

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

November 14, 2013 - 9:13 a.m.
Concord, New Hampshire

NHPUC DEC03'13 PM 1:37

RE: DM 13-252
OBJECTIONS TO PUBLIC UTILITY ASSESSMENTS.
(Prehearing conference)

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Robert R. Scott
Commissioner Michael D. Harrington

Sandy Deno, Clerk

APPEARANCES: Reptg. FairPoint Communications:
Harry N. Malone, Esq. (Devine, Millimet...)

Reptg. Public Service of New Hampshire:
Matthew J. Fossum, Esq.

Reptg. Unutil Energy Systems and
Northern Utilities:
Gary Epler, Esq.

Reptg. Granite State Electric Company
and EnergyNorth Natural Gas d/b/a
Liberty Utilities:
Sarah B. Knowlton, Esq.

Reptg. New Hampshire Electric Cooperative:
Mark W. Dean, Esq.

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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APPEARANCES: **Reptg. New England Power, New England
Electric Transmission Corporation and
New England Hydro Transmission Corp.:**
Steven V. Camerino, Esq. (McLane, Graf...)

Reptg. Retail Energy Supply Association:
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. Electricity NH d/b/a ENH Power:
Christopher G. Aslin, Esq. (Bernstein Shur)

Reptg. Residential Ratepayers:
Susan Chamberlin, Esq., Consumer Advocate
Stephen Eckberg
Office of Consumer Advocate

Reptg. PUC Staff:
David Wiesner, Esq.
Kate Bailey, Director/Telecom Division

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P R O C E E D I N G

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2 CHAIRMAN IGNATIUS: Good morning. I'd
3 like to open the hearing in Docket DM 13-252. This
4 involves all utility groups. And, it began with the
5 Commission issuing its assessment for Fiscal Year 2014.
6 In early August of 2013, we received objections from
7 FairPoint and a related company and the Public Service
8 Company of New Hampshire, and issued an order of notice in
9 response to that on October 8th, 2013 that set out the
10 explanation of the docket and called for a prehearing
11 conference this morning, and set forth dates for
12 interventions. We received a number of requests for
13 intervention, which we will go through after this.

14 Why don't we begin first with
15 appearances, and then we'll begin with the discussion of
16 intervention requests. And, Commissioner Harrington
17 points out I goofed and said this was a "hearing", it's
18 actually a prehearing conference. So, thank you for that
19 clarification.

20 Mr. Malone, why don't we begin with you.

21 MR. MALONE: Yes. Good morning, madam
22 Chair. I'm Harry Malone, of the law firm of Devine,
23 Millimet. And, I'm representing FairPoint today. And,
24 with me today are Ryan Taylor of FairPoint. He is their

1 Director of Regulatory Affairs, and Mr. Kevin O'Quinn, who
2 is their Director of Regulatory Accounting.

3 CHAIRMAN IGNATIUS: Good morning.

4 MR. CAMERINO: Good morning,
5 Commissioners. Steve Camerino, from the McLane law firm,
6 on behalf of the New England Power Company, the New
7 England Electric Transmission Corporation, and the New
8 England Hydro-Transmission Corporation.

9 CHAIRMAN IGNATIUS: Good morning.

10 MR. FOSSUM: And, good morning. Matthew
11 Fossum, for Public Service Company of New Hampshire.

12 CHAIRMAN IGNATIUS: Good morning.

13 MR. DEAN: Good morning. Mark Dean, on
14 behalf of the New Hampshire Electric Cooperative.

15 MS. KNOWLTON: Good morning. Sarah
16 Knowlton, here today for Granite State Electric Company
17 and EnergyNorth Natural Gas, Inc., both doing business as
18 Liberty Utilities.

19 MR. PATCH: Good morning. Douglas
20 Patch, law firm of Orr & Reno, filed a limited appearance
21 on behalf of the Retail Energy Supply Association.

22 MR. ASLIN: Good morning. Chris Aslin,
23 from Bernstein Shur, on behalf of Electricity NH, LLC,
24 doing business as ENH Power.

1 MS. CHAMBERLIN: Good morning. Susan
2 Chamberlin, Consumer Advocate for the residential
3 ratepayers, and with me today is Stephen Eckberg.

4 MR. EPLER: Good morning. Gary Epler,
5 appearing on behalf of the Unitil companies, Unitil Energy
6 Systems and Northern Utilities, and also Granite State Gas
7 Transmission, which has not moved to intervene, but is
8 just observing.

9 CHAIRMAN IGNATIUS: And just, I'm
10 sorry?

11 MR. EPLER: Just observing. Thank you.

12 CHAIRMAN IGNATIUS: Thank you.

13 MR. WIESNER: Good morning. Dave
14 Wiesner of the Commission Staff. With me today is Kate
15 Bailey, the Director of the Telecommunications Division.

16 CHAIRMAN IGNATIUS: Good morning. And,
17 thank you, everyone, for being here. My identification of
18 people seeking intervention I think has been covered by
19 everyone here. We don't -- and, in the file at least, we
20 don't have any additional requests for intervention. Is
21 there anyone else that we know has sought intervention,
22 any other papers submitted? It doesn't look like there's
23 anyone else here today who hasn't identified themselves.

24 All right. Then, we, I guess, want to

1 inquire, is there any objection from any party as to --
2 or, from any participant, let's call you generally that
3 right now, anyone with a reason to think that anyone else
4 shouldn't be intervening? It's a little bit loose here
5 right now. But is there any concern by any of you that
6 the mixture of regulated utilities within the gas and
7 electric and telephone worlds, and some competitors in the
8 electric side, and perhaps does RESA also represent some
9 gas competitors?

10 MR. PATCH: No.

11 CHAIRMAN IGNATIUS: All right. And, the
12 affiliated transmission entities under New England Power,
13 any reason that you think they shouldn't all be at the
14 table? Any reason that that's going to make -- be
15 improper for what this docket is set forth to do?

16 (No verbal response)

17 CHAIRMAN IGNATIUS: All right. Seeing
18 no --

19 MR. WIESNER: Madam Chair?

20 CHAIRMAN IGNATIUS: Yes.

21 MR. WIESNER: The Staff has no objection
22 to any of the petitions to intervene. We do understand,
23 however, that certain competitive suppliers have indicated
24 that they may withdraw their interventions, if it is

1 clarified that they would not be assessed for Fiscal Year
2 2013. And, Staff -- I think it's fair to say Staff can
3 represent that we will not -- we do not intend to argue
4 that the Commission has the authority under current law to
5 assess competitive electric power suppliers, because
6 they're not public utilities under RSA 374-F.

7 CHAIRMAN IGNATIUS: For Fiscal Year '13
8 or '14?

9 MR. WIESNER: I believe the objections
10 at issue are for Fiscal Year 2013.

11 CHAIRMAN IGNATIUS: I thought we were --
12 Fiscal Year '14 is what we're being -- that, in this
13 docket, it was a Fiscal Year '14 invoice that went out?

14 MR. MALONE: It was an invoice that we
15 received in 2013. But we are objecting to the assessment
16 that was issued in 2012, because the statute dictates that
17 you can only object to the previous year's assessment.

18 CHAIRMAN IGNATIUS: So, Fiscal Year
19 2012, which begins July 1st, 2013.

20 MR. WIESNER: And, I believe, I'm always
21 willing to be corrected, but I believe that it's Fiscal
22 Year 2013, which began in July 2012.

23 CHAIRMAN IGNATIUS: Yes. I just said it
24 in the reverse. Sorry. Yes. So, it's Fiscal Year 2013

1 assessments, which would be covering July 1st, 2012
2 through July -- June 30th, 2013.

3 MR. O'QUINN: Correct.

4 CHAIRMAN IGNATIUS: All right. And, so,
5 Mr. Wiesner, you were saying that some of the competitors,
6 if they know that there is no attempt to bring the
7 competitive suppliers in under the Fiscal Year '13
8 assessment, then they would not have reason to be involved
9 in this docket?

10 MR. WIESNER: My understanding is that
11 they have indicated that they may be willing to withdraw
12 their petitions to intervene, if it were clear that the
13 Commission did not intend to assess them for Fiscal Year
14 2013. And, Staff is not intending to argue that the
15 Commission has that authority under the current law.
16 Recognizing that there's legislation pending that may
17 change that, but that would be prospective and not
18 retrospective, in effect.

19 CHAIRMAN IGNATIUS: All right. Then,
20 why don't we, when we do talk about it, any positions that
21 parties have, if anyone wants to respond to that issue,
22 thank you for teeing that up, can give us their views on
23 that, and clarify either that is their position or
24 something slightly different from what you just described.

1 We are inclined to grant all of the
2 petitions to intervene, as we looked through the pleadings
3 beforehand, saw that there was a sound basis. Although,
4 this further issue suggests maybe there are not rights,
5 duties, and privileges that are at issue for competitors,
6 if they would not be assessed going back for the '13 --
7 Fiscal Year '13 period. So, why don't we hold off on an
8 actual ruling on that, but just let you know our general
9 inclination is that the petitions to intervene were
10 appropriate.

11 And, I also just want to check, we have
12 an affidavit of publication filed, correct? Thank you.

13 Then, why don't we have some preliminary
14 statements from everyone who is seeking to participate in
15 the docket. And, I'd be interested, as you describe it,
16 any thoughts you have as to the relationship, if any, to
17 the legislation that I know you've been involved in
18 reviewing. There's a legislative request that's been
19 filed, with the Commission's involvement, for this coming
20 legislative session. And, whether that has an impact on
21 this docket or not, it would be interesting to hear.

22 Any interested, who wants to lead off?
23 We have objections from PSNH and FairPoint. And, maybe if
24 one of the two of you wants to begin, and then we'll take

1 the other parties?

2 MR. MALONE: I'll be happy to start,
3 madam Chair.

4 CHAIRMAN IGNATIUS: Thank you.

5 MR. MALONE: Northern New England
6 Telephone Operations and its affiliate, Enhanced
7 Communications, which we refer collectively to as
8 "FairPoint Communications", have respectfully objected to
9 the public utility assessment invoices that these
10 companies received on August 21st, 2012. And, this
11 objection is made pursuant to RSA 363-A:4, which provides
12 that each public utility with an objection to the amount
13 it has been assessed for the prior fiscal year must file
14 its written objection within 30 days of the assessment for
15 the first quarterly payment of the current fiscal year.

16 And, to give you some background,
17 FairPoint filed a similar objection last year, in Docket
18 DM 12-276, but it was dismissed by the Commission because
19 it sought prospective relief, rather than the retroactive
20 relief that's dictated by RSA 363-A:4.

21 The Commission did, however, establish a
22 collaborative stakeholder process to review the current
23 assessment rules and recommend any changes. And, this
24 process resulted in proposed legislation supported by many

1 industry stakeholders and the Commission Staff, and is
2 currently pending in the Legislature. However, this
3 legislation would be effective in July of 2014, and,
4 therefore, it can only offer prospective relief, which is
5 why FairPoint has filed the objection that is the subject
6 of this proceeding.

7 And, there are two principles driving
8 this objection. One involving the Commission's mission
9 and the other one involving its jurisdiction. First,
10 FairPoint would be required to fund the expenses -- or,
11 neither FairPoint or Northern New England Telephone
12 Operations nor Enhanced Communications should be required
13 to fund the expenses of the Office of the Consumer
14 Advocate, in light of the enactment of SB 48, which
15 removed their retail operations from the OCA's purview.
16 Second, the Commission has no statutory authority to levy
17 an assessment on either of these companies' interstate
18 revenues, nor does federal law delegate any role of the
19 Commission to regulate, oversee or advise regarding
20 FairPoint's interstate telecommunications services.

21 So, in light of these two principles,
22 and as detailed in the Excel spreadsheet that was included
23 with our filing, FairPoint's 2013 assessment should be
24 reduced from \$942,999 to an amount not exceeding \$403,229

1 -- I'm sorry, that should be NNETO's assessment. Enhanced
2 Communications' 2013 assessment should be reset from
3 \$70,452 to an amount of no more than \$5,500. Thank you.

4 CHAIRMAN IGNATIUS: Thank you. And, I
5 take it you don't have any -- well, I guess I already
6 asked, you don't have any opposition to the intervention
7 requests?

8 MR. MALONE: No, madam Chair.

9 CHAIRMAN IGNATIUS: Okay. Mr. Fossum.

10 MR. FOSSUM: Thank you. I'll start by
11 noting that, well, a couple of things. One is that, in
12 our Petition, we had asked that the Commission take
13 administrative notice of the stakeholder process that
14 Mr. Malone has referred to, which was docketed by the
15 Commission as "13-038". And, I'd just make clear that
16 that continues to be our request, because there was
17 extensive comments filed by numerous parties, including
18 many in the room today, about their positions on some of
19 these issues. And, we believe that that would be helpful
20 and informative to the Commission, without requiring
21 everybody to reinvent the wheel on those issues.

22 The other thing that I'll note is that
23 which is also in our Petition, which is that, by filing
24 its objection, PSNH wasn't seeking any specific relief

1 right at that moment, but its concern stemmed from the
2 fact that, to the extent the assessments may be amended,
3 pursuant to FairPoint's request or some other, that
4 whatever amount is no longer paid by FairPoint or
5 similarly situated companies, would be reassigned over to
6 companies like PSNH. So, our concern was to protect
7 whatever interests we might have. So, ultimately, I
8 suppose, if the Commission determines that no changes are
9 appropriate retrospectively, then PSNH would -- maybe
10 perhaps not have any need for particular relief.

11 That said, the basis for PSNH's Petition
12 is essentially an equal protection, a "fairness" argument,
13 if you will. The Commission's assessments are -- have
14 been described as a "license fee", and that, as such,
15 they're to bear a relation to and approximate the expense
16 of the regulation. And, in fact, that's, if I might be so
17 bold as to paraphrase FairPoint's argument, that's
18 essentially FairPoint's argument, that their assessment
19 must go down to recognize that the level of regulation by
20 this Commission on them has decreased.

21 So, that, on that basis, that's PSNH's
22 basis for contending that other entities similarly
23 situated, at least in part to PSNH, namely, the
24 competitive electric power suppliers, might be required to

1 pick up some portion of the Commission's expenses. They
2 routinely participate in dockets at the Commission.
3 They're, for all but price, they're regulated by this
4 Commission. And, it would seem only appropriate,
5 therefore, that they bear some measure of the costs of
6 that regulation.

7 As for the issue that Staff had raised
8 about whether the Commission may impose an assessment upon
9 those entities, PSNH agrees that, under 363-A, they're not
10 subject to the specific assessments that are defined
11 there. However, under 374-F:7, I, the Commission is
12 empowered to set registration fees for those entities.
13 And, the statute is silent as to how that registration fee
14 is to be established. It may be that the Commission could
15 structure a registration fee that is functionally
16 equivalent to an assessment, credit that against the
17 Commission's expenses, and then allocate other assessed
18 expenses as appropriate.

19 PSNH has no objection to paying its fair
20 share of the Commission's expenses as a general matter.
21 That's not why we're here. We just believe that it should
22 be a fair and appropriate share of those expenses.

23 I'd also note, as we point out in our
24 Petition, that PSNH's default service revenue is counted

1 in determining its assessment level. PSNH's default
2 service is electric supply service, and that is
3 essentially the same service that's provided by electric
4 power suppliers in New Hampshire, yet it's treated
5 differently. And, while I understand that there may be
6 some argument that the setting of PSNH's default rate is a
7 matter of the Commission's jurisdiction, whereas their
8 rates are not, I don't believe that that particular issue
9 or that particular function should serve the basis for
10 calculating the assessment expense. That the expense must
11 bear in relation to the regulation as a whole, not the
12 regulation on any particular item.

13 So, to the extent, I guess, that PSNH's
14 revenues are counted in total, we would think that the
15 suppliers' revenues would be counted in total. Because
16 that would be how to determine whether there is a relation
17 to or approximating the expense of the regulation. There
18 may be other ways to do it, and we'd certainly be open to
19 exploring that.

20 CHAIRMAN IGNATIUS: Mr. Fossum, you lost
21 me on that one.

22 MR. FOSSUM: I can understand that.
23 About halfway through, I was unclear. And, I'll try
24 again.

1 CHAIRMAN IGNATIUS: And, if it helps, it
2 would help me, when you said that your "default service is
3 the same as provided by electric power suppliers", maybe
4 to sort out the difference between PSNH as a distribution
5 company, and then you've got comparable regulated
6 utilities providing that service, and then you've got PSNH
7 as a supplier of electricity. And, I guess the comparable
8 piece on that would be competitive suppliers, who then
9 break into two categories. Some are doing it as the
10 winning bidder to a default service bid by a regulated
11 utility and some are doing it totally on the outside on a
12 competitive -- in a competitive approach to people buying
13 their electricity. So, I don't know if I've made you more
14 confused. But I'm trying to figure out who's in which box
15 and what you're suggesting, in terms of assessments.

16 MR. FOSSUM: And, I guess that's why
17 there is some confusion, is that there are those different
18 boxes, there are those different things. But, in the end,
19 it's the same service. It's electric supply provided to
20 retail end users. And, so, it would be our position that,
21 to the extent it's counted for anyone of them, it should
22 be counted for all of them, or it shouldn't be counted for
23 any of them. And, I suppose, in brief terms, that's what
24 I was attempting to argue.

1 CHAIRMAN IGNATIUS: All right.

2 MR. FOSSUM: Just to close out, in New
3 Hampshire, I mean, we have power suppliers who serve
4 thousands of customers, and have millions in revenue, but,
5 at present, pay essentially no assessment whatsoever or
6 pay no portion of the Commission's fees for the regulation
7 that is set forth in statute and Commission rule. And, we
8 believe that all entities subject to the Commission's
9 jurisdiction should be required to pay some portion of
10 that expense, and that that would include both the
11 regulated utilities, historically, as well as the
12 competitive suppliers, who are now -- well, who are now
13 under 374-F:7 subject to the Commission's jurisdiction.
14 Thank you.

15 CHAIRMAN IGNATIUS: Thank you. All
16 right. Then, why don't we move, Mr. Camerino?

17 MR. CAMERINO: Thank you. I represent
18 New England Power Company, New England Electric
19 Transmission Corporation, and New England
20 Hydro-Transmission Corporation, all three of which are
21 FERC-regulated transmission subsidiaries of National Grid.
22 And, at this point, those parties are intervening really
23 for the purpose of monitoring this proceeding. They don't
24 have a position on the issues before the Commission or

1 with regard to the proposed legislation. But I did want
2 to highlight what issues they are concerned about.

3 The most important is that the outcome
4 in this proceeding, and in the investigative legislative
5 proceeding, let's call it, is that similarly situated
6 parties be treated in a similar manner. And, so,
7 obviously, as FERC-regulated entities, with their rates
8 set by FERC, there could be ramifications out of this
9 docket that affect those three entities.

10 The second is simply that the charge
11 that they pay to the Commission, the assessment, be one
12 that's fair in relationship to their activities and to the
13 other entities that are assessed.

14 And, lastly, somewhat on a related
15 basis, is the potential for the assessment of the year
16 that's under consideration in this proceeding could be
17 changed, and how it might be changed by the outcome of
18 this docket. And, one of the things that I think needs to
19 be considered is whether, if that assessment could be
20 changed I'll say retroactively, would that constitute a
21 new assessment that then could be subject to objection?
22 Obviously, what those numbers are could have an impact on
23 that determination. And, so, those are the issues that
24 they will be monitoring.

1 I also just want to add one comment with
2 regard to Mr. Fossum's request that the investigative
3 docket be pulled into this one through administrative
4 notice. National Grid has no objection to that in
5 concept, but how that is done in practice would matter.
6 That was not an adversarial proceeding, it was done more
7 in the nature of I'll call it a "rulemaking" or an
8 investigation by the Commission. So, there's a looser
9 standard, let's say, a lot of information hasn't been
10 subject to review. So, if it's in this docket, but not in
11 evidence, let's say, then we would have no objection.
12 And, my assumption is that that's how it would be treated.
13 Thank you.

14 CHAIRMAN IGNATIUS: And, so, if all of
15 the materials previously submitted in the other docket
16 were somehow brought into this one, you would then want
17 some discovery opportunity to test out the information
18 contained?

19 MR. CAMERINO: Only if -- if it were
20 going to be used, if it was going to be put into the
21 record, I would want it to come in formally in a hearing,
22 so that, for example, a witness could be cross-examined on
23 it. I'll just take a very simple example. There's a
24 straw proposal in there, and the document says --

1 suggests, if you read the words, that the parties who are
2 present at the meeting that the straw proposal resulted
3 from support that. And, that -- my understanding is
4 that's not correct. It's not -- not that there was any
5 intent to mislead, but the parties have differing
6 positions about that proposal. So, I wouldn't want the
7 Commission to take that statement and then, in an order,
8 say "the parties agree that this was an appropriate
9 proposal."

10 CHAIRMAN IGNATIUS: Would it be helpful
11 if the parties to this docket were to sit together and
12 identify what materials would make sense to be moved into
13 this new docket? So that it isn't everything back and
14 forth, if there were proposed straw proposals that were
15 then amended, and the final -- the various iterations
16 along the way might not need to come in, or maybe none of
17 that come in, but any sort of factual data brought in
18 about revenues might be helpful. Sort of, instead of just
19 take it all and put it in this file, to really make a more
20 specific list.

21 MR. CAMERINO: Well, I wouldn't have a
22 problem with that. I think I would defer to Staff, in
23 terms of how burdensome that would be. They have a sense
24 of the totality. That would be okay with National Grid.

1 The other possibility would be that it simply be treated
2 as if it was discovery. And, if a party wanted to put it
3 into evidence, they would have to submit testimony or
4 something with it attached, and then it would be subject
5 to either cross-examination or further discovery, but at
6 least it would be identified specifically for the other
7 parties.

8 CHAIRMAN IGNATIUS: Thank you. Mr.
9 Camerino, are the three entities you're representing
10 currently assessed?

11 MR. CAMERINO: Yes, they are. I don't
12 have the exact figure, but I think their total assessment
13 is something on the order of the 135 or \$140,000, the
14 three combined.

15 CHAIRMAN IGNATIUS: Thank you. Mr.
16 Dean.

17 MR. DEAN: Thank you. I think much of
18 what the Cooperative would say would echo what Mr.
19 Camerino just said, other than the references to FERC
20 regulation. Primarily, the Co-op's concern and interest
21 in this docket is, to the extent that the result of this
22 docket could result in essentially a reassessment of all
23 the utilities for a past year to account for some change
24 that occurred as a result of this docket, frankly, it's my

1 assumption that, at that point, a reassessment would
2 trigger or revive rights to objections. But, you know, in
3 an abundance of caution, the Co-op wants to reserve its
4 rights as best it can. And, to the extent somehow, in
5 this docket, if the subject came up as to how that
6 reassessment or reallocation would occur, you know, we
7 would want to be in the room. But, other than that, the
8 Co-op is not intending to play an active role, as far as
9 filing testimony, engaging in discovery, *etcetera*, but
10 will obviously assess its position in that regard as the
11 docket unfolds.

12 From the Cooperative's point of view, I
13 think the legislative efforts looking forward
14 prospectively is where we have most of our focus, and this
15 is really just to make sure that there isn't something
16 that occurs retroactively that has a significant albeit
17 one-time impact on the Co-op.

18 CHAIRMAN IGNATIUS: Thank you. Ms.
19 Knowlton.

20 MS. KNOWLTON: Thank you. Liberty
21 Utilities shares the perspective of the Co-op, in that we
22 do not want to see costs shifted, further assessment costs
23 shifted to Liberty based on FairPoint's objection.
24 Liberty has been an active participant in the development

1 of the legislative proposal and supports that. I think
2 that is the best way to resolve this. And, FairPoint has
3 acknowledged, in its opening statement, that it supports
4 the legislation. And, I would posit to the Commission
5 that we wouldn't need legislation -- we wouldn't have a
6 need for legislation if the law was already clear on the
7 issues that are being raised today.

8 So, we would like to see this resolved
9 through the legislative process, and would like FairPoint
10 -- FairPoint's objection to its assessment to be denied,
11 and that we deal with this on a prospective basis.

12 CHAIRMAN IGNATIUS: Tell me what that
13 means. "To deny FairPoint's objection and deal with it
14 prospectively", is there not a gap where FairPoint is
15 either too -- is ahead of the game or it's too late? And,
16 when does it ever get its chance to object to --

17 MS. KNOWLTON: Well, I think it can
18 object. But my point is just that, if the law was clear
19 today and supported FairPoint's position, then, it seems
20 like legislation wouldn't be necessary. I mean, I
21 understand that the legislation addresses other issues,
22 you know, as to the competitive suppliers, and it provides
23 a cost recovery mechanism for the assessment by those who
24 are assessed. But, as to FairPoint, it seems to me that

1 it's, you know, it's an issue that needs to be resolved by
2 a change in the law, which is itself supporting. So, I
3 think, you know, we should deal with the issue
4 prospectively in that regard.

5 CHAIRMAN IGNATIUS: Thank you. Mr.
6 Patch.

7 MR. PATCH: I think it's clear from the
8 Petition to Intervene or the Limited Petition that the
9 Retail Energy Supply Association submitted that the main
10 concern that they have here is a cautionary one. And,
11 that is, in light of some of the issues that PSNH raised
12 in their objection, that were noted in the order of
13 notice, RESA just wants it -- would hopefully like to see
14 a clear statement from the Commission along the lines of
15 what Staff has outlined, indicating that there's no
16 scenario under which this docket could result in any of
17 the costs that are at issue being shifted onto competitive
18 suppliers. In fact, in the order of notice, the
19 Commission refers to the law at 363-A, and refers to the
20 fact that it's "an assessment on utilities". And, I don't
21 believe under the law that competitive suppliers meet that
22 definition, but clarity on that issue would be helpful.
23 And, so, that's really why we're here. In the event that
24 there were to be a clear statement from the Commission on

1 the record in some form, then we wouldn't need to
2 intervene in the docket.

3 I think, just to respond to a couple of
4 comments that PSNH made, I was a little confused by some
5 of their statements as to whether they were suggesting,
6 under current law, it would be possible to spread those
7 costs, or whether that was sort of under a change in the
8 law. And, so, that leaves me a little bit confused about
9 that. I understand their argument under 374-F:7, I. But
10 it would seem to me, in order to set the registration fee,
11 that the Commission would need to do that through a
12 rulemaking docket, and that's not what this has been
13 noticed as.

14 So, again, our position really is that
15 we just want clarity on the issue. If, for some reason,
16 the Commission isn't certain that the law is clear that
17 they could not assess on competitive suppliers, then we
18 would feel the need to continue to participate in the
19 docket to protect the interests of RESA members.

20 CHAIRMAN IGNATIUS: Thank you.

21 MR. PATCH: And, I'd be happy to answer
22 any questions you might have.

23 CHAIRMAN IGNATIUS: All right. Thank
24 you. Mr. Aslin.

1 MR. ASLIN: Yes. Thank you. ENH Power
2 is in a similar situation to RESA. And, so, I will more
3 or less agree with Mr. Patch's comments in that respect.
4 And, just further add that, I think, for ENH Power's
5 perspective, it's a question of the scope of the docket.
6 There are issues raised by PSNH that suggest the
7 possibility of current assessment against the competitive
8 suppliers being an issue in this docket. The order of
9 notice, as Mr. Patch noted, repeats some of those issues.

10 And, so, to the extent that it may come
11 up in this docket, ENH Power would like to be involved and
12 be able to respond to those arguments. If the Commission
13 clarifies the scope as not allowing those types of issues
14 to come up, then ENH Power would not need to intervene.
15 Thank you.

16 CHAIRMAN IGNATIUS: Thank you. Mr.
17 Epler.

18 MR. EPLER: Thank you. At this time,
19 the Util Companies do not take a position on the
20 objections filed by FairPoint or PSNH. Our concern is
21 similar, however, to that that has been raised by a number
22 of the other participants in the docket. And, that is, if
23 the outcome of this docket would be a recalculation and
24 reallocation of the assessment, we would seek that the

1 Commission also provide the utility companies a reasonable
2 opportunity to recover those costs. Particularly in the
3 instance where a company may be under a long-term rate
4 agreement with a rate case stay-out provision.

5 With respect to the issues of
6 jurisdiction, I would just note, on behalf of Granite
7 State Gas Transmission, that Northern Utilities and
8 Granite State Gas Transmission have entered into a
9 Settlement Agreement with the Staff and the OCA, whereby
10 Granite State has agreed to pay the settlement -- excuse
11 me, the assessment and to withdraw an objection it
12 previously filed. That Settlement Agreement was filed in
13 DG 08-048, the acquisition case. And, the Company is
14 planning to continue to abide by that Settlement Agreement
15 and pay the assessment.

16 CHAIRMAN IGNATIUS: Thank you.

17 Ms. Chamberlin.

18 MS. CHAMBERLIN: Thank you. The OCA's
19 position is that the objection to the assessment is
20 premature. We are transitioning into the aftereffects of
21 SB 48, but that does not mean that the OCA's
22 responsibilities toward telecommunications is completely
23 over. We continue to have statutory obligations for
24 consumer education and outreach. Our phone rings every

1 day with questions about who to call and where to go, and
2 we continue to respond to those. We have statutory
3 authority over Lifeline. We continue to work with
4 consumers on getting their applications in. FairPoint and
5 other telecoms have participated in the electric rules
6 regarding tree pruning and pole attachments. And, as long
7 as they continue to show up and continue to petition, we
8 continue to spend time and resources managing this.

9 I believe that going forward we will be
10 able, with the legislation, to sort it out. In the terms
11 of administrative efficiency, I don't believe reallocating
12 some of these costs to other utilities, only to have them
13 reallocated again through the legislation, is an effective
14 use of everyone's resources. So, I would suggest that we
15 address this prospectively and comprehensively, rather
16 than on a year-by-year basis.

17 CHAIRMAN IGNATIUS: The current status,
18 under Senate Bill 48 and House Bill 542, if I got the
19 right number, says the OCA's jurisdiction regarding
20 customer complaints is what?

21 MS. CHAMBERLIN: We do not have
22 jurisdiction over resolving individual complaints.
23 Nonetheless, our phone rings every day and we answer it.
24 And, we direct people, we direct people to the PUC,

1 customer service. We have a long list of contacts for the
2 various utilities. We say "this is who you call". We
3 respond to questions as to, you know, cable, and we
4 respond to questions from legislators. We spend a
5 significant amount of time answering and directing people,
6 and sometimes simply spearheading an event. If something
7 has somehow gotten dropped between the cracks, we end up
8 getting the call. And, so, then, we call around and try
9 to pick up the pieces and get things moving again.

10 CHAIRMAN IGNATIUS: And, am I right that
11 basic service remains under the Commission's jurisdiction,
12 even after the passage of those two bills?

13 MS. CHAMBERLIN: I am not completely
14 sure about the complete effect of the passage of the
15 bills, honestly. So, I couldn't answer that off the top
16 of my head.

17 CHAIRMAN IGNATIUS: If there were
18 disputes regarding basic service, would your office be
19 involved in that?

20 MS. CHAMBERLIN: We do not, again, have
21 official responsibility. We work with the PUC Staff to
22 resolve the complaints.

23 CHAIRMAN IGNATIUS: And, I guess I
24 didn't ask it very well. If there were a docket involving

1 basic service, would your office be involved?

2 MS. CHAMBERLIN: I would believe so.

3 CHAIRMAN IGNATIUS: Commissioner
4 Harrington.

5 CMSR. HARRINGTON: Yes. Good morning.
6 I just wanted to try and understand it. It sounds like
7 what you're saying is, somebody goes to whatever the
8 equivalent of the telephone book these days are, something
9 on the Web or something, and they look up and they see
10 "Office of Consumer Advocate". And, so, they have a
11 problem with the utility, so they assume, regardless of
12 the recent law changes, that that's a good place to call,
13 because I'm a consumer, and you're my advocate. And, so,
14 therefore, you get the phone call.

15 MS. CHAMBERLIN: Right.

16 CMSR. HARRINGTON: And, at that point,
17 you don't respond to these people that "well, Senate Bill
18 whatever was passed, so, you got to call somebody else."
19 You try to direct them to that right place or tell them
20 "you better call the utility" or who else to contact?

21 MS. CHAMBERLIN: Essentially, that's
22 what we're doing. We're telling them "we can't resolve
23 your problem, but these are the people who have the
24 authority to do so." And, we try not to just say, you

1 know, "not our problem" and hang up, because then they're
2 left still without any help. And, so, we do have a
3 extensive list of contacts. And we ask them to call us
4 back if their problem is still unresolved, to make sure
5 that, you know, they have gotten through to somebody.

6 CMSR. HARRINGTON: And, if you had taken
7 the former course and told them "Sorry, call somebody
8 else", then you probably would be getting a call from the
9 Legislature asking where -- what happened in the recent
10 legislation year. And, then, you'd be trying to answer
11 his or her complaint.

12 MS. CHAMBERLIN: And, we do get calls
13 from legislators all the time saying, you know, "they told
14 us to call you". No matter how many times we're up there
15 saying "that's not our responsibility", we still get the
16 call.

17 CMSR. HARRINGTON: So, I guess, in a
18 nutshell, what you're saying then, regardless of the
19 changing laws, your office still bears a burden of
20 answering these complaints and dealing with it, and it
21 takes up part of your time and your budget?

22 MS. CHAMBERLIN: Yes. And, I believe
23 that, because we are statutorily authorized with consumer
24 education and outreach, that that falls within our

1 responsibility, so that we are lawfully performing that
2 service.

3 CMSR. HARRINGTON: All right. Thank
4 you.

5 CHAIRMAN IGNATIUS: Thank you.
6 Mr. Wiesner.

7 MR. WIESNER: Staff has not developed a
8 position on the issues in this proceeding at this point.
9 We look forward to working with the parties to develop a
10 procedural schedule and to clarify those issues which need
11 to be addressed by the Commission in this docket with
12 respect to the Fiscal Year 2013 assessments.

13 CHAIRMAN IGNATIUS: Thank you. I think
14 we may have a few other questions to other entities.
15 Commissioner Harrington.

16 CMSR. HARRINGTON: This is for
17 FairPoint. Excuse me. I'm just trying to, I'm not
18 challenging anything here, I'm just trying to figure out
19 how your numbers were arrived at. Now, let's assume we
20 just deduct the OCA part of it, because that's the
21 position you're taking. Now, I'm trying to figure out if
22 this was done on an iterative basis or not, meaning that,
23 if you're just looking at the interstate part, once that's
24 subtracted out, you say that that should not be assessed,

1 assuming the bill of the PUC stays the same, then
2 everybody else is going to get a higher assessment, once
3 those interstate assets are no longer assessed. So, did
4 the figures you show in here for that reflect that
5 FairPoint would also receive a higher assessment to
6 account for, obviously not 100 percent, but for some
7 percentage of the fact that their interstate assets were
8 no longer being assessed, so that their intrastate assets
9 would be assessed higher?

10 MR. MALONE: I'm going to ask
11 Mr. O'Quinn to answer that for us.

12 CMSR. HARRINGTON: Okay.

13 MR. O'QUINN: Sure. No, we did not. We
14 were simply estimating, based on the rate that the
15 assessment came out at to our total revenues, and used
16 that ratio and applied it to our intrastate revenues to
17 come up with what the -- what the estimated amount would
18 be.

19 CMSR. HARRINGTON: But would you agree
20 that, just make it real simple, that, if removing
21 FairPoint's interstate assets, that let's say took
22 10 percent of the funding away, then that 10 percent would
23 have to be made up by everybody else who was remaining,
24 including FairPoint's intrastate assets, so that your --

1 the bill for those portions of assets would go up to
2 reflect your portion of that 10 percent?

3 MR. O'QUINN: Yes.

4 CMSR. HARRINGTON: Okay. But it's not
5 in your figures? No?

6 MR. O'QUINN: No.

7 CMSR. HARRINGTON: Okay.

8 MR. O'QUINN: Just to clarify that just
9 a little bit. The assessment's on all revenues of all
10 utilities. And, the amount of revenues that FairPoint
11 contributes to that would be much less, and then the
12 assessment would then be prorated across the utilities.

13 CMSR. HARRINGTON: Thank you.

14 CHAIRMAN IGNATIUS: Commissioner Scott.

15 CMSR. SCOTT: Thank you. I'd like to go
16 back to the OCA. I just want to -- I'm looking at 363:28,
17 Section II, where it says, under your duties, "Except as
18 pertains to any end user of an excepted local exchange
19 carrier or services provided to such end user", and then
20 it goes on to what your duties are. So, if I heard what
21 the discourse you were talking about earlier, you know,
22 that would seem to exclude an end user from an ELEC. But
23 it sounds like your position, I just want to get it
24 clarified, to the extent that it talks about you get

1 involved in pole attachments and all the ancillary work
2 that may affect an ELEC, you're saying you do have
3 jurisdiction. Is that a fair statement?

4 MS. CHAMBERLIN: Well, that's my
5 interpretation. I mean, the case I'm specifically talking
6 about is we were there for the electric rules, where I
7 undoubtedly have jurisdiction, and the telephone companies
8 were there to voice their concerns about tree pruning,
9 which is fine. But, then, they're there, they're using
10 resources, we're there using our resources, and, so, I
11 don't see that they shouldn't pay for that.

12 CMSR. SCOTT: Okay. Thank you.

13 CHAIRMAN IGNATIUS: Mr. Malone, a couple
14 more questions about the relationship with the OCA and new
15 legislation. Your proposal is that all OCA expenses be
16 deducted from the assessment, correct?

17 MR. MALONE: That's correct.

18 CHAIRMAN IGNATIUS: What do you make of
19 the arguments that Ms. Chamberlin has just made that,
20 although the legislation definitely changed some of its
21 jurisdiction, it doesn't -- it doesn't prohibit the OCA
22 from having anything to do with telecommunications, and
23 doesn't, in reality, doesn't keep them away from being
24 involved in dockets that implicate interests of

1 residential customers? You don't see -- you don't see --
2 I guess I see still an ongoing role for the OCA, to be
3 involved on some communications issues affecting
4 residential customers, notwithstanding the two bills that
5 were passed. Do you disagree with that?

6 MR. MALONE: Respectfully, yes. I do
7 disagree, madam Chair. SB 48 was very clear that OCA does
8 not have the statutory authority to get involved in
9 anything having to do with end user services of excepted
10 local exchange carriers. If the OCA feels that its
11 mission, you know, continues to involve -- you know, that
12 it should continue to be involved with consumer affairs,
13 we can understand how they would feel that way, but
14 they're not under any statutory obligation to do so, and
15 we don't believe that excepted local exchange carriers
16 should have to fund that function.

17 CHAIRMAN IGNATIUS: So, what section of
18 the bill of the current legislation -- current statutes,
19 I'm sorry, supports your sentence that "it has no
20 authority to get involved in anything to do with
21 telecommunications services of ELECs"?

22 MR. MALONE: SB 48 amended RSA 363:28,
23 II, to read "Except as pertains to any end user of an
24 excepted local exchange carrier or services provided to

1 such user, the Consumer Advocate shall have the power and
2 duty to petition for, initiate, appear or intervene in any
3 proceeding concerning rates, charges, tariffs, and
4 consumer services before any board, commission, agency or
5 regulatory body in which the interests of residential
6 utility consumers are involved and to represent the
7 interests of such residential utility consumers." So,
8 this lays out what the charter of the OCA is, which, you
9 know, if we want to get into details, I would argue does
10 not include pole attachment and tree trimming proceedings,
11 because this is not a residential service and has nothing
12 to do with rates, charges, tariffs or consumer services.
13 But the clause in the beginning of the statute, as added
14 by SB 48, says that, you know, "Except as it pertains to
15 any end user of an excepted local exchange carrier". So,
16 I would say that as of -- you know, with SB 48, and that
17 amendment to the OCA's enabling legislation, that they
18 would have no authority over the affairs of an ELEC.

19 CHAIRMAN IGNATIUS: Do any of the ELECs
20 provide basic service?

21 MR. MALONE: Yes, they do.

22 CHAIRMAN IGNATIUS: And, basic service
23 remains under Commission jurisdiction?

24 MR. MALONE: Moving to a discussion in

1 another proceeding, yes. Yes. I think that, where there
2 is some disagreement as to how extensive that jurisdiction
3 is, but, yes, the Commission continues to have
4 jurisdiction over basic service. But I would add to that
5 that there was a carve-out in SB 48, you may remember,
6 that was also modified by HB 542, that says "the
7 Commission would have the authority to hear complaints
8 about basic service -- regarding basic service." It said
9 "the Commission". It did not say "the OCA".

10 CHAIRMAN IGNATIUS: So, if there were a
11 proceeding involving basic service, the Commission would
12 have jurisdiction, but the OCA would not have any
13 jurisdiction to participate in it?

14 MR. MALONE: That's correct.

15 CHAIRMAN IGNATIUS: Who are the primary
16 users of basic service, residential or commercial
17 customers?

18 MR. MALONE: They would be, actually,
19 basic service can be provided to business customers. But
20 the way SB 48 is written, really, the Commission's
21 authority is essentially for residential basic service.
22 One of the Commission's main roles in its jurisdiction
23 over basic service is that no ELEC can discontinue basic
24 -- residential basic service without Commission authority.

1 CHAIRMAN IGNATIUS: So, it would be your
2 view that, if the OCA -- if we had a docket on
3 discontinuation of basic service by an ELEC, the OCA would
4 not have a role to play, and, in fact, would you even
5 object to them participating?

6 MR. MALONE: Well, it's hard to
7 speculate at this point. But, yes, I would say that we
8 would not think that they had a right to intervene in the
9 proceeding.

10 CHAIRMAN IGNATIUS: Let's leave
11 legislation aside for a second. Does that make any common
12 sense?

13 MR. MALONE: We -- there are
14 representatives, I mean, NHLA would have the right to
15 intervene. It's possible that the Consumer Protection
16 Office of the AG's would have the right to intervene.

17 CHAIRMAN IGNATIUS: I'm not sure that
18 works statutorily on the AG's Office. But that's -- we're
19 going further and further --

20 MR. MALONE: Well, you'll have to
21 forgive me, I'm speculating here. And, I would -- this is
22 pure speculation at this point. I would say that it would
23 not be unreasonable to see the OCA in the room. But,
24 getting back to our initial point here, ELECs should not

1 be required to fund the OCA's operations.

2 CHAIRMAN IGNATIUS: Thank you.

3 Commissioner Harrington.

4 CMSR. HARRINGTON: Just one more
5 follow-up, Mr. Malone. I guess, from a practical basis,
6 the OCA is stating that they bear a financial burden as
7 far as their budget time to handle complaints that could
8 be from telephone -- about telephone companies that they
9 no longer have jurisdiction on. I don't think anyone is
10 debating that, at least I'm certainly not. But, from a
11 practical matter, how do they deal with that? Somebody
12 calls up and says, I'll just use your company for an
13 example, "I have this problem with FairPoint I can't seem
14 to work out. You're the Office of Consumer Advocate.
15 What do I do?" Is it reasonable to think their response
16 is going to be "I'm sorry, we no longer have jurisdiction.
17 Call somebody else. Bye."? It may be the legal place to
18 be. But is it reasonable to think that a state agency is
19 going to perform that way? Is it desirable?

20 MR. TAYLOR: Good morning, Commissioner
21 Harrington. Ryan Taylor, from FairPoint. I'll take a
22 response to that. I think one approach to that simply
23 could be to field the call, acknowledge the call, inform
24 the consumer that's calling in that they will pass along

1 their concerns to the particular provider or department
2 that would handle that complaint. I think that's a
3 reasonable approach.

4 CMSR. HARRINGTON: So that would then
5 mean another phone call that they would have to do, and
6 then possibly a follow-up phone call back to the customer.
7 I mean, all I'm trying to establish here is that,
8 regardless of the law, there seems to be a small amount of
9 time and, therefore, budgetary responsibility that's going
10 to be consumed by the OCA, just because common sense,
11 which doesn't always line up with legislation, I'm not
12 complaining about the legislation, but as a person looking
13 up "Office of Consumer Advocate", a lot of people are
14 going to call there saying "I have a problem with a
15 utility." And, what you just said makes sense to me, but
16 that is going to make -- it's going to consume some
17 percentage of their time. Do you feel as though that
18 FairPoint should have absolutely no financial -- or, let's
19 just even say it's a very small percentage, should there
20 be no bill to FairPoint and other exempt telephone
21 companies for that?

22 MR. TAYLOR: I think that's something
23 that we could think about, Commissioner Harrington. But I
24 would say that there probably would be some overlap, the

1 legislation aside, I could see that there would be some
2 overlap with the OCA and telephone issues in the future,
3 but I think that's something that remains to be seen.

4 CMSR. HARRINGTON: Okay. Thank you.

5 CHAIRMAN IGNATIUS: All right. Thank
6 you. Is there anything that people wanted to raise that
7 you didn't get a chance to or that any of this questioning
8 back and forth may have brought up in your mind that you'd
9 like to respond to while we're all here?

10 MR. MALONE: If I could have a moment,
11 madam Commissioner?

12 CHAIRMAN IGNATIUS: Yes.

13 MR. MALONE: I would like to respond,
14 one of the themes of many of the intervenors was in
15 regarding to cost-shifting. And, how, you know, I think
16 that probably a way to describe it would be the fact that
17 this appears to be a zero sum type of game. And, to the
18 extent that FairPoint gets any relief, other utilities
19 would have to pay more of an assessment. And, I'd like to
20 just take a few minutes to sort of reframe that picture
21 and go back in time. And, let's remember that RSA 363-A
22 was passed by the Legislature in 1955. And, in 1955, all
23 the utilities in the state were monopolies. Each one of
24 them had its own territory, an exclusive territory, and

1 they were all intrastate. New England Telephone was an
2 intrastate company, while its interstate long distance
3 service was provided by -- I forget what they were called
4 at the time, --

5 CMSR. HARRINGTON: AT&T, I believe.

6 MR. MALONE: -- no, AT&T Long Lines, or
7 something like that, and only AT&T Long Lines provided
8 long distance. So, in 1955, the gross utility revenues of
9 any utility were a very good proxy for the burden that
10 they placed on the Commission. Well, things have changed
11 drastically since then. And, I won't go into all the ways
12 that they changed, but one way that they have changed is
13 that, beginning with its 271 authority, which I think was
14 granted in 2001, 2002, I have to go back, New England
15 Telephone/Verizon started offering interstate long
16 distance service. And, all of a sudden its gross utility
17 revenues increased dramatically. There's no more burden
18 on the Commission, because this is interstate service
19 that's under the jurisdiction of the FCC. But all of a
20 sudden Verizon has a much greater share of gross utility
21 revenues in the state.

22 So, we've been talking about
23 "cost-shifting", but I think maybe we need to talk a
24 little about who the shifter is and who the shiftee is.

1 Because I think another way to look at it is, for the last
2 10 or 12 years, essentially, New England Telephone,
3 Verizon, and FairPoint have had the greater amount of the
4 Commission's costs shifted to them, on account of the fact
5 that revenues that were not anticipated to be counted when
6 the legislation was first passed were now being counted.

7 And, to exacerbate this problem, at this
8 point FairPoint is the only utility in this room that
9 really doesn't have a workable mechanism for recovering
10 those costs. Because it's in a competitive market, it
11 cannot go in for a rate case and ask for its basic rates
12 to be -- or, its rates to be increased, like other
13 utilities can.

14 So, you know, I'm bringing this up just
15 because I would like to shift a little bit of the
16 perception here as to the cost shifting that's going on
17 here, and the direction that it's occurring, and how long
18 it's been occurring for. Thank you.

19 CHAIRMAN IGNATIUS: Thank you. It's
20 interesting. This is probably an inquiry that's overdue
21 for the significant change in the regulatory landscape.

22 Anything else? Ms. Knowlton, yes.

23 MS. KNOWLTON: I just want to point out
24 that, at least from my perspective, the discussion this

1 morning really illustrates that the current state of the
2 law doesn't match the reality, you know, that we see on a
3 day-to-day basis. Whether we're talking about, you know,
4 maybe it's the OCA, but I'm also sitting here thinking
5 about the Commission and the how much time the Commission
6 spends on issues relating to competitive suppliers. And,
7 you know, the law doesn't match that reality, in terms of
8 the ability to assess, which underscores our perspective
9 that what we really need is a legislative change to
10 resolve this. I understand that FairPoint is here today
11 with an objection on a particular assessment. But I think
12 we really need a change in the law to fix this, because
13 there are many inequities that exist now that should be
14 remedied.

15 CHAIRMAN IGNATIUS: Mr. Patch.

16 MR. PATCH: I guess I would just like to
17 ask if the Commission could at least think about ways to
18 respond to the issue of whether or not there is any
19 potential outcome from this docket that would impact on
20 competitive electric suppliers. Whether, you know, if
21 we're to participate in a discussion of a schedule, we
22 ought to look at a submission of a memo of law on that
23 issue, if the Commission thinks that's necessary. Or, if
24 you think, on the face of it, there's no need for that,

1 because the law is very clear, you know, if there's some
2 way to sort of resolve that issue as early as possible in
3 this docket, I just think it would certainly serve our
4 interests. I think it would probably serve the interests
5 of others involved in the docket, so that we didn't end up
6 taking up more of the Commission's time or my client's
7 resources, or Mr. Aslin's client's resources. So, if
8 there's a way for the Commission to at least consider that
9 and what the best way is to resolve it, I think that would
10 be helpful. Thank you.

11 CHAIRMAN IGNATIUS: That's a point well
12 taken. I don't know what follows today. Obviously, the
13 development of a procedural schedule. Was there also
14 going to be a tech session and any delving into any of the
15 data or arguments of the parties?

16 MR. WIESNER: I think we would try to
17 address some of the questions that were raised here,
18 regarding, for instance, administrative notice of the
19 record in the IR docket, and certainly procedural
20 schedule, and probably get a better sense of where parties
21 are in their positions with respect to this particular
22 year's assessment.

23 (Chairman and Commissioners conferring.)

24 CHAIRMAN IGNATIUS: We'd like to think

1 about this a little bit, not make any kind of a
2 determination right now. But we're not inclined to
3 briefing on the issues. So, I wouldn't build that into
4 the schedule that you're going to develop today. If, by
5 chance, we find that we do need that, then, we'll do
6 something to impose a briefing time into the midst of it.
7 But we will endeavor to get an answer out to you very
8 quickly on that, so that people know, not right this
9 minute, but soon, so that you know how much to stay
10 engaged in the docket, if you find that -- if we find that
11 there are still implications for the year under
12 consideration for the competitive suppliers, or if that's
13 not something that would be affected by any outcome in
14 this docket.

15 MR. PATCH: Thank you.

16 CHAIRMAN IGNATIUS: If there's nothing
17 else, then we'll await a procedural schedule, and any
18 other -- if there's any other clarity about ways to manage
19 the materials from the prior docket, moving into this, to
20 the extent that that's helpful. I do think it's -- it
21 always sounds good to just take notice of another docket.
22 But, if it really means that we're now -- it now becomes
23 part of the record, and that we're all -- all of us
24 collectively are held responsible for that information on

1 the record, we want to be sure that it's been given the
2 normal opportunities for examination of witness
3 sponsoring, make sure that it is accurate. And, if there
4 have been preliminary positions that subsequently have
5 changed or ideas that were floated early on that no longer
6 are on the table, it probably makes sense to cull that
7 down a bit and get to the most pertinent information for
8 going forward. So, I'd encourage you to see if there's a
9 more limited set of documents that either would be moved
10 into this docket or ask the companies to just send them in
11 again, not have to, you know, do the new work, if they're
12 still accurate, but be sure that we have the information
13 that really is appropriate going forward, and then some
14 understanding of how that material might be used in this
15 docket. As Mr. Camerino points out, you know, is there
16 going to be a witness sponsoring it or is there going to
17 be any discovery on the material, that sort of thing.

18 So, thank you. I appreciate everyone's
19 time. This is a complicated question, that the more you
20 delve into it, the more complicated it seems to get. So,
21 thank you for everybody's efforts in trying to sort it
22 out, both legislatively and through the proceedings here.
23 We're adjourned.

24 **(Prehearing conference was adjourned at 10:18 a.m.)**