

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

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

**Reptg. Community Power Coalition of
New Hampshire:**

Clifton C. Below

Reptg. Clean Energy New Hampshire:

Christopher Skoglund

Reptg. Residential Ratepayers:

Donald M. Kreis, Esq., Consumer Adv.
Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:

Matthew C. Young, Esq.
Elizabeth Nixon, Dir./Electric Group
(Regulatory Support Division)

	I N D E X	
		PAGE NO.
1		
2		
3	SUMMARY OF THE DOCKET BY CMSR. SIMPSON	4, 6
4	STATEMENTS OF PRELIMINARY POSITION BY:	
5	Mr. Sheehan	8
	Ms. Chiavara	8
6	Mr. Campbell	17
	Mr. Kreis	18
7	Mr. Young	22
	Mr. Below	23
8		
9	STATEMENTS RE: MOTIONS TO CONVERT THE DOCKET TO AN ADJUDICATIVE DOCKET BY:	
10	Mr. Sheehan	30
	Ms. Chiavara	31
11	Mr. Campbell	32
	Mr. Kreis	32
12	Mr. Young	34
	Mr. Below	34
13	Mr. Skoglund	35
14	QUESTIONS BY CMSR. CHATTOPADHYAY	36
15	STATEMENTS RE: BRIEFING SCHEDULE BY:	
16	Cmsr. Simpson	43
	Mr. Kreis	44
17		
18	QUESTIONS BY CMSR. SIMPSON (to Mr. Below)	45
	QUESTIONS BY CMSR. SIMPSON (to the utilities)	50
19	COMMENT BY CMSR. CHATTOPADHYAY	54
20	STATEMENTS RE: BRIEFING SCHEDULE BY:	
21	Ms. Chiavara	56
	Mr. Kreis	56
22	Mr. Young	57
	Mr. Below	57
23	Mr. Skoglund	59
24	QUESTION BY CMSR. SIMPSON (procedural schedule)	59

P R O C E E D I N G

1
2 CMSR. SIMPSON: On the record. Good
3 morning, everyone. I'm Commissioner Simpson.
4 I'll be presiding over today's prehearing
5 conference, as Commissioner Goldner is
6 unavailable. I'm joined by Commissioner
7 Chattopadhyay.

8 We're here this morning for a
9 prehearing conference noticed by an Order of
10 Notice issued on September 20th, 2022, in Docket
11 Number IR 22-061. The authority to convene an
12 investigation is authorized by New Hampshire RSA
13 374:7. During the 2022 Legislative Session, the
14 General Court amended RSA 362-A through Senate
15 Bill 321.

16 As amended, Senate Bill 321 authorized
17 the Commission to approve pilot projects allowing
18 limited producers of electrical energy to sell
19 the energy they produce to one or more purchasers
20 other than the franchise electric utility.
21 Before approving such pilots, SB 321 directed the
22 Commission to open a docket to determine whether
23 such pilot programs would result in any
24 jurisdictional conflicts concerning the use of

1 the distribution or transmission system.

2 Let's take appearances. We'll start
3 with the utilities. Liberty?

4 MR. SHEEHAN: Good morning. Mike
5 Sheehan, for Liberty Utilities (Granite State
6 Electric) Corp.

7 CMSR. SIMPSON: Thank you. Unitil
8 Energy Systems?

9 MR. CAMPBELL: Matt Campbell, appearing
10 for Unitil Energy Services, Inc. And with me
11 today is also Patrick Taylor, Chief Regulatory
12 Counsel for Unitil.

13 CMSR. SIMPSON: And Eversource Energy?

14 MS. CHIAVARA: Good morning. Jessica
15 Chiavara, here on behalf of the Public Service
16 Company of New Hampshire, doing business as
17 Eversource Energy. And with me today I have
18 David Burnham, Director of Transmission Policy.

19 CMSR. SIMPSON: The Office of the
20 Consumer Advocate?

21 MR. KREIS: Good morning, Presiding
22 Officer Simpson and Commissioner Chattopadhyay.
23 I like to put the correct em-PHA-sis [sic] on the
24 correct syl-La-ble [sic]. I hope I'm doing that.

1 I'm Donald Kreis, the Consumer
2 Advocate. And, of course, we represent the
3 interests of residential customers of all of the
4 utilities.

5 CMSR. SIMPSON: Thank you. New
6 Hampshire Department of Energy?

7 MR. YOUNG: Good morning,
8 Commissioners. Matt Young, on behalf of the
9 Department of Energy. And with me today is Liz
10 Nixon, Director of our Electric Division.

11 CMSR. SIMPSON: Thank you. And the
12 Community Power Coalition?

13 MR. BELOW: Yes. Good morning,
14 Commissioners. Clifton Below, on behalf of the
15 Coalition, consisting of 27 towns, cities, and
16 counties in New Hampshire.

17 CMSR. SIMPSON: Thank you. Clean
18 Energy New Hampshire?

19 MR. SKOGLUND: Good morning,
20 Commissioners. Chris Skoglund, with Clean Energy
21 New Hampshire.

22 CMSR. SIMPSON: Thank you.

23 I'll note for the record that General
24 Court Representative Michael Vose also submitted

1 a letter asking to be added to the service list,
2 but I don't see him here today.

3 Because this docket is currently an
4 investigation, we do not require interventions.
5 In the event the nature of this proceeding
6 changes, we'll consider interventions in due
7 course.

8 The potential jurisdictional increases
9 at hand, as included in the Order of Notice,
10 identified potential conflicts posed by the
11 proposed pilots, with respect to jurisdiction
12 over distribution and transmission facilities,
13 existing Transmission Owners Operating
14 Agreements, a potential need to recalculate
15 ISO-New England Open Access Transmission Tariffs,
16 and whether such pilot projects produce avoided
17 transmission cost savings.

18 We'll now invite each participant to
19 provide their preliminary comments on each of the
20 issues identified in the Order of Notice and the
21 underlying statute.

22 With respect to the motions to convert
23 this investigatory document into an adjudication,
24 I will afford the parties an opportunity to argue

1 the merits of these motions after initial
2 comments.

3 So, we will start with Liberty.

4 MR. SHEEHAN: If I may, I know Ms.
5 Chiavara has prepared a more detailed statement
6 than I could give. And, in effect, I am going to
7 say we generally agree with her statement. So, I
8 won't say any more.

9 CMSR. SIMPSON: Okay. Very good. And
10 I should note, if folks could keep these initial
11 comments to five or ten minutes each, that would
12 be appreciated.

13 Attorney Chiavara.

14 MS. CHIAVARA: Thank you, Commissioner
15 Simpson. And I clocked this at about five
16 minutes. So, I will try to keep it to that.

17 CMSR. SIMPSON: Very good.

18 MS. CHIAVARA: So, as you had just
19 stated, as SB 321 that was passed earlier this
20 year amended portions of RSA Chapter 362-A, and
21 asked the Commission to open this docket to
22 determine definitively whether any jurisdictional
23 conflicts exist concerning the use of the
24 distribution or transmission system, including a

1 determination about whether activities allowed by
2 this Chapter would require a utility to violate
3 its Transmission Owners Operators Agreement or
4 require a recalculation of any ISO-New England
5 Open Access Transmission Tariffs, and whether
6 such projects produce avoided transmission cost
7 savings.

8 Without going into a detailed argument
9 about the motion that's pending, Eversource does
10 believe that the "definitive determination"
11 language makes an adjudication even more
12 appropriate than an investigation, because of the
13 implications to the rights, duties, and
14 obligations of what are now participants, and
15 would ultimately be parties. And we can discuss
16 that further later.

17 However, the ability to make a
18 definitive determination of the questions at
19 issue in the statute is constrained here, because
20 the statute, as written, triggers federal
21 preemption, due to the fact that the Federal
22 Energy Regulatory Commission has exclusive
23 jurisdiction over both transmission service and
24 wholesale sales of energy and capacity, and

1 SB 321 implicates both of these.

2 The statute treads on the Federal
3 Energy Regulatory Commission's jurisdiction in a
4 number of ways, in addition to the limited
5 acknowledgement by the statute regarding the
6 FERC's jurisdiction over the transmission system.

7 Regarding wholesale -- sales of
8 wholesale power, the SB 321 pilot programs
9 implicate wholesale sales. The statute provides
10 that the purchaser in the pilot program "may be
11 any nonresidential retail electric customers
12 located within the same New Hampshire electric
13 distribution utility franchise areas where the
14 limited producer is located, or any electricity
15 supplier serving retail load within such area."
16 This latter transaction is a wholesale sale under
17 FERC jurisdiction.

18 The U.S. Supreme Court has ruled that
19 the FERC has exclusive jurisdiction over the
20 rates for all such sales of energy or capacity
21 for resale in *Hughes v. Talen Energy Marketing*.
22 In that case, the Court held that "States may not
23 seek to achieve ends, however legitimate, through
24 regulatory means that intrude on FERC's authority

1 over interstate wholesale rates." The Court has
2 long held that once wholesale energy is placed on
3 any part of the grid, it becomes an
4 undifferentiated component of interstate
5 electricity regulated under the Federal Power
6 Act, even if the buyer and seller are both in the
7 same state. Therefore, there cannot be a
8 wholesale intrastate transaction as invoked by
9 SB 321, as wholesale sales are, by definition,
10 interstate. If a generator and its wholesale
11 customers are both located on the distribution
12 system, it remains an interstate wholesale sale,
13 unless the parties are physically disconnected
14 from both the transmission and distribution grid.

15 The Federal Energy Regulatory
16 Commission has also rejected the argument that
17 sales of power that take place over
18 state-regulated distribution systems are exempt
19 from its jurisdiction, finding that the FERC's
20 authority to regulate sales for resale of
21 electric energy and transmission in interstate
22 commerce is definitive, regardless of the
23 generator's location on the distribution system.

24 There is also a jurisdictional issue in

1 regard to wholesale capacity sales. XIII of SB
2 321 states that reduced capacity supply
3 obligations shall be assigned to the LSEs serving
4 such limited producers as approved by the
5 Commission. But capacity obligations for
6 load-serving entities, or LSEs, are set by
7 ISO-New England, and, therefore, any
8 determination of whether capacity sales are
9 avoided are squarely within the exclusive
10 jurisdiction of the Federal Energy Regulatory
11 Commission. Any reduction of capacity
12 obligations by the PUC is federally preempted, as
13 it is a determination that can be made solely by
14 ISO-New England, as approved by the FERC.

15 Regarding transmission service, SB 321
16 allows for the Commission to provide relief for
17 specific customers from transmission charges and
18 determine if credits should be provided for
19 actual avoided transmission charges. These
20 provisions raise additional jurisdictional
21 increases.

22 As a first matter, the creation of a
23 contractual construct where the transmission
24 system is not acknowledged within the contract is

1 simply that, a construct. It does not mean that
2 the transmission system is not being used and
3 relied upon by the customers and distribution
4 facilities participating in the SB 321 pilots.
5 In fact, the Federal Energy Regulatory Commission
6 has rejected the premise that such a transaction
7 obviates the use of the transmission system, and
8 has ruled that distribution services involving
9 wholesale sales cannot be performed in isolation
10 from the ISO grid.

11 But, in addition to the practical
12 consideration that all customers rely on the
13 transmission grid, regardless of whether a
14 specific transaction does not contractually
15 implicate it, there is also the legal and
16 regulatory authority granting the FERC exclusive
17 discretion to determine which wholesale loads and
18 unbundled retail loads it should allocate
19 transmission costs. This means that only the
20 Federal Energy Regulatory Commission can
21 determine if generators, such as those
22 contemplated by SB 321, produce avoided
23 transmission cost savings, based on the FERC's
24 determination of transmission costs and ISO-New

1 England's Open Access Transmission Tariffs'
2 allocation of transmission costs.

3 Insofar as SB 321 implicates ISO-New
4 England's FERC-regulated transmission and market
5 rules, this area is also federally preempted from
6 state action. The Transmission Operating
7 Agreement and the Open Access Transmission Tariff
8 are ISO-New England's governing documents
9 approved by the Federal Energy Regulatory
10 Commission, and so have the force and effect of
11 federal law.

12 Because of this, any PUC order to
13 modify either of these agreements or to direct
14 the utilities to unilaterally modify, violate, or
15 abrogate them would be unenforceable, as ISO-New
16 England is not bound by PUC authority.

17 SB 321 directs that "Upon successful
18 resolution of these questions, the commission may
19 approve pilot projects." But any determination
20 at the state level pertaining to outstanding
21 questions surrounding the potential conflict with
22 federal law in carrying out the activities
23 allowed by SB 321 likewise would not be binding
24 on federal authority, nor could it modify the

1 federal obligation to sellers and buyers who are
2 subject to PUC authority to comply with the
3 Federal Power Act and ISO-New England's rules.

4 The Federal Energy Regulatory
5 Commission is the appropriate regulatory entity
6 to interpret the question of whether its
7 authority under the Federal Power Act preempts
8 state regulatory authority related to the
9 activities contemplated by SB 321.

10 While this Commission can certainly
11 make a determination on the issues raised by
12 SB 321, such a determination cannot be acted
13 upon, as it could put the utilities in the
14 position of having to either violate a PUC order
15 that has the force and effect of state law, or
16 violate federal law and regulatory obligations.

17 But, to resolve the federal preemption
18 issues presented by SB 321, this Commission could
19 issue an order with a finding on the matter of
20 federal jurisdiction at the conclusion of the
21 docket, and in the same order direct the electric
22 utilities to make the necessary filings at the
23 FERC to receive a FERC determination as to any
24 jurisdictional conflicts.

1 However, for the sake of administrative
2 efficiency and clarity, what Eversource would
3 recommend is that the Commission issue a
4 prehearing order pursuant to Puc 203.15,
5 Subparagraph (e), directing the electric
6 utilities to make the required filings with the
7 FERC, or, if the Commission prefers, it may
8 petition the FERC directly, to receive a FERC
9 determination on relevant jurisdictional issues
10 before the commencement of the procedural
11 schedule in this docket, so that the Commission
12 may take administrative notice of the FERC
13 findings at the outset of this proceeding, and
14 then the record can be developed on that
15 foundation.

16 And then, additionally, Eversource
17 wants to make a final suggestion that
18 participants, at this time, or parties, should
19 this docket become an adjudication, have the
20 opportunity to provide legal briefs on these
21 issues after the conclusion of today's
22 proceeding, addressing the federal preemption
23 questions, if doing so would help facilitate the
24 findings that would appear in a prehearing order,

1 as these comments that I've just raised raise a
2 number of complex legal issues.

3 And I realize that was a lot of
4 information. I thank you for your consideration
5 of these comments.

6 CMSR. SIMPSON: Thank you, Attorney
7 Chiavara.

8 Attorney Taylor, do you have any
9 further comments at this time?

10 MR. TAYLOR: Attorney Campbell is going
11 to provide Unitil's statement today.

12 CMSR. SIMPSON: Okay. Pardon me.
13 Attorney Campbell.

14 MR. CAMPBELL: Thank you, Commissioner
15 Simpson.

16 So, Unitil also shares many of the
17 federal preemption concerns that have been
18 identified by Attorney Chiavara, and we look
19 forward to exploring those further in this
20 proceeding.

21 In that regard, Unitil also supports
22 Eversource's recommendation that the parties be
23 afforded the opportunity to file legal briefs on
24 the issue of federal preemption.

1 Thank you.

2 CMSR. SIMPSON: Thank you.

3 Mr. Consumer Advocate.

4 MR. KREIS: Thank you, Mr. Presiding
5 Officer.

6 I really thank Ms. Chiavara and
7 Mr. Campbell for what they have just told you,
8 because what I heard is an unambiguous statement
9 that this state's utilities, or at least the two
10 that you heard from, intend to do everything in
11 their power to thwart the expressed legislative
12 intent that the General Court adopted when it --
13 when it enacted Senate Bill 321 last year.

14 The statutory directive to the Public
15 Utilities Commission could not be more clear and
16 unambiguous. The General Court has instructed
17 you, the Public Utilities Commission, to make a
18 definitive determination about where the
19 jurisdictional lines lie here. And the utilities
20 are basically asking you to ignore that
21 directive, climb under your desks, whimper, and
22 await their action to cause the Federal Energy
23 Regulatory Commission to make a decision that you
24 are expressly authorized to make as a matter of

1 New Hampshire law.

2 Now, it is true that there is case law
3 to the effect that over certain things the
4 Federal Power Act vests FERC with exclusive
5 jurisdiction. But that does not mean that the
6 Public Utilities Commission, and, ultimately, the
7 New Hampshire Supreme Court, cannot grapple with
8 legal issues that arise under both federal and
9 state law.

10 Another route to a "definitive
11 determination" is for you to make decisions or
12 reach legal conclusions about the jurisdictional
13 issues that are raised by this docket. A party
14 that doesn't like what you decide has the right
15 to seek appellate review by the New Hampshire
16 Supreme Court. And, if what the New Hampshire
17 Supreme Court decides is displeasing to anybody,
18 they have the right to file a petition for a writ
19 of *certiorari* with the United States Supreme
20 Court.

21 You've heard today a citation to *Hughes*
22 *versus Talen Energy Marketing*. We know,
23 therefore, that the Supreme Court of this great
24 country is not afraid to grapple with the

1 jurisdictional and constitutional issues that
2 arise under the Federal Power Act.

3 I heard a couple of things that I just
4 found, I guess, impossible to disagree [agree?]
5 with. First is the idea that there is simply no
6 state authority whatsoever over what the
7 utilities or what Ms. Chiavara characterized as
8 "wholesale intrastate transactions". We know
9 that can't possibly be true. Why? Net metering.
10 Net metering, any time a residential or retail
11 customer of a utility in this state feeds
12 electrons back into the grid for resale, they
13 have just conducted a wholesale intrastate
14 transaction with their utility. And FERC has
15 said in the past that it does not intend to
16 interfere with or embroil itself in state
17 regulation of those transactions. So, the idea
18 that there is this ironclad ban on any federal
19 authority over so-called "wholesale intrastate
20 transactions" simply does not withstand scrutiny.

21 So, too, with the proposition that
22 ISO-New England is "not bound by PUC authority".
23 ISO-New England is a nonprofit organization. It
24 is based in another state, incorporated under the

1 laws of another state. It is not a New Hampshire
2 utility. But, like anyone or anything, when it
3 does things that raise issues under New Hampshire
4 law, of course it's bound by the authority of
5 duly authorized decision-makers in this state,
6 whether it's the PUC, the New Hampshire Supreme
7 Court, or the trial courts of this state.

8 And, so, if the utilities are so
9 outraged by the possibility that the Public
10 Utilities Commission will actually follow the
11 instructions that it has received from the
12 General Court, then it certainly knows what the
13 address of the Federal Energy Regulatory
14 Commission is. It could file some sort of
15 petition at FERC this afternoon, if they wanted.
16 So, the idea that you should simply call a halt
17 to this proceeding is not appropriate, just not
18 appropriate.

19 I guess I'd also like to point out, I
20 don't think this is being swept under the rug,
21 but the Legislature has directed the PUC to make
22 what I guess I would characterize is a "factual
23 determination" about, and I'm reading from the
24 statute now, "whether such projects produce

1 avoided transmission cost savings." That will
2 require, I think, a formally developed record and
3 a full-blown adjudication. And I don't think
4 that the Commission should shrink from its
5 instruction to do that, regardless of how these
6 jurisdictional questions get addressed.

7 I think that's all I have to say, at
8 least as a matter of preliminary comments.

9 CMSR. SIMPSON: Thank you. New
10 Hampshire Department of Energy.

11 MR. YOUNG: Thank you, Commissioners.

12 For today's prehearing conference, the
13 Department does not have a position on any of the
14 jurisdictional issues that are the focus of this
15 investigatory proceeding.

16 We do look forward to working with all
17 the parties in this matter on those issues, as
18 well as a development of procedural schedules.

19 I guess, turning to some of the motions
20 filed by the parties ahead of today, the
21 Department has reviewed those filings. And at
22 this time we would not oppose the initiation of
23 an adjudicative proceeding, and would, you know,
24 defer to the Commission on such decisions.

1 Thank you.

2 CMSR. SIMPSON: Okay. Thank you.

3 Community Power Coalition of New
4 Hampshire.

5 MR. BELOW: Thank you.

6 At the outset, let me say that the
7 Coalition fully concurs with the comments of the
8 Consumer Advocate.

9 And I just want to comment that I
10 think, over the past few decades, there has
11 become a sloppy trend, sometimes at FERC, but
12 certainly with quite a few utility lawyers, of
13 conflating the term "wholesale sales" with
14 "wholesale sales and intrastate commerce", within
15 a state. It has long been understood, since the
16 enactment of the Federal Power Act in 1935, that
17 the Federal Power -- the FPA, and its successor,
18 FERC, has exclusive jurisdiction over selling
19 electricity in interstate commerce. But that is
20 distinguished from "intrastate commerce". And
21 wholesale sales has become an intra --
22 "interstate commerce" has become a shorthand that
23 gets conflated with that "intrastate commerce".

24 And let me just -- I think both the

1 Federal Power Act and the Supreme Court decisions
2 are quite clear on this. There's really no
3 ambiguity. So, the short answer to the questions
4 that are proposed is "No, there is no
5 jurisdictional conflict. No, there's not an
6 issue with regard to transmission tariffs." This
7 is -- what's proposed in the statute is entirely
8 compatible with the FERC-approved Open Access
9 Transmission Tariffs that are currently in
10 effect, and they would produce avoided
11 transmission cost savings.

12 So, just as a bit of background, I
13 think it's helpful to look at the review of the
14 issues that the U.S. Supreme Court made in
15 *FERC v. EPSA*, in 2016, which is still standing
16 precedent. And just in summary, which gives a
17 little bit of background, the Court held in the
18 *Public Utilities Commission of Rhode Island*
19 *versus Attleboro Steam & Electric*, in 1927, that
20 the Commerce Clause bars the States from
21 regulating certain interstate electricity
22 transactions, including wholesale sales, that is
23 sales for resale, across state lines. That
24 ruling created what became known as the

1 "Attleboro gap", a regulatory void which, the
2 court pointedly noted, only Congress could fill.

3 Congress responded to that invitation
4 by passing the Federal Power Act in 1935. The
5 Act charged FERC's predecessor agency with
6 undertaking effective federal regulation of the
7 expanding business of transmitting and selling
8 electric power in interstate commerce. *New York*
9 *v. FERC*, from 2022. Under the statute, the
10 Commission has authority to regulate "the
11 transmission of electric energy in interstate
12 commerce", "the sale of electric energy at
13 wholesale in interstate commerce."

14 The Act also limits FERC's regulatory
15 reach, and thereby maintains a zone of exclusive
16 state jurisdiction. As pertinent here,
17 Section 824(b)(1), the same provision that gives
18 FERC authority over wholesale sales", using that
19 shorthand, "sales", that this subchapter,
20 including its delegation to FERC, "shall not
21 apply to any other sale of electricity."
22 Accordingly, and this is a Supreme Court finding,
23 "Accordingly, the Commission may not regulate
24 either within state wholesale sales or, more

1 pertinent here, retail sales of electricity", in
2 that particular case. And they cite, you know,
3 another prior Supreme Court decision.

4 "State utility commissions continue to
5 oversee these transactions as earlier described.
6 Section 824(b) limits FERC's sale jurisdiction to
7 that at wholesale, reserving regulatory authority
8 over retail sales, as well as intrastate
9 wholesale sales, to the States. FERC cannot take
10 an action transgressing that limit." That's
11 clear Supreme Court language over the basic
12 jurisdictional issue.

13 Furthermore, ISO-New England has
14 clarified its tariffs such that distributed
15 generation of storage, and by that I mean
16 facilities that are under 5 megawatts at the
17 interconnection point to the distribution grid,
18 and that are not wholesale market -- interstate
19 wholesale market participants with ISO-New
20 England, they're not registered as a generation
21 asset, and they're not participating in
22 interstate sales of electricity. That those
23 facilities, which I'll just call generally
24 "distributed generation", function as load

1 reducers, and thereby do not incur energy,
2 ancillary service costs, or capacity charges,
3 because they reduce the load on the interstate
4 transmission grid and the bulk wholesale
5 generation of electricity that is under FERC
6 jurisdiction.

7 Furthermore, there was controversy and
8 confusion around this, with regard to
9 transmission tariffs, that has, only in the past
10 year, been fully clarified. And that confusion
11 came around some language about behind-the-meter
12 generation, which, again, was a conflating of
13 behind the wholesale meter, at the intersection
14 of transmission and distribution, with retail.
15 And that the confusion led NEPOOL and ISO-New
16 England market participants to propose a
17 modification to the transmission tariff to make
18 clear that any distributed generation, as it's,
19 you know, characterized in the definition of a
20 "limited producer" in the statute at issue, do,
21 you know, function the same way as load reducers,
22 and serve to offset or reduce, they don't count
23 towards the coincident peak demand, because they
24 reduce that peak demand on which transmission

1 charges are allocated.

2 So, we already have consistency with
3 the Open Access Tariff that says, if you reduce
4 the load on the transmission grid, measured at
5 the interface between FERC jurisdiction and state
6 jurisdiction, and you're not a market
7 participant, you know, you meet those criteria,
8 then you are treated as having reduced that load
9 and avoided those transmission costs. It's
10 really that simple.

11 And, so that -- I'll just conclude with
12 those points. I, you know, would be happy to
13 speak to the need to turn this into an
14 adjudicative proceeding, because, you know,
15 fundamentally, the Commission needs to make
16 findings of law, which would then be appealable,
17 that would create a definitive determination.
18 So, I think we need to move to that stage, and
19 get into perhaps a round of legal briefs, and a
20 chance to respond to those, and then perhaps an
21 oral hearing, you know, an argument, something
22 like that.

23 Thank you.

24 CMSR. SIMPSON: Thank you. Clean

1 Energy New Hampshire?

2 MR. SKOGLUND: We have no comments at
3 this time. Thank you.

4 CMSR. SIMPSON: Okay. Thank you. So,
5 somewhat analogous to the varying perspectives on
6 interstate and intrastate jurisdiction, we're
7 aware of differing views on the Commission's use
8 of investigations versus adjudications.

9 Looking at Senate Bill 321, and the
10 subsequent revisions to RSA 374, the Legislature
11 used some definitive terms, the word
12 "definitive", in terms of the Commission's
13 determination. But the Legislature also directed
14 the Commission to use our adjudicative abilities
15 when there are projects, pilot projects within
16 the scope of the statute, proposed.

17 With respect to the motions to convert
18 this to adjudication, I know we've heard from
19 some of the parties on that. So, if your
20 comments have already been voiced, they don't
21 bear repeating; they're on the record.

22 The Commission is interested in hearing
23 from the parties as to whether or not a more
24 informal process, via an investigation, might be

1 beneficial to all of the parties involved, the
2 public, and the Commission, given the complexity
3 and dimension of the issues at hand, and whether,
4 at some point down the road, such proceeding
5 might be converted to adjudication, or, if it
6 remains the position of the parties that, from
7 the beginning of this effort, this should be an
8 adjudicated case.

9 So, with that, I'll circle back to my
10 original point, to offer folks another
11 opportunity to argue the merits of the motions to
12 convert. And I'll start with Attorney Sheehan,
13 if you have any comments?

14 MR. SHEEHAN: Thank you.

15 I think the legal issue that's been
16 discussed so far this morning needs to be
17 resolved either way. I contest Mr. Kreis's
18 arguments that we have some ulterior bad motive
19 here. It's simply a disagreement of the law, and
20 we need direction on that.

21 If we are right, then this docket,
22 doesn't matter whether it's an adjudication or an
23 investigation, it doesn't go forward. If we are
24 wrong, then it should be an adjudication, as we

1 set out in the motion.

2 CMSR. SIMPSON: Thank you. Attorney
3 Chiavara.

4 MS. CHIAVARA: Yes. Thank you.

5 I agree with Attorney Sheehan's
6 assessment that these threshold legal matters do
7 need to be decided one way or the other.

8 I would say that I would still advocate
9 for a full adjudication, rather than a more
10 informal proceeding, due to -- even setting aside
11 the federal preemption/jurisdictional issues for
12 a moment, the issues -- the substantive increases
13 within SB 321 are of a certain -- a degree of
14 complexity that I believe should be afforded due
15 process.

16 I suppose that it matters a little bit
17 what would come out of a more informal process.
18 If it were just to be information-gathering, then
19 that might be one thing. But, since the statute
20 asks for a definitive determination, I would say
21 that, you know, testimony, rebuttal testimony,
22 and, you know, exam and cross-exam, would all be
23 things that the utilities would want to have, to
24 make sure that these issues are fully fleshed

1 out.

2 CMSR. SIMPSON: Thank you. Attorney
3 Campbell.

4 MR. CAMPBELL: I would just echo what
5 Attorney Chiavara and Attorney Sheehan have
6 already stated. I think the "definitive
7 determination" requirement in the statute
8 suggests an adjudicatory proceeding would be the
9 most appropriate way to proceed in this matter,
10 in order to preserve the due process rights of
11 the parties.

12 Thank you.

13 CMSR. SIMPSON: The Consumer Advocate.

14 MR. KREIS: Thank you, Mr. Presiding
15 Officer.

16 First, I'd like to clarify that the
17 Office of the Consumer Advocate ascribes no
18 ulterior or ignoble motives to anybody in this
19 proceeding. I would just simply make the
20 observation that the utilities apparently
21 disagree with what the Legislature decided when
22 it enacted Senate Bill 321, and intend to do
23 everything in their power to effectuate that
24 disagreement. That is an honorable position with

1 which I just happen to emphatically disagree in
2 my official capacity.

3 That said, I completely agree with the
4 utilities with respect to their motion to
5 commence an adjudicative proceeding.

6 Mr. Presiding Officer, as you alluded
7 to, there are various perspectives on the way
8 that the Commission has used its investigative
9 authority in other dockets. Those can be put to
10 one side. Here, it is clear that the Commission
11 has been instructed by the General Court to make
12 a determination that clearly will affect the
13 rights, duties, obligations, and other
14 substantial interests of parties. And, so,
15 therefore, the Administrative Procedure Act
16 requires adjudicative proceedings in this
17 instance. And the fact that there might be later
18 adjudications necessary to make more specific
19 determinations, about individual utilities or
20 individual pilot projects, that is -- that's
21 neither here nor there. Right from the getgo,
22 you are told that you must make definitive
23 determinations. That requires adjudication.

24 CMSR. SIMPSON: Thank you. Department

1 of Energy.

2 MR. YOUNG: The Department, I think,
3 would just reiterate its previous comments, that
4 we, you know, we would not oppose the
5 adjudicative proceeding. And we would just defer
6 to the Commission on how to proceed in this
7 matter.

8 CMSR. SIMPSON: Thank you. Community
9 Power Coalition.

10 MR. BELOW: Thank you.

11 We fully concur on this issue with the
12 utilities and the Consumer Advocate, that this
13 really requires an adjudication.

14 I had kind of hoped that maybe we could
15 informally stipulate to most issues. Because I
16 think what this may end up coming down to is an
17 argument over whether this implicates
18 Eversource's point-to-point transmission
19 provision, which doesn't even exist with National
20 Grid. And -- but it's apparent that there are
21 broader jurisdictional issues that need to be
22 resolved. And the way to do that is through an
23 adjudication. And I think the sooner we get to
24 that, the sooner we can get this docket resolved.

1 CMSR. SIMPSON: Thank you. And Clean
2 Energy New Hampshire.

3 MR. SKOGLUND: Thank you,
4 Commissioners.

5 We have no formal position on these
6 matters. But do note that, in previous dockets,
7 investigatory dockets, specifically Docket IR
8 20-004, which looked at time-of-use rates for
9 electric vehicles, that was helpful in setting
10 the stage for the later docket, DE 20-170, in
11 that the parties were able to educate one other
12 and come to positions that more closely hewed one
13 another, so there was greater agreement.

14 CMSR. SIMPSON: Thank you.

15 *[Cmsr. Simpson, Cmsr. Chattopadhyay,*
16 *and Atty. Ross conferring.]*

17 CMSR. SIMPSON: Okay. Thank you all
18 for those comments.

19 Before we go to Commissioner questions,
20 are there any other procedural matters that folks
21 in the room would like to raise today?

22 *[Atty. Chiavara indicating in the*
23 *negative.]*

24 *[No verbal response.]*

1 CMSR. SIMPSON: I think it would be
2 helpful if the participants could work together
3 to offer a procedural schedule, whether it's in
4 an adjudicative form or an investigatory form in
5 this proceeding, and offer that to the
6 Commission, so that we can better understand the
7 timelines through which the participants would
8 like to proceed.

9 We'll take the motions under advisement
10 and issue an order in due course.

11 I will now recognize my esteemed
12 colleague, Dr./Commissioner Chattopadhyay.

13 CMSR. CHATTOPADHYAY: A few more
14 adjectives would have helped. But, clearly, not
15 being a legalee, so I'm sort of struggling with
16 it. Being an economist, to me, what jumps out is
17 that, even like when you're talking about pilots,
18 unless it is clearly specified what the elements
19 are within a pilot, it's hard for me to decide
20 whether something is, you know, going forward,
21 the right thing to do or not.

22 So, just I'm going to simply ask one
23 question. You would agree that, if there is a --
24 if the pilot is properly specified, and even

1 there, that information would help someone like
2 me to understand whether a pilot should go ahead
3 or not?

4 And, you know, that can certainly
5 happen in an adjudicated docket. And I have
6 not -- I am still thinking about it. But really
7 trying to make sure that, when you talk about a
8 pilot, unless I have a good sense of what the
9 specifics are, at this point we're really talking
10 about a legal issue. That's all, right?

11 MR. KREIS: I can leap into that fray,
12 if that would be helpful?

13 CMSR. CHATTOPADHYAY: Sure.

14 MR. KREIS: I think, Commissioner
15 Chattopadhyay, that you're essentially raising a
16 "chicken and egg" problem. In that, if I'm
17 understanding you correctly, you think it might
18 be helpful to have a specific pilot program, or
19 possibly more than one, to look at to help you
20 make determinations that you're required to do
21 under SB 321. And that is, I think, a
22 potentially valid approach to this particular
23 proceeding. It still, I think, requires an
24 adjudicative process.

1 I think, and I'm really curious to hear
2 what the other parties would have to say, these
3 things are often a matter of allocation of
4 resources and administrative efficiency. There
5 seems to be some momentum behind having you all
6 make a bunch of legal determinations right at the
7 outset, that allows parties to avoid the
8 extensive effort required to develop and propose
9 and then litigate over a pilot program.

10 But the Office of the Consumer Advocate
11 is willing to participate in this process in
12 whatever manner the Commission finds convenient
13 and consistent with the public interest.

14 CMSR. CHATTOPADHYAY: Anyone else?

15 MR. BELOW: Yes. Thank you,
16 Commissioner Chattopadhyay.

17 I think that, obviously, the statute
18 requires the definitive jurisdictional
19 determination before we can get to the point of
20 actually proposing any pilots or the Commission's
21 consideration thereof. But I think the statute
22 itself spells out the key elements of what would
23 likely be part of any pilot that raised the
24 jurisdictional issues. Which is, if a limited

1 producer, and, again, that's caveated with the
2 fact that they are not participating in FERC
3 jurisdictional interstate wholesale markets in
4 any way, can they get credit for actual avoided
5 transmission charges and actual avoided capacity
6 charges?

7 And just to illustrate the capacity
8 issue right now, all net metered generation,
9 except that which is, I would say, incorrectly
10 allowed to be wholesale market participants with
11 ISO-New England, there's a few examples of that,
12 which I think is contrary to the statute, because
13 they have to be behind a retail meter. And, if
14 they're participating in interstate wholesale
15 commerce, they're behind a wholesale meter.

16 So, taking that aside from the fact
17 that there seem to be some exceptions that may be
18 inappropriate, assuming all the net metering
19 generation in New Hampshire that does not
20 participate in ISO-New England markets, when they
21 produce power at the hour of coincident peak
22 today, the annual one, they reduce the overall
23 capacity obligation that is allocated to
24 customers of that distribution utility.

1 And this is simply positing that credit
2 be given for that, in much the way that the Value
3 of Distributed Energy Resources Study suggested
4 is appropriate, and recognize that they actually
5 do have value in reducing the need for capacity
6 from the FERC jurisdictional bulk wholesale
7 interstate power market.

8 Likewise, today, net metered generation
9 that is producing at the monthly hour of
10 coincident peaks in which RNS and LNS charges are
11 allocated, function under the FERC-approved
12 ISO-New England tariff to reduce the apparent
13 demand on the transmission grid on which
14 allocation of transmission costs are made. So,
15 they do have the effect of reducing those costs.

16 And, as the Value of Distributed Energy
17 Resource Study suggested, if you attribute that,
18 there's significant value there. So, the
19 parameters of the statute basically say those are
20 the two key new things that occur.

21 And I'll just give a practical example
22 of this. The City of Lebanon installed some
23 solar at its water treatment plant and wastewater
24 treatment plant. So, a couple of years ago, we,

1 our two biggest loads in the City, curtailed
2 generation -- I mean, curtailed energy
3 consumption at our water treatment plant, to the
4 point that, at the hour of highest demand in all
5 of New England, we were exporting power to the
6 grid. And the result of that is we got a zero
7 capacity tag, no capacity cost allocation for the
8 following power year, because we had zero demand
9 on the grid, and it was a customer that had
10 interval metering, so that was measured. And
11 that interval metering measurement is implicit or
12 explicitly part of the statute, would be part of
13 the pilot.

14 However, to the extent we exported to
15 the grid, we got no credit for that. But, in
16 point of fact, it actually reduced the allocation
17 of capacity, overall capacity tags, it's just
18 that that benefit got socialized to all the
19 customers.

20 So, I mean, there are some fact
21 patterns here that could be suggested or set.
22 But, basically, the jurisdictional implications
23 are explicit in the kind of credits that the
24 pilots, you know, that the statute contemplates

1 would occur in a pilot.

2 So, it's those two -- those are the two
3 really jurisdictional issues that seem to arise
4 here. There seems to be no debate that this
5 reduces energy costs. You don't have to buy
6 energy or ancillary services, if you reduce the
7 load, you know, if you're not getting that from
8 the bulk market.

9 The issue is, is there a similar
10 recognition of credit when it's also reducing the
11 capacity and transmission? And that's really the
12 essence of it.

13 CMSR. CHATTOPADHYAY: Any comments from
14 the utilities?

15 MS. CHIAVARA: Yes. Thank you very
16 much.

17 Assistant Mayor Below's statements, I
18 think they go -- they head a little far down the
19 road on the substance of this matter. I think
20 they assume that there are no jurisdictional
21 conflicts, which I think is what this proceeding
22 is supposed to ascertain. And I think that that
23 requires a factual inquiry which would happen
24 throughout the course of an adjudication.

1 However, it doesn't address the --
2 going back to the OCA's reference to the "chicken
3 and egg" situation, taking either the egg or the
4 chicken first, whichever it is in this instance,
5 I think the threshold questions are legal ones.

6 And, so, I would still recommend that
7 either along with a suggested procedural
8 schedule, or prior to the submission of a
9 procedural schedule, that the parties or
10 participants be able to submit legal briefs, so
11 that we can determine sort of these threshold
12 questions of federal preempt -- of whether or not
13 the statute itself is federally preempted to
14 various -- like, to certain degrees, or entirely.

15 CMSR. CHATTOPADHYAY: Thank you.

16 CMSR. SIMPSON: In response to that, I
17 think we would welcome briefing. And, if folks
18 would like to make that a formal element, with a
19 date, we can do that. But, certainly, anybody is
20 welcome to submit anything into the record with
21 respect to their perspectives on that particular
22 issue. And I think that's really at the heart of
23 the Commission's question of the appropriateness
24 of embarking on an investigation, and,

1 subsequently, an adjudication.

2 Clearly, we recognize the requirement
3 from the Legislature to make a definitive
4 determination. It's just a question of "how and
5 when do we do that?"

6 And it sounds like the parties have
7 general support for an adjudication. I think the
8 question remains of whether an initial informal
9 process, where other parties -- or, other
10 participants, I should say, stakeholders, might
11 be brought in to educate all of us on these very
12 complex issues. Whether that would be helpful,
13 or do we jump right in to an adjudication from
14 the beginning, and the rules that align with
15 that?

16 Very interesting questions here. Does
17 anyone have any perspectives on what makes
18 transactions in interstate commerce, because that
19 seems to be a threshold issue?

20 MR. KREIS: Well, that's another fray
21 I'm willing to leap into.

22 I'm a simplistic person. And, so,
23 therefore, I guess I, as an initial matter, look
24 at what's on the high-voltage side of substations

1 and what's on the low-voltage side. And I think
2 it's really great public policy to encourage
3 parties to buy and sell electricity with each
4 other on the low-voltage side of distribution
5 substations. And I think what happens on that
6 side of the distribution substations is subject
7 to plenary state jurisdiction.

8 You have to keep in mind, or I would
9 urge the Commission to keep in mind, that in this
10 fabulous Republic of ours, the States are
11 sovereign. And you have authority, the State has
12 authority over everything. And the State has
13 delegated a pile of that authority to you, and
14 you should exercise it.

15 CMSR. SIMPSON: A question for Mr.
16 Below.

17 Are you aware of any other states that
18 enable the types of transactions that you just
19 posited with respect to the pilot programs and
20 Commission Chattopadhyay's question? Or, is this
21 a novel area, in your opinion, of electricity
22 markets?

23 MR. BELOW: I don't know that it's
24 entirely novel, in part, because, since 1977 or

1 '78, New Hampshire has had a law in its books,
2 the LEEPA statute, which posited state
3 jurisdiction over both, between a generator and a
4 customer, that could be either potentially a
5 retail or a intrastate wholesale sale.

6 However, generally speaking, I'm not
7 sure those provisions of the statute have ever
8 actually been utilized. So, I am, you know,
9 out -- you know, there's extensive precedent with
10 regard to net metering. And, as the Consumer
11 Advocate pointed out, sometimes the net metering
12 cases have assumed that there is actually a
13 wholesale transaction, that the net metering --
14 the net metered generator is actually selling to
15 the utility at wholesale and they're reselling
16 it.

17 And, you know, I think, if you delve
18 into that case law, it generally comes back that
19 that's a state jurisdictional transaction. You
20 know, there have been attempts to escalate that
21 and try to get FERC to take jurisdiction over it,
22 but they have repeatedly declined. And
23 Congressional legislation has explicitly
24 recognized that net metering transactions are, in

1 essence, a state jurisdictional matter. You
2 know, that's reflected in the Energy Policy Act
3 that amended PURPA, that directed state
4 commissions to, essentially, enable and encourage
5 net metering. They didn't tell FERC to do that.
6 They told the state, you know, PUCs to do that.

7 But I think there's never been a notion
8 that net metering is the only way you can have
9 these kinds of transactions. And, so, what's
10 contemplated here is simply a market-based
11 approach, in which, you know, there's a deal
12 between either a retail customer or a supplier
13 and a generator that happens outside of net
14 metering that is just a bilateral transaction.

15 And, certainly, New Hampshire's
16 restructuring statute contemplated that such
17 options would be available to customers, and that
18 the only -- you know, it was never, I don't
19 think, contemplated that the only way customer
20 choice was to go to pretend like such a sale from
21 a generator that might be across the street or in
22 the same community, on the same circuit on a
23 distribution grid, that somehow that power had to
24 flow up into the transmission grid and be sold

1 back down, you know, backwards, because that's
2 not how the power actually flows. You know,
3 power generated on the distribution grid offsets
4 power -- offsets load on the distribution grid.
5 It doesn't flow back up into the transmission
6 grid. So, --

7 CMSR. SIMPSON: A question on sale for
8 resale.

9 MR. BELOW: Yes.

10 CMSR. SIMPSON: With the exception of a
11 bilateral agreement from one, let's call him a
12 generator, to one retail customer, --

13 MR. BELOW: Uh-huh.

14 CMSR. SIMPSON: -- if that purchaser
15 were an aggregation, how -- would that
16 transaction be a sale for resale, in your
17 opinion?

18 MR. BELOW: In intrastate, within the
19 state?

20 CMSR. SIMPSON: Correct.

21 MR. BELOW: And I think, I can't cite
22 it today, but I believe that there is some court
23 precedent that essentially says "An intrastate
24 sale is a sale in which the power is generated

1 within a state and it is sold within the same
2 state." Whether it actually, to make that
3 transaction happen, involves FERC jurisdictional
4 transmission elements, you know, is sort of a
5 separate matter. And this would come out in
6 legal argument, legal briefs.

7 I think there's pretty clear legal
8 precedent that, even if the sale involves some
9 element of a FERC jurisdictional transmission
10 element, that sale itself is still a state
11 jurisdictional event, because the buyer and
12 seller are within the same state. And then, the
13 issue becomes, you know, compliance with the Open
14 Access Transmission Tariff. And part of the
15 whole point of that behind FERC's, you know,
16 original analysis was to get rid of sort of
17 point-to-point pancake-type transmissions, and
18 reform the transmission structure.

19 And the way that's occurred in New
20 England is to say that generators don't pay for
21 transmission, except to interconnect with the
22 PTF, or whatever transmission facility. But,
23 once they're interconnected, they don't pay for
24 transmission. Customers pay for it. And the way

1 they pay for it, over open, nondiscriminatory
2 access to transmission, is based on their share
3 of coincident demand on that system. And, you
4 know, in some ways, it's that simple.

5 But, in terms of other states that have
6 actually explicitly done this, I'm not aware of
7 any particulars on that, outside of net metering.
8 And I think, for better or for worse, net
9 metering has become the vehicle that everybody's
10 turned to. And this is trying to create more of
11 a market-based, which I think is consistent with
12 New Hampshire's legislative policy, approach to
13 the same kind of transaction that occurs with net
14 metering.

15 CMSR. SIMPSON: Thank you. A few
16 questions for the utilities.

17 It would be helpful if you could
18 explain, while distinguishing between
19 distribution and transmission, your wheeling
20 agreements, and the applicability of those
21 agreements with respect to the types of possible
22 pilot projects enabled by this statute?

23 MS. CHIAVARA: Could you give us just a
24 moment?

1 CMSR. SIMPSON: Of course.

2 [Atty. Chiavara and Mr. Burnham
3 conferring.]

4 MR. BURNHAM: At least on the
5 transmission side, --

6 CMSR. SIMPSON: Could you just identify
7 yourself?

8 MR. BURNHAM: I'm sorry. Dave Burnham,
9 Director of Transmission Policy --

10 CMSR. SIMPSON: Thank you.

11 MR. BURNHAM: -- for Eversource Energy.

12 On the transmission side, I'm not aware
13 of any wheeling agreements. Transmission service
14 in New England is kind of a uniform product
15 provided under the ISO-New England Open Access
16 Transmission Tariff.

17 I am aware of some distribution
18 wheeling agreements, but it's out of my area.
19 I'm not comfortable trying to speak to that
20 today.

21 CMSR. SIMPSON: Do you know if Public
22 Service Company of New Hampshire has any wheeling
23 agreements?

24 MR. BURNHAM: I believe we have some

1 wholesale distribution contracts, which I believe
2 is what you're referring to when you say
3 "wheeling agreements". But I'm not familiar with
4 the details of them.

5 CMSR. SIMPSON: Yes. And I very well
6 may not be using the correct vocabulary. But it
7 would seemingly imply the statute in some of the
8 pilot projects described in the statute, that
9 these projects would be transporting energy
10 across the distribution system?

11 MR. BURNHAM: Actually, the one detail
12 that may be relevant is that the agreements, and
13 the customers that are party to those agreements
14 that I'm aware of, are using those to access the
15 wholesale markets and the transmission system.
16 So, they're taking -- they are ultimately taking
17 transmission service, --

18 CMSR. SIMPSON: Okay.

19 MR. BURNHAM: -- and paying for it as
20 well.

21 CMSR. SIMPSON: So that the
22 distribution system serves as a means to access
23 the transmission system?

24 MR. BURNHAM: That's my understanding

1 of the agreements I am aware of.

2 CMSR. SIMPSON: So, the topic of
3 utilizing purely the distribution system to
4 transport energy from one node to another, you're
5 not aware of that occurring today?

6 MR. BURNHAM: I am not aware of that.

7 CMSR. SIMPSON: Okay. Any of the other
8 utilities?

9 MR. SHEEHAN: I'm not aware of any in
10 Liberty's territory. As a sidenote, there was a
11 docket here, --

12 *[Court reporter interruption.]*

13 MR. SHEEHAN: There is a DE 15-068,
14 which was a proposal to do just that, which did
15 not result in an order. It was filed, it was
16 litigated, and then it was withdrawn. But that's
17 the only one I'm aware of. And I think that
18 might have even been Eversource's territory back
19 then.

20 MS. CHIAVARA: On a related note, and
21 this takes it back more in a legal direction,
22 FERC has weighed in on transactions over the
23 state-regulated distribution systems, and it's in
24 *CPUC v. SCE*. They rejected the argument that

1 sales of power that take place solely over
2 state-regulated distribution systems are exempt
3 from FERC jurisdiction. And that FERC's
4 authority to regulate sales for resale of
5 electric energy and transmission in interstate
6 commerce is definitive regardless of the
7 generator's location on the distribution system.

8 And I would say that, going back to
9 Commissioner Chattopadhyay's question about
10 "whether this is a novel program?", I think the
11 answer is "yes", in that it's not net metering.
12 This is sales to a third party and not back to
13 the host utility. And I think that does --
14 that's a difference that makes a difference. So,
15 I think that makes it novel.

16 CMSR. SIMPSON: Okay. Anything else
17 from the utilities on that?

18 *[No verbal response.]*

19 CMSR. SIMPSON: Okay. Do you have
20 anything else, Commissioner Chattopadhyay?

21 CMSR. CHATTOPADHYAY: I'm sort of
22 hesitating, trying to create hypothetical
23 situations. But I don't really need a response,
24 *per se*, but I'll tell you where -- what I'm

1 struggling with.

2 So, let's say you have a zone that has
3 200 megawatts of, you know, needs that also
4 relies on the transmission system, but,
5 ultimately, that load requirement is coming from
6 customers who are in a distribution system. And,
7 if, within the distribution system, if I'm
8 correct, it's the -- the load is 200 megawatts,
9 let's say, or maybe a little bit off here and
10 there, they all agree to figure out a way to
11 sell, you know, to get generation, to get power
12 within that zone, and consume it all within the
13 distribution network, then the fact that that
14 zone is part of a grid, that they -- are we
15 talking about then they're completely avoiding
16 transmission costs? That's bothering me, like,
17 you know, whether that can truly happen.

18 So, no need to respond. I just wanted
19 to share that.

20 CMSR. SIMPSON: Thank you.

21 CMSR. CHATTOPADHYAY: Thank you.

22 *[Cmsr. Simpson conferring with*
23 *Atty. Ross.]*

24 CMSR. SIMPSON: Okay. Can the

1 parties -- or, excuse me, can the participants
2 offer comments on a briefing schedule? When
3 might they feel comfortable to submit initial
4 briefs?

5 That would be helpful in the
6 Commission's analysis of the motions at hand, and
7 scoping out our duties under the statute.

8 MS. CHIAVARA: I think the utilities
9 would be -- ideally, would ask for two weeks to
10 submit briefs, and able to do it in one, if
11 there's a sense of urgency felt by others.

12 CMSR. SIMPSON: Okay. And is that
13 echoed by the other companies?

14 MR. SHEEHAN: Yes.

15 MR. CAMPBELL: Yes, it is.

16 CMSR. SIMPSON: Okay. And I'll go to
17 the Consumer Advocate?

18 MR. KREIS: The Consumer Advocate
19 certainly is not in any position to file a brief
20 on all of these issues in one week's time. And
21 I'm not even sure whether we're in a position to
22 do that in two weeks' time. We're in a bit of a
23 staffing and resource crisis at present, as
24 you're probably aware.

1 I'm not sure whether I wouldn't just
2 await what the utilities file, and respond to
3 that. I rather thought this was something that
4 we would talk about informally, after you all
5 adjourn the on-the-record portion of this
6 morning's procedures.

7 But I'm glad to hear that you think
8 that the first step ought to be some briefing. I
9 agree with that rather hardily.

10 CMSR. SIMPSON: Department of Energy?

11 MR. YOUNG: Department of Energy would,
12 I think, raise some of the similar concerns of
13 the Consumer Advocate. We would need at least
14 two weeks, and would need to consider maybe some
15 other timing issues before providing any sort of
16 definitive schedule.

17 CMSR. SIMPSON: Community Power
18 Coalition?

19 MR. BELOW: Yes. Thank you.

20 I guess I have a question for the
21 Commission itself. Which is, it seems, you know,
22 to be administratively efficient, I think legal
23 briefs need to be in the context of an
24 adjudication. To do that, it seems as though a

1 new order of notice needs to be issued, to notice
2 that this is converted to an adjudication, so
3 that there can be formal parties to the
4 proceeding that have standing and position to
5 file briefs, and potentially testimony as well to
6 support factual issues.

7 So, I guess, you know, I'm certainly
8 interested in expediting this. But I guess the
9 question is, how quickly, you know, I realize you
10 have to make a decision, but, once that's done,
11 how quickly could -- I guess an order of notice
12 could occur pretty quickly, but it seems like
13 there's some time -- I'm just wondering how much
14 time would be needed in order to actually get
15 formal interventions. And I think, maybe
16 informally, we could talk about what a schedule
17 would follow from the point in time in which we
18 have parties to an adjudicative proceeding, and
19 briefing could happen pretty quickly once that's
20 done.

21 But I think the timetable for briefing,
22 and perhaps rebuttal, needs to occur in the
23 context of this being an adjudication, to be
24 efficient and productive.

1 CMSR. SIMPSON: And I don't know if
2 we're in a position to respond directly to that.
3 We're certainly grappling with the complexity of
4 the issues here, and trying our best, based on
5 the material in front of us, to educate ourselves
6 and better understand the issues and the
7 determinations that we have to make.

8 All right. Clean Energy New Hampshire?

9 MR. SKOGLUND: We defer to everyone
10 else in the room on this matter.

11 CMSR. SIMPSON: Okay. Thanks.

12 Well, then would the participants today
13 be able to work together to propose a joint
14 procedural schedule, with your recommended
15 approaches of this investigation and possible
16 subsequent adjudication, within, let's say, a
17 week, and propose something to the Commission,
18 which would include briefing and next steps?

19 MS. CHIAVARA: Yes. That works.

20 *[Atty. Young indicating in the*
21 *affirmative.]*

22 MR. KREIS: I can't guarantee that we
23 would reach such an agreement, but we can
24 certainly work very hard to do so.

1 CMSR. SIMPSON: Okay. All right.

2 Well, then, let's do that. Let's say, we'll do
3 it by -- ooh, Friday, the 13th -- let's do it by
4 the 12th, a proper week.

5 If the participants, whether jointly,
6 or individually, should you not coalesce around a
7 common approach, submit suggested procedural
8 schedules to the Commission by close of business
9 on January 12th.

10 Are there any other issues that the
11 participants wish to raise today before we
12 adjourn?

13 *[No verbal response.]*

14 CMSR. SIMPSON: All right. Thank you
15 all. We're adjourned. Off the record.

16 ***(Whereupon the prehearing conference***
17 ***was adjourned at 10:13 a.m., and a***
18 ***technical session was held***
19 ***thereafter.)***

20

21

22

23

24