STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

October 10, 2023 - 9:17 a.m.
21 South Fruit Street
Suite 10
Concord, NH

[Hearing also conducted via Webex]

RE: DE 23-068
ELECTRIC AND GAS UTILITIES:
2024-2026 Triennial Energy
Efficiency Plan.
(Prehearing conference)

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

Eric Wind, Esq./PUC Legal Advisor
Tracey Russo, Clerk & PUC Hybrid
Hearing Host

APPEARANCES: Reptg. Public Service Co. of New
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Reptg. The Nature Conservancy:
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CHAIRMAN GOLDNER: Okay. Good morning.

I'm Chairman Goldner. I'm joined today by Commissioner Chattopadhyay and Commissioner Simpson.

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

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

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

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

CHAIRMAN GOLDNER: Very good. Northern Gas and Unitil?

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

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

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

CHAIRMAN GOLDNER: New Hampshire Electric Cooperative?

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

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

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

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

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

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

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

CHAIRMAN GOLDNER: Very good. And the Conservation Law Foundation?
MR. KRAKOFF: Good morning, Commissioners. Nick Krakoff, with the Conservation Law Foundation.

CHAIRMAN GOLDNER: Very good. CPower?

[No indication given.]

CHAIRMAN GOLDNER: And the Acadia Center?

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

CHAIRMAN GOLDNER: Very good. The Nature Conservancy?

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

CHAIRMAN GOLDNER: Very good. LISTEN Community Services?

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

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

MR. CLOUTHIER: Good morning, Commissioners. This is Ryan Clouthier, with Southern New Hampshire Services.
CHAIRMAN GOLDNER: Good morning, all.

Okay. Very good. So, as everyone is aware, we've asked a large number of questions, the Commission has, about the Triennial Plan, cost-effectiveness, benefit-cost testing, et cetera. At this point, subject to the last remaining responses coming in this week, we feel that we've identified the full scope of our questions. And, although we intend to ask some follow-up questions of witnesses, the subjects of our questioning are laid out.

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

We have three hearing sessions reserved over three weeks. Due to the Commissioners'
written questions we have already touched on the
topics, and gathered the reports and the data
that we wanted to see. We, therefore, do not
anticipate needing multiple days to hear
testimony and ask questions. The time can be
used to ensure that the parties have the time and
are afforded the opportunity to make their cases
and present any rebuttal evidence.

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

MS. CHIAVARA: Thank you, Chairman.

I don't have an immediate response to
the idea of having the utility witnesses adopt
the information requests issued by the Commission
as their own. That's pretty new territory. And
I would have to give that some more thought.
Because, obviously, it would give the parties an
opportunity to do full cross-examination on
those. I imagine we'd also have to do a little
bit of direct exam, because, as their attorneys,
we haven't had a chance to fully vet the -- we
provided responses, but we did not -- I would
think we would probably want to have a further conversation on the nature of those responses, the context surrounding them.

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

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

MS. CHIAVARA: Yes.

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

MS. CHIAVARA: I understand.

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

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

MR. CAMPBELL: Well, similar to my colleague here, I wasn't expecting this. So, I haven't had a chance to think about it. I
certainly understand the motivation with regard to administrative efficiency. But, again, I'd like a little bit more time to let it marinate, so to speak.

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

MR. SHEEHAN: Similar thoughts.

Obviously, what it's bumping into is the concept of "who creates the record and who introduces evidence". And, we've had conversations with the Commission about that, we've had conversations outside your presence about that. And, again, this is a twist that we hadn't thought of. So, "stay tuned", I guess, is the thought.

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

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

CHAIRMAN GOLDNER: Okay.

MR. SHEEHAN: Because, yes, there may
be a difference in substance, but not -- in form, not substance.

CHAIRMAN GOLDNER: Okay. Very good.

New Hampshire Electric Cooperative?

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

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

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

Thank you.

CHAIRMAN GOLDNER: Okay. Thank you.

The New Hampshire Department of Energy?

MS. DEXTER: Thank you.

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

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

Similar to what the parties do before the Commission, you know, we may ask dozens of information requests in the course of discovery in a case, but, before we come to the Commission, we produce an exhibit list, and we try to identify the data responses that are going to be
most relevant, and many times we attach them to testimony well -- written utility well before the hearing. So, some sort of narrowing of the record responses I think would be helpful to the proceeding.

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

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

MR. KREIS: Thank you, Mr. Chairman.

First, I'd like to say that I believe I agree with everything that I've heard any of my learned colleagues say so far. And, beyond that, I want to emphasize that it's the intention of the Office of Consumer Advocate to be as cooperative as possible in moving this proceeding on to its conclusion. And we're aware of the, of
course, strict and really draconian deadline that
the Legislature has adopted. And we definitely
do not want to impede the proceeding or do
anything that would create procedural bumps or
interruptions.

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

The first objection that I need to make
has to do with the questions that the Commission
instructed me to have my witnesses reply to in
writing by this Friday. I will submit those
replies. But I do not believe, respectfully,
that the Commission has the authority to issue
queries like that to the Office of the Consumer
Advocate. We are not a utility subject to
plenary oversight by the Commission, and the
Commission's procedural rules do not contemplate
that the Commission will conduct discovery in
contested, adjudicative proceedings such as this
one.
With respect to the question of taking official notice of the voluminous responses that the utilities have provided to the Commission, and that we will be providing on Friday, the taking of official notice is governed by Paragraph V of Section 33 of the Administrative Procedure Act, which is RSA 541-A. And there are four circumstances in which a tribunal, an administrative adjudicator, may take administrative notice of something, and none of them apply here, unfortunately.

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

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

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

And the last one is "Codes or standards that have been adopted by an agency of the United
States, or of a state, or a nationally recognized organization or association." That does become germane in some context, certainly not here.

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

One is that the statute that governs this proceeding, which is subparagraph (d) of Paragraph VI-a of RSA 374-F, Section 3, significantly circumscribes the extent of the Commission's inquiry in this particular case. So, you know, the answer might be different, and the Commission might have more broad-ranging discretion in, say, a rate case, which has almost a legislative component to it. But here, in this proceeding, the Commission has very little to do,
because the Legislature has done most of your work for you.

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

Finally, as an aside, or maybe as a footnote, I just note that I have a witness availability problem on the 18th that I would like to address. And, so, it will help, and I'm glad the Commission apparently intends to gain some clarity about just the logistics and particulars of the hearings we're about to enter.
So, again, to stress, I intend to be as cooperative as I possibly can. But, for all the reasons I've just given, I expect to enter, for purposes of rehearing and appeal, a series of ongoing objections to almost everything that I understand the Commission to be intending to do.

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

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

And there's nothing in the responses that we'll file on Friday that will create any tremors or shock waves or surprise anybody. And,
in that sense, there's nothing unreasonable about them. I'm just concerned about the procedural implications. The utilities, for whatever reason, have chosen not to raise any of those issues about the propriety of the Commission having conducted what amounts to an informal investigation within the four corners of an adjudicative proceeding. I feel like I have to note objections to those things.

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

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

MR. KREIS: I agree that the Commission has a statutory duty to keep informed. And, so, therefore, in the abstract, there's nothing wrong with the Commission having issued all of the information requests. It has plenary access to the books and records of all the state's utilities. And, so, you could, even outside of a
docketed case, I think have just written the utilities a letter saying "Hey, here's a bunch of information that we would like." And, if the utilities don't have any issues with providing that information, I know they sometimes get concerned when they're asked to do new analysis that they don't already have on hand. But I don't contest the Commission's authority to do that.

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

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

MR. KREIS: Yes.

CHAIRMAN GOLDNER: Thank you.

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

MR. SKOGlund: Clean Energy New Hampshire has no position at this time.
CHAIRMAN GOLDNER: Okay. Thank you.

The Conservation Law Foundation?

MR. KRAKOFF: Yes.

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

Second, I'm concerned with the precedent of, you know, introducing into evidence, you know, by the Commission's own accord, these numerous and voluminous record requests. And I'd note that Rule Puc 203.22, titled "Exhibits", states that "A party presenting evidence at a hearing shall present such evidence in exhibit form if the evidence contains tabulations and figures so numerous as to make oral presentation difficult to follow."

You know, this explicitly calls for "parties" introducing evidence at a hearing, does not permit the Commission itself to introduce
evidence at the hearing or exhibits.

And, then, second, I would draw the Commission's attention to Puc Rule 203.23, titled "Evidence", which says that "The parties entitled to offer evidence at hearing in an adjudicative proceeding shall be the petitioner, the staff of the commission, the office of consumer advocate and any person granted intervenor status."

Again, this does not allow or permit explicitly, though, the Commission itself to offer evidence at a hearing.

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

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

Thank you.

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

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

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

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

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

Let's move to The Nature Conservancy?

MS. HATFIELD: Thank you, Mr.
Chairman.

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

Thank you.

CHAIRMAN GOLDNER: Thank you. LISTEN Community Services?

MR. BURKE: Thank you, Mr. Chairman.

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

I think this might have been expressed by Attorney Dexter, that, and perhaps by Attorney Krakoff as well, that this does seem like a deviation, not only just from past practice, but is something that is not contemplated in the rules. You know, there was a lot of discovery
among the parties, and that doesn't automatically get adopted and come in, as Attorney Dexter said. Usually, the parties prepare an exhibit list, and then -- and file that.

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

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

But we would say, at this point in the proceeding, that there is no disagreement among the material facts in question, and that Puc Rule 203.20 actually requires the parties, when they are in agreement, and there are no disputes among the facts, to file a stipulation, and that is why we worked with the parties to do that.
So, with that said, I don't think we have more to add.

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

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

CHAIRMAN GOLDNER: Okay.

MR. CLOUTHIER: Thank you.

CHAIRMAN GOLDNER: Thank you.

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

Does anyone wish to comment on that procedural matter?

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

I will say that Eversource has similar witness issues to the OCA. So, we are down some
people for the 18th. I don't know if is open to streamlining the hearings further, but we will be down some people that day.

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

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

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

MS. CHIAVARA: Okay. So, I just wanted to comment on "the Commission's duty to keep informed", the question that you posed to the OCA. And I would have a tendency to agree that, with adjudicative dockets, the Administrative Procedures Act is a much more specific statute. And, therefore, the more specific statute would
prevail over the more general. And the APA does have pretty specific guidelines as to how evidence is treated and how the record is developed.

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

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

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

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

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

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

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

CHAIRMAN GOLDNER: Okay. Okay.

Attorney Kreis.

MR. KREIS: Thank you, Mr. Chairman.
Subject to all of the ongoing objections I articulated before, and intend to continue to maintain on an ongoing basis, I'm indifferent to the order in which witnesses adopt their testimony. I do not have any cross-examination questions for any of the witnesses.

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

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

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

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

Ms. Hatfield.

MS. HATFIELD: Thank you, Mr. Chairman.

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

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

CHAIRMAN GOLDNER: Okay. Very good.

Does anyone intend to ask questions of the intervenors?

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

CHAIRMAN GOLDNER: Oh, sorry.

MR. BURKE: I was going to say something similar to The Nature Conservancy.

Just that right now we're not planning to. But,
just thinking of past energy efficiency dockets, there have been times where things have come up in the hearings, where then we have wanted to reserve the right, and had to ask questions.

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

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

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

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

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

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

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

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

But I will repeat that we are down two Eversource witnesses on the 18th. I don't know if the Commission would be open to canceling the 18th, to reinstate the 24th, and then we would
still have three days, and then a full utility

witness panel.

Otherwise, we also have the issue of --

we do have witnesses that testified as to the SBC rate and the calculation of those rates. I don't

know how much the SBC rates would be at issue here, because they're set by statute. So, I

think our plan was to just swear them in to adopt their testimony, and we didn't really have any questions for them, per se. If there are going to be any questions for those witnesses, I think we could swear them in on the 18th and get that out of the way. Or, if there were any rate questions, we would ask that those come up front, because that's something that we could produce those witnesses on that day. Otherwise, maybe consider the 24th, instead of the 18th.

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

MS. CHIAVARA: Okay.

CHAIRMAN GOLDNER: And I'll also just add, I think, at least in my mind, that a lot of the questions we're asking about are what I would
call "clarifications" or "potential errors". And, so, the spirit of the questions, I think, revolve around those issues. So, and that's why I think it's important to streamline the proceeding somewhat, so that we can get to those issues and resolve them efficiently.

MS. CHIAVARA: Sure.

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

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

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

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

[Atty. Dexter indicating in the negative.]
CHAIRMAN GOLDNER: Or is that the complete list of exhibits? Yes?

[No verbal response.]


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

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

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

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

MS. CHIAVARA: For Eversource, it's going to be Katherine Peters and Brandy Chambers. I believe, if necessary, Brandy would be able to make it. Katherine Peters -- Ms. Peters has had
a long-outstanding speaking obligation
out-of-state. And I understand that the hearings
have been noticed for some time. I believe,
because there were four days of hearings, we
thought we could probably schedule around her
absence. Now that there are three, and that the
witnesses -- and that the utilities are going to
go first, it looks less likely that we'll be able
to schedule around her.

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

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

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

CHAIRMAN GOLDNER: Sure.

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

CHAIRMAN GOLDNER: Okay. Okay. Thank
you. The Consumer Advocate, the same question
MR. KREIS: Thank you. So, our witnesses are Mr. Woolf and Ms. Goldberg, and their written testimony is written sort of Greek chorus style. But the reality beneath that is that Mr. Woolf is responsible for I think the things that you already know he has a lot of expertise in. And Ms. Goldberg I think is responsible for the sort of nuts-and-bolts analysis of various Plan details and that sort of thing.

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

I would say, from our perspective, like Eversource, we, when the Commission noticed a multi-day hearing spread out over several weeks in October, it was our assumption that we could address any witness availability issues, which, frankly, occur all the time in PUC proceedings, by getting permission to have our witnesses testify on a hearing date other than the 18th.
Really, the question of witness availability was one of the main reasons that I requested that the Commission hold this prehearing conference, and that's a request that you granted. It was originally scheduled I think for sometime last week, and it got put off to today. So, we're closer to the hearing dates than we would have been last week.

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

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

CHAIRMAN GOLDNER: Okay. Thank you.

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

[Chairman Goldner and Cmsr. Chattopadhyay conferring.]

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

MR. KREIS: Mr. Woolf would be available.


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

Yes, Ms. Hatfield.

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

Thank you.

CHAIRMAN GOLDNER: Yes. And I think that's why you heard the long dialogue earlier on
the Commission's questions, and what -- where we could use an administratively, perhaps more efficient process, rather than coming back and doing things in what I, in my opinion, would be a less efficient process.

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

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

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

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

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

So, as it pertains to the responses to the Commission's questions, does the OCA objection still stand, if the responses are officially noticed and part of the record, as opposed to being admitted as evidence?
MR. KREIS: Mr. Chairman, let me say at the outset that the question that you just raised raises some pretty grave issues of due process and administrative law. And I am prepared to address your question now. But I really would want to reserve the right to supplement my response, and perhaps ask for an opportunity to submit additional briefs to the Commission about all of this at some appropriate time. And my impression is that maybe some of the other parties would appreciate that opportunity as well.

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

So, under the old paradigm, the one that the General Court had in mind in 1951, there were a bunch of capable people, known as the "PUC
Staff", who could hit the ground running, conduct investigations for the Commission, gather information, and do all of that work. And, then, at a suitable time, in a contested administrative proceeding, at which the due process rights of all parties, including those of the OCA, were fully protected, could then introduce evidence. So, it would be the Staff, participating as if it were a party, introducing evidence, that then the quasi-judicial decision-makers sitting up at the Bench could then use as the basis for its decision.

That paradigm was chattered on July 1st, 2021. And I am sympathetic to the difficult position that puts you in, because there are all these ambiguities and uncertainties about how that is all supposed to work now. And I concede that there are unresolved questions about that. I am concerned that -- or, at least I think there's a pretty good likelihood that this case may end up forcing the ultimate decision-maker to confront some of these questions and give us all guidance about how this is all supposed to work.
As I said earlier, in my opinion, and it's a pretty emphatically held opinion, this is a contested case within the meaning of the Administrative Procedure Act. And the Administrative Procedure Act governs what is and is not evidence in this case that the Commission may take into account when it makes its decision.

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

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

So, that's my best effort at an off-the-top-of-the-head semi-educated answer to your question.
CHAIRMAN GOLDNER: Thank you very much.
That was very helpful.
Would anyone else like to comment on
that topic?
MS. CHIAVARA: I'll just say briefly
that I agree, again, that "the specific over the
general" applies in this case to 365:19.
Also, it speaks to "when such
investigation shall disclose any facts", and a
lot of the questions that were asked of the
utilities over the course of this docket asked
about hypothetical situations. And I'm not
exactly clear how those can be determined to be
facts, unless somebody was, again, swearing to
them under oath as to their voracity.
So, I am unsure how many of the -- and
I don't have the responses in front of me, and
that would be a lot of things to go over right
now, but I'm unclear how many of those would be
at least certainly not uncontested facts, I don't
believe so.

CHAIRMAN GOLDNER: Okay. Thank you.
Would anyone else like to comment?
MS. GEIGER: I would, Mr. Chairman.
CHAIRMAN GOLDNER: Yes. Thank you.

[Court reporter interruption regarding use of the microphone.]

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

CHAIRMAN GOLDNER: Okay. Thank you, Attorney Geiger.

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

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

[Multiple parties indicating in the negative.]

CHAIRMAN GOLDNER: All right. Seeing none. Thank you, everyone, for your time. And
we are adjourned.

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