

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

October 8, 2015 - 12:39 p.m.  
Concord, New Hampshire

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RE: DE 14-238  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:  
Determination Regarding PSNH's  
Generation Assets.  
*(Hearing on the Motion by Settling Staff,  
the Objection thereto by Non-Advocate Staff,  
and other relief requested)*

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire  
d/b/a Eversource Energy:  
Robert A. Bersak, Esq.  
Matthew J. Fossum, Esq.

Reptg. the City of Berlin and the Town of  
Gorham, New Hampshire:  
Christopher L. Boldt, Esq. (Donahue, Tucker)

Reptg. the Office of Energy & Planning:  
Christopher G. Aslin, Esq., Dept. of Justice  
Meredith A. Hatfield, Director

Reptg. New England Power Generators Assn.:  
James Monahan

Pentti Aalto, pro se

COURT REPORTER: STEVEN E. PATNAUDE, LCR NO. 52

ORIGINAL

**APPEARANCES: (c o n t i n u e d)**

**Reptg. the Conservation Law Foundation:**

Thomas F. Irwin, Esq.  
(via teleconference)

**Reptg. Granite State Hydropower Assn.:**

Susan S. Geiger, Esq. (Orr & Reno)  
(via teleconference)

**Reptg. the Sierra Club:**

Zachary M. Fabish, Esq.  
(via teleconference)

Terry Cronin, *pro se*  
(via teleconference)

**Reptg. PUC Staff Advocates (Settling Staff):**

F. Anne Ross, Esq.  
Thomas C. Frantz, Dir./Electric Division

**Reptg. Residential Ratepayers:**

James Brennan  
Office of Consumer Advocate

**Reptg. PUC Non-Advocate Staff:**

Michael J. Sheehan, Esq.  
Alexander F. Speidel, Esq.  
Leszek Stachow, Asst. Dir./Electric Division  
Jay Dudley, Electric Division  
Richard Chagnon, Electric Division

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**P R O C E E D I N G**

CHAIRMAN HONIGBERG: Good afternoon, everyone. We're here in Docket DE 14-238 because we have a motion, with some alternative relief proposed by others, and we need to try and get this sorted out as quickly as possible, because you all think you're on a very short timeline here, and we're going to hear about that as well.

I think some things changed from the time that papers were filed, before right now, and that I understand that a draft report was sent out by Non-Settling Staff. And, I guess I would ask Attorney Ross, and anyone else who is here for the Settling Parties on this issue, whether -- if that changes anything, and, if so, how?

So, Ms. Ross -- actually, before we do that, I'm sorry. Let me take appearances. Let's find out who's here, because that probably would be helpful. Trying to get right to the meat without getting through all the pleasantries. Mr. Bersak.

MR. BERSAK: Good afternoon, Commissioners. On behalf of Eversource Energy, you have Matthew Fossum and Robert Bersak.

MS. ROSS: Good afternoon, Commissioners. Anne Ross, for Settling Staff, with Tom

1 Frantz.

2 MR. MONAHAN: Jim Monahan, for the New  
3 England Power Generations Association.

4 MR. BOLDT: Chris Boldt, for the City of  
5 Berlin and the Town of Gorham.

6 MR. ASLIN: Chris Aslin, for the Office  
7 of Energy & Planning.

8 MR. BRENNAN: Good afternoon. Jim  
9 Brennan, with the Office of Consumer Advocate.

10 MR. AALTO: Pentti Aalto, for myself.

11 MR. SHEEHAN: Mike Sheehan, for  
12 Non-Advocate Commission Staff. Present with me is Les  
13 Stachow; Alexander Speidel, co-counsel; Jay Dudley; and  
14 Rich Chagnon, all Commission employees.

15 CHAIRMAN HONIGBERG: All right. I  
16 apologize for my rudeness. Oh, yes.

17 MR. SHULOCK: Mr. Chairman, there may be  
18 some additional parties on the telephone line who may wish  
19 to make an appearance.

20 CHAIRMAN HONIGBERG: All right. Where  
21 is the speaker that would be --

22 MR. SHULOCK: Is there anyone on the  
23 conference call who would like to make an appearance at  
24 today's hearing?

1 COMMISSIONER BAILEY: Is your mike on?

2 MR. SHULOCK: Is there anyone on the  
3 telephone conference who would like to make an appearance?

4 MS. GEIGER: Susan Geiger, on behalf of  
5 the Granite State Hydropower Association.

6 MR. SHULOCK: Thank you.

7 MR. IRWIN: Tom Irwin --

8 MR. FABISH: Zack Fabish, on behalf  
9 of -- sorry, Tom. Go ahead.

10 MR. IRWIN: I'm sorry about that, Zack.  
11 Tom Irwin, Conservation Law Foundation.

12 MR. FABISH: Zack Fabish, the Sierra  
13 Club.

14 CHAIRMAN HONIGBERG: Can -- I didn't  
15 hear who it was who entered the appearance for  
16 Conservation Law Foundation?

17 MR. IRWIN: Tom Irwin.

18 CHAIRMAN HONIGBERG: Okay. Is there  
19 anyone else besides Granite Hydro, Conservation Law  
20 Foundation, and the Sierra Club on the phone?

21 MR. CRONIN: Yes. Terry Cronin, for  
22 himself.

23 CHAIRMAN HONIGBERG: Anyone else? All  
24 right. The question stands then for Ms. Ross.

1 MS. ROSS: Thank you. Is this mike  
2 working?

3 CHAIRMAN HONIGBERG: It is.

4 MS. ROSS: Okay. Yes. This does change  
5 things for Settling Staff. I will speak about the public  
6 portions of the filing only for now. The public Executive  
7 Summary acknowledges some changes that occurred after the  
8 date of the original La Capra forecast, which was to  
9 forecast the value of the plants as of December 31st,  
10 2014. That's now ten months old. What it recognizes in  
11 the Executive Summary is that the forward capital market,  
12 as well as the gas market have changed. The forward  
13 capital market is higher than at the time the forecasts  
14 were made and the gas market is lower.

15 What the public portion of the La Capra  
16 report goes on to indicate is that the value of the  
17 plants, as a whole, as a conglomerated or a cumulated  
18 total is pretty close to what it was even with these  
19 market changes using their DCF methodology.

20 We find this information to be very  
21 helpful for a couple of reasons. Because La Capra is not  
22 our consultant, we have not been able to ask La Capra if  
23 subsequent changes in the market would influence the  
24 forecast that they did for plant value on December 31st,

1       2014. This helps us to see what the answer to that  
2       question might be.

3               And, I think, for the Commission, the  
4       question is sort of "to forecast or not to forecast", to  
5       paraphrase Shakespeare. No forecast is accurate on the  
6       day it is made, because already events are unfolding that  
7       may or may not have been taken into account in the  
8       forecast. If we were to require a full updated forecast  
9       every time events change, we would never reach a point  
10      where this Commission could make a decision. The standard  
11      of review that the Commission is obligated to consider in  
12      looking at the Settlement Agreement is the economic  
13      interests -- is, I'm sorry, is the impact on PSNH  
14      customers and the impact on the economy. Those two  
15      determinations, if the Commission chooses, could be made  
16      with no forecast at all. The Commission could simply  
17      decide that it would look at the impact on the economy  
18      based on the set of circumstances that exist on the day of  
19      hearing. And, if that is the standard that the Commission  
20      wants to pursue, then I would submit that La Capra has no  
21      value in this proceeding.

22              If the Commission wishes to try to  
23      guess, and it will only be a guess, what circumstances  
24      will look like in six months or a year or three years or



1 five years, then, at hearing, it is going to be stuck with  
2 some attempt at forecasting future events.

3 And, I think we've argued in our  
4 underlying pleading, so, I won't repeat all those  
5 arguments, the savings estimates that we made were based  
6 on a set of numbers that were generated a professional  
7 forecaster who forecasts for a living. That doesn't mean  
8 the forecasts are accurate in all ways. It only means  
9 that that forecaster takes a lot of time and effort to try  
10 to identify all of the various forces at work in these  
11 very complex markets.

12 We think that exercise, of trying to  
13 look at all of those forces, has some value. We also  
14 think that the best way to present a witness that supports  
15 our case is to allow us to sponsor the witness, defend the  
16 witness against questions, attempt to make sure questions  
17 are clarified, and to develop the record in the way that  
18 we typically do in an adjudicative proceeding, which is  
19 the party whose witness supports them, that's the party  
20 who sponsors the witness.

21 And, so, I'll stop there, because I'm  
22 sure other parties may have something to add.

23 CHAIRMAN HONIGBERG: Mr. Aslin, you're  
24 the other person who filed somewhat strenuous comments

1       regarding the Staff's proposal. I may have some questions  
2       for you about those comments. But does what you received,  
3       I hope you received, change your view at all about what  
4       should happen going forward?

5               MR. ASLIN: Thank you, Mr. Commissioner.  
6       I don't think it changes my view as to the procedure going  
7       forward. I would agree with Advocate Staff's comments  
8       about the value of forecasts. Obviously, they are a  
9       forecast and not a crystal ball. But, from OEP's  
10      perspective, we do think that it is important in this  
11      docket for the Commission to consider the future and the  
12      likelihood of various outcomes, because the future is when  
13      the impacts will be hitting onto customers. So, to ignore  
14      forecasts, the OEP would say, would be a poor way to  
15      address this docket.

16              With regard to the procedures, OEP, as  
17      you say, had some strong opposition to the procedure that  
18      was put forward by Non-Advocate Staff. We find that it's  
19      an unusual procedure that has many pitfalls in terms of  
20      the process for the whole docket, but also for presenting  
21      to the Commission the best information available.

22              CHAIRMAN HONIGBERG: Well, I think you  
23      said "it appeared as if Non-Settling Staff was" -- I think  
24      that was your word "appear", "to be keeping information

1 from the Commission". I think that's what you said it  
2 appeared as, isn't that right?

3 MR. ASLIN: We said that there was an  
4 appearance that Non-Advocate Staff was preventing Advocate  
5 Staff from bringing certain information forward.

6 CHAIRMAN HONIGBERG: Oh, no, no, no, no,  
7 no. No, that's not what you said.

8 MR. ASLIN: I'll take a look.

9 CHAIRMAN HONIGBERG: No, I think maybe  
10 you should reread what you said.

11 MR. ASLIN: I will.

12 CHAIRMAN HONIGBERG: But, I think, if  
13 you believe there was an appearance that Non-Settling  
14 Staff was trying to withhold information from La Capra  
15 from the Commission's consideration, it looks like they  
16 were doing a pretty poor job of it, don't you think?  
17 Because if they're offering up that witness under oath for  
18 people to question, that's kind of an odd way to hide  
19 information, isn't it?

20 MR. ASLIN: Well, respectfully, Mr.  
21 Commissioner, the point that we are making is that the  
22 procedure put forward by Non-Advocate Staff was to allow  
23 La Capra to come forward in a tech session, but,  
24 essentially, a deposition.

1                   CHAIRMAN HONIGBERG: That's right.  
2       Sounds like a deposition, under oath.

3                   MR. ASLIN: Correct. However, they were  
4       proposing this in a way where La Capra would not have been  
5       given the opportunity to perform analyses that are at the  
6       heart of this docket that we are -- we didn't have the  
7       information at the time. So, we didn't know what analysis  
8       La Capra had performed under Non-Advocate Staff's request  
9       for consulting services. And, if any party, OEP included,  
10      had asked La Capra "we are really interested in the effect  
11      of this change in the market on your 2014 analysis", and  
12      La Capra, who was at the deposition, said "well, we have  
13      not been asked to perform that update", then there would  
14      be no way for that information to come forward under the  
15      proposed procedure. It would require some level,  
16      additional discovery, and then perhaps an additional  
17      deposition, which was not contemplated here.

18                  CHAIRMAN HONIGBERG: Well, this is maybe  
19      a better question for Attorney Ross. But the two pieces  
20      of information that were of interest in the original  
21      motion that started this little mini-proceeding relates  
22      to, basically, two areas of inquiry. One having to do  
23      with forward capacity markets, where, back when they  
24      originally did their work, the most recent auctions hadn't

1 taken place, and now they have. And, the assumptions that  
2 they made turned out not to be correct, as many  
3 projections and assumptions turn out to be. And, the  
4 other has to do with the effect of spiked -- spiking  
5 prices on things going forward. Those are the only two  
6 things identified in the papers.

7 So, what about that would have been  
8 impaired in any way in the parties, all of their  
9 abilities, to ask La Capra about those effects? Now, I  
10 understand that maybe they wouldn't have done all of the  
11 work yet, but this wasn't proposed as an open-ended  
12 opportunity to turn La Capra into a new witness in this  
13 proceeding.

14 So, you speculated about other items,  
15 but those aren't the items that are in the motion. So, it  
16 seems much more limited than that.

17 Attorney Ross, was I missing anything?

18 MS. ROSS: No. And, at the risk of sort  
19 of going off script, I think that one way to cure the  
20 concerns about this October 13th tech session might be to  
21 prepare ahead of time for La Capra a description of the  
22 areas of inquiry that would be asked, and so that -- that,  
23 if you were to provide La Capra as a witness or a  
24 deponent, they would then have made an effort to be

1 prepared to actually answer the questions that were going  
2 to be asked, so that the questioning would provide results  
3 that would be able to be used in some fashion. At the  
4 very least, having this report issued as final, and having  
5 it available as evidence, would be very helpful.

6 CHAIRMAN HONIGBERG: All right. I'm  
7 going to turn to Mr. Sheehan. Mr. Sheehan, you're going  
8 to be speaking for your side right here?

9 MR. SHEEHAN: Yes, sir.

10 CHAIRMAN HONIGBERG: What do you say to  
11 what you have heard?

12 MR. SHEEHAN: Well, I haven't heard yet  
13 a definitive answer to what they want now, in light of the  
14 production that we made last night of the public and  
15 confidential reports from La Capra.

16 But, stepping back, we have a  
17 fundamental objection to the Settling Parties poaching, in  
18 effect, our witness -- our consultant, I should say. We  
19 chose not to make them a witness for very easy-to-explain  
20 reasons. And, I think it's unheard of for one party to  
21 reach across to another party's consultant and say "we  
22 want to hire that person to perform an opinion to help  
23 us." As an example, we understand the Liberty Consulting  
24 Group is advising some of the Settling Parties. It would

1 be entirely improper for me to try to hire Liberty to  
2 buttress part of our case.

3 Now, with that being said, we have made  
4 La Capra -- we asked them to do the update -- let me take  
5 one step back. The only thing La Capra did was come up  
6 with the value of the plants, \$235 million. Yes, they did  
7 some work underneath that. We get the case in July. A  
8 petition, testimony, of a very complex case, and we had  
9 two months to analyze and prepare testimony. We have to  
10 pick our battles.

11 One battle we looked at was "has that  
12 number changed?" We asked La Capra, "what would it take  
13 to update your report?" "Option A: We can do a  
14 quick-and-dirty, change two variables. It will cost you  
15 25,000 bucks. We can do it in 30 days. Option B: We can  
16 rerun the whole report. And, it will cost you \$100,000  
17 and take three months."

18 We didn't have the luxury of Option B.  
19 We chose Option A. They changed the forward capacity  
20 number, they looked at the gas prices, they updated the  
21 report. That's what we have in front of us. That's all  
22 La Capra did was say "the value of the plants are X."

23 The only place a number from La Capra is  
24 challenged in the core of our testimony, and that was

1       cited, I believe, in OEP's motion, was a reference that  
2       Mr. Cannata made about the "outdated La Capra numbers".  
3       And, that wasn't a criticism of La Capra's analysis. That  
4       was simply saying "time's passed". And, so, we have cured  
5       that problem. So, as of today, La Capra is up-to-date.  
6       It still does exactly what it was intended to do on day  
7       one.

8                       Now, if the parties want to have a  
9       different kind of analysis, a different kind of  
10      projection, they had every right to hire an expert to do  
11      that. La Capra was simply never hired to do that. Now,  
12      we can use their updated forward capacity numbers, they're  
13      in the record now or they will be, and we can use their  
14      gas for whatever they please.

15                      So, I'm not sure what else needs to be  
16      done. And, again, we're happy to make La Capra available  
17      for a session. I agree, having a witness who hasn't filed  
18      testimony may be a little unusual. But, having someone  
19      available at a tech session is entirely normal here in the  
20      Commission. In a rate case, if you two sponsored  
21      testimony, but we wanted some information from the person  
22      who didn't sponsor testimony, they're often made available  
23      in tech sessions to say "how did you come up with these  
24      underlying numbers?" So, that's exactly what we've done



1 here. You can have an opportunity to question La Capra,  
2 ask them whatever you want. And -- right. And, just so  
3 you know, that the dates that we propose, the 13th, was  
4 really driven by Mr. Hahn, from La Capra. He is gone for  
5 the whole month of November. He had that date available.  
6 And, I think we've informally advised the parties that  
7 he's available later in the months, if the Commission  
8 would want to grant some more time to do this.

9 So, I have not heard yet what the  
10 Settling Parties want from La Capra, other than a  
11 forecast. Well, they have the forecast. So, now, what  
12 else do they want? And, I haven't heard it yet.

13 So, I think we've addressed the concern  
14 in the motion by providing the update. I think our  
15 procedure is as open as it can be. And, I think this  
16 should be resolved there.

17 I must step aside and put on the record,  
18 because some of the people who made the most strongest  
19 statements about Staff are not here, and that would be the  
20 senators. Our only charge in this case comes from the  
21 statute. And, the statute says that the Commission "shall  
22 review the 2015 Settlement proposal and determine whether  
23 its terms and conditions are in the public interest." We  
24 are doing the Commission's work, providing the information

1 upon which you can make that decision. We have no  
2 interest in this case one way or the other. We're the  
3 only party that can say that. We are just finding  
4 information. And, I can tell you, when we first got the  
5 numbers that ultimately ended up in the Cannata testimony,  
6 we were not happy to see those numbers. There was no joy  
7 in looking like the Chung savings analysis was in error.  
8 And, we tried really hard to debunk those numbers. We  
9 pushed, we prodded, and we spent a lot of hours on those  
10 numbers.

11 We hired another consultant from the  
12 Brattle Group to look over our shoulder on those numbers.  
13 And, at the end of the day, we're comfortable with those  
14 numbers. We think they are accurate. And, we filed the  
15 testimony. That's not partisan and that's not taking a  
16 unreasonable stance. It's what we thought the facts were.  
17 If, through discovery, we are informed and convinced that  
18 those numbers are wrong, we will be the first to change  
19 our position and say "okay, you've convinced us that's  
20 wrong, and we need to reevaluate."

21 But, as of today, we believe those are  
22 correct numbers, and that's why we're presenting them to  
23 you. And, so, we take offense and umbrage at the  
24 suggestion that we are partisan, that we have any other

1 agenda in this case other than to provide you with the  
2 facts.

3 So, I think I'll stop.

4 CHAIRMAN HONIGBERG: All right. Others  
5 who are in the room, and the folks who are on the phone,  
6 I'll get to you next, is there anyone else who's in the  
7 room who wants to comment on what has been said so far?

8 Mr. Bersak.

9 MR. BERSAK: Thank you, Mr. Chairman.  
10 From our vantage point, we look at this as how it fits  
11 into the overall procedural posture of this case. We got  
12 testimony from the Non-Advocate Staff, and we sent out  
13 data requests to them. I know you're not familiar with  
14 what data requests were asked, but three different parties  
15 asked data requests seeking whatever information the  
16 Non-Settling Staff might have with respect to La Capra.  
17 So, it's part of the discovery process now. We expect  
18 that we would have gotten from Non-Advocate Staff whatever  
19 responsive information they had regarding La Capra,  
20 whether it's the public report, private reports, whatever  
21 they have, and they might object. As a matter of fact,  
22 the filing that was made by Non-Advocate Staff says they  
23 plan to provide information over objection. We don't know  
24 that they're still objecting or not. So, this is still

1 part of the discovery process.

2 As part of the discovery process,  
3 there's also Commission rules about how do you deal with  
4 potentially confidential information in the course of  
5 responding to discovery. And, those discovery rules kind  
6 of say, when a party is going to give something to the  
7 Staff, what happens. Well, it's kind of reversed now.  
8 Staff is giving things to the parties, but it seems like  
9 we have a witness who's not sponsored by anybody. We're  
10 being asked to sign a confidentiality agreement, not with  
11 Staff, but with the consultant themselves. Is that  
12 consultant going to file a motion for confidential  
13 treatment with the Commission? And, if not, does it  
14 become nonconfidential? So, you know, we're kind of in a  
15 never-never land right now.

16 So, you know, I had heard Attorney  
17 Sheehan say, you know, that it was their "witness". Under  
18 normal process, they provide us discovery. And, then, you  
19 know, if they think it's confidential, they should follow  
20 the rules, with respect to say "We think this is  
21 confidential. We plan to file a motion at the appropriate  
22 time to make it that way." And, we stick with a procedure  
23 that we know what's going on. So, there are other aspects  
24 of this that are of concern procedurally.

1                   CHAIRMAN HONIGBERG: Can I stop you for  
2 just a second?

3                   MR. BERSAK: Yes.

4                   CHAIRMAN HONIGBERG: I'll come back to  
5 you. But I heard what Mr. Sheehan said, and he said  
6 "witness", and then he corrected himself and said  
7 "consultant". And, I think what Mr. Sheehan also said is  
8 that they made a conscious decision not to turn La Capra  
9 into a witness, but is still serving as a consultant.  
10 And, so, that, I mean, that's not uncommon in the court  
11 system, that's actually fairly regular. But the  
12 information that may be available to whomever may still be  
13 discoverable, and I think that's what you're talking  
14 about. So, I mean, the premise underlying some of what  
15 you just said I think I might take issue with, but I  
16 understand what you're saying.

17                   And, I did interrupt you. Do you have  
18 more?

19                   MR. BERSAK: No. I'm all set.

20                   CHAIRMAN HONIGBERG: Okay.

21                   MR. BERSAK: Thank you, Mr. Chairman.

22                   CHAIRMAN HONIGBERG: Any of the others  
23 in the room who want to add anything on this?  
24 Mr. Brennan, yes.

1                   MR. BRENNAN: Thank you. To the extent  
2                   OCA's testimony in 14-238 includes a discussion on  
3                   forecast savings calculations performed by PSNH Witness  
4                   Eric Chung, and those PSNH savings calculations use  
5                   variable assumptions taken directly from La Capra Report,  
6                   the OCA supports the Advocate Staff's efforts to have  
7                   access to La Capra to help determine the accuracy of Chung  
8                   testimony and savings projections.

9                   CHAIRMAN HONIGBERG: Mr. Boldt.

10                  MR. BOLDT: From the City and Town's  
11                  perspective, obviously, the new report, which we just  
12                  received this morning, gives us some concern over the  
13                  valuations going forward for the hydros. I think it's a  
14                  significant discovery issue that time needs to be given  
15                  to. I'm concerned with a Tuesday offer being enough time.  
16                  Until I walked in today, I was going to be a guest of the  
17                  County of Carroll on a jury pool starting on Tuesday, and,  
18                  luckily, got an e-mail saying that one's past. But there  
19                  are -- I'm still on the hook for the 26th. So, we'd like  
20                  to get some discovery, I think is natural, especially with  
21                  the other open issues that are involved in this docket.

22                  CHAIRMAN HONIGBERG: All right. I'm  
23                  going to take the people who are on the phone one at a  
24                  time, and I believe there's four. Ms. Geiger, do you have

1 anything you want to add?

2 MS. GEIGER: No thank you, Mr. Chairman.

3 CHAIRMAN HONIGBERG: Mr. Irwin, do you  
4 have anything you want to add?

5 MR. IRWIN: Thank you, Mr. Chairman. As  
6 you know from the Advocate Staff's filing, we were  
7 supportive of their motion and the approach they were  
8 proposing with respect to La Capra. I guess I'm feeling a  
9 bit at a disadvantage in that I've not seen the report  
10 that was apparently provided to parties last night, and  
11 perhaps to other parties this morning.

12 CHAIRMAN HONIGBERG: Mr. Sheehan, do you  
13 know about anything sent to Mr. Irwin on this one?

14 MR. SHEEHAN: At about five o'clock last  
15 night, I emailed to the entire service list the public  
16 version, and the non-disclosure agreement with an offer to  
17 provide the confidential version upon receipt of a signed  
18 NDA. So, unless I somehow skipped Mr. Irwin on the email  
19 list, he should have gotten it last night. And, I can  
20 double check that, obviously, once I get back to my desk.

21 CHAIRMAN HONIGBERG: Mr. Fabish, do you  
22 have anything you want to add?

23 MR. FABISH: No, nothing to add. Thank  
24 you.

1 CHAIRMAN HONIGBERG: Mr. Cronin, do you  
2 have anything you wanted to add?

3 MR. CRONIN: No. Thank you.

4 MR. IRWIN: And, Mr. Chairman, Tom  
5 Irwin. Just for the record, I have reviewed my emails and  
6 I've not seen -- did not receive the e-mail that went out  
7 to the service list.

8 CHAIRMAN HONIGBERG: Mr. Boldt, do you  
9 have something?

10 MR. BOLDT: Mine was caught in my SPAM  
11 filter, oddly enough. And, I've received matters from  
12 Mike. So, I'm looking at a copy. It does list everybody.  
13 But, Tom, you might want to check your SPAM filter.

14 CHAIRMAN HONIGBERG: Did you hear that,  
15 Mr. Irwin?

16 MR. IRWIN: Yes, I did. Thank you.

17 CHAIRMAN HONIGBERG: Okay. All right.  
18 Now, let me circle back to people a second time. Assume  
19 for a moment that you are going to be given some  
20 additional time, rather than happen on Tuesday, this was  
21 going to happen closer to the end of the month. And, that  
22 Ms. Ross's suggestion that some indication of what  
23 questions would be of interest were provided to the  
24 witness, so the witnesses could be prepared. Consultants,



1       sorry. Consultants -- well, they would be under oath, and  
2       they would be essentially deposition witnesses, but that's  
3       a good point, at the technical session.

4               Tell me if people still have objections  
5       to proceeding in that manner, which I guess I would call  
6       it a "modification" of Non-Settling Staff's proposal?

7               And, for those on the phones, there's  
8       some feverish conversations going on at various tables.

9               Ms. Ross.

10              MS. ROSS: We would certainly accept  
11       that solution as better than not having anything. We  
12       think it's not as optimal as our proposal, but it's a good  
13       compromise.

14              MR. ASLIN: And, Mr. Chairman?

15              CHAIRMAN HONIGBERG: Mr. Aslin.

16              MR. ASLIN: Thank you. I would ask for  
17       one clarification. Are we considering still the La Capra,  
18       whichever witness -- or, whichever person from La Capra  
19       appears at the tech session would then also be at the  
20       hearing to serve as a witness, so that they could be  
21       cross-examined on their answers from the technical  
22       session?

23              CHAIRMAN HONIGBERG: Mr. Sheehan.

24              MR. SHEEHAN: Our offer was, it would be

1 primarily Mr. Hahn, and he has told us that there is a  
2 gentleman in his office that helped him. But, the prime  
3 person is Mr. Hahn, that we would make him available at a  
4 tech session, and we would make him available at hearing,  
5 in the format -- he wouldn't file prefiled testimony, but,  
6 yes, we would agree to make him available at both  
7 sessions.

8 CHAIRMAN HONIGBERG: Mr. Aslin.

9 MR. ASLIN: So that certainly helps. It  
10 just raises some questions about how that witness at  
11 hearing will be presented. Will they be represented by  
12 Non-Advocate Staff or by someone else? Will they be  
13 cross-examined by everyone? I think the proposal was that  
14 they would be available for cross-examination by all  
15 parties, with an order of precedence. It's just, I'm  
16 having a little trouble understanding exactly how that  
17 procedure would be effectuated. It does raise some  
18 concerns for me from a procedural standpoint, which we've  
19 raised, but I would be interested in working that out.

20 CHAIRMAN HONIGBERG: It certainly seems  
21 like they would be associated with Non-Advocate Staff.  
22 And, however you characterize that, I think that would be  
23 the structure that they would be following.

24 Mr. Speidel, do you have something you

1 want to add?

2 MR. SPEIDEL: Yes, Mr. Chairman. As I  
3 had tendered the motion that is the objection on behalf of  
4 Non-Advocate Staff, I think I might be able to provide a  
5 little bit of insight. It was described as, under  
6 Subpart C, under Item 10 of the objection, as "La Capra  
7 representative(s)", with "s" in parentheses, "providing  
8 sworn answers at this technical session will be available  
9 at the final hearing for cross-examination on the basis of  
10 their transcribed responses." So, we will have a  
11 transcript prepared by a court reporter, sworn statements  
12 by La Capra. In the first instance, Non-Advocate Staff  
13 would probably engage in some limited direct questioning  
14 to set up the context by which the other parties may  
15 engage in cross-examination of the La Capra witnesses.

16 CHAIRMAN HONIGBERG: Mr. Aslin.

17 MR. ASLIN: That's a very helpful  
18 clarification. So, we would have, essentially, the  
19 testimony that was the record from the deposition would be  
20 more or less offered up by Non-Advocate Staff, if I  
21 understand, and it would be in the record.

22 The question I have that follows from  
23 that, procedurally, is, as the Settling Parties file  
24 rebuttal testimony, that I imagine will incorporate

1       whatever comes out of this technical session with La  
2       Capra, if there are data requests or questions about that  
3       rebuttal testimony that really go back to La Capra, it  
4       just creates a bit of a circle. I mean, if we -- if  
5       Non-Advocate Staff is asking, for example, Mr. Frantz  
6       about his analysis based on La Capra's updated  
7       information, they're, in essence, asking their own  
8       non-witness or consultant for information from their own  
9       non-witness/consultant through Mr. Frantz, and it gets  
10      very complicated.

11                     And, this is one of the reasons that we  
12      felt that Staff Advocate's proposal was much cleaner and  
13      more optimal to present a simple way for rebuttal  
14      testimony to come in under the normal procedure, and have  
15      the opportunity for cross-examination by all parties.

16                     CHAIRMAN HONIGBERG: Well, wouldn't it  
17      have been simpler for one of the Settling Parties to  
18      retain an expert on this topic? Wouldn't that have been  
19      much cleaner?

20                     COMMISSIONER BAILEY: Don't you have an  
21      expert on this topic?

22                     MR. ASLIN: We have an expert on this  
23      type of analysis, yes. However, we were under the  
24      understanding all along that La Capra, who is the

1 foundation of both Settling Staff's analysis, the Settling  
2 Parties' analysis, and the legislative analysis in 1602  
3 last year and 221 this year, that that forms an important  
4 basis for the decision-making of everyone involved in this  
5 case. And, at the time, we understood from Non-Advocate  
6 Staff that they were contemplating bringing La Capra into  
7 this docket and using them to update the information.  
8 What we found in testimony was that they -- well,  
9 presumably, hadn't done that, although I guess they had  
10 done an update, and we got questions about the underlying  
11 assumptions about La Capra's analysis.

12 So, we were caught in this question of  
13 "how do we get this information into the record at this  
14 point, having it -- where it did not come through the  
15 route that we expected it to come through?"

16 CHAIRMAN HONIGBERG: Yes, I got that  
17 part.

18 COMMISSIONER BAILEY: I'm missing a big  
19 part, I think. Because, as I understand it, the La Capra  
20 report did not say "PSNH should divest", it just said what  
21 the value of their assets were.

22 The Staff report, which was submitted by  
23 Mr. Mullen, in conjunction with your witness in this case,  
24 said, you know, "for all these reasons, it's in the public

1 interest to have PSNH divest its assets." And, that is  
2 what I thought was the basis of the Settlement, not the  
3 valuation necessarily of the plants.

4 So, can you explain what I have wrong  
5 there?

6 MR. ASLIN: Commissioner Bailey, I think  
7 there are two different Staff reports that you may be  
8 confusing, I'm not sure I'm understanding fully, or maybe  
9 you're not confusing. But there was the Liberty Staff  
10 report in 2013, and then there was the La Capra Staff  
11 report in 2014.

12 COMMISSIONER BAILEY: Hang on a second.

13 MR. ASLIN: Maybe Mr. Frantz or --

14 MS. ROSS: Could I just respond to  
15 clarify? Commissioner Bailey is correct. The 2014 report  
16 contained actually three reports. The first piece was the  
17 Staff report, which actually recommended that it would be  
18 appropriate to divest. The second piece was the La Capra  
19 Valuation Report. And, the third piece, which was part of  
20 the La Capra report, was the environmental assessment.

21 What La Capra does though, in order to  
22 reach a plant value, is that they forecast all of the  
23 various inputs, including the LMP wholesale pricing over  
24 the next ten, fifteen, twenty years. What Staff did was

1 to take the LMP wholesale pricing, adjust it to add the  
2 retail cost, and then use that number as the basis for  
3 their analysis of how rates in the competitive market that  
4 customers of PSNH would have available to them, if they  
5 weren't basing -- if their supply wasn't being generated  
6 by the fleet that PSNH currently owns. And, they compared  
7 it to the likely costs of the PSNH generating fleet going  
8 forward in the market.

9 So, even though La Capra's end product  
10 was a plant assessment, the forecasting that gets you to  
11 the plant assessment requires you to forecast several -- a  
12 number of inputs, REC inputs, capacity market inputs,  
13 wholesale energy market inputs. And, all of those  
14 forecasts go into a DCF model, that then comes up with the  
15 investors' return at different prices, at different  
16 capital investments. And, that's how you back out your  
17 asset value.

18 So, you're right, the job that was given  
19 to La Capra was to value the assets. But the process that  
20 they used created forecasts that were very central to the  
21 Staff analysis about whether it was better to continue to  
22 have customers supplied from the owned generation of PSNH  
23 or whether it was better to cut them loose and have them  
24 go into the market.

1 COMMISSIONER BAILEY: And, when you say  
2 "Staff's analysis", are you talking about Staff before it  
3 was separated?

4 MS. ROSS: I'm sorry, what?

5 COMMISSIONER BAILEY: When you talk  
6 about "Staff's analysis", are you talking about the Staff  
7 analysis before the Staff was separated or is that your  
8 analysis?

9 MS. ROSS: That was part of the Staff's  
10 analysis in 2014, when the April report was issued by  
11 Staff. What my witness, Mr. Frantz, did in this  
12 testimony, in support of the Settlement, was to use those  
13 underlying numbers, because a forecast, even a dated  
14 forecast, is better than no forecast. And, he took those  
15 numbers, and he did his analysis of the impacts of the  
16 Settlement and the timing of the divestiture under the  
17 Settlement, and reached a conclusion that it still looked  
18 like it was a good option for customers of PSNH to have  
19 the assets divested in the 2016/2017 timeframe.

20 Now, as you've heard, you know, we  
21 didn't have access to La Capra, because La Capra was  
22 contracted for by the Non-Advocate Staff. So, we didn't  
23 realize that they weren't going to be doing any type of  
24 update of their numbers, and that they would not be



1 available as a witness to, you know, to help clarify what  
2 even their underlying report did. We had about six  
3 questions, actually, from Non-Advocate Staff, that were  
4 questions about what assumptions La Capra used or didn't  
5 use in its underlying 2014 evaluation analysis. So, we  
6 were answering questions to the Staff about what their  
7 expert did when they generated the original report in  
8 2014, which we thought was unusual, but we answered the  
9 questions. But it's sort of -- it's a second layer out to  
10 have Mr. Frantz always explaining to you "here's what, you  
11 know, what La Capra did to generate this forecast that we  
12 relied on or that forecast."

13 So, it just seems more direct to the  
14 Commission if the Commission has access to that expert at  
15 hearing.

16 CHAIRMAN HONIGBERG: Mr. Sheehan.

17 MR. SHEEHAN: If I may, what I think is  
18 being missed is, our testimony does not challenge the  
19 underlying La Capra work. We updated it. And, so, we had  
20 a critique simply that the old '14 numbers were  
21 out-of-date. But we're not challenging their analysis,  
22 we're not challenging their inputs, we're not challenging  
23 their forecasting methods. We accept those numbers. Our  
24 disagreement is with what 2014 Staff did with those

1 numbers and with what Mr. Chung did with those numbers.

2 So, there's no need to go back to, for  
3 the most part, to go back to La Capra. We agree, La Capra  
4 is what it is. It's been updated. It's there. We can  
5 all work from it.

6 CHAIRMAN HONIGBERG: Is La Capra still  
7 doing work for Non-Settling Staff at this time,  
8 Mr. Sheehan?

9 MR. SHEEHAN: Yes. And, in fairness,  
10 it's in the nature of asking questions and checking  
11 things. You know, they're not -- we haven't assigned them  
12 any more analyses to do, other than the update that's been  
13 talked about today. But we have asked them questions,  
14 we've run things by them. We certainly talked to them  
15 about what's going on today. So, they are still an active  
16 consultant for us.

17 CHAIRMAN HONIGBERG: Mr. Speidel.

18 MR. SPEIDEL: Thank you, Mr. Chairman.  
19 To amplify what Mr. Sheehan said, and also to address some  
20 of what Mr. Aslin has been talking about, I think he made  
21 an allusion within the hearing room today, and a more  
22 explicit reference to my own statements made at the  
23 prehearing conference in this original proceeding just  
24 about a year ago, October the 2nd of 2014, and it was only

1 a year ago, but it seems like a lot longer than that to  
2 me. Among our group of colleagues here, I only had Mr.  
3 Stachow here with me, the other three weren't involved at  
4 the time. And, the character of the proceeding was rather  
5 different at that time. The Legislature had mandated that  
6 the Commission open this proceeding to examine the open  
7 question of "whether divestiture is in the public interest  
8 of PSNH customers?" There was no settlement agreement.  
9 The stay that had been sponsored by certain Settling  
10 Parties had not come through. And, the entire field of  
11 play looked rather different, in terms of the amount of  
12 time that we expected, as Staff, a unified Staff, to  
13 engage in discovery and develop evidence in the  
14 proceeding. And, also, we had to respond to certain  
15 arguments that were made at that prehearing conference  
16 that the La Capra report should be used as dispositive  
17 evidence.

18 And, in my advocacy, I recommended that  
19 it not be used as dispositive evidence, certainly not  
20 without revisiting the report. And, in general terms, the  
21 Company seemed to agree with my approach, and that was the  
22 understanding at the time. It was a long time ago. And,  
23 ultimately, once the Settling Parties had engaged in their  
24 negotiations and had proffered the Settlement Agreement

1 for the Commission's consideration, my own role and the  
2 role of Non-Advocate Staff, in general, was rather  
3 different than what it had been in October of 2014.

4 So, I just wanted to make that crystal  
5 clear that, when you read my entire statements provided at  
6 that prehearing conference, you'll see a rather different  
7 picture than promising a particular report for a  
8 particular purpose. That wasn't even contemplated at the  
9 time.

10 CHAIRMAN HONIGBERG: I appreciate that  
11 statement, Attorney Speidel. And, I would say that things  
12 have changed up on this side of the bench as well. And,  
13 the legislation that was passed, following the Settlement,  
14 did some significant things to the number of questions or  
15 the nature of the questions that the Commission has to  
16 answer at this time. And, back a year ago, the issue of  
17 divestiture was completely open, whether it was a good  
18 idea or a bad idea. I mean, the Commission was tasked  
19 with determining whether that made sense, and, if so, on  
20 what terms and when and what assets?

21 The Legislature, to a large degree,  
22 although not completely, has taken away the "whether" and  
23 the "what" questions, and left us with the "when" and the  
24 "how". So, that is a very different set of circumstances.

1 We also had a different cast of characters up here at this  
2 time -- at that time.

3 And, I feel like we've run a lot of  
4 these issues to ground at this point. It seems like,  
5 although there are people who wishes it were different,  
6 Staff -- Non-Settling Staff is making La Capra -- or, they  
7 are offering to have us, I guess, make La Capra available,  
8 under oath, to answer questions about what it did, with  
9 specific reference to the two topics that started this  
10 with the motion, and perhaps other things as well. And,  
11 to the extent that those topics can be shared with La  
12 Capra in advance, La Capra can perhaps be prepared to  
13 provide full information.

14 I mean, I guess one thing I'll circle  
15 back to, and this is going to be for all the Settling  
16 Parties, but, if you were to get La Capra today, and say  
17 "we want you to do an updated report, beyond what's in  
18 that draft", do you have any sense of how long that would  
19 take?

20 Mr. Sheehan, it looks like he's prepared  
21 to answer that question, if you're not, Ms. Ross.

22 MS. ROSS: I have no idea how long it  
23 would take, because I haven't spoken with La Capra. But  
24 let me just indicate that I think the questions that were

1 asked are pretty much what we would be asking. So, I  
2 think what we would be certainly, speaking only now for  
3 Tom and me, we would be happy if the Commission would  
4 accept the original 2014 report as an exhibit in this  
5 docket, and whatever the finalized version of this update  
6 is, and then provide whatever the Commission determines is  
7 an appropriate opportunity to build a record on those two  
8 pieces, since we now understand La Capra will not be a  
9 witness or at least isn't going to be sponsored as we  
10 originally thought, I think that gets us a long way to  
11 where we want to be.

12 CHAIRMAN HONIGBERG: Mr. Sheehan, you  
13 have now two things to respond to in there.

14 MR. SHEEHAN: We specifically asked  
15 Mr. Hahn, yesterday or the day before, "if they were asked  
16 to redo their 2014 report, how long would it take?" They  
17 had told us "three months" last summer. Yesterday, he  
18 said "At least three, maybe four or five." And, the costs  
19 would be roughly what he had -- actually, I'm not sure we  
20 talked about costs the other day, but I would assume it  
21 would be in the same neighborhood.

22 I'm not sure what the other point was.

23 CHAIRMAN HONIGBERG: The other point  
24 was -- it's implied in what Ms. Ross just said. Is that

1 draft going to be turned into something else? Is there  
2 going to be a final based on that draft or is that draft  
3 what it is?

4 MR. SHEEHAN: We got the -- the answer  
5 is "no". We hadn't asked -- we have not asked La Capra to  
6 finalize that. We got the report. It confirmed the value  
7 of the plants had not changed. It gave us a snapshot of  
8 the markets, what they were, and we were satisfied with  
9 that. And, we put it aside and moved to the other areas  
10 that we were focused on. So, no, we hadn't asked them to  
11 do that.

12 I don't know, if we were to ask Mr. Hahn  
13 today, "if he were to finalize that report, would there be  
14 any more than simply removing the draft stamp or not?" I  
15 don't know the answer to that question.

16 COMMISSIONER BAILEY: When did he do  
17 that draft?

18 MR. SHEEHAN: It's dated August 17, I  
19 believe.

20 COMMISSIONER BAILEY: So, before your  
21 testimony?

22 MR. SHEEHAN: Correct.

23 COMMISSIONER BAILEY: Okay. Thank you.

24 CHAIRMAN HONIGBERG: Mr. Boldt, you look

1       like you want to say something.

2                   MR. BOLDT:   Very briefly.

3                   *[Court reporter interruption.]*

4                   MR. BOLDT:   My apologies.

5                   CHAIRMAN HONIGBERG:   Off the record.

6                   *[Brief off-the-record discussion*  
7                   *ensued.]*

8                   MR. BOLDT:   My apologies.   I support the  
9       idea of having the original report in unredacted form and  
10      whatever the final version of the La Capra current update  
11      become an exhibit in this case, for whatever purpose, if  
12      it's, you know, whosever offering it.   My concern is, I  
13      was not involved for my clients in IR 13-020.   I only have  
14      the public version to date.   Now, I've signed off on the  
15      non-disclosure agreement for La Capra.   So, I would hope  
16      that that unredacted version of the original reports could  
17      be produced.   But there are some significant things,  
18      there's a change in which line items have value.   So that  
19      some of the hydros have gone down, and Newington has gone  
20      up.   And, so, certain things are different in the  
21      valuations performed by La Capra.

22                   Part of the discovery process I would  
23      hope we could have is, in giving requests over to  
24      Non-Settling Staff to forward over to La Capra, what are



1 the documents behind these? Not just in answer to a  
2 question. Because there are DCFs that are referenced,  
3 there are comparable sales that are referenced in all of  
4 these plant valuations that could have meaning, not only  
5 for the La Capra witness, but for the other witnesses that  
6 will take the stand.

7 CHAIRMAN HONIGBERG: Mr. Sheehan.

8 MR. SHEEHAN: I don't have a principled  
9 objection that I have. It just -- we will certainly  
10 forward along whatever is presented to us. There has been  
11 an issue with the La Capra report from day one over the  
12 author's willingness to share confidential material. And,  
13 so, I can't make any -- I'm not sure how that's going to  
14 be resolved. They have been reluctant to allow the  
15 confidential versions to be broadcast. And, we have to  
16 think through if we're going to file the confidential  
17 2014, how that's done, what process we have go to make  
18 sure his concerns are met.

19 That being said, we'll certainly  
20 cooperate as best we can to get the questions to them and  
21 get as many answers as we can.

22 CHAIRMAN HONIGBERG: And, I got to tell  
23 you, Mr. Boldt, that's not part, really, you're  
24 introducing some new material here. And, I mean, that

1       wasn't part of the motion that started this and got us  
2       here today. But I understand what you're saying, and I  
3       understand Mr. Sheehan's response. And, I think that's --  
4       to the extent that there becomes something to discuss  
5       regarding that, it will be presented at some future date.

6               Is there anything else anyone wants to  
7       say right now? What we're going to do -- I'll get to you,  
8       I just want to tell you what we're going to do, Mr. Aslin,  
9       we are going to take probably a ten-minute break, after I  
10      give people one last shot at talking. We're going to  
11      talk, and then, because we want to get this resolved for  
12      you today, we'll come back and tell you what we're going  
13      to do.

14             Mr. Aslin, you have something you want  
15      to say?

16             MR. ASLIN: Yes. Just a thought about  
17      the procedure that's being suggested here. Would it make  
18      more sense for the La Capra's original report and a  
19      finalized update to become their testimony, in essence,  
20      rather than come in as exhibits? I mean, if they're going  
21      to be a live witness at the hearing, prepared to talk  
22      about those reports, it seems to me that those reports  
23      could be part of their testimony, with follow-up questions  
24      at the tech session as proposed, rather than making it an

1 exhibit to I don't know whose testimony.

2 CHAIRMAN HONIGBERG: I mean, it would be  
3 an exhibit in the docket. It would become part of the  
4 record. And, it seems to me that, if it's their report,  
5 they pretty much own it. So, I don't think that -- I  
6 don't perceive that to be much of an issue.

7 Does anything else -- does anyone have  
8 anything else they want to offer before Commissioner  
9 Bailey and I leave the room? And, I will make sure that  
10 the four people on the phone get this last crack as well.

11 *[No verbal response]*

12 CHAIRMAN HONIGBERG: Ms. Geiger, do you  
13 have anything you want to say at this time?

14 MS. GEIGER: No. Thank you, Mr.  
15 Chairman.

16 CHAIRMAN HONIGBERG: Mr. Irwin, do you  
17 have anything you want to say at this time?

18 MR. IRWIN: No. Thank you, Mr.  
19 Chairman.

20 CHAIRMAN HONIGBERG: Mr. Fabish, do you  
21 have anything you want to say at this time?

22 MR. FABISH: No. Thank you, Mr.  
23 Chairman.

24 CHAIRMAN HONIGBERG: Mr. Cronin, do you

1 have anything you want to say at this time?

2 MR. CRONIN: No. Thank you, Mr.  
3 Chairman.

4 CHAIRMAN HONIGBERG: That's going to be  
5 a very boring page of the transcript. All right.  
6 Commissioner Bailey and I are going to take about a  
7 ten-minute break, and we will return.

8 (Recess taken at 1:30 p.m. and the  
9 hearing resumed at 1:58 p.m.)

10 CHAIRMAN HONIGBERG: Thank you all for  
11 your thoughtful comments on the issues that we have before  
12 us.

13 We are going to deny the Settling  
14 Staff's motion. We're going to allow a technical session  
15 along the lines of what was proposed by Non-Settling  
16 Staff, on a date for you all to decide makes the most  
17 sense. It feels like that's going to be at the end of  
18 this month, on one of the days when La Capra's witnesses  
19 are available -- or, La Capra's representatives are  
20 available, one day. The parties, to the extent that they  
21 want to, can submit questions or areas of inquiry. We  
22 would recommend that you agree on a date by which those  
23 requests are made. We are doing this with the  
24 understanding that La Capra will also have someone

1       available for the hearing.

2               We think those are the issues that were  
3       outstanding. We think that, if you all hang around a  
4       little bit after we leave, you'll be able to work out the  
5       specifics, that then can be confirmed, and a secretarial  
6       letter after you all are done. If, for some reason,  
7       you're not able to agree on some aspect of it, someone  
8       will let us know, and we'll help you out further.

9               Does anyone have any questions or  
10       further comments that they want to make at this time?

11              (No verbal response)

12              CHAIRMAN HONIGBERG: All right. Seeing  
13       none, thank you all. We are adjourned.

14              MR. BERSAK: Thank you.

15              **(Whereupon the hearing was adjourned at**  
16       **1:57 p.m.)**