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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 Commissioner Chattopadhyay and Commissioner
5 Simpson.

6 We're here this morning for a
7 prehearing conference in Docket Number DE 23-068,
8 relating to the Joint Utilities' Petition to
9 approve the 2024 to 2026 Triennial Energy
10 Efficiency Plan. This prehearing conference was
11 scheduled to outline the hearing plan, sort of
12 similar to a trial management conference, where
13 we'll discuss how the hearing sessions will be
14 conducted, evidence, and other matters that might
15 aid in facilitating the hearing process.

16 To set the tone, I'll say that we have
17 familiarized ourselves with the Joint Utilities'
18 Plan and proposed changes to existing
19 programming, the testimonies of other parties,
20 and the responses to our questions. We've
21 learned a lot and gained confidence in our
22 understanding of the changes we are being asked
23 to approve. We look forward to the hearing
24 process and learning more, both today and at the

1 hearings.

2 Let's start by taking appearances,
3 beginning with Eversource.

4 MS. CHIAVARA: Good morning, Mr.
5 Chairman and Commissioners. Jessica Chiavara,
6 here on behalf of Public Service Company of New
7 Hampshire, doing business as Eversource Energy.

8 CHAIRMAN GOLDNER: Very good. Northern
9 Gas and Unitil?

10 MR. CAMPBELL: Good morning,
11 Commissioners. Matt Campbell, on behalf of
12 Unitil Energy Systems, Incorporated, and Northern
13 Utilities, Incorporated.

14 CHAIRMAN GOLDNER: Very good. Granite
15 State Electric and EnergyNorth?

16 MR. SHEEHAN: Good morning,
17 Commissioners. Mike Sheehan for the two Liberty
18 entities, EnergyNorth Natural Gas and Granite
19 State Electric.

20 CHAIRMAN GOLDNER: New Hampshire
21 Electric Cooperative?

22 MS. GEIGER: Good morning, Mr. Chairman
23 and Commissioners. Susan Geiger, from the law
24 firm of Orr & Reno, representing New Hampshire

1 Electric Cooperative.

2 CHAIRMAN GOLDNER: Thank you. The New
3 Hampshire Department of Energy?

4 MS. DEXTER: Good morning, Mr.
5 Chairman, Commissioners. I'm Paul Dexter,
6 appearing on behalf of the New Hampshire
7 Department of Energy. I'm joined by co-counsel
8 Molly Lynch.

9 CHAIRMAN GOLDNER: Very good. The
10 Office of the Consumer Advocate?

11 MR. KREIS: Good morning. I'm Donald
12 Kreis, the Consumer Advocate. I and my office
13 represent the interests of residential utility
14 customers, pursuant to RSA 363, Section 28. And
15 with me today is our Staff Attorney, Michael
16 Crouse.

17 CHAIRMAN GOLDNER: Very good. And
18 intervenors, beginning with Clean Energy New
19 Hampshire?

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

23 CHAIRMAN GOLDNER: Very good. And the
24 Conservation Law Foundation?

1 MR. KRAKOFF: Good morning,
2 Commissioners. Nick Krakoff, with the
3 Conservation Law Foundation.

4 CHAIRMAN GOLDNER: Very good. CPower?
5 *[No indication given.]*

6 CHAIRMAN GOLDNER: And the Acadia
7 Center?

8 MR. SOSLAND: Good morning, everyone,
9 Commissioners. This is Dan Sosland, for Acadia
10 Center.

11 CHAIRMAN GOLDNER: Very good. The
12 Nature Conservancy?

13 MS. HATFIELD: Good morning. Meredith
14 Hatfield, for The Nature Conservancy.

15 CHAIRMAN GOLDNER: Very good. LISTEN
16 Community Services?

17 MR. TOWER: Good morning. This is
18 Steve Tower and Raymond Burke, of NHLA,
19 representing LISTEN Community Services.

20 CHAIRMAN GOLDNER: Very good. And
21 Southern New Hampshire Services?

22 MR. CLOUTHIER: Good morning,
23 Commissioners. This is Ryan Clouthier, with
24 Southern New Hampshire Services.

1 CHAIRMAN GOLDNER: Good morning, all.
2 Okay. Very good. So, as everyone is
3 aware, we've asked a large number of questions,
4 the Commission has, about the Triennial Plan,
5 cost-effectiveness, benefit-cost testing, et
6 cetera. At this point, subject to the last
7 remaining responses coming in this week, we feel
8 that we've identified the full scope of our
9 questions. And, although we intend to ask some
10 follow-up questions of witnesses, the subjects of
11 our questioning are laid out.

12 We do intend to take official notice of
13 the data responses provided to us, and we expect
14 that the witnesses will adopt the responses as
15 though the questions had been asked of them while
16 they were on the stand. We're disclosing our
17 intent to take official notice to afford due
18 process and to facilitate the development of a
19 hearing plan that will afford the parties the
20 opportunity to contest the material noticed
21 through cross-examination and the opportunity to
22 present rebuttal evidence.

23 We have three hearing sessions reserved
24 over three weeks. Due to the Commissioners'

1 written questions we have already touched on the
2 topics, and gathered the reports and the data
3 that we wanted to see. We, therefore, do not
4 anticipate needing multiple days to hear
5 testimony and ask questions. The time can be
6 used to ensure that the parties have the time and
7 are afforded the opportunity to make their cases
8 and present any rebuttal evidence.

9 With that said, I'd start by going
10 around the room and to hear responses from the
11 parties to what I've just discussed, beginning
12 with Eversource.

13 MS. CHIAVARA: Thank you, Chairman.

14 I don't have an immediate response to
15 the idea of having the utility witnesses adopt
16 the information requests issued by the Commission
17 as their own. That's pretty new territory. And
18 I would have to give that some more thought.
19 Because, obviously, it would give the parties an
20 opportunity to do full cross-examination on
21 those. I imagine we'd also have to do a little
22 bit of direct exam, because, as their attorneys,
23 we haven't had a chance to fully vet the -- we
24 provided responses, but we did not -- I would

1 think we would probably want to have a further
2 conversation on the nature of those responses,
3 the context surrounding them.

4 Those are the thoughts off the top of
5 my head on those. I would like to hear what
6 others have to say.

7 CHAIRMAN GOLDNER: Okay. And I think,
8 just as we go around the room and to give another
9 opportunity, I think the alternative -- it's a
10 time-saving device, but the alternative would be
11 to ask the same questions on the stand, and go
12 through it all over again, which would take a
13 tremendous amount of time.

14 MS. CHIAVARA: Yes.

15 CHAIRMAN GOLDNER: So, it was our
16 intention to create a time-saving device.

17 MS. CHIAVARA: I understand.

18 CHAIRMAN GOLDNER: So, that's what we
19 were looking for.

20 Okay. Very good. Northern Gas and
21 Unitil, Mr. Campbell?

22 MR. CAMPBELL: Well, similar to my
23 colleague here, I wasn't expecting this. So, I
24 haven't had a chance to think about it. I

1 certainly understand the motivation with regard
2 to administrative efficiency. But, again, I'd
3 like a little bit more time to let it marinate,
4 so to speak.

5 CHAIRMAN GOLDNER: Okay. Very good.
6 Granite State Electric and EnergyNorth?

7 MR. SHEEHAN: Similar thoughts.
8 Obviously, what it's bumping into is the concept
9 of "who creates the record and who introduces
10 evidence". And, we've had conversations with the
11 Commission about that, we've had conversations
12 outside your presence about that. And, again,
13 this is a twist that we hadn't thought of. So,
14 "stay tuned", I guess, is the thought.

15 CHAIRMAN GOLDNER: Okay. Would you
16 have any remarks or anything that could be
17 helpful to the Commission, in terms of the
18 difference between asking the question in writing
19 prior to hearing or asking that question at
20 hearing?

21 MR. SHEEHAN: That's a good question.
22 And that's, I think, what has us pausing.

23 CHAIRMAN GOLDNER: Okay.

24 MR. SHEEHAN: Because, yes, there may

1 be a difference in substance, but not -- in form,
2 not substance.

3 CHAIRMAN GOLDNER: Okay. Very good.
4 New Hampshire Electric Cooperative?

5 MS. GEIGER: Yes. Thank you,
6 Mr. Chairman.

7 I, basically, concur with what my
8 colleagues from the other utilities have
9 indicated. But I would add that, on Friday, the
10 joint utilities, and some -- all of the other
11 parties, except for Staff, filed a Stipulation of
12 Fact. And, so, we believe that the core
13 essential facts that are necessary in order to
14 review the Plan and make a determination on it
15 are set forth therein.

16 So, to the extent that there are
17 numerous other responses to data requests that
18 may stray from what is actually before the
19 Commissioners for adjudication, we may have -- I
20 may have some questions about the relevance of
21 admitting into evidence, as the parties'
22 testimony, some of those responses to the data
23 requests that are based on hypotheticals and
24 things that really aren't before the Commission

1 for a decision.

2 Thank you.

3 CHAIRMAN GOLDNER: Okay. Thank you.
4 The New Hampshire Department of Energy?

5 MS. DEXTER: Thank you.

6 None of the record requests were
7 directed at the Department of Energy. So, we
8 have a different perspective, I guess. So, we
9 don't have any objection to the Commission asking
10 questions of those folks that did answer the data
11 requests.

12 We think it would be helpful to all the
13 parties if the Commission could identify, perhaps
14 before the hearing, some subset of the record
15 responses that they believe would be relevant to
16 the proceeding. I haven't counted them
17 personally, but I've heard numbers thrown around
18 about 80 to 90 to 100 questions out there.

19 Similar to what the parties do before
20 the Commission, you know, we may ask dozens of
21 information requests in the course of discovery
22 in a case, but, before we come to the Commission,
23 we produce an exhibit list, and we try to
24 identify the data responses that are going to be

1 most relevant, and many times we attach them to
2 testimony well -- written utility well before the
3 hearing. So, some sort of narrowing of the
4 record responses I think would be helpful to the
5 proceeding.

6 But, generally speaking, we understand
7 that the Commission has asked those questions for
8 a reason. And, if you have follow-up questions
9 on those record responses, the Department
10 encourages the Commission to take the hearing
11 time to get on the record what it needs to hear
12 in order to hopefully approve the Plan as
13 presented.

14 CHAIRMAN GOLDNER: Okay. Thank you,
15 Attorney Dexter. Moving to the Office of the
16 Consumer Advocate?

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

18 First, I'd like to say that I believe I
19 agree with everything that I've heard any of my
20 learned colleagues say so far. And, beyond that,
21 I want to emphasize that it's the intention of
22 the Office of Consumer Advocate to be as
23 cooperative as possible in moving this proceeding
24 on to its conclusion. And we're aware of the, of

1 course, strict and really draconian deadline that
2 the Legislature has adopted. And we definitely
3 do not want to impede the proceeding or do
4 anything that would create procedural bumps or
5 interruptions.

6 That said, I, unfortunately, feel that
7 I have to say, on behalf of the constituency that
8 I represent, that I'm going to need to interpose
9 a series of ongoing objections to almost
10 everything I understand the Commission to have
11 now expressed an intention to do.

12 The first objection that I need to make
13 has to do with the questions that the Commission
14 instructed me to have my witnesses reply to in
15 writing by this Friday. I will submit those
16 replies. But I do not believe, respectfully,
17 that the Commission has the authority to issue
18 queries like that to the Office of the Consumer
19 Advocate. We are not a utility subject to
20 plenary oversight by the Commission, and the
21 Commission's procedural rules do not contemplate
22 that the Commission will conduct discovery in
23 contested, adjudicative proceedings such as this
24 one.

1 With respect to the question of taking
2 official notice of the voluminous responses that
3 the utilities have provided to the Commission,
4 and that we will be providing on Friday, the
5 taking of official notice is governed by
6 Paragraph V of Section 33 of the Administrative
7 Procedure Act, which is RSA 541-A. And there are
8 four circumstances in which a tribunal, an
9 administrative adjudicator, may take
10 administrative notice of something, and none of
11 them apply here, unfortunately.

12 The first is "Any fact which could be
13 judiciously noticed in the courts of this state."
14 And the queries that the Commission has issued do
15 not meet that criterion.

16 Official notice may be taken of "The
17 record of other proceedings before the agency."
18 That doesn't apply.

19 "Generally recognized technical or
20 scientific facts within the agency's specialized
21 knowledge." That's not what we're talking about
22 here.

23 And the last one is "Codes or standards
24 that have been adopted by an agency of the United

1 States, or of a state, or a nationally recognized
2 organization or association." That does become
3 germane in some context, certainly not here.

4 To the Chairman's question about
5 "saving time" by basically admitting those
6 responses into the record as an alternative to
7 simply asking those questions at hearing, I
8 actually, and, again, with regret, and with
9 respect, believe that the Commission lacks the
10 authority to ask all those questions, at least in
11 this particular proceeding. And the reason I
12 feel that way, or the reason I believe that's
13 what the law requires of all of us, there are
14 really two.

15 One is that the statute that governs
16 this proceeding, which is subparagraph (d) of
17 Paragraph VI-a of RSA 374-F, Section 3,
18 significantly circumscribes the extent of the
19 Commission's inquiry in this particular case.
20 So, you know, the answer might be different, and
21 the Commission might have more broad-ranging
22 discretion in, say, a rate case, which has almost
23 a legislative component to it. But here, in this
24 proceeding, the Commission has very little to do,

1 because the Legislature has done most of your
2 work for you.

3 The second reason I think that there
4 are issues here is that the parties, as you've
5 already heard, have filed a Stipulation of Fact.
6 And, in our opinion, that Stipulation of Fact is
7 (a) binding on the Commission pursuant to its
8 rules, because there is no party contesting any
9 of those stipulated facts; and (b) all of those
10 facts taken together comprise collectively a firm
11 and solid basis for the Commission simply
12 approving the Triennial Plan as it has been
13 proposed to the Commission. In other words,
14 technically, the Commission doesn't even need to
15 hold a hearing in this proceeding. It can,
16 should, and arguably must approve the Plan based
17 entirely on that Stipulation.

18 Finally, as an aside, or maybe as a
19 footnote, I just note that I have a witness
20 availability problem on the 18th that I would
21 like to address. And, so, it will help, and I'm
22 glad the Commission apparently intends to gain
23 some clarity about just the logistics and
24 particulars of the hearings we're about to enter.

1 So, again, to stress, I intend to be as
2 cooperative as I possibly can. But, for all the
3 reasons I've just given, I expect to enter, for
4 purposes of rehearing and appeal, a series of
5 ongoing objections to almost everything that I
6 understand the Commission to be intending to do.

7 CHAIRMAN GOLDNER: A clarification on
8 the request that the Commission made of the OCA.
9 I think it was that, it was a request. We did
10 not require or anything like that, right? We
11 requested the information from the OCA as a
12 clarification to the existing filing.

13 MR. KREIS: Yes. And, to be fair and
14 forthright, the request that you made is the sort
15 of routine request that we would receive, usually
16 from other parties, in response to that kind of
17 testimony. I checked with our witnesses, and
18 they said "Oh, well, that would be the kind of
19 questions that we would expect to get in
20 discovery." We didn't get any questions like
21 that, because of the way this thing sugared off.

22 And there's nothing in the responses
23 that we'll file on Friday that will create any
24 tremors or shock waves or surprise anybody. And,

1 in that sense, there's nothing unreasonable about
2 them. I'm just concerned about the procedural
3 implications. The utilities, for whatever
4 reason, have chosen not to raise any of those
5 issues about the propriety of the Commission
6 having conducted what amounts to an informal
7 investigation within the four corners of an
8 adjudicative proceeding. I feel like I have to
9 note objections to those things.

10 But, that said, I'm going to supply the
11 information. You will have it. And I don't
12 think that the outcome of the case actually will
13 turn on the responses that we're going to supply.

14 CHAIRMAN GOLDNER: And perhaps you
15 could also provide here your sort of legal
16 opinion on the Commission's duty to keep
17 informed?

18 MR. KREIS: I agree that the Commission
19 has a statutory duty to keep informed. And, so,
20 therefore, in the abstract, there's nothing wrong
21 with the Commission having issued all of the
22 information requests. It has plenary access to
23 the books and records of all the state's
24 utilities. And, so, you could, even outside of a

1 docketed case, I think have just written the
2 utilities a letter saying "Hey, here's a bunch of
3 information that we would like." And, if the
4 utilities don't have any issues with providing
5 that information, I know they sometimes get
6 concerned when they're asked to do new analysis
7 that they don't already have on hand. But I
8 don't contest the Commission's authority to do
9 that.

10 What I do contest, ultimately, is the
11 Commission's authority to do all that, and then
12 place it in the record of a contested
13 administrative proceeding, and then rely on that
14 as evidence that is outcome-determined.

15 CHAIRMAN GOLDNER: And just a last
16 question. So, the OCA's position is that this is
17 a contested case?

18 MR. KREIS: Yes.

19 CHAIRMAN GOLDNER: Thank you.

20 Okay. Very good. Let's move to the
21 intervenors, beginning with Clean Energy New
22 Hampshire?

23 MR. SKOGLUND: Clean Energy New
24 Hampshire has no position at this time.

1 CHAIRMAN GOLDNER: Okay. Thank you.
2 The Conservation Law Foundation?

3 MR. KRAKOFF: Yes.

4 I share a number of the concerns that
5 were just raised by the Consumer Advocate. We're
6 particularly concerned about -- well, first, I'd
7 say that I agree with the Consumer Advocate that
8 there's no provision in either the APA or the
9 Commission's own rules that allow for
10 administrative notice of these types of record
11 requests.

12 Second, I'm concerned with the
13 precedent of, you know, introducing into
14 evidence, you know, by the Commission's own
15 accord, these numerous and voluminous record
16 requests. And I'd note that Rule Puc 203.22,
17 titled "Exhibits", states that "A party
18 presenting evidence at a hearing shall present
19 such evidence in exhibit form if the evidence
20 contains tabulations and figures so numerous as
21 to make oral presentation difficult to follow."
22 You know, this explicitly calls for "parties"
23 introducing evidence at a hearing, does not
24 permit the Commission itself to introduce

1 evidence at the hearing or exhibits.

2 And, then, second, I would draw the
3 Commission's attention to Puc Rule 203.23, titled
4 "Evidence", which says that "The parties entitled
5 to offer evidence at hearing in an adjudicative
6 proceeding shall be the petitioner, the staff of
7 the commission, the office of consumer advocate
8 and any person granted intervenor status."
9 Again, this does not allow or permit explicitly,
10 though, the Commission itself to offer evidence
11 at a hearing.

12 And, so, I'm concerned about this
13 precedent of, you know, the Commission itself
14 introducing evidence at hearing, where they're
15 not a party and not listed as one of these
16 parties under the rules here.

17 So, we are largely concerned about
18 that. And I think I agree with the other parties
19 that the Stipulations in this case that were
20 filed by the parties on Friday, and which none of
21 the parties in this docket object to, really
22 narrows the scope of the issues, or the factual
23 issues at stake here, which should streamline and
24 improve the administrative efficiency for the

1 upcoming hearings.

2 Thank you.

3 CHAIRMAN GOLDNER: Thank you. So, I
4 think CPower is not here. So, we'll move to the
5 Acadia Center?

6 MR. SOSLAND: Thank you. We do agree
7 that the Stipulation should help streamline the
8 issues and narrow the scope, and share some of
9 the concerns raised.

10 CHAIRMAN GOLDNER: Could you please
11 start again? You cut out and went offline. So,
12 we'll ask you to repeat any statement you just
13 made please.

14 MR. SOSLAND: Okay. Thank you. I was
15 just iterating that Acadia Center did sign the
16 Stipulation, and agree that it does provide a
17 means to narrow the issues in the proceeding, and
18 share some of the procedural concerns that have
19 been raised by the public advocate and
20 Conservation Law Foundation.

21 CHAIRMAN GOLDNER: Okay. Thank you. I
22 think we captured the whole comment there.

23 Let's move to The Nature Conservancy?

24 MS. HATFIELD: Thank you, Mr.

1 Chairman.

2 We agree with the issues that have been
3 identified by some of the other parties,
4 including the Office of Consumer Advocate. And
5 we do point the Commission to the Stipulation
6 that we filed on Friday, and also to the briefs
7 that all of the parties filed in the case. And,
8 so, we would also have the same issues with the
9 Commission seeking to broaden the scope of the
10 issues in the case and seeking to introduce new
11 evidence.

12 Thank you.

13 CHAIRMAN GOLDNER: Thank you. LISTEN
14 Community Services?

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

16 I think we also, as others have said,
17 agree with the concerns expressed by several of
18 the parties. And just want to make a few notes.

19 I think this might have been expressed
20 by Attorney Dexter, that, and perhaps by Attorney
21 Krakoff as well, that this does seem like a
22 deviation, not only just from past practice, but
23 is something that is not contemplated in the
24 rules. You know, there was a lot of discovery

1 among the parties, and that doesn't automatically
2 get adopted and come in, as Attorney Dexter said.
3 Usually, the parties prepare an exhibit list, and
4 then -- and file that.

5 So, we share the concern about whether
6 this practice is permitted under the
7 Administrative Procedure Act and the Commission's
8 rules, but understand, you know, that the
9 Commission here is trying to achieve some
10 efficiencies and judicial economy, which is
11 exactly what the parties were trying to do by
12 filing the Stipulation as well.

13 And I would just like to note, I know
14 you didn't ask us, but you asked the Consumer
15 Advocate if this is a contested case. And I just
16 want to add that we agree it's a contested case,
17 it's an adjudicative docket.

18 But we would say, at this point in the
19 proceeding, that there is no disagreement among
20 the material facts in question, and that Puc Rule
21 203.20 actually requires the parties, when they
22 are in agreement, and there are no disputes among
23 the facts, to file a stipulation, and that is why
24 we worked with the parties to do that.

1 So, with that said, I don't think we
2 have more to add.

3 CHAIRMAN GOLDNER: Thank you. And,
4 finally, Southern New Hampshire Services?

5 MR. CLOUTHIER: Thank you. SNHS did
6 sign on to the Stipulation in hopes of
7 streamlining the efficiencies. But, otherwise,
8 no position at this time.

9 CHAIRMAN GOLDNER: Okay.

10 MR. CLOUTHIER: Thank you.

11 CHAIRMAN GOLDNER: Thank you.

12 Okay. We can move onto the next topic,
13 which is presenting witnesses. We're open to
14 hearing from the witness panels in any order. It
15 could make sense to start with the utilities, and
16 then turn to the agencies, then to the
17 intervenors. But we're open to any presentation
18 order.

19 Does anyone wish to comment on that
20 procedural matter?

21 MS. CHIAVARA: Yes, please, if you
22 don't mind.

23 I will say that Eversource has similar
24 witness issues to the OCA. So, we are down some

1 people for the 18th. I don't know if is open to
2 streamlining the hearings further, but we will be
3 down some people that day.

4 What we were thinking was, it may
5 actually be most efficient to flip the order that
6 you presented, and have intervenors go first,
7 followed by the DOE, followed by the utilities
8 last, as they are the ones defending the Plan
9 itself. And, so, that was one idea that we had.
10 We're certainly open to different ones.

11 I guess I will -- I had some more
12 thoughts on the first topic. But, to keep things
13 orderly, I will hold those for now.

14 CHAIRMAN GOLDNER: That's okay. I
15 think, if you wanted to return to the first
16 topic, that's fine, too. And, then, we can
17 proceed on the second topic with others.

18 MS. CHIAVARA: Okay. So, I just wanted
19 to comment on "the Commission's duty to keep
20 informed", the question that you posed to the
21 OCA. And I would have a tendency to agree that,
22 with adjudicative dockets, the Administrative
23 Procedures Act is a much more specific statute.
24 And, therefore, the more specific statute would

1 prevail over the more general. And the APA does
2 have pretty specific guidelines as to how
3 evidence is treated and how the record is
4 developed.

5 So, given that, I believe that there
6 are also some issues with having the utility
7 witnesses adopt questions, because it sort of
8 gives -- it gives the impression that it was
9 their position to begin with. And, while they
10 provided the answers, it's not necessarily their
11 position. So, if an order were to come out based
12 on those questions, and that we didn't
13 necessarily agree with the decision that came out
14 of them, it would be difficult to appeal
15 something that the witnesses had adopted at
16 hearing as their own.

17 And I don't know that there's a good
18 answer to that, but it's just -- it's an issue
19 that I am trying to wrap my head around right
20 now.

21 CHAIRMAN GOLDNER: Okay. Fair enough.
22 Does -- would anyone else like to comment on the
23 order and grouping of witnesses? Mr. Dexter.

24 MS. DEXTER: Yes. The Department of

1 Energy's view is that the Joint Utilities, as the
2 Petitioners, need to go first. And, if we need
3 to shift around the days because of that, I think
4 we ought to do that. It's particularly important
5 in this case, because their Plan is -- and their
6 appendices are in the hundreds of pages. And, as
7 I said, we've had, you know, somewhere upwards of
8 80 questions that the Department *[sic]* has
9 indicated they might want to ask them about.

10 So, I think it's extremely important
11 that the Joint Utilities testify first, support
12 the Plan, defend the Plan, answer the
13 Commission's questions, and then we can move on
14 to agencies and intervenors.

15 CHAIRMAN GOLDNER: And, Mr. Dexter,
16 just to clarify, the Department would cross the
17 utilities' witnesses with additional questions or
18 are you fully satisfied with -- would you have no
19 questions for the utility witnesses?

20 MS. DEXTER: We are not planning any
21 questions for the utilities' witnesses.

22 CHAIRMAN GOLDNER: Okay. Okay.
23 Attorney Kreis.

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

1 Subject to all of the ongoing
2 objections I articulated before, and intend to
3 continue to maintain on an ongoing basis, I'm
4 indifferent to the order in which witnesses adopt
5 their testimony. I do not have any
6 cross-examination questions for any of the
7 witnesses.

8 I will produce my witnesses for
9 cross-examination. My only logistical problem is
10 that Ms. Goldberg is not available on the 18th.
11 You've already given her permission to testify
12 remotely, and she can do that on any of the other
13 hearing dates that are currently on the schedule.

14 CHAIRMAN GOLDNER: Okay. Very good.
15 Were there any other comments, Mr. Skoglund?

16 MR. SKOGLUND: Yes. I just wanted
17 to -- thank you. I just wanted to echo the
18 comments that Attorney Dexter had just made. We
19 also do not have questions to cross the
20 utilities, but have concerns about appearing as,
21 you know, the possible tip of the spear in this
22 proceeding. That the utilities have done the
23 vast majority of the work, and feel that they are
24 best suited to lead with the opening and provide

1 the bulk of the testimony.

2 CHAIRMAN GOLDNER: This might be a
3 premature question, but do any parties -- do any
4 parties intend to ask questions of the utility
5 witnesses? If you could raise your hand?

6 Ms. Hatfield.

7 MS. HATFIELD: Thank you, Mr. Chairman.

8 I feel like I need to reserve the right
9 to be able to ask cross of the utilities,
10 particularly if the Commissioners are planning to
11 ask questions about the discovery that you
12 issued.

13 And, then, I also wanted to say that I
14 agree with Attorney Dexter, regarding the need
15 for the utilities, as the Petitioners, to present
16 their witnesses first.

17 CHAIRMAN GOLDNER: Okay. Very good.
18 Does anyone intend to ask questions of the
19 intervenors?

20 MR. BURKE: Mr. Chairman, if I could?

21 CHAIRMAN GOLDNER: Oh, sorry.

22 MR. BURKE: I was going to say
23 something similar to The Nature Conservancy.
24 Just that right now we're not planning to. But,

1 just thinking of past energy efficiency dockets,
2 there have been times where things have come up
3 in the hearings, where then we have wanted to
4 reserve the right, and had to ask questions.

5 But, as of right now, like others have
6 said, you know, we worked with the parties to
7 file a Stipulation and on how to present that.
8 So, we don't have plans to, but, depending on
9 what comes up, we may want to ask questions in
10 the moment.

11 CHAIRMAN GOLDNER: Okay. Very good.
12 And would the same answer apply to the agencies?
13 Any questions to the Office of the Consumer
14 Advocate or the Department of Energy?

15 I assume the intervenors would still
16 reserve that right, and the utilities may have
17 questions as well?

18 MS. DEXTER: And the Department of
19 Energy would as well. When I said "we had no
20 questions planned", I took the question to mean
21 "did we have questions planned for the Energy
22 Efficiency Plan as presented by the utilities?"
23 And we're not planning on any cross-examination
24 on the Plan itself, but we would like to reserve

1 the right.

2 CHAIRMAN GOLDNER: Okay. Okay. I'm
3 hearing, and I see Ms. Hatfield nodding in the
4 back as well, so, I think the consensus is that
5 everyone would like to reserve the right to ask
6 questions of any party. And, while no questions
7 may be planned at the moment, that questions may
8 come up over the course of the proceeding. So, I
9 think I've captured that right. If I haven't,
10 please let me know.

11 Okay. So, I think -- I think what I
12 heard was that the utilities will need to go
13 first. And, so, we'll -- the Commission will
14 take a brief break before we wrap up the
15 prehearing conference here today. But that seems
16 relatively clear to me.

17 Is there any -- would the utilities
18 like to make one last plea to not go first?

19 MS. CHIAVARA: No. I'll go ahead and
20 give that one up.

21 But I will repeat that we are down two
22 Eversource witnesses on the 18th. I don't know
23 if the Commission would be open to canceling the
24 18th, to reinstate the 24th, and then we would

1 still have three days, and then a full utility
2 witness panel.

3 Otherwise, we also have the issue of --
4 we do have witnesses that testified as to the SBC
5 rate and the calculation of those rates. I don't
6 know how much the SBC rates would be at issue
7 here, because they're set by statute. So, I
8 think our plan was to just swear them in to adopt
9 their testimony, and we didn't really have any
10 questions for them, *per se*. If there are going
11 to be any questions for those witnesses, I think
12 we could swear them in on the 18th and get that
13 out of the way. Or, if there were any rate
14 questions, we would ask that those come up front,
15 because that's something that we could produce
16 those witnesses on that day. Otherwise, maybe
17 consider the 24th, instead of the 18th.

18 CHAIRMAN GOLDNER: Okay. Yes, I think
19 we have a Commission availability issue now on
20 the 24th, I think is the challenge there.

21 MS. CHIAVARA: Okay.

22 CHAIRMAN GOLDNER: And I'll also just
23 add, I think, at least in my mind, that a lot of
24 the questions we're asking about are what I would

1 call "clarifications" or "potential errors".
2 And, so, the spirit of the questions, I think,
3 revolve around those issues. So, and that's why
4 I think it's important to streamline the
5 proceeding somewhat, so that we can get to those
6 issues and resolve them efficiently.

7 MS. CHIAVARA: Sure.

8 CHAIRMAN GOLDNER: So, "clarifications"
9 and "errors" I think would be how I would
10 classify the bulk of our questions.

11 Let me ask one more question before we
12 take a short break. Under the hearing
13 guidelines, any exhibits due seven days before
14 the hearings, which would be the 18th. We did
15 receive a number of exhibits yesterday. And I'm
16 just asking here, should we expect to receive any
17 additional exhibits or do we have everything for
18 the 18th, assuming that the 18th hearing is a go?

19 MS. CHIAVARA: Those were all the
20 exhibits that were filed yesterday.

21 CHAIRMAN GOLDNER: Okay. Does anyone
22 else intend on filing anything?

23 *[Atty. Dexter indicating in the*
24 *negative.]*

1 CHAIRMAN GOLDNER: Or is that the
2 complete list of exhibits? Yes?

3 *[No verbal response.]*

4 CHAIRMAN GOLDNER: Okay. Okay. Very
5 good.

6 Let's take a short break. We don't
7 need long. Let's come back at five after ten to
8 wrap up. Thank you.

9 *(Recess taken at 9:54 a.m., and the*
10 *prehearing conference resumed at*
11 *10:13 a.m.)*

12 CHAIRMAN GOLDNER: Okay. So, just a
13 couple of things from the Commission's point of
14 view.

15 So, I'd like to hear from Eversource
16 and the OCA relative to October 18th. Those
17 dates have been noticed for a long time. And,
18 so, we would like to understand why the witnesses
19 won't be available, and which witnesses won't be
20 available?

21 MS. CHIAVARA: For Eversource, it's
22 going to be Katherine Peters and Brandy Chambers.
23 I believe, if necessary, Brandy would be able to
24 make it. Katherine Peters -- Ms. Peters has had

1 a long-outstanding speaking obligation
2 out-of-state. And I understand that the hearings
3 have been noticed for some time. I believe,
4 because there were four days of hearings, we
5 thought we could probably schedule around her
6 absence. Now that there are three, and that the
7 witnesses -- and that the utilities are going to
8 go first, it looks less likely that we'll be able
9 to schedule around her.

10 So, that's how that came to pass. We
11 thought we would be able to schedule around it.

12 CHAIRMAN GOLDNER: And can you remind
13 me of her expertise? What topic would she be
14 testifying on?

15 MS. CHIAVARA: She's expert on all
16 things residential programs, and also to the -- I
17 believe the incentive levels. Give me just a
18 moment please.

19 CHAIRMAN GOLDNER: Sure.

20 MS. CHIAVARA: Yes. Residential
21 programs, incentive levels, the actual contents
22 of the Plan itself.

23 CHAIRMAN GOLDNER: Okay. Okay. Thank
24 you. The Consumer Advocate, the same question

1 please?

2 MR. KREIS: Thank you. So, our
3 witnesses are Mr. Woolf and Ms. Goldberg, and
4 their written testimony is written sort of Greek
5 chorus style. But the reality beneath that is
6 that Mr. Woolf is responsible for I think the
7 things that you already know he has a lot of
8 expertise in. And Ms. Goldberg I think is
9 responsible for the sort of nuts-and-bolts
10 analysis of various Plan details and that sort of
11 thing.

12 Interestingly, Ms. Goldberg is
13 appearing, I believe, in the same panel that Ms.
14 Peters is, at an -- I think it's an ACEEE
15 Conference on the 18th. So, their unavailability
16 is basically the same.

17 I would say, from our perspective, like
18 Eversource, we, when the Commission noticed a
19 multi-day hearing spread out over several weeks
20 in October, it was our assumption that we could
21 address any witness availability issues, which,
22 frankly, occur all the time in PUC proceedings,
23 by getting permission to have our witnesses
24 testify on a hearing date other than the 18th.

1 Really, the question of witness
2 availability was one of the main reasons that I
3 requested that the Commission hold this
4 prehearing conference, and that's a request that
5 you granted. It was originally scheduled I think
6 for sometime last week, and it got put off to
7 today. So, we're closer to the hearing dates
8 than we would have been last week.

9 So, that was my thinking. I just
10 thought that it would be reasonable. And this is
11 sort of the way these things have gone over the
12 years that I've been hanging out in this
13 building, and over on Manchester Street, that
14 everybody sort of collaborates and works out
15 witness availability issues, and at the end
16 everybody lives happily ever after.

17 I apologize if I've made any
18 assumptions about that that I should not have.

19 CHAIRMAN GOLDNER: Okay. Thank you.

20 So, we'll issue a post-PHC order today,
21 and we'll take this issue of the hearing dates
22 under advisement. I would like to give the other
23 parties any last opportunity to weigh in on the
24 topic of the October 18th hearing.

1 Just a moment.

2 *[Chairman Goldner and Cmsr.*

3 *Chattopadhyay conferring.]*

4 CHAIRMAN GOLDNER: So, just a
5 clarification, Attorney Kreis. If we hold the
6 hearing on the 18th, both Mr. Woolf and
7 Ms. Goldberg will not be available, or Mr. Woolf
8 will be available?

9 MR. KREIS: Mr. Woolf would be
10 available.

11 CHAIRMAN GOLDNER: Would be available.
12 Okay, just Ms. Goldberg. Okay. Thank you.

13 Would anyone else like to weigh in on
14 the topic of the October 18th hearing date?

15 Yes, Ms. Hatfield.

16 MS. HATFIELD: Thank you, Mr. Chairman.

17 It's our view that two full days of
18 hearing are more than enough for this proceeding.
19 So, we were hopeful that you could cancel the
20 18th, and simply hold the hearings on the 25th
21 and I believe it's the 31st.

22 Thank you.

23 CHAIRMAN GOLDNER: Yes. And I think
24 that's why you heard the long dialogue earlier on

1 the Commission's questions, and what -- where we
2 could use an administratively, perhaps more
3 efficient process, rather than coming back and
4 doing things in what I, in my opinion, would be a
5 less efficient process.

6 So, I think, if we can achieve the
7 efficiencies targeted, I have no doubt, Ms.
8 Hatfield, that you are correct. But we'll have
9 to cross that bridge.

10 I do have another question the
11 Commission would like to ask. And we would like
12 to ask this question based on the OCA's -- or,
13 some of the OCA's earlier comments. And it will
14 give -- we'll give everyone the opportunity to
15 weigh in as well, and it's relative to this
16 concept of the "record" and "evidence".

17 So, I'll direct the question to you,
18 Attorney Kreis, and then we'll give everyone else
19 a chance to comment. And I'll just read -- I'll
20 just read this into the record, so that we can
21 have a precise question.

22 So, in its objection, the OCA
23 referenced RSA 541-A:33 on "Evidence", but there
24 are other provisions related to the "record",

1 drawing a distinction between those two words,
2 that contain broader categories that are
3 contained in 541-A:33. The following provision
4 also mentions the "record", opposed to expressly
5 mentioning "evidence", 365:19, "Independent
6 Investigation", and I'll just read it for
7 everyone who doesn't have a statute book in front
8 of them: "In any case in which the commission
9 may hold a hearing it may, before or after such
10 hearing, make such independent investigation as
11 in its judgment the public good may require;
12 provided, that, whenever such investigation shall
13 disclose any facts which the commission shall
14 intend to consider in making any decision or
15 order, such facts shall be stated and made a part
16 of the record, and any party whose rights may be
17 affected shall be afforded a reasonable
18 opportunity to be heard with reference thereto or
19 in denial thereof."

20 So, as it pertains to the responses to
21 the Commission's questions, does the OCA
22 objection still stand, if the responses are
23 officially noticed and part of the record, as
24 opposed to being admitted as evidence?

1 MR. KREIS: Mr. Chairman, let me say at
2 the outset that the question that you just raised
3 raises some pretty grave issues of due process
4 and administrative law. And I am prepared to
5 address your question now. But I really would
6 want to reserve the right to supplement my
7 response, and perhaps ask for an opportunity to
8 submit additional briefs to the Commission about
9 all of this at some appropriate time. And my
10 impression is that maybe some of the other
11 parties would appreciate that opportunity as
12 well.

13 RSA 365, Section 19, was adopted by the
14 General Court in its most recent form in 1951.
15 That was quite a long time ago, even longer than
16 I've been around. And what I think it
17 presupposed was the paradigm that existed before
18 July 1st of 2021. On July 1st, 2021, as
19 everybody in the room knows, the General Court
20 created the Department of Energy, and calved off
21 a lot of what used to be done by the PUC Staff.

22 So, under the old paradigm, the one
23 that the General Court had in mind in 1951, there
24 were a bunch of capable people, known as the "PUC

1 Staff", who could hit the ground running, conduct
2 investigations for the Commission, gather
3 information, and do all of that work. And, then,
4 at a suitable time, in a contested administrative
5 proceeding, at which the due process rights of
6 all parties, including those of the OCA, were
7 fully protected, could then introduce evidence.
8 So, it would be the Staff, participating as if it
9 were a party, introducing evidence, that then the
10 quasi-judicial decision-makers sitting up at the
11 Bench could then use as the basis for its
12 decision.

13 That paradigm was chattered on
14 July 1st, 2021. And I am sympathetic to the
15 difficult position that puts you in, because
16 there are all these ambiguities and uncertainties
17 about how that is all supposed to work now. And
18 I concede that there are unresolved questions
19 about that. I am concerned that -- or, at least
20 I think there's a pretty good likelihood that
21 this case may end up forcing the ultimate
22 decision-maker to confront some of these
23 questions and give us all guidance about how this
24 is all supposed to work.

1 As I said earlier, in my opinion, and
2 it's a pretty emphatically held opinion, this is
3 a contested case within the meaning of the
4 Administrative Procedure Act. And the
5 Administrative Procedure Act governs what is and
6 is not evidence in this case that the Commission
7 may take into account when it makes its decision.

8 There's a bigger universe of
9 information that the PUC, as an agency, may have
10 or may get in its files. That doesn't matter.
11 What matters is what is evidence entered into the
12 record that can then become the basis of the
13 PUC's decision in this case.

14 To the extent that there could be
15 perceived any conflict or contradiction between
16 what's in statutes like RSA 365, Section 19, and
17 the Administrative Procedure Act, as I believe my
18 learned colleague, Ms. Hatfield, pointed out,
19 there's a well-established canon of statutory
20 interpretation that says that "the specific
21 prevails over the general."

22 So, that's my best effort at an
23 off-the-top-of-the-head semi-educated answer to
24 your question.

1 CHAIRMAN GOLDNER: Thank you very much.
2 That was very helpful.

3 Would anyone else like to comment on
4 that topic?

5 MS. CHIAVARA: I'll just say briefly
6 that I agree, again, that "the specific over the
7 general" applies in this case to 365:19.

8 Also, it speaks to "when such
9 investigation shall disclose any facts", and a
10 lot of the questions that were asked of the
11 utilities over the course of this docket asked
12 about hypothetical situations. And I'm not
13 exactly clear how those can be determined to be
14 facts, unless somebody was, again, swearing to
15 them under oath as to their voracity.

16 So, I am unsure how many of the -- and
17 I don't have the responses in front of me, and
18 that would be a lot of things to go over right
19 now, but I'm unclear how many of those would be
20 at least certainly not uncontested facts, I don't
21 believe so.

22 CHAIRMAN GOLDNER: Okay. Thank you.
23 Would anyone else like to comment?

24 MS. GEIGER: I would, Mr. Chairman.

1 CHAIRMAN GOLDNER: Yes. Thank you.

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

4 MS. GEIGER: You know, I'd also add to
5 the principle of statutory construction cited by
6 Attorney Kreis, the principle that states that
7 "the more recently enacted statute takes
8 precedence over the old statute." But, since RSA
9 365:19 was enacted in 1951, and the relevant
10 provision of the APA, RSA 541-A:33, was enacted
11 in 1994, it would be the APA that would govern.

12 CHAIRMAN GOLDNER: Okay. Thank you,
13 Attorney Geiger.

14 All right. Let's see. So, the
15 Commission will issue a post-PHC order after
16 this. So, addressing all the issues that were
17 discussed here today. So, have no worries about
18 that.

19 Is there anything else that anyone
20 would like to cover today?

21 [Multiple parties indicating in the
22 negative.]

23 CHAIRMAN GOLDNER: All right. Seeing
24 none. Thank you, everyone, for your time. And

1 we are adjourned.

2 ***(Whereupon the prehearing conference***
3 ***was adjourned at 10:26 a.m.)***

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