

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

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Concord, New Hampshire

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RE: DE 14-238
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
Determination Regarding PSNH's
Generation Assets.
(Prehearing conference)

PRESENT: Commissioner Martin P. Honigberg, Presiding
Commissioner Robert R. Scott
Sandy Deno, Clerk

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Robert A. Bersak, Esq.

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Reptg. the Office of Energy & Planning:
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Karen Cramton, Deputy Director

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and Retail Energy Supply Assn:
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Reptg. the Business & Industry Assn. of N.H.:
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P R O C E E D I N G

CMSR. HONIGBERG: Good morning, everyone. I know most of you are here just to see what the Bench looks like without the Chair. We're here at the invitation of the Legislature. On August 1st, 2014 Governor Hassan signed into law House Bill 1602, an act relative to the divestiture of PSNH assets, and relative to the siting of wind turbines. The second part of that is not relevant to what we're doing here today.

The new law amended RSA 369-B:3-a, to require the Commission to "commence and expedite a proceeding to determine whether all or some of PSNH's generation assets should be divested." Under the law, the Commission may, a quote, "may order PSNH to divest all or some of its generation assets if the Commission finds that it is in the economic interest of retail customers of PSNH to do so, and provides for the cost recovery of such divestiture."

In this proceeding, the Commission will be guided by the purposes of House Bill 1602, which include maximizing the economic value for PSNH's retail customers; minimizing the risk to those customers; reducing stranded costs; settling issues surrounding stranded costs; and if appropriate, providing for the

1 continued operation or possible repowering of PSNH's
2 generation assets.

3 We published an order of notice setting
4 a prehearing conference for today, directing those who are
5 interested in intervening in the proceeding to file their
6 request to intervene by the 29th of September, I think,
7 yes.

8 CMSR. SCOTT: Yes.

9 CMSR. HONIGBERG: Objections, if any,
10 are due today. And, we'll ask PSNH whether it intends to
11 or whether it has objected or is objecting to any of the
12 requests, and we'll have a discussion about that. We'll
13 also discuss preliminary issues that we've identified.
14 And, those include what assets should be included, whether
15 long-term contracts need to be included, what the status
16 and relevance of the 1999 Restructuring Settlement
17 Agreement might be to what we're doing today, and any
18 other issues the parties and intervenors identify for us
19 today. To the extent any of those issues require legal
20 briefing or would benefit from briefing up front, we'll
21 try and set a schedule today for when those legal memos
22 and briefs would be submitted.

23 We'll take comments on the sequence of
24 what issues we should decide in what order, how we should

1 go about doing that, to best accomplish the Legislature's
2 stated intent to "expedite" this proceeding.

3 This will almost certainly not be the
4 only prehearing conference we have in this matter. We may
5 do prehearing conferences on specific issues, we may do
6 other scoping types of hearings to get a handle on how
7 we're going to proceed.

8 We recognize there's a lot to do. We
9 don't know how long it will take. We're aware that one of
10 the sponsors of this legislation thinks we should go slow.
11 But the legislative directive signed by the Governor into
12 the law is that we expedite this proceeding, and we expect
13 all of you to cooperate in that process.

14 So, with that out of the way, we'll take
15 appearances from those who know they were going to be
16 here, those who have asked to be here, and anybody else
17 who somehow missed what's been going on and is just here
18 for the show and wants to participate. So, I know you
19 didn't ask for this, but this is all about you. So, we'll
20 start with PSNH.

21 MR. FOSSUM: In that case, good morning,
22 Commissioners. Matthew Fossum and Robert Bersak, here for
23 Public Service Company of New Hampshire.

24 CMSR. HONIGBERG: Let's go backwards

1 from behind the Company. Anybody in the second table?

2 No. Let's go to the third table.

3 MR. BOLDT: Chris Boldt, Donahue, Tucker
4 & Ciandella, on behalf of the City of Berlin.

5 MS. HATFIELD: Good morning,
6 Commissioners. Meredith Hatfield, for the Office of
7 Energy & Planning. And, with me from the office is our
8 Deputy Director, Karen Cramton.

9 MS. GEIGER: Susan Geiger, from the law
10 firm of Orr & Reno. I represent New England Power
11 Generators Association and Retail Energy Supply
12 Association.

13 CMSR. HONIGBERG: Who else back there?

14 MR. LICATA: Michael Licata, on behalf
15 of the Business & Industry Association of New Hampshire.

16 MR. PATCH: Good morning. Doug Patch,
17 law firm of Orr & Reno, on behalf of TransCanada, the two
18 entities noted in my appearance and in the Petition. And,
19 with me this morning is Shawn Keniston, who is with
20 TransCanada Hydro Northeast, and is the Director of
21 External Affairs and Relicensing.

22 CMSR. HONIGBERG: I think we're to the
23 back row over there.

24 MR. IRWIN: Good morning, Commissioners.

1 I'm Tom Irwin, with Conservation Law Foundation. And,
2 with me today is Ivy Frignoca, also with Conservation Law
3 Foundation.

4 MS. EPSEN: Good morning. Kate Epsen,
5 with the New Hampshire CleanTech Council.

6 MS. GOLDWASSER: Rachel Goldwasser, of
7 the law firm of Orr & Reno, for the Granite State
8 Hydropower Association.

9 MR. FABISH: Good morning. Zach Fabish,
10 with the Sierra Club.

11 MR. AALTO: Pentti Aalto, representing
12 myself.

13 MS. CHAMBERLIN: Susan Chamberlin,
14 Consumer Advocate for the residential ratepayers. And,
15 with me today is Jim Brennan.

16 MR. SPEIDEL: Alexander Speidel, Staff
17 attorney representing the Staff of the Commission. And, I
18 have with me Director of the Electric Division, Thomas
19 Frantz, and Assistant Director of the Electric Division,
20 Leszek Stachow.

21 CMSR. HONIGBERG: I think we have
22 everybody who filed motions to intervene. Is there
23 anybody else that anyone is aware of, either here or
24 someone, the Company or the Staff is aware of who are

1 interested in intervening?

2 MR. FOSSUM: Commissioners, I believe
3 two who I did not hear this morning that I am aware of are
4 the City of Manchester and the International Brotherhood
5 of Electrical Workers.

6 CMSR. HONIGBERG: You are correct. I
7 was just picking up my list and I see both Manchester and
8 the IBEW. Has anyone been in contact with representatives
9 of the City of Manchester or the union to know if -- know
10 what's going on with them and why they're not here today?

11 (No verbal response)

12 CMSR. HONIGBERG: Okay. Good enough.
13 Mr. Fossum, Mr. Bersak, what's your position on
14 interventions? If you want to state it orally, just want
15 to tell us what you're filing?

16 MR. FOSSUM: Well, initially, we have
17 not filed anything yet. Part of the reason for that is
18 that we were served with some of the petitions to
19 intervene, others of which we only become aware of by
20 finding on the Commission's website. So, we didn't want
21 to file anything prior to this morning before we knew who
22 the actual players were going to be. We are working on a
23 document related to the interventions that we're aware of.
24 We do intend to file that later. And, we do intend to

1 object to some of the requests for intervention at that
2 time.

3 To the extent that there's an issue to
4 be, I guess, argued or set out this morning with regard to
5 intervention, I would ask that, to the extent that the PUC
6 ultimately determines that it would grant any of the
7 petitions for intervention, I would ask the Commission to
8 make it clear at the outset that, given the expedited
9 nature of this proceeding, that any intervenor must comply
10 with the Commission's orders and directives, that it not
11 refuse to do so when -- when or if they deem it not in
12 their interest, and that any intervenors must provide any
13 and all relevant information that they, their members,
14 affiliates or parent companies may possess.

15 As the Commission has already noted this
16 morning, this is an expedited docket. There's clearly a
17 lot of people very interested in it. And, our hope is to
18 help the Commission fulfill its goal as directed by the
19 Legislature in that regard.

20 CMSR. HONIGBERG: I appreciate your
21 comments. I know that everyone's always fighting the last
22 war, and so you're trying to avoid redoing that in
23 proceedings that have been ongoing. Although, I'm not
24 sure that anything you've asked us to consider is

1 something that isn't already required by law. But I
2 understand what you're saying.

3 Are there parties -- or, rather
4 prospective intervenors whom you intend to object entirely
5 to their participation in the docket?

6 MR. FOSSUM: Yes, there are some. But I
7 would let our objections speak for itself when it's filed.

8 CMSR. HONIGBERG: We weren't planning on
9 ruling on intervention motions this morning. So, what
10 we'll do is we'll see your objections or responses to the
11 motions. To the extent there are prospective intervenors
12 whose rights PSNH wants to limit or prevent from
13 participating in this docket, you -- I would expect you'd
14 probably want to respond to that. And, we would give you
15 five days to respond or reply to PSNH's objections. Yes,
16 Mr. Fossum.

17 MR. FOSSUM: And, Commissioner, just for
18 the record I suppose, I would object to them being
19 permitted to do so. The Commission's Order of Notice was
20 very clear about what a potential intervenor would need to
21 demonstrate in order to justify their participation in
22 this docket. It's the same requirements that are in
23 statute. I mean, it's nothing new. It's nothing
24 different than what has ever been here before. And, the

1 Commission's rules provide for either motions or petitions
2 and objects to them, and not necessarily replies back to
3 that.

4 CMSR. HONIGBERG: You're right. You're
5 right. But you know, as well as I do, that a number of
6 them will file something anyway. And, so, we might as
7 well have them do it and get it out there, because it's
8 not like we're going to strike them if they do it, and
9 it's not like you would move to strike them if they did
10 it.

11 MR. FOSSUM: All right.

12 CMSR. HONIGBERG: So, let's get a
13 deadline for them to do it, which is essentially in the
14 middle of next week and get those things -- or, the end of
15 next week, next Thursday. And, so, we'll get those
16 replies, and we'll have both parties' positions on the
17 limitations that you're suggesting or the eliminations of
18 some. But I understand what you're saying.

19 MR. FOSSUM: Thank you.

20 CMSR. HONIGBERG: Does anybody else want
21 to say anything about interventions? Staff? Mr. Speidel.

22 MR. SPEIDEL: Yes, Commissioner. I
23 think that Staff ought to make its viewpoints on the
24 motions for intervention known within the context of

1 today's prehearing conference, just to make it clear and
2 make it plain to all parties involved that we're not
3 necessarily keying off of what the Company might be
4 interested in responding to, or vice versa. We just want
5 to present our own thoughts on intervention, if possible,
6 right here at the hearing so that all can hear them.

7 So, if I may, we have some thoughts that
8 we'd like to go through about the specific intervenors?

9 CMSR. HONIGBERG: Go ahead.

10 MR. SPEIDEL: Okay. Thank you very
11 much. I'll begin with the intervenors for which the Staff
12 believes there is a right to mandatory intervention under
13 RSA 541-A:32, I. With an asterisk, obviously, the Office
14 of the Consumer Advocate has a right to participate in
15 this proceeding as a matter of statute, but we look
16 forward to working with the Office of the Consumer
17 Advocate during the pendency of this proceeding, and we
18 welcome their participation.

19 CMSR. HONIGBERG: You're even getting to
20 sit at the same table with them today.

21 MR. SPEIDEL: Yes, exactly. Space is at
22 a premium today. We also believe that mandatory
23 intervention is available to the International Brotherhood
24 of Electrical Workers, in that their interests as

1 employees of PSNH and workers at these physical assets are
2 implicated here. So, we would support their intervention.

3 We also support the intervention of the
4 Office of Energy & Planning, as there are many significant
5 issues of state energy policy to consider here. And, the
6 Office of Energy & Planning is the representative of our
7 Governor in formulating energy policy.

8 We support, on a mandatory basis, the
9 intervention of the City of Manchester, and also the City
10 of Berlin, as they have plainly indicated that they have
11 certain rights, not only under the 1999 Settlement
12 Agreement, but also potential future rights and interests
13 implicated in the hydroelectric assets located within
14 their city's borders.

15 Also, we would support, on a mandatory
16 basis, and having reviewed the late-filed Petition to
17 Intervene by Mr. Pentti Aalto. We have interpreted his
18 intervention to be one on the basis of his individual
19 personal status as a ratepayer, not in any corporate
20 status. And, on that basis, we do recognize that it was
21 late-filed, but we'd recommend that the Commission accept
22 the late-filed intervention and approve it.

23 With regards to the remaining
24 intervenors, and I'll list them, we have two that can be

1 qualified as environmental advocacy organizations, the
2 Conservation Law Foundation and the Sierra Club. And, we
3 have several that could be qualified as competitors of
4 PSNH in one regard or another. We have TransCanada, in
5 its individual capacity. We have the New England Power
6 Generators Association, the Retail Energy Supply
7 Association, a competitor of PSNH, in the sense that they
8 represent the interests of competitive suppliers,
9 competitors of PSNH's supply business, also the Granite
10 State Hydropower Association. And, to a certain extent,
11 insofar as they represent the interests of distributed
12 generation, manufacturers or providers, and other
13 potential wholesale competitors of PSNH, the New Hampshire
14 Sustainable Energy Association.

15 All of these entities, on the basis of
16 our interpretation of the importance of this case to all
17 of these different interests, we would not object to these
18 entities being granted discretionary intervention under
19 Subpart II. However, we would like to present the caveat
20 that, in the interests of making sure that this proceeding
21 is handled in an expedited and orderly fashion, that where
22 possible there be perhaps a consolidation of intervenors
23 into groupings, where appropriate. For instance, it might
24 be appropriate for the CLF group and the Sierra Club group

1 to work together as a single intervenor group. It might
2 be appropriate, for instance, for TransCanada to be
3 subsumed into an intervenor status with its trade
4 association, the New England Power Generators Association,
5 so as to, you know, so as to avoid duplication of effort
6 and unnecessary collateral problems that might be arising
7 from such duplication of effort.

8 And, we don't have specific guidance at
9 this time in terms of how the consolidation should be
10 accomplished or whether it should be accomplished. But,
11 in order to give the Commission the tools to be able to
12 correctly examine the field at play with these intervenors
13 under discretionary intervention, we would recommend that
14 all of the intervenors that I have described that are
15 falling under the "discretionary" category be required to
16 provide a statement of interest, regarding what they plan
17 to do as part of their participation in this case, how
18 their participation would implicate the economic interests
19 of PSNH retail customers, and also a general description
20 of the scope of their intended discovery and testimony.
21 Because, if there is overlap, if at all possible, a lot of
22 these intervenors could very well be consolidated without
23 harming their interests and enabling a more efficient
24 proceeding. So, we would suggest that in terms of

1 intervention at the present time.

2 CMSR. HONIGBERG: I want to follow up on
3 some of what you just said, and taking them in the order
4 that you just presented them. You listed the CLF and the
5 Sierra Club first. In either order, would either of you
6 like to say anything about Staff's thoughts? Mr. Irwin.

7 MR. IRWIN: Thank you, Commissioner. We
8 would prefer not to have a full -- certainly a full
9 consolidation of CLF and the Sierra Club, although I'll
10 let the Sierra Club speak for itself. But we expect that
11 we may very well have different interests. We would
12 certainly -- we would be pleased, through submission of
13 briefing or some other submission, to undertake the sort
14 of analysis mentioned here to define what the differences
15 may be. But we are concerned that we may -- may very well
16 have different interests and would prefer not to have full
17 consolidation.

18 That said, we're certainly willing to
19 work with other parties to avoid duplication and to ensure
20 the efficiency of the process.

21 CMSR. HONIGBERG: Someone from the
22 Sierra Club?

23 MR. FABISH: Good morning. Yes, I would
24 like to echo that. I think that, as a note of caution,

1 far from enabling expedition, forcing discrete parties to
2 consolidate in party status may well end up causing
3 problems later on as the docket develops, as positions
4 develop. Parties that, at the outset, may have
5 superficial or a generalized similarity of interests may
6 develop different positions, and then would have to come
7 before the Commission and petition for dissolution of
8 whatever consolidation that had happened at the outset.

9 I think that an agreement and an
10 intention to conduct the docket consistent with the
11 Legislature's intention that it be expedited, and to
12 coordinate on ensuring that discovery is not duplicative,
13 that testimony is not duplicative, I think that that may
14 be of value. But that consolidating parties that are
15 separate entities, based on a generalized supposition of
16 shared interests I think would be ultimately
17 counterproductive.

18 CMSR. HONIGBERG: Okay. The group that
19 Staff I think identified as, broadly, very broadly, as
20 "competitors" in one way or another. We have three
21 different Orr & Reno lawyers sitting in three different
22 parts of the room. So, I'm interested in perhaps one or
23 all three of you describing how your different interests
24 are going to work here. So, Mr. Patch, why don't you

1 start.

2 MR. PATCH: Yes, I'd be happy to start,
3 since TransCanada was mentioned first.

4 CMSR. HONIGBERG: Do you want to find a
5 microphone to help the court reporter?

6 MR. PATCH: Sure.

7 CMSR. HONIGBERG: Sorry about that.

8 MR. PATCH: First of all, just to --
9 first of all, just to note for the record, TransCanada is
10 not a member of NEPGA. TransCanada's, one of the two
11 entities on whom we sought intervention, the power
12 marketing entity is a member of RESA. And, that having
13 been said, I believe TransCanada's interests in this
14 docket in all likelihood will be aligned with NEPGA and
15 RESA. But it's a little hard to know. The scope of
16 issues have not been, you know, obviously, in your Order
17 of Notice, you laid out a number of pretty broad issues.
18 But, as we understood the Order of Notice, the scope of
19 issues, there are going to be more prehearing conferences.
20 And, so, it's a little hard to know at this point in time
21 where there might be some divergence of views.

22 So, what we would prefer that the
23 Commission do would be to allow separate intervention by
24 the TransCanada entities, with the understanding that we

1 will certainly make every effort to consolidate with NEPGA
2 and RESA. At this point in time, we don't see divergence
3 of points of view, but that could develop, depending on
4 the issues. And, if that were to happen, then at that
5 point in time, obviously, we would let the Commission
6 know, and we would do what we had to at that point in
7 time. So, that would be our preference, is to handle it
8 that way.

9 The only other thing that I'd like to
10 say, I mean, I agree with what Staff basically outlined,
11 in terms of attempts to try to make this docket, since
12 it's supposed to be an expedited docket, as
13 administratively efficient as possible. Discovery
14 oftentimes, I mean, it's very easy for PSNH, and they do
15 it frequently, to say, you know, "See the answer to this
16 discovery request", if there's a duplication. I mean,
17 it's handled very simply. So, I don't see that as being
18 so much of an issue in terms of duplication of effort.

19 But, overall, I think the idea of
20 consolidating definitely makes sense. We understand the
21 interest in doing that. We'd be happy to make every
22 effort to try to do that.

23 CMSR. HONIGBERG: Ms. Geiger.

24 MS. GEIGER: Yes. Thank you,

1 Commissioner Honigberg. NEPGA and RESA have already taken
2 at least the initial step that's been suggested by Staff,
3 and they filed jointly a petition for intervention. They
4 are separate entities, but they plan on participating in
5 the docket together, for purposes of efficiency. For the
6 reasons articulated very well by Sierra Club's attorney, I
7 believe that forcing further consolidation or joinder with
8 other parties at this juncture may be difficult, because
9 down the road we may need to come back before you to
10 separate.

11 So, we would ask that NEPGA and RESA be
12 considered participants together, but that further, you
13 know, mandatory consolidation with other parties, who may
14 seem superficially similarly situated, not concur.

15 CMSR. HONIGBERG: Ms. Goldwasser.

16 MS. GOLDWASSER: Yes. The Granite State
17 Hydropower Association is an association of mainly small
18 hydroelectric plants 5 megawatts or smaller, and have
19 certain statutory rights that don't apply to the members
20 of NEPGA specifically. We aren't competitive supply
21 organizations, so we aren't aligned necessarily with RESA
22 or TransCanada as a competitive supply.

23 I would note GSHA was an active
24 participant in the settlement process in 1999. I'd also

1 note that GSHA isn't planning on taking some of the
2 positions that I understand some of the other parties are
3 taking today. And, for that reason, their interests are
4 not conflicting, but not necessarily the same as the other
5 parties that have been referenced in Staff's list. And,
6 that may create some complications, if these organizations
7 are combined, because GSHA may not wish to take a position
8 that one of the other organizations is taking.

9 Notwithstanding that fact, at this point
10 we don't see a conflict there. I hope that that makes
11 sense.

12 CMSR. HONIGBERG: I would think you
13 wouldn't see a conflict, since three of you could meet in
14 one office.

15 MS. GOLDWASSER: Yes. And, clearly,
16 we've had that discussion. But there is a -- there is a
17 different interest for the small independent power
18 producers that may not apply to some of the other entities
19 that were listed in Staff's grouping.

20 CMSR. HONIGBERG: Ms. Epsen.

21 MS. EPSSEN: Representing the New
22 Hampshire CleanTech Council, as I said, which is a part of
23 the New Hampshire Sustainable Energy Association, we're
24 committed to keeping our participation fully cooperative

1 and expeditious as well. I think, similar to Granite
2 State Hydroelectric, we represent somewhat of a different
3 membership than the other entities. We're a mixture of
4 small and large clean energy developers or installers or
5 other related businesses, representing all of the
6 renewable energy technologies. So, we may have a slightly
7 different perspective than some of the other petitioners
8 here today. But we're fully open to cooperating where
9 possible.

10 CMSR. HONIGBERG: Mr. Speidel, I've
11 forgotten, what did you say about the BIA?

12 MS. EPSSEN: Oh, I didn't say anything
13 about the --

14 CMSR. HONIGBERG: No, I'm sorry. I'm
15 talking to Mr. Speidel.

16 MR. SPEIDEL: That's my opening. I
17 hadn't said a word about it, because they're ultimately
18 neither fish nor fowl. In that they are not an individual
19 ratepayer, nor are they an association of, broadly
20 speaking, "competitors". But we would not object to the
21 position of BIA as an intervenor under the Subpart II
22 discretionary intervention.

23 CMSR. HONIGBERG: Does anybody have
24 anything else they want to say about intervention right

1 now?

2 (No verbal response)

3 CMSR. HONIGBERG: All right. We're
4 going to caucus for just a moment.

5 (Cmsr. Scott and Cmsr. Honigberg
6 conferring.)

7 CMSR. HONIGBERG: We think we want to
8 hear from -- hear some of this in writing about your ideas
9 for how to work together. I'm not using the word
10 "consolidate" right now. But, to the extent that
11 consolidation is something that the parties and the
12 intervenors think make sense, PSNH thinks makes sense,
13 also by next Thursday, to the extent that you want to file
14 something on that, that would be the time to do so.

15 I think, if there's a proposal from
16 intervenors as to how to work together or consolidate,
17 that would be a good time to make a suggestion like that.
18 If there are suggestions about scope of intervention from
19 certain parties, it's pretty clear some of the -- even
20 some of the ones who were mandatory, in the Staff's eyes,
21 like the City of Manchester and the City of Berlin, have
22 very specific interests, the IBEW have very specific
23 interests, it will I think be appropriate to consider the
24 scope of the participation of such intervenors along the

1 issue lines like that.

2 Ms. Geiger.

3 MS. GEIGER: Yes. Commissioner
4 Honigberg, I'd just like a little clarification from the
5 Bench, if you could. I'm just curious as to the timing of
6 the PSNH objection. I'm not sure when they're making --
7 when they're planning on making that filing. They may
8 have said it, and I may have missed it. So, I apologize.

9 CMSR. HONIGBERG: Mr. Fossum.

10 MR. FOSSUM: Well, under the
11 Commission's Order of Notice, the filing would be due
12 today, and it will be filed today.

13 CMSR. HONIGBERG: And, so, that's what
14 we thought was the case. Just wanted to get that on the
15 record.

16 MS. GEIGER: Thank you.

17 CMSR. HONIGBERG: And, obviously, PSNH,
18 if you have thoughts on consolidation and limitations of
19 scope of intervenors, beyond what you've already said
20 orally, and that's not included in the true objections
21 today, you can file next week as well with those.

22 Okay. Anything else people want to say
23 about intervention right now?

24 (No verbal response)

1 CMSR. HONIGBERG: Okay. We put in the
2 Order of Notice a part where we would talk about issues
3 that might be appropriate to address early, through,
4 presumably, written submissions by the parties, to help
5 define how we're going to proceed on certain specific
6 issues. Anybody want to make an offer on how we do that?

7 MR. SPEIDEL: Well, Commissioner, I
8 understand that at times the Company or other parties may
9 wish to have a chance to speak in advance of Staff
10 weighing in. But we'd like to offer, and if there's a
11 general assent in the room, --

12 CMSR. HONIGBERG: Mr. Speidel, you
13 grabbed the microphone, so go for it.

14 MR. SPEIDEL: Thank you very much. We
15 have an idea about an interim roadmap for this proceeding
16 that might be of assistance to us all. Looking at the
17 language of 1602, I think there's a quotation mark phrase
18 that is of great keen interest as part of this proceeding,
19 and that would be "economic interest of PSNH's retail
20 customers". There needs to be a definition of what that
21 is. And, Staff would not presume to unilaterally be able
22 to establish that through our own advocacy or through our
23 own points of view on that. We would be keenly interested
24 in this broad group here, including, of course, the

1 Company, weighing in on that through briefing. And, we
2 would imagine that, around mid-November, if we were to
3 receive briefing from all of the intervenors and from the
4 Company and from ourselves, describing what we view to be
5 the "economic interest of PSNH retail customers". I think
6 that would go a long way for framing the next steps, in
7 terms of how to go about determining that economic
8 interest.

9 And, Staff is a little bit agnostic at
10 the present time as to whether it would be too ambitious
11 to require a combination briefing on that point, with both
12 what is "economic interest", and how best to determine
13 that. It would be nice if we were to have that in hand by
14 mid-November, both elements, but that might be a little
15 bit overambitious. We could start by asking for a
16 definition of what "economic interest" means, and what
17 factors would feed into a proper assessment of that
18 economic interest. Not necessarily the mechanics of
19 determining that as part of this proceeding, but just an
20 overview of the scope of what that term means. Because
21 it's very important, it's critical to nail that down as
22 part of this.

23 And, on the basis of the briefings that
24 are received by the Commission in November, the Commission

1 would then rule and come up with a working definition that
2 would apply for the remainder of this docket. That's one
3 idea that we had.

4 The next piece that we wanted to
5 investigate was the status of the 1999 Settlement
6 Agreement. That, of course, is a very important document
7 that was folded into subsequent legislation in the late
8 1990s and early 2000s, regarding the disposition at that
9 time of PSNH's generation-related assets. And, that
10 Settlement Agreement has a lot of moving parts. Just by
11 way of example, the hydroelectric facilities, within the
12 City of Berlin and the City of Manchester, are small
13 elements, but very important to those two municipalities
14 of that Settlement Agreement. And, so, there's many
15 branches of that Agreement. And, we want to know, as a
16 Staff, as to whether that Settlement Agreement has certain
17 legal effects or practical effects as part of this
18 proceeding that we need to be aware of. And, I think we
19 have an awful lot of brain power in this room today. And,
20 certainly, the Company has a very important obligation to
21 make its position on the Settlement Agreement known to
22 everyone. And, I think that would enable the Commission
23 to have some useful tools in considering on how to
24 proceed.

1 So, "economic interest", perhaps it's a
2 little ambitious, but maybe even the method of determining
3 the "economic interest", and also the status of the 1999
4 Settlement Agreement and the implications of that
5 Settlement Agreement for this proceeding. I think those
6 need to be aired out, and the Commission needs to have a
7 full viewpoint from everyone on those matters. Thank you.

8 CMSR. HONIGBERG: Anyone want to comment
9 on Mr. Speidel's issues? Mr. Bersak.

10 MR. BERSAK: We tend to agree with what
11 Mr. Speidel said. It's just a question of timing.

12 CMSR. HONIGBERG: Uh-huh.

13 MR. BERSAK: As the Commission is aware,
14 we have got another matter that's pending, that's going to
15 take up a significant amount of time, with the possibility
16 of briefs afterwards. And, to try to meet a mid-November
17 deadline that he proposed would be difficult to do a good
18 job.

19 So, just when the Commission decides
20 what it's going to do and how it's going to move this
21 docket forward, we agree that we would like it done
22 expeditiously, but we're already bumping into conflicts,
23 and that's one of the reasons why our objections on
24 petitions to intervene wasn't available today, because we

1 were busy two days ago sitting in this very room doing the
2 other docket. So, we just have to make sure that there's
3 a consideration of the timing that's necessary to get
4 everything done.

5 CMSR. HONIGBERG: No, I appreciate that.
6 Are there others who want to comment on the proposal?
7 Ms. Chamberlin.

8 MS. CHAMBERLIN: Thank you. I agree
9 with the first part, that the "economic interests of PSNH
10 retail customers" needs to be defined. It's a somewhat
11 unique standard. And, I think it will help channel, from
12 interventions to discovery, if we have a better idea of
13 what that means.

14 I would not address the Settlement
15 Agreement quite yet. I just think it's premature. I
16 think the Agreement is a -- it's a done deal. And, if
17 anything about what people propose going forward affects
18 that Agreement, then they need to raise that at the time
19 and resolve it at the time. I think it would be too
20 difficult to try to imagine all the possible outcomes and
21 how they might affect the 1999 Agreement. I just don't
22 think we're ready for that.

23 CMSR. HONIGBERG: Ms. Hatfield.

24 MS. HATFIELD: Thank you, Mr. Chairman.

1 One thing that occurs to me is that the issues related to
2 what factors or methods should be considered in
3 determining what is in customers' economic interests could
4 very well be more of a factual inquiry and less legal.
5 So, I'm not sure I have a clear proposal. But it does
6 concern me to try to cover all of those issues within the
7 context of a legal briefing schedule. For example,
8 parties might like to have expert witnesses weigh in on
9 some of those questions.

10 So, as long as the parties had an
11 opportunity to revisit some of those issues, if we tried
12 to cover things in briefs, but then continue to develop
13 them, that might make sense.

14 CMSR. HONIGBERG: I don't think -- I
15 don't think what you said is inconsistent with what
16 Mr. Speidel said. I think his idea is that he wants --
17 maybe I'll let you say it, Mr. Speidel, because I think
18 you'll probably do it better than I will.

19 MR. SPEIDEL: Yes. I would like to
20 invite all of the parties of this proceeding, including
21 the Company, to provide whatever information they can in
22 shedding light on the issue surrounding "economic
23 interest". And, there's not necessarily an expectation
24 that what is provided is completely dispositive evidence

1 or even dispositive evidence at all with regards to the
2 ultimate decision on the assets that PSNH possesses.

3 However, in terms of establishing a
4 basis for a Commission decision on how to frame the issue
5 as a legal matter, as a legal standard, folks can supply
6 all kinds of attachments to their briefings, from experts,
7 from their own personnel, whatever they would like to do,
8 just to provide information for a useful decision-making
9 process on the part of the Commission. Because Staff is
10 concerned, if we can't even set up the standard through
11 which we can examine this question that's mentioned in the
12 legislation, we're going to be adrift. We're not going to
13 be able to find a way to move on and get into the
14 nitty-gritty of actually developing dispositive evidence.

15 CMSR. HONIGBERG: Then, I think you do
16 disagree. I think Ms. Hatfield is thinking that what
17 needs to be done on the issue of methodology is more of a
18 process discussion, rather than a substantive discussion.
19 And, that one or more of the intervenors or the Staff or
20 the Company might take the view that expert testimony is
21 needed on how to determine what the economic interest is,
22 whereas others might think it could be done with, you
23 know, with other types of evidence.

24 And, I think what Ms. Hatfield is

1 saying, you can correct me if I'm wrong, Ms. Hatfield, is
2 that this first round is a discussion of the process, not
3 with the actual substantive proposals. Did I get that
4 right, Ms. Hatfield?

5 MS. HATFIELD: Yes. Thank you, Mr.
6 Chairman. It's possible that we could come to an early
7 agreement on just what "economic interest of retail
8 customers" means. But that could end up being the issue
9 at the heart of this entire case. And, it seems to me
10 that we need to proceed with the case in chief and develop
11 a full schedule to get us there. If we get tangled up in
12 fighting over that issue right at the beginning, hoping
13 for a resolution, you know, then we aren't on an expedited
14 track.

15 CMSR. HONIGBERG: Okay. Other thoughts
16 on any of what Mr. Speidel or Ms. Hatfield has been
17 discussing or the other issues? Yes, Mr. Boldt.

18 MR. BOLDT: Yes, Mr. Commissioner. I
19 might suggest it would be beneficial to have a somewhat
20 staggered schedule. If the Company would produce what
21 they think the definition would be, and Staff produced
22 theirs, we, as intervenors, may be able to see something
23 that is agreeable to the great group, or at least be able
24 to focus. And, there might not be as much disagreement on

1 the issue. If we have everybody file at once, you may
2 have a great much information that is duplicative.

3 CMSR. HONIGBERG: We hadn't really
4 talked about the order of filing, but that's an important
5 consideration. It's something I've been thinking about,
6 but hadn't really focused on.

7 Ms. Geiger.

8 MS. GEIGER: Yes. Thank you. NEPGA and
9 RESA would support the idea of scheduling perhaps an
10 opportunity either for a procedural schedule or a physical
11 meeting for the parties to try to see if they can reach
12 agreement on what the threshold issues are and a schedule
13 for briefing. That was not indicated in the Order of
14 Notice, but that's something that NEPGA and RESA think
15 might be appropriate. And, I think that echos or keys off
16 the comments that we've heard from the other speakers this
17 morning.

18 CMSR. HONIGBERG: Other comments? Mr.
19 Bersak.

20 MR. BERSAK: We tend to agree with what
21 Attorney Geiger just said. That, once we have a
22 determination of who the players are, it would probably be
23 beneficial for us to get together in a tech session type
24 of atmosphere and discuss "how do we move this docket

1 forward?"

2 With respect to what Ms. Hatfield said
3 about we need to have a hearing before we can determine
4 what "economic interest" is, the difficulty with that is
5 it means the hearing would be very broad, because we
6 haven't narrowed down as to what is the exact issue, so
7 everything will be allowed. And, that will make this
8 proceeding much more difficult than it needs to be.

9 CMSR. HONIGBERG: In fairness, I don't
10 think that's what she was saying. I think she was very
11 close to the process that Mr. Speidel was articulating.
12 But I get what you're saying, yes.

13 MR. BERSAK: Okay. But, you know, it
14 kind of touches on one of the issues and questions that
15 the Company had, which is, this is an adjudicative
16 proceeding. Is there a burden of proof? We didn't
17 petition for this. Like you said at the outset, we're the
18 guest of honor. We were invited to come here. We
19 certainly didn't ask for this. And, so, is there a burden
20 of proof? And, if so, what is the burden of proof? And,
21 who has the burden of proof?

22 This is a somewhat unique type of
23 proceeding, because it was the Legislature that called for
24 it. So, we're all here at the behest of the mandate of

1 the Legislature. But we need to know who's got the
2 obligation to go forward, and who has to meet whatever the
3 requirements are to -- for the Commission to make its
4 ultimate decision.

5 One where, in an earlier discussion
6 about the "economic interest of PSNH's retail customers",
7 there's really two issues right there. One is "economic
8 interest", and the second is "exactly what retail
9 customers?" Because, as the Commission is well aware, we
10 have two subsets perhaps of retail customers. One is our
11 delivery customers, which is the universe of all retail
12 customers. But our energy service customers are also
13 retail customers, which is a distinct subset of the larger
14 group. And, their interests don't necessarily align with
15 respect to the interest of the -- of the issues in this
16 proceeding.

17 So, I think we need to discuss and then
18 kick around as to, when we look at the statutory standard,
19 exactly which customers are we talking about, because
20 there are differing impacts on those two sets.

21 With respect to the Restructuring
22 Settlement Agreement, we do have some agreement with the
23 Consumer Advocate, which is, that agreement is an
24 agreement. It was fully litigated before the Commission.

1 It was adopted by many statutory measures that the
2 Legislature included references to the Restructuring
3 Settlement. And, as part of that Settlement, the Company
4 made write-offs of hundreds of millions of dollars. And,
5 in return, the Company had a entitlement to recovery of
6 its stranded costs.

7 And, we don't want to be, you know,
8 re-litigating that Agreement, we don't want that Agreement
9 repudiated. The signatories to that Agreement have a
10 obligation, which they agreed to and signed up for, to
11 support that Agreement. And, just to remind the
12 Commission who those parties were, it's the Governor, the
13 Attorney General, the Executive Secretary and Director of
14 this Commission, the Office of -- at that point it was the
15 "Office of Energy and Community Services", or OEP today.
16 And, so, to take, you know, we can look at that Agreement,
17 as the Consumer Advocate's Office suggests, as to guide us
18 through things that may happen as a result of this docket,
19 but that Agreement still lives. And, if it is repudiated,
20 to put the Company back into the -- where it was, the
21 status quo ante, and return to us the hundreds of millions
22 of dollars of write-offs would make the stranded cost
23 issue in this docket trivial.

24 CMSR. HONIGBERG: Yes. I would be

1 interested in hearing from Mr. Speidel. I don't think
2 that's where he was going with that. But do you have any
3 other comments at this point?

4 MR. BERSAK: Just, you know, another
5 thing we'll need to discuss at some point is, because of
6 the interests of at least the group that Mr. Speidel
7 deemed to be the "competitors", how do we deal with
8 confidential information? Because if the competitors, you
9 know, have excess to that information, it may impact a
10 later divestiture, where we have those that had the
11 information and those that don't. You know, we were very
12 careful during the routine energy service and
13 reconciliation and other dockets to treat information
14 confidentially with respect to competitors.

15 If we now vary from that here, all the
16 other work and precedent is for not. So, we do have
17 issues with respect to how to deal with confidential
18 information, if that information becomes relevant in this
19 proceeding.

20 One of the things that perhaps at the
21 kind of tech session that Attorney Geiger talked about
22 that we can raise, if we have such a get-together, what is
23 the impact and effect of the report that LaCapra has done?
24 How does that weigh into this? I mean, there was some

1 initial spadework that was done that set some numbers out
2 there. How does that weigh into this whole process? Is
3 it an interesting exercise that we're not going to deal
4 with or is it something that really should set a
5 foundation? We really don't know. But it was done, and
6 it's out there, and it needs to be taken into
7 consideration. And, I believe that's my list.

8 CMSR. HONIGBERG: Mr. Speidel.

9 MR. SPEIDEL: Thank you, Commissioner.
10 I'd like to address Mr. Bersak's concerns. Staff actually
11 shares the concerns and the interest of the Consumer
12 Advocate and the Company in avoiding, shall we say,
13 re-litigation of the 1999 Settlement Agreement. Staff was
14 just flagging the issue of the existence of this
15 Settlement Agreement as something that should be very
16 carefully examined and synchronized with this proceeding
17 to avoid any sorts of negative legal implications or
18 financial implications that have been mentioned by Mr.
19 Bersak. We want to make sure that this proceeding does
20 not invalidate the Settlement Agreement, but rather is in
21 harmony with it. And, that is a very difficult legal
22 question. It is not a question that we have ready answers
23 at our fingertips for. So, Staff wanted to invite the
24 parties to weigh in and describe what their viewpoints are

1 on the status of the Settlement Agreement. And, the
2 Company certainly has a number of ideas about that, and we
3 would like to see those in writing, so that we can guide
4 our own thought process about that.

5 CMSR. HONIGBERG: And, Mr. Bersak, I
6 have to confess that I kind of expected you would agree
7 with the notion that the effect of the Settlement
8 Agreement on this proceeding would be something you'd want
9 to get established clearly for everyone, because I'm
10 guessing that it's going to be your position ultimately
11 that there are constraints on the Commission's abilities
12 to -- well, that that agreement does constrain all of us,
13 all of the parties to it and everyone, the legislation
14 that arose out of it.

15 MR. BERSAK: We absolutely agree. I
16 mean, for some of us in the room, we lived through
17 restructuring. And, this is deja-vu all over again.
18 Where, during restructuring, it was the Rate Agreement
19 that came out of the bankruptcy reorganization, which was
20 the agreement in question there. And, that led to an
21 incredibly complex, litigated, litigious, lengthy battle
22 in court, which we don't want to do again.

23 CMSR. HONIGBERG: How many people were
24 involved in that? Raise your hands.

1 (Show of hands.)

2 CMSR. HONIGBERG: That's what I thought.

3 MR. BERSAK: I don't see the couple
4 Commissioners behind me, but I hope their hands are up, or
5 former Commissioners. But, you know, we've done this
6 before, and we've seen the results. And, that's not what
7 the Legislature intended here. And, we don't want to have
8 to revisit, you know, the legalities of what we've entered
9 into. But we agree with what Attorney Speidel said and
10 then what the Consumer Advocate said, is that it's out
11 there, and it has to be heeded, and it does have to be
12 harmonized with this docket. So, to the extent that
13 that's the intention of what Mr. Speidel brought up, we
14 are certainly very, very in agreement with him.

15 MR. SPEIDEL: Excellent. And, if I may
16 also address a second matter that Mr. Bersak raised, and
17 that was the LaCapra report, and also the previous Liberty
18 Consulting report. We concur with Mr. Bersak that it
19 would be inappropriate to have those two reports used as
20 dispositive evidence in this proceeding. They served
21 their purpose, in that they informed parties, including
22 the Legislature, about the then current state of play of
23 PSNH's assets, and the wholesale energy markets and other
24 matters of interest, but we want a fresh look at this.

1 And, it is our expectation that Staff will retain LaCapra
2 Consulting for a fresh report.

3 And, moreover, I have a number of ideas
4 regarding the facilitation of access to LaCapra's
5 methodologies. They have to be worked out in detail for
6 the Company, for other parties, so that we'll have a
7 proceeding where the LaCapra report will be as open source
8 as possible, and will have up-to-date data used, including
9 data from the most recent couple of years, instead of
10 having to rely on a report that, in this world, everything
11 is dated the minute it comes out.

12 But, certainly, we do not want to rely
13 on old reports as part of this proceeding in any way.
14 And, Staff would agree, and actually prefer to have a
15 stipulation to the effect that we will not have these old
16 reports relied upon as dispositive evidence in this
17 proceeding.

18 CMSR. HONIGBERG: All right. Our
19 inclination -- or, is there anybody else who wants to talk
20 on these issues? Yes, Mr. Aalto.

21 MR. AALTO: Very briefly. One concern
22 with the issue of customer benefit and impact, we probably
23 should consider a range of impact, ranging from what
24 happens if there's a bankruptcy of PSNH on one end, to

1 recovering all of the costs under conventional methods.
2 The impacts can be very broad, is I guess what I'm getting
3 at. And, I'm not sure how to get that in to something
4 more confined that would fit here well.

5 CMSR. HONIGBERG: Mr. Fabish.

6 MR. FABISH: Sure. Thank you. Just two
7 quick points. The first of which is, I think that the
8 idea of having a technical session fairly early on in
9 which the parties could sit down and hash out, a number of
10 these issues are ones that I think are going to be of
11 extreme substance and will be at the heart of this docket.
12 Some of them I think are ones that there may be
13 commonalities of interests that can be decided in a tech
14 session and then proposed to the Commission, and that may
15 help expedite the docket. So, I definitely agree with
16 that idea. I think it would be an excellent idea.

17 The second point is, with regard to the
18 LaCapra study and the Liberty Consulting study, I do want
19 to point out that, though I'm not sure what the word
20 "dispositive" means in Staff's recommendation, that they
21 "not be treated as dispositive evidence". The LaCapra
22 report is only six months old. And, given that this
23 docket is under directive from the Legislature to be an
24 "expedited docket", I would be concerned about redoing a

1 lot of work that is actually of fairly recent vintage.
2 And, so, certainly, these reports have been commissioned,
3 are out there, were robust, and should be considered
4 evidence. I wouldn't want to see them ignored on the
5 basis that they are a few months old, particularly in the
6 case of the LaCapra report.

7 CMSR. HONIGBERG: Uh-huh. Understood.
8 Others? Anyone? Yes, Mr. Boldt.

9 MR. BOLDT: I would agree that LaCapra
10 and other reports have some legs still and should not just
11 be discounted. However, from the City's standpoint, we
12 just want to flag an issue. I'm not sure how my council
13 will yet take a position. But the statutory authority for
14 the Commission's consideration of these issues expressly
15 says one part of the Settlement Agreement is to be
16 followed, and that is Section 10, on the employee benefits
17 issues. However, it is silent on whether any of other
18 issues could yet be modified by this Commission, based on
19 its own definition of -- modified definition of "stranded
20 costs".

21 I would not want to say that we have a
22 set of concrete shoes on how we're supposed to run this
23 race, by saying we have to follow the 1999 Settlement
24 Agreement in all parts. Just want to flag that issue for

1 the record.

2 CMSR. HONIGBERG: Okay. Anyone else
3 briefly?

4 (No verbal response)

5 CMSR. HONIGBERG: I think we're inclined
6 to agree with those who have suggested a tech session
7 would be valuable, to talk about what issues to brief and
8 a schedule for briefing. I think that there may be a
9 benefit to having Staff or the Company or some others go
10 first, and give others an opportunity to come in
11 afterwards. If you do that, you generally want to give
12 the party that went first a chance to respond. I am very
13 sensitive, Mr. Bersak, to the scheduling issue that you
14 highlighted.

15 MR. BERSAK: Thank you.

16 CMSR. HONIGBERG: It affects me, too.
17 It affects many people in this room. So, we recognize
18 that there's limits on what can be done during the month
19 of October and in some number of weeks beyond that,
20 presumably. So, I think that it would be unrealistic to
21 expect mid-November to be comprehensive submissions by
22 many of the people in this room. There are others who
23 may, in fact, be able to do a bang-up job by the middle of
24 November, who aren't affected by the Scrubber docket, the

1 hearings on which are starting very soon. So, you can
2 discuss that as you talk about a schedule, which you'll be
3 doing without us, if it's done in a tech session. A
4 couple things I would encourage you to discuss would be
5 page limits on these submissions. I mean, there is no
6 need to go beyond fifteen pages for most of this stuff.
7 This is not -- yes, there are significant issues, but we
8 don't need expositions on the history of ratemaking as a
9 preliminary to any of this stuff. So, we would encourage
10 you to decide and hold to some real page limits in
11 submissions like this, because there are a lot of people
12 out there and a lot of pages. And, whoever made the
13 suggestion to "avoid repetition" made a good one. So, I
14 would encourage you to do that when you discuss
15 scheduling.

16 I'm not going to -- we're not going to
17 impose them from up here yet. So, we hope you'll come up
18 with a reasonable process for that.

19 Not sure when we can schedule a tech
20 session. I mean, you're all here, I don't know how much
21 longer you were planning on being here. So, when we're
22 done, if you're maybe able to hang around and get some
23 work done on some of these issues, I think it might make
24 sense to do that.

1 You can certainly talk about scheduling,
2 although some of that scheduling depends on how many
3 issues you're trying to tackle, and how many different
4 submissions you're talking about. Because they really
5 are, and you could identify three or four different types
6 of submissions, depending on how you slice the issues
7 we've just been talking about. I'm not sure you want to
8 roll it all into one. And, there may be some parties who
9 only are interested in one or two of them, and might not
10 want to file something on all. So, if we keep them
11 discrete, it might make some sense for the readers and for
12 the writers to do that.

13 People have thoughts on -- having heard
14 what I just said and what we've been thinking, are there
15 responses or thoughts? Mr. Bersak.

16 MR. BERSAK: The only difficulty we have
17 with doing a tech session today is that we do have a
18 filing that's due today in this docket.

19 CMSR. HONIGBERG: Good point.

20 MR. BERSAK: And, we need to get back in
21 order to be timely.

22 CMSR. HONIGBERG: Yes. You can discuss
23 scheduling a tech session.

24 MR. BERSAK: Sure.

1 CMSR. HONIGBERG: Find dates.

2 MR. BERSAK: Great. Thank you.

3 CMSR. HONIGBERG: Other thoughts?

4 Considerations? Yes, Ms. Frignoca.

5 MS. FRIGNOCA: I think it also -- I
6 agree with Mr. Bersak. I think it makes sense to not have
7 a tech session until we know the rulings on the motions to
8 intervene, and whether and to what extent the Commission
9 believes the parties should be consolidated in conducting
10 discovery or any other steps.

11 CMSR. HONIGBERG: Well, we're not doing
12 a tech session today. So, that's pretty clear. Yes, Mr.
13 Patch.

14 MR. PATCH: Just one quick thought. I
15 liked, and I think you kind of picked on this, Mr. Boldt's
16 idea of some preliminary indication from Staff and the
17 Company about what a definition of "economic interest"
18 would be.

19 And, whenever the tech session is, if
20 there was something we had in hand coming into that, we
21 could talk to our clients about, assuming we're still in
22 the case at that point in time, that I think would be
23 useful.

24 CMSR. HONIGBERG: Yes, Mr. Speidel.

1 MR. SPEIDEL: Staff is a little bit
2 confused as to why it's necessary for Staff and the
3 Company to provide its viewpoints in advance of everyone
4 else. Everyone could provide their viewpoint at the same
5 time, and then we could all respond to each other. I
6 don't understand why Staff and the Company have some
7 privileged or less privileged position in making their
8 viewpoints, on something that I believe all of the parties
9 present today have thought about long and hard. Just my
10 two cents.

11 CMSR. HONIGBERG: I think Mr. Boldt's
12 concern, and I think a number of -- well, there's the
13 obvious concern that everybody in a context like this
14 would like somebody else to go first. But, more
15 substantively, he makes a point that a number of people
16 may not have thought about it in as great depth, may think
17 that you have, and perhaps the Company has. And that,
18 when they hear what your proposal is, they will say to
19 themselves "There's a lot there I can like. And, so, my
20 filing then becomes a lot less complicated if you've gone
21 first." I mean, that's a perfectly reasonable and
22 rational position for him to take.

23 I will tell you that coming into this,
24 before today, I thought, to the extent we were going to be

1 doing this, we'd have everybody file at the same time, and
2 have, you know, give everybody then ten, fifteen days to
3 respond to what everybody else had filed. And, to the
4 extent that they agree, they could say "well, I agree,
5 actually, with what so-and-so said."

6 Now, I think you could make a very good
7 argument for both types of structures. And, the question,
8 in some ways, you know, really does goes down, it also --
9 well, backing up, it does implicate the burden of proof,
10 burden of going forward issue that Mr. Bersak highlighted,
11 which is an interesting one here.

12 MR. SPEIDEL: Staff would also like to
13 offer, for what it's worth, a preliminary concept on
14 burden of proof. And, I would not expect that any final
15 rulings on this matter be issued, this is far down the
16 road. But, as a general matter, Staff had a conception
17 that a party seeking to make a factual and/or legal
18 assertion has the burden of proving that assertion. And,
19 so, we can go in a granular fashion, rather than looking
20 at the case as a seamless whole. Each individual
21 assertion must be tested and must be supported by the
22 party making that assertion. It's just a concept designed
23 to break it down and make it more realizable, because I
24 don't think that the Legislature necessarily intended for

1 this to be a "trial". There's no trial here. This is
2 more in the realm of an investigation, an inquiry, an
3 examination.

4 So, I don't think that the parties to
5 this case should consider this to be a matter of
6 prosecuting a defendant. It's not that at all. It's more
7 an exploration of the current market conditions and the
8 implications on the operations of the Company, not global
9 burden of proof one side or the other.

10 So, if the Staff makes an assertion, we
11 have the burden of upholding that assertion, after
12 collateral examination and even attack from other parties.
13 If the Company makes an assertion, they have the burden of
14 proving that. If one of the intervenors makes an
15 assertion, they have the burden of proving that. And, we
16 can keep track of that. But it's the only workable way
17 that Staff sees that would avoid this implication, this
18 negative implication, that somehow the Company is on
19 trial, because it is not, it is not, in Staff's view. It
20 is the subject of an inquiry that should be collaborative
21 and should be positive in its efforts.

22 CMSR. HONIGBERG: People may want to
23 comment on that. But let me circle back to the notion of
24 filing at the same time, versus having somebody or

1 somebodies file first or state their positions first. If
2 every intervenor raises his or her hand and says "Staff
3 and the Company should go first", I'm not -- I'm inclined
4 to think people haven't thought about it that hard.

5 Mr. Patch.

6 MR. PATCH: Maybe there's a way to do
7 that a little less formally, and so that it isn't
8 necessarily a filing, but at least some drafts that could
9 be circulated prior to a tech session, as a way of trying
10 to focus the discussion. Because I liked what you said
11 about the fact that I don't think all parties in the room
12 have necessarily come up with a definition of what
13 "economic interest" is. And, I think the concept is to
14 try to focus the discussion and save some time. It's not
15 so much to put somebody on record of where they stand on
16 that particular definition. So, that's just my thought.

17 CMSR. HONIGBERG: Anybody else want to
18 comment on that?

19 MS. GEIGER: Yes.

20 CMSR. HONIGBERG: Ms. Geiger.

21 MS. GEIGER: Yes. Thank you. NEPGA and
22 RESA also thinks that the list of potential threshold
23 issues to be briefed may not necessarily be limited to
24 those two major issues that we've heard about this

1 morning. There may be other issues that the parties may
2 want to consider briefing first. So, we would ask that --

3 CMSR. HONIGBERG: Got anything in mind?

4 MS. GEIGER: Well, I've got sort of a
5 list here. And, obviously, at the Commission's invitation
6 in the Order of Notice, I thought that today we would --
7 parties would be expected to present those threshold
8 issues. I know we've heard two. But, you know, I don't
9 want to take up the Commission's time, if it's something
10 that can be discussed among the parties at the technical
11 session, I would be happy to do that. But I just don't
12 want -- I wouldn't want the technical session to be
13 limited only to the two major questions that we've heard
14 this morning.

15 CMSR. HONIGBERG: I agree with you. But
16 I do think that we're here, and we did schedule this for
17 people to flag issues that they could. And, I've actually
18 got four of them now. So, what else you got?

19 MS. GEIGER: Sure. NEPGA and RESA
20 basically look at this, the commencement of this docket,
21 from a slightly different angle. And, we begin from the
22 premise that asset divestiture simply represents the
23 monetization of assets at a particular point in time. So,
24 we believe, in a well-functioning market, assets yield

1 proceeds equal to their value, and ratepayers are going to
2 benefit, whether they see that value as a reduction to
3 their energy rates in a pre-divestiture world, or as a
4 reduction to stranded costs in a post-divestiture world.
5 And, so, under this premise, we believe that examining
6 which assets should or should not be divested is not
7 something that should be looked at currently. And, also,
8 that the future of market price of electricity is not a
9 central question that needs to be examined at this
10 juncture.

11 And, so, before getting into those very
12 difficult, sort of fact-driven and time-consuming task, in
13 terms of developing a record and making findings of fact,
14 NEPGA and RESA believe it's more efficient and productive
15 to look at the threshold philosophical question of whether
16 customers' economic interests are best served by a utility
17 that offers retail choice, but continues to own generation
18 assets that are subject to cost of service rates?

19 So, to answer that question, we've
20 identified some -- three subquestions that we think should
21 be examined. And, we're happy to just go through them
22 quickly now, and then again in a tech session with other
23 parties.

24 First of all, is divestiture consistent

1 with the electric industry restructuring principles
2 articulated in RSA 374-F:3, including, among other things,
3 customer choice, benefits for all consumers, full and fair
4 competition, near-term rate relief, and stranded cost
5 recovery?

6 Secondly, migration. Does asset
7 ownership create risks to the Company associated with
8 retail migration away from default service, and does it
9 create risks to customers who remain on default service,
10 when other customers leave? Are there risks associated
11 with reverse migration back to default service? And, does
12 divestiture eliminate these risks?

13 Third, default service procurement.
14 Does asset ownership provide a necessary long-term hedge
15 to default service customers. We think that parties
16 should think about discussing the risks and benefits of
17 long-term hedging, focusing on questions of whether
18 long-term hedging can be accomplished more efficiently
19 through market resources. The risks and benefits to
20 customers associated with keeping default service prices
21 closer to the prevailing wholesale markets, and whether
22 there are benefits to having all New Hampshire utilities
23 procure and price default service in the same manner.

24 Cost of ownership. Apart from sunk

1 costs, what are the risks and costs associated with
2 ongoing asset ownership? For example, O&M costs, future
3 capital expenses, and rate of return on the assets, and
4 how are these costs recovered? And, how are these risks
5 avoided through divestiture?

6 And, then, lastly, the divestiture
7 process. If the Commission determines that divestiture is
8 deemed to be appropriate, should all generation assets of
9 PSNH be divested? And, if not, why? And, what are the
10 best ways to structure the divestiture process, to assure
11 proper monetization of the assets?

12 In addition, we would want to know
13 whether the Commission should consider using a floor
14 price? What would be the basis for the floor? What's the
15 appropriate timing of divestiture? And, are there lessons
16 to be learned from prior divestitures?

17 Again, we think that the Commission
18 should go about issuing a scheduling order that gives the
19 parties an opportunity to reach agreement, if they can,
20 about which of these issues should be briefed. And, then,
21 we'd like -- we think that it would be an appropriate,
22 obviously, for the Commission to issue an order setting
23 forth the positions on those issues, and then giving the
24 parties direction on how to proceed with the remainder of

1 the docket, which may include an evidentiary phase for
2 discovery, *etcetera*. Thank you.

3 CMSR. HONIGBERG: Mr. Aalto.

4 MR. AALTO: I would support a lot of
5 that. I would add one other item. There may be other
6 paths other than strict divestiture. In particular, it
7 may be possible that the customer retains the plant and
8 operates it for the benefit of all of the customers, if we
9 end up with kind of the assumption that the customers are,
10 in fact, going to pay for those plants. And, by that, I
11 mean the broad base of customers.

12 The structure would be a revenue rights
13 type of a deal, where the customer pays for the stranded
14 cost, if we want to use that term here, in exchange they
15 get revenue rights for all of the income from those
16 plants, since the Company no longer has any profit or
17 return type of an interest in those plants.

18 This would be similar to other contracts
19 that have been done for -- between wind sources and
20 customers directly. In this case, it would have a
21 different structure. But the point would be that we don't
22 know what the value of these plants ultimately will be.
23 Any study that says it's worth "this" or "that" at this
24 point in time is always flawed, because we really don't

1 know the future that well, and it is a very vibrant
2 future.

3 This would permit the other customers of
4 the utility to go onto market-based rates. It would
5 support the interest of developing a market, having the
6 customers deal with the market, but it retains their
7 interest in whatever hedging values a coal-fired plant or
8 whatever would have in the near-term. Although, I expect
9 that that ultimately would disappear, but it would
10 certainly be of value in the next couple of years.

11 The other sources of income for that
12 would be the capacity value. I don't have a detailed
13 number of what plants have capacity value in the ISO.
14 But, currently, the Forward Capacity Market I think is
15 running around \$7 a kilowatt-month. If the total capacity
16 is something on the order of 1,000 megawatts, that would
17 add up to someplace between 50 and \$100 million a year in
18 income only for the capacity value.

19 The issue would be to try to regain that
20 value back to customers. I have a feeling that a sale of
21 the plant would not provide very much value at all. And,
22 in fact, the customers would end up paying more for the
23 plant than the buyer. And, for that, they should perhaps
24 -- and, in essence, they would own the facility under one

1 form of thinking.

2 CMSR. HONIGBERG: Any other thoughts?
3 Mr. Speidel, then Mr. Boldt.

4 MR. SPEIDEL: Just in response to some
5 of the matters that have been raised by the various
6 parties. They sound like a pretty good outline for
7 opening statements here at this prehearing conference.
8 And, there's a lot of issues in the air, obviously. I
9 think, to a certain extent, Staff might have had the vain
10 hope that we could have, through the issuance of briefs on
11 the matter of "economic interest", and the development of
12 a Commission response to that, some sort of lodestar for
13 the remainder of the proceeding, where all the parties
14 would understand what the field of play was in terms of
15 "economic interest".

16 But, certainly, I think what this
17 indicates to us, the various points that have been raised
18 by the various parties, what this indicates to us is the
19 need to have these matters briefed. And, I don't know if
20 necessarily a restrictive approach is really what we want.
21 Maybe the best approach is to have all issues briefed, and
22 not necessarily in mid-November, obviously. We understand
23 what Mr. Bersak is driving at. But perhaps we could have
24 a series of opening briefs that are on whatever issues the

1 parties would be interested in raising for consideration.
2 But it has to, as some point, have a boundary. And, it
3 seems like our understanding of the boundary being
4 "economic interest" first, and then the rest might not be
5 in play here. But we understand the concerns of the other
6 parties.

7 CMSR. HONIGBERG: So, what you're
8 thinking is basically scoping proposals?

9 MR. SPEIDEL: I think that would be
10 good. It would be good to have some sense of what the
11 parties believe to be the issues at play. And, the
12 Commission would certainly benefit from that, in terms of
13 perhaps structuring the proceeding, because, ultimately,
14 the proceeding will be structured by the Commission, not
15 by any of the parties, including Staff.

16 CMSR. HONIGBERG: Mr. Boldt.

17 MR. BOLDT: Mr. Speidel may have
18 addressed the issue. My concern was how broad we were
19 becoming in the discussion. When we have the enabling
20 statute before us, it is clear that "economic interest"
21 are really to be tied to the generation assets. If we go
22 into the economic interest of the Company as a whole or
23 the energy market as a whole, that elephant becomes quite
24 large and unedible, by any of us.

1 I think, if we focus back into what are
2 the "economic interests of the generation assets", as
3 stated in House Bill 1602, we have a much smaller field of
4 concerns. How the Commission wishes to schedule this,
5 obviously, that's within your purview. And, we will
6 cooperate, from the City's standpoint, on our issues as
7 quickly as possible.

8 CMSR. HONIGBERG: Anybody else want to
9 say anything right now? Yes, Ms. Chamberlin.

10 MS. CHAMBERLIN: A quick comment on the
11 Staff's "burden of proof" proposal. I respectfully
12 disagree with it. And, we can resolve it either through
13 briefs or otherwise. But, if, for example, Staff says
14 they have the burden of proof to show divestiture, and
15 they fail, and then PSNH has the burden of proof to say
16 retain the assets, and they fail to meet their burdens of
17 proof, we're back into no man's land. I mean, you have to
18 have somebody who has the burden of proof.

19 CMSR. HONIGBERG: All right. We're
20 going to take a five-minute break to consult, give
21 everybody a chance to rest. And, then, we'll come back
22 and try and bring ourselves to some resolution of this, as
23 to how we're going to proceed. So, we'll be back at, say,
24 11:30.

1 (Recess taken at 11:19 a.m. and the
2 prehearing conference resumed at 11:41
3 a.m.)

4 CMSR. HONIGBERG: Thank you all for your
5 patience. We're going to schedule some things with real
6 dates attached to them. Given the schedules that we're
7 looking at and the holidays, it's very difficult to do
8 this quickly. And, I apologize to those who were hoping
9 that we were going to be moving this more quickly than
10 it's going to sound like.

11 The first thing I'm going to say is
12 we're going to pull back slightly on what people are
13 filing next Thursday, of the intervenors. We're not
14 looking right now for your thoughts on working together,
15 consolidating, because of the uncertainties regarding the
16 scope of the proceeding. The discussion we just went
17 through I think should make it clear to everyone that
18 there are very different ideas of the scope and the issues
19 that are going to be gone through in depth during the
20 proceeding. So, it will make more sense to discuss the
21 scope and levels of participation, with certain
22 exceptions, certain things are obvious. But, for the ones
23 that are not obvious, to wait until we have a better,
24 clearer picture of the scope.

1 So, you'll be able to respond to
2 whatever PSNH's objections are to the interventions.
3 PSNH, you can put in your thoughts regarding the very --
4 the more obvious limitations on intervenors. But, beyond
5 that, we're going to be talking about the scope over the
6 next few months.

7 So, we would like to do a tech session
8 on November 6th, which is a Thursday, I believe. At that
9 point, we hope you'll be able to hash out a number of
10 these issues through discussion, and decide as many things
11 as you can.

12 We believe that there will be a need for
13 legal briefs, memos of law, to be filed. And, we're going
14 to give a full month for that from that tech session, to
15 December 5th. For those who don't have calendars in front
16 of them, Thanksgiving is right at the end of the previous
17 week, and that limits our reasonable ability to make
18 people do things in and around Thanksgiving. So, you'll
19 have a full week after Thanksgiving to put in legal memos
20 on the issues that you all have identified or identify
21 throughout this process. Everybody filing at the same
22 time.

23 Responses, excuse me, a month later, on
24 January 7th, which I believe is a Wednesday. And, again,

1 New Year's Day being the end of the previous week, it's
2 very difficult for people to do things over the holidays,
3 but we do know people will be working on a variety of
4 things throughout the month of December, and hoping to get
5 those responses finalized and into us early in January,
6 January 7th.

7 We will take those filings and then work
8 out a scope and a series of next steps. While we would
9 like to have been able to do this more quickly, there are
10 structural reasons, calendar reasons, Scrubber reasons,
11 why it's difficult to do that.

12 Does anybody have any other thoughts or
13 questions or issues they want to raise right now? Mr.
14 Bersak, moving his microphone towards him.

15 MR. BERSAK: Yes. Thank you,
16 Commissioner Honigberg. Just one question about the
17 schedule that you have set forth. It calls for a tech
18 session on November 6th for the parties to discuss issues.
19 Suppose there is not a unanimity of thought of what the
20 issues are, how do we know what we're going to brief?

21 CMSR. HONIGBERG: You're going to submit
22 memos on the issues you think we should be looking at and
23 how we should be looking at them.

24 MR. BERSAK: And, then, there will be

1 some kind of a secretarial letter or something to direct
2 us as to what goes into the briefs?

3 CMSR. HONIGBERG: No. I think you're
4 going to -- if you disagree with certain parties, you'll
5 be filing what you think we should be doing and other
6 parties will be filing what they think we should be doing,
7 and then you'll be able to respond to them a month later.
8 The hope is that you'll work out as much as you can, and
9 what you can't work out, you'll' brief. Make sense?

10 MR. BERSAK: I suppose so.

11 CMSR. HONIGBERG: No, but you'll live
12 with it?

13 MR. BERSAK: Perhaps.

14 CMSR. HONIGBERG: Other thoughts and
15 questions? Yes, Mr. Boldt.

16 MR. BOLDT: One question I can
17 anticipate at least one of my Council members asking is,
18 is the initial brief that would be required from the City
19 something of along the lines "we reserve our right to
20 respond"?

21 CMSR. HONIGBERG: I think the City's
22 interest is fairly clear. I think you may have -- your
23 entire viewpoint on this is constrained somewhat by the
24 fact that you have an asset in your borders. I don't

1 know. What do people think? Do the people think that's a
2 reasonable first cut for the City? My inclination is
3 "yes". But I just want to see if anybody disagrees with
4 that.

5 MR. SPEIDEL: Yes. Staff recommended
6 mandatory intervention on that basis.

7 CMSR. HONIGBERG: No, but can the City
8 just -- can their brief on November 5th -- I'm sorry,
9 December --

10 CMSR. SCOTT: Fifth.

11 CMSR. HONIGBERG: -- December 5th just
12 say "we'll respond to what others say"?

13 MR. SPEIDEL: Why not?

14 CMSR. HONIGBERG: And, I can't think of
15 a reason why that's not -- why that won't work. But, if
16 everybody does that, we're going to have a problem here.

17 (Laughter.)

18 MR. BOLDT: We appreciate that. Thank
19 you.

20 CMSR. HONIGBERG: Ms. Hatfield.

21 MS. HATFIELD: I guess just a follow-up
22 question that, just a follow-up, is there an expectation
23 that every party is required to file something in that
24 first round?

1 CMSR. HONIGBERG: I really think the
2 answer is "yes". I mean, I think, if we set it up so that
3 only some start to take positions, and everybody hangs
4 back and tries to sandbag that, that's not going to work.
5 We're not going to appreciate that, and that's going to --
6 it's going to make things go longer. So, the idea is that
7 people should be spending, should have already been
8 spending time, since this legislation was proposed many,
9 many months ago, and it was apparent that something was
10 going to pass many, many months ago, folks should have
11 been thinking about this, about what this meant to them,
12 their clients, their interests. And, so, none of this
13 should be new.

14 And, so, I would hope that this will
15 crystallize people's thinking and give people an
16 opportunity to sit down and look at their peers, look in
17 the mirror, look at their clients, and say "what is" --
18 "how do we think this should work?" And, be ready to
19 share those thoughts with the parties at the tech session.
20 And, then, to the extent that things haven't been worked
21 out, share them in writing with the Commission.

22 So, while I acknowledge that you maybe
23 won't -- you won't have thoughts on every issue, you
24 should have thoughts on something. So, yes, Ms. Hatfield.

1 MS. HATFIELD: This is probably obvious,
2 but certainly it wouldn't be OEP's intention to try to
3 sandbag anyone, but just coming from a point of such
4 extremely limited resources, for a party like us, you
5 know, we just may just realistically be in a position
6 where we can only engage in a responsive way. And, I'm
7 not -- I don't know right now, but it does concern me that
8 we would be potentially prejudiced in some way if we were
9 not to make a filing on that date, just sheer, you know,
10 just largely do to resource constraints.

11 CMSR. HONIGBERG: I understand what
12 you're saying. I don't think a party would be, you know,
13 I don't think a party would be prejudiced by the lack of
14 resources at this point in articulating what they think
15 the issues are. I don't think it's going to be that
16 complicated a matter. I think there are some
17 well-resourced and well-financed parties here in the room
18 who will be filing lots and lots of paper at that time. I
19 think there are others who are much less well-equipped to
20 do that, who will be submitting letters or simple
21 statements of the types of things that are significant in
22 how to proceed. I leave open the possibility that someone
23 wouldn't even be able to do that, but it would surprise
24 me.

1 MS. HATFIELD: Thank you. That's very
2 helpful.

3 CMSR. HONIGBERG: Mr. Patch.

4 MR. PATCH: When you say "legal briefs",
5 I guess I'm thinking what you want is "What are the issues
6 that you think, you, the individual intervenor, thinks
7 ought to be addressed by the Commission?" And, when we
8 say "legal briefs", it's almost like, well, I guess you
9 could explain why you think those are the issues that
10 ought, and maybe you would refer to the law or something,
11 but it's not sort of a traditional legal brief as I'm
12 thinking of it, in the first time at least.

13 CMSR. HONIGBERG: You're right. I agree
14 with you, Mr. Patch. I think that phrase was probably a
15 poor one for me to have used, and I agree with you. These
16 are not necessarily legal briefs. These are scoping
17 documents. I think the word "scoping" I think should be
18 the concept you have as you think about this, because
19 people clearly in this room have very different ideas
20 about what the scope of this proceeding is. And, that's,
21 I think, the concept you should have with you. So, "legal
22 briefs" are probably a poor choice of words. Ms.
23 Goldwasser.

24 MS. GOLDWASSER: To follow up a little

1 bit on Director Hatfield's question. To the extent that a
2 party perhaps does, this is a hypothetical, but does or
3 does not have a position on the scope, but may have a
4 position on the facts that come out in the process that's
5 applied, I just want to make sure that that party would
6 not be prejudiced.

7 So, for example, you could have a party
8 that doesn't want to opine about whether the scope should
9 be, you know, what A or B, you know, A or B process is the
10 right way to do this, or A or B question is the right
11 question to answer, but does have a position on the
12 underlying questions that eventually will get asked.

13 And, I'm presuming that what you said to
14 Ms. Hatfield would apply to that party as well?

15 CMSR. HONIGBERG: That's correct.
16 Because there are certainly parties who may have truly no
17 position. And, so, that may well be the kind of thing
18 that they say.

19 MS. GOLDWASSER: I just wanted to make
20 sure that that was the case.

21 CMSR. HONIGBERG: Yes. Other thoughts?
22 Comments? Questions? Clarifications? Mr. Speidel.

23 MR. SPEIDEL: Yes, Commissioner. I
24 would like to make a very brief statement on behalf of

1 Staff, just about two or three minutes, to indicate to
2 everyone what our philosophy of this upcoming proceeding
3 is, if that's all right?

4 CMSR. HONIGBERG: Okay. Yes. Before
5 you do that, I just want to make sure that we don't have
6 it that -- that that will in all likelihood be the last
7 word. Does anybody else have anything else here? Mr.
8 Aalto.

9 MR. AALTO: Just a review of the dates
10 again.

11 CMSR. HONIGBERG: November 6 for the
12 tech session; December 5th for the first submissions;
13 responses January 7th.

14 MR. AALTO: Thank you.

15 CMSR. HONIGBERG: Anything else?

16 (No verbal response)

17 CMSR. HONIGBERG: Mr. Speidel.

18 MR. SPEIDEL: Thank you very much. PSNH
19 has a critical role as the state's largest electric
20 utility. Its distribution network stretches from
21 Pittsburg to Portsmouth, from Berlin to Nashua, serving
22 New Hampshire's major industrial centers and far-flung
23 rural towns alike. The Legislature has given the
24 Commission a great responsibility: The examination of

1 PSNH's generation-related physical plant and contractual
2 arrangements.

3 The Staff of the Commission will
4 undertake its analytic responsibilities in a spirit of
5 impartiality, scientific and databased rigor, and a focus
6 on the economic interests of PSNH's retail customers, as
7 charged by the Legislature.

8 Staff is cognizant of the serious
9 challenges facing New Hampshire's and New England's
10 wholesale electricity markets, and the effects on retail
11 rates and New Hampshire's citizens of these challenges.

12 Thank you.

13 CMSR. HONIGBERG: Thank you,
14 Mr. Speidel. I want to thank everybody for their thoughts
15 and their willingness to engage in this somewhat
16 open-ended discussion. I know that this is going to be --
17 this is going to be an expedited process, but expedited is
18 still going to take us a little while to get through it.
19 And, so, I hope everyone will keep that spirit of
20 cooperation and openness going throughout.

21 So, again, I thank you all very much.

22 And, we're adjourned.

23 **(Whereupon the prehearing conference was**
24 **adjourned at 11:54 a.m.)**