

1 **STATE OF NEW HAMPSHIRE**
2 **PUBLIC UTILITIES COMMISSION**

3
4 **September 14, 2020 - 10:51 a.m.**

5 *[Remote Hearing conducted via Webex]*

6
7 **RE: DE 20-092**
8 **ELECTRIC AND GAS UTILITIES:**
9 **2021-2023 Triennial Energy**
10 **Efficiency Plan.**
11 **(Prehearing conference)**

12 **PRESENT:** Chairwoman Dianne Martin, Presiding
13 Cmsr. Kathryn M. Bailey
14 Cmsr. Michael S. Giaimo

15 Jody Carmody, Clerk
16 Eric Wind, PUC Remote Hearing Host

17 **APPEARANCES:** **Reptg. Eversource Energy:**
18 Jessica Chiavara, Esq.

19 **Reptg. Liberty Utilities (Granite**
20 **State Electric) Corp. and Liberty**
21 **Utilities (EnergyNorth Natural Gas)**
22 **Corp. d/b/a Liberty Utilities:**
23 Michael J. Sheehan, Esq.

24 **Reptg. Unitil Energy Systems, Inc.,**
 and Northern Utilities, Inc.:
 Patrick H. Taylor, Esq.

Reptg. New Hampshire Electric
 Cooperative:
 Mark W. Dean, Esq. *(Mark Dean Law)*

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

Reptg. Conservation Law Foundation:
Nick Krakoff, Esq.

Reptg. Clean Energy New Hampshire:
Elijah D. Emerson, Esq. (*Primmer...*)
Madeleine Mineau, Executive Director

Reptg. Acadia Center:
Stefan Koester

Reptg. The Way Home:
Raymond Burke, Esq. (*N.H. Legal Asst.*)

Reptg. Dept. of Environmental Services:
Rebecca Ohler
Christopher Skoglund

Reptg. Residential Ratepayers:
D. Maurice Kreis, Esq., Consumer Adv.
Christa Shute, Esq.
Phil Mosenthal, Optimal Energy
Cliff McDonald, Optimal Energy
Office of Consumer Advocate

Reptg. PUC Staff:
Paul B. Dexter, Esq.
Brian D. Buckley, Esq.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

PAGE NO.

ISSUE RE: PENDING INTERVENTION MOTIONS 10

**STATEMENTS RE: JOINT MOTION FOR
DESIGNATION OF STAFF BY:**

Mr. Kreis	12, 41
Mr. Emerson	23
Mr. Dexter	23, 35
Mr. Buckley	24, 48
Ms. Chiavara	37
Mr. Burke	38

QUESTIONS BY:

Chairwoman Martin	38, 45, 49
Cmsr. Giaimo	40

STATEMENTS OF PRELIMINARY POSITION BY:

Ms. Chiavara	52
Mr. Kreis	56
Ms. Mineau	59
Mr. Koester	62
Mr. Burke	63
Ms. Ohler	65
Mr. Krakoff	65
Mr. Dexter	67

P R O C E E D I N G

1
2 CHAIRWOMAN MARTIN: Okay. We're here
3 this morning in Docket DE 20-092 for a prehearing
4 conference regarding the electric and gas
5 utilities' 2021 through 2023 Triennial Energy
6 Efficiency Plan.

7 I still need to make the findings
8 required for remote hearings, because we are
9 still doing these due to the pandemic.

10 As Chairwoman of the Public Utilities
11 Commission, I find that due to the State of
12 Emergency declared by the Governor as a result of
13 the COVID-19 pandemic and in accordance with the
14 Governor's Emergency Order Number 12, pursuant to
15 Executive Order 2020-04, this public body is
16 authorized to meet electronically. Please note
17 that there is no physical location to observe and
18 listen contemporaneously to this hearing, which
19 was authorized pursuant to the Governor's
20 Emergency Order.

21 However, in accordance with the
22 Emergency Order, I am confirming that we are
23 utilizing Webex for this electronic hearing. All
24 members of the Commission have the ability to

1 communicate contemporaneously during this hearing
2 through this platform, and the public has access
3 to contemporaneously listen and, if necessary,
4 participate.

5 We previously gave notice to the public
6 of the necessary information for accessing the
7 hearing in the Order of Notice. If anybody has a
8 problem during the hearing, please call (603)
9 271-2431. In the event the public is unable to
10 access the hearing, the hearing will be adjourned
11 and rescheduled.

12 Okay. Let's start with roll call
13 attendance of the Commission. When each
14 Commissioner identifies himself, if anyone is
15 with you, please identify that person as well.

16 My name is Dianne Martin. I am the
17 Chairwoman of the Public Utilities Commission.
18 And I am alone.

19 Commissioner Bailey.

20 CMSR. BAILEY: Kathryn Bailey,
21 Commissioner at the Public Utilities Commission.
22 And I am alone.

23 CHAIRWOMAN MARTIN: Commissioner
24 Giaino.

1 CMSR. GIAIMO: Good morning. Good
2 morning. Michael Giaimo, PUC Commissioner. I,
3 too, am alone.

4 CHAIRWOMAN MARTIN: Okay. And we'll
5 take appearances next. But I do want to say, I
6 have a lot of people on my screen. So, if you're
7 raising your hand to get recognized and I don't
8 see you, please do kind of shake it at me or
9 shout out if you are not getting recognized. I
10 don't want to move forward without recognizing
11 you.

12 Okay. Let's take appearances, starting
13 with Ms. Chiavara.

14 MS. CHIAVARA: Good morning. Jessica
15 Chiavara, counsel for Eversource. And
16 *[inaudible]*.

17 CHAIRWOMAN MARTIN: Ms. Chiavara?
18 You're on mute. And I lost you a little bit for
19 a moment there. Mr. Patnaude, did you?

20 MR. PATNAUDE: Yes, I did. I missed
21 something.

22 CHAIRWOMAN MARTIN: Can you start over
23 for us please?

24 MS. CHIAVARA: Me?

1 CHAIRWOMAN MARTIN: Yes.

2 MS. CHIAVARA: Restart? Okay. Sorry
3 about that.

4 Good morning. Jessica Chiavara,
5 counsel, Eversource Energy. And I am alone.

6 CHAIRWOMAN MARTIN: Okay. Thank you.
7 Yes. We got that one.

8 Mr. Sheehan, why don't we go to you
9 next.

10 MR. SHEEHAN: Good morning. Mike
11 Sheehan, for two companies: Liberty Utilities
12 (EnergyNorth Natural Gas) Corp. and Liberty
13 Utilities (Granite State Electric) Corp. On
14 video, the Company, and you don't need to speak
15 to them, is Heather Tebbetts and Eric Stanley.

16 CHAIRWOMAN MARTIN: Okay. Great.
17 Mr. Taylor.

18 MR. TAYLOR: Good morning,
19 Commissioners. Patrick Taylor, on behalf of
20 Northern Utilities, Inc., and Unitil Energy
21 Systems, Inc.

22 CHAIRWOMAN MARTIN: Thank you. And,
23 Mr. Dean, are you on somewhere? Yes.

24 MR. DEAN: Yes. Good morning. Mark

1 Dean, representing New Hampshire Electric
2 Cooperative.

3 CHAIRWOMAN MARTIN: All right. Thank
4 you. Mr. Kreis.

5 MR. KREIS: Good morning, everybody.
6 Good morning, Chairwoman Martin, Commissioners.
7 Speaking to you from the World Headquarters of
8 the OCA, I am the Consumer Advocate, Don Kreis.
9 Of course, the job of our office is to represent
10 the interests of residential utility customers.

11 And with me today is our Staff
12 Attorney, Christa Shute, and our two consultants
13 from Optimal Energy Services, Phil Mosenthal and
14 Cliff McDonald.

15 CHAIRWOMAN MARTIN: Okay. Thank you.
16 And Mr. Dexter.

17 MR. DEXTER: Good morning. Thank you,
18 Chairwoman Martin. Appearing on behalf of the
19 Commission Staff, Paul Dexter and Brian Buckley.

20 CHAIRWOMAN MARTIN: Okay. And I will
21 try to go through the list of who I have for
22 intervenors. And, if you can just let me know
23 that you're here.

24 I have CLF?

1 MR. KRAKOFF: Yes. Good morning. My
2 name is Nick Krakoff, for Conservation Law
3 Foundation. I'm here alone.

4 CHAIRWOMAN MARTIN: Okay. Thank you.
5 Clean Energy New Hampshire? Ms. Mineau.

6 MR. EMERSON: Good morning, Chairwoman.
7 This is Eli Emerson, from Primmer, Piper,
8 Eggleston & Kramer, on behalf of Clean Energy New
9 Hampshire. Virtually today is Madeleine Mineau
10 and Kelly Buchanan from Clean Energy, and also
11 David Hill from Energy Futures Group.

12 Thank you.

13 CHAIRWOMAN MARTIN: Okay. Thank you.
14 Acadia Center?

15 MR. KOESTER: Stefan Koester, with
16 Acadia Center, here today. And I am alone.

17 CHAIRWOMAN MARTIN: Okay. Thank you.
18 The Way Home?

19 MR. BURKE: Good morning,
20 Commissioners. Raymond Burke, from New Hampshire
21 Legal Assistance, on behalf of The Way Home. I
22 am alone at the moment. But, given the realities
23 of my home office, my wife may be present at some
24 point in the future. Her name is Linda Haller.

1 CHAIRWOMAN MARTIN: No worries. The
2 requirement really applies to the Commission more
3 than anything else.

4 Okay. New Hampshire DES?

5 MS. OHLER: Yes. Hi. This is Becky
6 Ohler, with the Department of Environmental
7 Services. And also with DES is Christopher
8 Skoglund.

9 CHAIRWOMAN MARTIN: Excellent. And
10 Southern New Hampshire Services was the last I
11 had, and appears they have not joined yet?

12 *[No indication given.]*

13 CHAIRWOMAN MARTIN: Okay. Otherwise,
14 we'll proceed. And, if they do join, just let me
15 know.

16 Is there anyone else who needs to make
17 an appearance?

18 *[No indication given.]*

19 CHAIRWOMAN MARTIN: All right. Great.
20 Seeing none. Let's get on with preliminary
21 issues.

22 We have a number of pending
23 interventions. I have an intervention motion
24 from CLF, Clean Energy New Hampshire, DES, The

1 Way Home, Acadia Center, and this morning
2 Southern New Hampshire Services also filed a
3 Petition to Intervene.

4 Are there any objections to any of
5 those petitions?

6 MR. DEXTER: No. Staff has no
7 objection.

8 CHAIRWOMAN MARTIN: Okay. And from the
9 utilities?

10 MR. SHEEHAN: None from Liberty.

11 CHAIRWOMAN MARTIN: Okay. Seeing none.
12 Any other parties objecting or potential parties?

13 *[No verbal response.]*

14 CHAIRWOMAN MARTIN: All right. I see
15 no objections. So, we will grant the Motions to
16 Intervene, and proceed -- so that all of those
17 intervenors can proceed as full parties today in
18 the hearing and in the technical session.

19 All right. We have a Joint Motion for
20 Designation of Staff. Why don't we start with
21 that. And we'll take arguments on the Motion
22 first, and then we will go to the initial
23 positions of the parties.

24 Why don't we start with you, Mr.

1 Kreis.

2 MR. KREIS: Good morning, everybody,
3 again. I'm just going to leap right in.

4 The PUC's job, by statute, is to serve
5 as the arbiter between utility shareholders and
6 utility customers. For the reasons that we
7 explained in our written Motion, this particular
8 proceeding is really an exercise of the
9 Commission's statutory authority to determine
10 just and reasonable utility rates. And because,
11 when the PUC does that, there's a statutory
12 hearing requirement, that means recourse to the
13 Administrative Procedure Act and the PUC 200
14 rules regarding adjudication.

15 PUC Commissioners are appointed for
16 their insight and expertise, but they can't do
17 that work alone. So, of course, they have a
18 staff. And the rules say that, for purposes of
19 adjudication, the Commission will treat its Staff
20 as if it were a party. Note: The Staff is not a
21 party, but it must act like one and be treated
22 like one by both the Commission and the other
23 parties. That's a key reality. And I two things
24 to say about it in the present context.

1 One, this paradigm is a good thing.
2 It's about transparency. If the Staff didn't
3 participate in adjudication as if it were a
4 party, then Staff's advice would simply be
5 tendered behind closed doors, around the
6 conference table in the Chairwoman's office, or
7 maybe the conference room next to the General
8 Counsel's office. Instead, Staff's advice is
9 grounded in evidence, subject to formal scrutiny
10 by other parties, as if Staff were a party.

11 The other thing I have to say about
12 this "Staff as a pseudoparty" paradigm, is that
13 it's weird. To get personal for a second, when I
14 joined the Commission as a Staff attorney in
15 1999, after five years working as a judicial law
16 clerk in two state courts and one federal court,
17 I was incredulous. Incredulous, in light of
18 habits developed in a judicial setting, that I'd
19 be sitting at counsel table in the hearing room,
20 arguing, cross-examining, litigating, and then,
21 often later the very same day, I'd be sitting
22 with the commissioners as they deliberated.

23 RSA 363:32 is all we have when it comes
24 to squaring that process with due process and

1 notions of basic fairness. The Motion says there
2 are three. But, in fact, if you drill down,
3 you'll see there are really six distinct
4 circumstances when that paradigm doesn't work
5 without an extra added bit of protection, and
6 that protection is that there needs to be an *ex*
7 *parte* wall between the Commissioners and certain
8 of the Commission's employees.

9 One is the situation in which Staff
10 members "may not be able to fairly and neutrally
11 advise the Commission on all positions advanced
12 in the proceeding." Building the *ex parte* wall
13 is mandatory in that situation.

14 The other five circumstances are left
15 to the Commission's discretion. They are when
16 "the proceeding is particularly controversial and
17 significant in consequence"; (2) when "the
18 proceeding is so contentious as to create a
19 reasonable concern about the staff's role"; (3)
20 when "it appears reasonable that such
21 designations may increase the likelihood of a
22 stipulated agreement by the parties"; (4) when
23 "such designations will contribute to the prompt
24 and orderly conduct of the proceeding"; and

1 finally, (5) when it "is otherwise in the public
2 interest." Every single one of those statutory
3 grounds for designation are present here with
4 respect to Mr. Dexter and Ms. Nixon.

5 Now, this is a challenging statute for
6 the Commission to apply. There is no guidance,
7 no binding precedent from the New Hampshire
8 Supreme Court. There is, of course, Commission
9 precedent. But the Commission should not
10 consider itself, an indeed, as far as I know,
11 does not consider itself bound by its own
12 precedent, for the simple reason that being a
13 commissioner requires policy judgment, and the
14 policy views of the Commission does change over
15 time, as it should.

16 Ground one does not require the
17 Commission to determine that Mr. Dexter and
18 Ms. Nixon will not be able to fairly and
19 neutrally advise the Commission, only that they
20 "may not be able to". That standard is easily
21 satisfied here, for the reasons stated in the
22 OCA/Acadia/CLF Motion.

23 A committee of the EESE Board, that's
24 the Energy Efficiency & Sustainable Energy Board,

1 worked under a Commission-approved plan for
2 almost eight months to achieve stakeholder
3 consensus on a new Triennial Energy Efficiency
4 Plan. In the end, after a sometimes difficult
5 process, mission accomplished: Stakeholder
6 consensus. The key agreement being how much
7 savings from energy efficiency we are willing to
8 pay for in the three years beginning on January
9 1.

10 The sole dissenting voices, offered
11 repeatedly and emphatically on this crucial
12 issue, were not those of any stakeholders, but
13 rather of Mr. Dexter and Ms. Nixon.

14 Now, I do not want to overplay my hand
15 here. These two Staff members were not rude,
16 they were not obnoxious, and they weren't making
17 frivolous arguments or *ad hominem* arguments.
18 But, rather, they were repeatedly asserting that
19 the near-term pain, higher SBC and LDAC rates,
20 are not worth the long-term gain of megawatts,
21 reduced energy costs, and a more sustainable New
22 Hampshire. You may or may not, Commissioners,
23 end up agreeing with that perspective. But they
24 have advanced it so forcefully in public, on

1 numerous occasions, that it should not enjoy
2 special treatment during your deliberations.

3 Back in 2014, when the issue was the
4 ultra controversial mercury scrubber at Merrimack
5 Station, the Commission, in Order Number 25,630,
6 rejected a designation motion and made this
7 observation: "To avoid designation in every case
8 in which it takes a position, Staff is entitled
9 to the presumption that they are of conscience
10 and capable of reaching a just and fair result.
11 The presumption of fairness", said the
12 Commission, "should not be lightly overcome."

13 I respectfully disagree with what the
14 Commission said in 2014, ironically, on
15 Valentine's Day of that year. If I had evidence
16 that a Commission employee, particularly a fellow
17 member of the New Hampshire Bar, were not "of
18 conscience", I would, in fact, report the facts
19 to various authorities. And I would expect
20 disciplinary action, not RSA 363:32 designation.
21 Imposing a "bad faith" standard reduces the
22 mandatory ground in RSA 363:32 to a nullity.

23 Moreover, and this is both something I
24 would say with great hesitation, and something,

1 in fact, I would not have said before last
2 Friday. If there really is such a presumption,
3 it is, in fact, overcome here. I say that in
4 light of the email I received from Mr. Dexter
5 last Friday afternoon, in which he complained
6 about how much Staff time this Motion has taken
7 up, and, more importantly, he circulated a
8 proposed procedural schedule for this docket,
9 but said that Staff would not support that
10 schedule --

11 *(Audio feed dropped off.)*

12 CHAIRWOMAN MARTIN: Going to go off the
13 record for a minute, Mr. Patnaude.

14 *(Off the record and a brief
15 off-the-record discussion ensued.)*

16 CHAIRWOMAN MARTIN: Okay. Back on the
17 record. Go ahead.

18 MR. KREIS: Okay. So, I was talking
19 about the existence of a "good faith"
20 presumption. And I said, that if there really is
21 such a presumption, it is, in fact, overcome
22 here. And I said that, and I say it again, in
23 light of the email I received from Mr. Dexter
24 last Friday afternoon, in which he complained

1 about how much Staff time this Motion has taken
2 up, and, more importantly, he circulated a
3 proposed procedural schedule for the docket, but
4 he said that Staff would not support that
5 schedule if the Commission grants the
6 OCA/Acadia/CLF Designation Motion.

7 Conditioning Staff's willingness to
8 collaborate with parties on procedural matters,
9 on Commission employees not being designated
10 Staff advocates, is not what one would expect
11 from Staff members who are capable of fairly and
12 neutrally advising the Commission on matters
13 related to this docket. In these circumstances,
14 you must grant the requested designations under
15 the first ground in Section 32.

16 Now, a few words about the
17 discretionary grounds, which the Commission
18 generally prefers to invoke when designations are
19 appropriate. You can and do -- and should do
20 that here.

21 This is a case -- this case, that is,
22 is the functional definition of a case that is
23 "particularly controversial and significant in
24 consequence". This great state lags behind all

1 of its neighbors when it comes to energy
2 efficiency. And this Triennial Plan, if
3 approved, will give us a good shot at catching
4 up. But it will increase rates in the near term,
5 hopefully just as the pandemic is easing. It
6 will put people back to work just as the pandemic
7 is easing.

8 But ambitious savings targets have,
9 let's be honest here, partisan political
10 opponents. That has become obvious -- or, that
11 became obvious when the proposed Triennial Plan
12 came before the full EESE Board for a vote a few
13 weeks ago. Whatever you decide on the merits, no
14 decision you make between now and the end of the
15 year will be more controversial. I guarantee it.

16 For the exact same reasons, this is a
17 contentious case. And, yes, there are reasonable
18 concerns about the Staff's role.

19 Would it be reasonable to conclude that
20 such designations may increase the likelihood of
21 a stipulated agreement by the parties? Well, let
22 me put it this way. I respect Mr. Dexter and
23 Ms. Nixon, and readily proclaim that they know a
24 lot about our ratepayer-funded energy efficiency

1 programs. But I have little interest in
2 negotiating with them if they will be
3 participating in your deliberations.

4 Conversely, their designation -- excuse
5 me.

6 CHAIRWOMAN MARTIN: I'm sorry to
7 interrupt. I was making sure we still had
8 Ms. Chiavara, but I see her now.

9 Go ahead.

10 MR. KREIS: Okay. Thank you.

11 Conversely, their designation would
12 contribute to the prompt and orderly resolution
13 of the case. They'd be free to articulate their
14 perspective as forcefully as they would like.
15 And, generally, such a step would be in the
16 public interest for whatever other more inchoate
17 reason the Commission would care to apply under
18 the catch-all public interest standard.

19 One final point. As noted in the
20 Motion, how much ratepayer money to spend during
21 the triennium on energy efficiency is a policy
22 call, given that the money must be spent
23 cost-effectively under a test that you have
24 already approved. There's the big policy call

1 about how willing we really are as a state to
2 bring our progress in line with that of the rest
3 of the region. But there's a smaller one, about
4 how aggressively and quickly to pursue savings
5 related to lighting, now that LEDs are blossoming
6 in more and more places.

7 You do not need the expert advice of
8 Mr. Dexter or Ms. Nixon to address these policy
9 questions. You are capable of making those
10 important policy decisions yourselves. And,
11 unlike your employees, each of you, as a
12 Commission, bear the signature of the Governor
13 who appointed you.

14 Thank you for hearing my oral argument.
15 I'd be happy to answer any questions and listen
16 to the argument of my colleagues.

17 CHAIRWOMAN MARTIN: Ms. Bailey, do you
18 have any questions for --

19 *(Cmsr. Bailey indicating in the*
20 *negative.)*

21 CHAIRWOMAN MARTIN: You're all set.
22 Commissioner Giaimo?

23 *(Cmsr. Giaimo indicating in the*
24 *negative.)*

1 CHAIRWOMAN MARTIN: So, why don't we
2 move on to Mr. Krakoff.

3 MR. KRAKOFF: Chairwoman, I
4 have *[inaudible]* to Mr. Kreis's testimony.

5 *[Court reporter interruption due to*
6 *inaudible audio.]*

7 CHAIRWOMAN MARTIN: You can say it
8 again, Mr. Krakoff.

9 MR. KRAKOFF: Yes. I just said "I have
10 nothing to add to Mr. Kreis's argument."

11 CHAIRWOMAN MARTIN: Do any of the other
12 parties who joined in the Motion wish to be
13 heard?

14 *[No indication given.]*

15 CHAIRWOMAN MARTIN: Okay. I don't see
16 anyone's hand up.

17 Clean Energy submitted a letter of
18 support. Do you wish to be heard?

19 MR. EMERSON: Yes. This is Eli
20 Emerson. We don't have anything to add to the
21 letter of support we filed.

22 CHAIRWOMAN MARTIN: Okay. Then, why
23 don't we hear from Staff at this point.

24 MR. DEXTER: Thank you, Chairwoman

1 Martin. Attorney Buckley will be delivering
2 Staff's objection to the Motion.

3 Although, if we were in the hearing
4 room, I would lean over to Mr. Buckley and
5 whisper if he would like me to address the email
6 aspect that Attorney Kreis brought up. I'd be
7 happy to do that at the end of his comments. So,
8 I'm making that suggestion in front of everyone,
9 since I don't have the ability to whisper.

10 But I will turn the Staff's comments
11 over to Attorney Buckley. And, if you'd like to
12 supplement at the end, he will let me know.

13 CHAIRWOMAN MARTIN: Okay. Mr. Buckley.

14 MR. BUCKLEY: Thank you, Madam Chair
15 and Attorney Dexter. Can everybody hear me all
16 right? Okay.

17 So, at the outset, I'll mention that
18 the Staff objects to this Motion, and intends to
19 file a written objection later today, as allowed
20 for under the Commission's rules which prescribe
21 a ten-day period during which parties may file an
22 objection to a motion. The Movants filed their
23 Motion on September 2nd, and that ten-day period
24 tolled on Saturday, which means any objections

1 must be filed by close of business today.

2 Moving to the substance of the Motion,
3 I'll start by addressing the Motion at issue
4 proceeds from a fundamentally flawed premise by
5 failing to recognize a substantial body of case
6 law describing Staff's dual role at the
7 Commission. Yes, the Staff during adjudications,
8 and, in this case, during the lead up to an
9 adjudication, develops and promotes proposals for
10 the resolution of issues, often via testimony, as
11 if it were a party to the proceeding.

12 But, in addition to this role, Staff
13 also has a duty to fairly and neutrally advise
14 the Commissioners as to the positions of the
15 parties, policy considerations that should be
16 taken into account, and other aspects of the case
17 during deliberations. Staff is afforded a
18 presumption that they're able to remain fair and
19 neutral, a presumption that the Commission has
20 repeatedly stated "should not be lightly
21 overcome", and further instructed that "a lack of
22 impartiality is not sufficient to rebut this
23 presumption."

24 Now, I'll turn to RSA 363:32, I, which

1 requires designation in cases where certain Staff
2 members "may not be able to fairly and neutrally
3 advise the Commission on all positions advanced
4 in the proceeding." In this case, the Movants
5 claim that statements by Ms. Nixon and Mr. Dexter
6 can no longer satisfy their duty to fairly and
7 neutrally advise the Commissioners based on
8 statements of concern relating to the savings
9 goals and associated rate impacts resulting from
10 the energy efficiency plan we will consider in
11 this docket.

12 It is a longstanding precedent at the
13 Commission that mere statements of Staff which
14 may be adverse or contrary to other parties does
15 not justify mandatory designation. Recognizing
16 this precedent, the Movants argue that Ms. Nixon
17 and Mr. Dexter's statements go beyond mere
18 contrary statements, in that they are seeking to
19 influence or were seeking to influence the EERS
20 Committee discussions.

21 Without conceding that there should be
22 any distinction between Staff statements made
23 during EERS Committee discussions and statements
24 made in testimony, technical sessions or

1 settlement discussions, the Staff notes the
2 following: The comments of Ms. Nixon and Mr.
3 Dexter were offered within a stakeholder process
4 agreed to via settlement, a settlement in which
5 the settling parties included Staff and each of
6 the Movants. That Settlement was approved by the
7 Commission in Order Number 26,207, and describes
8 Staff as one of the stakeholder to whom a
9 technical consultant, a consultant hired to
10 facilitate and advise the EERS Committee process,
11 would consult as the EERS Committee and other
12 relevant stakeholders attempted to inform the
13 appropriate level of funding and goals related to
14 the 2021 through 2023 Plan. That same settlement
15 then commits the Settling Parties, which includes
16 Staff, to work in good faith through these
17 discussions to reach consensus on the design of
18 the plan.

19 The intent of Ms. Nixon and Mr. Dexter,
20 during the collaborative process that led to
21 today's 2021 through 2023 Plan, was not, as the
22 Movants suggest, to influence EERS Committee
23 discussions, but rather instead were efforts to
24 work in good faith to reach consensus on the

1 design of the plan. If Staff were to withhold
2 its opinion on aspects of the plan until the
3 litigated process, it would have been a violation
4 of that settlement commitment.

5 Now, I'll turn to RSA 363:32, II, which
6 permits the Commission to use its discretion to
7 designate Staff, if good reason can be found,
8 specifying three factors that would be
9 considered, including the significance of the
10 case; the contentiousness of the case; and
11 whether doing so would aid in reaching
12 settlement.

13 With respect to these factors, the
14 Commission has long held that merely stating that
15 a case is significant or contentious is not
16 enough, but rather the Movants must show that how
17 the nature of the case is likely to impact
18 Staff's ability to provide the Commission with
19 fair and neutral advice, remembering that Staff
20 enjoys the presumption of fairness.

21 Staff submits that this -- Staff
22 submits that its discussion of all three factors,
23 the Movants have failed to demonstrate how the
24 significant or contentious nature of this case

1 would likely impact Staff's ability to provide
2 fair and neutral advice.

3 With respect to the first factor, the
4 Movants argue that this case is of particular
5 significance because of the significance of
6 raising the System Benefits Charge, a target of
7 persistent scrutiny at the Legislature. The
8 Movants make no attempt to describe how this
9 significance might impact Staff's ability to
10 provide fair and neutral advice during Commission
11 deliberations. Furthermore, the Commission has
12 in cases with even more political significance
13 and even greater bill impact than the instant
14 petition declined to designate Staff advocates.

15 One example of such an instance was the
16 docket considering the prudence of PSNH's
17 investment in the \$420 million scrubber for
18 Merrimack Station, an investment decision which
19 was directly intermingled with directives from
20 the Legislature.

21 With respect to the second factor, the
22 Movants argue that this case is abnormally
23 contentious because the eight months of
24 pre-adjudication process at the EERS Committee

1 were contentious, and because the treatment of
2 the SBC is a target of legislative attention.
3 The Movants make no attempt to describe how their
4 perceived contentiousness of this subject might
5 impact the Staff's ability to provide fair and
6 neutral advice during the Commission
7 deliberations.

8 Furthermore, this case is no more
9 contentious than the docket where the Commission
10 considered development of a new net metering
11 tariff for customer generators. That case had
12 approximately 17 parties, many of whom are
13 national organizations, and more than 15
14 individual non-consensus issues existed for the
15 Commission to rule on even after two separate
16 settlements were filed. In that docket, the
17 Commission declined the Office of the Consumer
18 Advocate's motion to designate a Staff advocate.
19 Staff also notes that in the instant petition,
20 like the net metering case, many of the parties
21 have not joined in this Motion. And no single
22 utility, the parties that have filed the Plan we
23 consider in this docket, has taken any position
24 in support of the Motion.

1 With respect to the third factor, the
2 Movants argue that designation is more likely to
3 increase the likelihood of a stipulated agreement
4 by the parties, describing the expertise of Ms.
5 Nixon and Mr. Dexter as valuable for facilitating
6 settlement negotiations, but expressing "little
7 interest in negotiating with Commission employees
8 who will be at liberty to participate thereafter
9 in the Commission's internal deliberations." The
10 Commission should not consider this expression of
11 unwillingness to negotiate with employees who can
12 participate with deliberations, because it would
13 validate the false premise upon which the
14 unwillingness is impliedly based; that the
15 Commission Staff is incapable of fulfilling its
16 duty to fairly and neutrally advise the
17 Commission simply because they have participated
18 in settlement negotiations or previously
19 expressed a position contrary to the Movants.

20 Furthermore, Movants have -- the
21 Movants have consistently participated in
22 significant and contentious dockets where they
23 have willingly negotiated with Staff who they
24 knew later would advise the Commissioners during

1 deliberations.

2 Finally, the Commission should consider
3 the likelihood that as a consequence of a
4 decision on the Motion, it might designate
5 certain employees as decisional, thereby removing
6 them from the opportunity to help facilitate
7 settlement discussions, and instead embracing
8 them solely to provide advice to the
9 Commissioners.

10 While it's unclear exactly which
11 members of Staff might be considered for a
12 designation as decisional, it is clear that those
13 employees would no longer be able to contribute
14 their subject-matter expertise or conflict
15 resolution skills to any settlement process. It
16 is likely that such a designation, which might be
17 a direct result of any decision to designate a
18 Staff advocate, may make settlement less likely,
19 in direct contravention to the assertions of the
20 movements -- of the Movants relating to their
21 willingness to negotiate with certain Staff
22 members who might deliberate with Commissioners.

23 Finally, Staff observes that the
24 Movants assert that "the determination of what

1 savings targets are appropriate is really a
2 matter of figuring out how to balance the
3 near-term SBC and LDAC increases against
4 long-term bill savings," and that "it is not a
5 matter of objective analysis, expert opinion, or
6 even legal reasoning of the sort typically
7 contributed to Staff" -- "by Staff to assist the
8 Commissioners with the policy calls they must
9 make."

10 Staff agrees that the question of how
11 to balance near-term SBC and LDAC increases
12 against long-term bill savings is one of the many
13 questions at issue in this proceeding, and among
14 the most important. Yet, Staff takes issue with
15 the Movants' inference that the Staff cannot
16 fulfill its duty of fairness and neutrality when
17 responding to the Commissioners' questions about
18 the case during deliberations as they consider
19 this policy decision. This inference is
20 particularly worrisome when those Staff experts
21 can offer the Commissioners advice on the many
22 likely issues in this case, inclusive of, but in
23 addition to, the single issue the Movants
24 describe as a policy question the Commissioners

1 must decide.

2 For the aforementioned reasons, Staff
3 objects to the Motion to Designate Staff
4 Advocates in the instant petition.

5 And I will just follow up with one of
6 the items that has been asserted by the Consumer
7 Advocate. And that's that the Consumer Advocate
8 suggests that, even though there is a presumption
9 of fairness here, that it has been overcome, and
10 cites Staff's proposals relating to the
11 procedural schedule. The proposals related to
12 the procedural schedule, these suggestions were
13 not offered in bad faith or out of some bias
14 against the parties' positions. But rather were
15 offered based on practicality related to the
16 docket timeline, which, by order, was supposed to
17 be considered over a period of several more
18 months that are now available as a result of
19 delays, which in some parts are unavoidable and
20 related to the pandemic. It is entirely possible
21 that, as a result of this --

22 CHAIRWOMAN MARTIN: Mr. Buckley, I
23 apologize for interjecting. Mr. Emerson just
24 went off my screen. I want to make sure that he

1 is still available.

2 Mr. Emerson, can you hear me? Can you
3 still hear us? You went off the screen for a
4 minute there.

5 MR. EMERSON: Yes. I can hear you.

6 CHAIRWOMAN MARTIN: Okay. I just
7 wanted to make sure you could participate.

8 Okay. Go ahead, Mr. Buckley.

9 MR. BUCKLEY: And, so, I'll just --
10 thank you.

11 I'll finish up by just noting that it
12 is possible that, as a result of this Motion, the
13 Staff will need to solicit outside counsel or
14 expert witnesses for this docket. That was the
15 motivating factor in qualifying our circulation
16 of the previously developed procedural schedule,
17 not any sort of bias on the behalf of Staff.

18 And with that, I will turn it over to
19 Attorney Dexter, if he has anything else to add.

20 MR. DEXTER: Thank you, Attorney
21 Buckley.

22 I just wanted to note that about a
23 month ago, as indicated in the stakeholder
24 process, the Staff circulated a procedural

1 schedule, a four-month procedural schedule. And
2 we were going to discuss that at the tech session
3 today, which is typical, and then present it to
4 the Commission for approval.

5 And, as a result of the Motion that was
6 filed, Staff tweaked the schedule a little bit to
7 allow for some extra discovery time at the front
8 end of the schedule.

9 And, secondly, noted that its support
10 of that schedule would be conditioned upon denial
11 of the Motion. The simple reason for that is
12 because, if the Motion is granted, and then Staff
13 submits a proposed revision to the procedural
14 schedule, which is likely, depending on the
15 implications of what comes out of a Commission
16 decision in terms of granting the Motion, it is
17 likely that Staff would seek to alter the
18 schedule, and Staff did not want to have thrown
19 back at it a statement like "Well, you proposed
20 the procedural schedule on September 14th."

21 It almost goes without saying that our
22 support of the schedule presumes that the case
23 will go forward in the manner that it was going
24 to go forward when the schedule was produced.

1 That was the only reason for that condition. It
2 has nothing to do with litigation strategy or bad
3 faith. Simply stating the obvious.

4 Thank you.

5 CHAIRWOMAN MARTIN: Okay. Any
6 questions -- just a moment, Mr. Kreis -- from the
7 other Commissioners for Staff on that?

8 (Commissioner Bailey indicating in the
9 negative.)

10 CHAIRWOMAN MARTIN: Okay. Seeing none.
11 Mr. Kreis, you had your hand up?

12 MR. KREIS: I guess I would like leave
13 to be heard in reply to the argument that I just
14 listened to.

15 CHAIRWOMAN MARTIN: Well, I'd like to
16 just see if anyone else wants to be heard first,
17 and then I'll circle back to you, since it was
18 your motion, then I have a question for you
19 myself.

20 Do any of the utilities want to be
21 heard on this Motion? If you do, you can just
22 put your hand up.

23 Ms. Chiavara.

24 MS. CHIAVARA: Yes. The Joint

1 Utilities don't have any comment on or a position
2 on this matter at this time.

3 CHAIRWOMAN MARTIN: Okay. Thank you
4 for that. How about any of the intervenors? If
5 you want to be heard on this and haven't been,
6 can you put your hand up please? Okay.

7 MR. BURKE: Chairwoman Martin, I can
8 just say that The Way Home takes no position on
9 the Motion at this time.

10 CHAIRWOMAN MARTIN: Okay. Thank you,
11 Mr. Burke. And I don't see anybody else.

12 And, so, I will circle back to you, Mr.
13 Kreis. Why don't I ask my question first.

14 I guess the main question that I have
15 for you is how is this different than all of the
16 other cases that I've seen in my brief time here,
17 where Staff comes into the hearing room or the
18 virtual hearing room and shares their position?
19 Why is this fundamentally different from that?

20 MR. KREIS: First of all, let me
21 reemphasize what I said earlier, which is I don't
22 think those previous Commission precedents,
23 including the one that both I and Mr. Buckley
24 referred to, actually are precedents that you

1 should necessarily follow. You're not obliged
2 to, and I disagreed with some of the legal
3 analysis in that prior Commission decision.

4 But, assuming that that is the correct
5 framework, this scenario is very different than
6 those scenarios, because of this very elaborate
7 stakeholder engagement process that took place
8 prior to the commencement of the proceedings.
9 That process was intended to drive the
10 stakeholders to consensus, and it, in fact, did
11 that. But it did that in spite of what Staff
12 did, which is repeatedly interject a particularly
13 contentious and I would argue divisive
14 perspective into those deliberations. And I know
15 that influenced the way that we got to the
16 consensus.

17 You basically are looking at a scenario
18 here where you will have a room full of parties
19 saying "Commission, approve these savings goals",
20 and the only people telling you to do anything
21 other than that will be your own employees. That
22 is very troublesome.

23 I don't object to the fact that the
24 Commission Staff raised their hands during the

1 stakeholder engagement or deliberation process
2 and articulated some concerns. That was actually
3 helpful. In fact, it didn't happen three years
4 ago, and that created its own set of
5 difficulties, because it's useful to actually
6 know what Staff's perspective is on things that
7 we're talking about.

8 But this went beyond that, into a
9 repeated, emphatic, and I would say ongoing
10 effort to influence a collaborative stakeholder
11 process, that was simply not helpful, and raises
12 issues under RSA 363:32.

13 So, let me just stop and ask if that
14 was an adequate answer to your question?

15 CHAIRWOMAN MARTIN: Yes.

16 MR. KREIS: Okay. So, --

17 CHAIRWOMAN MARTIN: Before you go on, I
18 think Commissioner Giaimo has a follow-on to
19 that.

20 CMSR. GIAIMO: Yes. I guess I actually
21 had the same exact question.

22 What makes this so unique? What makes
23 it more contentious and more contested than some
24 prior situation?

1 But, I guess, Mr. Kreis, as you
2 continue on, I'm hoping you might talk about, if
3 we entertained your Motion, how it would delay
4 and potentially cost more to the consumer because
5 of the delay? I'd like to hear a little more
6 about that.

7 MR. KREIS: Sure.

8 CMSR. GIAIMO: Thank you.

9 MR. KREIS: Let me just go through a
10 few issues, and one of them is the one that
11 Commissioner Giaimo just addressed.

12 First of all, I think the Commission
13 should ask its Staff not to file a written
14 objection to the Motion. (a) It has already been
15 heard an objection. (b) Staff is not a party.
16 And it would be more seemly for the employees of
17 the Commission simply to await what the
18 Commission decides about this Motion. And you're
19 capable of doing that.

20 (3) If you await the Staff filing a
21 written objection to the Motion, then, obviously,
22 you can't rule from the Bench on the Motion.
23 And, if you can't rule from the Bench on the
24 Motion, then there isn't going to be any

1 agreement on a procedural schedule. And, in that
2 scenario, my request will be that we need to
3 address the procedural schedule on the record at
4 this prehearing conference, as opposed to the
5 usual Commission practice of having the parties
6 address it informally during the tech session.
7 That custom is premised on the notion that there
8 will be an agreement about the procedural
9 schedule, and you already know that there will
10 not be an agreement. That is a problem.

11 Beyond that, I want to say that, you
12 know, I address this idea that I'm proceeding
13 from a fundamentally flawed premise, in light of
14 the existence of a substantial body of case law.
15 None of that case law was written by the New
16 Hampshire Supreme Court. All of that case law
17 comes from prior Commissioners, who clearly don't
18 like granting these designation motions, for
19 reasons that I fully understand, because I used
20 to work at the Commission.

21 I would also like to respectfully
22 suggest to the Commission that the Staff's oral
23 argument misconstrued the statutory standards.
24 The standard that relates to the significance or

1 contentiousness of the proceeding is a
2 stand-alone basis for designation. It doesn't
3 matter whether I or anybody else can demonstrate
4 a smoking gun that says that, because this is a
5 significant and contentious docket, the Staff is
6 somehow biased or its objectivity could be
7 questioned; the statute doesn't say that. It
8 says merely that, because of the significance and
9 contentiousness of this docket, you can and
10 should designate.

11 And, you know, it's clear why that
12 requirement or why that standard exists. It is a
13 way of raising issues that could become extremely
14 difficult to confront and very disruptive, if
15 they have to be raised on appeal later. And,
16 believe me, depending on how this turns out, I
17 will seriously consider doing that. That could
18 really hold up the state's energy efficiency
19 programs.

20 You know, the net metering docket, and
21 the precedent that set about a previous
22 designation motion that I previously tendered and
23 had denied, is completely inappropriate.
24 Because, if you look at that decision of the

1 Commission, the Commission stressed that, in
2 fact, that case was not an adjudicative
3 proceeding. I remember that vividly, because it
4 made that ruling over my intense objection. I
5 still think that was incorrect. But that's why
6 the Commission rejected my designation motion.
7 It said "Oops. Not an adjudicative proceeding.
8 RSA 363:32 only applies to adjudicative
9 proceedings."

10 Mr. Buckley raised the concern about
11 what would happen if you made any designations of
12 decisional employees. That's a red herring,
13 obviously, because the Motion doesn't ask you to
14 do that. And I do not think you need to do that.
15 Unless there are facts and circumstances internal
16 to the Commission that I have no knowledge of, I
17 do not ask and do not think you need to designate
18 any decisional employees.

19 And, with respect to Commissioner
20 Giaimo's question, about how this might or might
21 not add to the ultimate cost of this proceeding
22 to consumers, I want to avoid having to appeal
23 this case to the New Hampshire Supreme Court. I
24 am not asking you to tell any Commission employee

1 that its role in this case is limited to being a
2 decisional adviser to you, the Commissioners.
3 And I'm not even seeking to limit the role of Mr.
4 Dexter or Ms. Nixon in everything but your
5 deliberations. So, they are free to come to the
6 tech session, to do everything they would have
7 done at the tech session, to do everything they
8 would have done around developing testimony and
9 conducting discovery, and doing everything that a
10 party would also be able to do.

11 The only thing I don't want them to do
12 is to advise you, Chairwoman Martin, in your
13 conference room, even if it's a virtual
14 conference room, because that would be
15 fundamentally unfair in these circumstances. And
16 one reason it would be fundamentally unfair --
17 well, Staff is not a party. I guess that's the
18 final point I would leave you with.

19 That, I think, is all I have to say.

20 CHAIRWOMAN MARTIN: Mr. Kreis, I hear
21 the reference to "decisional employee", and that
22 designation would effect that. But I'm looking
23 at the definition of "decisional employee" in the
24 statute, which includes those who are to "assist

1 or advise the commission...with respect to issues
2 of law, fact or procedure".

3 So, I think that the two employees you
4 reference would otherwise be "decisional
5 employees". Is that your understanding?

6 MR. KREIS: No. When there is no
7 designation, Commission Staff is free to straddle
8 the two universes.

9 I'm sorry, I'm getting some feedback.
10 But I don't think it's my fault.

11 In other words, you know, this is
12 very -- this is a very difficult, and I think, to
13 some degree, unsettled area of the law, because
14 the precedent is the *Atlantic Connections* case.
15 And, you know, a party sought to challenge this
16 sort of Heisenberg uncertainty principle, where
17 Staff people are sometimes particles and
18 sometimes waves. Sometimes they're litigants and
19 sometimes they're advisers, and those are usually
20 the same people. That, as I said, that's weird,
21 but it is permissible under your statute. And
22 the designation statute exists when there are
23 reasons why that kind of freedom should be
24 restricted.

1 So, to answer your question, Chairwoman
2 Martin, when there is no designation, if you deny
3 my Motion, then everybody on the Commission
4 Staff, including Mr. Dexter and Ms. Nixon, are
5 free to both participate as if they were a party
6 in all of the adjudicative things that parties do
7 here, and then advise you in your conference room
8 as you figure out how you want to decide the
9 case, either before, during, or after the
10 hearings.

11 I mean, could that raise due process
12 issues? Yessiree. Are we there yet? No.

13 CHAIRWOMAN MARTIN: Okay. Thank you
14 for that. I think my point was just the use of
15 the term "decisional employee". If you look at
16 the statute, it may be slightly different. I
17 understand the process that you would be
18 describing.

19 Do either of the other Commissioners
20 have any follow-up questions?

21 *(Commissioner Giaimo and Commissioner*
22 *Bailey indicating in the negative.)*

23 CHAIRWOMAN MARTIN: Nothing,
24 Commissioner Bailey? Okay. Commissioner Giaimo,

1 I saw you shake your head? Okay.

2 And any follow-up from Staff in
3 response to that? Mr. Buckley.

4 MR. BUCKLEY: I think the Staff's
5 follow-up to the Consumer Advocate would be to
6 suggest that the Commission not direct Staff not
7 to file a written objection.

8 And we would also just note that the
9 contentiousness and significance of the case, and
10 how it would allow for designation, although it's
11 not in statute that that has to directly relate
12 to how that influences an employee's ability to
13 fairly advise the Commissioners, it is
14 extensively discussed in prior Commission
15 precedents.

16 And, while the Consumer Advocate is
17 correct, that the Commission is free to disregard
18 its own precedents, there is reasoning underlying
19 those decisions, which the Commission should
20 carefully weigh as it considers this request for
21 designation.

22 And I think that's all I'll add, unless
23 Attorney Dexter has something else to add.

24 MR. DEXTER: I have nothing further.

1 Thank you.

2 CHAIRWOMAN MARTIN: Okay. I think what
3 we'll do is take a brief break, so that I can
4 consult with the other Commissioners before we
5 move forward.

6 I would ask one question. Mr. Kreis, I
7 heard you suggest that an order needed to issue
8 from the Bench today on procedural schedule,
9 because, in the normal course, the recommendation
10 coming out would be the result of an agreement in
11 a tech session.

12 I would say that the presumption is
13 that might happen. But, in any case, there could
14 be a procedural schedule discussed that wasn't
15 agreed to and a filing made thereafter, and you
16 would have the ability to either object or
17 recommend your own procedural schedule. Is that
18 not doable here for some reason?

19 MR. KREIS: I would say the only reason
20 it -- it's doable, as a matter of law, and you
21 are not obliged to rule from the Bench on the
22 Motion by any means. You know, it's certainly
23 within your right to say that you want to hear
24 from your Staff in writing and then make a

1 written ruling on whatever timeframe you deem
2 appropriate.

3 It's just that, as I think Mr. Dexter
4 explained to you, or maybe it was Mr. Buckley or
5 maybe it was both of them, you know, time is
6 really of the essence in this proceeding, because
7 the new triennium begins on January 1st.

8 You know, I did my best to try to get
9 some of the procedural stuff in this docket out
10 of the way, even before the Triennial Plan was
11 filed, and my suggestions to that end were mostly
12 rebuffed. So, you know, it is what it is. And
13 I'm sorry everybody is rushed.

14 And the only downside to the Commission
15 taking the Motion under advisement, having the
16 parties talk about a procedural schedule, and
17 then have a letter filed with the Commission
18 saying "Well, there really isn't a unanimous
19 agreement on the procedural schedule, so you'll
20 have to decide." That will just slow things
21 down, I would say, more than they otherwise would
22 be and more than they otherwise would need to be.

23 But, yes. You can do that, if that's
24 the way you believe it has to be done or should

1 be done.

2 CHAIRWOMAN MARTIN: Okay. Thank you.
3 Mr. Wind, at this point, if the Commissioners
4 want to step off, do you need to demote us or can
5 we just shut off our video and sound.

6 MR. WIND: You can just shut off your
7 video and sound, and go to a private session.

8 CHAIRWOMAN MARTIN: Mr. Patnaude, we'll
9 go off the record. Thank you.

10 *(Recess taken at 11:46 a.m. and the*
11 *prehearing conference resumed at*
12 *11:54 a.m.)*

13 CHAIRWOMAN MARTIN: Okay. Thank you.
14 Let's go back on the record, Mr. Patnaude.

15 All right. The Commission has
16 discussed the Motion, and has decided that it
17 will take it under advisement and not issue a
18 ruling from the Bench today on the Motion to
19 Designate. But we will take the timing concerns
20 that you raised in the consideration in reaching
21 our decision and getting that order issued.

22 Okay. And, so, I think, at this point,
23 we can move on to initial positions, well, unless
24 there are any other preliminary items that I am

1 not aware of?

2 *[No indication given.]*

3 CHAIRWOMAN MARTIN: Okay. Seeing none.
4 Why don't we start with Ms. Chiavara.

5 MS. CHIAVARA: All right. Thank you.
6 Good afternoon, Chair Martin and the
7 Commissioners, and all of the stakeholders here
8 today.

9 *[Court reporter interruption due to*
10 *indecipherable audio.]*

11 CHAIRWOMAN MARTIN: Let's go off the
12 record.

13 *(Off the record.)*

14 CHAIRWOMAN MARTIN: Let's go back on
15 the record and see if it works.

16 MS. CHIAVARA: Thank you. All right.
17 Go again.

18 Chair Martin and Commissioners, the New
19 Hampshire utilities are surpassingly proud to
20 submit the second Triennial Statewide Energy
21 Efficiency Plan that provides the roadmap for
22 energy savings and environmental benefits that
23 can be achieved through New Hampshire's Energy
24 Efficiency Programs for the next three-year

1 period.

2 The Plan submitted on September 1st
3 represents the next phase of New Hampshire's
4 energy efficiency goals envisioned and embodied
5 by the Energy Efficiency Resource Standards.
6 This second Statewide Triennial Plan has the
7 potential to serve as a catalyst for staunch
8 advancement of statewide energy policy, while
9 providing tangible economic and environmental
10 benefits for all residents through local business
11 growth and community economic development.

12 The 2021 to 2023 Plan presents
13 cost-effective, energy-maximizing program
14 pathways that allow all New Hampshire customers
15 to receive definitive benefits, while reinvesting
16 in our local workforce and economy. This Plan's
17 design takes into account the most financially
18 sensitive residents in the state, and focuses on
19 maximizing the benefits of programs, whether
20 generally offered or for those specifically
21 targeted to those facing economic hardships and
22 challenges.

23 This Plan was developed through a
24 robust stakeholder process spanning ten months,

1 beginning at the end of 2019 and continuing
2 uninterrupted through September of this year.
3 Working through difficult topics, all while
4 during the radical shift in logistics of the
5 planning process itself. Both the EERS Committee
6 and the EESE Board members provided thoughtful
7 insight and engagement that ultimately led to a
8 more comprehensive and inclusive Plan. The
9 program administrators are grateful for all input
10 and participation that led to this final result.

11 The 2021-2023 Plan sets energy savings
12 targets at 5 percent of 2019 electric sales and 3
13 percent of 2019 natural gas sales to be achieved
14 over the Plan term. With additional Plan savings
15 from other fossil fuels and active electric
16 demand reduction.

17 This plan budgets \$350 million for the
18 electric programs and more than \$42 million for
19 the natural gas programs. These figures
20 represent a competent commitment to New
21 Hampshire's investment in energy efficiency.
22 Worthy of note is the 20 percent of the electric
23 budget and 17 percent of the natural gas budget
24 that are targeted to income-eligible energy

1 efficiency projects, reflecting the policy
2 objectives of the EERS to deliver tangible,
3 relevant benefits to all New Hampshire residents.

4 New elements to this Plan include an
5 adjusted planning framework to provide stability
6 in the marketplace and support achievement of
7 ambitious goals in the face of a significantly
8 changed economy.

9 The New Hampshire utilities, in their
10 capacity as program administrators of the New
11 Hampshire Energy Efficiency Programs, thank the
12 stakeholders, Commission Staff, and Commissioners
13 for their earnest dedication of this program
14 plan, and welcome the upcoming discussions in
15 order to see this Plan realized.

16 Thank you.

17 CHAIRWOMAN MARTIN: Okay. And,
18 Ms. Chiavara, were you speaking for all the
19 utilities here?

20 MS. CHIAVARA: Yes. That's on behalf
21 of all utilities, including the New Hampshire
22 Electric Cooperative.

23 CHAIRWOMAN MARTIN: Okay. Great.
24 Then, we can go to Mr. Kreis next.

1 MR. KREIS: Thank you, Chairwoman
2 Martin.

3 The Office of the Consumer Advocate
4 intends to ask the Commission to approve the
5 Triennial Plan that has been filed by the program
6 administrators. We believe that the savings
7 goals proposed by the utilities are achievably
8 aggressive, calculated to bring New Hampshire
9 into the New England mainstream when it comes to
10 ratepayer-funded energy efficiency.

11 There is lots of good news here. The
12 new Granite State Test assures that, as we reach
13 for new heights of energy efficiency, we will do
14 so in a manner that is cost-effective from the
15 perspective of all ratepayers. And we've shown
16 that the stakeholder collaboration process, I
17 heard Ms. Chiavara say "ten months", I tend to
18 think of it as "eight months", so, let's split
19 the difference and say "nine months", nine months
20 of really hard work leading up to this day. That
21 was effective in forging consensus. The process,
22 by the way, is something for the Commission to
23 consider, as it ponders stakeholder engagement
24 processes in several other pending dockets.

1 That is not to say that we're ready to
2 sign on the dotted line and go directly to
3 hearing. There are questions to be asked,
4 insights to be shared, refinements to be
5 implemented. Our most significant questions, I
6 think, concern the midterm modification process
7 in the Plan, and that the relationship of that
8 process to the stakeholder collaboration model.

9 Our hypothesis is that, because
10 stakeholder collaboration works so well, it
11 should not be limited to the fifteen months prior
12 to the implementation of the next Triennial Plan,
13 and the one after the one before you now. That
14 process should, however, be an ongoing
15 phenomenon, with available consulting help
16 throughout, so that, as potential midterm
17 modifications arise, the community of
18 stakeholders is actively involved.

19 We expect that during this proceeding
20 the Commission will hear concerns that the
21 budgets are too high and thus the savings goals
22 are too ambitious. But the latter does not
23 necessarily flow from the former. And it may be
24 that, over the course of the next few months, we

1 can work together to make the programs less
2 expensive, without sacrificing our lofty savings
3 goals.

4 We look forward to working with the
5 parties to find out, and to make the Triennial
6 Plan as good as it can possibly be.

7 CHAIRWOMAN MARTIN: Okay. Thank you.
8 Mr. Krakoff, are you still able to see the
9 proceeding?

10 MR. KRAKOFF: Yes, I can. I'm
11 *[indecipherable audio]* --

12 CHAIRWOMAN MARTIN: I can't hear you
13 very well. Can you say that again?

14 MR. KRAKOFF: Yes. *[indecipherable*
15 *audio]* all day. Hold on.

16 CHAIRWOMAN MARTIN: Okay.

17 *[Court reporter interruption due to*
18 *indecipherable audio.]*

19 CHAIRWOMAN MARTIN: Okay. Mr. Patnaude
20 can't hear you. Seems like you're having a
21 connection problem. Let's go off the record for
22 a minute.

23 *[Brief off-the-record discussion*
24 *ensued.]*

1 CHAIRWOMAN MARTIN: We'll hear Clean
2 Energy New Hampshire next.

3 MR. EMERSON: Thank you. Madeleine
4 Mineau is *[indecipherable audio]*.

5 MS. MINEAU: Thank you, Attorney
6 Emerson.

7 CHAIRWOMAN MARTIN: Just a moment. I'm
8 sorry, Ms. Mineau. Just a moment. Mr. Patnaude
9 needs to catch up. Did you hear any of that?

10 MR. PATNAUDE: I heard Mr. Emerson
11 initially, and then I didn't hear anything. It
12 just broke off.

13 CHAIRWOMAN MARTIN: Okay. So,
14 Mr. Emerson, can you repeat what you said?

15 MR. EMERSON: So, Madeleine Mineau is
16 going to deliver the initial position of Clean
17 Energy New Hampshire. Thank you.

18 CHAIRWOMAN MARTIN: Okay. All right.
19 Ms. Mineau.

20 MS. MINEAU: Thank you. Thank you,
21 Commissioners, for the opportunity to make
22 opening remarks before you today.

23 Clean Energy New Hampshire broadly
24 supports the Energy Efficiency Resource Standard

1 Plan for 2021 to 2023 submitted by the New
2 Hampshire utilities on September 1st. As members
3 of the EERS Committee of the EESE Board, we
4 actively participated in the collaborative
5 planning process, submitted multiple rounds of
6 comments, and provided input, both ourselves, as
7 well as directly from our members and partner
8 organizations, to inform the Plan that was
9 submitted by the program administrators.

10 The program administrators were
11 responsive to input from the EERS Committee. And
12 we find that the Plan submitted by the New
13 Hampshire utilities reflect many months of
14 productive collaboration among stakeholders.

15 Specifically, Clean Energy New
16 Hampshire supports the ambitious energy savings
17 goals proposed in the Plan. This will represent
18 significant progress for energy efficiency in New
19 Hampshire. As energy efficiency is the
20 least-cost energy resource, all measures and
21 programs are cost-effective, and the state's
22 efficiency programs provide benefits for all
23 ratepayers, we feel it is in the state's best
24 interest to set ambitious, achievable savings

1 targets for the 2021-2023 Plan.

2 Clean Energy New Hampshire is also
3 supportive of the new three-year integrated
4 implementation period. This will provide
5 contractors with more flexibility in long-term
6 projects, longer term planning periods, budget
7 flexibility, and the ability to avoid disruptions
8 and wait lists in rebate programs.

9 We think it is important to move beyond
10 traditional passive energy efficiency, and so we
11 support the inclusion of active demand response
12 programs, as well as the creation of the Energy
13 Optimization Pilot, which we hope will be
14 integrated as a full program, if the pilots prove
15 successful.

16 We also appreciate and support the
17 implementation of robust workforce development
18 programs during these trying economic times due
19 to the COVID-19 pandemic.

20 In conclusion, Clean Energy New
21 Hampshire is generally supportive of the EERS
22 Plan submitted. But we are still working with
23 our team to evaluate some details and
24 opportunities for further improvements.

1 We look forward to participating in
2 this docket. And thank the EERS Committee and
3 the New Hampshire utilities for their work on the
4 Plan to date.

5 CHAIRWOMAN MARTIN: Thank you. Mr.
6 Kreis, can you hear me?

7 *[No verbal response.]*

8 CHAIRWOMAN MARTIN: Okay. Go off the
9 record for a moment.

10 *[Off the record.]*

11 CHAIRWOMAN MARTIN: We'll go back on
12 the record.

13 And I have Acadia Center next. Mr.
14 Koester, do you want to be heard?

15 MR. KOESTER: Can you hear me?

16 CHAIRWOMAN MARTIN: Yes.

17 MR. KOESTER: I'm just here to say, on
18 behalf of Acadia Center, that we support the
19 stakeholder process that led to the proposal for
20 the Energy Efficiency Plan. And we look forward
21 to working with others in this process.

22 That's all for now.

23 CHAIRWOMAN MARTIN: Okay. Thank you.

24 MR. KOESTER: Thank you.

1 CHAIRWOMAN MARTIN: Next is The Way
2 Home. Mr. Burke.

3 MR. BURKE: Thank you, Chairwoman
4 Martin, and good morning, again, to the
5 Commissioners.

6 As others have said, The Way Home would
7 initially just like to echo a word of thanks to
8 the utilities, the other parties, and the
9 stakeholders for all of the time and effort that
10 went into the planning process that led to the
11 filing of this Plan. The Way Home believes that
12 that process did allow for meaningful and
13 valuable stakeholder input, as has been described
14 to you this morning. And also very much
15 appreciates the work of the facilitators from
16 VEIC who helped make that process possible.

17 As always, The Way Home is primarily
18 interested in the budget, design, and
19 implementation of the low income electric and
20 natural gas energy efficiency programs, known as
21 the "Home Energy Assistance Program", and
22 continues to believe that the HEA Program is
23 crucial to reducing the energy burden of
24 low-income families and individuals, who often

1 spend a larger percentage of their household
2 income on energy costs.

3 Importantly, the benefits of the HEA
4 Program, as we've noted in prior dockets, go
5 beyond the resulting reduction in energy usage.
6 And The Way Home appreciates the work that has
7 been done over the past couple of years to
8 further study this issue in New Hampshire.

9 There are several elements of the Plan
10 that The Way Home supports, including the
11 proposals around workforce development and
12 training. And The Way Home believes that there
13 are advantages to the proposal to move to a more
14 "true" three-year plan, which could benefit the
15 low income program.

16 So, broadly speaking, The Way Home does
17 support the Plan with respect to the HEA Program.
18 And looks forward to working with the parties in
19 this docket to resolve any remaining issues that
20 we didn't have time to resolve during the
21 planning process.

22 Thank you.

23 CHAIRWOMAN MARTIN: Okay. Thank you,
24 Mr. Burke. DES. Ms. Ohler.

1 MS. OHLER: Yes. Thank you very much.
2 On behalf of the Department of
3 Environmental Services, DES really appreciates
4 all of the efforts by all of the parties to come
5 up with this Plan. We support the Plan. As
6 noted by others, there's going to be some finer
7 details that we'll be working out over the next
8 coming months.

9 But, overall, we appreciate the fact
10 that it's going to a true three-year plan for the
11 first time. We think that that's going to allow
12 for a smoother implementation and hopefully get
13 rid of some of the start-and-stop issues. And we
14 also appreciate the utilities' ability to go back
15 and find some additional savings, so that we
16 could get the whole three-year plan up to 3 and
17 5 percent, which is substantially above what was
18 in the first draft. So, we look forward to
19 working with all parties to implement this Plan.

20 Thank you.

21 CHAIRWOMAN MARTIN: Okay. Mr. Krakoff,
22 I see that you're back on. Would you like to
23 give your position now?

24 MR. KRAKOFF: Yes. Thank you,

1 Chairwoman Martin.

2 Yes. I'd like to note that the
3 2021-2023 Statewide Energy Efficiency Plan is a
4 big step in the right direction to increase New
5 Hampshire's energy efficiency savings in the next
6 triennium.

7 For too long, New Hampshire has been a
8 laggard in New England with respect to energy
9 efficiency. Due to the energy efficiency savings
10 achieved in the Plan, when compared to other New
11 England states, New Hampshire actually has the
12 potential to be a leader in the realm of energy
13 efficiency for the next three years.

14 The Plan has very ambitious energy
15 efficiency savings of 5 percent for electric and
16 3 percent for natural gas, and will also
17 substantially increase the funding to the low
18 income program in the Plan.

19 Although we anticipate opposition from
20 Staff to the SBC rate increases, we know that the
21 testimony of the utilities filed with their plan
22 establishes that, for many ratepayers, overall
23 bills will actually decrease due to the energy
24 efficiency savings.

1 The Plan is the product of a meaningful
2 stakeholder process over the last several months.
3 While the Plan may still be subject to
4 improvement and further refinement in this
5 docket, and CLF will continue to evaluate it as
6 additional details emerge. In general, CLF
7 intends to seek approval of the Plan as submitted
8 by the utilities, but may recommend improvements
9 in certain areas of the Plan as necessary.

10 Thank you.

11 CHAIRWOMAN MARTIN: Okay. Thank you.
12 Did someone from Southern New Hampshire Services
13 ever join us, Mr. Wind, do you know?

14 MR. WIND: No. I have not seen them
15 join.

16 CHAIRWOMAN MARTIN: Okay. Thanks.
17 Then, we need to hear from Staff. Mr.
18 Buckley, I guess, or --

19 MR. DEXTER: This is Attorney Dexter.
20 I will be providing the Staff's preliminary
21 position this morning. And thank you for the
22 opportunity, Chairwoman Martin and Commissioners.

23 Staff has taken a preliminary look at
24 the filing. And, as mentioned, participated in

1 all of the pre-filing stakeholder processes. And
2 we've identified several issues that we want to
3 highlight today that we will be investigating
4 during the course of the proceeding.

5 First, we are concerned that the
6 savings targets that have been mentioned, 5
7 percent of 2019 electric sales and 3 percent of
8 2019 gas sales, have the potential to result in
9 rate impacts that are high, to the extent that
10 they violate the Commission's longstanding
11 principles and rate design goals of gradualism,
12 as expressed in many rate cases over the years.

13 We direct the Commission's attention to
14 Bates Pages 931 and 940 of the filing to look at
15 those SBC rates. Page 931 is just the energy
16 efficiency portion. Page 940 is the total SBC
17 rates.

18 And, related to the overall issue of
19 rate impacts, there are some questions that we
20 intend to explore during the course of the
21 proceeding, because we find that the proposed
22 rates on those pages are puzzling in certain
23 aspects.

24 For example, by 2023, the SBC rate for

1 Eversource's C&I customers will be almost double
2 that of the other electric companies, and yet
3 their residential rate will be lower than the
4 other two companies. And this is the first
5 instance where the utilities have proposed any
6 other than a uniform SBC rate. Up until now, the
7 SBC rate has been uniform across all companies
8 and all classes. And, while Staff is generally
9 supportive of a disaggregated SBC rate, because
10 we believe it will more correctly reflect
11 underlying costs, we want to investigate these
12 seeming disparities between the companies.

13 Secondly, Staff is concerned that the
14 plan places a higher reliance on lighting as a
15 percentage of the overall budget. And lighting,
16 particularly commercial lighting, is a market
17 that has largely been transformed over the years.
18 And Staff wants to investigate to be sure that
19 the money put towards C&I lighting rebates is
20 necessary. In other words, to be sure that this
21 isn't the situation where these companies would
22 have gone ahead and performed these energy saving
23 measures on their own without funding from the
24 utilities and the SBC.

1 Similar to that, we want to look at the
2 realization rates that are proposed in the plan,
3 from commercial and industrial custom measures
4 that are non-lighting, to be sure that they are
5 consistent with evidence of results based on
6 other states. This is an issue that Staff will
7 continue to explore through the evaluation,
8 monitoring, and evaluation -- the EM&V working
9 group, and which is continuing to work on its
10 Technical Resource Manual even as this docket
11 unfolds. And, so, as those values and inputs
12 with the TRM are built into the Plan, Staff wants
13 to be sure that those realization rates are
14 consistent with other states.

15 Similarly, Staff wants to investigate
16 the cost to achieve the targets, and make sure
17 they are reasonable, in light of information
18 learned from other states. And then,
19 particularly, in light of the ongoing pandemic,
20 we want to be sure that those targets are
21 achievable.

22 Staff will take a look at the demand
23 reduction programs in the energy optimization
24 pilot that's been proposed. We are generally in

1 favor of those programs, but we'll take the
2 opportunity to do a further review.

3 Two other rate issues: Lost Base
4 Revenues. Lost Base Revenues are presented by
5 some of the companies. And there is an intricate
6 interplay between the timing of distribution rate
7 cases for the utilities and also the
8 implementation of decoupling. And, given that, I
9 believe that puts all three -- all five of the
10 utilities, the three electric and two gas
11 utilities, in unique situations, given the rate
12 cases that have been filed and given the
13 decoupling measures that have been implemented.
14 So, Staff intends to investigate to make sure
15 that that interplay is appropriately reflected in
16 the proposed Lost Base Revenues.

17 With respect to performance incentives,
18 we believe -- we understand that the Plan has a
19 proposal to lower the minimum threshold for the
20 utilities to achieve a performance incentive, and
21 we believe it's tied to the new targets -- the
22 higher targets, I should say. Our preliminary
23 position is that it is not in favor of a reduced
24 threshold. As we understand the performance

1 incentive calculation, higher budgets -- higher
2 targets will lead to higher spending, higher
3 spending leads to increased performance
4 incentives. So, we don't see any reason to
5 couple that -- the opportunity for increased
6 performance incentive, we don't see the
7 opportunity to couple that with a lowering of the
8 threshold. That's something that we're going to
9 look at.

10 Concerning the planning structure,
11 we're generally supportive of the three-year
12 planning period. And that was something that was
13 discussed extensively in the collaborative
14 process that preceded the filing.

15 Like the Consumer Advocate, we are
16 interested in a midcourse modification, in terms
17 of who ultimately gets to request one and what
18 will be the thresholds for that.

19 Those are the issues that we've
20 identified at this point. We expect there will
21 be others as the case unfolds. And we will
22 perform that investigation. And we will achieve
23 a settlement, where possible, as we have done in
24 the last -- for each of the last updates in the

1 last three-year plan, and I believe in the CORE
2 programs before that. To the extent we don't
3 reach settlement, we will bring those issues
4 before the Commission for resolution.

5 And that concludes Staff's comments.
6 Thank you.

7 CHAIRWOMAN MARTIN: Okay. Thank you.
8 Is there anything else we need to do before you
9 go to your technical session?

10 *[No verbal response.]*

11 CHAIRWOMAN MARTIN: All right. As I
12 said earlier, we'll take the Motion for
13 Designation under advisement, and leave you to
14 your technical session. And this hearing is
15 adjourned. Thank you. Have a good day,
16 everyone.

17 ***(Whereupon the prehearing conference***
18 ***was adjourned at 12:20 p.m., and a***
19 ***technical session has held thereafter.)***