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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

December 12, 2023 - 9:06 a.m.
21 South Fruit Street
Suite 10
Concord, NH

RE: **DE 23-044**
LIBERTY UTILITIES (GRANITE STATE
ELECTRIC) CORP. d/b/a LIBERTY UTILITIES:
2023 Default Service Solicitations.
(Hearing regarding Liberty's request
for cost recovery of certain 2020
vintage Class III Renewable Energy
Credits.)

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

Alexander Speidel, Esq./*PUC Legal Advisor*

Doreen Borden, Clerk

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

Reptg. Residential Ratepayers:
Donald M. Kreis, Esq., Consumer Adv.
Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:
Matthew C. Young, Esq.
Stephen Eckberg, Electric Group
(Regulatory Support Division)

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

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EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
8	Direct Testimony of Stephen R. Eckberg, with Attachments	<i>premarked</i>
9	Rebuttal Testimony of Aaron J. Doll and Christopher Green, with Attachments {CONFIDENTIAL & PROPRIETARY}	<i>premarked</i>
10	Rebuttal Testimony of Aaron J. Doll and Christopher Green, with Attachments <i>[REDACTED - For PUBLIC Use]</i>	<i>premarked</i>

P R O C E E D I N G

1
2 CHAIRMAN GOLDNER: Okay. Good morning.
3 I'm Chairman Goldner. I'm joined today by
4 Commissioners Simpson and Chattopadhyay.

5 This is a hearing addressing the issue
6 of Liberty's request for cost recovery of certain
7 2020 vintage Class III Renewable Energy Credits.
8 The Commission allowed the Company to recover
9 \$864,640 related to these RECs on an interim
10 basis through Default Service rates in Order
11 Number 26,854, issued on June 30th, 2023.

12 This hearing was scheduled pursuant to
13 the Commencement of Adjudicative Proceeding and
14 Notice of Hearing order issued on August 10th,
15 2023. On December 8th, 2023, Liberty filed its
16 Witness and Exhibit List for this matter, with
17 the presumed concurrence of the Department of
18 Energy.

19 Liberty and the Department of Energy
20 has proposed that Mr. Aaron Doll and
21 Mr. Christopher Green of Liberty, and Mr. Stephen
22 Eckberg of the DOE, be called to testify this
23 morning regarding the RECs issue. Given that
24 there is an adverse litigation position at play

1 here, we'll call the Liberty and DOE witnesses
2 separately.

3 Liberty and the DOE propose that the
4 Direct Testimony of Mr. Eckberg, with
5 attachments, filed on September 1st, 2023, be
6 marked as Hearing "Exhibit 8"; Liberty proposes
7 that confidential Hearing Exhibit 9 be reserved
8 for its confidential version of its rebuttal
9 testimony filed by Mr. Doll and Mr. Green; and
10 that Hearing Exhibit 10 be reserved for its
11 public version of its rebuttal testimony, which
12 was filed on November 30th, 2023.

13 As the confidential testimony presented
14 as confidential Exhibit 9 pertains to information
15 relating to the procurement of RECs, we note that
16 Liberty relies on Puc Rule 201.06(a)(15), and
17 201.06 and 201.07 generally for the confidential
18 treatment of this material. And we will inquire
19 as to whether there are any objections to this
20 request.

21 There are no intervenors in this
22 docket, and no members of the public here today,
23 I think, I don't see any members of the public?

24 *[No indication given.]*

1 CHAIRMAN GOLDNER: Okay. In light of
2 this, when confidential information is implicated
3 in the hearing today, we ask that the parties
4 indicate this for the benefit of the court
5 reporter.

6 When we take appearances today, we'll
7 invite the Company, the OCA, and the Department
8 of Energy to make brief opening statements. And
9 we do request that the OCA and DOE indicate
10 whether they have any objections to the proposed
11 exhibits, or to the Company's request for
12 confidentiality relating to confidential
13 Exhibit 9.

14 If there are no other preliminary
15 matters, we'll now take appearances, starting
16 with the Company?

17 MR. SHEEHAN: Good morning,
18 Commissioners. Mike Sheehan, for Liberty
19 Utilities (Granite State Electric) Corp.

20 CHAIRMAN GOLDNER: Thank you. The
21 Office of the Consumer Advocate?

22 MR. KREIS: Good morning, Mr. Chairman,
23 Commissioners. I'm Donald Kreis, the Consumer
24 Advocate, here on behalf of the residential

1 utility customers of this and every other
2 utility.

3 CHAIRMAN GOLDNER: Thank you. And the
4 New Hampshire Department of Energy?

5 MR. YOUNG: Good morning,
6 Commissioners. Matt Young, on behalf of the
7 Department of Energy. And with me today is
8 Stephen Eckberg, who is a regulatory analyst in
9 the Electric Division.

10 CHAIRMAN GOLDNER: Very good. So, we
11 can move now to brief opening statements,
12 beginning with the Company.

13 MR. SHEEHAN: Thank you. And, Mr.
14 Chairman, you accurately summarized the history
15 of this case. We are recovering the so-called
16 "stranded" -- the cost of the so-called "stranded
17 RECs", and the hearing today is to determine
18 whether it was appropriate to do so.

19 Our position, as outlined in the
20 rebuttal testimony, is stated simply as follows:
21 DOE claims the purchase of the RECs in the Summer
22 of '20, at a time when the price was higher than
23 ACP, was imprudent. And the remedy that DOE has
24 asked is the disallowance of recovering any costs

1 related -- excess costs related to those stranded
2 RECs.

3 As you know, we agreed not to
4 recover -- not to seek recovery of the excess
5 cost, the delta between ACP and the price paid.
6 That has been resolved and has been written off.
7 And, so, what we are asking to recover is the
8 cost of the -- at the ACP level, for the 8
9 percent purchase we made in the Summer of 2020.

10 Our argument is quite simple, that a
11 prudent utility manager, in the Summer and Fall
12 of 2020, could have bought the 8 percent
13 requirement at ACP. And I believe the DOE
14 witness would agree with that, that that would
15 have been a prudent decision all the way up until
16 the time when the Commission noticed it was going
17 to look at changing the 8 percent requirement.

18 And, so, if you want to look at a
19 measure between what was an arguably imprudent
20 decision and what we should have done, and that
21 delta has already been taken care of, the
22 over-price amount.

23 So, by purchasing -- by seeking
24 recovery of 8 percent, at ACP, that is an

1 appropriate level under these circumstances, and
2 that the amount that you have allowed us to
3 recover remain in rates.

4 That's a summary of our position.

5 CHAIRMAN GOLDNER: Thank you, Attorney
6 Sheehan.

7 We'll turn now to the Office of the
8 Consumer Advocate, and Attorney Kreis.

9 MR. KREIS: Thank you, Mr. Chairman.

10 I have no objections to any of the
11 confidentiality determinations that you laid out
12 at the beginning of the hearing.

13 Beyond that, I want to say that the
14 Office of the Consumer Advocate takes the
15 prudence standard very, very seriously. And that
16 means that the task that the Commission confronts
17 today is "what would a prudent utility manager
18 do -- have done at the time that the decision to
19 purchase the RECs in question was actually made?"

20 I am intending to listen to the
21 testimony of the witnesses today with that
22 question in mind. And, at the end of the
23 hearing, I will be pleased to tell you what I
24 think a prudent utility manager would have done.

1 CHAIRMAN GOLDNER: Thank you, Attorney
2 Kreis.

3 We'll move now to the Department of
4 Energy, and Attorney Young.

5 MR. YOUNG: Thank you, Mr. Chairman.

6 The Department also does not object to
7 the confidentiality or the exhibits that you
8 presented earlier.

9 The issue presented today is whether
10 Liberty should be authorized to recover the
11 full \$864,640 from ratepayers that resulted from
12 the purchase of a quantity of Class III RECs at a
13 price well above the then published ACP. In
14 making its determination, the Commission should
15 resolve this matter under the prudence
16 standard as suggested in RSA 374-F,
17 Paragraph V, Section (c) [374-F:3, V(c)?].

18 In articulating the prudence standard,
19 this Commission has stated that "A prudence
20 review, as we understand the concept, involves an
21 after-the-fact review of investment decisions in
22 light of actual performance, but limited to what
23 was reasonably foreseeable at the time of the
24 decisions."

1 Further, and as included in the
2 Company's rebuttal testimony and quoting a
3 Commission order, "One of the critical prudence
4 determinations is not to apply the perspective of
5 hindsight, but rather to consider the actions in
6 light of the conditions and circumstances as they
7 existed at the time they were taken."

8 The Company is seeking recovery for
9 these stranded or unused 2020 Class III RECs at
10 the ACP price. However, the Company did not
11 purchase these RECs at the ACP price. The RECs
12 were originally purchased at prices much higher
13 than the then published ACP.

14 Based on the facts surrounding the
15 Company's decision in July 2020, it is clear the
16 Company knowingly entered into contracts at a
17 cost per REC above the then current ACP rate.
18 Liberty made the decision to commit itself to pay
19 more than the statutorily enacted ACP, for the
20 full 8 percent requirement, in July 2020.

21 The Department believes it was
22 unreasonable and imprudent for Liberty to have
23 consummated the Class III REC transactions at
24 issue at the time that they did, based on the

[WITNESS PANEL: Green|Doll]

1 information available to the Company at the time.

2 Thank you.

3 CHAIRMAN GOLDNER: Thank you, Attorney
4 Young.

5 Okay. And we'll now invite the Liberty
6 witnesses to take the stand. And, when they're
7 settled in, Mr. Patnaude, if you could please
8 swear in the witnesses.

9 *(Whereupon **CHRISTOPHER M. D. GREEN** and*
10 ***AARON J. DOLL** were duly sworn by the*
11 *Court Reporter.)*

12 CHAIRMAN GOLDNER: Okay. Move to
13 direct testimony, and Attorney Sheehan.

14 And, yes. For the witnesses, if the
15 red light is on, that means that your mike is
16 live. So, thank you.

17 MR. SHEEHAN: And just a side comment,
18 Mr. Chairman. In this docket, last summer, we
19 also introduced, and the Commission accepted,
20 Exhibit 5, which was Mr. Warshaw's testimony
21 filed, that provides all of the background facts.
22 I don't think any of that's in dispute, but
23 that's a reference point.

24 And a slight correction, there was an

[WITNESS PANEL: Green|Doll]

1 intervenor in this docket. The Coalition
2 intervened this summer, but have not participated
3 since. So, they -- they are copied on all of
4 these matters.

5 And, gentlemen, the mike needs to get
6 this close to your mouths in order for it to be
7 able to pick it up and for everyone to hear.

8 **CHRISTOPHER M. D. GREEN, SWORN**

9 **AARON J. DOLL, SWORN**

10 **DIRECT EXAMINATION**

11 BY MR. SHEEHAN:

12 Q Mr. Green, I'll start with you. Please state
13 your name, your title with Liberty, and your
14 responsibilities?

15 CHAIRMAN GOLDNER: I'm sorry,
16 Mr. Sheehan, I think Mr. Speidel just informed me
17 that they're not intervenors. They didn't file
18 for intervention.

19 MR. SHEEHAN: Oh. Okay.

20 CHAIRMAN GOLDNER: So, yes, just to
21 clarify.

22 MR. SHEEHAN: Okay. My apologies.

23 BY MR. SHEEHAN:

24 Q Go ahead.

[WITNESS PANEL: Green|Doll]

1 A (Green) Christopher Green, and I work at Energy
2 Support Services --

3 *[Court reporter interruption regarding*
4 *use of the microphone.]*

5 **BY THE WITNESS:**

6 A (Green) Chris Green, Manager of Energy Market
7 Operations in the Energy Support Services
8 Department.

9 MR. SHEEHAN: Mr. Green, a prior
10 Chairman of this Commission used to say "You need
11 to get the thing so close that you're almost
12 swallowing it."

13 WITNESS GREEN: Okay. I'll work on
14 that.

15 BY MR. SHEEHAN:

16 Q And, as a practical matter, what does it mean,
17 your job, what do you do with that title?

18 A (Green) My primary roles right now is
19 facilitating the default service solicitations
20 and REC procurement. I also work in REC
21 procurement in the Central, as well as ARR/TCR
22 revenues and things of that nature that operate
23 in the SPP.

24 Q And you are based in the Central Region for the

[WITNESS PANEL: Green|Doll]

1 Company?

2 A (Green) Yes, sir. Joplin, Missouri.

3 Q And, Mr. Green, did you prepare, in the drafting
4 of the testimony that's been marked confidential
5 version as "Exhibit "9 and the redacted version
6 as "Exhibit 10", rebuttal testimony of you and
7 Mr. Doll?

8 A (Green) Yes. That's correct.

9 Q And do you have any corrections or changes to
10 that testimony you want to bring to the
11 Commission's attention this morning?

12 A (Green) No, sir.

13 Q And do you adopt that written testimony as your
14 live testimony today?

15 A (Green) I do.

16 Q Thank you. Mr. Doll, the same questions. Please
17 introduce yourself, your title, and your basic
18 job responsibilities?

19 A (Doll) Aaron Doll -- good. Aaron Doll, Senior
20 Director of Energy Strategy at Liberty Utilities.
21 I work for the Liberty Utilities Service Corp. I
22 oversee the procurement activities of the Central
23 Region, fuel, purchase power, we also do
24 strategic planning operations, and energy support

[WITNESS PANEL: Green|Doll]

1 services. And, then, I also oversee the
2 procurement activities for default service and
3 REC procurement for the East Region, Granite
4 State.

5 Q And, Mr. Doll, did you also participate in the
6 rebuttal testimony titled your "Rebuttal
7 Testimony", along with Mr. Green?

8 A (Doll) Yes, sir. I did.

9 Q And do you have any changes to that testimony you
10 would like to bring to the Commission's
11 attention?

12 A (Doll) No, sir. I do not.

13 Q And do you adopt it as your sworn testimony here
14 today?

15 A (Doll) Yes, sir, I do.

16 Q And, if I may, a few background questions or
17 context-setting questions.

18 Mr. Doll and Mr. Green, you're the
19 folks that have appeared in this Commission
20 before regarding the -- what I call the
21 "self-supply" that occurred last winter for
22 Granite State, is that correct?

23 A (Doll) That is correct.

24 Q And your operation has essentially taken over the

[WITNESS PANEL: Green|Doll]

1 functions that Mr. Warshaw used to provide for
2 the Company after his retirement?

3 A (Doll) That is correct.

4 Q And, so, the testimony you offer, in the rebuttal
5 testimony, is your look at what happened
6 beginning back in 2020, as we purchased the RECs,
7 used the RECs, so to speak, and have the leftover
8 RECs that we're dealing with today, is that
9 correct?

10 A (Doll) That is correct.

11 Q And the testimony you authored and have adopted
12 this morning is your understanding and your
13 opinions as to what happened and what should have
14 happened with regard to those RECs, is that fair?

15 A (Doll) That is correct.

16 MR. SHEEHAN: And I will leave it to
17 questions of others to dive into the details.
18 So, that's all I have for these witnesses.

19 Thank you.

20 CHAIRMAN GOLDNER: Thank you, Attorney
21 Sheehan.

22 We'll turn now to the Office of the
23 Consumer Advocate.

24 MR. KREIS: Thank you, Mr. Chairman.

[WITNESS PANEL: Green|Doll]

1 I just want to make sure I understand
2 the situation that we're in.

3 **CROSS-EXAMINATION**

4 BY MR. KREIS:

5 Q Mr. Doll and Mr. Green, neither of you had any
6 involvement with any of the facts that are at
7 issue in this proceeding today. Would that be a
8 fair statement?

9 A (Doll) Are you -- you're asking whether we were
10 involved in the procurement at the time the
11 procurement was made?

12 Q Yes.

13 A (Doll) We did not.

14 Q That's true of both of you?

15 A *[Witness Green indicating in the affirmative.]*

16 Q I think you have to say something.

17 A (Green) That's correct.

18 Q So, and just to remind myself of what happened,
19 my understanding is that this whole problem of
20 "stranded RECs" arises out of the fact that
21 utilities expected a piece of legislation to go
22 into effect that Governor Sununu ultimately
23 vetoed. Do I have that right?

24 A (Doll) That is our understanding, reading the

[WITNESS PANEL: Green|Doll]

1 testimony of John Warshaw in previous dockets,
2 that there was an expectation that the ACP was
3 going to remain at the \$55 that it had been in
4 the preceding two years, and that that was
5 ultimately vetoed.

6 Q So, you just mentioned Mr. Warshaw's testimony,
7 and, of course, we've already established that
8 Mr. Warshaw, after his distinguished career, has
9 now retired. I just want to make sure I
10 understand what we're dealing with here.

11 You've reviewed Mr. Warshaw's
12 testimony. Have you spoken with him about this?

13 A (Doll) We probably spoke about this kind of early
14 during the transition period, as they were
15 working through what amount of RECs could be used
16 in future years.

17 Q Are there any facts and circumstances of which
18 you two witnesses are aware that haven't already
19 been disclosed in either -- in Mr. Warshaw's
20 testimony that he's previously offered to the
21 Commission?

22 A (Doll) Not that I can recall at this time.

23 Q So, just so that I really understand what the
24 Company's position here is, the Company concedes

[WITNESS PANEL: Green|Doll]

1 that it should not have purchased renewable
2 energy credits above the ACP at the time it made
3 those purchases back in 2020. That is a
4 concession the Company has made. I'm
5 understanding that correctly?

6 A (Doll) Yes. The purchases made in mid-July 2020,
7 the Company concedes the amount that was paid
8 over the ACP that was the resulting ACP of the
9 2020 compliance year.

10 Q And your position also is that the appropriate
11 lense through which to view the prudence of that
12 decision is what a reasonable and prudent utility
13 manager, like Mr. Warshaw, should have done at
14 that time, in July of 2020, correct?

15 A (Doll) Yes. I think the issue at hand is, if
16 we're going to apply the understanding that the
17 renewable compliance standard was going to be
18 reduced to 2 percent, which did not occur until
19 Q1/Q2 of 2021, that we have to go through and
20 understand what a reasonable manager would have
21 done through that period.

22 Q That reduction from 8 percent to 2 percent, as I
23 understand it, did not occur as the result of
24 anything Governor Sununu did, that was an

[WITNESS PANEL: Green|Doll]

1 administrative determination made by either the
2 PUC or the Department of Energy, yes?

3 A (Doll) That is my understanding.

4 Q Okay. So, looking back at the juncture at which
5 Mr. Warshaw made the decisions that he made, that
6 we now know were imprudent, what should he have
7 done at that time, knowing what he knew then?

8 A (Doll) Knowing what he knew then, that the --
9 well, my understanding of his decision-making at
10 the time was there was a belief that the ACP was
11 going to remain at the \$55. And, so, he
12 purchased at the \$44 and \$47.

13 Q Let me just interrupt you, though, for a second.

14 A (Doll) Sure.

15 Q You just said "The ACP was going to remain at
16 \$55." It never actually got to 55, is that
17 correct?

18 A (Doll) It was at \$55 for the preceding years.
19 And, so, the legislation was to keep it remaining
20 there, yes. Otherwise, it would, by default,
21 fall to the 34.50.

22 Q Understood. Thank you.

23 A (Doll) So, a prudent manager would have looked
24 for an opportunity to purchase RECs at or below

[WITNESS PANEL: Green|Doll]

1 the ACP from that period forward, through the
2 compliance year.

3 Q So, it would have been prudent if the Company had
4 simply written a check in the amount of the ACP
5 to cover those RECs?

6 A (Doll) Depends on what period of time. I think,
7 if you write a check at that particular point, in
8 July, then you've forfeited your ability to
9 obtain RECs at a price of below the ACP.

10 Q So, a prudent manager would have acquired RECs at
11 whatever price they were available at at the
12 time, as long as it was below the ACP. That's
13 your testimony?

14 A (Doll) At or below the ACP.

15 Q And there were RECs available at that time below
16 the ACP?

17 A (Doll) Our research indicates, and I want to be
18 careful, because I don't want to get into the
19 confidential information. So, I can just speak
20 that information that we have seen, broker sheets
21 indicate that there were opportunities to
22 purchase RECs below the ACP.

23 Q And, so, Liberty's position is basically to
24 create or sort of determine what that

[WITNESS PANEL: Green|Doll]

1 hypothetical transaction would have been, and
2 Liberty wants to recover that amount of money?

3 A (Doll) That is correct.

4 Q That's the 800 and -- I forget -- the \$864,640
5 that we're talking about?

6 A (Doll) That is correct.

7 MR. KREIS: Okay. I think those are
8 the only questions I have.

9 CHAIRMAN GOLDNER: Thank you. We'll
10 turn now to the New Hampshire Department of
11 Energy.

12 MR. YOUNG: Thank you, Mr. Chairman.

13 My questions, I'll direct them to both
14 of you, either, whichever is comfortable
15 asking -- or, answering can respond. And I think
16 mostly I'll be referring to the redacted
17 Exhibit 10, unless otherwise, I think, stated.

18 BY MR. YOUNG:

19 Q So, the first thing I just wanted to clarify,
20 based on your responses to Attorney Kreis, is
21 regarding HB 1234, which was passed by the
22 Legislature at the end of June, and subsequently
23 vetoed at the end of July. So, I believe you had
24 stated that that bill would keep the ACP price at

[WITNESS PANEL: Green|Doll]

1 \$55. Did I hear you correctly?

2 A (Doll) That bill would have resulted in the ACP
3 being \$55, which it was in the prior two or three
4 years, I believe.

5 Q But, when Liberty made the purchase of the RECs,
6 the ACP price, as published, was not at \$55,
7 correct?

8 A (Doll) But for that legislation, the ACP would
9 not have been at the \$55; it would have been at
10 the 34.50.

11 Q I'm sorry, can you say that again?

12 A (Doll) So, but for that legislation, the ACP
13 would have been at the 34.50.

14 Q So, when they made the purchase, it was at 34.50,
15 correct?

16 A (Doll) That is correct.

17 Q Okay. So, and I think, turning to Exhibit 10,
18 your joint testimony, specifically Bates 012,
19 there's a quote there, it says: "A decision to
20 purchase the full 8 percent of Class III RECs in
21 July 2020 was reasonable, and the decision to
22 purchase those RECs "at or below" the ACP was
23 also prudent."

24 So, just to clarify for the record, you

[WITNESS PANEL: Green|Doll]

1 do agree that the Company did not purchase the
2 full 8 percent of Class III RECs at or below the
3 ACP, correct?

4 A (Doll) That is correct.

5 Q In fact, the Company actually made the decision
6 to purchase the full 8 percent of Class III RECs
7 in July 2020 at a price well above the ACP,
8 correct?

9 A (Doll) That is correct.

10 Q And, then, after that decision was made, the
11 Company then said that they would only seek to
12 recover the cost of those RECs at the ACP price?

13 A (Doll) That is correct.

14 Q So, turning back, I guess, to the testimony --
15 or, to the rebuttal testimony, excuse me,
16 Exhibit 10, Bates Page 009, specifically Lines 8
17 to 13, there's a definition of "prudence" there,
18 which describes one of the critical prudence
19 determinations "is not to apply the perspective
20 of hindsight, but rather to consider the actions
21 in light of the conditions and circumstances as
22 they existed at the time they were taken." And
23 that cites Commission Order 24,108.

24 So, I guess, first, since this is

[WITNESS PANEL: Green|Doll]

1 included in your testimony, I would assume that
2 you agree with that definition?

3 A (Doll) Yes. That's the definition that the
4 Commission stated in that order.

5 Q So, then, could you talk a little about or
6 explain why the Commission should apply that
7 perspective of hindsight, and I guess analyze or
8 judge the Company's purchase as if they were
9 bought at the ACP price, when, in fact, they were
10 bought at a much higher price?

11 A (Doll) Sure. I think the difference here, and
12 why we're asking for the recovery at the 34.50,
13 is, at the time, the standard for the Class III
14 RECs for New Hampshire was 8 percent. If we're
15 going to apply that the Company should have known
16 that the standard was going to be reduced to 2
17 percent, then I think we have to play that
18 forward, and say "what would a reasonable manager
19 have done in those circumstances?"

20 So, I think that is the reason that we
21 are discussing whether there was hindsight or
22 not, is that the Department of Energy has
23 indicated that a reasonable manager would have
24 known that the amount of Class III RECs was going

[WITNESS PANEL: Green|Doll]

1 to be reduced to 2 percent. And, so, the only
2 way to know that is to fast-forward all the way
3 through March. And I don't think that you can
4 skip the period of July 2020, up through March,
5 without playing through whether a reasonable
6 manager had opportunities to purchase RECs at or
7 below the ACP.

8 Q So, I think you just said "the only way to know
9 that it would be reduced is to fast-forward to
10 March 2021." But, at the time they purchased the
11 RECs, the Company, I mean, the Company would have
12 known that it was a possibility that it could
13 have been reduced, correct? Just based on the
14 statutory language at the time?

15 A (Doll) The Company could have known that there is
16 a possibility that it could have been reduced.
17 Correct.

18 Q Okay. Looking back at Exhibit 10, on Bates
19 Page 006, Lines 8 to 19, the Company states that:
20 "All market indicators available at the time
21 pointed at a \$55.00 ACP until the time of the
22 Governor veto."

23 Could you talk a little bit about what
24 these "market indicators" are, and how the

[WITNESS PANEL: Green|Doll]

1 Company, I guess, uses these market indicators to
2 evaluate the REC prices?

3 A (Green) Sure. So, we have several what we call
4 "broker sheets" that we've used in multiple
5 regions that kind of give you a bid/ask spread on
6 different classes of RECs across the country.
7 So, they had been very close to two actual bids
8 and asks the suppliers are willing to sell those
9 RECs at. So, we use those in order to kind of
10 get an idea of whether these suppliers are
11 offering competitive RECs for sale.

12 Q Okay. So, that, I guess, indicates how the
13 Company uses market indicators to evaluate RECs.
14 Here, I think it says "market indicators pointed
15 to a \$55.00 ACP until the time of the Governor
16 veto." And that the ACP was actually published
17 in January of 2020, is that correct?

18 A (Green) I have no reason to dispute that.

19 Q Okay.

20 A (Green) So, the broker sheets, at the time of the
21 purchase, were indicating somewhere around the
22 \$50 range.

23 Q Okay.

24 A (Green) So, I think that even the brokers thought

[WITNESS PANEL: Green|Doll]

1 that the \$55 legislation would pass at that time.

2 Q And would those broker sheets be based on things
3 such as if these RECs could be sold in other
4 states?

5 A (Green) I think that's a factor in it.

6 MR. YOUNG: Okay. I think those are
7 all the questions I have for now, Commissioners.

8 CHAIRMAN GOLDNER: Thank you. We'll
9 turn now to Commissioner questions, beginning
10 with Commissioner Simpson.

11 CMSR. SIMPSON: Thank you.

12 I guess, first, I'd have a legal
13 question for Attorney Sheehan. Are you familiar
14 with a similar issue that the Commission faced
15 with Public Service Company of New Hampshire and
16 REC III purchases?

17 MR. SHEEHAN: Yes. I know there were
18 some differences that I probably can't
19 articulate, but I know they had a similar issue.

20 CMSR. SIMPSON: Okay. And that was
21 what I was going to ask you. If you were able to
22 distinguish the issues, between that case and the
23 case for Granite State Electric, in your view?

24 MR. SHEEHAN: Not off the top of my

[WITNESS PANEL: Green|Doll]

1 head. What I can say is, we know they litigated
2 the effect of the legislation and the delta.

3 CMSR. SIMPSON: Yes.

4 MR. SHEEHAN: And they lost that
5 argument.

6 CMSR. SIMPSON: Yes.

7 MR. SHEEHAN: We elected not to
8 litigate that issue. And, as you've heard,
9 there's an argument we probably could have argued
10 it, that it was reasonable to buy at 55, because
11 the legislation had passed, but we chose not to.

12 CMSR. SIMPSON: Yes.

13 MR. SHEEHAN: And I think there's also
14 a slight difference in the Eversource case that I
15 can't bring to mind right now.

16 CMSR. SIMPSON: What I'm wondering is
17 the timing of the purchase, because it seems that
18 there was an order that came out from this
19 Commission changing the 2 percent requirement,
20 which I'd like to ask Mr. Eckberg when he's on
21 the stand about, that was really what I was
22 trying to drill down into, was whether they faced
23 the same issue, because that's not my
24 recollection, of the delta from 8 percent to 2

[WITNESS PANEL: Green|Doll]

1 percent that arose from Commission order?

2 MR. SHEEHAN: So, the timing of that
3 order, the purchase -- this purchase was Summer
4 of 2020, at the time the 8 percent was in effect.

5 CMSR. SIMPSON: Yes.

6 MR. SHEEHAN: It was the following
7 spring when it was reduced to 2 percent. So, as
8 you're hearing, there's two issues here. One is,
9 "Should we buy 2 percent or 8 percent?" And the
10 other is "at what price?"

11 CMSR. SIMPSON: Yes. The price you put
12 off, though?

13 MR. SHEEHAN: Yes.

14 CMSR. SIMPSON: You've put to the
15 aside. You're not asking for anything over the
16 34.

17 MR. SHEEHAN: Correct.

18 CMSR. SIMPSON: You're just looking for
19 the 8 percent that you purchased of your
20 obligation at the ACP that was effective by law
21 at the time you made the purchase, and
22 subsequently?

23 MR. SHEEHAN: Exactly.

24 CMSR. SIMPSON: Okay.

[WITNESS PANEL: Green|Doll]

1 CHAIRMAN GOLDNER: So, Cmsr. Simpson,
2 just a clarification. Since Attorney Sheehan
3 isn't the witness, though, --

4 CMSR. SIMPSON: Yes. No, I know.

5 CHAIRMAN GOLDNER: -- we don't -- no, I
6 know. We don't have testimony. So, will you
7 also direct your questions at the witness box?

8 CMSR. SIMPSON: I will. Those were
9 legal questions, though. So, I was asking the
10 attorney.

11 MR. SHEEHAN: That's our position.
12 Correct.

13 CMSR. SIMPSON: Yes.

14 CHAIRMAN GOLDNER: That's your -- okay.
15 Thank you.

16 CMSR. SIMPSON: Okay.

17 BY CMSR. SIMPSON:

18 Q So, today, if you were faced with the situation,
19 what would you do?

20 A (Doll) The exact same situation?

21 Q Yes. Your RPS obligation, how would you manage
22 it?

23 A (Doll) I think the uncertainty we see in the
24 Class III RECs, as far as the volume, the

[WITNESS PANEL: Green|Doll]

1 percentage required, I think, at this point, we
2 would probably hold off on purchasing, or, if we
3 purchased, it would be a very *de minimus* amount.
4 I think we'd look at the calculation of what the
5 Commission reduction can be.

6 It's not something I think we can
7 accurately estimate. And, so, we would either
8 choose to not purchase or purchase a
9 significantly smaller amount, to try to ensure
10 that we don't come in over the threshold.

11 Q Why wouldn't you just wait until the end of the
12 obligation period and pay the ACP?

13 A (Doll) I think, if you wait till the end of the
14 obligation period, you forfeit your ability to
15 procure below the ACP, which has been part of our
16 process, is to look for value below the ACP.

17 Q Uh-huh. And do you have a perspective on
18 Mr. Warshaw's thinking? Because, if I were in
19 his position, and I were seeing that the
20 possibility of the ACP increasing significantly
21 was likely, which is what it seems like his
22 thought process was, why wouldn't he try to look
23 in the lower cost, and pay the ACP at that time?

24 A (Doll) I think the ACP is only paid at the

[WITNESS PANEL: Green|Doll]

1 period -- at the end of the compliance period.

2 So, he has, my understanding of the facts, he has
3 a 34.50 ACP. His belief is the ACP, assuming the
4 Governor signs, is going to move it to \$55.

5 Q Uh-huh.

6 A (Doll) So, he purchased two tranches around the
7 \$44 and \$47 mark, to save the delta between those
8 purchases and the 55.

9 Q Okay. So, you can't make that ACP payment
10 intraperiod. You have to make that payment at
11 the close of the period, that's your
12 understanding?

13 A (Doll) That is my understanding.

14 A (Green) I think you can make the ACP payment. I
15 mean, if you're just counting on making the ACP
16 payment, I think you could probably make it at
17 any point.

18 Q Uh-huh.

19 A (Green) But, with our compliance filing, to get
20 it all in the same thing, I believe that we just
21 wait and pay it at the end. Because, if we
22 don't, we just forfeit the opportunity to beat
23 the ACP with the market price.

24 Q Okay. I'll look forward to --

[WITNESS PANEL: Green|Doll]

1 A (Green) That's my understanding.

2 CMSR. SIMPSON: Okay. I'll look
3 forward to asking Mr. Eckberg those questions.

4 Thank you, both. I don't have any
5 further questions for these witnesses.

6 CHAIRMAN GOLDNER: Thank you. We'll
7 turn to Commissioner Chattopadhyay.

8 CMSR. CHATTOPADHYAY: Good morning.

9 BY CMSR. CHATTOPADHYAY:

10 Q So, what is the compliance year for 2020? Is it
11 July through June?

12 A *[Witness Green indicating in the affirmative.]*

13 A (Doll) Yes.

14 Q And I think, just to confirm again, at the time
15 Mr. Warshaw triggered the purchases, the ACP was
16 \$34.50?

17 A (Doll) That is correct.

18 Q Typically, when you do pay for the -- pay the ACP
19 for the RECs that you're required to commit to,
20 that happens, for example, for the 2-20 --
21 sorry -- 2020 compliance year, it would have
22 happened sometime around end of June 2021,
23 correct, or a little before that?

24 A (Doll) That is correct.

[WITNESS PANEL: Green|Doll]

1 Q Can you tell me when was the ACP eventually set,
2 meaning, when did the veto happen, and what
3 point, in 2021, you knew what the ACP is going to
4 be for the compliance year?

5 A (Green) I believe the veto was July 28th of that
6 year.

7 Q July 28th of?

8 A (Green) 2020.

9 Q 2020.

10 A (Green) Yes.

11 Q So, you're talking about purchases made before
12 that?

13 A (Green) Yes. I think a week and two weeks, in
14 that range, before that.

15 Q And, so, well before 2021 June, you knew that the
16 veto had happened?

17 A (Doll) That is correct.

18 Q Okay. When was the requirement change from 8
19 percent to 2 percent? July what -- sorry, 2021,
20 when?

21 A (Green) In March.

22 Q In March, okay. Let's say you had decided not to
23 buy the purchases at roughly the prices, which
24 were, I think, \$48, around that, and you had

[WITNESS PANEL: Green|Doll]

1 waited till the end. So, just sort of saying
2 that we're going to go with the ACP, and I think
3 I heard Witness Green talk about "you could have
4 actually purchased at ACP", it's just that, I
5 think, correct me if I'm wrong, there's some sort
6 of a settlement process that happens at end of
7 the compliance year, that's what you were talking
8 about. But you could have committed to paying
9 \$34.50?

10 A (Green) That's correct, at a -- based on the load
11 data that we have the time, we would be procuring
12 up to an estimate at that point. It wouldn't be
13 like -- we could still have something that would
14 be available at the ACP that we would have to
15 pay.

16 Q If you had done that, and it turned out that the
17 ACP was actually changed to \$55 later, what would
18 you have done during the end of the compliance
19 year?

20 A (Doll) So, just to make sure I understand the
21 question. You're saying "if the veto did not
22 occur, and we did not make the purchases that we
23 made in July, what would our ACP compliance
24 payment have looked like that following June?"

[WITNESS PANEL: Green|Doll]

1 Q Yes.

2 A (Doll) I think, then we would have made the ACP
3 purchase at \$55. And that is assuming that, as
4 we are monitoring the REC market and the
5 bilateral market, that the price never drops
6 below the then certain ACP.

7 Q But could you have committed to paying \$34.50 at
8 the time the decision was made, and that is what
9 you would have been asked to pay, rather than the
10 \$55, at the time of the compliance?

11 Because what I understood from
12 Mr. Green's testimony is that you could have
13 bought -- or, you could have paid -- you could
14 have committed to an ACP of \$34.50, taking care
15 of the purchase right during, roughly, July of
16 2020. I'm trying to understand.

17 A (Doll) I think -- so, the ACP, you're saying we
18 could have committed to a \$34.50 purchase --

19 Q Yes.

20 A (Doll) -- in July of --

21 Q 2020.

22 A (Doll) -- 2020, at the 8 percent?

23 Q Doesn't matter. Like, I'm saying, whether it's 8
24 percent or 2 percent, would you have committed --

[WITNESS PANEL: Green|Doll]

1 could you have committed to it?

2 A (Doll) I think, subject to check, I think we
3 could have committed to an ACP purchase.

4 Q Okay. Okay.

5 A (Doll) I think it would require a percentage --

6 Q Okay. That's all I'm checking. Okay. Was there
7 uncertainty about the percentage? Like, that it
8 will remain 8 percent, or it could go down to
9 2 percent? Were you certain it would remain 8
10 percent?

11 A (Doll) To my knowledge, there was not a lot of
12 uncertainty that it was going to remain at 8
13 percent. I believe the prior years it had been 8
14 percent. So, I'm not sure if I can recall how
15 many years it had been 8 percent for Class III
16 RECs.

17 A (Green) Yes, I can't recall either. I know it
18 was at least four.

19 It looks like it was three years,
20 leading up to the 2020 compliance year.

21 A (Doll) So, 2017, 2018, and 2019, they were all
22 8 percent.

23 Q Was the proceeding to allow the change from 8
24 percent to 2 percent already in place at the time

[WITNESS PANEL: Green|Doll]

1 the decision was made?

2 A (Doll) At the time of the July 2020 purchases?

3 Q Yes.

4 A (Doll) My understanding was that proceeding was
5 kicked off the next year, sometime in the March
6 timeframe.

7 Q Okay. I just wanted to get it. Okay. If you
8 had decided that you wouldn't make the purchases
9 as you did, but you also did not buy the -- did
10 not pay the ACP, and waited till the compliance
11 year ended, like usually had happened previously,
12 after March, you would have actually bought 2
13 percent, not 8 percent?

14 A (Doll) After it became certain, we would have
15 bought a smaller percentage, yes. Sometime in
16 the March/April timeframe, yes.

17 Q Can you tell me whether previously, when you made
18 these sort of purchases or the Company made these
19 purchases, did they always do it for the
20 compliance period, for example, 2020, July
21 through June, you do it during July 2020? Or,
22 you know, is that how it's always been done or
23 can you -- or, is it the case that previously, or
24 even all other years, you had actually waited,

[WITNESS PANEL: Green|Doll]

1 you didn't buy a whole lot, like the 8 percent or
2 whatever the number was, so far ahead of the end
3 of the compliance year?

4 A (Doll) So, --

5 Q Do you want me to repeat the question? I can --

6 A (Doll) No, I think I understand it. But maybe
7 I'll rephrase in my response, to make sure I'm
8 answering your question.

9 You're saying, historically, have the
10 purchases been made at a specific period in time?
11 And I don't know that I can say that,
12 historically, the purchases were always made at a
13 specific point in time. My understanding of the
14 philosophy of the bilateral trading that the
15 Company was doing was it was not a laddering
16 approach. It was looking for opportunities to
17 buy the RECs that were appropriate to the
18 percentages, and it was looking at prices that
19 would be at or below the ACP.

20 Q My question was, to be -- I'm trying to be more
21 clear here. So, in July, roughly around
22 July 2020, you bought 8 percent of your, you
23 know, the whole requirement, --

24 A (Doll) That's correct.

[WITNESS PANEL: Green|Doll]

1 Q -- for the compliance year 2020, which would have
2 ended in June 2021.

3 I'm saying, whether that kind of
4 purchase or approach was used in previous years,
5 meaning, you always bought everything right the
6 beginning of July, you know, in 2000 --

7 A (Doll) Yes. I can't say that, historically, that
8 they were all purchased at that period in time.
9 I can just speak to my understanding of the
10 trading philosophy of the Company, would be to
11 purchase them at or below the ACP.

12 So, if, during that point in time, they
13 were seeing RECs offered at what they would
14 consider a value at or below the ACP, they would
15 have purchased an amount at that time. If they
16 were above, they would have not purchased.

17 Q Did you use the 30 percent banking opportunity in
18 any of the compliance periods?

19 A (Green) Yes. We exhausted our 30 percent banking
20 for each of the subsequent years that we were
21 allowed.

22 Q Did any -- I mean, it's difficult to ask this
23 question, because you weren't there in 2020,
24 don't you think, when you do an analysis, you

[WITNESS PANEL: Green|Doll]

1 should look at what is the upside, as well as
2 what is the downside? If you commit to
3 something, and then the reality turns out to be
4 something else, meaning because there is
5 uncertainty, was -- do you believe that that
6 should be looked at, both upsides and downsides,
7 generally speaking? Or, do you want me to
8 clarify even more?

9 A (Doll) Yes, can you clarify, --

10 Q So, --

11 A (Doll) -- in particular, when you said the
12 "uncertainty"?

13 Q So, for example, at the time you made the
14 purchases, okay, the ACP was \$34.50, and you were
15 expecting it was going to be \$55, but that is an
16 expectation. What happens if it stayed at 34.50,
17 and do some sort of analysis there. What happens
18 it's \$55, under the assumption that you're buying
19 the RECs, what are the outcomes? So, there are
20 these upsides/downsides.

21 But, likewise, if you decide not to buy
22 the RECs, you -- could be that later the price
23 went up to \$55, the ACP, and there's a downside
24 there. And the upside would be it actually

[WITNESS PANEL: Green|Doll]

1 remained \$34.50.

2 Are you aware of whether anybody did
3 any analysis comparing those scenarios?

4 A (Doll) I am not aware of any scenario analysis on
5 an oscillation of the ACP.

6 CMSR. CHATTOPADHYAY: Okay. I think a
7 proper economic analysis, and I'm speaking to as
8 an economist, I would look at all realities, and
9 sort of have some sort of a sense of explaining
10 why the decision that has been taken is the
11 optimal decision.

12 And, so, I'll leave it at that. Thank
13 you.

14 CHAIRMAN GOLDNER: Okay. Just a few
15 questions.

16 BY CHAIRMAN GOLDNER:

17 Q So, just on the issue of the Company's philosophy
18 when trying to achieve the lowest purchase price
19 for the RECs. I think what you're saying, and I
20 don't -- just want to clarify, that the closer
21 you get to the deadline, I think June 30th, the
22 last day in the cycle, the closer you get to that
23 deadline, more often than not, the closer the
24 market price is to the ACP, because everyone

[WITNESS PANEL: Green|Doll]

1 knows that you can purchase -- you can purchase
2 for ACP at the very end of the deadline, if
3 needed.

4 So, I assume that the reason that the
5 Company chose to execute transactions early in
6 the year was that the variability is highest
7 early in the year. And, so, the opportunity to
8 procure a lower price would be earlier in the
9 cycle, rather than later in the cycle.

10 Is that the right understanding or does
11 the Company have a different view of the timing
12 of purchases?

13 A (Doll) I may ask you to rephrase that, just to
14 make sure -- I want to make sure that I answer
15 your question correctly.

16 Q Sure. So, you have twelve months to purchase the
17 RECs. So, if you're one day before the deadline,
18 the market price, I assume, would be very close,
19 if not the ACP itself. And, then, the farther
20 back you go in time, the more variability there
21 might be. But the price would always be under
22 ACP, at least in New Hampshire, because,
23 otherwise, there would be no reason for you to
24 purchase anything.

[WITNESS PANEL: Green|Doll]

1 So, I just want to understand your ACP
2 process, early in the cycle versus late in the
3 cycle, if you could just help the Commission
4 understand the logic of purchasing something
5 early in the cycle versus late in the cycle?

6 A (Doll) Yes. I think, overall, the philosophy is
7 to look where you can find value. I don't think
8 there's a predetermination on where the market
9 trends would be. I'm not going to dispute that,
10 as you get closer to the end of the compliance
11 period, that you could see a softening of prices.
12 But there's a lot of market competition forces at
13 play during that period. You know, our review of
14 the market since these purchases, from broker
15 sheets, from the offers that we've gotten from
16 other suppliers, is, you know, whether it's the
17 Connecticut Class I or the New Hampshire
18 Class III, the offers tend to come in just below
19 the lower of the two, because, otherwise, you're
20 not going to make the sale, right? I think that
21 was kind of what you were getting at.

22 Q I think so. Thank you for that. And, then,
23 based on this experience, does the Company have a
24 different philosophy than it did back then? In

[WITNESS PANEL: Green|Doll]

1 other words, waiting until you get farther along
2 in the cycle decreases the uncertainty, and makes
3 the transactions safer, at least from the
4 Company's point of view, the closer you get to
5 the final date?

6 A (Doll) Yes. I think I can speak specifically
7 about the Class III RECs, because I think those
8 are really what we're talking about.

9 The Company's philosophy is, if, right
10 now, we were to see an offer just below the ACP,
11 just the uncertainty of the volume, based on what
12 we've seen in 2020, and our inability to
13 precisely predict what that lowering could be, is
14 we would tend to hold off. And, so, it's
15 probably a little bit of a different philosophy
16 for the Class III RECs, just due to the
17 volumetric uncertainty from the 2020 process.

18 Q Okay. And, in the current cycle, have you
19 already purchased the RECs, or no? What's
20 happening today?

21 A (Green) We have purchased Class I, IIs, and IVs
22 to meet the obligation. We have refrained from
23 purchasing any Class IIIs.

24 Q IIIs. So, that makes -- that makes sense. The

[WITNESS PANEL: Green|Doll]

1 number of RECs that are at issue today, I just
2 want to validate that I'm looking at the right
3 numbers, I'm showing "20,000" RECs in Tranche 1
4 and "15,497" in Tranche 2. Is that what we're
5 talking about today?

6 A (Green) I think that describes the purchases,
7 yes.

8 Q Okay. And is that -- was that exactly 8 percent?
9 Was that 6 percent? Was that 4 percent? What
10 was the translation?

11 A (Green) That would have been the 8 percent.

12 Q So, that was exactly 8 percent. Okay. Okay,
13 that is helpful.

14 And is the -- and I'm going back to
15 this earlier question on Eversource, the
16 Eversource Order 25,582, in Docket 21-077, and
17 the Company's familiarity with that ruling from
18 the Commission.

19 And I'm going to -- it's, I think, a
20 follow-up question to one of Commissioner
21 Simpson's questions. Is it your understanding
22 that, in that Eversource ruling, the Commission
23 took the 8 percent, so, the number of RECs at
24 8 percent, similar to what you've done,

[WITNESS PANEL: Green|Doll]

1 multiplied that times the 34.54 ACP price, and,
2 so, really, what you're asking for today is for
3 the Commission to rule as we did in the
4 Eversource docket? Is that your understanding?

5 A (Doll) Subject to check.

6 A (Green) Yes.

7 CHAIRMAN GOLDNER: And, so, I think,
8 Attorney Sheehan, I would ask you to address that
9 in closing as well please. The Commission would
10 be very interested in knowing if what you're
11 asking for here today mirrors exactly the ruling
12 in the Eversource Order 25,582?

13 MR. SHEEHAN: Yes. I pulled up the
14 order, and I'll be able to address that.

15 CHAIRMAN GOLDNER: Thank you.

16 Okay. I'll turn to my fellow
17 Commissioners, to see if there's any follow-on
18 questions?

19 CMSR. SIMPSON: Yes, I have a
20 follow-up.

21 BY CMSR. SIMPSON:

22 Q So, to go off of what Chairman Goldner was asking
23 you about the numbers. So, at 8 percent, in July
24 of 2020, how many RECs would have met the

[WITNESS PANEL: Green|Doll]

1 8 percent burden? What's the number?

2 A (Green) I don't know that off the top of my head.
3 I'd have to look real quick.

4 Q Take your time.

5 A (Doll) So, just to make sure we're getting the
6 question correct, --

7 Q Yes.

8 A (Doll) You want to know what --

9 Q In 2020, for calendar year 2020, what would
10 8 percent have been, in terms of the number of
11 RECs?

12 A (Green) So, it's like the filing at the end of
13 the year, in 2021?

14 Q For calendar year 2020, 8 percent of your -- or,
15 what -- how many RECs would have resulted for you
16 meeting 8 percent of your purchase obligation?
17 What's that number, the number of RECs?

18 A (Doll) So, the 8 percent should reflect, now, and
19 I think the reason it's a little confusing is,
20 there's an 8 percent that you have at the
21 time, --

22 Q Yes.

23 A (Doll) -- which relies on an estimate of what
24 your sales are through the end of the year.

[WITNESS PANEL: Green|Doll]

1 Q Uh-huh.

2 A (Doll) So, we can say it's approximately 35,500
3 RECs.

4 Q Okay. So, in July of 2020, how many RECs were
5 purchased?

6 A (Doll) 35,497.

7 Q Okay.

8 A (Doll) Class III RECs.

9 Q Okay. And, then, I should be asking
10 Dr. Chattopadhyay, a quarter of that --

11 CMSR. CHATTOPADHYAY: So, 9,000.

12 BY CMSR. SIMPSON:

13 Q So, a quarter of that is roughly 8,875 RECs,
14 would you agree with that? A quarter of 35,500?

15 A (Doll) Yup.

16 Q Okay. So, that's the 2 percent. Now, I'm trying
17 to get to the distribution over the subsequent
18 years, your 30 percent. How many of these RECs,
19 of the 35,497 calendar year 2020 Class III RECs,
20 were attributed to subsequent years?

21 A (Doll) You're looking for what the 30 percent of
22 those RECs purchased in 2020 were used for 2021,
23 and then 2022?

24 Q Yes, sir.

[WITNESS PANEL: Green|Doll]

1 A (Doll) It's going to take us a few minutes to
2 find.

3 Q Okay. Take your time. And, then, once you
4 figure that out, what's the stranded number?

5 *[Short pause.]*

6 **BY THE WITNESS:**

7 A (Green) Okay. I believe that, in 2020, we were
8 able to retire 8,419.

9 BY CMSR. SIMPSON:

10 Q In 2020?

11 A (Green) Yes.

12 Q 8,419?

13 A (Green) Correct.

14 Q And, then, 2021?

15 A (Green) 1,366.

16 Q Thirteen hundred and sixty-six?

17 A (Green) Yes, sir.

18 Q Okay. And 2022?

19 A (Green) 679, which leaves you a stranded amount
20 of 25,033.

21 Q Say the 2022 number for me one more time please?

22 A (Green) 679.

23 Q And, then, stranded, say that number one more
24 time?

[WITNESS PANEL: Green|Doll]

1 A (Green) 25,033.

2 Q Thank you. Okay.

3 A (Doll) That may be three -- three off your
4 number, because I gave you the approximate
5 35,500.

6 Q So, we're within an order of magnitude. So,
7 that's helpful.

8 A (Green) Yes.

9 CMSR. SIMPSON: Thank you so much.
10 That's all I have.

11 CMSR. CHATTOPADHYAY: So, I have a
12 follow-up.

13 BY CMSR. CHATTOPADHYAY:

14 Q I think I asked about the banking facility, okay.
15 Did you have to rely on this in any other
16 compliance year? Like, the question is, the
17 situation that was created in 2020, with the move
18 from 8 percent to 2 percent, you were kind of
19 forced to use the banking facility. I'm asking,
20 in previous years or some other years, have you
21 ever relied on the banking facility to better
22 optimize purchases? Would you happen to know
23 that?

24 A (Green) Subject to check, I believe that he did

[WITNESS PANEL: Green|Doll]

1 have some banked Class IIIs in subsequent years.
2 It was a very small amount. Subject to check.
3 And he uses -- or, Mr. Warshaw has used the
4 banking provisions --

5 *[Court reporter interruption.]*

6 **CONTINUED BY THE WITNESS:**

7 A (Green) Mr. Warshaw has used the banking
8 provision in other classes.

9 BY CMSR. CHATTOPADHYAY:

10 Q And you said "subsequent years", can you clarify?

11 A (Green) Yes. Just give me a second, I can pull
12 up one of his workbooks.

13 *[Short pause.]*

14 **BY THE WITNESS:**

15 A (Green) So, it looks like, in 2018, he did have
16 some banked from the previous year. It was 82
17 RECs in Class III.

18 BY CMSR. CHATTOPADHYAY:

19 Q This could be for Attorney Sheehan. But, I mean,
20 it's probably a collective effort to answer this
21 question. Which is, are you sure, for
22 Eversource, the issue of this excess RECs was
23 also part of the fray?

24 So, I'm not sure, I understand the

[WITNESS PANEL: Green|Doll]

1 logic behind your request to go, you know, allow
2 up to 34.50, beyond that don't, that is, you're
3 going to eat the cost.

4 But I'm not sure whether the Eversource
5 situation is exactly what you're asking for,
6 because maybe the issue of excess RECs was
7 handled differently there.

8 So, I just wanted to give you the
9 opportunity to --

10 MR. SHEEHAN: Could I chime in?

11 CMSR. CHATTOPADHYAY: Yes.

12 MR. SHEEHAN: The Eversource case did
13 not involve excess number of RECs. It was only
14 involved in the price differential. So, it turns
15 out they bought RECs at the higher price, that
16 they could use all of them in that year. So,
17 they didn't end up with any stranded RECs, and
18 they didn't have the 8 percent/2 percent issue.

19 So, I don't know the number, but the
20 number of -- for example, the number of RECs they
21 purchased was only 1 percent of their
22 requirement. So, they used them all, none are
23 stranded. And the only issue was "We overpaid
24 for them. Do we get that money or not?" And you

[WITNESS PANEL: Green|Doll]

1 said "No."

2 So, the 8 percent/2 percent issue was
3 not part of that order.

4 CMSR. CHATTOPADHYAY: So, I wanted that
5 confirmation. So, the 8 percent or 2 percent is
6 specific to this docket. Thank you.

7 CHAIRMAN GOLDNER: Thank you. I think,
8 at this point, we'll move to the Company's
9 redirect.

10 MR. SHEEHAN: Thank you. Just a few,
11 tying up loose ends, gentlemen.

12 **REDIRECT EXAMINATION**

13 BY MR. SHEEHAN:

14 Q Starting from the last topic, your review of the
15 prior use of banking, is it fair to say that that
16 was more of a last-minute true-up kind of thing?
17 Where Mr. Warshaw would buy RECs based on a
18 forecast during the year, at the end of the
19 compliance year, when you have actual load data,
20 you're off by 82 RECs, one way or the other. So,
21 you either pay the ACP for the 82 you were short
22 or you stick the 82 in the bank for the next
23 year, it was that kind of concept?

24 A (Green) That's correct.

[WITNESS PANEL: Green|Doll]

1 Q So, if, to the extent banking was used, it was
2 small numbers, just to even things out at the end
3 of each compliance year?

4 A (Green) Yes.

5 Q And you're comfortable that, with the much larger
6 over-purchase of the 8 percent, we exhausted the
7 rules governing banking over the next two years.
8 And all we're asking for now are the ones that we
9 could not retire under the statute that governs
10 how we use banking?

11 A (Green) That's correct.

12 Q Which goes back to the fact that we purchase RECs
13 during the course of the year based on forecasts
14 that always need to be trued up?

15 A (Green) That's correct.

16 Q Okay. And, Mr. Doll, you mentioned the volume
17 uncertainty that persists today, and that is the
18 question of "Will the 8 percent be changed again
19 this coming spring?" That's a question you have
20 each year. And, because of that, the Company is
21 not committing to purchases of Class IIIs during
22 the year?

23 A (Doll) That is correct.

24 Q And it turns out that 2020, the requirement went

[WITNESS PANEL: Green|Doll]

1 from 8 to 2, and, in each year since, it was also
2 gone from 8 to a very small number, 1 percent or
3 a half percent, or something of the same
4 magnitude?

5 A (Doll) I believe it's gone -- it went from 8
6 percent to 2 percent; 2021 was 1 percent; 2022
7 was a half percent; and, then, the last two years
8 it had been 8 percent for 2023, so current, and
9 then 8 percent for 2024.

10 Q And the 8 percent for 2023 is subject to change,
11 the DOE, who now has the authority to change it,
12 could act in the upcoming year for that?

13 A (Doll) That is my understanding.

14 Q And, again, the 8 percent is a statutory
15 requirement?

16 A (Doll) That is my understanding.

17 Q That is in place unless and until either the
18 Commission or now DOE changes it?

19 A (Doll) That is my understanding, yes.

20 Q Going back to the practice of buying RECs in the
21 past, where I think you mentioned that we
22 would -- the Company would monitor the market,
23 and, if they saw an opportunity to buy at less
24 than the ACP, that's when the Company would make

[WITNESS: Eckberg]

1 a decision to buy?

2 A (Doll) That is correct.

3 Q And is it fair to say that the risk the Company
4 had in that situation is, if we didn't buy, just
5 to use a hypothetical, \$30 Class IIIs, when the
6 ACP was 34, did not make that purchase, at the
7 end of the year paid the \$34 ACP, we were subject
8 to "why didn't you buy them at 30, when they were
9 available last October?"

10 A (Doll) That would certainly be a consideration.

11 MR. SHEEHAN: That's all I have. Thank
12 you.

13 CHAIRMAN GOLDNER: Okay. Then, I would
14 say the Liberty -- the questioning for Liberty
15 witnesses has concluded. The witnesses are now
16 dismissed. Thank you for traveling from the
17 Great State of Missouri today.

18 And we'll take a quick break, and start
19 again at 10:25 with the DOE's witness, Mr.
20 Eckberg. Thank you.

21 *(Recess taken at 10:13 a.m., and the*
22 *hearing resumed at 10:29 a.m.)*

23 CHAIRMAN GOLDNER: All right. We'll go
24 back on the record.

[WITNESS: Eckberg]

1 And, Mr. Patnaude, if you could please
2 swear in Mr. Eckberg.

3 *(Whereupon **STEPHEN R. ECKBERG** was duly*
4 *sworn by the Court Reporter.)*

5 CHAIRMAN GOLDNER: Thank you. And
6 we'll begin with direct testimony from the New
7 Hampshire Department of Energy.

8 MR. YOUNG: Thank you, Mr. Chairman.

9 **STEPHEN R. ECKBERG, SWORN**

10 **DIRECT EXAMINATION**

11 BY MR. YOUNG:

12 Q Mr. Eckberg, could you please state your name and
13 current position at the Department for the
14 record?

15 A I'm a Utility Analyst with the Regulatory Support
16 Division of the Department of Energy.

17 Q And how long have you held your current position
18 for?

19 A Well, first, I think I neglected to state my name
20 there in that response. Did I not? I think I --
21 perhaps I missed stating that my name is "Stephen
22 Eckberg". So, let me put that on the record.

23 I have held my position with the
24 Department of Energy since it was formed, in July

[WITNESS: Eckberg]

1 of 2020.

2 Q 2021, I believe?

3 A Okay. Subject to check.

4 Q And what are your primary responsibilities as an
5 Analyst in the Electric Division?

6 A My primary responsibilities are reviewing filings
7 from electric utilities, and advising the
8 Commission, through testimony and technical
9 statements, on the Department's position
10 regarding electric rates and a variety of
11 filings.

12 Q And, prior to this current position at the
13 Department of Energy, did you hold any other
14 positions at the Commission?

15 A Yes, I did. I joined the Commission in 2014 as
16 an analyst in the Sustainable Energy Division,
17 where my responsibilities included oversight and
18 review of compliance with the Renewable Portfolio
19 Standard, which included reviewing the annual
20 reports from utilities, as well as competitive
21 suppliers, regarding the RECs that were purchased
22 and used in compliance with the statute.

23 Q And are those reports you just mentioned, are
24 they know as the "E-2500 reports"?

[WITNESS: Eckberg]

1 A That's correct. That's the official designation.

2 Q And would you describe your involvement in this
3 docket, and the stranded REC issue before the
4 Commission in a little more detail?

5 A Certainly. I've been involved in this docket, in
6 this matter regarding these Class III RECs, since
7 it first came before the Commission in Docket DE
8 21-087, which was Liberty's 2021 Default Service
9 Solicitation, which also included reconciliation
10 of energy and RPS costs. And, during that
11 review, that's when I became aware of this
12 situation regarding these Class III RECs.

13 Q Do you have Exhibit 8 in front of you?

14 A Exhibit 8. Yes, I do.

15 Q Is this your prefiled testimony, correct?

16 A Yes, it is.

17 Q And was this testimony prepared by you or at your
18 direction?

19 A Yes, it was.

20 Q And do you have any changes or corrections to
21 make to that testimony?

22 A No, I do not have any changes or corrections.

23 But I would like to offer one clarifying comment.

24 In Exhibit 8, at Bates Page 003, Lines

[WITNESS: Eckberg]

1 8 through 10, where I share my recommendation
2 that "the portion of costs representing both
3 excess quantity and excess cost (above ACP) of
4 the vintage 2020 Class III RECs be disallowed for
5 collection from ratepayers", I don't want there
6 to be any confusion about the meaning of my
7 language there. I'm referring to all of the
8 costs, both the costs that are above the ACP and
9 the costs for unused or stranded Class III RECs,
10 both of which are the result of and directly
11 attributable to the Company's original decision
12 to commit to purchase Class III RECs at prices
13 above the then applicable ACP rate of \$34.54 per
14 kilowatt-hour in July of 2020.

15 Q Okay. Thank you. I think I want to start at
16 maybe just an overview of RPS compliance
17 generally. And I think I'll start with, when is
18 the ACP rate published in any given year?

19 A According to statute, and as far as I'm aware,
20 the -- previously, the Commission, and now the
21 Department of Energy publishes the updated ACP
22 rates by January 31st in each year for that
23 compliance year. So, for the current compliance
24 year of 2023, the ACP rates are published on the

[WITNESS: Eckberg]

1 Department's website by January 31st of 2023.

2 And, similarly, for the year in question, 2020,
3 the ACP rates were published by January 31st of
4 that year.

5 Q And attached to your testimony is a NEPOOL GIS
6 table, on Bates Page 017, and it's marked as
7 "Attachment SRE-2". Could you just provide us a
8 brief, I guess, explanation of what this table is
9 showing?

10 A Sure. And we've heard some testimony from
11 Liberty's witnesses this morning in response to
12 Commission questions about the compliance year.
13 And just to be clear, the RPS compliance year is
14 a calendar year, January 1st through
15 December 31st. The energy that is sold by a
16 utility or a competitive supplier is required to
17 comply with the Renewable Portfolio Standards for
18 that calendar year. And the E-2500 report, or
19 the annual report, of how the Company, any
20 company, complies with the RPS standard is due by
21 July 1st of the following calendar year.

22 And this table here, which I've
23 included as an attachment to my testimony, is a
24 table that's publicly available on the NEPOOL GIS

[WITNESS: Eckberg]

1 website, that's the "Generation Information
2 System", that tracks energy that's generated in
3 the New England area, as well as, since the
4 advent of RPS standards in New England states,
5 has also been the tracking agency to track the
6 renewable characteristics of certified renewable
7 generators.

8 And this table that we see here in my
9 Attachment 2, as I say, this is available on the
10 NEPOOL GIS website, and all, you know, compliance
11 managers are quite familiar with this table. But
12 it shows us that, for instance, in the first
13 three rows, we're looking at January, February,
14 and March of any given year, it shows us that the
15 energy produced in that quarter, in that calendar
16 quarter, generators are responsible for
17 submitting to the GIS their generation records by
18 July 10th. And RECs, or the "Renewable Energy
19 Certificates", are issued by the GIS on July 15th
20 for that first quarter of the annual generation.

21 So, there is quite a bit of a lag, a
22 time lag, between the time of REC issuance and
23 when that energy is generated. And, certainly,
24 that time lag does play into a lot of the

[WITNESS: Eckberg]

1 challenges, you might say, that are faced by
2 entities who are required to comply with the RPS.
3 Q Perfect. Thank you. So, understanding that the
4 RPS compliance year is a calendar year, and the
5 ACP rate is published by, I guess, then the
6 Commission, but now the Department, by the end of
7 January each calendar year.

8 I guess it would be helpful to ask
9 about your understanding of the legislation that
10 was passed in 2020, or that passed the House and
11 Chamber -- and Senate in 2020, and it was
12 subsequently vetoed, and that was HB 1234. And
13 is your understanding that passed the House and
14 the Senate on June 30th, 2020, correct?

15 A Yes. According to information that's publicly
16 available on the New Hampshire House website,
17 which tracks and keeps track of records relating
18 to bills, and their flow through the legislative
19 process, the docket -- the legislative docket,
20 you might say, for HB 1234 shows that, on
21 June 30th, the House concurred with the Senate
22 amendment, and, therefore, that bill, HB 1234,
23 was passed, as you asked.

24 I would point out that HB 1234 is I

[WITNESS: Eckberg]

1 guess we may call it an "omnibus" -- "omnibus
2 bill", which was sort of a collection of many,
3 many pieces of legislation, which had been
4 reviewed and evaluated, some had been rejected
5 earlier in the year, but this piece of
6 legislation here that we're talking about, that
7 has been talked about today, which would have
8 impacted the Class III Alternative Compliance
9 Payment rate, had its genesis in another piece of
10 legislation, which was HB 1518, 1-5-1-8, which
11 did not survive the legislative process, and then
12 was -- I guess you could say it was incorporated
13 into this larger omnibus bill, HB 1234. And
14 that's how it was making its way through the
15 House.

16 That's my understanding, of having
17 watched or learned about the legislative process
18 related to this bill.

19 Q And just to clarify the effect of that
20 legislation, that would have raised the ACP for
21 the 2020 compliance year to \$55, shortly after it
22 was signed by the Governor, if it was signed by
23 the Governor, correct?

24 A Yes. It would have raised the ACP to 55, that's

[WITNESS: Eckberg]

1 correct. Because, as I said a few minutes ago,
2 effective January 30th, approximately, when the
3 ACP prices were published, January 30th of 2020,
4 the ACP price was 34.54. That was in statute
5 about how to calculate that, and the information
6 was publicly available, yes.

7 Q Okay. So, the bill passes the House and Senate
8 on June 30th, 2020. And, then, if we look to
9 Exhibit 5, the redacted testimony of Mr. Warshaw,
10 Attachment 2, on Bates Page 041, it appears there
11 that the Company contracted on July 10th and
12 July 24th for the Class III RECs that are at
13 issue here, is that correct?

14 A Could you point me to that reference again? You
15 said that we were looking at Exhibit 4 or 5?

16 Q The redacted version is Exhibit 5.

17 A Okay.

18 Q And it's Bates Page 041.

19 A Bates Page 041, yes. Mr. Warshaw's Attachment 2,
20 on that page, shows a variety of different RPS
21 purchase agreements or contracts that Liberty had
22 entered into to acquire vintage 2020 RECs, yes.
23 And there are -- we can see several contracts
24 there for "Class III RECs", the lines aren't

[WITNESS: Eckberg]

1 numbered, but one of them is -- one agreement is
2 with Bridgewater Power, and another is with Engie
3 Energy Marketing. Those are the two Class III
4 REC contracts that I see.

5 The actual prices and quantities are
6 shaded out there. But I think maybe others have
7 stated those numbers out loud this morning. I'll
8 try not to at the moment, unless necessary.

9 Q Thank you. So, July 10th, July 24th, and then HB
10 1234 is vetoed by the Governor on July 28th. Is
11 that your understanding?

12 A Yes. As I mentioned, the docket for that bill
13 shows vetoed by the Governor, by Governor Sununu,
14 on July 28th, 2020. That's correct.

15 Q Perfect. I think we have established the
16 timeline now. I just wanted to make sure that
17 was clear.

18 A Yes.

19 Q So, in your testimony, you had broken down, I
20 guess, the issues concerning the RPS into two
21 categories; one involving quantity and one
22 involving price. I think we'll talk about the
23 quantity issue first.

24 So, in July of 2020, the Company went

[WITNESS: Eckberg]

1 out and bought 8 percent of their load in Class
2 III RECs, is that correct?

3 A Yes. It's my -- your question was "they bought 8
4 percent of their load with Class III RECs?" I
5 might -- I'm not 100 percent sure that's when
6 they -- they committed to purchase those RECs
7 with contracts. I think that the actual delivery
8 or the transfer of the RECs happened probably at
9 some later date, when those RECs were actually
10 created by the certified renewable generators.

11 Q Perfect. Thank you for that clarification. So,
12 in July of 2020, they contracted to purchase the
13 full 8 percent requirement. And, then, in March
14 of 2021, that requirement was lowered by the
15 Commission to 2 percent, after these contracts
16 had been entered into, right?

17 A That is correct. Yes.

18 Q So, then, turning to the price portion, what was
19 the ACP when the Company made their purchase at
20 the full 8 percent requirement?

21 A At the time, the ACP was \$34.54, at the time that
22 the Company made their commitment to purchase
23 those RECs, yes.

24 Q And, then, could you talk a little bit about,

[WITNESS: Eckberg]

1 regarding, I guess, the banked RECs, how these
2 RECs became banked? Could you just provide any
3 context or clarity on that issue?

4 A Certainly. Well, we did hear some discussion
5 about, you know, banking RECs in general. And
6 the Company witnesses did share some general
7 details, that it's fairly common for the Company
8 to bank, you know, small quantities, reasonably
9 small quantities, and to carry those RECs forward
10 into future years. It's generally, you know, the
11 sellers of RECs may not want to sell, you know,
12 exactly 12,327 RECs, which might be a number that
13 the Company estimates it needs. A seller might
14 prefer to sell 12,500 RECs. So, the Company may
15 agree to purchase that slightly larger quantity,
16 and then they have a little bit of extra that,
17 depending upon their actual sales numbers at the
18 end of the year, which will impact their actual
19 RPS compliance number for any class. Here, we're
20 mostly talking about the Class III requirement,
21 of course. So, it's very common for the utility
22 to bank those extra RECs and use them in future
23 years.

24 In the specific situation we're talking

[WITNESS: Eckberg]

1 about here, when the Company purchased the
2 8 percent RECs to meet its Class III requirement
3 originally, in that earlier docket, DE 21-087,
4 that was mentioned, the Company's original
5 proposal, as I recall it, was to collect the full
6 cost of that REC purchase from ratepayers at that
7 time. And there was -- there was disagreement
8 with that approach, from myself, representing
9 then PUC Staff. And the course of action that
10 the Company ultimately took was, as their
11 witnesses have explained, was to -- to not
12 collect the amount of cost above the ACP related
13 to all those RECs, and to bank the extra quantity
14 of RECs that they weren't able to use. Once the
15 8 percent requirement had been reduced to
16 2 percent, they had quite a few extra RECs
17 available. They banked them, in the hopes that
18 they would be able to use a quantity of them in
19 each of the two successive calendar years, as is
20 allowed by the RPS statute.

21 Q Then, turning to the rebuttal testimony of the
22 Company, Exhibit 10, on Bates Page 008, Lines 8
23 and 12, the Company described what it believes is
24 the issue that the Commission must resolve

[WITNESS: Eckberg]

1 related to these 2020 Class III RECs.

2 Essentially, the Company is stating that "The
3 Commission must decide whether it would have been
4 prudent for a reasonable utility manager...to
5 purchase a sufficient number of Class III RECs to
6 meet the 8 percent requirement at the ACP price."

7 Do you agree that this is the issue the
8 Commission must resolve?

9 A I see that statement on Bates Page 008. And, no,
10 I don't believe that that is the decision that
11 the Commission is faced with in this situation,
12 because that is not an accurate reflection of
13 what the Company did at that point in time. They
14 did not purchase the 8 percent statutory
15 requirement at the ACP; they purchased the
16 8 percent requirement at prices above the ACP.

17 And I think it's important to keep in
18 mind both the price and the quantity that -- that
19 were part of the Company's decision at that point
20 in time.

21 Q Can you talk a little bit about why the price and
22 the quantity issue should be viewed at together?

23 A Well, I believe that the price and the quantity
24 together are the two elements which impact the

[WITNESS: Eckberg]

1 Company's decision. Should a prudent utility --
2 a reasonable utility manager, to use the
3 Company's language here, should the reasonable
4 utility manager have purchased 8 percent --
5 enough Class III RECs to meet a statutory 8
6 percent requirement at a price above the ACP? I
7 think, from my perspective, the clear answer to
8 that question is "No."

9 Had the Company purchased that
10 sufficient number of Class III RECs to meet the
11 statutory 8 percent requirement at a price that
12 was below ACP, I don't believe we'd be here today
13 having this argument.

14 That's the fundamental nature of the
15 disagreement.

16 Q And, then, a few pages later in their rebuttal
17 testimony, on Bates Page 010, again, this is
18 Exhibit 10, specifically Lines 7 through 17, the
19 Company offers an explanation as to how, in your
20 testimony, you did not follow the prudence
21 standard in reaching the recommendation.

22 And I'm wondering if you could describe
23 whether you agree with that assertion, and how
24 the Company applies the prudence standard to its

[WITNESS: Eckberg]

1 decision?

2 A Yes. I see this description here on Bates
3 Page 010 that you directed me to. And I -- I
4 don't believe that the characterization is
5 accurate, if the Company witnesses suggest that I
6 should have considered what a prudent manager
7 would have done in order to properly calculate
8 what customers should or should not have to pay
9 for the stranded RECs. And, in fact, I believe I
10 have considered what a prudent manager would have
11 done, because, in my evaluation, when the Company
12 committed to purchase the 8 percent Class III
13 requirement at prices above the ACP, that was the
14 very definition of an "imprudent decision". And,
15 therefore, in my evaluation, the Company -- the
16 customers of the Company should not be held
17 liable for any costs related to the stranded
18 RECs.

19 The Company -- the Staff, previously
20 the Staff, and now the Regulatory Support
21 Division, has been very willing to be patient and
22 let this situation develop, I guess, we would
23 say, for the last several years, while the
24 Company -- to give the Company an opportunity to

[WITNESS: Eckberg]

1 use as many of the RECs as possible by banking
2 them, waiting to see what the eventual Class III
3 requirement would be, whether it would be
4 adjusted by the Department or not, and then
5 allowing the Company to go ahead and use banked
6 RECs to meet that requirement.

7 And, unfortunately, there are stranded,
8 unused RECs available now at the end of that
9 situation. And those RECs are stranded or
10 unusable as a direct result of the Company's
11 decision to make that original purchase.

12 Q And, just a minute. I think you alluded to this
13 earlier. The Company also makes an assertion
14 that the Department doesn't necessarily think it
15 would have been prudent to purchase Class III
16 RECs in any quantity towards meeting the
17 statutory requirement. And I guess I'm wondering
18 if you could respond to that again?

19 A Could you repeat the question, just so I make
20 sure I understand it?

21 Q So, on Bates Page 015, Lines 10 through 12 of the
22 rebuttal testimony. So, the Company states there
23 that the Department wouldn't have been prudent --
24 thinks it wouldn't have been prudent to purchase

[WITNESS: Eckberg]

1 the Class III RECs in any quantity at that point
2 in time, so early in the calendar period, to meet
3 the 8 percent statutory requirement.

4 And I guess I'm asking, is there, and I
5 think you alluded to this earlier, but is there
6 any situation where the Department may have
7 thought it was prudent?

8 A Well, as I believe I did state clearly a few
9 minutes ago, yes. That had the Company purchased
10 Class III RECs in a quantity sufficient to meet
11 its 8 percent statutory requirement at a price
12 lower than the ACP, I don't believe that there
13 would be any reason to question the prudence of
14 the decision, because those are the factors,
15 those are the legal facts that were in place,
16 that was the legal requirement, and with the ACP
17 of 34.54, at the time the Company made the
18 decision, had they purchased those RECs at a
19 price lower than the ACP, I don't think that
20 would have been an imprudent decision. Even if
21 there were RECs that were stranded eventually,
22 because of the reduction in the requirement, the
23 Company would have purchased those RECs at a
24 price that was a reasonable price for a

[WITNESS: Eckberg]

1 reasonable utility manager to make.

2 So, it is both the quantity and the
3 price combined that create the imprudency, in my
4 evaluation of the situation.

5 Q But, to be clear, that hypothetical that you just
6 described, is just that, it's a hypothetical
7 situation that is not -- that did not happen
8 here, correct?

9 A That is correct, yes. I tried to be very clear,
10 that the Company purchased the RECs, and the
11 Company has said that it purchased the RECs at a
12 price greater than the ACP, yes.

13 Q So, I think, maybe just based off of some of the
14 Commissioners' questions from earlier, I would
15 point you to Exhibit 5, which is the redacted
16 testimony of Mr. Warshaw.

17 A Yes, I have a copy of that here.

18 Q Bates Page 011.

19 A I'm there.

20 Q That, on Line 9, there's a question in the
21 testimony that states: "Why did Liberty buy RECs
22 at higher than the ACP?" And I guess, just to
23 summarize, Mr. Warshaw states that it was,
24 effectively, because the legislation had passed

[WITNESS: Eckberg]

1 the Legislature, and was going to raise the price
2 at that time. Is that your understanding of what
3 happened in July 2020?

4 A That's what Mr. Warshaw states in his testimony,
5 yes. He states there, at Line 12-13, that "As it
6 appeared the change would soon become effective,
7 Liberty updated the metrics it used to evaluate
8 purchasing opportunities." I'm not exactly sure
9 what he means by that. But I think he's alluding
10 to the fact that there was some degree of belief
11 on his part that the price might increase -- the
12 ACP rate for Class III might increase to \$55 per
13 megawatt-hour, and, therefore, that influenced
14 his decision.

15 However, we've also heard testimony
16 about other market factors. And I think it's
17 important to be aware of the fact that the REC
18 market in New England is a regional market, that
19 other states in New England, Connecticut and
20 Massachusetts, for example, have RPS
21 requirements. And the RPS requirements and
22 prices for their RECs influence the market price
23 of RECs in New Hampshire. Class III New
24 Hampshire RECs, for example, are often

[WITNESS: Eckberg]

1 dual-certified as Connecticut Class I RECs, I
2 believe. And, therefore, market factors include
3 not just the things that are happening at the New
4 Hampshire Legislature, but they also include
5 factors that are happening in Connecticut. So,
6 if a Connecticut ACP is \$55, even if the New
7 Hampshire ACP is \$35, these RECs in question
8 might have a market value at some given point in
9 time during the compliance period of a price
10 that's greater than the New Hampshire ACP, but
11 lower than the Connecticut ACP.

12 It's a complex market, there's no doubt
13 about it. And utility managers, who are
14 responsible for RPS compliance, face a lot of
15 challenges, and doing so in a reasonable way. I
16 won't deny that.

17 MR. YOUNG: Those are all the questions
18 I have for our witness. He's available for
19 cross.

20 CHAIRMAN GOLDNER: Thank you. We'll
21 turn now to Liberty, and then we'll move to the
22 OCA.

23 MR. SHEEHAN: Thank you. Good morning,
24 Mr. Eckberg.

[WITNESS: Eckberg]

1 WITNESS ECKBERG: Good morning.

2 **CROSS-EXAMINATION**

3 BY MR. SHEEHAN:

4 Q Thank you for that direct. I think it did
5 crystalize what is at and was not at issue this
6 morning. And, if I could recap, and you let me
7 know if you agree.

8 If you put aside for the moment
9 Liberty's actual conduct, and I were to ask you,
10 if a utility bought RECs in July of 2020 to meet
11 an 8 percent requirement at ACP, that would have
12 been a prudent decision, and we would not be here
13 today, as you mentioned?

14 A So, I understand the scenario you've suggested
15 is, in July 2020, the Company purchased 8 percent
16 Class III, at a rate equal to the ACP?

17 Q Yes.

18 A I think that would probably not be an imprudent
19 decision. Though, I think it would be unusual to
20 buy RECs at exactly the ACP price.

21 Q Okay. So, let's break that down. If they bought
22 those 8 percent at a dollar less than ACP, could
23 you clearly state "DOE would not object to that",
24 or not "object", but claim that was an improper

[WITNESS: Eckberg]

1 decision?

2 A I'm not sure about the "objection" part. I
3 might -- I might say my answer a little bit
4 differently. I would say, I don't believe I
5 could hold the utility accountable with a claim
6 that that was an imprudent decision in any way.

7 Q Okay. So, at one end of the spectrum, a purchase
8 of 8 percent, in July of 2020, below ACP, would
9 be a decision that the DOE would not have a basis
10 to challenge or contest the recovery of those
11 costs, knowing what happened after-the-fact, that
12 the 8 percent requirement was reduced?

13 A I'll have to reluctantly agree with you on that.

14 Q Okay. Your testimony says a few times that it
15 would be prudent to buy RECs "at or below ACP".
16 So, my question is, are you distancing yourself
17 from that language, "at or below"?

18 If you look to the very last paragraph
19 into your testimony, in the recommendations, it's
20 that the Company should buy RECs "at or below
21 ACP"?

22 A I'm not trying to distance myself from that, no.
23 I think I'm simply trying to suggest that it's
24 unusual, I think, that RECs would trade exactly

[WITNESS: Eckberg]

1 at the ACP price.

2 Q Okay.

3 A And that it would be more likely that they would
4 be very close to the ACP price.

5 Q Okay. So, now, assuming Liberty made the
6 transaction it made, and assuming that the
7 Commission would find that transaction to be
8 imprudent, for the reasons that it was above ACP.
9 It seems to me the question that we've isolated
10 is a theoretical purchase of 8 percent RECs at
11 the ACP would be okay, an actual purchase of
12 RECs, where we're seeking to recover ACP, that
13 would otherwise be imprudent, is not okay, and
14 that that's the dispute?

15 You think the Commission should not
16 look at what a prudent manager should or would
17 have done, you can only look at what Liberty did
18 do, in assessing whether customers should pay
19 this or not?

20 A I think that's absolutely correct. The scenario
21 that we -- that you just asked me about is
22 hypothetical, and that does not represent what
23 the Company did. The Company did purchase RECs
24 at prices above ACP. And, in my evaluation,

[WITNESS: Eckberg]

1 indemnifying customers by simply writing off the
2 over-ACP amount does not create an equivalent
3 situation with purchasing RECs at or below the
4 ACP. Those are not equivalent situations.

5 The Company purchased the RECs, by its
6 own admission, at prices over ACP. And I think,
7 by definition, that is an "imprudent decision".

8 Q Okay.

9 A And, so, ratepayers should not be held
10 accountable for additional costs --

11 Q Okay.

12 A -- resulting from that.

13 Q Let me ask you a few questions I think we are
14 agreed on. And that is, the way that the Company
15 used the RECs for the 2020 year, and the
16 subsequent years through the banking process,
17 you're comfortable that the Company got the best
18 value they could for those RECs, and that the
19 number of stranded RECs is as low as we could
20 have managed through that process. Do you agree
21 with that?

22 A I do agree with that, yes.

23 Q Okay.

24 A And --

[WITNESS: Eckberg]

1 Q Go ahead.

2 A -- Staff was well aware of that, as we went along
3 each year looking at the Company's
4 reconciliations and RPS compliance reports. So,
5 that was -- we were well aware of that process --

6 Q Okay.

7 A -- as we were proceeding through the course of
8 this event.

9 Q And, frankly, the hope was, we could use as many
10 of them as possible, so we wouldn't have to be
11 here today?

12 A It would -- well, I think, even back in 2021, Mr.
13 Warshaw and I disagreed on the characterization
14 of things. I think that we -- we probably always
15 knew that we might have this discussion. It was
16 really a matter of what the dollar amount would
17 be involved in the discussion.

18 Q And, in fact, the 8 percent statutory requirement
19 was lowered in the subsequent years, as someone
20 mentioned, to 1 or one-half percent. And, so, we
21 were not able to use very many of those RECs?

22 A That is correct. It was lowered to 2 percent in
23 2020, 1 percent in 2021, and half a percent in
24 2022.

[WITNESS: Eckberg]

1 Q So, going back to the core question/dispute is,
2 if Liberty did not buy the RECs at that date, at
3 the higher price, do you have any dispute with
4 our witnesses' testimony that, during the Fall of
5 2020, the practice would have been to monitor the
6 market to see if RECs fell below ACP, the
7 evidence indicates it probably did, and that the
8 Company probably would have purchased the RECs
9 later at a ACP or less price. Do you have any
10 reason to contest that those events likely would
11 have happened?

12 A Well, again, that's a hypothetical.

13 Q Yes.

14 A I believe the Company's witnesses have provided
15 information, which suggested that later, during
16 the year, the Class III price did go down. As a
17 result of what factors, I have no idea. If the
18 Company had responded to purchase opportunities
19 to buy Class III RECs at a price below ACP,
20 whether that was \$20, \$25, or \$32, if the prices
21 that they purchased RECs at were below the Class
22 III ACP, I don't think we'd be having much of a
23 disagreement.

24 Q And the other indication of price below ACP comes

[WITNESS: Eckberg]

1 from comments made by a generator of Class III
2 RECs at the hearings, when the Commission lowered
3 the requirement from 8 to 2 percent in 2021. Are
4 you aware of that?

5 A I'm aware of there was a hearing to take public
6 comment and evaluate the availability of Class
7 III RECs in the marketplace, in order to inform
8 the then Commission's decision. I'm not familiar
9 with the specific comments of any particular
10 generator, no.

11 Q Okay.

12 A Though, presumably, they're a matter of public
13 record.

14 MR. SHEEHAN: I think that's all I
15 have. Thank you.

16 CHAIRMAN GOLDNER: Thank you. Now,
17 we'll turn to the Office of the Consumer Advocate
18 for cross.

19 MR. KREIS: Thank you, Mr. Chairman
20 I'll try to be as quick as I can, since the lunch
21 hour is approaching.

22 BY MR. KREIS:

23 Q But just to continue this Steve Eckberg lovefest
24 here for a second. You testified earlier about

[WITNESS: Eckberg]

1 your experience, and you mentioned, Mr. Eckberg,
2 that you joined the Public Utilities Commission I
3 think you said in "2014", correct?

4 A Yes. That's correct.

5 Q Could you tell the Commission what you were doing
6 before you joined the Commission?

7 A I worked as a Utility Analyst with the Office of
8 Consumer Advocate, from 2007 to 2014.

9 Q And your decision, just to remind everybody, to
10 leave the Office of the Consumer Advocate in
11 2014, occurred prior to my tenure as Consumer
12 Advocate, did it not?

13 A That is -- that is correct, yes. Your
14 predecessor was, at the time, the Consumer
15 Advocate, your immediate predecessor.

16 Q And, given that you were the Shohei Ohtani of
17 utility analysts here in the building, you know
18 that I would never have allowed you to leave the
19 OCA had I been Consumer Advocate in 2014?

20 A Would that you had such financial flexibility,
21 sir.

22 Q But, more to the point, though, you went to work
23 at the OCA in 2007?

24 A Yes.

[WITNESS: Eckberg]

1 Q And that was the year that the Renewable
2 Portfolio Standard went into effect here in New
3 Hampshire, yes?

4 A Subject to check, I will take your -- will take
5 that as fact, certainly.

6 Q When you were at the OCA, I'm sorry I don't know
7 the answer to this question, but, when you were
8 at the OCA, were you monitoring the Renewable
9 Portfolio Standard as it was initially deployed
10 and administered?

11 A I would probably say I was not heavily monitoring
12 that, no. There were -- there were so many
13 opportunities to monitor a wide variety of things
14 when I worked at the OCA, including electric,
15 gas, and water dockets all at once. I have now
16 the luxury of only paying attention to one
17 regulatory practice area, which more than
18 occupies my limited time.

19 Q Indeed. And allow me to observe, as an aside,
20 that your testimony about life inside the OCA
21 strikes me as highly credible.

22 But it would be fair to say that back
23 in -- during your time with the OCA, the OCA was
24 highly interested in the Renewable Portfolio

[WITNESS: Eckberg]

1 Standard, would that be a fair statement?

2 A Yes. In fact, the Consumer Advocate who held
3 that title at the time was very much, I believe,
4 supportive of the RPS, and also was supportive of
5 the utilities providing green energy rates. I
6 believe that that was an experiment that electric
7 utilities offered during those mid-2000s to late,
8 you know, that period of 2008 through 2010 or
9 '12.

10 So, yes, there was a lot of interest in
11 renewable energy.

12 Q Mr. Young asked you some questions about the very
13 last page of your prefiled testimony, which is
14 Exhibit 8. And, on that last page, as you will
15 recall, is a chart titled "Important NEPOOL GIS
16 Dates". And you mentioned that you took that off
17 of the website of NEPOOL GIS. Let me just try to
18 level set here. What -- "GIS", as you testified,
19 stands for "Generation Information System". That
20 was what you testified, yes?

21 A Yes.

22 Q Okay. So, what's the significance of "NEPOOL",
23 for this purpose?

24 A I have -- I can't tell you, because I don't know.

[WITNESS: Eckberg]

1 Q Okay.

2 A Not because I'm refusing to tell you.

3 Q Understood. I guess my general question is, does
4 the New Hampshire Public Utilities Commission or
5 the New Hampshire Department of Energy have any
6 role in administering the Generation Information
7 System?

8 A We have no direct role that I'm aware of. We may
9 somehow provide financial support or participate
10 in -- actually, you know, I do believe that
11 probably members of the Programs and Policy
12 Division may discuss various issues with the
13 administrators of the GIS. Because the more I
14 think about it, the way that generators get
15 certified as "renewable generators" is by making
16 application to the Department, and having their
17 bona fides checked, to ensure that they meet the
18 RPS standards and qualifications. And, then, if
19 they are certified, for instance, if a new solar
20 installation gets installed, interconnected with
21 the grid, and then wishes to be a Class II
22 certified generator, they would make application
23 to the Department of Energy, they would get
24 certified, and that would be communicated to the

[WITNESS: Eckberg]

1 GIS. So, there is communication between us.

2 Q Okay. I understand all of that.

3 A Okay.

4 Q But what I'm really trying to establish here is
5 the fact that the NEPOOL GIS is administered by a
6 private club, NEPOOL, and is not subject to
7 oversight by any authority here in New Hampshire?

8 A As far as I know, that is correct.

9 Q And, yet, our utilities, and any load-serving
10 entity in New Hampshire, is required to comply
11 with or make REC purchases subject to the dates
12 or the schedule, I guess, that's laid out in that
13 chart?

14 A That's correct. Yes.

15 Q And you also testified about the legislative
16 process here in New Hampshire as it unfolded
17 during the 2020 Legislative Session. And let me
18 just make sure that that is clear.

19 You would agree with me, would you not,
20 that the Legislative Session that began at the
21 beginning of 2020, and ended sometime around the
22 middle of 2020, was a rather unusual session of
23 the New Hampshire General Court? Because of the
24 pandemic, not to hide the P [sic].

[WITNESS: Eckberg]

1 A Oh. The pandemic, yes. I'd almost forgotten
2 about the pandemic. I'm sure there were a lot of
3 adjustments made to the normal legislative
4 process, just as there were adjustments made to
5 our process here at the then PUC, yes.

6 Q And, indeed, that was the year that the House of
7 Representatives was meeting at some parking lot
8 in Durham, or whatever. And, as a result of
9 that, as you testified, it became necessary to
10 create, at least in the energy realm, an omnibus
11 bill, as a means of getting necessary
12 energy-related legislation out of the Legislature
13 and over to the Governor for him to consider?

14 A I don't know that I testified to the "necessity"
15 of creating an omnibus bill, but rather the fact
16 that it did occur. I don't know how unusual that
17 is in the legislative process overall, honestly.

18 Q Fair enough. But you would agree with me that
19 2020 was not your garden-variety legislative
20 session, and, so, therefore, the -- to the extent
21 utility managers needed to make educated guesses
22 about what the Legislature or the Governor were
23 or were not likely to do, 2020 wasn't necessarily
24 a typical year?

[WITNESS: Eckberg]

1 A I'd prefer not to have to agree with you on that.
2 I think it's always challenging to make guesses
3 about what the Legislature would do. So, I'm not
4 sure whether 2020 was more or less challenging in
5 that regard.

6 Q I want to see if I can get a little more clarity
7 on the interplay here between the amount that
8 Liberty paid for RECs versus the quantity of RECs
9 that was purchased by Liberty back in 2020,
10 during the period that we're talking about.

11 First of all, if I ask you, subject to
12 check, would you agree with me that, if you
13 looked at Exhibit 6, in Docket Number DE 21-077,
14 which is the prefiled testimony of the four
15 Eversource witnesses that testified in that case,
16 and if you went to Page 7 of that exhibit, and
17 looked at Lines 3 through 8, you would see that
18 Eversource, because of the change from the 8
19 percent to 2 percent requirement for Class III
20 RECs, purchased too many RECs, in the amount of
21 12,930?

22 A That's a lot of stuff. But, subject to check,
23 sure, I'll agree with you.

24 Q Okay. And that would be comparable to what

[WITNESS: Eckberg]

1 number here? In other words, how many RECs did
2 Liberty buy that turned out to be too many?

3 A Well, Liberty purchased a quantity of RECs that
4 was sufficient to meet their 8 percent
5 requirement. So, their initial purchase, from a
6 quantity perspective, was not excessive.

7 Q That is the 35,497 RECs, yes?

8 A Yes. That's the -- well, that's the quantity in
9 question related to these two contracts, yes.

10 Q So, and, really, it turned out that they only
11 needed something in the order of eight or nine
12 thousand (9,000) RECs, because the requirement
13 went down to 2 percent?

14 A That's correct. Yes.

15 Q So, based on my law school math, that's something
16 like, oh, I don't know, 26,000 RECs, roughly,
17 that Liberty bought, but didn't need, in order to
18 meet its RPS obligation for that year?

19 A That could be, that rough math could be correct
20 over the subsequent two years, as we talked
21 about, they were able to use some additional
22 banked RECs to meet the '21 and '22 requirements,
23 leaving them with a slightly reduced amount at
24 the end of this scenario.

[WITNESS: Eckberg]

1 Q Right. And, so, what I'm trying to get at here,
2 because I know the Commission was interested in
3 contrasting this situation that we have here,
4 with the situation that Eversource confronted in
5 DE 21-077. And I think, and I guess I'll ask if
6 you agree, that a -- probably the biggest
7 difference is that Eversource had fewer surplus
8 RECs, and was therefore able to retire the
9 surplus RECs that it purchased, and that's not
10 the situation that Liberty had?

11 A Well, I believe that Attorney Sheehan shared some
12 information from the Eversource case. And, if my
13 notes are accurate, I believe he said that the
14 quantity issue with Eversource was not part of
15 the problem. That they only bought a quantity,
16 roughly 1 percent of their requirement. And the
17 issue with the Eversource situation was solely
18 that the price they paid for that smaller
19 quantity was too high.

20 So, that is, I guess you could say, a
21 similar, but different, situation.

22 Q Right. And, so, what I'm struggling to
23 understand here is why you think that the
24 quantity of RECs purchased by Liberty is

[WITNESS: Eckberg]

1 important? It wasn't important in the Eversource
2 docket. But, for some reason, it is important
3 here. And I don't understand why. So, why?

4 A Well, the quantity -- you could say that quantity
5 was important in the Eversource docket, but,
6 because they were all -- because they were able
7 to use the RECs that they purchased for RPS
8 compliance, the quantity did not manifest itself
9 as an issue of concern. And, in fact, the only
10 element that needed to be adjudicated or
11 discussed was the price which they paid that was
12 over ACP.

13 In this situation, I've tried to be
14 clear, because the quantity the Company -- the
15 quantity and the price was what Liberty's
16 purchase manager, Mr. Warshaw, faced at that
17 time, he bought a quantity at a price. And, in
18 my evaluation, the decision he should have made
19 was to buy none of those RECs. Why would he
20 purchase RECs at a price above ACP? That
21 decision makes no sense to me. It's an imprudent
22 decision.

23 Q Okay. I think, following up on what I understood
24 to be Commissioner Chattopadhyay's concerns here,

[WITNESS: Eckberg]

1 some of his questions were around how to square
2 the situation we have here with not necessarily
3 just the situation that Eversource confronted in
4 21-077, but the actual decision that the
5 Commission made in that docket, which was in
6 Order Number 26,582. You're familiar with that
7 decision, correct?

8 A I am familiar with it at a high level. I
9 certainly was very involved with that docket,
10 just as I am with this docket.

11 Q Is it your recollection that your -- that the
12 Department's position and the OCA's position was,
13 in essence, that any purchases above the ACP
14 would be, *per se*, imprudent?

15 A I'm a little thrown by the "*pro se*" aspect of
16 your question.

17 Q "*Per se*".

18 A "*Per se*", okay. Thank you for that
19 clarification. I only speak a little French, no
20 Latin.

21 Q So, I guess "*per se*", at least what I mean when I
22 say "*per se*", is "by definition".

23 A That's my understanding. And I believe that that
24 aspect of the argument that was presented was

[WITNESS: Eckberg]

1 rejected by the Commission.

2 Q But that --

3 A And, so, I wanted to not get wrapped up in that
4 aspect of your question. But --

5 Q Right. But you've grasped my point here, which
6 is the Commission actually made the decision
7 based on the scenario that Eversource confronted,
8 and the risk profile or the risks inherent in
9 either buying risks -- buying RECs above the ACP,
10 and taking the risk that the Governor would veto
11 the bill, versus buying RECs without the
12 assumption that the ACP would increase. And the
13 Commission concluded that what Eversource did was
14 make the more risky decision, and, therefore, an
15 imprudent one?

16 A I believe that that's a representation of the
17 Commission's analysis in that order. There has
18 been no discussion, other than the Commission
19 questions here, in either my testimony or in the
20 Company's rebuttal, about "risk/reward" type
21 analysis. And, so, I guess I would leave that to
22 others to engage in.

23 From my perspective, the Company made a
24 decision that was 100 percent risk. They bought

[WITNESS: Eckberg]

1 RECs at a price over ACP. I think that's an
2 imprudent decision, end of story. I'm not seeing
3 a lot of nuance there in my world. So, I'll
4 leave it at that.

5 Q I understand. So, our utilities, Eversource,
6 Liberty, and Unitil, they're not the only
7 companies in New Hampshire that are subject to
8 the Renewable Portfolio Standard. Other
9 load-serving entities, that are competitive
10 suppliers, they also have to comply with the RPS,
11 and they also have to buy RECs, correct?

12 A That's correct. Yes, they do. There are however
13 many there are, 20 to 30 competitive suppliers,
14 who will be, you know, providing E-2500 annual
15 reports every year, yes.

16 Q So, in that scenario, all of those companies, as
17 they conduct their sort of risk/reward analysis,
18 and buy RECs as a result of whatever judgments
19 they make, if there's any reward to be had when
20 they guess right, they get to keep any windfall
21 that might arise out of that sort of REC
22 arbitrage, correct?

23 A Their decisions, at the prices they pay for RECs,
24 or whether their compliance is by REC or ACP, is

[WITNESS: Eckberg]

1 not subject to our review. I mean, yes.

2 Q So, my question to you is, what's the upside for
3 a utility here, if they do this really well? Is
4 there any -- is there any reward to the utility
5 from making really awesome, shrewd REC purchases,
6 by doing things like correctly guessing when the
7 Governor is going to veto bills?

8 A Well, I guess the reward would be not having to
9 endure a process like this.

10 Q But there's no financial reward to the utility?

11 A There is no financial reward. But I would point
12 out that in the -- but I think you said, in 2007,
13 that was when the RPS bill was passed. I presume
14 it took some grueling years of rule development
15 to get the administrative rules in place. So,
16 let's just say maybe in 2010 might have been the
17 very first year of actual RPS compliance, I'm not
18 sure.

19 But, in the 12 -- 10-12 years that I'm
20 aware of of RPS compliance, there have been
21 perhaps two situations that I'm aware of, the
22 Eversource one and the one we're currently
23 involved in right now, where the regulators, so
24 to speak, whether that's the Commission or the

[WITNESS: Eckberg]

1 Department, are seeking to disallow costs related
2 to what we see as an imprudent decision.

3 There's a lot of flexibility in
4 purchasing decisions for RECs in RPS compliance.
5 There is no requirement that it be the absolute
6 least cost compliance, for instance. I know the
7 OCA has spent a lot of effort on least-cost
8 planning, least-cost issues, because of your
9 concern for ratepayer impact, and that's a good
10 thing.

11 But, here, for instance, in RPS
12 compliance, if a utility pays \$32 for a REC,
13 versus another utility which pays \$30 for a REC,
14 there is no -- there's no risk there, you might
15 say, of a penalty. And I think that that's an
16 important point to make as well.

17 There is no reward, perhaps, but the
18 risks are limited, as long as the decisions that
19 are made are decisions at prices -- to purchase
20 RECs at prices below the ACP, you're pretty much
21 free to play in the sandbox there, wherever you
22 end up.

23 Q So, I think that's really helpful. And just to
24 summarize it or read back to you what I

[WITNESS: Eckberg]

1 understood you to have just said.

2 Utilities have a fair amount of
3 latitude about their REC purchases, appropriate,
4 because there's not a lot of reward in it for
5 them. And the only times to your knowledge that
6 any utility has run afoul of the requirements to
7 make prudent REC purchases, both occurred as to
8 the same 2020 compliance year, which was the year
9 of a very strange legislative session. Is that
10 basically what you're saying?

11 A As far as I'm aware, yes.

12 MR. KREIS: Okay. Thank you, Mr.
13 Eckberg. Super helpful. Those are all the
14 questions I have for this excellent witness, and
15 former OCA employee.

16 CHAIRMAN GOLDNER: Thank you. We'll
17 move to Commissioner questions, beginning with
18 Commissioner Simpson.

19 CMSR. SIMPSON: Thank you. And thank
20 you for being here, Mr. Eckberg.

21 BY CMSR. SIMPSON:

22 Q So, I think you made this clear, but I just want
23 to bring us back to the purchase in 2020. Your
24 perspective is that, in July 2020, when the

[WITNESS: Eckberg]

1 Company purchased RECs that were priced over the
2 then current ACP, that was an imprudent decision,
3 correct?

4 A That's my perspective, yes.

5 Q So, if that purchase was imprudent, why should
6 any of those RECs be attributed to their RPS
7 obligation in 2020, 2021, and 2022?

8 A A fair question. I think, because the -- as I
9 just described in discussing the RPS compliance
10 with Attorney Kreis, there is a fair degree of
11 latitude, in terms of, for example, the price
12 that a load-serving entity that has a compliance
13 obligation. As long as the prices paid for RECs
14 are below the ACP, --

15 Q Uh-huh.

16 A -- there's no penalty. I mean, we don't
17 scrutinize or try to penalize entities for paying
18 \$32 versus \$30.

19 And, similarly, I would say it is our
20 overall goal to try to be reasonable in RPS
21 compliance, as we've done here. I mean, we don't
22 have -- we do not have a written settlement
23 agreement or something with the Company, in terms
24 of how they went about applying some piecemeal

[WITNESS: Eckberg]

1 remedies, you might say, to this situation.
2 They, initially, as I described, changed their
3 approach, and agreed not to charge ratepayers for
4 the full cost of that purchase, to put the unused
5 RECs in the bank and wait and see how many they
6 could use.

7 They agreed to -- or, and I don't want
8 to say "they agreed", that might be suggesting
9 that there was some sort of a settlement or
10 something. It was an issue we talked about with
11 the Company. And it seemed reasonable to allow
12 them to use those RECs that they could use for
13 2020 compliance, to use them at the ACP rate,
14 34.54. That's what ratepayers were charged for
15 the RECs that were used for Class III compliance.

16 Because, again, we're trying to be
17 reasonable in our approach --

18 Q Uh-huh.

19 A -- to RPS compliance. So, I guess that's my
20 answer to "Why not hold the entire quantity as
21 imprudent?" There is -- I like to think there's
22 some element of reasonableness involved.

23 Q Uh-huh. Sure. So, then, really, it's just the
24 volume that they purchased over the 2 percent

[WITNESS: Eckberg]

1 that you view as imprudent?

2 A Well, it's the -- ultimately, the decision was
3 imprudent in itself.

4 Q Uh-huh.

5 A We have asked -- we have recommended that the
6 costs related to the stranded RECs, I believe the
7 numbers that were presented by the Company
8 witnesses, 25,033 RECs, which are stranded, times
9 \$34.54 each, that calculation results in the
10 \$864,639.82. I'm not doing that in my head, I've
11 already got it written down. I did that earlier
12 and wrote it down.

13 Q I'll decline to do it in my head as well. But
14 I'm sure there's somebody here that will.

15 A So, that is the amount that we have proposed.
16 And, of course, that is in addition to an amount
17 the Company has already written off, the over-ACP
18 price of all the RECs, this amount here is simply
19 the under-ACP amount, you might say, from --

20 Q Uh-huh.

21 A -- for the unused or stranded RECs that are left
22 over around can't be used.

23 Q What are the dates for a compliance year, from
24 when to when?

[WITNESS: Eckberg]

1 A A compliance year is a calendar year, from
2 January 1st to December 31st. And the compliance
3 reports or demonstration of compliance is due by
4 July 1st of the subsequent year. And, in part,
5 that's because of the -- the delay or the time
6 lag, as evidenced in the NEPOOL GIS schedule,
7 that is part of -- attached to my testimony, so
8 we can see that the RECs are traded, for example,
9 2020 RECs will continue to be traded in the final
10 period of 2021, by the final trading period,
11 which actually occurs in 2021, that would have
12 been from April 15th to June 15th. So, that's
13 why the compliance report isn't due until
14 actually two weeks after that, the end of June of
15 2021, for that 2020 compliance year.

16 Q So, the 2020 compliance year was January 1st,
17 2020, to December 31st, 2020?

18 A That's right. The energy that is delivered --
19 I'm sorry, it's the energy service amount, the
20 default energy that's sold by the Company, then
21 has to meet, during that 12-month period, has to
22 meet the 2020 RPS standards. And that report is
23 due by July 1st, and that report includes details
24 of all the RECs that they have purchased and used

[WITNESS: Eckberg]

1 for compliance. As included with the
2 Supplemental Testimony of Mr. Warshaw, Exhibits 4
3 and 5, you can see fifteen pages of little
4 details of RECs that were purchased, not each one
5 of those is a separate transaction, they may be
6 bundled together in large blocks that have been
7 purchased through a broker. But there's -- the
8 details of the RECs are provided by the
9 compliance entities, as well as any ACP payment
10 amounts are paid there at the end of June as
11 well.

12 Q And where is the obligation provided for the
13 Class III RPS? Where is that defined?

14 A Where is it defined? In the RPS statute is --
15 that's RSA -- perhaps I'll let one of the
16 well-informed attorneys to speak to that. That's
17 their area of expertise. RSA 362-F:10, III.

18 I'm getting a hand signal. It's a good
19 hand signal.

20 Q Okay. And, then, on January 1st, 2020, what was
21 the Class III obligation, in terms of percent?

22 A On January 1st of 2020, the obligation was
23 8 percent.

24 Q And what was it on December 31st of 2020?

[WITNESS: Eckberg]

1 A It was still 8 percent. It wasn't until early
2 2021 that the then Commission --

3 Q Uh-huh.

4 A -- opened a docket to review the possibility of
5 reducing that requirement, due -- and getting
6 public input from those in the know about the
7 market. And, in fact, the Company, Liberty, did
8 participate in that, as has been stated here in
9 the Testimony of Mr. Warshaw, and provided input,
10 they expressed their concern at that time that,
11 if the Company -- if the Commission were to lower
12 the requirement from 8 percent to something
13 lower, to be mindful of the fact that Liberty had
14 already purchased sufficient RECs to meet an
15 8 percent obligation, and they were, therefore,
16 being put at some risk --

17 Q Uh-huh.

18 A -- by Commission action. So, --

19 Q Were you involved in advising the Commission at
20 that time, in 2021, when the obligation was
21 changed?

22 A No. I was not involved in that.

23 Q Does it seem fair to you to retroactively, after
24 the end of the compliance year, to lower the

[WITNESS: Eckberg]

1 obligation?

2 A Well, I'm not sure I would say it's "after the
3 compliance year". As we see from the NEPOOL GIS
4 table, the compliance year really stays open
5 through June 15 of the following year.

6 Q So, it's not January 1st to December 31st?

7 A It is January 1st to 30 -- it is January 1st to
8 December 31st. That determines how much energy
9 is sold, and it determines the actual REC
10 requirement, the class-specific REC requirement.
11 So, you get a number of kilowatt-hours sold.

12 Q Uh-huh.

13 A You multiply it by the 8 percent, you divide it
14 by a thousand somewhere along the way, because we
15 need to talk megawatt-hours instead of
16 kilowatt-hours.

17 Q Okay.

18 A But, then, the compliance opportunity to acquire
19 RECs continues through June 15th of 2021. And,
20 then, between June 15th and June -- the end of
21 June, the Company will figure out how many RECs
22 it's going to use, does it have enough of each
23 class of RECs? Will they be paying a little bit
24 of ACP?

[WITNESS: Eckberg]

1 So, I just want to try to make that
2 timeline clear.

3 Q Okay. And that's what I'm trying to understand.

4 A Uh-huh.

5 Q So, December 31st is the last day that that
6 year's vintage REC can be created?

7 A Well, that -- I would adjust that statement a
8 little bit. That's the last day that energy for
9 which 2020 vintage RECs would be created.

10 Q Okay.

11 A But those RECs, according to the table in my
12 testimony, --

13 Q Uh-huh.

14 A -- those RECs will not actually be issued, or
15 "minted", --

16 Q Okay.

17 A -- that's the lingo that they use, --

18 Q Uh-huh.

19 A -- they don't get minted until April 15th of the
20 following year.

21 Q Okay.

22 A And, then, the trading period is from April 15th
23 to June 15th. So, that's when entities actually
24 deliver the RECs and get the money from each

[WITNESS: Eckberg]

1 other for those RECs.

2 Q So, 2 percent of the Company's purchase for Class
3 III has been used to meet their obligation for
4 2020?

5 A Yes.

6 Q And, then, this Commission reduced the
7 obligation -- or, excuse me, the 2 percent was
8 used for 2020. Then, we also used the banking
9 for '21 and '22. And we're okay with that?

10 A Yes. Absolutely. There's no -- that's
11 completely within the rules --

12 Q Yes.

13 A -- that govern RPS compliance, yes.

14 Q So, --

15 A It's important to be mindful also that, even
16 though, in 2020 -- the 2021 requirement, as we've
17 heard today, was reduced from 8 percent to
18 1 percent.

19 Q Yes.

20 A The Company does not have the opportunity to
21 fulfill that full 1 percent requirement with
22 banked RECs.

23 Q Only 30 percent --

24 A Correct.

[WITNESS: Eckberg]

1 Q -- from the prior year?

2 A Yes. So, it's really a small amount, yes.

3 Q Uh-huh. Okay. So, when they made the purchase,
4 the obligation was 8 percent?

5 A Yes.

6 Q I'm still struggling to see how it's prudent to
7 apply what they purchased, even though it was
8 over ACP, to their obligation, but not view their
9 purchase of their obligation at the time as
10 prudent, in terms of the percent? That's where
11 I'm struggling.

12 A Well, apparently, you're not the only one.

13 Q Ha, ha.

14 A A number of other people share your view. And I
15 would respectfully suggest that the evaluation
16 isn't simply whether -- it's not simply about the
17 quantity they purchased, it's the quantity, at
18 the price. I mean, --

19 Q But, then, why would any of those RECs be
20 attributable to their obligation? If that
21 overall purchase was imprudent, why would we
22 attribute any of them to their obligation?

23 A Well, I guess you're asking me "why am I not
24 harsher with them?" It's because I like to think

[WITNESS: Eckberg]

1 I'm a reasonable implementer of regulation
2 perhaps.

3 Q And that would be unreasonable?

4 A Well, as far as -- well, I don't want to be that
5 reasonable. But it's an interesting question you
6 pose, Commissioner. That I have -- I have
7 presented the situation as the Company has made
8 an unreasonable or an imprudent decision, why am
9 I -- why would I allow them to use any of those
10 RECs?

11 Q Uh-huh.

12 A And it is, I guess, that issue of reasonableness,
13 and not wanting to -- trying to strike a balance
14 between what's appropriate for ratepayers, --

15 Q Uh-huh.

16 A -- as far as I can reasonably go. And I feel
17 that I've gone as far as I can go. And the rest
18 of the cost needs to be borne by the Company.

19 Q I appreciate that. Thank you. A question for
20 you, and where I'm really struggling, is it seems
21 to me that the utilities are completely
22 disincentivized at this point from participating
23 within the REC market. And that there is
24 complete certainty, if they wait until the end of

[WITNESS: Eckberg]

1 the period and simply make the alternative
2 compliance payment for their obligations.

3 Do you share that fear? Do you think
4 that's unfounded? Do you see there being a
5 reason for them to not simply make the ACP
6 payments, the ACPs?

7 A Well, this issue was raised by Eversource, I
8 believe, during their process as well.

9 Q Okay.

10 A And I guess it connects to the issues of risk and
11 reward, that are similar to those raised by
12 Attorney Kreis.

13 Q Uh-huh.

14 A And I'm not sure quite how to answer that. I
15 don't know -- I don't know what methods are
16 available or what regulatory tools or legislative
17 tools or administrator rule tools we have, which
18 would force or direct the Company to continue to
19 operate in a reasonably least-cost way.

20 If the Company were to only pay all
21 ACPs at the end of the year, on July 1st, --

22 Q Uh-huh.

23 A -- for its full RPS compliance, that would be
24 highly likely to be very far from the least-cost

[WITNESS: Eckberg]

1 approach. We see that they're able to purchase
2 RECs below ACP almost all the time, at some point
3 during the compliance period, not the compliance
4 year, but the period, which extends beyond the
5 year. And it's certainly our hope that the
6 Company will -- will pursue strategies that don't
7 result in the maximum RPS compliance cost, which,
8 in my perspective, would be paying ACP for
9 everything all the time. That would be maximum
10 RPS compliance costs. And how do we avoid that
11 situation?

12 Q Uh-huh.

13 A I think that's a question that we need to
14 consider more, to find the appropriate tools. I
15 mean, I think the appropriate tools need to be a
16 combination of the traditional "carrot and the
17 stick", obviously, the risk and the reward. I'm
18 not sure all of those tools are in place at the
19 moment, because perhaps we haven't run into this
20 exact situation before in our RPS compliance
21 world. As I said, we've had two instances now,
22 with Eversource and now with Liberty. We're
23 facing a situation that is different than what
24 we've experienced before.

[WITNESS: Eckberg]

1 CMSR. SIMPSON: Okay. Thank you, Mr.
2 Eckberg. I appreciate your testimony.

3 That's all I have.

4 CHAIRMAN GOLDNER: Okay. We'll move to
5 Commissioner Chattopadhyay.

6 CMSR. CHATTOPADHYAY: It's still "good
7 morning."

8 BY CMSR. CHATTOPADHYAY:

9 Q So, first, recall the discussion that you were
10 having with the Consumer Advocate about "risk and
11 reward". Would you agree that the Commission's
12 order previously, it wasn't about the utility's
13 risk and rewards. It was driven by an
14 understanding of what the uncertainties are and
15 what might lead to the least-cost outcome for the
16 ratepayers?

17 A Well, I'm aware -- I did not make an extensive
18 study of the Eversource process in advance of
19 this hearing, because neither I, nor the rebuttal
20 testimony, brought that docket to bear here.

21 I am aware that the Commission's order
22 in that process did include some discussion of
23 "risk and reward", but I believe that the
24 ultimate decision was based upon the prudence

[WITNESS: Eckberg]

1 issue of what the Company did, yes.

2 Q Subject to check, I think we probably did not
3 talk about "rewards". And I'm just, it was
4 more --

5 A Okay.

6 Q -- to the point about "what is the approach that
7 leads to the least-cost solution for the
8 ratepayers?" So, again, --

9 A Sure. Maybe I'm -- maybe I'm conflating "reward"
10 with "reduced risk".

11 Q Yes.

12 A And, therefore, --

13 Q Yes, that's fair. That can happen. And what
14 you're saying is, actually, what is consistent
15 with your comment about, you know, you don't want
16 to go all the way to ACP as a default solution,
17 because then you haven't explored the times where
18 the costs may be lower than the ACP. And, so,
19 that is the utilities', in my opinion, job to do,
20 they should be alert to when they have the
21 opportunities to get lower cost for the
22 ratepayers.

23 Having said that, the question for me
24 is, first, before 2020, have there been occasions

[WITNESS: Eckberg]

1 where the utilities have found the cost to be
2 higher than the ACP, and they have actually
3 bought RECs at those prices?

4 A I don't know. It could be possible that, in
5 those years prior to 2020, that there were not
6 sufficiently detailed examination of records,
7 such that such a situation could have occurred,
8 for example. That's what I'm -- that's all I'm
9 trying to say. I have no evidence to suggest
10 that it has occurred, but I suppose it's
11 possible.

12 Q So, you started at PUC, if I recall correctly,
13 you said "2014" sometime?

14 A 2014, yes. August of 2014.

15 Q And were you privy to this kind of analysis after
16 2014, all the way up to 2020?

17 A Through 2019.

18 Q '19.

19 A I was privy to reviewing the E-2500 reports. The
20 E-2500 reports do not provide the detail of price
21 on each and every single transaction. The E-2500
22 reports provide cost information about each class
23 of RECs. So, for instance, "This company paid
24 this much for its Class I RECs, Class I Thermal,

[WITNESS: Eckberg]

1 Class II, III, and IV, for this number of RECs."

2 So, on average, the calculation --
3 simple calculations can show that what the
4 average price per REC was, and that would be a
5 normal part of the review, so that we could see
6 that, on average, prices paid were below ACP.

7 But I think that we're all
8 mathematically savvy enough to know that that
9 doesn't mean that there -- there could be some
10 chunks of RECs which happened at this price, and
11 some at a price down here, average them together,
12 they're in the middle somewhere. I don't know
13 about each and every REC transaction.

14 Q Okay. So, that is more about you would need more
15 information to confirm or not confirm, but,
16 essentially, --

17 A Yes.

18 Q -- over the period 2014 through 2019, you do not
19 recall something like this happening for sure?

20 A Correct.

21 Q Okay.

22 A In the situation like that we're dealing with
23 today is a situation I think that is more likely
24 to reveal itself in the reconciliation of energy

[WITNESS: Eckberg]

1 service and RPS costs, rather than in the program
2 oversight world of RPS, --

3 Q Yes.

4 A -- because this is where we're looking at more
5 very detailed costs. And I think we've elevated
6 our level of scrutiny in the last few years. I
7 would imagine utilities would agree to that, with
8 that statement.

9 Q Okay. So, for my understanding, I think what
10 you're saying is, that in the context of default
11 service rates, this issue is something you
12 probably did not look into, because you were not
13 the one who was in charge of that. You are
14 essentially saying that there's some
15 informational quantity, you have looked at that,
16 that is part of the Sustainable Division's --
17 were part of the Sustainable Division's
18 responsibility?

19 A Yes.

20 Q Okay. I think I understand.

21 A Okay.

22 Q Yes. So, I think you are saying that any time
23 the prices are higher than the ACP, they should
24 not have been purchased?

[WITNESS: Eckberg]

1 A Yes.

2 Q Okay. And do you, over the years that you've
3 looked at the default service information and all
4 of that, I'm just curious whether, in looking at
5 what the utilities do, if such a situation arose,
6 meaning the prices were higher than the ACP, do
7 you -- do you know whether they waited until the
8 end of the compliance year, and I know there is
9 some issue with what is a compliance year,
10 whether it's January through December, or it goes
11 all the way to next June, but whatever the
12 process is, is there, you know, they, in most
13 cases, do you know whether they waited until the
14 end of June, or beginning even middle of the
15 year, they were being flexible, whenever they
16 found purchases that are cheaper than the ACP
17 they bought it, you know, do you know any thing
18 like that has actually happened?

19 A I do not.

20 Q Okay. So, going back to Commissioner Simpson's
21 question, that is "the question" for me as well.
22 You're essentially saying, "any time you purchase
23 a REC at a price higher than the ACP, that is not
24 prudent." And, in recommending what you have

[WITNESS: Eckberg]

1 recommended in this docket is that, you know,
2 you've allowed the banking to happen, and the
3 remaining portion is where you're applying that.
4 The rest of it, you're sort of ignoring the same
5 way of thinking to the ones that -- to the RECs
6 that could have -- that were used for 2021 and
7 2022. So, and you're saying that is -- you think
8 that is a reasonable thing to do. That's your
9 position?

10 A That's my position, yes.

11 Q Would you agree that doing that sort of allows
12 the utility to at least benefit a little bit
13 from, you know, a decision that was ultimately,
14 in your opinion, not the right way to look at
15 things, but it provides them a little bit of
16 relief?

17 A A little bit of relief, yes.

18 Q Okay.

19 A And trying to make the best of what, from the
20 utility's perspective, is likely a bad situation,
21 yes.

22 Q Okay.

23 A But the bad situation, their perspective being a
24 financial situation. I think the Company has --

[WITNESS: Eckberg]

1 the Company doesn't disagree with the fact that
2 these RECs were purchased at prices over ACP.

3 CMSR. CHATTOPADHYAY: Okay. Thank you.
4 That's all I have.

5 CHAIRMAN GOLDNER: All right. We'll go
6 through the speed round of Commissioner
7 questioning now. I'll be quick.

8 And what we'll do for the next hearing
9 is we'll start an hour after this one concludes.
10 So, just to give everyone headlights on the
11 hearing for this afternoon.

12 Okay. Just a couple of quick questions
13 for you, Mr. Eckberg. Appreciate your testimony
14 today. It's been very helpful.

15 BY CHAIRMAN GOLDNER:

16 Q Just to clarify, the benefit of the utilities
17 finding a lower payment than ACP, I think we all
18 agree that, while the utilities don't benefit
19 from the standpoint of a financial benefit, they
20 do benefit from the ratepayers paying a lower
21 cost, and, of course, the utilities want to
22 charge their customers as little as they can.
23 And, so, you would agree that the utilities
24 benefited from that perspective, correct?

[WITNESS: Eckberg]

1 A Yes, I would. I think that the utility wants to
2 have good relationships with its customers. And,
3 generally, lower prices would probably support
4 better relationships, yes.

5 Q That's pretty high on the list, I would guess.
6 Okay. Very good. Thank you. I just wanted to
7 clarify that. Just a couple of more questions.

8 Does the DOE have authority today to
9 change the Class III REC prices? Does the DOE
10 have that authority today?

11 I think the answer is "yes", but I just
12 want to clarify with you.

13 A Yes. The DOE has assumed that authority with the
14 creation of the Department from -- that used to
15 be under the purview of the Commission, now it's
16 the purview of the Department, yes.

17 Q And is the Department's position or thinking
18 that, in future adjustments, and we're just
19 talking about REC IIIs, but I'm sure it applies
20 everywhere, that any changes to the requirement,
21 8 percent, half a percent, 2 percent, whatever it
22 is, would come retroactively? Or, is the
23 Department's current position that that would be
24 done farther back in the cycle?

[WITNESS: Eckberg]

1 A Just one point of clarification as I lead up to
2 answering, providing you the answer there. I
3 want to make sure that I spoke clearly on the
4 last response I gave you. Which is that the
5 Commission -- or, the Department has the
6 authority to adjust the Class III requirement.
7 We don't have the authority to change ACP prices.

8 Q Okay.

9 A That is legislative.

10 Q Thank you for the clarification.

11 A Yes. And, as far as the timing of when that
12 adjustment of the Class III requirement occurs, I
13 think that the Department is becoming -- has
14 always been very aware that the timing of when
15 that happens is very important to the
16 load-serving entities and utilities. The sooner
17 that is done the better, in any given compliance
18 year.

19 And I can't make a commitment, because
20 it's not -- I can only advocate for doing it
21 earlier. I'm but one voice in the wilderness.
22 But there are -- it's my understanding that there
23 are a number of other pieces of information that
24 go into that evaluation process, some of which

[WITNESS: Eckberg]

1 has to do with the actual generation information
2 from the Class III generators. How much energy
3 have they produced during the year, is --
4 obviously tells us how many RECs would be
5 available, of Class III New Hampshire RECs would
6 be available. So, that information is an
7 important piece of the puzzle in making a
8 determination whether to leave the Class III
9 requirement at 8 percent, or adjust it downward
10 somehow.

11 Q Okay. Thank you for that. And I think -- I
12 think what everyone in the hearing room agrees to
13 today is that the utilities would benefit from
14 more certainty.

15 So, I guess my encouragement to our
16 sister agency would be to consider pulling that
17 process as far forward as possible, to give the
18 utilities as much certainty, so we don't end up
19 having these kinds of discussions moving forward.

20 Just one last question --

21 A I'll gladly share that input, Mr. Chairman.

22 Q Thank you. Thank you. Yes. Thank you very much.

23 So, one last question. And I believe
24 you said this earlier, Mr. Eckberg, but I just

[WITNESS: Eckberg]

1 want to leave on a high note. Is it fair to say
2 that the Department encourages the utilities to
3 purchase at or below ACP? Is that something that
4 the Department views as a good thing?

5 A Well, I'm not sure that the Department has issued
6 any formal or informal encouragement in that
7 regard. I believe the statute is the sort of
8 encouraging information that the utilities should
9 refer to. And I believe I quoted in my testimony
10 a relevant piece of the statute, which basically
11 says that "If RECs are not available at prices
12 below the ACP, then the ACP is there as an
13 alternative compliance method."

14 So, I think the statute suggests that
15 the goal is to buy RECs at less than ACP. It
16 does not specifically say "You're forbidden from
17 buying RECs at a price greater than the ACP." I
18 think that's where the prudent manager decision
19 comes into play.

20 Q Okay. And at the risk of destroying the speed
21 round, the concern from the Commission, at least
22 from myself, would be that, if we land in a world
23 where utilities are unwilling to take on the risk
24 and just move to an ACP process, I think we all

[WITNESS: Eckberg]

1 agree that that would be -- that would not be the
2 desired outcome.

3 I think I hear your interpretation of
4 the statute being that the utilities could and
5 should pursue purchases below ACP, and that the
6 Department reads the statute in the same way.
7 And I just want to give you a chance to verify
8 or --

9 A Yes. And indeed, one of my two recommendations
10 to the Commission here is that the Commission
11 direct Liberty to continue its practice of
12 soliciting RECs via its RFP process, and to
13 purchase additional RECs as needed by a bilateral
14 agreement, meaning between producers of RECs, and
15 without brokers in the middle, that's a
16 possibility, as such opportunities arise, and
17 that such purchases should be at prices at or
18 below the then prevailing ACP rates.

19 So, I do agree that I want -- I want
20 everybody to be thinking in terms of "below ACP
21 rates", yes.

22 CHAIRMAN GOLDNER: Thank you. No,
23 that's -- I think that's a helpful clarification
24 for everyone.

[WITNESS: Eckberg]

1 So, are there any follow-on questions?
2 Commissioner Chattopadhyay has one.

3 CMSR. CHATTOPADHYAY: This is just for
4 clarity and my education.

5 BY CMSR. CHATTOPADHYAY:

6 Q So, in 2020, as Commissioner Simpson was asking
7 you, like, the 8 percent requirement remained
8 there until December 31st, and for the period
9 2020, that's what I've heard you say. And, then,
10 later in March, it was changed to 2 percent, but
11 that applied to 2020, correct?

12 A That applies to 2020, yes.

13 Q And is that how it's done every year?

14 A There is not a docket every year to -- a docket
15 or a proceeding, to change --

16 Q Okay.

17 A -- the Class III requirement. There has been
18 each year in the last three years. And that is
19 predominantly because the ACP now is lower than
20 it was before. It was at 55; it's now down, as
21 we've talked about today, down around 35. And
22 that has impacted the biomass generators in New
23 Hampshire. They're -- a number of the small
24 biomass generators which produce the Class III

[WITNESS: Eckberg]

1 RECs, along with their energy, are no longer
2 operating. So, that has limited, we know, the
3 supply of that Class III renewable energy, and,
4 therefore, Class III RECs. And, therefore, we
5 are regularly looking at that situation, and
6 trying to match the -- trying to determine what
7 an appropriate, reasonable requirement is for the
8 Class III RECs.

9 I would -- I would point out, at the
10 risk again of destroying the speed round, but, in
11 the 2019 -- excuse me, the 2020 Legislative
12 Session, there was also another bill, HB 1518,
13 which -- well, that's not the one I want to refer
14 to. I want to refer to the HB 1364, that was a
15 bill that was introduced in the 2020 Session,
16 that would have removed the Class III requirement
17 altogether.

18 So, there -- and I just point that out,
19 because there are a lot of -- there's a lot of
20 concern from regulators, from the Commission,
21 from the Legislature, from those who are required
22 to comply with the RPS, there's a lot of concern
23 about this issue. The Class III issue has been
24 historically a very up-and-down one, and the most

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1 challenging one to get right. And I think
2 efforts continue in that regard.

3 Q Would you agree that, whenever a change is put in
4 place, it's better to make it effective going
5 forward, rather than going retrospective, just
6 generally speaking?

7 A Generally speaking, I'm not sure -- I do
8 understand that the later in the process the
9 change happens, the more challenging it is for
10 those who are required to comply with the RPS,
11 yes.

12 CMSR. CHATTOPADHYAY: Okay. Thank you.

13 CHAIRMAN GOLDNER: Thank you. And
14 we'll move now to redirect.

15 MR. YOUNG: Thank you, Mr. Chairman.

16 So, I think I'll start with a few
17 issues brought up by the Company, Mr. Eckberg.

18 **REDIRECT EXAMINATION**

19 BY MR. YOUNG:

20 Q So, the Company put forth several hypotheticals,
21 assuming some facts, assuming others, I think the
22 term "theoretical purchase" was used. Based on
23 the prudence standard that was actually cited in
24 the Commission's Eversource order related to this

[WITNESS: Eckberg]

1 topic, which is Order Number 26,582, the
2 Commission has stated, as they did in that order,
3 that "Prudence review involves an after-the-fact
4 review of investment decisions in light of actual
5 performance."

6 So, do you think that any of those
7 hypothetical questions should have any bearing on
8 today's matter?

9 A Could you repeat the last part of your question?

10 Q Do you think that any of the hypothetical
11 scenarios posed by the Company should weigh on
12 the Company's -- or, on the Commission's decision
13 on whether to purchase these Class III RECs in
14 July 2020 was prudent?

15 A I don't believe that the hypothetical
16 situations -- well, obviously, by definition,
17 they are different than the actual situation, and
18 the actual decision that was made.

19 So, they may be useful in some way,
20 to -- educational, to consider what might be
21 appropriate in other situations. But that's not
22 the situation that we're faced with at the
23 moment.

24 Q And, then, Commissioner Simpson and Commissioner

[WITNESS: Eckberg]

1 Chattopadhyay asked "why the banked RECs were
2 permitted to be used in 2020, 2021, and, I guess,
3 2022 compliance years?" And would it be fair to
4 say that the Department was, for lack of a better
5 term, okay with that, because that could also
6 lower the burden on ratepayers, if a proceeding
7 such as this were to find that the Company could
8 recover on all those stranded costs?

9 So, put another way, we were -- the
10 Department was okay with seeing how many banked
11 RECs the Company could use to lower the burden on
12 ratepayers?

13 A I guess, if I understand the question and the
14 situation correctly, allowing the Company to
15 collect the \$864,000 now would -- would sort of
16 have no additional impact. The Company has
17 already written off the above-ACP portion of the
18 cost for all of the RECs, all of those Class III
19 RECs that it purchased, and that includes the
20 ones that were used in 2020, the ones that were
21 used from the bank in 2021, and '22. So, they
22 have already taken the haircut off the top, so to
23 speak. And the question now is about "what to do
24 with the remaining RECs?"

[WITNESS: Eckberg]

1 Q Uh-huh.

2 A And, if the Commission allows them to collect
3 those ACP prices for those remaining 25,000 RECs,
4 I guess using the banked RECs wouldn't -- doesn't
5 really impact that.

6 I believe that's my understanding of
7 the situation.

8 Q And I think it's been discussed here today, and
9 the Company seems to argue that, since the
10 statutory requirement, at the time they
11 purchased, was 8 percent, that that would be
12 viewed as a prudent decision.

13 But, at that same time, I guess the PUC
14 then, and now DOE, is also statutorily permitted
15 to lower that, to subsequently lower that
16 requirement, is that correct?

17 A Yes. Absolutely.

18 Q And I think it would be fair to say that a
19 reasonable utility manager would know that that
20 level could change?

21 A Yes. That authority to make that change has been
22 in the statute since the beginning of the RPS.
23 That that, in and of itself, is not new.

24 Q So, I want to talk a little bit about the RPS

[WITNESS: Eckberg]

1 compliance calendar and periods, when the
2 Commission and the Department issues their
3 reduction, if they issue any.

4 So, we've established that the
5 compliance year is a calendar year, January 1st
6 to December 31st, correct?

7 A Yes. The energy sold during the calendar year is
8 what the Company is required to figure out how
9 many RECs correspond to that amount of energy,
10 and file their compliance report by July 1st of
11 the following calendar year.

12 Q So, then, just to be clear, the deadline that any
13 load-serving entity/utility needs to meet is
14 actually July 1st of the following year?

15 A Correct.

16 Q And the Commission/Department has authority to --
17 or, the then Commission, now it's with the
18 Department, has the authority to review the Class
19 III REC obligation and make an adjustment, if it
20 feels necessary, is that correct?

21 A Yes. That's correct.

22 Q And you mentioned a little bit about "delays".
23 And do some of those delays, would that -- do
24 those include delays in reporting third quarter

[WITNESS: Eckberg]

1 or fourth quarter energy production? Meaning,
2 would it be even possible for the Department to
3 perform that reduction, say, before January --
4 or, before December 31st of the calendar year?

5 A Well, I think it would be technically possible,
6 but it would come at the price of using less
7 information to make a well-informed decision,
8 yes, because we wouldn't have as much generation
9 information available.

10 Q Thank you. I guess my final question is, and I
11 think I know the answer to this, but can you see
12 any scenario where buying an 8 percent load
13 obligation above the ACP would be considered
14 "prudent"?

15 A "Would be considered "prudent"?"

16 Q A prudent decision?

17 A I cannot think of a situation, no. I think my
18 contention today, and every day, is that buying
19 RECs at a price above the ACP is not prudent.

20 MR. YOUNG: Thank you. No further
21 questions.

22 CHAIRMAN GOLDNER: Thank you. The
23 questions for Mr. Eckberg have concluded. Thank
24 you, Mr. Eckberg. You're now dismissed.

1 We'll invite the parties to make brief
2 closing statements at the conclusion of the
3 proceeding. But, before this, seeing no
4 objections, we'll strike ID on Hearing Exhibits 8
5 through 10 and enter them into evidence.

6 So, if there are no other matters,
7 we'll ask the parties to make closing statements,
8 starting with the Office of the Consumer
9 Advocate.

10 MR. KREIS: Thank you. Mr. Chairman.
11 It's always a pleasure to go first.

12 Let me just first address a point that
13 you made, having to do with the possibility that
14 all of the utilities will somehow be driven to
15 simply make all of their REC purchases at or very
16 close to the Alternative Compliance Payment
17 level. And I'll just say again, I was alive,
18 well, and involved in the process that led to the
19 adoption of the RPS statute. And the ACP was
20 talked about during that process, and understood
21 to be a price cap.

22 But the OCA believes strongly that all
23 of our distribution utilities that provide
24 default energy services -- service, I mean, are

1 obliged to exercise the full measure of their
2 available business judgment when they make the
3 wholesale purchases that collectively comprise
4 default energy service. In other words, we
5 believe that mindlessly buying anything to meet
6 default energy service requirements is not
7 prudent. And it is not okay to tell this
8 utility, or any other utility, and let me just
9 say, to Liberty's credit, they haven't suggested
10 that this is going to be their approach, but it
11 would never be okay to say to a utility "You can
12 just turn your brains off and just, you know, buy
13 anything up to the ACP, and we'll never ding
14 you."

15 Really, every utility is obliged to
16 exercise prudent business judgment on behalf of
17 their customers, because they have an obligation
18 to serve those customers, whether we're talking
19 about purchases on the wholesale market of the
20 sort we'll be talking about this afternoon, or
21 whether we're talking about REC purchases of the
22 sort that we are talking about now.

23 So, having gotten that point out of the
24 way, let me just make sort of a general closing

1 argument, by saying that your job, as the
2 Commission, is to serve as the arbiter between
3 the interests of the utility's shareholders and
4 the interests of the utility customers. My job,
5 as the Consumer Advocate, is to put my thumb
6 firmly on the side of the scale that favors
7 residential utility customers.

8 And, so, therefore, what I have to say
9 to you is you have sitting up on the stand,
10 Mr. Eckberg, who, as far as I know, is this
11 state's foremost expert on RPS compliance. He
12 has been at this for as long as anybody has, and
13 has outlasted a whole bunch of retirements,
14 including that of Mr. Warshaw, he's even
15 outlasted his own retirement, because he
16 attempted to retire, and apparently has been
17 brought back into this process by the smart folks
18 who run the Department of Energy.

19 He has presented to you what I consider
20 to be a colorable set of facts and arguments in
21 favor of his position. And I would simply urge
22 the Commission to take his position very
23 seriously.

24 That's all I have to say.

1 CHAIRMAN GOLDNER: Thank you. We'll
2 turn now to the New Hampshire Department of
3 Energy.

4 MR. YOUNG: Thank you, Mr. Chairman.

5 The Department believes that it was
6 unreasonable and imprudent for Liberty to have
7 consummated the two Class III REC transactions at
8 issue at the time that it did, based on the
9 information available to the Company at that
10 time.

11 The Company did testify in July 2020
12 they purchased these RECs when they did, at the
13 price they did, because the ACP was going to go
14 -- was going to increase to \$55. Just as the
15 Commission did in Order 26,582, the Department
16 believes the Commission could come to no other
17 conclusion than a determination that the
18 Company's purchase of RECs at a cost
19 significantly above the published ACP of \$34.54
20 was imprudent.

21 Liberty should, therefore, be directed
22 to implement a reconciliation adjustment,
23 consisting of a credit to default service
24 customers in the amount of \$864,640 through the

1 RPS Reconciliation Adjustment Factor in Energy
2 Service filing period of August 1st, 2023, to
3 July 31st, 2024, which is filed likely in late
4 May 2024.

5 CHAIRMAN GOLDNER: Thank you. And,
6 finally, the closing from Liberty.

7 MR. SHEEHAN: Thank you.

8 I think the facts of this case are
9 accepted, not disputed, and it really does come
10 down to what I call a "measure of damage". So,
11 we don't agree that it was an imprudent decision,
12 but we accept that the Commission found so in the
13 Eversource case that buying above ACP in this
14 circumstance was. So, we'll accept that for
15 purposes of this.

16 So, the question is, "what do you do
17 with these stranded RECs?" And I think a good
18 analogy is the following: The Company is going
19 to be build a power line at a cost of \$10
20 million. Everyone agrees that we need that power
21 line for \$10 million; just like everyone agrees
22 we have to buy 8 percent of our load in RECs
23 during the Fall of 2020. Next, we actually sign
24 a contract -- next, the prudent price for that

1 power line is \$10 million dollars; the prudent
2 price for the RECs is ACP. Next, we actually
3 spend \$12 million on that power line, we actually
4 spent more than ACP on the RECs.

5 What do we do in the power line case,
6 where we spent \$2 million extra? We do not
7 remove the entire \$12 million from rate base. We
8 allow the Company to recover the prudent cost of
9 building that power line, the \$10 million.

10 And, so, here the analogy is, although
11 we overpaid, what we can recover is what an
12 otherwise prudent manager would have incurred,
13 the \$10 million in the power line case; the ACP
14 price in this case.

15 And it goes back to -- it is a
16 hypothetical, but to measure the damage from our
17 imprudent decision is to look like what a prudent
18 manager would do. And the evidence we presented
19 today is that RECs were available during the Fall
20 of 2020 to meet the 8 percent requirement at or
21 about ACP.

22 So, I think it's a fairly simple
23 exercise. I understand Mr. Eckberg's argument,
24 but it sort of throws the bath -- the baby out

1 with the bathwater. We do look at what the
2 prudent manager would do.

3 And, so, we ask that you affirm your
4 prior contingent decision to allow us to recover
5 that \$864,000.

6 Thank you.

7 CHAIRMAN GOLDNER: Thank you.

8 The Commission will issue an order
9 regarding this discrete issue as soon as
10 practicable.

11 We invite the parties to reconvene for
12 this afternoon's Default Service review. And
13 we'll begin at 1:30 p.m. This morning's hearing
14 is adjourned.

15 ***(Whereupon the hearing was adjourned***
16 ***at 12:28 p.m.)***