

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

May 16, 2023 - 9:02 a.m.
21 South Fruit Street
Suite 10
Concord, NH

RE: DE 23-026
ELECTRIC DISTRIBUTION UTILITIES:
Potential Jurisdictional Conflicts
Related to Authorization of Pilot
Programs Under RSA 362-A:2-b.
(Prehearing conference)

PRESENT: Chairman Daniel C. Goldner, *Presiding*
Commissioner Pradip K. Chattopadhyay

Eric Wind , Esq./PUC Legal Advisor

Tracey Russo, Clerk

APPEARANCES: **Reptg. Public Service Company of New**
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Jason Stark, Eversource Energy

Reptg. Liberty Utilities (Granite State
Electric) Corp. d/b/a Liberty Utilities:
Michael J. Sheehan, Esq.

Reptg. Unitil Energy Systems, Inc.:
Matthew C. Campbell, Esq.

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

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

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New Hampshire:**

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Reptg. Residential Ratepayers:

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Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:

Molly M. Lynch, Esq.
Paul B. Dexter, Esq.
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Mark Toscano, Electric Group
(Regulatory Support Division)

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P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good morning, everyone. I'm Chairman Goldner. I'm joined today by Commissioner Chattopadhyay.

We're here this morning for a prehearing conference noticed by a Notice of Adjudicative Proceeding issued March 9th, 2023, in this docket. The authority to convene a prehearing conference is derived from RSA 541-A:31, VI(c), and Puc 203.15(c), which includes the broad goal of simplification of the issues in contested cases.

Let's begin by taking appearances, beginning with Eversource.

MR. WIESNER: Good morning, Mr. Chairman, Commissioner Chattopadhyay. David Wiesner, representing Public Service Company of New Hampshire, doing business as Eversource Energy.

CHAIRMAN GOLDNER: Thank you. And we'll move to Unitil?

MR. CAMPBELL: Good morning, Commissioners. Matt Campbell, on behalf of Unitil Energy Systems, Incorporated.

1 CHAIRMAN GOLDNER: Very good. And
2 Liberty?

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

6 CHAIRMAN GOLDNER: Ah.

7 MR. SHEEHAN: Hiding in the background.

8 CHAIRMAN GOLDNER: Thank you. Not in
9 the usual seat assignment. Thank you, Attorney
10 Sheehan.

11 And the Office of the Consumer
12 Advocate?

13 MR. CROUSE: Good morning,
14 Commissioners. My name is Michael Crouse. I'm
15 the Staff attorney for the OCA. And, of course,
16 we represent the interests of residential
17 customers to all the utilities.

18 CHAIRMAN GOLDNER: Thank you. The New
19 Hampshire Department of Energy?

20 MS. LYNCH: Good morning,
21 Commissioners. My name is Molly Lynch,
22 representing the Department of Energy. Along
23 with me is Paul Dexter, Legal Director; Elizabeth
24 Nixon, Director of the Electric Division; and

1 Mark Toscano, a Utility Analyst in the Electric
2 Division.

3 CHAIRMAN GOLDNER: Okay. Welcome. And
4 we'll move to Clean Energy?

5 MR. SKOGLUND: Good morning,
6 Commissioners. My name is Chris Skoglund. And
7 I'm with Clean Energy New Hampshire. And also
8 with me is Loreley Godfrey, our summer policy
9 associate.

10 CHAIRMAN GOLDNER: Very good,
11 Mr. Skoglund. And, finally, the Community Power
12 Coalition of New Hampshire?

13 MR. BELOW: Good morning,
14 Commissioners. I'm Clifton Below, on behalf of
15 the Community Power Coalition of New Hampshire.

16 CHAIRMAN GOLDNER: Thank you. Did I
17 miss anyone?

18 MR. STARK: Mr. Chairman?

19 CHAIRMAN GOLDNER: Yes.

20 MR. STARK: I am Jason Stark. I'm with
21 Eversource.

22 CHAIRMAN GOLDNER: Oh, okay. Very
23 good.

24 All right. Okay. No parties have

1 objected to any of the interventions. And the
2 electric utilities are mandatory parties. We now
3 grant Clean Energy and Community Power Coalition
4 discretionary intervention under RSA 541-A:32,
5 II, and Puc Rule 203.17, insofar as granting
6 these parties intervention would be in the
7 interest of justice, and would not impair the
8 orderly and prompt conduct of the proceeding.

9 The Notice of Adjudicative Proceeding
10 listed the following issues contained in RSA
11 362-A:2-b concerning the proposed pilots: (a)
12 whether any jurisdictional conflicts exist
13 concerning the use of the distribution or
14 transmission system; (b) whether the activities
15 allowed by RSA Chapter 362-A would require a
16 utility to violate its transmission owner
17 operator's agreement or require a recalculation
18 of any Independent System Operator of New
19 Hampshire, ISO-New England, open access
20 transmission tariffs; and (c) whether such
21 projects produce avoided transmission cost
22 savings.

23 We'll discuss a briefing schedule later
24 in the proceeding. But, right now, we'll take

1 preliminary comments from the parties on Items
2 (a), (b), and (c), beginning with Eversource or
3 PSNH.

4 MR. WIESNER: Thank you. Thank you,
5 Mr. Chairman.

6 So, I'll -- excuse me -- I'll begin by
7 discussing some of the issues of federal
8 preemption that are relevant in this matter, and
9 then move on to address the procedural issues,
10 and our view of the briefing schedule.

11 So, the initial focus of this docket,
12 in our view, must be on the legal issues
13 pertaining to jurisdictional conflicts between
14 federal and state regulatory authority, as well
15 as other legal infirmities with the statutory
16 language that are implicated by the proposed
17 LEEPA pilot programs, as they're specifically
18 described in Senate Bill 321.

19 That focus should begin by giving the
20 parties to the docket an opportunity to submit
21 briefs on the legal issues, as briefing of those
22 issues will aid the Commission in rendering its
23 determination.

24 Issues of federal preemption, in

1 particular, are threshold questions, that would
2 be most administratively efficient for the
3 Commission to fully and finally resolve, before
4 it evaluates any proposed pilot programs that
5 attempt to comply with the specific wording of
6 the statute. In Eversource's view, the federal
7 preemption issues include the following, with the
8 caveat that this may not be an exhaustive list.

9 The first, it is a question "whether
10 any wholesale sale of power in New England can be
11 intrastate and state jurisdictional, rather than
12 interstate and FERC jurisdictional?" And it's
13 also a question "what the legal impact of the
14 answer to that issue would be?"

15 Secondly, whether any state statute,
16 rule, or regulatory order, including SB 321, can
17 direct a New Hampshire public utility that is a
18 host utility or a market participant in the ISO
19 system to report its retail loads and/or the
20 loads of other load-serving entities, for
21 purposes of energy, capacity, transmission, and
22 any other FERC jurisdictional services, purchased
23 at wholesale, from or through or otherwise
24 assessed by the ISO, to serve retail load, in a

1 manner different than would otherwise be done
2 under ISO rules and procedures, without
3 infringing on FERC's exclusive jurisdiction over
4 products and services, including wholesale
5 energy, capacity, transmission, ancillary
6 services, and other ISO tariff mandated services.

7 Third, whether any state statute, rule,
8 or order, including SB 321, can address the
9 capacity supply obligations of ISO-New England
10 capacity suppliers without being preempted by
11 federal law.

12 Fourth, whether any state statute,
13 rule, or order, including SB 321, can address how
14 transmission charges assessed by the ISO to
15 network customers may or may not be allocated to
16 load-serving entities, that is wholesale
17 entities, without being preempted.

18 Fifth, whether any state statute, rule,
19 or order, again, including SB 321 in particular,
20 can find that a transmission charge has been
21 avoided by a customer load deemed to be served by
22 a limited electrical energy producer, when
23 ISO-New England would not, in fact, charge such
24 customer load for transmission under the current

1 tariff construct. And whether any such statute,
2 rule, or order, including SB 321, is permitted to
3 result in trapped transmission costs.

4 Again, that's a potentially
5 non-exhaustive list of the issues as we see them,
6 to which we characterized as "threshold issues"
7 before moving forward up to any other issues in
8 this docket.

9 With respect to the process, Eversource
10 continues to support the proposal submitted in
11 January in the predecessor docket, IR 22-061, for
12 an initial procedural schedule focused on the
13 submission of legal briefs. And, just to recap,
14 that agreement submitted back in January was that
15 there would be three weeks for the simultaneous
16 initial briefs to be filed by all parties, then
17 two weeks for filing of reply briefs by all
18 parties, and then the potential for oral argument
19 on the briefs within two weeks thereafter, if the
20 Commission believes that would be warranted.

21 Although, I will say, if the Commission
22 were to conclude that an extra week for each
23 brief filing deadline would be helpful to the
24 parties, we would certainly not object to that

1 determination, as certain parties have expressed
2 concerns about limited resources.

3 Following the briefing and oral
4 argument, if held, Eversource recommends that the
5 Commission issue a prehearing order deciding that
6 either (1) there are federal preemption issues,
7 in which case, either (a) the utilities are all
8 parties, or the Commission itself, if it prefers,
9 should request a FERC determination on whether
10 the SB 321 pilot projects present jurisdictional
11 conflicts before proceeding further in this
12 docket, or (b) the docket would proceed on the
13 issues regarding the pilot programs and possible
14 credits, with the utilities directed to obtain a
15 FERC determination at the docket's conclusion, in
16 which case the parties would promptly meet to
17 agree on a procedural schedule for this docket to
18 be submitted for PUC approval.

19 Or, if the Commission were to decide
20 that there are no federal preemption issues, the
21 parties would be directed to assemble and decide
22 what, if any, procedural schedule or additional
23 briefing may be needed to address and resolve any
24 remaining open issues, including any

1 non-preemption legal issues.

2 With that overview, which I believe is
3 consistent with the letter submitted on January
4 12th in the prior docket, I'll conclude
5 Eversource's initial statement. And we'd be
6 happy to address any relevant questions that may
7 arise this morning.

8 CHAIRMAN GOLDNER: Okay. Thank you,
9 Attorney Wiesner.

10 I think we'll go all the way around,
11 and then circle back at the end, is the current
12 plan.

13 So, there's a PSNH here and an
14 Eversource here. Maybe can you gentlemen help me
15 with what -- what's happening?

16 MR. STARK: Hi, Mr. Chairman. I'm just
17 here to support Mr. Wiesner, and if you guys have
18 any questions going forward.

19 CHAIRMAN GOLDNER: Okay. Okay. Very
20 good. So, we received the PSNH/Eversource
21 opening? Okay. Thank you very much.

22 Okay. Great. So, let's move on to
23 Unitil.

24 MR. CAMPBELL: Thank you, Chairman.

1 Unitil agrees with Eversource that the
2 initial focus of this docket should be on the
3 legal and jurisdictional issues.

4 To that end, Unitil also agrees with
5 the procedural framework outlined by Attorney
6 Wiesner. For initial briefs, followed by reply
7 briefs, oral argument, as necessary, and a
8 prehearing order.

9 Thank you.

10 CHAIRMAN GOLDNER: Thank you. And
11 let's move to Liberty.

12 MR. SHEEHAN: Liberty is also on the
13 same page as Eversource and Unitil. And thinks
14 the approach outlined by Mr. Wiesner is the most
15 economical way to go in this docket.

16 Thank you.

17 CHAIRMAN GOLDNER: Okay. Thank you.
18 And the Office of the Consumer Advocate.

19 MR. CROUSE: Thank you.

20 As a predecessor docket, IR 22-061, the
21 OCA gave its opening statement to the effect
22 that, in our opinion, and humbly, that the
23 Commission should not shrink from the
24 Legislature's express instruction to make what we

1 characterize as a "factual determination"
2 regardless of how the jurisdictional questions
3 get addressed. The OCA appreciates the
4 Commission opening a docket, an adjudicative
5 docket, to address all of these issues.

6 We're not opposed to drafting any
7 briefs on the jurisdictional question. But think
8 that the other matters should still be addressed
9 regardless of that outcome.

10 While I do not speak for the Community
11 Power Coalition of New Hampshire, Mr. Below, in
12 his opening statement from that predecessor
13 docket, went into great detail discussing
14 potential jurisdictional conflicts, citing the
15 sources like Section 824(b)(1) of the Federal
16 Power Act, distinguishing FERC sale jurisdiction
17 to wholesale, and reserving retail sales, as well
18 as intrastate sales, to the states.

19 And then, Mr. Below also provided
20 attention to our office on certain matters
21 regarding whether there's a violation of the open
22 access transmission or whether such projects
23 produce avoided transmission cost savings.

24 Since I don't speak for his office,

1 I'll yield some of my time to allow him to expand
2 on those, if he so chooses.

3 The OCA looks forward to developing a
4 meaningful record. And I think that's all I have
5 to say as a preliminary comment.

6 CHAIRMAN GOLDNER: Okay. Thank you.
7 And the New Hampshire Department of Energy.

8 MS. LYNCH: The New Hampshire
9 Department of Energy has no objection to the
10 proposed briefing schedule.

11 CHAIRMAN GOLDNER: Okay. Very good.
12 And Clean Energy New Hampshire.

13 MR. SKOGLUND: Clean Energy New
14 Hampshire appreciates being granted intervention
15 status. And also has no objection to the
16 proposed briefing schedule.

17 But will cede any other time to Mr.
18 Below.

19 CHAIRMAN GOLDNER: All right. Mr.
20 Below, and the Community Power Coalition of New
21 Hampshire.

22 MR. BELOW: Thank you, Mr. Chairman.

23 The Coalition generally concurs with
24 the proposed procedural approach suggested by the

1 utilities, with one significant exception. The
2 suggestion that, if there is some residual
3 preemption question that remains at the end of
4 the jurisdictional briefing, that that matter be
5 deferred to FERC for a determination.

6 I would point out that that would be in
7 the nature of a declaratory-type ruling, I
8 presume. Much as the New England Ratepayers
9 Association did in a recent case at FERC, in
10 which they specifically challenged New
11 Hampshire's net metering tariffs as being a
12 resale, a sale at wholesale, that they argued was
13 FERC jurisdictional, and not consistent with FERC
14 policy.

15 And, at the end of that proceeding,
16 after many parties filed many briefs, a lot of
17 lawyers ran up a lot of hours, FERC said "We
18 don't have to decide this jurisdictional issue.
19 It's a declaratory-type ruling." And at least
20 one of the commissioners, as I recall, maybe two
21 of the commissioners, cited in their individual
22 comments that the federal courts were the
23 appropriate place to decide such a jurisdictional
24 issue, rather than FERC.

1 So, I would just caution that this
2 notion of "taking the matter to FERC" would
3 likely only result in a year or two of delay, in
4 terms of resolving the issues.

5 So, I could say a lot more, but perhaps
6 I should save it for the legal briefs. So, I'll
7 leave it at that.

8 I mean, basically, we don't feel that
9 there's any jurisdictional conflict. I think all
10 the questions raised by the Commission in the
11 statute, in the first instance, around
12 jurisdiction should be addressed in the legal
13 briefs. We don't believe that there would be any
14 violation of the tariffs from implementing the
15 kinds of sales contemplated in RSA 362-A:2-b.
16 That there would be no violation of the tariffs.
17 That the resale -- there would be no necessary
18 recalculation of the tariffs. And that there
19 would be avoided cost savings.

20 And I guess I will go ahead and just
21 point out one point in this regard, which is one
22 of several ironies in the utilities' response to
23 data requests. One being the fact that Unitil
24 has just gotten approval for a 4.88 megawatt

1 tracking -- single-access tracking solar project,
2 that is built on the exact same avoided cost
3 value proposition, the same value stack as RSA
4 362-A:2-b contemplates be available to other
5 generation of -- that fits the same criteria as
6 what Unitil is doing.

7 And, in that case, they argued that
8 there is avoided transmission costs, is actually
9 the term they used in their testimony, as opposed
10 to "charges". And, in that argument, they argued
11 that it would reduce both regional network costs,
12 as well as local network costs, and it was a
13 fairly easy calculation. You take the output of
14 the project at the hour of coincident peak, and
15 multiply it by those transmission rates, and
16 that's an avoided cost.

17 And, actually, to the point that they
18 made in their response to the data requests, the
19 utilities -- the joint utilities said that it was
20 not -- that there was a preemption that the
21 Commission could not authorize assessment of
22 transmission charges in excess of those set by
23 FERC, and could not include, in a retail
24 transmission rate, any cost other than what FERC

1 authorized. And I would just observe that the
2 argument there, which talks about retail
3 transmission customers, conflates the fact that,
4 in New Hampshire, by and large retail customers
5 are not transmission customers. It's the
6 distribution utility that's been deemed by the
7 PUC to be the transmission customer. And, as
8 such, we would stipulate and agree with the
9 utilities that this Commission has no authority
10 whatsoever to increase or decrease the
11 transmission rates under a FERC tariff.

12 And, furthermore, FERC has asserted,
13 and I think properly so, that those are, on the
14 face of it, prudently incurred costs, if they're
15 pursuant to a FERC-approved rate, and that there
16 is an obligation of state commissions to allow
17 the transmission customer, in this case, the
18 distribution utility, to recover those costs from
19 customers. So, clearly, they have to be passed
20 through.

21 But another irony here is the fact that
22 all three utilities include in their retail rates
23 cost components that are not FERC jurisdictional,
24 even when they're called a "transmission rate"

1 for the retail customer.

2 In Eversource's case, included -- it's
3 mostly FERC jurisdictional transmission costs
4 that are passed through, and they're reconciled
5 through the Transmission Cost Adjustment
6 Mechanism, but it includes a state jurisdictional
7 element, which is the cost of working capital,
8 return on that cost of working capital is
9 determined pursuant to state authority. Both the
10 lead/lag study and the return on that working
11 capital are purely state jurisdictional elements.
12 They're included in Eversource's transmission
13 rate. So, that sort of contradicts their
14 assertion that the Commission doesn't have the
15 authority to include something in what's called a
16 "transmission rate" on a retail bill.

17 It should be quite clear that this
18 Commission has exclusive jurisdiction over retail
19 rates. It's true they have to allow the utility
20 to recover the full cost of transmission under
21 FERC rates.

22 And, in Liberty, it's even broader. In
23 Liberty's transmission rate, that appears on the
24 bill as "transmission", they include certain

1 property tax reconciliation that are unrelated to
2 transmission costs. And I think it was just put
3 into the transmission rate, because it was
4 convenient, a place to have an annual
5 reconciliation of certain property taxes.

6 And, in Unitil case, it's even much
7 more broader. They don't even present a
8 transmission rate to customers; they present a
9 "delivery rate". And that delivery rate includes
10 distribution costs, it includes transmission
11 costs, it includes costs that they pay to net
12 metered customers, for instance, for both energy
13 and transmission as part of that rate. And they
14 have -- and the Commission has only, at the
15 beginning of this month, approved a plan to
16 include in their rate base the 4.88 megawatt
17 solar project that's going to be treated as a
18 load reducer. And, in doing that, they are
19 implicitly saying "Yes, there's avoided regional
20 network costs -- transmission costs, there's
21 avoided local network costs." I think some of
22 which Unitil or Eversource could correct me if
23 I'm wrong, some of which are purchased from
24 Eversource as a transmission provider, some of

1 which is purchased from Unitil as a local network
2 transmission provider.

3 And the calculation is they were going
4 to increase their rate base that's going to be
5 recovered through delivery costs, and were going
6 to justify that, because it's going to be more
7 than offset by avoided transmission costs. And
8 it goes a step further, and also recognizes the
9 avoided capacity costs as part of the formula,
10 recognizing that this will function as a load
11 reducer. It will reduce capacity cost allocation
12 to New Hampshire. And the Commission has
13 approved, with DOE's and Unitil's, and the
14 Consumer Advocate's support, a settlement whereby
15 they are including in a retail rate the costs to
16 achieve that avoided cost, and balancing that
17 credit against the increased cost to customers
18 for rate basing that product. This is really no
19 different, except it's just opening up the market
20 to other providers.

21 And, either in my -- in our legal
22 brief, or perhaps later, I could also respond to
23 a question that the Commission raised in the
24 investigative stage, where they asked "Are there

1 other examples of this?" And at the moment, at
2 that -- on the spot, I only thought of net
3 metering. But I have another really good example
4 from Vermont, where Vermont has been facilitating
5 these, with cooperation of the utilities and the
6 transmission provider, of projects under 5
7 megawatts that are treated as load reducers, that
8 are clearly selling at wholesale for resale by
9 others to retail customers, and that's purely
10 under state jurisdiction. And nobody has
11 questioned whether FERC needs to intervene in
12 those proceedings whatsoever.

13 Thank you.

14 CHAIRMAN GOLDNER: Thank you, Mr.
15 Below.

16 Before we turn to Commissioner
17 questions, I'd like to give the utilities and the
18 other parties a chance to respond to Mr. Below's
19 comments, if any?

20 MR. WIESNER: I'll just say that it
21 seems like we had an outbreak of oral argument,
22 and that may be seen as premature before the
23 briefs are filed.

24 I will address one point. Which is,

1 you know, the parties in the prior docket, in
2 January, submitted a letter that outlined a
3 proposed procedural schedule. And, if there were
4 a determination by this Commission that there
5 were federal preemption issues, it was
6 contemplated that there might be recourse to FERC
7 in the first instance, before moving forward in
8 this docket as one alternative.

9 You know, Mr. Below referenced the NERA
10 declaratory ruling request from a few years ago,
11 I think that is -- and the FERC, as he noted,
12 declined to decide that issue. I think there are
13 some important differences there.

14 Net metering is different than what
15 we're talking about here. That this is a very
16 specific statute that outlines a particular
17 methodology, in large extent, for these sorts of
18 intrastate wholesale, assuming there is such a
19 thing, or retail limited electrical energy
20 producer transactions. And I think there's
21 perhaps a greater likelihood that the FERC would
22 take this up, because it's not as general, it's
23 not as speculative. If I recall from that other
24 previous docket at FERC, it attracted attention

1 from across the country, including from NARUC,
2 and from many other states and other ISOs. And I
3 think the FERC, perhaps wisely, dodged a bullet
4 there.

5 But, that said, there's no guarantee
6 that they would take up a declaratory ruling and
7 decide it. That, I think, is a legitimate point
8 to make.

9 And I think, in terms of the substance,
10 and the differences between net metering and the
11 SB 321 pilot -- pilot program outline, and, in
12 addition, the differences that may exist with the
13 Unitil Kingston Proposal, or any other similar
14 programs in other states, I think there are
15 important differences.

16 But I do believe that it makes the most
17 sense to move forward with the briefing first,
18 and then have a better informed discussion during
19 oral argument, if that's the Commission's
20 pleasure.

21 CHAIRMAN GOLDNER: Thank you, Attorney
22 Wiesner. Any other comments?

23 MR. CAMPBELL: I think I would just
24 build on what Attorney Wiesner just stated. I

1 think the issues in this case are a bit more
2 nuanced than what you just heard from the
3 Coalition. And, as Attorney Wiesner just stated,
4 I think those are best addressed in detailed
5 legal briefs as recommended by the utilities.

6 CHAIRMAN GOLDNER: Okay. Thank you.
7 Any other parties' comments?

8 MR. CROUSE: No comments. Thank you.

9 MS. LYNCH: No comments.

10 MR. SKOGLUND: No comments from CENH.

11 CHAIRMAN GOLDNER: Okay. Very good.
12 Okay. Let's turn to any Commissioner questions,
13 beginning with Commissioner Chattopadhyay.

14 CMSR. CHATTOPADHYAY: Thank you.

15 I was going to ask the same question,
16 which I think was discussed just a while ago,
17 which is "Are there other examples of something
18 like this happening in the U.S.?"

19 And, if I recall, I probably was the
20 one who ended up asking that question in the
21 other, the IR docket. And, so, now that I know
22 there might be something going on in Vermont, I
23 mean, this is a prehearing conference. To me,
24 it's -- I am just sharing what I would care about

1 is, and I want to know more about that. So, I
2 don't know how that's going to be part of the
3 discussion in the briefing or anything, but it's
4 important that I know about it.

5 I think I will leave it at that. I
6 don't really have a question. Thank you.

7 CHAIRMAN GOLDNER: Okay. I think what
8 we'll do now is just take a brief 10-minute break
9 for the Commissioners to confer, and then come
10 back and wrap up the hearing.

11 So, we'll just take ten minutes, and
12 return at twenty till. Thank you.

13 *(Recess taken at 9:30 a.m., and the*
14 *prehearing conference resumed at*
15 *9:44 a.m.)*

16 CHAIRMAN GOLDNER: Okay. First, I'll
17 just mention that, for the briefing schedule, I
18 would suggest that we brief on (a) and (b). And
19 that the briefing be due June 16th, which is one
20 month, and the reply briefs due June 30th. And
21 then, we checked the Commission calendar, and
22 July 20th is open for oral arguments.

23 Let me just pause there and see if
24 there are any concerns with the scope or the

1 timing on that schedule?

2 Mr. Below.

3 MR. BELOW: Yes. Thank you. I'm not
4 quite sure why you wouldn't want briefing on the
5 other questions?

6 CHAIRMAN GOLDNER: On (c)?

7 MR. BELOW: (c).

8 CHAIRMAN GOLDNER: Yes.

9 MR. BELOW: On (c)?

10 CHAIRMAN GOLDNER: We were discussing
11 whether that might be a stipulation or part of
12 the briefing. We can -- I would appreciate
13 feedback on that, on topic (c), if you like.

14 MR. BELOW: Well, I guess my question
15 is, if it's not addressed in the first instance,
16 I guess maybe, if you conclude that the state
17 doesn't have jurisdiction, then it would be moot.
18 But, if it is determined, then that's still an
19 issue that the Commission -- a question that the
20 Commission has to resolve, and that would
21 implicate additional argument or briefing or
22 testimony or something like that.

23 It doesn't -- it just seems like, to
24 the extent there's jurisdictional increases

1 related to that, it would be best addressed as
2 part of the original briefs.

3 CHAIRMAN GOLDNER: Okay. Just a
4 moment.

5 *[Chairman Goldner and Commissioner*
6 *Chattopadhyay conferring.]*

7 CHAIRMAN GOLDNER: Okay. Any comments
8 on Mr. Below's comment?

9 MR. WIESNER: I guess I'll jump in. It
10 does seem that (c) is, to some extent, a mixed
11 question of fact and law. And the Chair has
12 suggested that it might be subject to a
13 stipulation, that there's a potential for that,
14 but -- at least a partial stipulation. I'm
15 getting ahead of myself here.

16 But it does -- it isn't like the other
17 two, because it's not purely jurisdictional.
18 It's more of a factual inquiry. And, so, I
19 gather that that was the basis for the reluctance
20 in the Commission's initial move to include that
21 as a topic for discussion.

22 I don't think we're against it being
23 addressed. But I do think that the threshold
24 jurisdictional issues must be resolved, before we

1 get into the factual evidentiary record that
2 would, you know, support, or not, any particular
3 incarnation of a pilot program under the statute.

4 CHAIRMAN GOLDNER: Okay. Thank you,
5 Attorney Wiesner.

6 Any other comments on the topic?

7 MR. CROUSE: I would support both the
8 comments of Eversource and Clifton Below, in the
9 sense that this is an express direction of the
10 Legislature to address this. But it is sort of a
11 mixed question on the first two positions, as
12 pointed out by Eversource.

13 So, I would be in favor of handling
14 everything at once, as opposed to piecemealing
15 the submissions of briefs. But I think I'm open
16 to either path moving forward.

17 CHAIRMAN GOLDNER: Okay. Okay, any
18 other comments?

19 Mr. Skoglund.

20 MR. SKOGLUND: Thank you, Chair
21 Goldner.

22 I think we don't have any comments on
23 the merits of including (c) or not. I think our
24 comments are a little bit more mundane, in that

1 we are much smaller and less resourced. And
2 there are already comments due for the final
3 comments in DE 22-076 on that week. And we
4 didn't know if there might be a potential to push
5 it out? This is a highly technical matter for
6 us. And, for us to have the best shot of
7 actually contributing to this record, the first
8 filing -- or, the first briefs be filed the next
9 week would be appreciated.

10 CHAIRMAN GOLDNER: Okay. Would there
11 be any objections to moving the schedule to
12 June 23rd and July, I think that would be the
13 7th?

14 MR. WIESNER: And the date for oral
15 argument would stay the same?

16 CHAIRMAN GOLDNER: That would, yes.
17 Would you want more time?

18 MR. WIESNER: Not necessarily. I
19 can't -- I mean, it's up to the Commission to
20 schedule the date. We are using outside counsel
21 in this case, and they're not here this morning,
22 so, I can't really speak to their schedule. But
23 can't think of a better time, so --

24 CHAIRMAN GOLDNER: Okay. Okay. And we

1 will publish a procedural order after the hearing
2 today. So, we'll document everything. But what
3 I have penciled in right now is June 23rd for the
4 briefing; July 7th for the reply brief; and then
5 keeping the oral arguments on July 20th, so, from
6 a scheduling perspective.

7 MR. CROUSE: Chairman Goldner, if I
8 may?

9 CHAIRMAN GOLDNER: Oh, I'm sorry.

10 MR. CROUSE: No, that's okay. I'm
11 going to be out of the office that week of
12 July 4th. Is there some leeway perhaps to have
13 that reply brief be submitted even by Monday, the
14 10th or the 11th?

15 CHAIRMAN GOLDNER: Yes. I think that
16 would be fine, yes. Let's make it the 10th.

17 MR. CROUSE: All right. Thank you.

18 CHAIRMAN GOLDNER: Okay. That sounds
19 like we resolved the schedule.

20 Back on scoping, I don't see any issue
21 with including (c), to the extent that (c) can be
22 included on the -- on any area, legal or
23 otherwise, that the parties want to comment on.
24 So, I think that was the suggestion, Mr. Wiesner,

1 that you made. If you would like to clarify,
2 that would be fine. I think you suggested
3 "including (c) in the legal brief", to the extent
4 that it -- to the extent that it made sense?

5 MR. WIESNER: I mean, there's an
6 argument that it could be held aside, and the
7 threshold jurisdictional increases be addressed
8 first. And I think, as I suggested in my opening
9 statement, that would then involve potentially
10 further briefing of issues, which are not
11 threshold federal preemption issues. But I do
12 see that that question (c) is a mixed question of
13 fact and law, potentially.

14 So, I mean, I'm not -- I don't think we
15 object to having it covered in some way. It may
16 be that the -- that the briefing can't be
17 considered definitive on that issue. And I don't
18 think that, by addressing it, the utilities would
19 be, you know, waiving, for lack of a better word,
20 any argument that the threshold issues are
21 determinative in the case, and that the Issue (c)
22 CPA, regarding "avoided transmission charges", is
23 something that you really only get to if you can
24 pass the initial thresholds.

1 CHAIRMAN GOLDNER: Okay. Just a
2 moment.

3 *[Chairman and Commissioner*
4 *Chattopadhyay conferring.]*

5 CHAIRMAN GOLDNER: Okay. Having
6 conferred, we'll -- let's keep the briefing to
7 (a) and (b). We agree that (c) is important.
8 But, just to keep it simple at this time, let's
9 just make the briefings on (a) and (b), and deal
10 with (c) later. So, let's move forward with
11 that, with that plan.

12 I'll also mention that, eventually, we
13 would like to hear, just in terms of giving
14 everyone headlights, we would like to hear about
15 the engineering implications, including examples,
16 with some testimony, after the legal piece of
17 this is sorted out. But, just in the spirit of a
18 prehearing conference, I'm letting you know
19 something that the Commission is interested in,
20 that would be something I would like to point
21 out.

22 Okay. Is there anything else that we
23 need to cover today or any additional comments,
24 before we adjourn?

1 *[No verbal response.]*

2 CHAIRMAN GOLDNER: Okay. All right.
3 Seeing none. Thank you, everyone, for
4 participating today. And we are adjourned.

5 ***(Whereupon the prehearing conference***
6 ***was adjourned at 9:54 a.m.)***

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