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

Reptg. Clean Energy New Hampshire:
Chris Skoglund

Reptg. LISTEN Community Services:
Raymond Burke, Esq. *(N.H. Legal Asst.)*

Reptg. Residential Ratepayers:
Donald M. Kreis, Esq., Consumer Adv.
Julianne M. Desmet, Esq.
Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:
Paul B. Dexter, Esq.
Elizabeth Nixon, Dir./Electric Group
Jay Dudley, Electric Group
(Regulatory Support Division)

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P R O C E E D I N G

1
2 CHAIRMAN GOLDNER: Okay. Good
3 afternoon. At this conference, the Commission
4 launches IR 22-042, an Investigation of Energy
5 Efficiency Planning, Programming, and Evaluation
6 pursuant to the Order of Notice issued by the
7 Commission on August 10th, 2022. In that Order
8 of Notice, we identify that statutory authorities
9 establishing the Commission's independent
10 investigatory authority. These statutes include
11 RSA 365:5 and allied statutes.

12 I want to begin by allaying the
13 concerns of certain participants here today. The
14 Commission draws a clear line between its
15 adjudicative functions, which can determine the
16 legal rights, duties, or privileges of the
17 parties involved, and its investigatory
18 functions, which do not. The investigative
19 docket is not a contested case to determine the
20 legal rights, duties or privileges of anyone here
21 today. Nor are there any "parties" to this
22 docket in the sense that that word is used in
23 adjudicatory proceedings.

24 I want to expressly acknowledge the

1 requirements of RSA 374-F:3, IV-a. The Joint
2 Utilities, as program administrators, are
3 responsible for submitting the next triennial
4 plan to the Commission by July 1st, 2023. The
5 Commission, in turn, must issue its order by
6 approving or denying that plan on its merits by
7 November 30th, 2023. The purpose of this
8 investigation is to educate the Commission and
9 its advisors, as well as to engage stakeholders
10 in an open and collaborative process that is free
11 of certain procedural constraints that exist in
12 adjudicative dockets. The investigation will not
13 do any of the following: (1) frustrate the
14 development of the next triennial plan; (2)
15 result in any advisory opinion that we intend to
16 have incorporated in that plan; or (3) dictate
17 any new or modified inputs to the tests or
18 testing formulae that the Joint Utilities will
19 rely on in developing the next plan.

20 We have heard, loud and clear, the
21 feedback from advocates and regulated utilities
22 that, since the reorganization of the PUC into
23 two entities, you have found opportunities for
24 collaboration with the PUC lacking. The

1 Commission has launched a number of investigative
2 dockets in the past few months, the purpose of
3 which is to engage in an open exchange of ideas.
4 Among these, this docket is unique. The
5 Commission is charged with approving changes to
6 energy efficiency programming, a task that
7 requires us to have a technical understanding of
8 existing programming and models. This review
9 requires the Commission to ensure programming and
10 incentives are optimized to deliver ratepayer
11 savings, programming is appropriately prioritized
12 within customer classes, and policies related to
13 market barriers are addressed. This view -- the
14 review, this review, must be conducted within a
15 statutorily prescribed timeline. The Commission
16 intends to use these proceedings to deepen its
17 understanding of technical matters to ensure
18 that, once it is time for it to review the
19 proposals properly put before it, the Commission
20 can fulfill its statutorily required review
21 within the statutory timeframe.

22 Today, I will address some of the
23 concerns raised by participants in filings in
24 this matter. I note, as I did in another

1 investigation last week, that the Commission is a
2 creature of statute and derives its authority
3 from the statutes that created it. We have
4 already identified today, and in our Order of
5 Notice, the statutory authorities for the
6 Commission to conduct investigations. The
7 Commission, and any other administrative agency,
8 has functions beyond those prescribed by the
9 Administrative Procedures Act, or APA. If it
10 were true that agencies could only do those
11 things laid out in the APA, and the APA does not
12 outline procedures for investigations, then
13 neither the Commission, nor any other agency,
14 including the Department of Energy, could conduct
15 investigations. That simply is not the case.

16 Second, the APA prescribes how the
17 Commission must carry out certain functions.
18 Among them are adjudications and rulemaking.
19 Adjudications are prescribed whenever the legal
20 rights, duties or privileges of a party must be
21 determined after notice and hearing, RSA
22 541-A:1, IV. Rulemaking is required whenever the
23 Commission issues a statement of general
24 applicability that is binding on persons outside

1 the agency, RSA 541-A:1, XV. Neither is
2 happening in this docket. We, therefore, do not
3 see these provisions of the APA applying to this
4 docket.

5 Third, the APA contemplates many types
6 of procedures other than adjudications and
7 rulemaking. It discusses declaratory rulings,
8 for example, in RSA 541-A:16, II(b). It
9 contemplates that agencies will take action on
10 applications, petitions, or requests without
11 commencing adjudicative proceedings under RSA
12 541-A:29 and 29-a. It encourages informal
13 settlement of matters by non-adjudicative
14 processes, RSA 541-A:38. Perhaps most important,
15 in this docket, the APA requires that agencies
16 "make available to the public all written
17 statements of policy or interpretations, other
18 than rules, formulated or used by the agency in
19 the discharge of its functions." The report used
20 at the conclusion -- or, the report issued,
21 rather, at the conclusion of this docket is just
22 such a statement; informative but not binding.
23 It is expressly authorized by the APA independent
24 of the APA's adjudicative and rulemaking

1 provisions.

2 Fourth, we take seriously the
3 references made in the filings of the *Seacoast*
4 *Anti-Pollution League* case. This case instructs
5 the Commission to be cautious about its public
6 statements and not to prejudge the merits of any
7 current or future adjudication before us. This
8 directive from the Supreme Court is well taken,
9 and we do not intend to do anything prohibited by
10 *Seabrook Anti-Pollution League*. Our goal here is
11 to learn, not to judge. If anything that takes
12 place in this docket runs afoul of the *Seacoast*
13 *Anti-Pollution League*, the appropriate place to
14 raise that challenge will be in the current or
15 future docket that is alleged to be impacted.

16 And, finally, leaving aside the
17 Commission's new investigations launched in 2022,
18 we count 22 independent Commission investigations
19 launched on our authority to engage in such
20 investigations over the last nine years. We do
21 not see any successful claims within these
22 dockets that the Commission had no authority to
23 engage in these investigations. As a matter of
24 past practice, we do not see any concerns for the

1 process we intend to follow here.

2 Having addressed these points, I would
3 like to discuss the value of this docket to the
4 participants. Here, you have the opportunity to
5 highlight your priorities and concerns in an
6 information gathering forum, where it will be
7 objectively viewed, not negotiated away, and be
8 readily available to members of the public, the
9 legislature, and fellow participants in this
10 docket. It is also an opportunity to educate the
11 Commission on key issues, so the review process
12 in 2023 and beyond goes smoothly.

13 The legislature has set certain rates,
14 and thereby provided a budget for energy
15 efficiency programs. The legislature also
16 required the Commission to review proposed
17 program modifications with respect to their costs
18 and benefits. The Commission is committed to
19 implementing the legislature's mandate as
20 efficiently and effectively as possible.
21 Historically, Energy Efficiency programming in
22 New Hampshire has been complex, with high level
23 plans in the hundreds of pages and the details of
24 the programs in the thousands. We see this

1 investigative docket as a valuable avenue to
2 increase transparency and understanding of energy
3 efficiency programs to ensure that they meet the
4 state's policy goals.

5 The upcoming Triennium will be the
6 first full triennial plan following the passage
7 of HB 549. The utilities will be required to
8 file a plan under a new statute. The Commission
9 will be required to review that plan under the
10 new standards enumerated therein. This docket
11 presents an opportunity, after the closer of the
12 prior Triennial docket and before the opening of
13 the new one, to collaboratively engage in a
14 better understanding of the new lay of the land.

15 The Commission sees a number of
16 provisions of HB 549 as open questions. For
17 example, there is no statutory definition of the
18 term "cost-effective", nor of the term "market
19 barrier". The legislature established the
20 Granite State Test as the "primary" test, and the
21 Total Resource Cost Test as the "secondary" test,
22 but it is not clear what it means to have a
23 "primary" and "secondary" test. The statute goes
24 on to state that "benefit per unit cost" is only

1 one factor in considering whether the utilities
2 have prioritized program offerings appropriately.
3 What are the other factors and how should they be
4 weighed? How should the Commission consider
5 average ratepayers and non-ratepayers in the
6 allocation of program offerings not necessarily
7 addressed in HB 549, but that are intrinsic to
8 the understanding of benefits and costs? With
9 respect to the ongoing application of the GST and
10 TRC tests, are inputs and assumptions to be
11 updated to reflect current economic realities, or
12 forever frozen in time? It is important that all
13 stakeholders understand how changes are to be
14 proposed, discussed, and ultimately approved.

15 From the preliminary comments, we are
16 encouraged to see engagement in the goal of
17 information gathering, including the
18 recommendation that the Commission ask
19 stakeholders for ideas about additional reporting
20 that could be provided to track outcomes and
21 potential areas of improvement. To the extent
22 that anyone here has any such recommendations, we
23 want to hear them, and certainly -- and are
24 certainly open to asking more questions,

1 including the economic concept of social welfare.

2 This docket, and the information it
3 gathers, will not answer any policy questions.
4 We will reach no judgments, make no findings, and
5 issue no orders. These things can only happen in
6 an adjudicative docket and based upon evidence
7 presented. Rather, it will be an opportunity for
8 a collaborative exchange of ideas and
9 information, and your opportunity to share
10 knowledge and ultimately impact the final report.
11 It is our hope that this exchange will result in
12 the General Court's policies being implemented in
13 an efficient and expeditious manner. We
14 appreciate the valuable contributions of everyone
15 here in this inquiry.

16 As we do not have insight into the
17 stakeholder process at the EESE Board's EE
18 Committee, if there are particular deadlines in
19 this docket that need to be modified due to other
20 commitments, don't hesitate to inform us, we will
21 do our best to accommodate them.

22 At this time, I would like to
23 acknowledge the participants that have filed
24 letters of participation in this investigation in

1 alphabetical order. When I read off the list of
2 participants, if each participant here could say
3 "present", that would be very helpful.

4 So, beginning with Clean Energy New
5 Hampshire?

6 MR. SKOGLUND: Present.

7 CHAIRMAN GOLDNER: Thank you. The
8 Conversation Law Foundation?

9 *[No indication given.]*

10 CHAIRMAN GOLDNER: Okay. Hearing none.
11 Eversource Energy?

12 MS. CHIAVARA: Present.

13 CHAIRMAN GOLDNER: Thank you. Liberty
14 Utilities, which is both Granite State Electric
15 and EnergyNorth?

16 MR. SHEEHAN: Present.

17 CHAIRMAN GOLDNER: LISTEN Community
18 Services?

19 MR. BURKE: Present.

20 CHAIRMAN GOLDNER: The New Hampshire
21 Department of Energy?

22 MR. DEXTER: Present.

23 CHAIRMAN GOLDNER: The New Hampshire
24 Department of Environmental Services?

1 *[No indication given.]*

2 CHAIRMAN GOLDNER: Okay. Not present.

3 The New Hampshire Electric Cooperative?

4 MS. GEIGER: Present.

5 CHAIRMAN GOLDNER: The Office of

6 Consumer Advocate?

7 MR. KREIS: Present.

8 CHAIRMAN GOLDNER: Unitil Energy

9 Systems, for Unitil electric and Northern gas?

10 MR. FOSSUM: Present.

11 CHAIRMAN GOLDNER: Have I missed any

12 participants here today?

13 *[No indication given.]*

14 CHAIRMAN GOLDNER: Okay. Seeing none.

15 The Commission has greatly appreciated

16 the thoughtful comments made in advance of today

17 by many of the participants in this

18 investigation, and most especially the Joint

19 Utilities and LISTEN. At this time, I would like

20 to invite participants who would like to do so to

21 make opening remarks on the record today, up to

22 ten minutes each, in the same alphabetical order.

23 Please introduce yourself, and state your name

24 and title for the record, if you do provide an

1 opening statement.

2 So, we'll begin again with Clean Energy
3 New Hampshire?

4 MR. SKOGLUND: There's no comment at
5 this time.

6 CHAIRMAN GOLDNER: Okay. Conservation
7 Law Foundation is not here. Eversource Energy?

8 MS. CHIAVARA: Yes. Thank you,
9 Commissioner -- or, Chair Goldner. Jessica
10 Chiavara, counsel here on behalf of Public
11 Service Company of New Hampshire, doing business
12 as Eversource Energy. And I have some brief
13 remarks to make on behalf of the New Hampshire
14 electric and gas utilities, as well as the New
15 Hampshire Electric Cooperative.

16 In Order Number 26,698, issued Monday,
17 regarding the Joint Utilities' Motion for
18 Rehearing of the Order of Notice for this docket,
19 the Commission stated that it "welcomes further
20 elaboration of arguments relating to the scope
21 and procedural schedule in this investigation so
22 that the investigation does not impede or
23 frustrate the development of the next triennial
24 plan."

1 The Utilities appreciate that, despite
2 the denial of the Motion for Rehearing, the
3 Commission is mindful of the undertaking required
4 to develop the triennial energy efficiency plan,
5 and wants to ensure that this investigation does
6 nothing to hinder that effort. The development
7 of a successful energy efficiency plan for 2024
8 to 2026 is an objective that we all share.

9 Ensuring the continued success of the
10 NHSaves Programs is a critical priority for the
11 Utilities, just as the benefits provided by the
12 NHSaves Programs are of critical importance for
13 New Hampshire residents and businesses in the
14 face of unprecedented energy prices.

15 With this common purpose in mind, the
16 Utilities ask that, if this investigation is to
17 continue, the scope should stay narrowly tailored
18 to targeted inquires and information sharing
19 regarding the reporting requirements established
20 in Order Number 26,621, and the eight topics
21 listed in the Order of Notice only as they apply
22 to those reports.

23 The Utilities want the Commission to be
24 well informed on the many complex planning

1 elements that comprise the triennial plans, so
2 that it has sufficient background knowledge and
3 information to review and render judgment on the
4 2024-2026 Triennial Plan when it is submitted for
5 Commission review and approval next year.

6 But, as discussed in the Motion for
7 Rehearing and the comments filed to this docket,
8 the triennial planning process is a formidably
9 time-consuming and labor-intensive effort that is
10 executed with finite resources. Each of the
11 eight topics listed in the Order of Notice is
12 sufficiently complex as to warrant its own
13 individual investigation, which I am not
14 suggesting that we do here. Instead, the
15 Utilities respectfully request that, rather than
16 broad-based inquiry into these topics and audit
17 level review of data, the focus remain
18 concentrated on the foundational information
19 necessary for the Commission to impartially
20 understand and evaluate the Triennial Plan when
21 it is filed, to ensure that it is just,
22 reasonable, and in the public interest.

23 By refining the scope of the inquiry in
24 this way, the Utilities hope that the additional

1 administrative effort created by the
2 investigation would remain manageable in the face
3 of existing responsibilities entailed with the
4 delivery of the current programming period and
5 the production of the 2024-2026 Plan.

6 To this end, the Utilities note that
7 there is a prolific amount of information already
8 available as the result of many years of work
9 conducted by various in-depth stakeholder and
10 working group processes that were conducted with
11 Commission oversight. However, without firsthand
12 knowledge of the development of this library of
13 information that now exists, the sheer volume of
14 information and data can be overwhelming, and not
15 necessarily helpful without context and guidance.

16 The Utilities would welcome the
17 opportunity to inform the Commission about these
18 existing resources, and to offer guidance and
19 context to the Commission and its Staff in
20 navigating those resources, as they offer a
21 wealth of insight to the topic areas the
22 Commission wishes to explore.

23 Additionally, it should also be
24 mentioned that, under RSA 125-0:5, Subpart a, the

1 PUC Chair, or a designee of the Chair, has a
2 dedicated seat on the Energy Efficiency &
3 Sustainable Energy Board, or "EESE Board", that
4 has been vacant for some time. The EESE Board
5 is another invaluable source of information, not
6 only for current programming, but also for
7 information on the stakeholder process that's
8 actively underway for the 2024-2026 Plan. In
9 fact, the EESE Board currently has a subcommittee
10 dedicated to the plan's development, which is, as
11 I mentioned, well underway, and routinely
12 provides updates to the broader EESE Board.

13 The Commission could likely satisfy
14 much of this inquiry with informational resources
15 already developed, coupled with attendance and
16 participation in the monthly EESE Board meetings.
17 However, regarding inquiry into the 2024-2026
18 planning process itself, the Utilities maintain
19 that such an inquiry is not appropriate for this
20 proceeding. HB 549 is clear in its language that
21 the Utilities produce the plans, and the
22 Commission reviews and approves them.

23 Investigating the planning process of
24 the 2024 to 2026 Plan, as suggested in the Order

1 of Notice, is not reviewing or facilitating
2 review, but rather participating and influencing
3 that planning process.

4 On a similar note, the Utilities
5 recommend that this proceeding be contained to
6 information gathering only, and respectfully
7 request that the Commission refrain from issuing
8 any report or guidance at the culmination of this
9 docket. Even if the intent is to be non-binding,
10 any report or guidance of the Commission on these
11 topics would have the effect of influencing the
12 planning process, as it wouldn't be advised for
13 regulated entities to disregard guidance from
14 regulators. Anything issued by the Commission
15 based on information gathered in this proceeding
16 essentially puts the Commission's thumb on the
17 scale of an active planning process that will be
18 the subject of future adjudication before the
19 Commission. Such actions could be interpreted as
20 the Commission prejudging certain plan aspects,
21 planning elements or programs that are the
22 subject of that adjudication, which would
23 compromise the Commission's impartiality by
24 determining the outcome prior to the hearing and

1 decision, which both the United States and New
2 Hampshire Supreme Courts have cautioned against
3 as violating due process. To ensure the rights,
4 duties, and obligations of the Utilities, as
5 mandatory participants to this proceeding, are
6 not implicated by this investigation. The
7 Utilities again recommend that this proceeding go
8 no further than sharing information in the
9 pursuit of a greater understanding of the
10 underpinnings of the NHSaves triennial plans.

11 Thank you.

12 CHAIRMAN GOLDNER: Will Liberty be
13 adding anything or is everyone being represented
14 by Eversource?

15 MR. SHEEHAN: Nothing further. We
16 support what Ms. Chiavara just read.

17 CHAIRMAN GOLDNER: Okay. Thank you.
18 LISTEN Community Services?

19 MR. BURKE: Thank you, Chairman
20 Goldner. Raymond Burke, from New Hampshire Legal
21 Assistance, representing LISTEN Community
22 Services in this docket.

23 I think just if I can make a few short
24 comments to add to the prefiled comments that we

1 submitted.

2 I think, if this docket moves forward,
3 it would be helpful to identify issues that --
4 or, top topics the Commission wants to explore
5 that are better explored before the next plan is
6 filed, versus topics that perhaps lend themselves
7 to a longer term discussion. There are issues or
8 topics we could raise for further investigation
9 in our state that don't necessarily need to be
10 fully resolved before the next plan is filed.

11 For example, we could explore what
12 other states like Massachusetts and Minnesota,
13 are doing to expand existing energy efficiency
14 programs to renters. But that, as I understand
15 it, some of that work is ongoing. And, so, it
16 would be a longer term horizon to see what the
17 results of those initiatives are.

18 In that same vein, some national
19 organizations have started to conduct research on
20 incentives to encourage landlord participation in
21 energy efficiency programs, and are trying to
22 develop protocols for approaching landlords with
23 energy efficiency, you know, to engage them and
24 get them to enroll in energy efficiency programs

1 to benefit their low-income tenants.

2 There are also efforts underway that
3 we're aware of to determine how to better
4 leverage other funding sources to reduce the
5 number of low-income homes that have to be turned
6 away from the Energy Efficiency Program.
7 Oftentimes, a pre-existing health and safety
8 issue, such as mold, leaky roofs, or asbestos,
9 can lead to deferrals of program services,
10 because the work can't be completely safely or
11 effectively.

12 We could look at what's being done in
13 those other states and try to learn from them,
14 and see what opportunities we might have to build
15 on those, or pursue those opportunities for
16 funding and initiatives here. But, again, these
17 are topics that don't necessarily need to be
18 resolved or addressed before the next three-year
19 plan is filed.

20 And I think we mentioned, alluded to in
21 our comments, there may be opportunities to
22 explore other data that we can gather over time,
23 to better understand how we're serving low-income
24 households throughout the state. But, also, we

1 would suggest that that is something, too, that
2 lends itself more to a longer term discussion,
3 and doesn't necessarily need to be resolved
4 before the next plan is filed.

5 Thank you.

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

8 MR. DEXTER: Thank you, Chairman
9 Goldner, Commissioner.

10 The first thing I'd like to do is refer
11 the Commission to the comments that the
12 Department of Energy submitted on September 30th.
13 And I just want to make a few points here in
14 addition, not "in addition", but highlighting
15 what we said in those comments.

16 The Department is generally supportive
17 of the Commission learning more about pertinent
18 energy efficiency topics. However, this docket
19 does raise two primary concerns.

20 The first concern is that the docket
21 could be used for parties to advocate for
22 specific elements to be included in the upcoming
23 2024-2026 Plan, or the PUC can use the docket to
24 signal what it believes might be acceptable or

1 likely to be approved in the 2024-2026 Plan.

2 The Department of Energy believes
3 firmly that this plan that's upcoming needs to be
4 evaluated after it's filed on July 1st 2023, on
5 its merits, in a docket, where all parties have
6 an opportunity to be heard with due process
7 rights.

8 The Department greatly appreciates the
9 Commission's opening comments on this concern.
10 And, in listening to the comments, there were two
11 words that jumped out that give the Department
12 pause.

13 The first has to do with a "report".
14 It's hard to imagine off-the-cuff, because we're
15 just reacting to the Commission's comments,
16 however, a report issued at the end of an
17 investigative proceeding would not be instructive
18 or influential. Maybe we need to keep an open
19 mind on that. But it would seem that a report,
20 at the end of an investigatory docket, would not
21 be appropriate or even necessary, if, in fact,
22 the purpose of the proceeding is for education of
23 the Commission and its technical staff.

24 The second word that caught the

1 Department's attention was "collaborate". And,
2 if I understand the meaning of "collaboration",
3 that would seem to indicate working together
4 towards a goal. If the goal is education of the
5 Commission and its technical staff, as I said,
6 the Department greatly supports that. It is a
7 very complex topic, energy efficiency. But, if
8 the goal is to guide the development of the
9 2024-2026 Plan, we don't believe that's an
10 appropriate use of the IR docket.

11 The second concern that the Department
12 highlighted in the September 30th letter, which
13 was also touched upon by the Commission in its
14 opening statements and by the utilities, is the
15 notion of "resources and time". The plan is to
16 be filed eight months from now, roughly. And
17 it's a three-year plan, as the Commission
18 indicated, the first one being submitted since HB
19 549 was enacted. And, from what we understand,
20 it will be the first plan, where the Utilities
21 will not be relying significantly on lighting
22 measures in the residential and commercial
23 offerings. And, therefore, the Utilities are
24 tasked with developing a plan that meets all the

1 other goals that have been in place for a long
2 time, and the parameters of HB 549, without
3 relying on their primary savings measure that's
4 been used in past years. So, it's going to be a
5 complex undertaking is what I'm trying to say.
6 And we could easily see that an intensive
7 investigatory docket could divert resources.

8 Now, having said that, the Department
9 attended the recent technical session on the
10 benefit/cost model workings. And we believe that
11 seemed to serve the purpose of educating the
12 stakeholders, including the Commission and its
13 technical staff. We believe that that session
14 was not used to advocate or to dictate in any
15 sense. And, you know, and, in that sense, that
16 seemed to be a proper means of investigation and
17 education.

18 Admittedly, the Department does not
19 know how much time the Utilities spent preparing
20 for that session. It was a useful presentation,
21 and, not surprisingly, well done. But, again, we
22 don't know how much time the Utilities took in
23 order to show up and educate all of us the way
24 they did. That is a concern of the Department,

1 because it is our belief that the focus over the
2 next eight months, eight and a half months,
3 should be towards developing the new plan.

4 That said, maybe focused technical
5 sessions, limited in number, more at this time,
6 and fewer as the filing date approaches, could be
7 a useful tool and a good use of this docket.

8 And, lastly, the Department echoes the
9 Utilities, when they point to the workings of, in
10 particular, the two working groups that were
11 undertaken over the last four or five years, I
12 don't remember exactly. The Benefit-Cost Test
13 Working Group and the Performance Incentive
14 Working Group met extensively over a two-year
15 period, and did issue reports that were
16 incorporated into subsequent plans. All of that
17 information is librated on the Commission's
18 website. And we welcome the Commission to review
19 all of that information, and that might be an
20 appropriate topic for tech sessions, if there are
21 questions about where those working groups ended,
22 and the process and the information that was used
23 to come up with the recommendations that were
24 eventually embodied.

1 So, with that, that concludes the
2 Department's comments.

3 CHAIRMAN GOLDNER: Thank you. We'll
4 move to the New Hampshire Electric Cooperative.

5 MS. GEIGER: Yes. Thank you, Mr.
6 Chairman. The Co-op does not have anything
7 further to add to the comments that Attorney
8 Chiavara delivered on behalf of all of the
9 Utilities. Thank you.

10 CHAIRMAN GOLDNER: Thank you. The
11 Office of Consumer Advocate.

12 MR. KREIS: Thank you very much, Mr.
13 Chairman.

14 I suppose that, in the interest of not
15 saying anything here that might come across to
16 anyone, much less the Commission, as, I think the
17 word I'm looking for is "inflammatory", I'm going
18 to say very little here. But I do feel obliged
19 to make a few little comments.

20 One, I agree with everything I think I
21 heard Ms. Chiavara and Mr. Dexter lay out. So,
22 the Commission should assume that we share the
23 perspectives that they laid out.

24 I want to review very carefully the

1 written transcript of the statement that the
2 Chairman made here earlier. And I want to
3 consider or at least reserve the right to respond
4 in writing to some of those statements, which
5 sounded a lot to me like legal analysis that,
6 while perhaps not binding on anyone, will, as Mr.
7 Dexter suggested, likely be very influential.

8 In particular, I heard or took note of
9 a couple of different things than Mr. Dexter did.
10 I heard the Chairman say that he believes that
11 there is no statutory definition of
12 "cost-effective", and that it is not clear what
13 it means to have a "primary" and a "secondary"
14 cost-effectiveness test.

15 As the Consumer Advocate, I know that I
16 have endeavored on at least one occasion to
17 explain exactly what I think those terms mean,
18 and exactly what I think the legislature thought
19 that those terms mean. And I appreciate that the
20 Commission might not agree with the way that I
21 have interpreted those things, as somebody who
22 was directly involved in the process of creating
23 the language in question. But lack of agreement
24 with me is not the same thing as lack of clarity.

1 I will concede that there is a certain
2 degree of non-clarity around what the phrase
3 "market barrier" means, and I think it might be
4 useful for us to try to build some consensus
5 around that.

6 In his remarks, the Chairman mentioned
7 that it might be "useful" or "helpful" or
8 "advantageous" for parties to participate here in
9 this forum, where their interests won't be, and I
10 think the phrase that he used was "not negotiated
11 away". And I would just like to say, as somebody
12 who has been involved in every single minute of
13 any negotiations about energy efficiency that
14 have occurred here in New Hampshire, since I
15 became Consumer Advocate in February of 2016,
16 that I have never observed anything being
17 inappropriately negotiated away. I've never seen
18 anybody intimidated out of asserting their
19 positions vigorously. I have seen every single
20 party, including the Office of the Consumer
21 Advocate, assert itself competently and capably.
22 Every single person who has ever been involved
23 has been a gifted and skillful negotiator. And
24 the results presented to the Commission have been

1 just, reasonable, and in the public interest.
2 And just because the Commission doesn't like what
3 stakeholders agree to doesn't mean that anybody
4 has negotiated away their interests or their
5 rights.

6 The last thing I want to say, and this
7 resonates quite well with what Mr. Dexter said on
8 behalf of the Department of Energy, I'm going to
9 say a little more plainly. Having looked around
10 the room, with the exception of Mr. Skoglund, who
11 is here representing an NGO, or a nonprofit
12 organization, the costs associated with every
13 single person in this room are ultimately a bill
14 that will be sent to ratepayers. There is
15 literally a room full of meters running here.
16 So, regardless of the propriety or the legality
17 or the usefulness or anything else about what
18 we're doing here, what the Commission wants us to
19 do here, or what we end up doing here, there is
20 ratepayer money at stake with all of this, and we
21 should not fritter it away. We should be very
22 careful about how we spend it.

23 That's all I have to say.

24 CHAIRMAN GOLDNER: Could I ask you, Mr.

1 Kreis, in my opening statement, and I realize it
2 was verbal, and not written, so maybe hard to
3 follow, but I asked for a statute -- if there was
4 a statutory definition of the term
5 "cost-effective" or "market barriers", are you
6 aware of any statutory definition?

7 MR. KREIS: I agree that those terms
8 are not explicitly defined in a list of
9 definitions that was included as a part of House
10 Bill 549.

11 But, as all of the attorneys in this
12 room I think would readily agree, terms in
13 statutes can be understood as crystal clear under
14 the applicable canons of statutory construction,
15 without the General Court having done us the
16 courtesy of providing what it describes as a
17 definition.

18 CHAIRMAN GOLDNER: Okay. Thank you,
19 Mr. Kreis. And I assume that Unitil will defer
20 to Eversource's opening statement?

21 MR. FOSSUM: That assumption is
22 correct.

23 CHAIRMAN GOLDNER: Thank you. Okay.
24 Well, so, thank you for all of your statements.

1 The Commission would like to give a brief
2 preview, based on our current understanding of
3 how we view the investigation proceeding. As
4 we've already done, we do expect a number of data
5 requests will be issued by the Commission, that
6 additional Commission-attended technical sessions
7 may also be held. We also found the initial
8 session helpful. And, again, you know, in terms
9 of educating the Commission on a very complex
10 topic, I hope you'll appreciate our statutory
11 requirements. Responses to data requests will
12 continue to be transparently provided to the
13 entire participant group in this docket and
14 posted to the Commission website.

15 We anticipate concluding this docket
16 with a report highlighting the key issues
17 identified by the participants and the
18 Commission, and concluding this investigation
19 well in advance of the Joint Utilities' filing of
20 the next triennial plan.

21 We also welcome any -- the filing of
22 further written comments, or white papers, by
23 participants or interested members of the general
24 public at any time.

1 Commissioner Chattopadhyay, is there
2 anything you would like to add?

3 CMSR. CHATTOPADHYAY: Just based on
4 what I'm hearing, I think it would be helpful, to
5 me at least, understand, I hear there's a concern
6 about a report being produced at the end. Would
7 sort of collecting the information that is
8 gleaned out of this process, and having a report
9 that provides all of that information, without
10 weighing on any of that, will that be a problem,
11 if that's part of the report?

12 So, I just wanted to understand from --
13 I think I heard Eversource speak to that. So,
14 I'm curious what the reaction is.

15 MR. FOSSUM: Well, while they're
16 conferring, I suppose -- this is Matthew Fossum,
17 with Unitil. And I suppose the answer to that
18 very much depends on what it is that the
19 Commission's vision of the report is? And I
20 guess, even given the description that you've
21 provided, if it's merely "We opened the docket
22 and collected the following", I'm not certain why
23 that would need to be a report at all.

24 To the extent that there are questions

1 asked and answers provided, they're posted to the
2 docket and publicly available. Having a report
3 that simply points back to them seems to be an
4 unnecessary duplication.

5 A report that goes beyond that, and
6 beyond merely reciting the information that was
7 provided, I think very much risks the possibility
8 of editorializing on that information, making
9 conclusions from the information, and doing the
10 very sorts of things that a number of parties
11 here have indicated would be troublesome.

12 And, in fact, getting back to the
13 Chairman's opening statements, in particular
14 regarding the issues under *Seacoast*
15 *Anti-Pollution League*, I think that would very
16 much risk the possibility of running afoul of the
17 concerns of that case and that precedent.

18 So, I don't know that what I just said
19 elaborates in any meaningful way on the comments
20 you've already heard. But, certainly, if there
21 is a "report" of any kind, I personally have some
22 concern about what that report might mean, and
23 what it might do, whether intended or not.

24 CMSR. CHATTOPADHYAY: Thank you. I

1 think that's all I have for now. I'll have to
2 process that as well.

3 MR. KREIS: Well, there might be other
4 parties who might have something to say in
5 response to that question.

6 CMSR. CHATTOPADHYAY: Please.

7 MR. KREIS: Well, I can say, on behalf
8 of the Office of the Consumer Advocate, that I
9 share the concerns that Mr. Fossum just laid out.
10 The Chairman, rather helpfully I thought, put the
11 *Seacoast Anti-Pollution League* case in its proper
12 context. And, just to be clear to everybody, the
13 *Seacoast Anti-Pollution League* case teaches that
14 it is very important, in fact, essential for the
15 members of the Commission not to prejudge issues
16 that are presented to them via an adjudicative
17 proceeding. And, as the Chairman pointed out,
18 the time for evaluating whether or not that has
19 occurred is when that adjudicative proceeding
20 commences, rather than before it.

21 And, so, I guess what I would say to
22 the Commission is, you can put out whatever you
23 want, but you do it at your peril. And you risk,
24 I think, some party, and not necessarily the OCA,

1 popping up and saying "Wait a minute. You know,
2 you are prejudging issues. And, therefore, you
3 are now disqualified from adjudicating them."

4 I would think that is an outcome the
5 Commission would want to be very, very, very
6 careful to avoid, especially in a
7 high-visibility, contentious realm, like
8 ratepayer-funded energy efficiency.

9 CHAIRMAN GOLDNER: Any other comments?

10 MR. SHEEHAN: I can articulate, this is
11 Mike Sheehan, in the back, from Liberty. I can
12 maybe say the same thing slightly differently.

13 The way we see this docket, we all
14 appreciate the problems or issues, if you will,
15 the Commission has in getting information, as
16 compared to the prior way things were run. And
17 we all appreciate that, and understand that you
18 don't have access to the same people, in the same
19 format as you had before. So, I see a docket
20 like this, and the best use of it is really to
21 educate you folks, and, of course, anyone in the
22 room who is tagging along for the ride.

23 So, as I think our opening statement
24 said, let's answer questions, let's have those

1 kinds of tech sessions like we had the other day.
2 And, at the end, you say "Thank you. That was
3 helpful. We're now ready to dive into the next
4 docket."

5 I think that would be, in my view, a
6 way to think of this docket.

7 CHAIRMAN GOLDNER: Thank you, Attorney
8 Sheehan.

9 Anyone else? I know, Attorney
10 Chiavara, you were --

11 MS. CHIAVARA: Yes. I'm sorry.

12 CHAIRMAN GOLDNER: -- contemplating
13 saying something earlier.

14 MS. CHIAVARA: Attorney Sheehan and
15 Attorney Fossum covered it. That's more or less
16 what I was going to say.

17 CHAIRMAN GOLDNER: Thank you. Yes,
18 sir, Mr. Burke.

19 MR. BURKE: Thanks, Chairman Goldner.
20 Just a brief comment. I think I agree with
21 everything that's already been said.

22 But I'll just also note that, the last
23 energy efficiency investigation docket that I can
24 recall is IR 15-072. And I don't -- there was no

1 summary report issued at the closing of that.

2 So, doing what others have suggested
3 would be consistent with past precedent. There
4 was, I think if I remember correctly, just
5 skimming the docket here, the Commission -- there
6 was a straw proposal filed at the beginning. The
7 Commission asked for comments. And then, the
8 Commission just took those comments under
9 advisement, and then that led to opening a docket
10 down the road.

11 So, just wanted to note the past
12 precedent of that energy efficiency docket.

13 CHAIRMAN GOLDNER: Okay. Thank you.
14 Yes, we counted 22 different dockets launched in
15 the last nine years. And I think it's possible
16 that they all ended differently. So, that's a
17 point well taken.

18 Mr. Dexter.

19 MR. DEXTER: Yes. I wanted to comment
20 more specifically on Commissioner Chattopadhyay's
21 suggestion. Because, if I understood what you
22 said, Commissioner, to me, that wouldn't
23 constitute a "report".

24 The Department of Energy is supportive,

1 certainly, of any information that comes through
2 this proceeding being public and posted, you
3 know, in a Commission website or docket, which I
4 assume it will be.

5 So, the premise, I think, of your
6 question was "would a report that collected all
7 the information be acceptable to the Department?"
8 That would be acceptable. I think it's actually
9 encouraged. In other words, if there are data
10 responses, and if there's, you know, any
11 information that's exchanged between the Parties,
12 that should be compiled and available.

13 But I don't think that's a report. I
14 would call it something else.

15 CMSR. CHATTOPADHYAY: That is why I'm
16 not a lawyer. To me, for example, right now,
17 there are issues that I -- when I look at the
18 statute, and when I look at the material, there
19 are things that I don't fully understand. So, if
20 I'm going to ask questions and get -- and gain
21 more transparency, more understanding, all of
22 that, if the end product is that we sort of -- we
23 have collected more information that helps us,
24 and simply just reported those. And, so, I'm

1 using the word "report".

2 But I really don't want to opine at
3 this stage. I mean, that's what I wanted to, you
4 know, clarify.

5 So, I think what you're saying is,
6 maybe the term "report" is confusing, but the
7 essence of what I was trying to get at would
8 still be part of the mix.

9 MR. DEXTER: Yes. The Department has
10 no objection to the Commission compiling
11 information and making that information
12 available, to the public, as well as to the
13 participants in the IR.

14 CHAIRMAN GOLDNER: Okay. I think
15 that's our intention, in compliance with the APA,
16 that was at Number 3 that I had highlighted in my
17 opening statement, was that's our intention is to
18 sort of -- maybe "compile" is a better word than
19 "report". So, point well taken.

20 Commissioner Chattopadhyay.

21 CMSR. CHATTOPADHYAY: Again, I may have
22 misheard, but there was a discussion about the
23 EESE Board, and there being a spot for the "PUC
24 Chair", is that what you meant?

1 MS. CHIAVARA: Yes.

2 CMSR. CHATTOPADHYAY: And do you think
3 that, in the current structure, it is
4 appropriate? I'm an economist. I'm just asking.
5 So, give me a sense.

6 MS. CHIAVARA: Sure. Yes. It's
7 provided by statute. So, the Chair -- the PUC
8 Chair has a seat on the Board, pursuant to RSA
9 125-0:5, Subpart a, II.

10 CMSR. CHATTOPADHYAY: And I don't
11 expect anyone will respond and explain things to
12 me, because you're not sort of my legal authority
13 here. But that begs the question, you know, how
14 can the PUC Chair be viewed unbiased, when being,
15 you know, in that Board?

16 MS. CHIAVARA: Sure.

17 CMSR. CHATTOPADHYAY: And, again, take
18 this as an outsider comment, because I don't know
19 the full process.

20 MS. CHIAVARA: And it's a fair
21 question.

22 I think, to maintain that perception of
23 propriety, it's probably, if I were to offer my
24 opinion, for what it's worth, it would probably

1 be best that the Chair, or the designee, whoever
2 takes that seat, go in more or less a listening
3 mode and an information-gathering mode, and, much
4 like this investigation, use it as an educational
5 opportunity.

6 CMSR. CHATTOPADHYAY: Thank you.

7 CHAIRMAN GOLDNER: Mr. Kreis next, and
8 then Mr. Skoglund.

9 MR. KREIS: You could tell that I was
10 making the sort of face that would say "I want to
11 say something."

12 So, I, too, am not counsel to the
13 Commission. But I used to be. And I even used
14 to be counsel to Commissioner Chattopadhyay. So,
15 in that spirit, I will say that I don't think
16 anybody could abrade the Commission for doing
17 what it has been told it probably should do by
18 statute, and the Commission -- the Chairman does
19 have a seat on the EESE Board.

20 If I were the legal advisor to the
21 Chairman, I would tell him that probably the best
22 thing to do would be to send in a designee. And
23 there are any number of people on the
24 Commission's Staff who would be able to discharge

1 that responsibility quite ably.

2 I guess the reason I would be
3 comfortable with that is that the Commission
4 routinely did stuff like that in its prior guise.
5 And the Commission, internally, was very careful
6 about not allowing any outside contacts of its
7 employees to compromise a commissioner's ability
8 to decide cases, consistent with the law and the
9 requirements of due process. And I guess that
10 some -- something that hasn't changed is the
11 appropriateness for all of us on the outside of
12 the Commission to assume that the Commission
13 continues to do that.

14 That said, you know, it's possible that
15 one might be able to convince the General Court
16 that having the PUC itself have a seat on the
17 EESE Board isn't appropriate anymore. But, until
18 the legislature does that, I think it would be
19 perfectly appropriate for the PUC to send one of
20 its employees in as its designee.

21 CHAIRMAN GOLDNER: So, I'd just like to
22 clarify with everyone. Would anyone object to
23 that in this room?

24 *[Multiple indications in the negative.]*

1 CHAIRMAN GOLDNER: I'm seeing -- for
2 the court reporter's benefit, I'm seeing all
3 "noes".

4 MR. SHEEHAN: Well, I could -- this is
5 Mike Sheehan. I could just add that the statute
6 that has the "PUC" listed as a seat was amended
7 as part of the divide, because number two is the
8 "Commissioner of DOE, or designee". So, there
9 was -- you could read an explicit intent that
10 both are to sit on the EESE Board.

11 CHAIRMAN GOLDNER: I'm sorry, Mr.
12 Sheehan, say again?

13 MR. SHEEHAN: You could read that, by
14 expressly adding "DOE", and not removing "PUC",
15 there was an express intent that both are fully
16 able to sit on the EESE Board.

17 CHAIRMAN GOLDNER: Okay. Mr. Dexter,
18 any thoughts on that?

19 MR. DEXTER: No, I don't have any. I
20 don't have anything to add. Thanks.

21 CHAIRMAN GOLDNER: Okay. Thank you.
22 I'm sorry, Mr. Skoglund, you raised your hand
23 twice, and I missed you both times.

24 MR. SKOGLUND: No, that's quite all

1 right. And I appreciate Attorney Wind catching
2 my eye.

3 And just to finish up on this, Attorney
4 Burke and myself are the co-chairs of the EE
5 Committee. And, so, we do provide updates at the
6 EESE Board on what we are working on during the
7 energy efficiency planning process. So, that
8 would be one way for the Commission, if they're
9 attending, to hear about what's going on, without
10 necessarily attending the EE Committee, which
11 would -- could have a chilling effect on the
12 openness of conversation.

13 But, to circle back to our previous
14 conversation, and just kind of taking a page from
15 the "Lean playbook", and not being an attorney,
16 but asking, for clarity from everyone else, when
17 we're talking about a "report", in both the
18 investigation of I think it was 22-004, which was
19 the EV rates, that resulted in a report on Staff
20 recommendations. But, then, in a much longer IR
21 15-, I think it was 576, the -- or, was it 296?
22 The Grid Modernization, that actually ended with
23 guidance in its final order.

24 And, so, this is where we are clearly

1 hearing people do not -- that would be
2 inadvisable. Is that what I'm hearing?

3 CHAIRMAN GOLDNER: Mr. Kreis.

4 MR. KREIS: Well, I'm glad Mr. Skoglund
5 mentioned the Grid Modernization investigative
6 docket. And I think, I'm really bad at docket
7 numbers, I think that was 15-296, if I'm not
8 mistaken? Yes.

9 So, I would suggest, I'm not really
10 arguing about that docket, but I would suggest
11 that the Commission take a look at it, because
12 that docket had an interesting arc. There was
13 the Grid Mod. Working Group phase. And, in that
14 phase, the Commission didn't issue a report. The
15 Grid Modernization Working Group issued a report,
16 and then the Commission Staff took two years, but
17 then issued its own response to that report.

18 And, at that point, I decided that what
19 was going on looked a lot to me like
20 adjudication. So, I had two experts provide the
21 Commission with testimony. And I said to the
22 Commission, quite explicitly at the time, "This
23 is an adjudicative proceeding for all intents and
24 purposes, please treat it that way." And the

1 Commission said "No, we're not going to do that."

2 And then, the Commission put out an
3 order that one of the state's utilities in
4 particular really didn't like. And, so, it filed
5 a rehearing motion saying "Wait a minute. You
6 issued an order that's binding on a bunch of
7 people, but you didn't adjudicate." Well, they
8 waived that argument, because I made it, and they
9 acceded. And then, all of a sudden they got an
10 order they didn't like, and then they popped up
11 and said "Oops, should have adjudicated."

12 And I think most of those questions
13 ended up, they were raised in that docket, but
14 they weren't resolved in that docket. And, since
15 the Commission has taken the time, I think
16 usefully, to inventory the totality of
17 investigative dockets that the Commission has
18 opened in recent history, I guess, or maybe ever,
19 I think that one in particular is relevant to the
20 question of how to do these things right.
21 Because the Commission clearly does have
22 investigative authority, and it's clearly
23 appropriate for the Commission to open a docket,
24 which, after all, is just a folder in the

1 Commission file room, to conduct those
2 investigations.

3 CHAIRMAN GOLDNER: Thank you, Mr.
4 Kreis. Mr. Skoglund, I'd like to go back to you
5 for a second. You said a couple of things, and
6 I'm not sure I understood what you were saying.

7 So, you talked about the Chair or
8 designee participating on the EESE Board, but
9 that it would have "a chilling effect on the EE
10 Committee." Can you tell me more about what you
11 mean by that?

12 MR. SKOGLUND: Oh, I'm sorry. I just
13 turned myself off.

14 No, I was not referring to the EESE
15 Board, the attendance of the EESE Board. I was
16 noting that we have the EE Committee of the EESE
17 Board, which has meetings. And, if the PUC were
18 to participate in that, that's where
19 conversations are going on that ultimately
20 results in informing the Utilities' final plan,
21 which they will then submit.

22 And I was suggesting that hearing a
23 briefing at the EESE Board is very different than
24 participating in the EE planning process, at the

1 EE Committee of the EESE Board.

2 CHAIRMAN GOLDNER: And what would be
3 the benefit of attending EESE Board meetings? I
4 assume there's a report that's issued, and it has
5 the minutes of the meeting and so forth. And, if
6 the Commission is just in a learning mode, I
7 suppose we could just read the minutes of the
8 meeting.

9 MR. SKOGLUND: I don't have a good
10 answer to that particular question.

11 MS. CHIAVARA: Well, I think you'd also
12 be able to ask questions of the participants,
13 because, I mean, there is a good cross-section of
14 stakeholders at those meetings as well.

15 CHAIRMAN GOLDNER: I would just respond
16 to that. Because what I heard earlier was that
17 "the Commission should be in listening mode and
18 not ask questions." So, --

19 MS. CHIAVARA: Right. Yes. I'm sorry,
20 I didn't mean that questions were discouraged,
21 but just, yes, that it was more
22 information-gathering.

23 CHAIRMAN GOLDNER: Okay. Okay. And
24 then, maybe you could educate me a little bit

1 about the EE Committee and what they're doing
2 specifically, and why it would be inappropriate
3 for the Commission or a designee to sit in on
4 that? Would you like to -- I'm sorry, it's okay.

5 MS. CHIAVARA: I'm terribly sorry.

6 CHAIRMAN GOLDNER: That's okay. No, I
7 was just asking, maybe you could help me
8 understand why it would be inappropriate for the
9 Commission designee to sit in on an EE Committee?
10 I'm just trying to understand what we would get
11 out of the EESE Board meeting versus the EE
12 Committee meeting, and how all that interplays?

13 MS. CHIAVARA: From my understanding,
14 and I don't sit in on these meetings, but the EE
15 Committee is more directly involved in the
16 planning process. So, the EESE Board is one step
17 removed from that. And, so, while the EE
18 Committee reports to the EESE Board and apprises
19 them of the progress being made, it's not so much
20 that the planning process gets opened up to the
21 EESE Board. That's more contained within the
22 activities of the Committee itself.

23 CHAIRMAN GOLDNER: Because that's sort
24 of what we're trying to learn here. We're trying

1 to figure out how things work, like the session
2 we had on how the GST Test worked, and so forth.
3 I mean, that's sort of what we're trying to get,
4 and in an appropriate way. And that was the
5 motivation, I think, behind launching this
6 investigative docket is that it's very -- this is
7 a very complex issue.

8 The only thing we know is what's filed.
9 And, so, understanding what's behind the paper is
10 extremely difficult in something this complex.
11 So, we're just trying to explore ways that we can
12 be ready for that filing when it comes on
13 July 1st.

14 And, if you'd like to comment, I'd
15 appreciate it, relative to the EESE Board, the
16 EE Committee, this docket, we're just trying to
17 piece something together, that's all.

18 MS. CHIAVARA: Yes. I think, you know,
19 participation in the EESE Board meetings would be
20 helpful, because there are, like, as I said,
21 there are a number of diverse stakeholders there.
22 And, you know, the progress of the plan is
23 addressed, if not, you know, it's not directly
24 opened up, and the planning process isn't

1 examined in that way. But it is a way to keep
2 apprised of it, and stay current on what the
3 topics are amongst the relevant stakeholders, and
4 what's coming to the fore, as far as both current
5 existing programming and what's coming up for the
6 next triennium.

7 CHAIRMAN GOLDNER: So, would your
8 advice be if the Commission designee saw
9 something that was concerning, what would you
10 advise the Commission to do, if something like
11 that was noticed or understood? Not "noticed" in
12 the legal sense, just --

13 MR. FOSSUM: Well, --

14 MS. CHIAVARA: Oh, sorry. Go ahead.

15 MR. FOSSUM: I guess I'm just curious
16 about that particular question. Are you asking
17 for our advice on what it is that a Commission
18 member should do if they hear something they feel
19 they shouldn't?

20 CHAIRMAN GOLDNER: No, no. No, we know
21 what to do there. Thank you.

22 MR. FOSSUM: That doesn't seem like the
23 kind of advice we should be offering.

24 CHAIRMAN GOLDNER: Well, you know, you

1 didn't fall into the trap. I'm sorry.

2 *[Laughter.]*

3 CHAIRMAN GOLDNER: No. What I was
4 trying to ask was, we're attending the EESE Board
5 meetings, if we are, then I assume that would be
6 with some purpose. We're educating ourselves,
7 we're understanding what's going on. Now we see
8 something that we don't understand. We see
9 something that's a concern, we have questions.
10 How would you advise that we get answers to those
11 questions?

12 MS. CHIAVARA: I think, aside from
13 asking questions at the EESE Board meeting, which
14 may be helpful, as we had referenced in the
15 opening statement, there has been extensive work
16 done by the Performance Incentive Working Group,
17 the EM&V does a tremendous amount of work.
18 The -- there's another working group that's
19 escaping my mind at the moment. But all of these
20 working groups have produced quite a bit of
21 information. And, if the answer isn't at the
22 EESE Board meeting, between, you know, the
23 existing staff of the utility and this sort of
24 repository of information that's been compiled

1 over the years, I'm sure we could probably direct
2 the Commission to some relevant and informative
3 source documents.

4 CHAIRMAN GOLDNER: Okay. And it sounds
5 like you would be open to having technical
6 sessions, as Mr. Dexter suggested, if we didn't
7 understand the pile of documents that we had
8 sitting in front of us, you'd be open to that?

9 MS. CHIAVARA: Sure. Yes.

10 CHAIRMAN GOLDNER: Okay.

11 MR. SHEEHAN: And, Mr. Chairman, Mike
12 Sheehan, in the back.

13 I think, to answer your question of
14 "what should the designee do at the EESE Board
15 meeting?" I think there's two answers. Is it
16 the person heard something they don't understand?
17 Well, then, they ask questions and try to
18 understand. If they hear something they don't
19 like, policywise, maybe that's when they keep
20 their mouth shut and, you know, don't say "well,
21 the Commission is not going to like this", or
22 something like that.

23 That's how I would differentiate the
24 issues that come up.

1 CHAIRMAN GOLDNER: Oh, absolutely. No,
2 I was thinking more about some complexity or
3 something that would require further explanation,
4 and how would we get to the bottom of that? So,
5 kind of a third category. Thank you.

6 Commissioner Chattopadhyay.

7 CMSR. CHATTOPADHYAY: So, I, you know,
8 I know now that there is an EE Committee that
9 sort of reports to the EESE Board. Is that a
10 good understanding of what it does?

11 *[Multiple parties indicating in the*
12 *affirmative.]*

13 CMSR. CHATTOPADHYAY: If there is a
14 Commission designee in EESE Board, does that
15 create issues for the EE Committee, when it comes
16 and shares information?

17 MS. CHIAVARA: I don't believe so, no.
18 Because it's mainly just the Committee reports to
19 the EESE Board, it's not really an exchange.
20 They don't take guidance necessarily from the
21 EESE Board. It's more the Committee reporting to
22 the Board.

23 CMSR. CHATTOPADHYAY: So, they will
24 continue to do what they do normally. That

1 shouldn't create any hurdles for them?

2 MS. CHIAVARA: Correct.

3 CMSR. CHATTOPADHYAY: Okay.

4 CHAIRMAN GOLDNER: Mr. Kreis.

5 MR. KREIS: Thank you, Mr. Chairman. I
6 think this might be helpful to Commissioner
7 Chattopadhyay, if nobody else. And let me just
8 say, if you would like me to cite chapter and
9 verse for the basis of what I'm about to say, I'd
10 be happy to do that.

11 But here's my understanding. I think
12 that what you just heard might be an incomplete
13 account of what the EE Committee is really there
14 to do. And here's my understanding of it. I
15 think, before I became Consumer Advocate, if I'm
16 not mistaken, there was consensus among the
17 various stakeholders, and I think this is
18 something the Commission endorsed, that there
19 would be a committee that would serve as what has
20 been described, I think in Massachusetts, as a
21 "enhanced" stakeholder advisory board. And, by
22 "enhanced", I think it was meant that there would
23 be resources that this Committee would be able to
24 devote to the process of collaborating with the

1 utilities, as they develop their plan, as program
2 administrators, so that most issues in
3 controversy would be resolved on a consensus
4 basis by the Parties, before that plan is filed
5 with the Commission.

6 So, the theory is that you get better
7 outcomes that way, if everybody is at the table,
8 as the utilities work on what they want to file,
9 rather than the utilities just do their thing
10 unilaterally, and then it gets filed, and
11 everybody then pops up to say what they don't
12 like about it.

13 And that I think is the premise that
14 still drives the EE Committee, which used to be
15 called the "EERS Committee", back when there was
16 an Energy Efficiency Resource Standard blessed by
17 the Commission. But I think the assumptions
18 haven't changed. And I think the Commission's
19 orders -- the Commission has never issued an
20 order saying that it no longer buys that
21 paradigm. But that was the idea.

22 So, it's not just you have this EE
23 Committee that sits around and talks about smart
24 things having to do with energy efficiency, and

1 then reports the results of its deliberations to
2 the EESE Board. It really was supposed to be
3 ultimately an aid to the program administrators,
4 so they could develop plans that everybody would
5 like, essentially.

6 I hope that was helpful.

7 CMSR. CHATTOPADHYAY: Thank you.

8 CHAIRMAN GOLDNER: Just a minute.

9 *[Chairman Goldner conferring with*
10 *Mr. Wind.]*

11 CHAIRMAN GOLDNER: Okay. Are there any
12 other comments? And please, please jump in.
13 We've only been here for an hour out of three and
14 a half. So, we have plenty of time.

15 So, yes, Mr. Burke.

16 MR. BURKE: Just on this topic, a
17 couple of things. This might be very basic, but
18 they haven't been said. So, I just want to make
19 sure it's clear.

20 The EE Committee of the EESE Board was
21 created by the EESE Board, to help inform it
22 about the energy efficiency programming. And
23 those meetings are public, too. So, there are
24 minutes posted. We link to the timeline document

1 that was posted that came out of one of those
2 meetings in our comments. It's posted on the
3 Department of Energy's website.

4 But one thing, I guess I don't -- I
5 don't think I disagree with anything I've heard
6 so far. But I'm a little surprised that no one
7 has commented yet that, at the last go-around,
8 there was a concern, before the Department of
9 Energy was created, about Commission Staff that
10 participated in the Committee about the planning
11 process. And I just want to make sure that
12 that's noted.

13 We did not file anything about that in
14 the last planning cycle. But there were motions
15 filed about whether the Commission Staff could
16 then participate in the proceeding, in any
17 decision-making.

18 So, I just -- I just want to note that,
19 because, you know, that I wonder if that risks
20 happening again, which is I think where some of
21 the questions were coming from.

22 CHAIRMAN GOLDNER: Mr. Dexter, would it
23 be possible for you to comment?

24 MR. DEXTER: So, I'm going back into my

1 memory bank a little bit. I believe that the
2 Committee facilitated the development of the plan
3 that ultimately was rejected on November 12th,
4 2021. So, that would have been the 2020 to 2023
5 Plan. And the Committee, it was fairly
6 abbreviated, but I believe the Committee -- well,
7 maybe not. I'm wondering whether the Committee
8 had input into the abbreviated plan that was
9 filed as a result of the statute, but that's not
10 important. What is important is that the
11 Committee is again conducting these collaborative
12 sessions that I think the Consumer Advocate
13 described exactly correctly, as a way to air
14 issues prior to the plan coming before the
15 Department, so that, when the plan came to the
16 Department, there would be -- the intent or the
17 hope was that there would be a degree of
18 consensus.

19 My understanding is that that process
20 preceded the Committee, and, in fact, when the
21 programs were called "Core Programs", there was a
22 high degree of input ahead of time as well.

23 So, I guess all I'm trying to say is
24 that it's a process that's been in place for at

1 least -- at least six years, and it has guided
2 the last two plans.

3 Now, in the last plan, the one that was
4 rejected, did not result in consensus, in the
5 sense that the PUC Staff did not support the
6 savings goals and the attendant rate impacts that
7 went along with the consensus plan. And that
8 issue was appropriately brought before the
9 Commission and decided.

10 What Mr. Burke is referring to were
11 motions in that process to designate the Staff,
12 you know, as advocates or advisers. But I don't
13 think that's relevant anymore, given that the
14 Department of Energy is now separate.

15 I guess the question that Attorney
16 Burke is raising is, would a Commission Staff
17 member, sitting in on the Energy Efficiency
18 Committee meetings, which are public, create a
19 similar problem, to the extent there was a
20 problem? And the answer is "yes", I think it
21 would. I think it would -- I think, having a
22 Commission Staff member sitting in on the
23 Committee would probably effectively end the
24 Committee, I would think, because why would --

1 why would the Committee engage in that process,
2 given all the concerns that have been expressed
3 about *ex parte* contact and communication for a
4 case that's about to be developed.

5 So, the Department of Energy's advice
6 would be for the Commission not to send a
7 designee to the Committee, because "chilling
8 effect" may be an understatement. But we do
9 support the Utilities' suggestion that the PUC do
10 send a designee to the EESE Board, which is one
11 degree removed from the actual consensus-building
12 process that is totally focused on preparation of
13 the next plan. We believe that the PUC should
14 not have a designee on that Committee. Because,
15 as I said, that Committee's primary focus, as I
16 understand it, and I do sit in on virtually all
17 those meetings, is preparation for the upcoming
18 three-year plan.

19 So, that's my thoughts on that.

20 CHAIRMAN GOLDNER: And maybe it would
21 be helpful, under, you know, HB 549, and maybe
22 nothing has changed, but maybe could somebody in
23 the middle of the development of the plan maybe
24 just summarize, in, you know, five minutes or

1 less, the process that goes on? So, somebody is
2 creating a proposal. It's going in front of
3 committees that have people on them. There are
4 decisions being made, how are those decisions
5 made?

6 It would be helpful, I think, for the
7 Commission to understand the process that you
8 plan on going through for the next eight months,
9 and how that comes together. That would be
10 helpful for me at least.

11 MR. DEXTER: I just want to, before
12 anyone answers that question, and I assume it
13 would be someone from the Utilities that answers
14 it, I do want to point out that, in the last
15 go-around, there was a voting process, and the
16 PUC Staff did not participate in the voting
17 process.

18 CHAIRMAN GOLDNER: Okay.

19 MR. DEXTER: I just wanted to throw
20 that out there. I don't know if that's going to
21 have any influence on the answer that comes in.

22 But I think someone from the Utilities
23 could probably best describe the Committee action
24 right now.

1 CHAIRMAN GOLDNER: Yes. That would be
2 very helpful to know. Yes. How does this all
3 fit together?

4 MR. LEMÉNAGER: Sure. Good afternoon.
5 Marc Leménager, from Eversource.

6 So, back in May of this year, we
7 started discussing getting the Committee up and
8 running again, with the plan filing due next
9 July 1st before the Commission. We established a
10 timeline, along with the other stakeholders, to
11 discuss which topics. We need to meet to
12 determine which areas are likely to change, in
13 light of the lighting market evolving, and no
14 longer being existent come 2024. Which, as noted
15 previously, is going to be a significant change
16 to what we offer. Additionally, the 65 percent
17 requirement from the PUC's interpretation of
18 House Bill 549 presents a rather large hurdle for
19 us to adapt and adjust to.

20 So, we've been meeting with
21 stakeholders along that timeline to discuss
22 various topics, and trying to then put together,
23 essentially, pieces of a puzzle, if you will, to
24 figure out, within the funding that we have set

1 by statute, what programs and at what levels can
2 we offer to ensure that we're complying with all
3 of the regulations that we have, as well as all
4 of the wants and desires of stakeholders as best
5 as we can.

6 The goal, as noted from many people
7 today, is trying to come up with a consensus,
8 where we're delivering a suite of programs that
9 are available to all customers, and are able to
10 deliver the benefits and savings goals that meet
11 various stakeholders' -- their constituents and
12 their wants and needs.

13 So, the goal is for us to go through
14 all these sessions, discuss with stakeholders
15 what possibilities we have in front of us. Put
16 together a draft plan, see where we are, and see
17 how all Committee members feel about it, about
18 the package, so to speak, and --

19 CHAIRMAN GOLDNER: I'm sorry, who
20 creates the draft? Is that the Utilities create
21 the initial draft? Each utility comes up with
22 their own proposal or is it like a single
23 proposal?

24 MR. LEMÉNAGER: So, the Utilities

1 jointly work together on crafting a plan, similar
2 to the filing that will be coming next July 1st,
3 it's a Joint Utility filing. So, we're meeting
4 with stakeholders and with each other to come up
5 with a collaborative, uniform proposal, that we
6 will then present before the Committee, and begin
7 to refine it from there.

8 So, we do have other work that is kind
9 of on its own timeline as well, where there's
10 updated cost-effectiveness tests, and beyond my
11 expertise. But we get revised estimates for what
12 costs and what benefits we're able to use, and
13 that's on a timeline that is going to come, I
14 believe, early next year. So, it will fit into
15 our timeline to file with you. But we're not
16 there yet on getting that information. So, we're
17 trying to work with what information we can work
18 with for the time being. And then, when we have
19 that cost-benefit information and further
20 information, we can continue to piece it
21 together, if you will.

22 CHAIRMAN GOLDNER: Would it be fair to
23 say that the Joint Utilities come up with the
24 proposal; then the Joint Utilities sit with the

1 EE Committee, with all the stakeholders and
2 participants, and then fine-tune it? Is that the
3 process, more or less?

4 MR. LEMÉNAGER: I'd define it more as a
5 "brainstorming session", before we have a
6 proposal. The Utilities do not have a plan
7 proposal at this time, and we've been meeting for
8 several months now. We are genuinely getting
9 feedback and input from stakeholders, to
10 determine "what should we be doing and how should
11 it all piece together?" Because, with the
12 funding being constrained by law, any changes to
13 one program will necessarily impact another
14 program.

15 CHAIRMAN GOLDNER: And how do we deal
16 with, I'm going to be careful not to use any
17 specific examples, but, if you have something
18 innovative, something different than what you've
19 done before, how is that proposed, folded in,
20 weighed in on, discussed, and decided?

21 MR. LEMÉNAGER: It's a balancing act.
22 So, if there is a desire to try something novel
23 or unique, then, similar to my last statement, it
24 will impact something else. But the money is

1 finite, as defined by law. So, if funding goes
2 towards something new or something different, it
3 needs to come from something else.

4 CHAIRMAN GOLDNER: Yes.

5 MR. LEMÉNAGER: So, it's a balancing
6 act.

7 CHAIRMAN GOLDNER: Yes. And I'm just
8 trying to understand the process of how you
9 decide. Is it a vote that's taken between
10 stakeholders or how do you decide? That two
11 people have differing opinions or two -- let's
12 say there's two or three differing opinions, how
13 do you get to resolution?

14 MR. LEMÉNAGER: We have yet to come to
15 that bridge.

16 CHAIRMAN GOLDNER: Okay. But what's
17 your process for getting to resolution? Like, is
18 it a voting process? Is it -- how do you decide?
19 What's your process for deciding?

20 MR. LEMÉNAGER: So, we honestly haven't
21 come to any issues at this point in the process.
22 So, when we do have to face that dilemma --

23 CHAIRMAN GOLDNER: You'll figure out
24 what the process is. What was the process

1 before? How did you decide last Triennial Plan,
2 when you had people with differing opinions? It
3 sounds like, from Mr. Dexter's description, there
4 was a vote from which the DOE abstained.

5 MR. LEMÉNAGER: I think there were many
6 areas of agreement, and there were some that were
7 not. And what ultimately happened was the
8 Utilities put together a plan in conformance with
9 what was voted upon. So, at the last time
10 around, it resulted in not every single
11 stakeholder signing onto the proposed plan.

12 CHAIRMAN GOLDNER: Okay. Would anyone
13 else like to comment? Mr. Burke, Mr. Kreis, and
14 Mr. Dexter all have their hands up. Let's start
15 in the back and move forward. Mr. Burke.

16 MR. BURKE: Sure. I was just going to
17 say, and I assume others will comment on this.
18 But, just to clarify, I think, to the extent that
19 any vote might be taken before the Committee, it
20 would be a vote on what to recommend to the full
21 EESE Board about any position or statement it may
22 take with regards to the plan that's ultimately
23 put together.

24 I mean, I think everyone who attends

1 the meetings understand that ultimately it's the
2 Utilities are responsible for drafting and filing
3 the plan. And it's really, as I think the
4 Consumer Advocate commented earlier, this is to
5 serve as a forum to try to get input, so the
6 Utilities aren't sort of blindsided after the
7 filing about someone who has a big disagreement
8 that wasn't ever discussed.

9 But, to the extent, and we don't yet
10 know, I think, what's going to happen, but, if
11 there is a vote before the Committee, that's what
12 it would be, to recommend that the EESE Board do
13 or do not do something with respect to the plan.
14 And then, ultimately, the EESE Board, the voting
15 members would have to vote. And I think, in the
16 past, I'd have to go back and look, but the EESE
17 Board has at times voted to make statements about
18 what it thinks about the energy efficiency plan
19 or energy efficiency policy, you know, whatever
20 is appropriate within its realm of its statutory
21 duties, I guess, to the extent you can call the
22 EESE Board's role as having duties.

23 CHAIRMAN GOLDNER: Thank you. That's
24 very helpful.

1 Mr. Kreis.

2 MR. KREIS: Thank you. First of all,
3 in case it isn't clear already, I was the
4 Chairman of that Committee during the last two
5 planning cycles. So, up to my neck in all of
6 this stuff. And, in that capacity, I just want
7 to say that, although we did successfully reach
8 consensus the last time with every party, except
9 for the Staff of the PUC, which actually was not
10 a party, prior to the creation of the Department
11 of Energy.

12 But all of that, in my view, and you've
13 been hearing a lot about all the formal
14 mechanisms that were created, you know, the EESE
15 Board is created by the statute, and the EERS or
16 EE Committee were formally created by the EESE
17 Board. But, at the end of the day, the Utilities
18 are the program administrators. They're
19 responsible for filing a plan with the
20 Commission, and you're responsible for approving
21 it or rejecting it. And the rest of us, when
22 we're collaborating with the Utilities, are in a
23 process that the Utilities are absolutely free to
24 ignore, if they choose to. I mean, none of that

1 is binding on the Utilities. It's just there as
2 a public mechanism for the Utilities to take
3 advantage of, so that they can avoid the expense,
4 hassle, and inconvenience of having to litigate
5 against all of us before the PUC.

6 But, as you know, just because
7 everybody in the room, other than you, reaches an
8 agreement, doesn't mean that you are going to
9 rubber stamp it. Because the PUC has
10 consistently said, over many, many years, that it
11 has to review settlements and anything that comes
12 before it independently, so that it can assure
13 itself that the appropriate statutory standards
14 are met.

15 You might also take a look at the
16 Settlement Agreement that you rejected back on
17 November 20 -- November 12th of 2021, because,
18 and here I guess I want to come out as the
19 brainchild of this whole scheme, that Settlement
20 Agreement contained language in it that took all
21 of this stakeholder collaboration stuff out of
22 the EESE Board, and created instead kind of a
23 independent committee, I guess, or collaboration,
24 that would be -- would have been conducted under

1 the aegis of the Utilities themselves. Why did I
2 propose that idea? I'll be candid. I wanted to
3 take the whole thing out from under the Right to
4 Know Law, RSA 91-a. Because it essentially
5 functions as a negotiation process, just the same
6 as any other settlement negotiations would
7 operate. And I tend to think that those kinds of
8 conversations are best not conducted in public.

9 The other thing that you should keep in
10 mind as you think through what happened the last
11 time, and the desirability of avoiding any
12 mistakes the next time, is that the last time we
13 went through all of this we did it at the height
14 of the pandemic. So, essentially, all of
15 these -- any of these meetings that took place,
16 as of March of 2020, going through to the time
17 that the Utilities made their Triennial Plan
18 filing in September, that all took place in a
19 "virtual" meeting room. And I think that had a
20 real effect.

21 I also want to confess that I, in my
22 capacity as Chair of that Committee, made some
23 pretty grievous errors. And, in particular, I
24 made some grievous errors about the way I treated

1 the Staff of the Commission. I adopted, I think,
2 what was a pretty belligerent stance towards them
3 at the time, on the theory that they weren't
4 really a party, and that, really, their views
5 were of no significance, and that they should
6 just kind of go away. And I think that was a
7 mistake.

8 It certainly isn't the way I would
9 treat the Department of Energy now, because they
10 clearly are a party. And, if they don't agree to
11 something that everybody else agrees to, that's a
12 contested issue before you unquestionably.

13 So, I just wanted to put that out
14 there, because you, up on the Bench, are clearly
15 trying to kind of get a better feel for like
16 "What was going on? What were all these people
17 thinking? How did we get here?"

18 And I hope some of this is helpful to
19 you as you seek to find your way through that
20 particular fog.

21 CHAIRMAN GOLDNER: It is. Thank you.
22 Mr. Dexter.

23 MR. DEXTER: Yes. Just a couple of
24 comments.

1 The most important thing I heard from
2 Attorney Burke and Kreis was that "ultimately,
3 the Plan gets filed by the Utilities." And it is
4 the Utilities' obligation to present the plan to
5 you for review. All of what went on beforehand
6 was designed to enhance the -- not "enhance", to
7 reach -- to narrow issues, is what I'm trying to
8 say, to avoid issues in the timeframe for the
9 Commission to review.

10 And, you know, whether it was votes or
11 committees, or an informal -- I think, before the
12 EERS Committee, in the iteration before that, I
13 believe the Commission Staff conducted a lot --
14 facilitated a lot of the pre-filing
15 collaboration, if you will.

16 When I said "the Department didn't vote
17 on the" -- pardon me, "the PUC Staff didn't vote
18 on the ultimate plan last time around", we didn't
19 vote on anything. We sat in on all the committee
20 meetings, but decided that -- well, maybe we
21 weren't offered a vote, but, however we ended up
22 in that role, we were there to listen and to
23 offer ideas, but we did not vote on anything.
24 Seemed like there were a lot of votes, I don't

1 really remember, but it wasn't like we abstained
2 from a particular vote. I just wanted to point
3 that out.

4 The second thing that Attorneys Burke
5 and Kreis both said, I believe, was that, and I
6 get to quote myself here, I think, if you were to
7 go back to the closing statements in the last
8 Triennial Plan, I believe I said that the
9 Committee and the vote and all the stuff that
10 happens beforehand is not the end of the process,
11 it's the beginning of the process. And the
12 process is for the Commission to review and
13 approve the plan that gets filed, in this case it
14 will be July 1st. So, the Commission will have
15 five months to review the plan, you know,
16 irrespective of what goes on ahead of time, and
17 whether there's consensus or not. That is almost
18 double the amount of time that the Commission was
19 allotted under prior procedural schedules. It
20 seemed to me that all the plans I was involved in
21 before that had a three-month period, which made
22 it very difficult to litigate any issues. Time
23 was always a -- was always a concern in those
24 dockets.

1 But five months should provide the
2 Commission additional time to do -- you were
3 talking about "what if a question comes up, what
4 do we do with that question?" You know, a very
5 reasonable approach would be to hold that
6 question, and, you know, get the docket moving
7 the minute the filing is made, and issue those
8 questions right away.

9 So, yes. Those are my thoughts on the
10 prior -- on the prior process.

11 MR. KREIS: Mr. Chairman, could I just
12 say one more thing?

13 And I think this falls back to a
14 statement you made at the beginning that I, I
15 think, took exception to. You seemed to be
16 implying that there was some possibility that
17 these processes would lead to parties negotiating
18 away their positions. And, as I said earlier, I
19 don't think anybody did that.

20 But there were, and I think everybody
21 will recall this, there were some pretty vehement
22 public objections to that Triennial Plan that the
23 Commission then rejected. And, really, those
24 objections came from people who chose to absent

1 themselves from the deliberations that we're
2 talking about here. And they weren't obliged to
3 participate in them. They had every right to
4 come before the Commission and tell the
5 Commission not to approve the Plan. And,
6 essentially, that's what happened. And, lo and
7 behold, those people prevailed, and we all know
8 what happened after that.

9 So, you know, in resonance with what
10 Mr. Dexter just said, it's important for
11 everybody to keep in mind that, regardless of
12 what happens between now and July 1, there will
13 be every opportunity for anybody with any
14 concerns whatsoever, including the Commissioners,
15 to raise them on the record, and subject them to
16 skeptical scrutiny, and the presentation of
17 evidence, and cross-examination, and all of that.
18 And, at the end of the day, the Utilities are the
19 program administrators, and the Commissioners are
20 the deciders. And the rest of us are just kind
21 of along for the ride.

22 CHAIRMAN GOLDNER: I did have one
23 additional, just a follow-up question. If there
24 was data that the Commission wanted as of the --

1 the initial filing, so, July 1, 2023, if there
2 are things that we think of, we want information
3 on, would anyone have objections to us asking for
4 those ahead of time in the adjudicative docket?

5 And what I'm thinking of is just
6 processing the information as quickly as
7 possible, Mr. Dexter -- Attorney Dexter said
8 "five months". That's true, but time goes
9 quickly in the utility world, as we all know.
10 So, we'd like to be set up with everything that
11 we need out of the gate as much as we can.

12 Is there -- Mr. Kreis.

13 MR. KREIS: I'm glad you asked that
14 question. Because the last time around, I asked
15 the Commission to open the adjudicative docket
16 before September 1, and that's exactly what I had
17 in mind. I didn't see any reason, under the
18 Administrative Procedure Act, why the Commission
19 couldn't put out an order of notice saying "We're
20 going to get this big filing on September 1st,
21 and we're not going to" -- "we're going to start
22 the process now, and we're going to get
23 everything in place, so that we can tell the
24 Parties what we want to see when the Utilities

1 make that filing. And we want to kind of put,
2 basically, the procedural schedule in place in
3 advance."

4 Because when that doesn't happen, as
5 you all know, and nothing happens until there is
6 a prehearing conference after that order of
7 notice, and, in this case, after the Utilities
8 make that filing, then, almost inevitably, you've
9 frittered away like the first month of those five
10 months.

11 And I think it would be really great,
12 if this time around the Commission managed to
13 find a way to use all five of those months
14 effectively. And my suggestion would be to do
15 this time what the Commission didn't want to do
16 last time, which is open that docket earlier than
17 September 1.

18 CHAIRMAN GOLDNER: Would anyone object
19 to that approach? Mr. Fossum, you look like you
20 might object?

21 MR. FOSSUM: No, I don't believe that I
22 would. I think there's a measure of wisdom in
23 that.

24 My only concern might be, and perhaps

1 this is me reading too much into the question
2 that you asked, if the Commission intends to, you
3 know, open the docket, establish a procedural
4 schedule, you know, indicate that, you know,
5 "Please include, you know, all of the Excel
6 sheets", or, you know, whatever might accompany
7 the filing, I don't think I'd have any issue with
8 that.

9 If, however, you know, it's "We've
10 opened this docket, and we intend to see a plan
11 that does 1, 2, and 3", potentially that's more
12 concerning.

13 Like I said, maybe that's me reading
14 more into your question than was intended. But
15 you did ask, you know, "if we sent out this Order
16 of Notice that said "well, we were hoping to
17 see...?" Well, that is, you know, sort of --
18 that may be more problematic.

19 But, if it's simply what you mean by
20 that is "What we're hoping to see is a plan that
21 is comprehensive and provides the following
22 things, and make sure to address the following,
23 you know, items", you know, perhaps that's fine,
24 and I don't think I'd have any problem with that.

1 But, if it's something very specific,
2 you know, "we want to see a plan that makes sure
3 it will account for low-income customers in a
4 particular way", you know, now that's actually
5 influencing the plan itself before it's even
6 filed.

7 CHAIRMAN GOLDNER: Yes. I'd want to
8 consult with Attorney Wind, but it seems like
9 that would be maybe perhaps prejudging. So, I
10 see your point.

11 Any other comments on that, on that
12 idea? I do think, you know, that that seems
13 like, just to follow Attorney Kreis's proposal,
14 that that would be helpful to identify the
15 schedule up front, and put all that in place, so
16 everyone knows exactly where and when to be over
17 the five months, from July 1st to November 30th.
18 Seems like that would be helpful.

19 MR. DEXTER: The Department would
20 support Attorney Kreis's suggestion. I don't
21 recall that from the last time, and I don't
22 recall the Department not taking that advice.
23 But there is about six weeks involved in just the
24 order of notice and the procedural. And, you

1 know, so, I don't see why all that couldn't be
2 worked out ahead of time, an order of notice, in
3 anticipation of a filing.

4 CHAIRMAN GOLDNER: Yes.

5 MR. KREIS: I guess the only caveat
6 would be, there is some possibility, from a due
7 process perspective, that people -- there's
8 hypothetically, or theoretically, a party out
9 there that could decide, only after reading what
10 the Utilities actually file, that they need to
11 intervene. And, so, I would think it would be
12 appropriate for the Commission to allow for that
13 possibility.

14 It's unlikely, frankly, because I think
15 everybody that would be likely to intervene is
16 already part of the stakeholder advisory process.
17 And we already, or we will by then, already have
18 a really good idea of what's going to be in that
19 September 1 filing.

20 MR. DEXTER: As long --

21 CHAIRMAN GOLDNER: July 1st.

22 MR. KREIS: July 1 filing, excuse me.

23 MR. DEXTER: I'm sorry for just jumping
24 in.

1 CHAIRMAN GOLDNER: That's all right,
2 Attorney Dexter. No, I was just making sure I
3 hadn't forgotten the date.

4 MR. DEXTER: As long as the prehearing
5 conference and the intervention deadline comes,
6 you know, a week or two after the filing date, I
7 don't think that would present any problems. And
8 I think it would still pick you up four or six
9 weeks.

10 CHAIRMAN GOLDNER: Yes. Yes, I'm
11 just -- I'm thinking about that, that would seem
12 sensible. We could have a very -- I would think
13 we could have that prehearing conference very
14 quickly after the initial filing.

15 Attorney Chiavara, you have some
16 thoughts?

17 MS. CHIAVARA: I was just going to say
18 something as to scope, and this might go along
19 with what Attorney Fossum just said.

20 But I would say that, if the Order of
21 Notice were to be issued prior to the Plan
22 filing, that, pursuant to HB 549, the guidelines
23 it sets out for the Plan submission, review, and
24 approval, that the scope of the Order of Notice

1 not be broadened beyond the consideration of that
2 matter. And I realize that that is still a
3 pretty broad matter, and there might be a lot of
4 questions the Commission has within that. But I
5 would say that the parameters should stay pretty
6 much within the universe of examining, reviewing,
7 and approving that Plan.

8 CHAIRMAN GOLDNER: Yes. I think the
9 key word is "examine", you know, what level of
10 depth is something that we're wrestling with.
11 You know, is it just at the very top level?
12 Probably not. Is it a level or two below that?
13 Almost certainly. You know, is it, you know,
14 twelve levels below? You know, that's something
15 we have to -- we have to sort out. So, I don't
16 think we have an answer on that either. But it's
17 our responsibility to look at it in enough depth
18 to see that it's just, reasonable, and prudent,
19 and so forth.

20 Attorney Sheehan.

21 MR. SHEEHAN: Thank you. As we've all
22 been adjusting to the new paradigm, where we are
23 filing Excels with our filing and the like, we've
24 always faced in the past the question "Okay, we

1 have a 20-page filing, but there's 6,000 pages
2 that support it. How much do we file?"

3 And, you know, we're slowly getting to
4 a point we're all getting to what you're
5 expecting, which I hope. But that could be
6 another purpose of this order of notice. As you
7 look at the plan we filed in the past, I suspect
8 the types of documents you'll see are similar.
9 And you could have a laundry list of "When you
10 file your plan, please include the backup for
11 this, and we don't have to worry about the backup
12 for that." That could be helpful as well.

13 CHAIRMAN GOLDNER: Yes. Very good.
14 That's, I think, very much along the lines of
15 what we were thinking, you know. In the end, we
16 need a high-level summary, and then we need
17 details in certain areas. And we -- but we don't
18 need every last, you know, detail for sure.

19 So, we'll be -- thank you, Attorney
20 Sheehan. We'll be thoughtful about how we ask
21 for the information up front.

22 To hopefully, and our goal, as I hope
23 you can understand, we're just trying -- we're
24 trying to simplify the process, and to make it

1 more streamlined. And our intention in this
2 docket was to get some of these preliminary
3 issues out of the way, so we could really hit the
4 ground running on July 1st. That was our very
5 pure motivation.

6 All right. Commissioner Chattopadhyay,
7 anything else from your side?

8 *[Cmsr. Chattopadhyay indicating in the*
9 *negative.]*

10 CHAIRMAN GOLDNER: Okay. Is there any
11 further comments or suggestions from the
12 participants here today? Careful not to use the
13 word "parties".

14 MR. KREIS: I thought you were going to
15 say "peanut gallery".

16 CHAIRMAN GOLDNER: No. No, no. That
17 never crossed my mind, honestly. But
18 "participants" and "parties".

19 Excellent. Okay. Well, very good.
20 Well, I thank you for your time today. This has
21 been very helpful, from the Commissioners'
22 perspective, just speaking on behalf of
23 Commissioner Chattopadhyay as well. We look
24 forward to working with you. And the proceeding

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is now adjourned. Thank you.

***(Whereupon the prehearing conference
was adjourned at 2:38 p.m.)***