARA: Yes.

8 CHAIRMAN GOLDNER: So, it sounds like
9 scheduling and things like typographical errors
10 are the things that come to mind?

11 MS. CHIAVARA: Yes. And I think, with
12 certain matters, we could check and see if we
13 could, you know, if there was an order coming
14 shortly, just so we could sort of plan, not
15 asking about substance, obviously, but just if we
16 could anticipate an order coming out on a certain
17 matter soon, something like that.

18 CHAIRMAN GOLDNER: I see. Okay. Yes,
19 that's very helpful.

20 We can come back to Attorney Chiavara,
21 or is there any questions that the Commissioners
22 have now?

23 CMSR. SIMPSON: Nothing at this time.
24 Thank you.

1 CMSR. CHATTOPADHYAY: No.

2 CHAIRMAN GOLDNER: Okay. Thank you.
3 We'll move to the Consumer Advocate, Attorney
4 Kreis.

5 MR. KREIS: Thank you. Good morning,
6 Mr. Chairman. Good morning, Commissioners.
7 Great to be back from the City of New Orleans,
8 where I just was at the NARUC and NASUCA
9 Conference. We got lots of great ideas.

10 I'm in a somewhat similar position to
11 Ms. Chiavara, in that I'm told that I win the
12 prize for having filed the most extensive
13 comments in this rulemaking. And, actually, that
14 was by intent. I have been thinking a great deal
15 about the Commission's procedural rules.

16 I had a fairly significant hand in
17 drafting the version of the rules that were
18 adopted during the time I was General Counsel,
19 circa 2007 or so. And much of that is still in
20 place.

21 But, obviously, the sort of procedural
22 paradigm that dates from that era is not fully
23 applicable anymore to the realities of the Public
24 Utilities Commission, in the wake of the creation

1 of the Department of Energy. And I see the PUC
2 straining to fulfill its somewhat transformed
3 role within the context of procedural rules that
4 were geared for the old PUC. And I see the
5 Commissioners straining to make sure that they
6 have the information and the insight they need to
7 be really effective commissioners and make really
8 great decisions.

9 And I know that I, and my fellow
10 members of the state's Utility Bar, and I think
11 all of the other frequent flyers that appear
12 here, are eager to cooperate with the Commission,
13 and collaborate with it, and exchange ideas about
14 how to make that possible.

15 There is a concern sort of floating out
16 there that, as the PUC strives to make itself
17 more engaged in dockets as they progress toward
18 hearing, it threatens, I think, or at least some
19 worry that it threatens, to kind of create the
20 old paradigm, again, by default. Meaning, we
21 don't gain anything, if the Department of Energy
22 now exists, but the PUC is basically behaving or
23 acting or operating exactly the way it did before
24 the creation of the PUC [sic], by being -- by

1 having employees of the agency, not really the
2 Commissioners, but Staff people very actively
3 involved in dockets as they develop.

4 And, of course, the Commission has been
5 conducting a great deal of its own discovery, I
6 guess I would call it. You have adopted the
7 practice of calling those requests for
8 information "record requests". And I guess I
9 wish you would stop doing that, because, first of
10 all, the phrase doesn't appear anywhere in the
11 Commission rules currently. And what everybody
12 calls "record requests" really are late-filed
13 exhibits in dockets that have already held
14 hearings, and that clearly is not what you folks
15 are doing as you issue requests for information
16 as dockets are progressing toward hearings.

17 The other thing I think the procedural
18 rules might profitably grapple with is a question
19 that I have been rather pointedly raising with
20 the Commission a lot lately, and I've heard a lot
21 from the Bench about this, both from the Bench
22 and in the Commission's orders, which has to do
23 with this universe of things that an
24 administrative agency can do that is neither

1 adjudication, nor rulemaking.

2 And, of course, at the Commission, it
3 comes up in the context of your IR dockets, your
4 investigative dockets. And, although I've been
5 fond of saying "Well, that's the equivalent of
6 inventing strawberry, when the Administrative
7 Procedure Act only authorizes vanilla and
8 chocolate", I have had to concede that there
9 is -- there is some amount of strawberry that
10 does seep into the cracks and crannies in the
11 Administrative Procedure Act, in that
12 administrative agencies couldn't really function
13 if all they could literally do is make rules and
14 conduct formal adjudications. There does need to
15 be room for informal decision-making.

16 And the question is "When is that
17 appropriate? When can we expect the Commission
18 to do that? When can we expect the Commission to
19 conduct adjudications? And when there are going
20 to be informal adjudications, what rules will
21 apply to them?" I think that requires some
22 further thought, both from the Commission and
23 from those of us who practice in front of the
24 Commission.

1 A general point I would make, or I
2 guess I would call it a "general suggestion",
3 that I don't think I put in my comments, because
4 I just didn't think it would be useful, is a
5 suggestion that the Commission look to a
6 neighboring state for inspiration. And the
7 reason I didn't mention this neighboring state in
8 my letter is that that state arrives here in New
9 Hampshire with a fair amount of baggage, and I'm
10 talking, of course, about Vermont.

11 Now, the reason I think that you should
12 look to Vermont for inspiration isn't because I
13 think that the public policy of New Hampshire
14 resembles that of Vermont; it's actually quite
15 different. It is rather because (a) I spent a
16 year working at what is now the "Vermont Public
17 Utility Commission", and (b) the legal and
18 regulatory paradigm that Vermont has adopted and
19 has had in place for, I think, several decades
20 now, is, I think, quite similar to the paradigm
21 that our General Court adopted when it created
22 the Department of Energy a little more than a
23 year ago. And there are a lot of
24 well-established practices and procedures in

1 place over in Vermont that I think allowed their
2 PUC to get what it needs and do what it needs to
3 do, without duplicating the efforts of their
4 Department of Public Service, which is the
5 analogue to our Department of Energy. And it
6 doesn't create any anxiety around due process or
7 procedure or duplication or anything else.

8 So, if I had some general advice, I
9 would say go on the Vermont PUC website, look at
10 how they manage their dockets, look at what their
11 procedural rules say, and not necessarily adopt
12 what they do wholesale, but consider it as a
13 possible source of insight and inspiration.

14 One thing I can say about the Vermont
15 PUC, having worked there, and this may surprise
16 you to hear these words coming out of my mouth,
17 but the Vermont PUC is very caught up with a sort
18 of self-image of a court. Whenever it can, the
19 Vermont PUC tries to act like, and get parties
20 that appear before it to treat it like, a court.
21 And I actually think that has a lot of
22 advantages. Because there are a lot of very
23 well-established procedures and principles and
24 limitations that are common to courts, and well

1 known among lawyers who litigate, that actually
2 could be pretty helpful here.

3 And, of course, the main one I can
4 think of right off the top of my head is case
5 management. Courts are very used to having
6 various employees manage cases very, I don't want
7 to say "aggressively", but vigilantly. So that,
8 by the time a civil action comes to trial, or by
9 the time a hearing comes up at the Vermont PUC,
10 there are no surprises, and everybody kind of
11 knows what is going to go on.

12 So, there's some maybe counterintuitive
13 advice to seek inspiration from Vermont.

14 The other thing I want to acknowledge,
15 although nobody has responded this way, is I
16 dropped into my written comments what I thought
17 of as something of a "bombshell". In that, I
18 suggested a wholesale reexamination of the
19 Commission's approach to confidentiality. And
20 the reason I made that suggestion is I think that
21 RSA 91-A, the state's Right-to-Know law, is the
22 wrong source of legal principles that govern when
23 information that is presented to the Commission
24 or exchanged in discovery in Commission

1 proceedings should be treated as confidential.
2 And, again, there I think the judicial model is
3 extremely helpful. Because the Superior Court,
4 for example, in New Hampshire, is very clear that
5 it has authority to issue protective orders, and
6 make sure that, when confidential information
7 needs to be exchanged in civil proceedings, or
8 presented on the record in a civil trial, those
9 things can happen without violating anybody's
10 rights to confidentiality.

11 So, again, that's my general
12 recommendation. That's the reason I appended the
13 Superior Court's rules that govern
14 confidentiality to my comments.

15 So, I think those are my two big
16 themes: Look at Vermont; ditch RSA 91-A. I am
17 really eager, though, to collaborate with
18 everybody, because I think that the task of
19 improving the procedural rules and adapting them
20 to the current legal environment is really
21 important and, frankly, really challenging and
22 interesting. And, so, I'm eager to see it go
23 forward. And I commend the Commission for
24 opening this docket. I enjoyed participating in

1 the informal session that the Commission hosted a
2 few months ago, and eager to roll this forward in
3 any way the Commission would be finding helpful.

4 CHAIRMAN GOLDNER: Very good. Well, we
5 can move to some Commissioner questions.

6 I'll just note, Attorney Kreis, that we
7 do have a former employee of the Vermont PUC on
8 staff. So, we have some insight into how the
9 Vermont PUC works. So, in view of that, sounds
10 like you knew that, saw you were shaking you head
11 up and down. So, --

12 MR. KREIS: I did know that.

13 CHAIRMAN GOLDNER: So, very good.

14 So, we'll begin with Commissioner
15 Simpson for any questions.

16 CMSR. SIMPSON: Thank you, Mr.
17 Chairman.

18 I'll start with the Consumer Advocate,
19 on the topic of IRs. You probably saw we opened
20 an IR last week, pursuant to a federal statute --
21 or, this week, excuse me, pursuant to federal
22 statutory requirements, and we have several other
23 IRs that are ongoing.

24 And, from my view, I think those are

1 helpful, to give us an opportunity to, outside of
2 an adjudication, interact with some relevant
3 stakeholders, and for us to learn and gain
4 further insight into very complex issues.

5 So, I recognize that you and your
6 Office have had some concerns with our use of IRs
7 in the past. What other forum do you think would
8 be appropriate for us to engage in that type of
9 fact-finding exercise or educational exercise,
10 outside of an adjudication?

11 MR. KREIS: Well, I would say that I
12 wouldn't use the word "fact-finding", because, if
13 you're talking about "fact-finding", then that
14 starts to seem a lot like adjudication.

15 CMSR. SIMPSON: I'll strike that from
16 the record, and say "education".

17 MR. KREIS: Okay. First of all, I
18 think that the label that you attach to a docket,
19 like "IR", doesn't matter very much. I mean, a
20 docket, sort of historically, is really just a
21 folder in the Commission's file room. So,
22 whether you label something an "IR" docket or a
23 "DE" docket, for an electric case, it doesn't
24 matter.

1 When you label a docket "rulemaking",
2 that does matter, because a rulemaking has a
3 different set of procedures under the
4 Administrative Procedure Act that differ quite
5 markedly from anything else that the Commission
6 does.

7 I think that the Commission, and,
8 again, looking at the Vermont model, the
9 Commission holds -- the Commission over there
10 holds a lot of informal workshops, at which the
11 information is exchanged, generally, orally, in a
12 very collaborative fashion inside their hearing
13 room.

14 I've grown very concerned about the
15 Commission relying on its investigative authority
16 to conduct these dockets. Because I think it's
17 clear that the Commission has the authority to go
18 down to the office of any utility in the state
19 and say "Hey, show us your books and records."
20 And I think the Commission also has the authority
21 to examine, find out what is going on at
22 utilities.

23 But, if you look at the energy
24 efficiency docket, for example, the energy

1 efficiency IR docket, the Commission has gone
2 beyond that, and it's actually asking the program
3 administrator/utilities in the first instance,
4 and then other parties in the second instance, to
5 actually develop information and conduct research
6 that you think will be helpful to you. And I
7 just -- I'm not sure that the law really
8 authorizes the Commission to do that.

9 Now, that said, we are preparing
10 responses to some of the questions that you asked
11 in the docket. And I agree that those are
12 important subjects to be thought about and
13 reviewed. It's just that, you know, and, again,
14 I'm responsible for having introduced the
15 Seacoast Anti-Pollution League case into the
16 public discourse about all this stuff. I'm very
17 concerned about that. And I think I've
18 successfully communicated that concern to the
19 Commission, based on what I've heard back.
20 Because it's less about what we do in an informal
21 context, and more about whether we do something
22 in that context that then means that it looks too
23 much like the Commission may be prejudging
24 things. I think that's a real danger.

1 CMSR. SIMPSON: You brought up the
2 workshops in Vermont. And I'm aware of some
3 requests for "informal" technical sessions and
4 Commissioner involvement in New Hampshire.
5 How -- what are the differences that you see in
6 Vermont, with these informal workshops, from a
7 practical standpoint, versus our recent IRs that
8 we've opened?

9 MR. KREIS: Well, I do want to stress
10 that what I know about Vermont is probably pretty
11 out-of-date, in that my tenure there was around a
12 decade ago.

13 So, subject to that caveat, I would say
14 the biggest difference is that, in Vermont, there
15 is much more of a tradition of relying on that
16 agency's hearing officers to conduct workshops
17 and informal contact with the parties.

18 And, so, in Vermont, and everybody, all
19 of the professional staff of the agency are
20 considered "hearing officers". So, the Vermont
21 PUC will take anybody, often it's one of their
22 lawyers, but sometimes it's one of their
23 economists or one of their other experts, and
24 that person will preside at a workshop, and,

1 frankly, even at hearings. And, so, when a
2 hearing officer at the Vermont PUC presides at a
3 hearing, then she or he makes a recommended
4 decision to the commissioners.

5 And that creates I guess I would call
6 it a certain amount of -- it's a "fig leaf" of
7 sorts, right? It distances the actual deciders,
8 the three appointed commissioners, from some of
9 the more informal back-and-forth that goes on
10 between the agency and its parties at the
11 pre-final decision stage.

12 CMSR. SIMPSON: Does that or would that
13 model bring us closer to the PUC's prior
14 construction, before the formation of the
15 Department of Energy, do you think?

16 MR. KREIS: Maybe, but probably in a
17 helpful way, in the sense that you're still doing
18 things that are primarily focused on meetings,
19 rather than written discovery. And there is, I
20 think, a better sense of when the Commission
21 is -- well, I think it's as simple as the parties
22 feeling comfortable about saying to the
23 Commission "Well, you know, you're asking us to
24 duplicate labor that we're already conducting."

1 I do think the Commission does, to some
2 degree, have to school itself to be a bit
3 patient, and allow parties to develop their
4 cases. And I think you might need, to some
5 degree, to suffer in silence, in that you're
6 sitting in your offices thinking "This docket is
7 moving forward, and we don't know what's going
8 on. Hope everybody is doing a good job."

9 I mean, I -- I think I'm not going to
10 say that. I was almost going to say something.
11 But, I'm on the record, I'm not going to say it.

12 CMSR. SIMPSON: All right. Well, I
13 appreciate those comments. Thank you.

14 And then, just one question, with
15 respect to the joint utility comments, pertaining
16 to publication. There was a suggestion that
17 publication of notices become the sole
18 responsibility of the Commission and its Staff,
19 with respect to petitions that the utilities
20 file. So, can you elaborate on that please?

21 MS. CHIAVARA: Yes. This was really --
22 it was mostly an administrative efficiency
23 foundation for this. The thought was, if the
24 public is looking for a regulatory proceeding,

1 they're most likely looking to the regulators for
2 that. So, it's, rather than, you know, digging
3 into the utility website, people are most likely
4 going to the Commission anyway.

5 So, it just seems a bit duplicative.
6 And it seemed like an area where we could be more
7 efficient. That was -- that was the gist of it.

8 CMSR. SIMPSON: Do you think there
9 might be ways, through other channels, like the
10 Company's social media or through their website,
11 where they can find more up-to-date and relevant
12 information, than the current practice of
13 newspaper or going to a docket on the PUC
14 website?

15 MS. CHIAVARA: I mean, we do -- right
16 now, we maintain a webpage with all the, --

17 CMSR. SIMPSON: Uh-huh.

18 MS. CHIAVARA: -- you know, the current
19 regulatory ongoing dockets. And I would say, you
20 know, absent eliminating the publication
21 requirement for the utilities, to just keep that
22 as the default position, doing the electronic
23 publication, because that's probably the most
24 accessible.

1 CMSR. SIMPSON: Okay. Thank you.

2 MR. TAYLOR: I have not --

3 CMSR. SIMPSON: Attorney Taylor.

4 MR. TAYLOR: I'm not signed up to
5 speak, but I'll just offer some thoughts on the
6 use of social media to make --

7 CMSR. SIMPSON: Please.

8 MR. TAYLOR: -- to make public notice
9 postings.

10 And I am by no means, being a little
11 bit older, an expert on the use of social media.
12 But I do know that we have some internal folks,
13 and we've thought about, not this specifically,
14 but the way in which we use social media in the
15 past.

16 I think some of the concerns around
17 that are not all of our customers engage with the
18 Company on social media. It's an incomplete way
19 of reaching out to people.

20 And the Company uses those channels for
21 very specific things. And I think there might be
22 some concern about diluting the effectiveness of
23 those streams, if we were to start using them for
24 routine public filings. It may not be as

1 impactful if we were to do it that way. And, so,
2 I think it's an incomplete way of reaching
3 people. And I think that's really not the
4 purpose of it for the Company.

5 So, you know, we do put it up on our
6 website. And I will note that, in Maine, the
7 Maine Commission takes care of publication.
8 That's not something that the utilities do. I,
9 practicing in both states, I don't notice any
10 material difference, in terms of how it brings
11 people into the hearing room.

12 If I could say anything, I would say
13 that the method of publication in newspapers is
14 quite outmoded. I don't think it's effective.
15 It is costly. And, if anything, I think that
16 that is something that should be done away with.

17 CMSR. SIMPSON: Can you speak to what
18 Massachusetts has for publication requirements?

19 MR. TAYLOR: Currently, with -- and I
20 think this is partially due to the pandemic, the
21 Commission -- or, the Department has not been
22 requiring publication in newspapers. Typically,
23 what we do now is we do publish it on our
24 website. And, in some cases, we are required to

1 make service to a service list, sometimes to
2 municipal contacts, things of that nature.

3 But we have not been required to do
4 newspaper publication for some time.

5 CMSR. SIMPSON: Okay. Thank you.
6 Those are all the questions I have at this time,
7 Mr. Chairman.

8 CHAIRMAN GOLDNER: Okay. Thank you,
9 Commissioner Chattopadhyay.

10 CMSR. CHATTOPADHYAY: Good morning.

11 I'd like to probe something that wasn't
12 touched upon in the, you know, the filings that
13 I've seen. I just want to know whether -- what
14 the reaction is from the utilities about, when
15 you file something, you file testimony, you start
16 a rate case, just as an example. You file
17 testimony, you file a lot of stuff with it,
18 attachments. Given that, the way I operate, as
19 far as my analytical bent is, I would like to see
20 some of the materials being supported by live
21 worksheets, live Excel files, and all of that.

22 And I did read the comments, and some
23 of you have issues with the Commission sort of
24 being part of the discovery process and looking

1 at stuff. To me, at the least, when you are
2 filing a rate case, or testimony, and you have
3 some material that you want us to look at,
4 really, it's important for me to get under the
5 hood or for the senior advisors that help us to
6 get under the hood.

7 And why isn't it that you cannot --
8 maybe I shouldn't say that, presume that. Why
9 wouldn't it be helpful to have the live files
10 also being submitted at the same time?

11 And I just want to hear what the
12 utilities have to say.

13 MS. CHIAVARA: I'll start that off.
14 And, unfortunately, it might be more helpful to
15 speak to people who deal with these spreadsheets
16 every day, but I'll do my best.

17 I know that there are -- there is a bit
18 of concern with the sort of role overlap between
19 the DOE and the PUC and the Commission, in
20 regards to how we conduct, as the OCA was
21 mentioning, we conduct these adjudications, and,
22 you know, things develop, and party positions
23 develop.

24 So, when we file testimony or an

1 initial filing, even in a rate case, positions do
2 evolve. And, if we come in with a settlement
3 agreement at the end of that docket, then things
4 can be quite a bit changed by the time we go in
5 to file.

6 So, as the adjudicators, you know, it
7 may not necessarily be entirely appropriate to
8 have all of the backup, supporting work. It
9 just -- it seems like more of maybe a function of
10 the DOE Audit staff to run all those numbers to
11 ground. And, again, I'm, you know, not the
12 expert on this here. But it seems like there is
13 probably some sort of, like, Venn diagram overlap
14 of the roles between the DOE and the Commission
15 on this point.

16 CMSR. CHATTOPADHYAY: I think -- sorry.
17 I think there is a possibility that you are
18 misinterpreting what I'm asking.

19 MS. CHIAVARA: Okay.

20 CMSR. CHATTOPADHYAY: What I'm asking
21 is, when you file your testimony, the material
22 that supports the testimony, and it's not about
23 audit, Audit Division does whatever it does with
24 DOE. You're providing information that is going

1 to be part of the record. It really helps us,
2 with the analytical bent of mine that I have, to
3 actually look into the numbers in the way that I
4 can make sense of it. And that would require, in
5 my opinion, you also filing the live, for
6 example, the Excel files. That's all I'm talking
7 about.

8 MS. CHIAVARA: Uh-huh.

9 CMSR. CHATTOPADHYAY: And not doing
10 that, the issue that you were talking about, how
11 things change over time, that issue remains
12 unchanged. I mean, that's -- so, I'm not -- how
13 would that help, by not providing me the Excel
14 files, you know, I don't get that?

15 I mean, it's not like we don't
16 understand it, what you initially filed, and then
17 you have this process where you could be talking
18 to each other, and then, ultimately, what you end
19 up converging on, as settlements, for example,
20 that could be very different. We fully
21 understand that.

22 So, the point really is, very simple,
23 I'm trying to understand, given this is about
24 rules, why can't we have something in the rules

1 that requires the utilities to provide the backup
2 materials in live format, when anytime you
3 actually file testimony? And that could also be
4 about, sometimes some utilities have filed
5 something, and then 15 days later they have
6 realized they made a mistake, they refile stuff.
7 Every time they do that it is extremely helpful,
8 for me and for the senior advisors who are
9 looking at the numbers, to have all of the
10 material that support the testimony to be part of
11 the package. And that's what I'm asking about.

12 MS. CHIAVARA: And perhaps some of the
13 other utilities might have different comments
14 about this.

15 I don't, from a regulatory perspective,
16 I don't see anything that would prohibit a rule
17 being made about submitting live Excel files
18 along with whatever other attachments we file.

19 CMSR. CHATTOPADHYAY: Okay.

20 MS. CHIAVARA: I believe there are
21 certain concerns that utility staff have. And,
22 if I could go back to staff and find those out,
23 then maybe I could give you a more satisfactory
24 answer.

1 CMSR. CHATTOPADHYAY: Yes. That would
2 be helpful. I think it's also, I can see one
3 issue, which is some Excel work would be
4 confidential. But we, I mean, it's not like you
5 have to transmit that to everyone. There are
6 ways to deal with confidential information.

7 So, I would really appreciate if you do
8 what you just suggested. And, if other utilities
9 want to respond, I would also appreciate that.

10 MR. KREIS: Might you suffer my leaping
11 into this fray?

12 CMSR. CHATTOPADHYAY: Absolutely.

13 MR. KREIS: So, one niche I seem to
14 occupy these days is I guess I'm much more
15 willing, than the utilities are, to make
16 statements to the Commission that are very frank.
17 And, so, I would offer this one in a spirit of, I
18 guess, respect, but also concern.

19 Commissioner, you talked about your
20 "analytical bent", and I'm quite familiar with
21 that because of your prior employment. But I
22 guess I would caution the three folks up on the
23 Bench to remember that you are not "analysts" in
24 the same sense that my staff members, or the

1 regulatory staffs of the utilities are
2 "analysts". And, because our job is to do the
3 analysis, and present evidence to you at
4 hearings, that you can then use as the basis of
5 your decisions.

6 And, so, the concern, I think, is that
7 when Commissioners, or Commission employees, do
8 what analysts do, then you're essentially
9 developing your own record in a way that isn't
10 consistent with due process. And I would urge
11 the Commission to be very, very cautious about
12 that.

13 Now, I am not, even less than Ms.
14 Chiavara, I am not an expert on working with
15 Excel spreadsheets. And I know that if I -- or,
16 I think or I suspect that, if I were an analyst,
17 if I were an economist, or a finance expert, I'd
18 be all about messing around with live
19 spreadsheets, and even if I was a commissioner.
20 But there are lots of things that commissioners
21 are not supposed to do, and this might be one of
22 them.

23 CMSR. CHATTOPADHYAY: And I would
24 respond that you're assuming that we get those

1 things and we start messing around with them.
2 Maybe. That's not what the focus is for us.
3 It's like, you have filed the testimony, you're
4 backing it up with some material. It is
5 important for us to know what you're saying.
6 And, believe me, I am not going to go in and
7 start fiddling with the Excel files, no. It's
8 more about understanding "how did you get to this
9 number?"

10 So, understanding what the utility is
11 saying is the focus here. And what happens is,
12 the approach right now is to just have the
13 material sent in *pdf* format. Sometimes we look
14 at something, and "how did they get that?" And,
15 so, it's really trying to educate ourselves to
16 fully follow the steps that go into justifying
17 what the utilities are saying. That's it, that's
18 the thrust.

19 But, otherwise, I understand your point
20 fully. Like, it's, you know, it's not about --
21 it shouldn't be that we would go in and start,
22 "Okay, what happens if this is the number, if
23 this is how we play with it?" No. That's not
24 the focus. It's really trying to understand what

1 they have filed.

2 MR. KREIS: If I might respond? And I
3 guess, and I apologize if this comes off as glib,
4 but that's what hearings are for.

5 I mean, you know, when -- when
6 something isn't clear to the Commission,
7 obviously, it's in the best interest of the
8 parties to resolve any ambiguities, and make sure
9 that the record is clear, and that your
10 understandings are clear. But that's why we have
11 hearings. And the reason it's important to do
12 that at hearing is, it's on the record, it's
13 subject to cross-examination, and it's clear what
14 is and is not in the record.

15 When the Commissioners are sort of
16 doing their own thing back in their offices,
17 whatever that is, we have no way of knowing what
18 that is, what kind of analysis and thought and
19 evidence generation is happening inside the black
20 box that is the New Hampshire PUC. That raises a
21 lot of fairness and due process concerns.

22 CMSR. CHATTOPADHYAY: Okay. I think we
23 can keep going forever, because there are some
24 things I kind of don't agree with.

1 But, anyway, please go ahead.

2 MR. GOODHUE: I did not sign up to
3 speak. But, as another utility in the room, if
4 it would be all right? Larry Goodhue, CEO and
5 CFO at Pennichuck.

6 You know, with regard to your
7 questioning, Commissioner Chattopadhyay, there's
8 a number of issues relative to presenting live
9 Excel files at the time of the testimony. One of
10 the things you brought up is confidential
11 information. Many times that confidential
12 information is embedded on one tab, within a
13 large workbook. So, the ability to now cull that
14 out within the context of that becomes a little
15 bit more problematic. In a *pdf*, it's much easier
16 to do.

17 Number two, it is an evolving process,
18 as was alluded to by both of these folks. And
19 that, I can tell you that, in my tenure at the
20 Company, never ever have the original schedules
21 filed been the final schedules over which the
22 settlement agreement is relied upon. And, in
23 some ways, it's actually been a difference in the
24 entire construct of certain elements of that

1 filing. So, that's important.

2 And, in some ways, I wouldn't want to
3 waste the Commission's time to have you diving
4 deep on the front end, versus really
5 understanding what has evolved, after all of the
6 other parties to the case have done their work
7 relative to presenting to the Commission a
8 settlement based on a rate case result that is
9 being offered up for consideration. I think, at
10 that point in time, it does make a lot of sense
11 to do that.

12 One of the problems that you also have
13 with these files is the method in which they can
14 be communicated and delivered to you. I know, in
15 our case, the volume of these files is huge.
16 And, in many cases, it's amongst multiple files
17 that are linked together. And we've had
18 countless examples of links between files being
19 broken. So, by presenting an Excel file in live,
20 actually is giving you information you can't work
21 with, versus, in a *pdf*, you can work with.

22 You know, I'm not the person who does
23 the actual transcribing of these files. But I'm
24 very, very familiar with them, over a number of

1 years of working with them in my role. And one
2 of the things that I have always enjoyed is the
3 way that, at least the way we construct those
4 files, in the 06 schedules, the 08 schedules, is
5 that there is an intuitive audit trail between
6 the various tabs, leading up to the leading
7 schedules that really define a revenue deficiency
8 and what we're seeking for in a rate case.

9 And, so, hopefully, that construct,
10 it's clear not only on a live basis, but in a *pdf*
11 picture basis. And, if there is a concern about
12 how a number may have been developed, hopefully,
13 that is being vetted by the DOE Staff, who does
14 an excellent job, believe me, of actually getting
15 down to the very basis for how calculations are
16 done, in us arriving at what is to be considered
17 a true request to be considered by the
18 Commission.

19 So, I just wanted to offer that up as
20 another utility that comes before you on a
21 frequent basis.

22 CMSR. CHATTOPADHYAY: So, thank you for
23 the comments.

24 And there's one more thing, this is

1 purely out of curiosity. I'm just -- does
2 anybody here know how something like this is
3 actually done in some other jurisdiction? That
4 is, when a utility ends up filing something, they
5 provide the backup files.

6 So, could -- you know, I don't know
7 about it. I'm just curious whether anyone of you
8 know anything in other, you know, happening in
9 other states?

10 MR. GOODHUE: I could only offer up
11 again, from Pennichuck's perspective, a gentleman
12 who's not here with me today, that you know very
13 well, Donald Ware, our Chief Operating Officer,
14 operating for a number of years in the State of
15 Maine bringing rate cases before that Commission.

16 And, if you would like us to provide
17 some follow-up insights from his perspective, we
18 would be happy to do so?

19 CMSR. CHATTOPADHYAY: We would
20 appreciate that greatly.

21 MR. GOODHUE: Yes.

22 CMSR. CHATTOPADHYAY: Thank you.

23 MS. CHIAVARA: Commissioner?

24 CMSR. CHATTOPADHYAY: Go ahead. Sorry.

1 MS. CHIAVARA: I'm sorry. I just
2 wanted to add a couple of things that actually go
3 to what the -- the points that the OCA made a few
4 minutes ago.

5 And it's more about what's on the
6 record and what isn't. When we file these Excel
7 files, they're not admitted as exhibits. But,
8 yet, if they're relied upon -- I realize you're
9 saying it's not to do alternative analysis, and
10 that's good. But, to the extent that they're
11 relied upon at all, and not part of the record,
12 is a somewhat uncomfortable point that, I don't
13 know, would need some kind of resolution.

14 Also, to the OCA's point, that is
15 partially what hearings are for. The Company
16 witnesses go up, and they're swearing under oath
17 to the veracity of the filing, whether it's a
18 settlement, or testimony, or the supporting
19 attachments.

20 So, and through the discovery process,
21 which I referenced earlier, part of which, you
22 know, the DOE, as a sister agency, is also a
23 party, they vet, you know, the underlying support
24 quite thoroughly. And, so, when they come in as

1 a party and make a recommendation, I think the
2 hope is is that that vetting has been done, and
3 that the Commission can rely upon the fact that
4 all the parties have gone through that exercise,
5 and are now swearing under oath as to the
6 accuracy and voracity of everything being
7 presented at hearing.

8 CMSR. CHATTOPADHYAY: Again, thank you
9 for the comments. I mean, I just want to add,
10 when you file something, you have schedules.
11 What I'm talking about is those schedules can be
12 in live format. And, yes, there are times where
13 you would say "I can't go back to, this is linked
14 to something that's not being provided." So, I'm
15 okay with that.

16 What I'm talking about is, when you
17 file something right at the beginning, if you --
18 if it's in the filing that, and it's an Excel
19 file, like a schedule is generally, that's what
20 I'm talking about.

21 But I'm still trying to understand the
22 points here. So, everything is helpful.

23 CHAIRMAN GOLDNER: And I do,
24 Commissioner, have a couple of follow-up

1 questions in this area, too.

2 CMSR. CHATTOPADHYAY: Okay.

3 CHAIRMAN GOLDNER: So, I'll have a few
4 myself, yes.

5 CMSR. CHATTOPADHYAY: I'm all set.

6 CHAIRMAN GOLDNER: Okay. Oh, that's
7 good timing then. Okay.

8 Yes, I just wanted to sort of layer on
9 to what Commissioner Chattopadhyay was talking
10 about, maybe to illuminate the issue maybe
11 further.

12 When we're -- we're trying to educate
13 ourselves, prior to going to the hearing, so we
14 can ask better questions. So, it's not, you
15 know, it's not, for us, for example, we might go
16 into a spreadsheet, and we might say "Gee, the
17 utility has a little bit more, they have a few
18 more customers, the revenue goes up by this
19 amount. You know, what does that ratio look
20 like?" So, we'll just do a quick calc to say
21 "Well, wait a minute, you know, the ratio is
22 changing by this amount." That develops a
23 question for us. So, we can come into the
24 hearing with a better question. And we can, of

1 course, perform the same function on a *pdf* file
2 with out calculator, but it's for ease of use.

3 One of the things that Commissioner
4 Chattopadhyay is saying, if I can illuminate it a
5 little bit, is just so we can educate ourselves
6 coming into the hearing, so we can ask better
7 questions. That's the motivation. Nothing more.

8 Another example is, a lot of times
9 there will be multiple tabs on the spreadsheet,
10 and they will all be linked to the master. And,
11 so, we're just trying to figure out, "Okay, they
12 got the number 12, how did they get that?" "It
13 was x plus y plus z." "Oh, okay. I want to ask
14 about z at the hearing."

15 So, it helps us sort of develop our
16 questions, so we can come to the hearing better
17 prepared. That's the motivation.

18 So, I'll just throw a pause there to
19 see if there's any comments on what we're trying
20 to illustrate?

21 MR. SHEEHAN: If I may? Mike Sheehan.
22 We totally appreciate that. You guys on the
23 other side of the Bench, you're dumped all this
24 information and you try to understand it.

1 But the concerns on this end are real.
2 And Mr. Kreis laid out some, and I can give you a
3 made-up example. You see a number on a
4 spreadsheet, it's 12. You've got the live sheet,
5 you look back behind the closed door and say
6 "It's not 12, it's 11", and then you issue an
7 order based on "11". We're saying "Where did
8 that come from?" You know, in fact, you were
9 wrong to say it was "11", it really is "12", and
10 we didn't have the opportunity to correct you.
11 So, it's that kind of analysis that's allowed in
12 a spreadsheet that worries us.

13 Now, again, we've been filing Excels
14 with our Costs of Gas this fall, and outside of
15 the docket, I think we made the formal filing,
16 and then we sent a separate email with the Excel,
17 trying to keep it out of the record, frankly.
18 The last thing you want is a live Excel as an
19 exhibit, because anyone can change it. And what
20 is the exhibit, if it's something that's subject
21 to change.

22 So, it's a difficult question. And we
23 do appreciate what you're asking and what you're
24 looking for, but there's legitimate concerns on

1 this side of the Bench as well.

2 CHAIRMAN GOLDNER: And I'll just maybe
3 add that that same concern would apply to the *pdf*
4 file. We could take a *pdf* file, hit the wrong
5 calculator button, you know, and I suppose make a
6 mistake.

7 And I will say this, the Commission is
8 very careful to -- the Commissioners, all of us,
9 are very careful to ask those questions at
10 hearing, and make decisions only based on the
11 record at the hearing. This is just part of our
12 preparation. And mostly, this analysis is done
13 by our analysts anyway, you know, we're not so
14 involved in the spreadsheets oftentimes, but it
15 helps them to prepare us for the hearing.

16 So, I just wanted to illustrate our
17 concern as part of this discussion, to maybe just
18 provide that perspective.

19 Commissioner Chattopadhyay.

20 CMSR. CHATTOPADHYAY: Those are good
21 points that you made. And I'm just following up
22 on what the Chair mentioned.

23 The way that it operates is, like,
24 we're looking at it, the senior advisors,

1 essentially what I tell them is "How did they get
2 this number? Can you explain?" It's not about
3 trying to change anything. It's about better
4 understanding what you have provided.

5 So, I'm generally extremely mindful of,
6 you know, sort of, it's not about trying to play
7 with it. No, that's not. I still need to
8 understand some of the things that just jump out
9 at me and, like, "I don't know how they got it."

10 That's what we are talking about here.
11 I just wanted to flag that.

12 CHAIRMAN GOLDNER: And also, I'd say
13 that I recognize the concern for abuse. So, I
14 think we're recognizing that, what you're saying.
15 We're just trying to, I think, have a two-way
16 conversation about the concerns on both sides.

17 So, very good. So, I think that's --
18 anything else on that topic, Commissioners? Are
19 we covered on that one?

20 CMSR. CHATTOPADHYAY: Yes. We are
21 covered.

22 CHAIRMAN GOLDNER: Okay. Very good.
23 So, sadly, most of my questions were for the DOE.
24 So, I see an empty chair there. And I know they

1 have some things going on. So, I'm not being
2 critical. It was just my questions were directed
3 at them. So, it's unfortunate, for this
4 particular session, that they're not here. But
5 don't worry, there will be more chances.

6 So, what I'd like to share with you now
7 is kind of our thought moving forward, and get
8 your thoughts on how we proceed. So, our idea is
9 to, based on this session, to draft an Initial
10 Proposal that we can use to sort of start the
11 rulemaking process, or if we call it
12 "pre-process". And then, after that Initial
13 Proposal, get another round of comments, and
14 another pre-process hearing, so the DOE at least
15 has another opportunity. And then, at that
16 point, sort of launch the formal 180-day process.

17 And I'll just throw that out there and
18 get some comments, and if that would be well
19 received by the participants here today?

20 *[Multiple parties indicating in the*
21 *affirmative.]*

22 CHAIRMAN GOLDNER: I'm seeing nodding
23 of heads.

24 Mr. Kreis, I think I can always tell

1 when you're ready to speak.

2 *[Laughter.]*

3 CMSR. SIMPSON: And I, for one,
4 appreciate your candor.

5 MR. KREIS: Well, I think what you've
6 laid out makes sense, in that it would be helpful
7 to have an actual Initial Draft to work off, so
8 then we would have the -- we would then know what
9 you folks are thinking at the agency.

10 I do want to say that I, too, am
11 disappointed that the Department of Energy is not
12 here today. And, like you, I don't mean to
13 criticize them, because I also know that they
14 have other business to attend to. I believe the
15 JLCAR is meeting this morning, in fact.

16 CHAIRMAN GOLDNER: They were, yes.

17 MR. KREIS: Yes.

18 CHAIRMAN GOLDNER: Mr. Wind was there.

19 MR. KREIS: I guess the thing that I
20 didn't say on the record before, because I
21 remembered that I was on the record, is now
22 something that I think I can say now in a
23 suitably diplomatic fashion, and it is this:

24 I think the Commission has to keep in

1 mind that the Department of Energy is tasked with
2 doing a lot of what your Staff needed to do.
3 Now, you don't supervise the Department of
4 Energy. There is an *ex parte* wall between you
5 and the Department, as well as us. But the
6 paradigm calls on you, I think, to trust and
7 assume that the Department of Energy is doing its
8 job, and conducting the kind of thorough
9 investigations pre-hearing that the Commission
10 itself used to conduct.

11 And I would imagine, if I were a
12 commissioner, or an advisor to the Commission, I
13 would find that frustrating. Because, in part,
14 because I think the Department is still feeling
15 its way as an agency, figuring out how it wants
16 to do its job, and, frankly, what its job really
17 is.

18 So, they are an essential partner, I
19 think, in this conversation, because what -- the
20 procedures you adopt, both formal and informal,
21 need to dovetail with the way they do business in
22 particular.

23 CHAIRMAN GOLDNER: And they had a lot
24 of excellent and salient comments. And, so, if

1 we follow this proposed process, we'll have
2 another bite at the apple.

3 But, yes, it's unfortunate, because
4 they had a lot of interesting comments that we
5 were hoping to probe on further.

6 MR. KREIS: Particularly, since today
7 is Mr. Wiesner's last day here, we're forgoing
8 the opportunity to grill him in particular. He
9 has a lot of insight.

10 CHAIRMAN GOLDNER: True, yes. Yes, a
11 lot of knowledge.

12 Okay. That is all I have at the
13 moment.

14 Commissioners, anything else that you
15 want to ask, before we give the --

16 CMSR. SIMPSON: No. Nothing from me.
17 Thank you.

18 CMSR. CHATTOPADHYAY: Nope.

19 CHAIRMAN GOLDNER: Okay. Anything else
20 from the participants today?

21 *[Multiple parties indicating in the*
22 *negative.]*

23 CHAIRMAN GOLDNER: Okay. Very good.
24 Well, we appreciate the support and the

1 engagement today. This is an important process
2 for us. And, by virtue of your being here today,
3 clearly, an important process to you as well.

4 I'll thank you for your time. And we
5 are adjourned.

6 ***(Whereupon the hearing was adjourned***
7 ***at 10:56 a.m.)***