

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

NH PUC 21SEP'18PM12:32

September 5, 2018 -1:35 p.m.  
Concord, New Hampshire

RE: DG 18-092  
LIBERTY UTILITIES (ENERGYNORTH NATURAL  
GAS) CORP., D/B/A LIBERTY UTILITIES  
PETITION FOR LICENSE TO CONSTRUCT AND  
MAINTAIN A NATURAL GAS PIPELINE  
BENEATH THE ASHUELOT RIVER IN KEENE  
(*Prehearing Conference*)

**PRESENT:** Chairman Martin P. Honigberg, Presiding  
Commissioner Kathryn M. Bailey  
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

**APPEARANCES:** Reptg. Liberty Utilities (EnergyNorth  
Natural Gas) Corp. d/b/a Liberty  
Utilities:  
Michael J. Sheehan, Esq.

Rptg. Terry Clark, Intervenor:  
Richard M. Husband, Esq.

Reptg. PUC Staff:  
Paul B. Dexter, Esq.

**Court Reporter:** Susan J. Robidas, NH LCR No. 44

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I N D E X

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Petition to Intervene GRANTED to Berlin Station, LLC.

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PRELIMINARY STATEMENTS:

Mr. Bersak

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Mr. Boldt

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Ms. Holahan

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Mr. Kreis

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Ms. Amidon

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Mr. Bersak

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Ms. Holahan

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## 1 P R O C E E D I N G S

2 CHAIRMAN HONIGBERG: Good morning,  
3 everyone. Please be seated.

4 We're here this morning in Docket  
5 DE 10-195, specifically because the  
6 legislature has passed a law telling us to do  
7 so. Before we do anything else, let's take  
8 appearances.

9 MR. BERSAK: Good morning. For  
10 Eversource Energy, Robert Bersak.

11 MR. COLANTUONO: Thomas Colantuono  
12 from Bianco, P.A., for Burgess.

13 MR. BOLDT: Chris Boldt, Donahue,  
14 Tucker & Ciandella, on behalf of intervenor,  
15 City of Berlin.

16 MS. HOLAHAN: Carol Holahan from  
17 Foley, Hoag, on behalf of Berlin Station.

18 MR. KREIS: Good morning,  
19 Commissioners. D. Maurice Kreis, the  
20 Consumer Advocate, here on behalf of the  
21 beleaguered residential customers of  
22 Eversource New Hampshire.

23 MS. AMIDON: Good morning. Suzanne  
24 Amidon for Commission Staff. With me at

1 counsel's table is Rich Chagnon, an analyst  
2 with the electric division.

3 CHAIRMAN HONIGBERG: What do we  
4 need to deal with in terms of preliminaries?  
5 I think we have a new intervention petition  
6 from Ms. Holahan. Anyone have any position  
7 on that petition? Mr. Bersak shakes his  
8 head.

9 MS. AMIDON: Staff has no  
10 objection.

11 CHAIRMAN HONIGBERG: Seems like  
12 that should be granted. So we'll be granting  
13 that. Everyone else here was already in the  
14 case; is that correct?

15 MS. AMIDON: Yes.

16 CHAIRMAN HONIGBERG: All right.  
17 Any other preliminaries before I ask the  
18 parties for their preliminary positions? Ms.  
19 Amidon?

20 MS. AMIDON: Nothing that I know  
21 of. Thank you.

22 CHAIRMAN HONIGBERG: Mr. Bersak,  
23 why don't you start us off.

24

## PRELIMINARY STATEMENTS

1  
2 MR. BERSAK: Thank you, Mr.  
3 Chairman. The requirements of Senate Bill  
4 577 are relatively clear and specific. You  
5 know, we can read it. It says that,  
6 notwithstanding any other provision of the  
7 law, this Commission shall reopen this docket  
8 and revise a particular order in the  
9 following manner, and it says that it will  
10 change a particular page, Page 97 of the  
11 order, to suspend operation of the cap on the  
12 cumulative reduction factor for a period of  
13 three years.

14 So the Commission's already taken  
15 one of the steps required by law, to reopen  
16 this docket. What remains is for the  
17 Commission to amend Order No. 25,213. But  
18 just complying, the Commission complying with  
19 SB 577 by amending the order does not change  
20 the underlying contract, the power purchase  
21 agreement that was approved by the Commission  
22 earlier in this docket. The law is not  
23 self-effectuating -- that is, a change to the  
24 order alone does not and cannot change the

1 contractual relationship between Eversource  
2 and Burgess. The reason why it does not  
3 change the contract -- a couple reasons. One  
4 you set out in the Order of Notice deals with  
5 the contract clause and retrospective  
6 law-making. But another, perhaps even more  
7 clear prohibition on that, are the  
8 constraints set forth in the Public Utility  
9 Regulatory Policy Act, PURPA. PURPA is a  
10 preemptive federal law that gives states  
11 authority with respect to sales made between  
12 utilities and qualifying facilities, only to  
13 set avoided cost rates for such purposes or  
14 to approve voluntary,  
15 bilaterally-entered-into, negotiated  
16 contracts. In this situation, we're dealing  
17 with the latter. We're not dealing with an  
18 avoided cost determination by this  
19 Commission. What we have is the power  
20 purchase agreement that Burgess and  
21 Eversource are operating under that was  
22 voluntarily negotiated pursuant to the terms  
23 of PURPA; therefore, any changes to the PPA  
24 would either have to be an avoided cost rate

1 or a bilaterally-agreed-upon, re-negotiated  
2 contract. All the change required by SB 577  
3 does is provide headroom for us to begin  
4 those negotiations and see if we can agree on  
5 how to implement that law in a way that is  
6 satisfactory to both parties.

7 As the new law requires a  
8 three-year change to the relationship between  
9 Eversource and Burgess, Eversource will be  
10 bringing any such amended agreement back to  
11 this Commission for approval under RSA  
12 374:57. But before we get to the process of  
13 sitting down and trying to re-negotiate  
14 something, and whatever adversarial position  
15 that puts us across the table from Burgess,  
16 Eversource requests that this Commission give  
17 assurance that the new contract will be  
18 entitled to avoided -- to stranded cost  
19 recovery treatment. The recovery of costs  
20 via a stranded cost recovery charge is  
21 somewhat put into question as a result of the  
22 decision this Commission issued three weeks  
23 ago denying Eversource's request to vacate  
24 the order in the Hydro-Quebec PPA docket.

1           You recall that we -- that Eversource  
2           requested such vacation based upon the  
3           Supreme Court's decision in the Access  
4           Northeast case. In this Commission's refusal  
5           to vacate the Hydro-Quebec PPA order, it  
6           noted that, in addition to the Access  
7           Northeast reasoning, another reason for  
8           rejecting the PPA was that it would not be  
9           entitled to stranded cost treatment. We just  
10          want to assure ourselves, before we go  
11          through a lot of time, effort and waste of  
12          energy, that any changes to this PPA would in  
13          fact be entitled to stranded cost recovery  
14          treatment.

15                        It should be noted that the fiscal  
16          note to Senate Bill 577 as enacted states  
17          that, because the costs of the Burgess  
18          contract are paid by Eversource customers, if  
19          such an increase in the cost of that PPA  
20          occurred, it would increase costs above the  
21          \$100 million cap on the energy component of  
22          the current contract. To the extent that  
23          state, county and local governments are  
24          Eversource ratepayers, increasing the



1 cumulative reduction fund would increase  
2 their electricity bills as all over-market  
3 costs associated with the contract are  
4 recovered through the stranded cost reduction  
5 charge. Know it's stranded cost recovery  
6 charge, but that's what they said. So it  
7 appears the legislature is operating under  
8 the assumption that the increased costs of  
9 this law would indeed be recovered as a  
10 stranded cost through the SCRC.

11 So, in conclusion, the law tells  
12 the Commission what it must do. But what the  
13 bill does not do and cannot do is change the  
14 underlying contract without Burgess and  
15 Eversource sitting at the table and  
16 negotiating an appropriate amendment that  
17 will be brought to this Commission for its  
18 review and ultimate approval as a condition  
19 to it becoming effective.

20 CHAIRMAN HONIGBERG: So your  
21 expectation is that the next step, the next  
22 substantive step is that the Commission would  
23 issue an order amending that provision in the  
24 prior order and including some statement

1 about stranded costs?

2 MR. BERSAK: Yes, sir.

3 CHAIRMAN HONIGBERG: Okay. Mr.  
4 Colantuono.

5 MR. COLANTUONO: I defer to  
6 Attorney Holahan. Thank you.

7 CHAIRMAN HONIGBERG: Mr. Bolt.

8 MR. BOLDT: Simply put, Your Honor,  
9 as the host community, the City of Berlin is  
10 interested in maintaining the existence of  
11 the plant. It obviously has a significant  
12 impact on both tax revenues and the  
13 employment of not only the city, but the  
14 North Country itself.

15 As for the issues raised by Mr.  
16 Bersak, we respectfully reserve our right to  
17 comment on those at a future time.

18 CHAIRMAN HONIGBERG: Ms. Holahan.

19 MS. HOLAHAN: Thank you, Mr.  
20 Chairman. Can you hear me?

21 So, Berlin Station asserts that the  
22 legislative action taken in Senate Bill 577  
23 seeks to achieve important policy objectives  
24 in protecting critical energy infrastructure

1 within the state and advancing important  
2 energy policy goals, such as fuel diversity,  
3 capacity, sustainability and adherence to the  
4 RPS. And as Mr. Bersak stated, the  
5 legislature's intent with respect to this  
6 docket is unambiguous, and it is intended to  
7 ensure the viability of the Berlin facility.  
8 We would agree with Mr. Bersak that, from our  
9 perspective, while the language is specific,  
10 the parties to the PPA, Berlin and  
11 Eversource, should be allowed to sit down to  
12 try to work out the mechanics of how to best  
13 effectuate the intent that the legislature  
14 had in suspending the cap and in protecting  
15 the viability of the Berlin facility.

16 On the specific issues raised in  
17 the Order of Notice issued by the Commission  
18 on August 2nd -- I don't know if you want our  
19 position with respect to each every issue  
20 raised on the statutes or --

21 CHAIRMAN HONIGBERG: Only if you  
22 think it's important. Tell us what's  
23 important, and tell us what you expect us to  
24 do so.

1 MS. HOLAHAN: Okay. So I guess the  
2 three most significant ones, from my  
3 perspective, first, are the relationship with  
4 the divestiture statute. And since it was  
5 the legislature itself that called for the  
6 divestiture of PSNH in 2015, I think there  
7 can be no doubt that the legislature was  
8 aware of the state of the PSNH divestiture  
9 when it debated and passed Senate Bill 577.  
10 So the legislature approved Senate Bill 577  
11 because it had broader energy and economic  
12 policy issues in mind. And from our  
13 perspective, those policy determinations were  
14 completely within the purview of the  
15 legislature when they made them and should  
16 not be the subject of debate or dispute in  
17 this proceeding.

18 The next provision that's important  
19 to us is the stranded cost provision. And  
20 so, despite the existing statutory language  
21 regarding stranded costs, the legislature  
22 made different policy choices when it passed  
23 Senate Bill 577 by including the language,  
24 "notwithstanding any other provision of law"

1 within the text of Senate Bill 577. Berlin  
2 asserts that it's clear that the legislature  
3 intended that the directives of Senate Bill  
4 577 supersede any existing provision that  
5 might otherwise conflict with them. Again,  
6 these are policy choices made by the  
7 legislature within its purview and should not  
8 be the subject of dispute here or challenged  
9 here. And I think, as Mr. Bersak, Attorney  
10 Bersak, has stated, the fiscal note prepared  
11 by the legislative budget office, in  
12 conjunction with Senate Bill 577, expressly  
13 indicates or raises the issue of stranded  
14 costs. So I think we are safe to presume  
15 that the legislature understood that when it  
16 adopted Senate Bill 577.

17 And finally, on the constitutional  
18 questions, with respect to Part I,  
19 Article 23, which our courts interpret as the  
20 functional equivalent of the contracts clause  
21 in the federal constitution, recent case law  
22 demonstrates that, where the legislature acts  
23 with a public purpose in mind to promote  
24 public policy, important public policy goals,

1           it is not impermissible for them to do so.  
2           It is not a constitutional violation for them  
3           to do so. And this is particularly so where  
4           the state itself is not a beneficiary of the  
5           contract that it is amending or passing  
6           legislation on.

7                         With respect to the separation of  
8           powers issue, under Part I, Article 37 of the  
9           constitution, the pertinent language in the  
10          state constitution says, "The three essential  
11          powers ought to be kept separate from and  
12          independent of each other as the nature of a  
13          free government will admit." This language  
14          expressly anticipates that there will be some  
15          overlapping of functions between and among  
16          the functions of the three branches of  
17          government. The language, the "separation of  
18          power" language, in our state constitution is  
19          different from that contained in the federal  
20          constitution and it is different from almost  
21          every other state constitution and it  
22          implicitly recognizes that there will be  
23          times when strict separation of powers is  
24          neither warranted nor desired.

1           Berlin Station asserts that,  
2           whereas here the legislature has crafted a  
3           very narrow solution to advance important  
4           policy goals, strict separation of the  
5           branches is unnecessary, and this is an  
6           example of permissible constitutional  
7           overlap. Moreover, while enacted by the  
8           legislative branch, the bill was signed into  
9           law by the governor, who constitutionally is  
10          the supreme executive magistrate of the  
11          executive branch, according to Part II,  
12          Article 41 of the New Hampshire Constitution,  
13          thus demonstrating the executive branch's  
14          concurrence both in the goals and the relief  
15          sought in Senate Bill 577.

16                   And you've already granted my  
17          Petition to Intervene, so I think that  
18          concludes my remarks.

19                   CHAIRMAN HONIGBERG: And so you  
20          think we should do what as the next step?  
21          Issue the type of order Mr. Bersak  
22          contemplated?

23                   MS. HOLAHAN: Yes, and direct the  
24          parties to the PPA to get together to discuss

1 the terms and the mechanics of how best to  
2 carry out the intent of the legislature in  
3 Senate Bill 577.

4 CHAIRMAN HONIGBERG: Thank you.

5 Mr. Kreis.

6 MR. KREIS: Thank you, Mr.

7 Chairman. I agree with some, but not all of  
8 what has already been said this morning. In  
9 particular, on behalf of the residential  
10 customers of Eversource, I agree that the  
11 command of the legislature in Senate Bill 577  
12 is inexorable. You must reopen Order 25,213  
13 and make certain changes to Page 97 of that  
14 order. We believe this supercedes, and for  
15 purposes of this docket, partially repeals by  
16 implication the requirements that would  
17 ordinarily apply by virtue of 365:28 --

18 CHAIRMAN HONIGBERG: Slow down.

19 MR. KREIS: -- governing the  
20 reopening of prior orders in this docket, and  
21 RSA 362-F:9, governing the consideration of  
22 purchase power agreements. We further  
23 believe that RSA 369-B:3-a is not implicated  
24 by this proceeding, given the directive



1 contained in SB 577, because RSA 369-B:3-a  
2 concerns the process by which Eversource  
3 divested its generation assets, a process  
4 that has now been completed.

5 A somewhat more difficult question  
6 concerns the effect of Paragraph 12 of RSA  
7 374-F:3, which describes the extent to which  
8 ratepayers can be saddled with additional and  
9 non-bypassable stranded costs. We must  
10 reluctantly concede that over-market costs  
11 associated with the power purchase agreement  
12 between Eversource and Berlin Station meet  
13 the definition of "recoverable stranded  
14 costs." The issue, then, is the extent to  
15 which a three-year reprieve in the operation  
16 of the cumulative reduction factor has the  
17 effect of unfairly, and perhaps illegally,  
18 altering the terms of the restructuring and  
19 rate stabilization agreement signed in 2015  
20 and approved two years ago in Docket DE  
21 14-238. When my predecessor entered into the  
22 restructuring and rate stabilization  
23 agreement, she agreed that Eversource could  
24 recover via Part 2 of its stranded cost

1 recovery charge, and I quote, "PPA costs...  
2 as determined by the Commission." The costs  
3 associated with this PPA had already been  
4 determined by the Commission.

5 I have recently sat in this very  
6 chair, in this very hearing room, and been  
7 told by this very utility that the  
8 restructuring and rate stabilization  
9 agreement is in the order of a contractual  
10 undertaking by which I am bound as the head  
11 of the Office of Consumer Advocate. We,  
12 meaning the OCA, bargained away certain  
13 things, in part relying on what the OCA  
14 understood to be limitations on the extent to  
15 which over-market costs associated with this  
16 power purchase agreement would be recoverable  
17 via the stranded cost charge. And even if  
18 you don't agree, as I do not agree, that the  
19 restructuring and rate stabilization  
20 agreement is in the order of the contract,  
21 the fact is that the order that the  
22 Commission entered in Docket 14-238 is  
23 binding on all of these parties and cannot be  
24 altered simply because the legislature, in an

1 unrelated bill, said that the cumulative  
2 reduction factor has to be lifted for  
3 purposes of Docket 10-195. As a result, it  
4 is necessary for the Commission, in this  
5 proceeding, to consider the legal  
6 implications of changing the bargain in the  
7 restructuring and rate stabilization  
8 agreement. It is clear that in SB 577, the  
9 legislature intended Berlin Station to get a  
10 financial boost beyond that which was  
11 previously approved in this docket. What is  
12 less clear is how that burden should be  
13 allocated as between the shareholders of  
14 Eversource and the customers of Eversource.  
15 This of course touches on one of the two  
16 constitutional provisions referenced in the  
17 Order of Notice, Part I, Article 23 of the  
18 state constitution, which prohibits so-called  
19 "retrospective laws," like its federal  
20 counterpart, precluding the impairment of the  
21 obligation of contracts, this safeguard  
22 arguably precludes the Commission from  
23 forcing utility residential customers to  
24 forego the full benefit of the bargain they

1 struck in 2015. We request the opportunity  
2 to brief this significant question in due  
3 course.

4 Finally, particularly given the  
5 questions I'm raising here about the extent  
6 to which the burdens of SB 577 should fall  
7 exclusively on the backs of customers, I  
8 strongly believe that the Commission should  
9 indeed exercise the right explicitly granted  
10 to it by the bill to obtain the cost and  
11 profitability records of the Berlin BioPower  
12 plant. It is further the OCA's position that  
13 we are entitled to a complete and unredacted  
14 copy of those records pursuant to Paragraph 6  
15 of our enabling statute, RSA 363:28.

16 In closing, I'd like to stress  
17 that, as the advocate for the state's  
18 residential customers, I respect the policy  
19 choice made here by the General Court and the  
20 Governor that the economic welfare of the  
21 state, and the North Country in particular,  
22 justifies and requires the recovery of  
23 additional costs by Berlin Station. In our  
24 judgment, the chief issue the Commission must

1           confront here is the extent to which the  
2           burden of those additional costs should be  
3           allocated to customers as opposed to  
4           shareholders. As the statutorily-designated  
5           arbiter between customers and shareholders,  
6           the Commission is well positioned to make  
7           that determination. Casting you as the  
8           arbiter implies a middle ground, as distinct  
9           from always expecting ratepayers to foot the  
10          bill whenever some virtuous public policy  
11          imperative touches on the field of energy.

12                   CHAIRMAN HONIGBERG: Two questions.  
13           I'll ask them both and you can answer them in  
14           turn. First, why are the cost and  
15           profitability records relevant to any issue  
16           raised by you or anyone else in this  
17           proceeding; and second, as a result of what  
18           you think is going on, what is it we should  
19           do next?

20                   MR. KREIS: I'll answer the second  
21           question first, if I can. I think the  
22           Commission should entertain some briefing on  
23           some of the legal issues that I've just  
24           raised, and perhaps some of the other legal

1 issues some of the other parties have raised.

2 And as to the question about why  
3 the Burgess Station -- the Berlin Station  
4 plant's records are relevant, I think they  
5 impact the extent to which the stranded cost  
6 charge is ultimately just and reasonable as  
7 imposed on Eversource's customers. In other  
8 words, if it turns out that Berlin Station is  
9 less unprofitable or more profitable or more  
10 financially viable than the legislature may  
11 have supposed when it adopted SB 577, that  
12 would likely affect the extent to which any  
13 of those costs should ultimately be passed on  
14 by customers. I see the skeptical look on  
15 your face --

16 CHAIRMAN HONIGBERG: Yeah. Those  
17 of us who are following this bill know the  
18 source of that language, and it arose in a  
19 very different version of the bill, when  
20 there were questions about what, if anything,  
21 Burgess should receive. We're in a different  
22 land now. The situation we're in is that  
23 Burgess is supposed to get money, and the  
24 question is who's going to pay it. So we

1 don't regulate Burgess. So it seems that  
2 that language is not really relevant to the  
3 issues before us.

4 MR. KREIS: But nevertheless, the  
5 legislature has explicitly granted you the  
6 authority and opportunity to acquire those  
7 records. And I think --

8 CHAIRMAN HONIGBERG: Which we would  
9 only want to exercise if it were going to  
10 help us answer some question before us;  
11 right?

12 MR. KREIS: Well, indeed, Mr.  
13 Chairman, as someone who also participated in  
14 at least some of the discussions that led to  
15 the adoption of SB 577, like you, I discerned  
16 a disconnect between decisions that the  
17 Commission actually gets to make or needs to  
18 make or must make and the value of obtaining  
19 these records. But nevertheless, the  
20 legislature told you that you have the right  
21 to obtain them, and I think you should.

22 CHAIRMAN HONIGBERG: All right.  
23 Ms. Holahan, we're going to give everybody a  
24 chance to respond to everybody else. I think

1 I know what you want to say, but I'll give  
2 you a chance in a minute or two.

3 Ms. Amidon.

4 MS. AMIDON: Thank you. I hadn't  
5 considered some of the 2015 settlement  
6 agreement arguments that the Consumer  
7 Advocate just presented, and I think I need  
8 to think about those before I respond to  
9 anything with respect to that.

10 I will say that, you know, having  
11 worked here since 2002, this is a novel  
12 situation where the legislature says, you  
13 know, go to Page 97 of this order and amend  
14 it in this fashion. I agree with you that,  
15 you know, there may be some lack of relevancy  
16 in just looking at the profitability or other  
17 records of Burgess BioPower, but I think it's  
18 an open question because it's been raised by  
19 the Consumer Advocate. However, having said  
20 that, aside from the fact that whether the  
21 Commission decides it needs legal briefs, I  
22 do not see this as an adjudication. There's  
23 no party on one side and party on the other  
24 side debating whether a rate increase should



1 be implemented, for example. It's how does  
2 the Commission really effectuate this without  
3 having a new contract or an amended contract  
4 between the two parties. I mean, I think  
5 that's probably the critical issue here is  
6 directing the parties to go back and amend  
7 the contract. And unfortunately, there is  
8 just nothing further that the Commission  
9 really is required to do.

10 So I also don't think there is any  
11 need for a technical session following this  
12 prehearing conference or for a procedural  
13 schedule. What we need is, I think, an  
14 amended contract. And absent that, I would  
15 say that Staff is available to assist the  
16 Commission in any way you deem necessary to  
17 fulfill your obligations under the statute.

18 CHAIRMAN HONIGBERG: Do you think  
19 there might be value in having the parties  
20 have a technical session and discuss the  
21 possibility of entering into a stipulation?  
22 It may not be possible, given some of the  
23 things the Consumer Advocate has said. But  
24 at least a process stipulation as to how to

1 go forward?

2 MS. AMIDON: I hadn't considered  
3 that. I suppose that has some merit. If it  
4 gets adversarial, as you know, then people  
5 are going to have different approaches -- we  
6 can see what we can do. Is that your  
7 direction, then, to --

8 CHAIRMAN HONIGBERG: I haven't  
9 given any direction. I'm just trying to  
10 figure out what -- I want people to tell me  
11 what to do next.

12 MR. KREIS: Okay.

13 CHAIRMAN HONIGBERG: It occurred to  
14 me as this was going, I thought maybe some of  
15 these conversations would have happened  
16 before we got here. But it seems like a lot  
17 of this is new to everybody.

18 MS. AMIDON: Yes. I had hoped that  
19 we would be here with a proposal between the  
20 two parties as to how to implement a change  
21 to the contract, but I haven't heard from  
22 either party that that's been done.

23 CHAIRMAN HONIGBERG: Oh, I think  
24 it's fairly obviously that it hasn't been

1 done.

2 All right. Who wants a second  
3 round? Mr. Bersak.

4 MR. BERSAK: Thank you, Mr.  
5 Chairman. The Company and Burgess have, in  
6 fact, spoken, and we are pretty much on the  
7 same page right here, that we need a chance  
8 to sit down and negotiate an amendment to the  
9 PPA. So we have, in fact, prepared for this  
10 proceeding.

11 I applaud the Consumer Advocate for  
12 trying to find somebody else to pay for what  
13 the legislature has put into effect, but it's  
14 very clear from the fiscal note that I read  
15 from the underlying legislation that the  
16 legislature fully understood and intended  
17 that the costs of this legislation would be  
18 borne by customers, not by the Company  
19 shareholders. The shareholders of Eversource  
20 get no benefit from this. If anything, it  
21 hurts them because it makes the cost of our  
22 product that much higher in the marketplace.  
23 So, you know, we can try to deal with the  
24 issues that the Consumer Advocate brought up,

1 one way or the other. But ultimately,  
2 whatever we present back to this Commission,  
3 should we reach an agreement with Burgess, is  
4 going to contain a condition that approval  
5 has to be for rate recovery and methodology  
6 that customers are bearing full cost of the  
7 legislation. That's it. Thank you.

8 CHAIRMAN HONIGBERG: Mr. Bolt, you  
9 want another round?

10 MR. BOLDT: Nothing further.

11 CHAIRMAN HONIGBERG: Ms. Holahan.

12 MS. HOLAHAN: I'll echo what  
13 Attorney Bersak just said with respect to the  
14 stranded cost issues. But also, I wanted to  
15 reiterate what you said, Mr. Chairman, about  
16 the production of confidential,  
17 commercially-sensitive information. I  
18 think -- I'm not sure I can say it any better  
19 than you did, that that provision was  
20 included in there from a prior version of the  
21 statute, and those documents will not be  
22 relative to the determination in this  
23 proceeding. I think the legislature has  
24 already balanced those interests and made

1           those policy determinations, and now it is  
2           just incumbent upon the parties to figure out  
3           the best way to carry out the terms of the  
4           legislation.

5                         CHAIRMAN HONIGBERG: All right.  
6           What do you want to do next, everybody? Do  
7           you think there is value in having the  
8           technical session that is scheduled and the  
9           room is available for to have a discussion  
10          about what to do?

11                        MR. BERSAK: Never hurts to talk.

12                        CHAIRMAN HONIGBERG: That's my  
13          inclination. I don't know that you're going  
14          to talk Mr. Kreis out of some of the  
15          positions that he wants to argue. But it may  
16          well be that you have to submit dueling  
17          recommendations to us about how to proceed  
18          and we'll have to rule on them. It may be  
19          that Mr. Kreis is going to end up filing a  
20          motion of some sort. I don't know. We can  
21          come back if you want to see us in an hour to  
22          help noodle through something, but... anyone?  
23          Thoughts?

24                        [No verbal response]

1                   CHAIRMAN HONIGBERG: All right. We  
2 will then adjourn the prehearing conference  
3 and let you start your technical session.  
4 And if you need us, let us know.

5                   MR. BERSAK: Thank you.

6                   (Hearing adjourned at 10:35 a.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
Shorthand Court Reporter and Notary Public  
of the State of New Hampshire, do hereby  
certify that the foregoing is a true and  
accurate transcript of my stenographic  
notes of these proceedings taken at the  
place and on the date hereinbefore set  
forth, to the best of my skill and ability  
under the conditions present at the time.

I further certify that I am neither  
attorney or counsel for, nor related to or  
employed by any of the parties to the  
action; and further, that I am not a  
relative or employee of any attorney or  
counsel employed in this case, nor am I  
financially interested in this action.

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Susan J. Robidas, LCR/RPR  
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