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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

June 21, 2022 - 9:01 a.m.
21 South Fruit Street
Suite 10
Concord, NH

RE: DG 17-152
LIBERTY UTILITIES (ENERGYNORTH
NATURAL GAS) CORP. d/b/a LIBERTY
UTILITIES:
Least Cost Integrated Resource Plan.
(Status conference)

PRESENT: Chairman Daniel C. Goldner, Presiding
Commissioner Carleton B. Simpson

Tracey Russo, Clerk

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

Reptg. the Conservation Law Foundation:
Nicholas A. Krakoff, Esq.

Reptg. Terry Clark:
Richard M. Husband, Esq.

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

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

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

Reptg. New Hampshire Dept. of Energy:
Mary E. Schwarzer, Esq.
(Regulatory Support Division)

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P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good morning, everyone. I'm Chairman Goldner. I'm joined by Commissioner Simpson. We're here this *morning* in Docket DG 17-152 for a status conference regarding the Liberty Utilities' Least Cost Integrated Resource Plan.

Let's take appearances, beginning with the Company, Liberty.

MR. SHEEHAN: Good morning, Commissioners. Mike Sheehan, for Liberty Utilities (EnergyNorth Natural Gas) Corp.

CHAIRMAN GOLDNER: All right. And then, next on my list is the Conservation Law Foundation?

MR. KRAKOFF: Good morning, Commissioners. Nick Krakoff, with the Conservation Law Foundation.

CHAIRMAN GOLDNER: All right. And then, I have Terry Clark, represented by Richard M. Husband?

MR. HUSBAND: Good morning, Commissioners. Richard Husband, representing Terry Clark, next to me.

1 CHAIRMAN GOLDNER: Thank you. And the
2 Pipe Line Awareness Network for the Northeast?

3 *[No verbal response.]*

4 MR. SHEEHAN: Haven't seen him. I
5 didn't get anything formal, but he has not been
6 participating much in the last few weeks.

7 CHAIRMAN GOLDNER: Okay. Very good.
8 And the Office of Consumer Advocate?

9 MR. KREIS: Good morning, Mr. Chairman,
10 Commissioner Simpson. I am Donald Kreis, the
11 Consumer Advocate, here on behalf of residential
12 utility customers.

13 CHAIRMAN GOLDNER: Thank you. The New
14 Hampshire Department of Environmental Services,
15 are they here today?

16 *[No verbal response.]*

17 CHAIRMAN GOLDNER: No. And, finally,
18 the New Hampshire Department of Energy?

19 MS. SCHWARZER: Good morning, Mr.
20 Chairman, Commissioner Simpson. My name is Mary
21 Schwarzer. And I'm the Staff Attorney for the
22 Department of Energy.

23 CHAIRMAN GOLDNER: Thank you. Just a
24 moment.

1 Okay. So, just to start on the status
2 conference, the Commission would like to begin by
3 asking the parties if the 2017 LCIRP filing has
4 been rendered obsolete by events in time?

5 And we'd just like to get the parties'
6 opinion on that. So, we can begin with Mr.
7 Krakoff.

8 MR. KRAKOFF: Thank you, Chairman.

9 I would say, you know, largely so. You
10 know, as you're well aware, this LCIRP was filed
11 back in 2017. And, you know, under the LCIRP
12 statutes, the LCIRP is really supposed to guide
13 least cost resource planning for utilities.

14 You know, given the passage of time, as
15 well as the, you know, passage of intervening
16 events, particularly the fact that several of the
17 projects that Liberty was proposing in its
18 initial LCIRP have now been withdrawn, you know,
19 a lot of what's in their LCIRP is obsolete.

20 You know, this really isn't the
21 intention of the LCIRP statutes, to sort of wait
22 this long, you know, to try to decide an LCIRP.
23 you know, that's not the fault of any of the
24 Commissioners here. You know, a lot of what

1 happened in this docket preceded the
2 Commissioners, you know, on the Bench here, you
3 know, before they were affirmed -- or, confirmed.

4 But, again, I think what we can really
5 hope to gain in this docket is trying to figure
6 out a path forward to really improve the process,
7 and ensure that this scenario doesn't happen
8 again.

9 You know, obviously, CLF and other
10 parties opposed Liberty's filings. And,
11 unfortunately, you know, there was never a
12 hearing in this docket on, you know, on those,
13 you know, on the filings themselves.

14 Yes. At this point, you know, CLF
15 hopes to sort of provide a path forward, you
16 know, with the other parties, for the next LCIRP
17 filing.

18 Thank you.

19 CHAIRMAN GOLDNER: Does CLF have any
20 recommendation on the disposition of the current
21 filing?

22 MR. KRAKOFF: You know, I mean, by
23 statute, there has to be a hearing in this
24 docket. You know, I think, ultimately, yes, I

1 think one path forward can be seen in the recent
2 Unutil -- the Unutil LCIRP docket, that's DG 19-,
3 I think, 126 (19-126). Yes. Yes, there the
4 settling parties in that docket entered into an
5 agreement to hire consultants to put together a
6 working group report, basically, on ways that
7 Unutil could improve its LCIRP filing going
8 forward.

9 You know, while CLF doesn't agree with
10 everything in that report, CLF agrees with an
11 awful lot of what's in that report. And I think
12 that report, it provides us the start of a
13 framework for potentially, you know, reaching an
14 agreement with the parties to move forward, you
15 know, for the next LCIRP for Liberty.

16 CHAIRMAN GOLDNER: Thank you, Mr.
17 Krakoff. Mr. Husband?

18 MR. HUSBAND: So, I assume it's the
19 same question before me, whether or not the time
20 and events have rendered the LCIRP, you know,
21 unapprovable at this point?

22 CHAIRMAN GOLDNER: Yes, sir. And also
23 your recommendation on the disposition of this
24 docket.

1 MR. HUSBAND: This is working, first of
2 all, right?

3 CHAIRMAN GOLDNER: Yes.

4 MR. HUSBAND: Okay. Mr. Clark would
5 agree generally with the proposition that the
6 time and the events have rendered this Plan
7 unapprovable.

8 But he would also add that there are a
9 number of other reasons put forth in his position
10 statement that also rendered the Plan
11 unapprovable from the outset. He doesn't want
12 the Commission to overlook those.

13 And one point being, again, as a
14 practical matter, you're looking at planning to
15 increase greenhouse gas emissions, not only for
16 the planning period, but for the next 20 years
17 under the planning that was, in part, being
18 developed through this proceeding. When all
19 established science tells us that we have to be
20 drastically reducing greenhouse gas emissions as
21 soon as possible.

22 Second question, I guess, in terms of
23 where you thought this may --

24 CHAIRMAN GOLDNER: Yes. Do you have a

1 recommendation on the disposition of this docket,
2 prior to launching the next LCIRP in October?

3 MR. HUSBAND: Yes. Again, actually,
4 it's expressly put forth at the end of
5 Mr. Clark's position statement. He provided his
6 conclusion, which starts out "The Commission
7 should grant Clark's pending motion" to condition
8 the Keene project on RSA 378:37 through 40
9 approval requirements, condition Keene
10 unapprovable under the statute. That's what the
11 pending motion is. But the Commission should
12 grant the pending motion, find Liberty's current
13 LCIRP to not be adequate for approval and deny
14 approval.

15 CHAIRMAN GOLDNER: Okay.

16 MR. HUSBAND: But it should also
17 include -- I'm sorry. As Mr. Krakoff got into,
18 some clear, concise findings and reasoning that
19 gives Liberty guidance going forward on what will
20 be approvable.

21 CHAIRMAN GOLDNER: Okay. Thank you.
22 And Mr. Kreis?

23 MR. KREIS: Thank you, Mr. Chairman.
24 In the spirit of one of my great heroes, Antonin

1 Scalia, I'm something of a plodding, with a "d",
2 p-l-o-d-d-i-n-g, literalist when it comes to
3 statutes and statutory construction. And, as I
4 said in my letter of June 1st, I think we all
5 have a serious problem here, but within that
6 problem perhaps lurks an opportunity.

7 To answer the question that you
8 actually asked, I don't really think that it is
9 anything but absurd to ask the Commission to
10 approve a Least Cost Integrated Resource Plan
11 that covers a -- I guess it was a three or four
12 year period that ends this coming November. I
13 mean, the Plan itself is completely obsolete. As
14 others have pointed out, it covers initiatives
15 and capital proposals that have been completely
16 superseded and overtaken by circumstances. And I
17 don't think it's possible for anybody to suggest
18 anymore that there is a Plan that is proceeding
19 toward Commission approval in the ordinary course
20 of business.

21 So, that means that, pursuant to RSA
22 378, Section 40, the Commission is literally
23 enable to approve any rate increases for this
24 utility. And that's a big problem for this

1 utility, as the Commission well knows.

2 I don't see how the statute, taken
3 seriously, as a statement of binding New
4 Hampshire law, allows the Commission to move
5 forward. It would be absolutely ridiculous for
6 the Commission to approve "the Plan" as it was
7 filed back in 2017. I mean, entire college
8 educations have taken place since that filing
9 took place. It's just patently absurd.

10 That said, I think that I agree with, I
11 think, just about everything I heard Mr. Krakoff
12 say about a potential approach to this docket. I
13 think the Commission should encourage the Parties
14 to this proceeding to come to some kind of an
15 agreement that would make a recommendation to you
16 that involves, I guess, a -- sort of a nominal
17 approval of the pending LCIRP, that's conditioned
18 on a bunch of things that need to happen in
19 connection with the next LCIRP.

20 I participated, or my office
21 participated in Docket 17-126, which is the --
22 it's 19-126, which is the counterpart proceeding
23 involving the Unitil utilities' gas affiliate.
24 And, as Mr. Krakoff suggested, we made a great

1 deal of progress there. I think it's possible to
2 make the same kind of progress here, adopting the
3 Unitil approach as a sort of a template.

4 And I really do have a great deal of
5 optimism that the ultimate outcomes to both of
6 the state's local gas distribution companies,
7 that we'll be able to come up, or we are coming
8 up with a framework for compliance with the Least
9 Cost Integrated Resource Planning statute that
10 might serve as something of a model for the
11 electric utilities, where keeping faith with that
12 statute has been more challenging, both for the
13 Commission and the utilities.

14 I hope that's somewhat responsive to
15 your question, Mr. Chairman. If not, I'd
16 cordially invite you to follow up, and see if I
17 can give you the insight from me that you might
18 be seeking, in case I haven't.

19 CHAIRMAN GOLDNER: I think Commission
20 Simpson would like to follow up.

21 CMSR. SIMPSON: Two questions for you,
22 Mr. Consumer Advocate.

23 You mentioned a suggestion of a
24 "nominal approval" of the Plan that the Company

1 filed. So, my question would be, in your view,
2 is that with respect to the original Plan that
3 was filed in 2017? And, regardless of your
4 answer there, what would you suggest we consider
5 for approval in your notion of a "nominal
6 approval" of a plan?

7 MR. KREIS: Well, the Company, over the
8 course of this long docket and the long and
9 winding journey that we've all taken, has, I
10 think, if not in reality, *de facto* amended its
11 Plan, to sort of catch up to the things that have
12 happened over the last five years. So, I think
13 that, if you were to approve something, it would
14 be the original Plan, as it's been supplemented
15 or amended or -- yes, "amended", I guess, would
16 be the right word.

17 And, by "nominal approval", I mean that
18 I really think that sort of a plain vanilla
19 statement that "the Plan is approved under RSA
20 378:39", but without making any specific findings
21 about the adequacy of the planning process that's
22 described in that Plan or the adequacy of the
23 planning decisions that are made in that Plan,
24 would be what I'm talking about when I suggest a

1 "nominal approval".

2 I have to say that, absent a settlement
3 agreement, I don't think an approval like that is
4 actually permissible under the statute.

5 The "nominal approval" I'm suggesting
6 is an acknowledgement of the legal reality that,
7 if all of the Parties to this proceeding
8 recommend that result to you, there is
9 essentially nobody who could ever challenge that
10 determination before the New Hampshire Supreme
11 Court. And, therefore, I think it would stand.

12 CMSR. SIMPSON: And then, with respect
13 to some of the comments we've heard about moving
14 forward, I have been recused from the Unitil
15 process, as most of you know. So, I don't have
16 any insight into some of the work that's been
17 done there. And, if you feel that you can maybe
18 generally speak to principles that would be
19 worthy of the Commission's consideration for
20 moving forward in LCIRP dockets generally, from a
21 stakeholder view, that would be helpful?

22 MR. KREIS: Sure. I think that what we
23 were able to accomplish in the Unitil docket is
24 sufficiently generic so as to not raise any

1 issues about your ability to participate here.

2 I mean, essentially, what it does, in
3 my opinion, is takes the requirements in the
4 statutes seriously. That the breakthrough seems
5 to have been agreement around how a natural gas
6 utility or a local distribution company might
7 meet the aspects of the Least Cost Integrated
8 Resource Planning statute that talk about
9 evaluation of environmental and health issues.
10 And then, I think it focuses the process toward
11 what menu of capital investment decisions,
12 including some that I would characterize as
13 "nontraditional", from the perspective of a gas
14 utility, are fair game for a least cost
15 integrated resource planning process or docket.

16 And, although Mr. Krakoff said that he
17 doesn't agree with all of it, I think that it's
18 the approach that I probably think I can persuade
19 the Conservation Law Foundation to endorse, based
20 on discussions. And, I think, frankly, it would
21 be -- I think the Commission would find it a
22 useful step toward in the history of the Least
23 Cost Integrated Resource Planning statute.

24 Hope that was somewhat helpful.

1 CMSR. SIMPSON: Thank you.

2 CHAIRMAN GOLDNER: Thank you. We can
3 move on to Attorney Schwarzer.

4 MS. SCHWARZER: Thank you, Mr. Chairman
5 and Commissioner Simpson.

6 I was not expecting the Chairman's
7 questions. But I would be happy to respond on a
8 very preliminary basis, with the understanding
9 that I have not spoken to leadership in the
10 Department of Energy about the question that you
11 posed.

12 The Department agrees that, pursuant to
13 the statutes, 378:39, RSA 378:39 requires the
14 Commission to review an Integrated Least Cost
15 Resource Plan; and, pursuant to RSA 378:40, "No
16 rate change shall be approved or ordered with
17 respect to any utility that does not have on file
18 with the commission a plan that has been filed
19 and approved."

20 And, so, as a preliminary matter, we
21 agree with the Office of Consumer Advocate that
22 this poses a challenging issue, in the instance
23 where a plan has not been approved for a
24 substantial period of time.

1 We also agree that, although perhaps
2 not unprovable or obsolete, many conditions have
3 changed. For example, the Keene conversion,
4 which was referenced recently, I believe by Mr.
5 Husband, has, in fact, been the subject of a
6 risk-sharing formula in the rate case, in Docket
7 20-105. And, so, that is something that,
8 although certainly was not initially included in
9 the Least Cost Integrated Resource Plan, is
10 perhaps something that would be appropriate for
11 the utility to file, a summary update of the
12 elements of the initial Least Cost Integrated
13 Resource Plan that would at least recite the
14 history or the outcome of changes, or indicate
15 what is no longer relevant or what is now
16 obsolete.

17 I am mindful that the Commission wishes
18 to move forward. And I don't disagree with the
19 OCA's position that a settlement agreement would
20 insulate any decision from review. However, at
21 the same time, I'm hesitant to agree that
22 elements of the statutes, particularly as revised
23 since that Plan was filed initially, have been
24 fully met.

1 And, so, perhaps the concept of
2 "nominal approval", particularly in light of the
3 recognition of the passage of time, and whatever
4 summary update the Company might file, in
5 conjunction with the kind of both process that
6 another LCIRP gas docket has reached, in 19-126,
7 as previously referenced, along with an
8 acknowledgment that the Department is concerned
9 not just with the process of coming to a least
10 cost integrated resource plan, but also with
11 granular, concrete action in some form. Not a
12 guarantee, not nailed-down specifics, but a
13 framework for understanding what actual projects
14 are eligible or under consideration in a more
15 choate form than has been reached so far.

16 CHAIRMAN GOLDNER: I did want to ask
17 you a question on 378:40. The tail-end of that
18 statute says "where the utility has made the
19 required plan filing in compliance with RSA
20 378:38 and the process of review is proceeding in
21 the ordinary course but has not been completed."
22 What is your opinion on that portion of the
23 statute?

24 MS. SCHWARZER: My preliminary opinion

1 would be that certainly that condition has been
2 met. And, so, to the extent that changes have
3 been approved or ordered to date, it is not
4 unreasonable to construe it broadly to cover
5 approval of those changes.

6 But the timeline, which cannot be
7 extended, in my opinion, past October, is fast
8 approaching. And, at some point, there will
9 either be an approved planned or a plan that has
10 not been approved, which would make that
11 condition problematic.

12 CHAIRMAN GOLDNER: Okay. Thank you,
13 Ms. Schwarzer.

14 Anything else you'd like to add, before
15 I move to the Company?

16 MS. SCHWARZER: No. Thank you, Mr.
17 Chairman.

18 CHAIRMAN GOLDNER: Okay. Thank you.
19 We'll move to the Company, Mr. Sheehan.

20 MR. SHEEHAN: Thank you.

21 I don't think the 2017 Plan, as amended
22 through two -- three versions of testimony in
23 2019, there was a supplemental filing in the
24 spring, there was a subsequent supplemental

1 filing in the summer, then there was rebuttal
2 testimony later in the year. Taken together, the
3 Plan does have components that are obsolete. No
4 question. But remember that an IRP includes
5 demand forecasts, a review of the process that we
6 go through in a demand forecast, an assessment of
7 our supply options, most of which did not include
8 the proposed projects that are now obsolete. So
9 all of that is still subject to approval. And,
10 in fact, in the Tennessee Gas docket, there were
11 some conditions in the Settlement to tweak some
12 of those processes of how we calculate design
13 day, etcetera.

14 So, the Commission has, by approving
15 that or adjusting that, is something that is
16 ripe, and it would be mostly directed towards the
17 next filing, but it is part of that Plan that
18 could be approved without, frankly, looking silly
19 for approving something that's obsolete. So, I
20 get that.

21 So, I think it would be well within the
22 Commission's authority and reasonableness to
23 approve those components of a plan.

24 As an aside, to be clear, any denial of

1 a Plan, from our view, cannot happen absent a
2 hearing. You know, we certainly have a right to
3 a hearing prior to an order. And, if the
4 Commission were so inclined to not approve the
5 Plan, we would suggest that can only happen after
6 a hearing. Put that aside, it's a real issue,
7 but I'm not suggesting that we have to have a
8 hearing if other things line up well, as has
9 already been hinted to.

10 As to the issue of 378:40, I agree,
11 obviously, with Ms. Schwarzer's view that a
12 reasonable interpretation of the statute covers
13 what's happened to date. I suggest that, to the
14 extent that we are getting to the end of
15 reasonableness, there should be some
16 consideration of the Company's responsibility for
17 the delay should be taken in consideration.
18 Namely, the rate changes -- denial of rate
19 changes would impact the Company. And, to the
20 extent that we did or did not have a role in that
21 should be considered. I get it, from the others,
22 they're not particularly concerned with who
23 caused the unusualness, but that should be
24 considered.

1 But I do think there's a -- continues
2 to be a sound argument that this docket is going
3 "under the ordinary course", because ordinary
4 course, things change. And you have to adapt and
5 address when things change. And, as you saw in
6 our filing, it can be reasonably attributed to
7 the Tennessee Contract filing. That was a
8 significant change to the IRP, and it made sense
9 to hit pause while that ran its course.

10 So, I do think the reasonableness of
11 378:40, that umbrella continues until an order in
12 this case, frankly.

13 So, that's sort of a statement of why I
14 don't think it's obsolete. I think there are
15 many things that could be addressed.

16 I also agree with the suggestion of a
17 "nominal approval". The fact that those issues
18 are still ripe and can be addressed, they have,
19 in some way, already been addressed, again,
20 through the Tennessee docket. So, we don't
21 necessarily have to get into a hearing and dive
22 into the nuts-and-bolts of our planning process.
23 This has already been looked at, and we've got
24 testimony in this docket and the other. So, a

1 nominal approval makes a lot of sense.

2 How you phrase that, of course, is your
3 call, but a "we find the Plan" -- "we approve the
4 plan" period, and then focus on the next plan,
5 that would be our preference.

6 So -- and I think everyone is on the
7 same page, in thinking that the focus should be
8 on the next plan.

9 Let me put one more thought in the
10 existing Plan. There has been critique over
11 whether our Plan, as supplemented, meets the
12 requirement of a assessment of environmental and
13 health. I recommend Mr. Hibbard's testimony from
14 the Summer of '19. Just review the first ten
15 pages, he's got a summary of what he presented.
16 He did essentially what is now in the Northern
17 working report.

18 He assessed the impact of our Plan.
19 And, again, the gist of that assessment is, our
20 Plan shows increased gas use. What's the impact
21 of that? And what he looked at is, as we add
22 customers, we are replacing oil and propane
23 mostly. So, what's the impact of that? He
24 looked at the NOx, he looked at the SOx, he

1 looked at all that stuff. So, he did a lot of
2 what is asked of in the working group report.
3 So, there is a basis to approve that part of our
4 Plan as well.

5 New paragraph. We have certainly
6 looked at the working group report. I agree with
7 Mr. Kreis that cutting and pasting that into this
8 docket raises no issues for Commissioner Simpson,
9 because it's a public filing. And it has
10 concepts that are transferable to this case.

11 I don't have authority to say we would
12 agree to that. But, like others, there's a lot
13 of good stuff in there. And that could be the
14 basis of an order for the next one.

15 The last thought, and I'm happy to have
16 this conversation going around the room more, is,
17 as suggested in our motion, we need time to react
18 to whatever you do in this case. We are already
19 working on the IRP, doing all the
20 number-crunching and the demand forecasts. But,
21 to the extent that we are going to do -- you're
22 going to require some more analyses, those take a
23 lot of time.

24 So, we had asked for a six-month

1 extension, from October 2. We've read CLF's
2 objection. Their preference would be six months
3 from an order, or six months from October 2,
4 whichever is earlier. We're okay with that. A
5 slight change in that, so, if you go and issue an
6 order tomorrow, our plan would be due in six
7 months. That's acceptable to us.

8 CHAIRMAN GOLDNER: Mr. Sheehan, could
9 you -- could you maybe respond to the statute on
10 378:38? It says -- it uses, well, I'm going to
11 say "...", "and in all cases within five years of
12 the filing date of the prior plan a new plan
13 should be filed." What would be your opinion on
14 what gives the Commission the -- or, what allows
15 the Commission to provide any kind of waiver?

16 MS. SCHWARZER: My apologies, Mr.
17 Chairman. I'm not sure which statute you're
18 referring to?

19 CHAIRMAN GOLDNER: Oh, I'm sorry.
20 378:38.

21 MS. SCHWARZER: Thank you, sir.

22 CHAIRMAN GOLDNER: And, yes, please
23 proceed.

24 MR. SHEEHAN: It's the next section,

1 378:38-a.

2 CHAIRMAN GOLDNER: Yes.

3 MR. SHEEHAN: Which says "by order, may
4 waive for good cause any requirement under
5 378:38." And, in my motion, I did cite an order
6 where things were extended under that authority.
7 And, so, the question, of course, is "good
8 cause". And, certainly, the circumstances of
9 this case, which we've been talking about, would
10 support a "good cause" finding.

11 CHAIRMAN GOLDNER: We did notice, in a
12 previous Commission filing, there was some kind
13 of language that would indicate some flexibility
14 with the five years. I think this Commission is
15 struggling with that, if 38-a applies to that
16 particular portion of 38, when it says "in all
17 cases", we're having troubled getting our minds
18 around an exception to "in all cases".

19 MR. SHEEHAN: Well, you know, the
20 basics of statutory instruction, you've got to
21 give both phrases meaning. And "in all cases",
22 "except when excused in the next section",
23 certainly makes sense. And I appreciate that
24 tension. And that's, obviously, for you folks to

1 resolve.

2 I add that, without an extension, you
3 will get an IRP on October 2 that doesn't do all
4 the things that the people in this room want it
5 to do. We will file something October 2,
6 frankly, it will look like what is in front of
7 the Commission now, because we don't have
8 direction on how to change that in a way that
9 would satisfy your interpretation of the statute.

10 So, you know, I think there is good
11 cause. And I do think, in order to give the
12 statute meaning, because say "any requirement of
13 378:38", you have the authority to extend.

14 CHAIRMAN GOLDNER: Maybe you could talk
15 a little bit about the obstacles that you have.
16 I mean, the five-year requirement is, you know,
17 have been in statute for a long time. And, so,
18 that October date has been out there. You talked
19 a little bit about looking for some feedback from
20 the Commission. I think Commissioner Simpson has
21 a few points on that he'd like to raise as well.

22 But, before we do that, I'd like to get
23 your assessment of the obstacles that exist to
24 the October 2nd filing?

1 MR. SHEEHAN: Sure. First, to the
2 extent the IRP includes "the usual stuff", we
3 don't have any obstacles. The timing factors
4 that play into that are creating a demand
5 forecast, you want that to be as current as
6 possible. And all the data from the most recent
7 year is being finalized -- most recent winter is
8 being finalized and fixed now. So, we are now
9 getting all the data from the last winter, so the
10 next forecast will be up-to-date. And that's off
11 and running. The team is working on that.

12 So, the planning for how we're going to
13 meet that demand, you know, we have our various
14 contracts, we need capacity contracts, we need
15 supply contracts. That's all stuff that's
16 everyday work for our folks, and that's in
17 process.

18 The pieces that are problems are new
19 things. I have the working group report up.

20 MS. SCHWARZER: Excuse me, is that from
21 19-126?

22 MR. SHEEHAN: Yes.

23 MS. SCHWARZER: Thank you.

24 MR. SHEEHAN: And it requires, I forget

1 where it was, but there was some evaluation of
2 "better gas" -- I forget the phrasing used, or
3 "better source gas", and the available of that.
4 We have not done that before, so that would be a
5 new task for us. We would certainly reach out to
6 Northern. Like, in many instances, our
7 colleagues, they talk to each other, and we --
8 but we don't know how much that will involve.

9 If the Commission directs a different
10 kind of environmental assessment than we did last
11 time, those, you know, those are consultants, you
12 got to get them on board and up to speed, and
13 deal with their schedules.

14 So, it's those kind of things that
15 could delay it. And, obviously, we can't commit
16 to doing something drastically different now, to
17 have ready for October, and then the Commission
18 issues an order next month that goes in a
19 different. That would be, obviously, a waste.

20 So, it's those kinds of things.

21 CHAIRMAN GOLDNER: It seems like, in
22 378:38, there's I through VII, in terms of, you
23 know, what's required. It seems clear to the
24 casual observer what's being required.

1 I mean, I think, from a Commission
2 perspective, at the top of the list is, you know,
3 what's your capital plan over the next, you know,
4 five to ten years? You know, why is that capital
5 plan in place? How are you doing over time
6 against that capital plan? Are you doing what
7 you said you would do?

8 I mean, at the top level, I think it's
9 very simple, this concept of an LCIRP. I realize
10 the devil's in the details, and there's certainly
11 some underlying factors that are important and
12 relevant and need to be considered. But I think
13 that the top level piece, you know, hopefully, is
14 straightforward.

15 I know, Commissioner Simpson, you had a
16 few questions you would like to ask the Company.

17 CMSR. SIMPSON: I do. Many times in
18 closing arguments, Attorney Sheehan, you provide
19 a clear summary of the issues. And given the
20 history and the various changes to your LCIRP,
21 things that were introduced, things that were
22 pulled, discussions that you had with the
23 Parties, do you feel that, at this point, the
24 Commission has a clear, precise plan in front of

1 us for consideration?

2 MR. SHEEHAN: Yes. With the caveat
3 that parts of it are obsolete. You know, Granite
4 Bridge is not on the table anymore. The
5 Tennessee Pipeline upgrade is not on the table
6 anymore. And those were the two options we were
7 looking at to meet the future increased growth.

8 Aside from that, we are going to find a
9 way to meet that increased growth. Part of it is
10 the Tennessee contract you just approved. And,
11 so, the environmental assessment we've done,
12 through Mr. Hibbard's testimony, started with
13 "The projection is this much growth, what's the
14 impact?" He's done that. It's in front of you.

15 So, you could look at that and say
16 "Okay, they're not going to meet it with Granite
17 Bridge", or I should say "They haven't met it
18 with Granite Bridge", because we're now looking
19 backwards, "they met it in different ways. Has
20 that, in fact, been assessed properly? And, you
21 know, this really requires an assessment." And
22 that's what we've done.

23 So, there's no question, an order
24 diving into this IRP, and hopefully approving it,

1 would be a little awkward, because of the
2 elephant in the room, it's looking backwards,
3 rather than forwards. But it's all there. And
4 it's in four documents; it's in the Plan, and
5 then three updates, if you will, through the
6 testimonies and rebuttal.

7 CMSR. SIMPSON: With respect to the
8 approach where an initial Plan was filed, and
9 then significant changes were proposed, not that
10 long after the initial Plan was filed, does the
11 Company have thoughts, in terms of lessons
12 learned, for moving forward in subsequent plans?

13 MR. SHEEHAN: Well, and again, this is
14 off the top of the head, given the questions are
15 not anticipated --

16 CMSR. SIMPSON: Uh-huh.

17 MR. SHEEHAN: -- good questions, but
18 not anticipated. And I think it requires a step
19 back to "what's the overall purpose of an IRP
20 document?" There's a move towards getting more
21 granular, and I totally understand that move.
22 But the more granular you get, the more likely it
23 is things will change. You know, if we're
24 talking about a pipeline going down Main Street

1 in the plan, and then, in year three, and it
2 changes to going down in Hudson Street, you know,
3 those kinds of things happen. This year we had a
4 big version of that.

5 But, you know, the lesson learned in
6 this case was, frankly, that, if we had thought
7 it through at the time, and I think we did in
8 pieces, the question would be "Okay, we paused
9 the case in the Fall of '19", because of what
10 became later known as the "Tennessee contract".
11 There probably should have been this status
12 conference in Spring of '20. "What do we do? Do
13 we wait out the approval of that or not?"
14 Because, clearly, if it's not approved, then
15 we're back to Granite Bridge versus Tennessee, if
16 it is approved.

17 So, I think that's the lesson learned,
18 is there probably should have been a check-in or
19 something then. For a lot of reasons, that
20 didn't happen. We did advise the Commission
21 through the spring, and, obviously, were informed
22 about the contract when it was signed.

23 And I think what happened was, for,
24 again, very many years that would take two hours

1 to explain, each party in this docket didn't have
2 a particular burning issue to push it, and it
3 didn't get pushed.

4 So, you know, we didn't want to push
5 it, because we wanted to make sure the Tennessee
6 contract was approved. I don't know why
7 others -- and there were filings, this is not an
8 issue of blame, it's simply that's the way it
9 happened.

10 If we had checked in in the Spring of
11 '20, and the Commission said, you never would,
12 but "assume we're going to approve the Tennessee
13 contract, please revise your plan", we would
14 have. And I suspect that it wouldn't look a lot
15 different, again, because the demand forecast
16 projected X demand, we're now satisfying it with
17 this contract, rather than Granite Bridge. The
18 environmental assessment is the same, the health
19 impact assessment is the same, the demand
20 forecast is the same, unless you guys suggested
21 we tweak all those things. And that would have
22 been the normal course.

23 CMSR. SIMPSON: So, then, looking at
24 the procedural schedule and some of the history.

1 So, the Company requested to suspend the
2 procedural schedule in November of 2019, and the
3 Commission granted that in December of 2019. The
4 Company then filed several status reports. And,
5 on April 17th, 2020, it said it would file a
6 procedural schedule on May 15th of 2020. On May
7 15th, Liberty filed a procedural schedule with
8 only one subsequent event, a June 3rd, 2020
9 technical session. And, since that time, the
10 Company didn't propose any changes or a
11 procedural schedule for moving forward. Can you
12 explain why?

13 MR. SHEEHAN: Remember, that was in the
14 day when Commission Staff spoke to the
15 Commission. So, rightfully or wrongfully, we
16 assumed the Commission knew in June of 2020 that
17 the Tennessee contract -- what it was, it was
18 being signed, and it would be filed for approval.

19 And maybe we should have said that
20 openly in that docket, rather than waiting for
21 the filing. But it was then, you know, we
22 proposed the schedule, the Commission approved
23 it, we had the tech session, and then things
24 stopped. Could we have filed a request a month

1 later to resume this docket? We could have.
2 And, then, we think the question would have been,
3 like it was, "Well, do we plow ahead with not
4 knowing whether the Tennessee contract is going
5 to be approved?" And, you know, again, the
6 Granite Bridge docket, which was traveling
7 parallel, was also in that limbo state. And my
8 sense is that was driving the bus. You know, if
9 Granite Bridge is approved, that's going to have
10 an impact on the IRP, and vice versa.

11 So, there were a lot of factors in
12 there.

13 CMSR. SIMPSON: And the Company
14 recognizes the significant risk that is presented
15 by not having a plan that is, under the ordinary
16 course of business, being reviewed, is that
17 correct?

18 MR. SHEEHAN: Correct.

19 CMSR. SIMPSON: Okay. And moving
20 forward, looking at October, the five-year
21 sunset, and the requirement for a LCIRP to be
22 filed, can you speak to the Company's approach
23 for developing that LCIRP at this time?

24 MR. SHEEHAN: Sure. And one more

1 thought on your prior question.

2 CMSR. SIMPSON: Sure.

3 MR. SHEEHAN: If the Commission is
4 inclined not to approve this IRP, because it's
5 not in the ordinary course, I would again suggest
6 that should happen only after a hearing.
7 Because, if the Commission is suggesting that it
8 was on Liberty to push things along, and it
9 become a hearing on emails, and behind-the-scenes
10 pushes we did make. And I am not sure anyone
11 wants to get into that.

12 But, if that's the risk that the
13 Commission is putting on us, "it's your fault,
14 therefore, it's not in the normal course", I
15 would suggest that should happen after a hearing,
16 where we can show the efforts we did make.
17 Again, not formally, as you suggest, as you
18 noted, but informally.

19 CMSR. SIMPSON: So, then, let me ask
20 you, regardless of what the Commission decides,
21 does the Company want a hearing at this time?

22 MR. SHEEHAN: The only reason we would
23 want a hearing is to make sure -- well, it's
24 required under the statute. It's an adjudicative

1 process, which means "a hearing".

2 Now, if all Parties agree not to have a
3 hearing, we're okay with that. And the worst
4 case would be for an order coming out of the
5 Commission approving, and some party in this room
6 saying "I didn't get my chance at a hearing."
7 And then, we're in the legitimate, but
8 troublesome, rehearings, appeals, and all of
9 that.

10 So, that hearing could take a couple
11 forms. It could be a hearing on a settlement, if
12 we get there. It could be the Parties could
13 waive the hearing, either through settlement or
14 otherwise. I could see a situation where Parties
15 say "We don't have a settlement, but I don't want
16 a hearing either."

17 But it is an issue that, again, the
18 hearing is required, unless we come up with a
19 workaround, which is settlement or agreement,
20 settlement on substance or maybe settlement on
21 just a hearing. And maybe that's a good thought
22 for us is, if we can't settle everything, can we
23 at least settle that issue, and present that to
24 the Commission.

1 CMSR. SIMPSON: And are those efforts
2 that the Company is motivated to undertake?

3 MR. SHEEHAN: Yes. And we're talking.
4 And, of course, we can't say anything more than
5 that, but we're talking.

6 MR. HUSBAND: Excuse me. May I add a
7 few comments, since this discussion has deviated
8 a bit from --

9 CHAIRMAN GOLDNER: Not quite yet, sir.
10 Just we'll --

11 MR. HUSBAND: Okay.

12 CHAIRMAN GOLDNER: -- we'll give
13 everyone another opportunity. We'll finish with
14 Mr. Sheehan first, and then come back around.

15 MR. HUSBAND: All right. Thank you.

16 CMSR. SIMPSON: Sorry, I lost my train
17 of thought. Just a moment.

18 Do you have any perspective regarding
19 the "conditional approval" concept that was
20 initially suggested by the Consumer Advocate?

21 MR. SHEEHAN: I think he used the word
22 "nominal approval", rather than "conditional".

23 CMSR. SIMPSON: "Nominal", excuse me.
24 Thank you.

1 MR. SHEEHAN: "Conditional" raises a
2 whole bunch of other questions. I think that's a
3 fine approach. And, if you look at prior PUC
4 orders, sometimes they use the word "we find the
5 plan adequate", and without a lot of discussion.
6 And, often, that's a result of settlement. But
7 it's an acknowledgment that, as I read those
8 orders, "They filed a plan, people had comments,
9 no one's completely happy with it, but we will
10 find this one adequate, with the following
11 conditions for the next one."

12 And I think that would be an
13 appropriate way to handle this one.

14 CMSR. SIMPSON: Generally speaking, in
15 terms of resource strategy as a local
16 distribution company, does the Company have a
17 perspective on investments or demand management
18 strategies that maybe were not considered in
19 2017, that now, in 2020, the Company views as
20 required or necessary, given the environment and
21 economic conditions today?

22 MR. SHEEHAN: Considering that the last
23 plan, we started working on it in 2016, there
24 have been a lot of changes, both internally and

1 externally, over that time. And the shorthand I
2 use is "gas mod", as opposed to "grid mod" on the
3 electric side, if you can use that as a catch-all
4 phrase for moving in those kinds of directions,
5 yes, the Company is well aware of that. We note
6 the Commission and other states are going in that
7 direction, and we are happy to go that direction,
8 too. There's, obviously, the devil in the
9 details. What does that mean? How exactly --
10 how far into the nuts-and-bolts is an IRP
11 should -- should it get, as opposed to a rate
12 case or something where we're seeking recovery?
13 Those are the kinds of lines that get harder to
14 draw as you get further down. But the concepts,
15 absolutely. The Company is in support of those.

16 CMSR. SIMPSON: And when you say that
17 "if the Commission were not to provide an
18 extension for the subsequent LCIRP, that we would
19 get something that looks like the LCIRP that's
20 pending today", that statement is with respect to
21 the revisions and supplements that have happened
22 over time, not the 2017 initial plan, but the
23 revisions as well. Is that -- am I understanding
24 your statement correctly?

1 MR. SHEEHAN: That's fair. And don't
2 hold me to that 100 percent, that was a shorthand
3 for, absent direction from the Commission, we
4 have to do our best to do what we think complies
5 with the statute. And what existed in the Fall
6 of '19 is what we thought was required by the
7 statute.

8 Will there be other things in there
9 that taking steps down the so-called "gas mod"
10 road absent a Commission order? Probably. But
11 that would be totally in our control of what we
12 think should be included, and not the benefit of
13 the folks in the room or you folks of what that
14 should be.

15 But, yes. It would be the supplemented
16 plan, that concept.

17 CMSR. SIMPSON: And my final question
18 for you, and I'd invite any of the other parties
19 as well, should they want to weigh in, what
20 direction would be most helpful for moving
21 forward, so that we can mitigate an extended
22 process like this in the future?

23 MR. SHEEHAN: The Company's issue
24 throughout this docket has been, this is the

1 first case we prepared under the new statute.
2 The last one was prepared before, although the
3 hearing was after the new statute. So, this is
4 the first time we prepared a case under the new
5 statute. And all recognize, this was a statute
6 written with electric utilities in mind, and
7 trying to put the square peg in the round hole
8 for gas utilities.

9 And we did our best the first time
10 around, and the folks in this room all objected.
11 And the Commission issued an order saying "Do
12 better." That order didn't say how we should do
13 better. So, we tried again, filed an update, and
14 Parties weren't happy. We had a conversation.
15 We filed a second update, trying to hit a target
16 we didn't know what it was.

17 So, as always, you know, the utilities
18 at some level are "Tell us what to do and we'll
19 do it." And, if we don't have the direction,
20 we're guessing. And we have plenty of critics in
21 the room that will tell us when we don't get it
22 right.

23 So, that's a long way of saying, the
24 more specific the guidance the Commission can

1 give, the better.

2 The working group report was, in the
3 Northern docket, the settlement was "We'll meet
4 and come up with those directions." And, if you
5 read the working group report, it isn't really a
6 review of what they filed, it's "Here is how you
7 can measure environmental impact." And they's
8 got, you know, SOx and NOx and all those things.
9 "And here's how you can assess health impacts."
10 That's very helpful. Now, we know what we're
11 supposed to do and we can do it. And, in fact,
12 we have done some of that stuff. And that's the
13 kind of direction that would be very helpful.
14 "What does "environmental assessment" mean?", for
15 example.

16 CMSR. SIMPSON: Okay. Thank you.
17 Thank you, Chairman Goldner. I'm all set at this
18 time.

19 CHAIRMAN GOLDNER: Let me just ask one
20 more question to the Company, and then we'll give
21 everyone an opportunity to respond.

22 I'm just probing deeper, Attorney
23 Sheehan, on this question of direction and what
24 the Company needs. I understood that there was

1 the Unutil working group, that was helpful. I
2 just -- if you can be as specific as you can with
3 what else the Commission could do to be helpful?

4 MR. SHEEHAN: Going through the list of
5 a IRP, like in demand forecasts, we're pretty
6 comfortable. We did what we did before. It had
7 been approved a couple times. And we got some
8 tweaks in the Tennessee docket.

9 How we're going to meet that demand,
10 various contracts, *etcetera*, we're pretty
11 comfortable with that. We don't have a big
12 project this time around, like Granite Bridge,
13 that will take over. We are still bumping up
14 against our maxes, and you'll see that. And, so,
15 we are doing smaller things to make sure we have,
16 you know, can satisfy demand.

17 So, those two pieces, we'll take
18 suggestions, but we don't necessarily need those.

19 It really is on those assessments of
20 environmental health that are troublesome.
21 Again, we have a model now. It is largely
22 consistent with the working group report. So,
23 that's what we would do.

24 And the second piece is, to the extent

1 the Commission wants us to do what I lump into
2 "gas mode", well, what is it you want us to do?
3 And the working group report has some suggestions
4 there or recommendations there, that have some
5 specificity to them. It's that kind of thing
6 that's helpful.

7 Do you want us to, you know, run down
8 RNG, and figure out a way that we can get ten
9 percent of our gas from RNG? If you tell us
10 that, then we know.

11 Otherwise, we're doing what we think
12 makes the most sense.

13 CHAIRMAN GOLDNER: If we were able to
14 provide some help and guidance in those, I think
15 it was two areas that you mentioned, that would
16 that -- would that overcome the obstacles to sort
17 of a clean and robust October 2nd filing?

18 MR. SHEEHAN: I, frankly, don't know
19 the answer to that. I'd have to go back with
20 your suggestions, saying "Okay, they want us to
21 do this, this, this, and this. Can we get it
22 done by October?" And, I don't know.

23 CHAIRMAN GOLDNER: Okay. Fair enough.
24 Okay. Let's give everyone else an opportunity to

1 reply to the Company's comments. And we'll begin
2 with Mr. Krakoff.

3 MR. KRAKOFF: Thank you.

4 So, one thing that I want to address,
5 first off, that Mr. Sheehan said, which I
6 disagree with, is this idea that we had to put
7 the LCIRP docket on hold while the TGP contract,
8 in Docket Number DG 21-008, was being considered.

9 You know, when this docket was
10 initiated, that was around the same time that
11 Granite Bridge was being considered. And the
12 Commission, at that time, realized that, you
13 know, the LCIRP and Granite Bridge, that the
14 projects sort of went hand-in-glove together.
15 You know, they were sort of -- the procedural
16 schedules for both those dockets was being heard,
17 you know, at the same time. And I think part of
18 that was out of recognition that, you know, the
19 LCIRP should really inform these investment
20 decisions that are being made.

21 So, respectfully, this idea that, you
22 know, we had to wait for this docket to proceed
23 until the Tennessee Gas Pipeline contract was
24 decided, you know, in my view, is really

1 backwards as to how resource planning should be
2 conducted.

3 You know, there's a number of, you
4 know, prior Commission decisions stating that the
5 LCIRP should really inform the Commission's
6 decision-making, and how it analyzes the
7 utility's decision-making. And, so, you know, to
8 say that we had to put the LCIRP docket on hold,
9 while, you know, that contract was being
10 considered, in my view, is backwards to how
11 resource planning should be conducted under the
12 statutes.

13 You know, the other thing I wanted to
14 respond to was, you know, this contention that,
15 you know, Liberty complied with the statutes with
16 respect to its assessment of environmental and
17 health impacts under the statutes. You know,
18 those health and environmental assessments, you
19 know, they were with regard to Granite Bridge and
20 to the -- you know, to the alternative to Granite
21 Bridge, which was investments on the Tennessee --
22 or, on the Concord Lateral.

23 And, so, you know, with the LCIRP on
24 file, there's been no assessment of, you know,

1 the separate environmental impacts from the
2 Tennessee Pipeline contract, which was approved.
3 So, you know, maybe Liberty would take the
4 position that any environmental impacts are the
5 same. But there's nothing in that filing, you
6 know, showing those environmental impacts.

7 You know, also as outlined in CLF's
8 position statement, you know, I went into sort
9 of, you know, Liberty has constantly taken this
10 position that, you know, investments in gas are
11 better for the environment, better for public
12 health, than sort of a status quo of continued
13 investments in propane, and, you know, not
14 "investments", but continued reliance on propane
15 and heating oil. And, you know, while that may
16 be true, you know, Liberty's sort of position is
17 rather self-serving than that, they're ignoring
18 other alternatives to, you know, to its gas
19 investments, which, you know, may have fewer
20 impacts.

21 And Liberty has sort of, you know, they
22 did recognize that, to some extent, with its
23 position on renewable natural gas, and its
24 position that renewable natural gas is even, you

1 know, more environmentally friendly, in his
2 words, than traditional investments.

3 But, you know, again, all of its
4 environmental and public health assessments, you
5 know, they're very self-serving, and they focus
6 sort of on Liberty's preferred investments,
7 Liberty's preferred approach to utility
8 investment, you know, without sort of looking at
9 alternatives that may have fewer environmental or
10 public health impacts. And, you know, to do a
11 full, comprehensive analysis, I think it's
12 necessary to sort of look at the environmental
13 and public health impacts under various
14 alternative scenarios, and sort of try to weigh
15 those impacts.

16 Going to the process for this docket
17 and for the future, you know, I would agree that,
18 you know, we could avoid the need for -- we could
19 avoid the statutory requirement for hearings, you
20 know, were the Parties, you know, to agree to a
21 nominal approval. You know, I think, short of an
22 agreement amongst the Parties, it would be, you
23 know, it would violate the statute to not have a
24 hearing, you know, on the LCIRP. You know, which

1 could come from a settlement, where we agree to
2 sort of a, you know, provide a nominal approval
3 without conducting hearings.

4 And then, you know, I do agree with
5 Liberty that, you know, Liberty, you know, that
6 specific guidelines and guidance by the
7 Commission would be very helpful for Liberty and
8 for the other parties for the next LCIRP. And
9 that, without some additional guidance, we'll
10 probably be back in the same position in a few
11 months time.

12 And, then, finally, you know, with
13 respect to one additional process improvement for
14 the next LCIRP, you know, I think part of the
15 problem with this docket is that, you know, the
16 LCIRP was filed five years ago, you know, we're
17 now five years in. The next LCIRP docket is due
18 in just a few months. And, so, you know, to
19 really ensure that the LCIRP can serve its
20 intended purpose of helping guide the Commission
21 in these important utility decisions, I think we
22 should try to -- we should strive to hold a
23 hearing on the next LCIRP within one year of the
24 filing of the next LCIRP. So that, you know, we

1 don't face the situation, like now, where a lot
2 of the information in the LCIRP is stale. So,
3 you know, I would suggest trying to conduct a
4 hearing earlier on during the five-year process,
5 to avoid some of those issues that have arisen in
6 this docket.

7 Thank you.

8 CHAIRMAN GOLDNER: All right. Thank
9 you, Mr. Krakoff. And we'll move to Mr. Husband.

10 MR. HUSBAND: Thank you, Chairman.

11 In responding to Liberty's comments,
12 first of all, I want to start with 378:40, and
13 the question of whether or not this plan is
14 approvable. If you look at the first sentence of
15 that statute, it says that "No rate change shall
16 be approved or ordered with respect to any
17 utility that does not have on file with the
18 commission a plan that has been filed and
19 approved in accordance with the provisions",
20 blah, blah, blah. So, the plan has to be
21 approved.

22 I've heard suggestions from Liberty
23 that components of the Plan are approvable.
24 There's nothing in here that suggests, or any

1 other statutes that apply here, that components
2 of a plan can be approvable. The plan, itself,
3 has to be approvable.

4 In terms of whether or not this
5 proceeding has been moving forward in the
6 ordinary course, since beginning until now, I
7 don't see how they could possibly be accepted as
8 true, given that Liberty's filings have never
9 been sufficient. They've never met the statutory
10 requirements.

11 Liberty, to begin with, and I have a
12 problem with hearing that they tried the best
13 they could, and they did what they should have,
14 they filed what they should have filed, knowing
15 what they knew. If you look right at 378:38, I
16 believe it's the first one of the seven sections
17 there, says that the demand -- the plan has to
18 apply to Liberty's "service area". Liberty is
19 just filing cherrypicked projects and ideas or
20 plans it has for specific franchises or customer
21 bases. It is not providing -- this Plan does not
22 provide, and I don't think it has any intention
23 to provide in the next one, a plan that's going
24 to cover its entire service area, which is what

1 the statutes require.

2 That's why Keene should have been in
3 from the beginning. I see that, you know, I
4 mentioned in my client's summary of his
5 positions, that Laconia -- a project's been
6 ongoing in Laconia to expand Liberty's customer
7 base there. That was never a part of this
8 proceeding.

9 I think, going forward, and in this
10 case, and that's one reason this Plan is not
11 approvable, it doesn't cover the territory that
12 it's required to cover.

13 You go on, after that, and there are
14 some obvious deficiencies in the analysis. The
15 analysis is supposed to be long- and short-term
16 emissions impacts analysis. Liberty stopped
17 short of all of this analysis, in the original
18 filing, way before the projects or the
19 infrastructure that would have been used, if
20 approved, would have ceased being used.

21 For example, Granite Bridge was
22 supposed to be used in the 2060s or '70s, I
23 think. And the only emissions analysis we got in
24 the Plan that was filed in this case was for the

1 emissions that would run through 2038, I think.
2 And, also, the only emissions analysis we got for
3 Granite Bridge was for the pipeline. There was
4 nothing on the LNG facility.

5 And, so, if they're going to come back
6 with that, I think that's a big problem. We're
7 going to be back here again, talking the same
8 issues.

9 So, you've got: They don't include the
10 entire service area they should; they are
11 supposed to include all of the emissions that are
12 going to result from any approved planning, and
13 that means right up to the end of the project or
14 the infrastructure being used. They also did not
15 use the right global warming potential for
16 methane. They used 25 for the period running up
17 to 2038, I think, that they were projecting use
18 for in their LCIRP. And it's clear, under the
19 Intergovernmental Panel on Climate Change rules
20 and standards, that the global warming potential
21 for methane, for the first two decades of its
22 use, is supposed to be 84 times that of carbon
23 dioxide, and yet they only used the GWP of 25.
24 That's something that would be, potentially, the

1 state, I guess, was using for the period that
2 covers 20 years after use, until 100 years after
3 use. It goes into that timeframe. But even the
4 state's using the wrong GWP.

5 If they're really going to follow the
6 IPCC standards, which Liberty claims it does in
7 its advertising and marketing, that it's going to
8 follow the IPCC's GWP that's appropriate, they
9 should do that going forward. And maybe, if it
10 wants to argue it both ways, minimally, it should
11 just put in both GWPs, so Parties could have an
12 opportunity to see it both ways and make their
13 arguments. You know, if you want to leave that
14 an open question.

15 But those are some problems in the
16 initial filing that are going to repeat, unless
17 Liberty gets a clear message from the Commission,
18 I think, that it's going to have to, you know, do
19 the calculations for all of the emissions impacts
20 to the end. It's going to have to include all of
21 the infrastructure that's being used. You can't
22 just include the pipeline. You know, it's going
23 to have to use the right GWP. It's going to have
24 to look at these things in terms of actual

1 concrete standards that are being applied, and do
2 that.

3 I think the best advice the Commission
4 can -- guidance that the Commission can give
5 Liberty going forward is as stated in my client's
6 position statement. To tell Liberty that it's
7 going to have to submit planning that's in
8 accordance with its own advertising and
9 marketing. It's going to have to go forward with
10 planning that is going to provide for
11 sustainability for New Hampshire, that's going to
12 result in immediate deep carbonization and
13 emissions cutting, that it's going to deploy
14 technologies that are good for that purpose,
15 instead of just gas. It's going to have to
16 follow its own representations. And this is,
17 again, all set forth in my client's summary
18 position statement.

19 But I don't see how this plan is
20 possibly approvable, except, as Mr. Kreis
21 indicated, by a settlement of the Parties
22 possibly. Otherwise, the statutory prohibition,
23 I think, is pretty plain, that you have a plan
24 here that doesn't meet the requirements.

1 CHAIRMAN GOLDNER: Thank you, sir.

2 We'll move on to Attorney Kreis.

3 MR. KREIS: Thank you, Mr. Chairman.

4 I'm tempted to ask the Commission for a
5 brief recess, so that I can walk outside and
6 dance a jig down Fruit Street, because, first, it
7 would be unseemly to do that here inside the
8 Walker Building. And, second, because I'm really
9 pleased, frankly, by what you said, Mr. Chairman,
10 by way of distilling what we're doing here to a
11 few key sentences. You made the observation
12 that, fundamentally, what we're doing here, at
13 the highest level, is telling utilities to come
14 forward and explain to you what its plan is for
15 deploying its capital, and then the Commission
16 evaluates that plan against the standards in the
17 statute.

18 That is a very simple and
19 straightforward proposition. I agree with it
20 wholeheartedly. And the Commission, or
21 predecessor editions of the Commission, have
22 essentially conditioned utilities to do something
23 other than that, and expect something other than
24 that. For whatever reason, historically, the

1 Commission had been telling the electric
2 utilities, principally, that what they really
3 needed to do, in compliance with this statute,
4 was to tell the Commission about the processes
5 that they use to conduct their own planning.

6 And my argument that I've made, with
7 increasing degrees of stridency and emphasis, is
8 that is simply a misinterpretation of the
9 statute. It doesn't matter what the utilities do
10 internally to make their capital planning
11 decisions. What matters is, what those decisions
12 are, and whether they are least cost, from the
13 standpoint of consumers, in light of the State
14 Energy Policy, that is stated in RSA 378,
15 Section 37.

16 And, when I hear you, Mr. Chairman,
17 distill the requirements of the LCIRP statute in
18 that manner, that tells me that maybe the
19 Commission is finally poised to get that right.
20 That is very encouraging.

21 In that light, and maybe this is
22 beginning to dawn on all of us, these LCIRP
23 proceedings are probably the most important thing
24 that the Commission actually does. Because of

1 their explicit relationship to rate cases, and
2 because what this calls on the Commission to do
3 holistically, is what the Commission is often
4 struggling to do piecemeal in individual dockets.
5 You know, there is case after case where the
6 Commission is grappling with things like "Oh,
7 what do we do about time-of-use rates?" And, you
8 know, "Oh, what do we do about non-wires
9 alternatives in electric cases and non-gas
10 alternatives in gas cases?" You know, "should
11 this company be allowed to invest in renewable
12 natural gas?" "Should franchises be expanded?"

13 All of that stuff really is fairly
14 within the LCIRP umbrella, and is germane to this
15 question of whether each utility is deploying its
16 capital in conformity with the State's energy
17 strategy, and in a manner that is least cost,
18 from the perspective of customers.

19 One thing that I disagree with that I
20 heard my learned colleague, Mr. Sheehan, say, is
21 that, if this case goes to hearing, there would
22 have to be a lot of examination of who is
23 responsible for I guess you would call it the
24 "interregnum" that began back in 2020, and

1 proceeded until quite recently. This is a strict
2 liability statute. I don't think it matters
3 whether the Commission is responsible for nothing
4 happening for two years, or whether that's the
5 Company's responsibility. And I think most of
6 what could be produced by way of evidence, about
7 what was going on behind the scenes during that
8 period, would violate the Commission's
9 prohibition in its rules against evidence related
10 to settlement conversations. So, I really don't
11 think that we should or can go there. I revert
12 back to what I said earlier, that it would be
13 patently absurd, under RSA 378:38, 39, and 40,
14 for the Commission to approve whatever we deem
15 "the Plan" to be.

16 That said, I'm happy to have a hearing
17 in this docket. I agree with the Company that,
18 ultimately, if this case is not resolved by
19 settlement, there would have to be a hearing. In
20 fact, recent Commission practice is to conduct
21 hearings on settlement agreements. So, I assume
22 that, if all the Parties came to an agreement,
23 along the lines that I've been and that others
24 have been hinting at, you would want to get us

1 all here, you'd want to put some witnesses up on
2 the -- you'd want us to put some witnesses up on
3 the stand. You'd want us to explain why our
4 settlement is in the public interest. You would
5 ask lots of questions, as is the custom. And the
6 public, or anybody else, would have the
7 opportunity to be here and raise objections, I
8 guess, to any settlement we might enter into.
9 That's all to the good.

10 Something I was thinking about, as I
11 was listening to the other parties talk, and I
12 want to say, I think I agreed with everything I
13 heard Mr. Krakoff say on behalf of the
14 Conservation Law Foundation. And that makes
15 complete sense to me, because he attempted, some
16 time ago, to bring a bunch of these issues to the
17 attention of the New Hampshire Supreme Court.
18 And what I told the Court at the time is, "Those
19 are very important issues, but they are not ripe
20 for a judicial review at this time. And the
21 Commission should really have an opportunity to
22 consider those issues in this very docket." So,
23 here we are, looking at and talking about what it
24 really means to comply with the Least Cost

1 Integrated Resource Planning statute.

2 Several years ago, this very utility
3 came before the Commission and asked to expand
4 its franchise into the Hanover and Lebanon area.
5 And the Commission ultimately granted that
6 request. But what I want to remind the
7 Commission of is that there were a couple of
8 grass roots intervenors in that case, who popped
9 up to argue that something the Commission needed
10 to grapple with in that case were what I would
11 characterize as "environmental issues". And what
12 the Commission said in response to that is
13 "You're at the wrong agency. We're not an
14 environmental regulator."

15 In my opinion, as the Consumer
16 Advocate, that was legal error. But I didn't
17 feel like I had the mandate and the authority,
18 or, really, the incentive to raise that as an
19 appellate issue with the New Hampshire Supreme
20 Court. I think that's an issue that is highly
21 germane to these LCIRP dockets, because there are
22 references in the LCIRP statute, particularly
23 Section 37, but also elsewhere in the statute, to
24 environmental issues. And I think these have the

1 effect of requiring the Commission to take
2 environmental implications, frankly, of the sort
3 that Mr. Husband was just raising with you, into
4 account as you review LCIRPs. Those things are
5 very important.

6 Another issue that comes up is the
7 extent to which this process could be construed
8 as calling upon natural gas utilities to do
9 things that might look like what electric
10 utilities do. And I will say that that isn't
11 contemplated by what was filed in the Unitil
12 Docket 19-126. But I think that's a fair
13 question for natural gas utilities to be forced
14 to confront in this LCIRP context.

15 The New Hampshire Supreme Court
16 decided, in *Appeal of Public Service Company of*
17 *New Hampshire*, which was a case decided in 1996,
18 at Page 13 or Volume 141 of the New Hampshire
19 Reports, that electric utility franchises are not
20 exclusive. And whether that applies to gas
21 utilities as well, we know that electric
22 franchise -- utility franchises are not
23 exclusive. And, so, therefore, nothing in New
24 Hampshire law prohibits the Commission from

1 telling natural gas utilities "Hey, what you're
2 really in the business of providing to your
3 customers as a utility is heat and comfort, and
4 you can be required to do that under the LCIRP
5 statute in ways that don't necessarily involve
6 zapping natural gas through a pipeline and
7 delivering it to people's homes and businesses."

8 Now, those are big questions. That's
9 why I said that these are big, important cases
10 that the Commission should take very seriously.
11 And that, from what I'm hearing today, you do
12 take very seriously.

13 So, that's my answer to the question
14 "What direction would be most helpful?" The
15 Commission should make clear to this utility,
16 and, therefore, by implication, all utilities,
17 and to all the Parties that have intervened here,
18 and all the parties that might intervene here,
19 that these LCIRP dockets are at the top of the
20 priority list, because this is where the
21 Commission is required by statute to consider the
22 biggest questions that are within the
23 Commission's jurisdiction.

24 I hope that's, again, somewhat helpful

1 in encouraging the Commission to keep doing what
2 it seems to be doing, and to telegraph to the
3 Commission that my office wants to be deeply
4 involved in a way that will be constructive.

5 CHAIRMAN GOLDNER: Thank you, Mr.
6 Kreis. Attorney Schwarzer.

7 MS. SCHWARZER: Thank you, Mr.
8 Chairman.

9 Again, none of my comments have been
10 approved by Department of Energy leadership. So,
11 I just offer them as a preliminary statement from
12 the Department.

13 Respectfully, the Department does
14 believe that the obligation falls upon the
15 Company to file. That while it's important for
16 the Parties to work together, certainly, the
17 intervenors and formally PUC Staff, but also
18 the -- now the Department of Energy, and to
19 balance collaborative effort, the statute and the
20 obligation remains with the Company to make a
21 timely and appropriate filing.

22 I do think it's appropriate to give
23 some weight to the fact that, in the Summer of
24 2021, the Public Utilities Commission split, and,

1 certainly, there were some procedural delay and
2 uncertainty, perhaps, associated with some of
3 that transition, which would normally not be the
4 case, understandably. Nonetheless, issues cited
5 by other parties here preceded that.

6 I think the remaining concern might be
7 that, while nominal approval may be something we
8 are moving towards, I would hesitate to equate
9 "nominal" and "adequacy", particularly in light
10 of the fact that this is the first LCIRP filed
11 under a newly -- then newly modified statute.
12 And that the then PUC's order approving the prior
13 LCIRP did reference need for increased
14 granularity, which may not have been fully met.

15 Thank you.

16 CMSR. SIMPSON: One -- may I ask a
17 question of Attorney Schwarzer?

18 CHAIRMAN GOLDNER: Of course.

19 CMSR. SIMPSON: We've heard some
20 comments with respect to the possibility of
21 settlement. Can you address the Department's
22 position on the appropriateness of that, and
23 ability, as in other cases, of the Department to
24 help facilitate some of those efforts, if seen as

1 appropriate?

2 MS. SCHWARZER: Again, my comments
3 would be preliminary.

4 CMSR. SIMPSON: Understood.

5 MS. SCHWARZER: The Department has had
6 the good fortune to recently hire a Director of
7 Gas, who will be -- who joined us very, very
8 recently, and who we look forward to having in
9 our stable, if you will. So, certainly, to the
10 extent that the Department is going to be in a
11 position to consider some of the more technical
12 aspects in more detail than it has been recently,
13 I believe that is something the Commission is
14 interested in hearing from us.

15 With regard to a settlement agreement,
16 as I think preliminary comments here have
17 indicated, there's a considerable range of
18 understanding about whether any bare-bones
19 minimum requirement -- or, which bare-bones
20 minimum requirements Liberty may have met. And,
21 while I believe there would be hesitancy to fail
22 the LCIRP, if you will, there's probably also
23 some hesitancy about finding both the process and
24 the scope and the specificity adequate.

1 So, I'm not sure what answer I can give
2 you at this time. I have not had an opportunity
3 to consider how -- a full answer to
4 Mr. Chairman's very good question at the
5 beginning of this status conference.

6 CMSR. SIMPSON: Okay. Thank you.

7 CHAIRMAN GOLDNER: Thank you. And,
8 Mr. Sheehan, would you like an opportunity to
9 respond?

10 MR. SHEEHAN: Sure. I try not to beat
11 dead horses, just to pick on a few things that
12 were mentioned.

13 First, the request to suspend the
14 docket in 2019 was assented to by all parties.

15 Second, the environmental assessment,
16 which I think is sufficient, was not an
17 assessment of Granite Bridge, it was an
18 assessment of the increased use of gas projected
19 by the demand forecast. So, it would have
20 applied equally to Tennessee, in broad terms.
21 Maybe the numbers would have wiggled a little.
22 But the concept was, "under our projected demand,
23 more customers would be using gas, what's the
24 impact of that?" Whether that is through a

1 Granite Bridge expansion or a Tennessee
2 expansion.

3 Third, with respect, there is no
4 mention of "capital planning" in the IRP statute.
5 I understand and agree with the concept that IRPs
6 inform capital planning, that we have to, when we
7 come in with a project, show why it's prudent.
8 And one way we show why it's prudent is it's part
9 of the -- it's consistent with the IRP. When we
10 draft IRPs, we are bound by the statute, at least
11 initially, which has I through VII. So,
12 Chapter 1 of an IRP is usually "Forecast of
13 Future Demand", *etcetera, etcetera*.

14 So, that's what's dictated the contents
15 and chronology. And, certainly, the Commission
16 can add to that and supplement what's in the
17 statute. But, up until now, there hasn't been a
18 requirement of a capital plan included in an IRP.
19 I don't object to that, but, that's, you know, to
20 the extent this one doesn't have it, it's not a
21 failure, if you will.

22 And, last, just to pick up on
23 Ms. Schwarzer's comment of a "bare-bone filing",
24 this is not a "bare-bone filing". We have

1 addressed everything in the statute. Maybe not
2 to everyone's satisfaction. But, to dismiss it
3 as a "bare-bone filing" is unfair, frankly, if
4 you look at the amount of work and discovery,
5 *etcetera*. And we received testimony in the Fall
6 of 2019 that acknowledged our demand forecast was
7 accurate. Acknowledged we had the need for more
8 capacity, *etcetera*.

9 So, we're not going to win the argument
10 here, but just I had to push back a little on
11 that.

12 So, that's all I had in response.

13 CHAIRMAN GOLDNER: Thank you. And I'll
14 just make one, one comment, I guess, is that, you
15 know, I think the Commission is interested in a
16 couple of things. You know, making sure that
17 we've, you know, closed this docket, and managed
18 that process.

19 But what we're most interested in is
20 moving to the next LCIRP, something that's
21 actionable. And, Mr. Sheehan, this goes to your
22 comment. If there was, to me, the result of all
23 of this work is a capital plan, with all the
24 underlying details, but a capital plan that tells

1 you what the expected investment that the Company
2 is making is, and then giving all parties the
3 opportunity to monitor how the Company is doing
4 against that investment plan, and the changes as
5 we go through time. Once you have that baseline,
6 it's a very productive process to look at that
7 plan.

8 So, when we do all this work in an
9 LCIRP, for me, what matters is the capital plan
10 that comes out the other end, because that's the
11 only thing that's actionable. Everything else
12 is -- is interesting, but perhaps not actionable.

13 So, I guess where we can go from here
14 is, did the Parties have the idea that they
15 wanted to make a final statement? Or, the
16 Commission has asked, I think, the questions that
17 we wanted to go through as we went through the
18 day.

19 But would the Parties be interested in
20 a closing statement or is there anything else
21 that you'd like to discuss?

22 MR. KREIS: Mr. Chairman -- Mr.
23 Chairman, I would welcome a brief opportunity to
24 respond to what I just heard you say and what I

1 just heard Mr. Sheehan say. In particular,
2 Mr. Sheehan's correct statement that "there is no
3 explicit reference to "capital planning" or
4 "capital budget" or "capital investments" in the
5 statute."

6 CHAIRMAN GOLDNER: Please. Please, and
7 then we'll give everyone an opportunity to reply.

8 MR. KREIS: Okay. Well, Mr. Sheehan is
9 correct, there is no mention of "capital
10 planning" in the IRP statute. Here's what the
11 IRP statute does say. This is the second
12 sentence of RSA 378:39: "In deciding whether or
13 not to approve the utility's plan, the Commission
14 shall consider potential environmental, economic,
15 and health-related impacts of", and here's the
16 key phrase, "each approached option." So, that's
17 what I'm talking about. The "options" that this
18 utility, or any utility, considers as it figures
19 out what it is going to do. So, that word
20 "option" is actually broader than "capital
21 planning", because there are "options", like
22 innovative rate design, that actually don't
23 involve capital investments. Those are even more
24 least cost than putting something in the ground

1 or buying some piece of equipment that then goes
2 on the books and into rate base.

3 So, that's my answer. Yes, no
4 reference to "capital planning", but still very
5 much a process that is along the lines that
6 you're describing, Mr. Chairman.

7 CHAIRMAN GOLDNER: And, happily, I
8 think the Company and Mr. Sheehan also said he
9 wouldn't take exception to a discussion of a
10 capital plan. So, it sounds like we're reaching
11 some alignment.

12 Just a moment please.

13 *[Chairman Goldner and Commissioner*
14 *Simpson conferring.]*

15 CHAIRMAN GOLDNER: Would anyone else,
16 before the Company responds to Mr. Kreis's point,
17 would anyone like to comment, before we let the
18 Company reply?

19 *[No verbal response.]*

20 CHAIRMAN GOLDNER: No? Okay.

21 Mr. Sheehan, any comments?

22 MR. SHEEHAN: Sure. And Mr. Kreis
23 pointing out "options" illustrates our bind.
24 That could be endless. He mentioned "rate

1 design". We've talked about "nongas
2 alternatives", we've talked about "RNG".
3 Certainly, hydrogen is out there, and "certified
4 gas", which is the lingo that they used in the
5 working gap -- group report.

6 There are, arguably, endless options
7 that could be considered. And, to the extent
8 that the Commission can provide guidance of what
9 is out there, that would help. Again, you don't
10 have to do our work for us. But, you know, we do
11 that kind of analysis in different ways. For
12 example, we have an RNG docket in front of you.
13 The issue there, frankly, is the RNG was more
14 expensive than pipeline gas. And, so, we were
15 basically asking for a way to socialize that
16 excess cost. As an aside, it may not be less
17 expensive anymore, given the current market. But
18 that's a different -- a different day.

19 It's the same as the non-wires
20 alternatives. There are options out there. And
21 we look at them, and, if they're more expensive,
22 we can't go forward.

23 So -- and this is new world for gas
24 utilities. And any help the Commission can do

1 for that would be great. Otherwise, we will do
2 our best to look at what we think options are.

3 And one more aside, something that Mr.
4 Kreis mentioned, and we've had informal
5 discussions on this, is "can a gas utility
6 provide non-gas services?" I mean, that's a
7 legal question, but it's certainly a policy
8 question, too.

9 And, so, anyway, there's a lot out
10 there, and our IRP could become unwieldy without
11 some brackets around it.

12 I have no need for any particular
13 closing.

14 CHAIRMAN GOLDNER: Okay. Thank you,
15 Attorney Sheehan.

16 Would anyone else like to make a
17 closing? If there is closing, we will need to
18 take a quick break. If there's no closing, then
19 we can move to adjourn.

20 Would anyone like to make a -- it's not
21 a threat, Mr. Kreis. It's just the reality of
22 the stenographer and the Commission.

23 MR. KREIS: Well, this is a status
24 conference, not a hearing. And, so, I think I've

1 said everything that I could usefully say.
2 Except that, the statute says "each proposed
3 option", right? The utility gets to propose what
4 it wants to do to the Commission, right? And we
5 rely on investor-owned utilities in this state to
6 provide these essential public services. They're
7 profit-maximizing businesses, you know,
8 functioning in the economy. So that they get to
9 propose stuff that's consistent with their
10 business objectives, in the interest of their
11 shareholders. So that -- so, the universe is not
12 open. It does get constrained, or at least --
13 yes, it gets constrained by what this particular
14 company would like to do in the best judgment of
15 its management.

16 CHAIRMAN GOLDNER: And I do see the
17 degree of freedom issue, you know, if you're
18 trying to manage eight or ten degrees of freedom,
19 it can be the outcome -- or, the output might be
20 less than optimal. So, that was an important
21 point, I think.

22 Any other comments? Ms. Schwarzer.

23 MS. SCHWARZER: Mr. Chairman, thank
24 you.

1 If this is not too forward-looking,
2 would the expectation of the Commission be,
3 following the status conference, that the utility
4 is to proceed to file something or work with the
5 Parties to perhaps file a settlement, if
6 possible? Or is the Commission intending to file
7 a more definitive framework?

8 And perhaps there's no direct answer to
9 that question at this time. This is an
10 opportunity for us to ask you what you envision?

11 CHAIRMAN GOLDNER: We should probably
12 confer. If the parties are okay with it, we
13 could take ten or fifteen minutes, and then
14 circle back with everything that we've processed
15 today, and hopefully provide some input or
16 guidance, if that would be acceptable to
17 everyone? Would that be okay?

18 MR. KREIS: Desirable even.

19 CHAIRMAN GOLDNER: Desirable even. Mr.
20 Krakoff.

21 MR. KRAKOFF: Yes. I mean, could I
22 just make -- this isn't necessarily a closing
23 statement, but just a comment about sort of where
24 we go from here.

1 You know, there's been a lot of time in
2 the hearing at sort of maybe a "nominal" finding
3 of approval. You know, respectfully, I think
4 that, you know, I understand that there's a
5 statutory requirement for a hearing. But, you
6 know, I don't think it makes a whole lot of sense
7 to have a hearing on a rather stale plan.

8 And, so, you know, I would hope that
9 the Parties could work together to try to, you
10 know, avoid the necessity for such a hearing.
11 Because having a hearing on something that
12 Liberty, you know, on a filing it made five years
13 ago, you know, may not be, you know, may not be
14 in everybody's best interest, or, you know, a
15 good use of time and resources.

16 So, you know, to the extent that, you
17 know, we could try to reach an agreement where we
18 can avoid, you know, such a situation, may be a
19 better path forward.

20 CHAIRMAN GOLDNER: Thank you, Mr.
21 Krakoff. Yes, I think, before we confer, I think
22 we -- I can speak for Commissioner Simpson by
23 saying that, you know, for us, getting to the
24 2022 Plan, having a crisp plan, getting

1 everything lined up and getting organized for
2 that is our priority.

3 But, to the extent that we need to
4 finalize the 2017 Plan, we need to be respectful
5 of the law and the process, and we'll, of course,
6 do that.

7 But, thank you, Mr. Krakoff. That's
8 very helpful.

9 Let's take -- let's just take ten
10 minutes, come back at fifteen till, 10:45, I
11 think, and then to wrap up. Okay. Thank you.
12 Off the record.

13 *(Recess taken at 10:34 a.m., and*
14 *the status conference resumed at*
15 *10:50 a.m.)*

16 CHAIRMAN GOLDNER: Okay. The
17 Commission has conferred, and we'd like to make a
18 couple of points.

19 First, we would like to encourage
20 settlement on this issue in this docket. And
21 what we'd like is an update on July 5th, that's
22 two weeks from today, in terms of the Parties'
23 status of reaching a settlement.

24 MS. SCHWARZER: Mr. Chairman?

1 CHAIRMAN GOLDNER: Uh-huh.

2 MS. SCHWARZER: July 5th, coming
3 immediately after the 4th of July holiday, with
4 many people having a lot of work scheduled before
5 that date, if there might be a reconsideration of
6 that deadline, the Department of Energy, and
7 perhaps others, would greatly appreciate it.

8 CHAIRMAN GOLDNER: Absolutely. We did
9 think not to put it on the 4th.

10 *[Laughter.]*

11 CHAIRMAN GOLDNER: So, we thought we
12 were doing well. How about, would the 7th be
13 okay? Or would -- or is that week -- are you out
14 that week?

15 MS. SCHWARZER: There are a number of
16 cost of gas issues. And subject to other
17 parties', of course, positions, perhaps the week
18 of the 11th might be better.

19 CHAIRMAN GOLDNER: Okay. Let's make it
20 July 11th, if that's -- if anyone has any issues?
21 No?

22 MS. SCHWARZER: Thank you very much.

23 CHAIRMAN GOLDNER: Okay. Seeing none,
24 we'll make that the 11th for a status update.

1 And the other thing we'd like to just
2 emphasize is that we do expect a filing for the
3 next LCIRP on October 2nd. And, obviously, we
4 want that to be a high-quality filing, and we
5 want to make sure that we have as much
6 information as the Company needs to make a
7 quality filing. But we are expecting a quality
8 filing on October 2nd. So, we just want to make
9 sure everyone's clear on our position on the next
10 LCIRP, the '22 filing.

11 Before we adjourn, does anyone else
12 need to -- wish to have any comments or wish to
13 make any additional statements before we adjourn?

14 MR. SHEEHAN: If I could, was that last
15 statement a denial of the Motion to Extend, or is
16 that still pending, depending on what may come
17 out of settlement?

18 CHAIRMAN GOLDNER: We'll issue -- we'll
19 issue something official, but you can consider it
20 a denial, yes. We will issue something, though.

21 MR. KREIS: I guess what I would like
22 to say, in response to that, is I'm worried, I
23 mean, I can't make the Company's arguments for
24 it, or make representations on behalf of the

1 Company. But I can say that, if, theoretically,
2 I were to badger or persuade Liberty into doing
3 something that looks a lot like what Unitil
4 appears to have agreed to do, they would
5 probably, quite reasonably, say "That is going to
6 take us longer than October 2nd to pull off."

7 So, in other words, what I'm worried
8 about, based on what I just heard, is that you
9 wouldn't approve a settlement that asks you to
10 extend the deadline for filing the next LCIRP.

11 CHAIRMAN GOLDNER: Commissioner
12 Simpson, did you want to make a comment?

13 CMSR. SIMPSON: Certainly, I would say
14 that we haven't reached finality with respect to
15 that motion at this time. I think it's clear
16 that the Parties have expressed interest in how
17 to move forward. And, certainly, the subsequent
18 LCIRP appears to be an appropriate forum for how
19 to move forward.

20 I would welcome comments from the
21 Parties. And, if there are perspectives on
22 extension of the October deadline for the coming
23 LCIRP, that would be appropriate, and the
24 Commission would appreciate those comments.

1 Certainly, with respect to the
2 conversations and the statements that have been
3 made today pertaining to settlement in this case,
4 we would like to hear about progress on July 11th
5 from the Parties. That will help the Commission
6 make a determination as to how to move forward,
7 both in this proceeding and subsequent LCIRPs.

8 MR. SHEEHAN: We will certainly give
9 you an update. But, absent a signed settlement,
10 all we can say is "it's going well" or "it's not
11 going well", because they're settlement talks.
12 So, it may be something more definitive. We hope
13 to have something filed by next week. But I'm
14 not sure we're going to, again, absent a filing
15 of a settlement, we're not going to be able to
16 give you a lot of help.

17 And, obviously, Mr. Kreis expressed our
18 concerns, which were in the motion, that not
19 having the flexibility past October 2 limits what
20 new stuff we can do, just as a -- and, so, if the
21 Commission orders us, in September, to do X, Y,
22 and Z, we'll do our best. But, if it's a lot of
23 work and it can't be done, you won't get that
24 polished product. You will get something that we

1 were able to pull together in short order.

2 So, --

3 CMSR. SIMPSON: So, with respect to the
4 update on July 11th, we recognize the
5 negotiations that happen during settlement
6 agreements. We're not looking for specifics. We
7 just would like to understand progress, and the
8 perspectives of all the parties, whether they
9 feel that a settlement agreement, in this
10 proceeding, is possible, and by when.

11 With respect to the October deadline
12 for the Company's pending or coming LCIRP, I
13 mean, certainly, updates happen in LCIRPs. So,
14 you know, the process isn't immune to that. But
15 we would continue to weigh input from the Parties
16 and comments, with regards to the future deadline
17 for the Company's LCIRP.

18 MR. KREIS: Well, I would like to say,
19 I appreciate the kindly way that the Commission
20 has characterized what it wants to see on
21 July 11th. And, you know, it's summertime,
22 people have vacations, there's other things
23 going on. So, you're asking for an update by
24 July 11th.

1 What I'm going to do is treat that as a
2 settlement deadline.

3 CHAIRMAN GOLDNER: Okay. Thank you,
4 Mr. Kreis.

5 I'll just -- I want to layer on to what
6 Commissioner Simpson was saying. And that is
7 that, for the October 2nd deadline, when the
8 finance team is building a model, they'll have,
9 you know, all the different variables built in
10 for environmental and all the other factors, and
11 they'll build up a model for the capital plan,
12 which is the main thing that the Commission cares
13 about.

14 So, ultimately, what we're asking for
15 is a capital plan on October 2nd with everything
16 you know. Understanding that there will be some
17 things you don't know, and that's okay. We can
18 always enhance the plan and improve the plan over
19 time.

20 But that's what we're really looking
21 for, is just to have a stake in the ground on
22 October 2nd, a place to start, models built.
23 And, if there's two or three things you just
24 don't know, that's -- it's very fair to say "we

1 don't know", and that's something that we'll have
2 to work on in the coming months, and years.

3 MR. SHEEHAN: Understood. And we'll do
4 our best to comply. Except just to note, the
5 capital plan we will prepare between now and then
6 is based on evaluation criteria that we now have
7 in place, and we will not include new evaluation
8 criteria that aren't in place. And that's the --
9 that's, I think, the concern of the room, and us
10 as well, is that we propose Project B, because we
11 didn't evaluate X. Now, you want us to evaluate
12 X, and Project B is now up in the air. And
13 that's the supplement that comes the next year.
14 And that's -- that's just what will happen, I
15 guess.

16 MS. SCHWARZER: Mr. Chairman, might it
17 be an acceptable format, given the description
18 you've given about your expectations on October
19 2nd, if the Parties were to agree to some sort of
20 new criteria, if that agreement might include a
21 supplement to the LCIRP as filed, with a specific
22 deadline past October 2nd?

23 CHAIRMAN GOLDNER: Yes. I think that
24 might be okay. I guess the point -- Commissioner

1 Simpson?

2 CMSR. SIMPSON: Sorry.

3 CHAIRMAN GOLDNER: I think what
4 we're -- I think what we're trying to communicate
5 is that there is a lot that we already know. The
6 Company has a capital plan ostensibly already,
7 that the CEO has looked at, and the Company has
8 approved, and the finance team has looked at, and
9 everybody has spent time on.

10 And that's, for us, a good foundation,
11 a good starting point, a good baseline. That's
12 the place to start. Then, there's scenario
13 planning that happens outside of that. And I
14 think, Attorney Schwarzer, what you're referring
15 to, I think, are then there's different aspects
16 or attributes of that plan that get added or
17 subtracted to that plan over time. And that's
18 okay. That's perfectly fine. And we expect the
19 October 2nd plan to morph and change and improve
20 over time.

21 MS. SCHWARZER: Thank you. Or perhaps
22 criteria from the plan referenced in 19-126 would
23 be something, I'm not familiar with the phrase
24 you used, "supplement" -- sorry, "secondary

1 criteria", I can't remember what you said. But,
2 fitting in that genre, I hope that perhaps new
3 criteria, as Liberty has referenced, it would not
4 be prepared to address in October, were the
5 Parties to the settlement to reach an agreement
6 that those categories were appropriate, and
7 perhaps necessary, it sounds as if the Commission
8 might entertain a settlement agreement with a
9 deadline past October 2nd, as long as it were
10 finalized?

11 CHAIRMAN GOLDNER: I think, in this,
12 and, Commissioner Simpson, if you'd like to weigh
13 in, that's fine, of course, but I would say, in
14 this docket, I would say, pending further
15 Commission discussion, I would be reticent to
16 have this docket spill over past October 1st.

17 MS. SCHWARZER: Thank you, sir.

18 CHAIRMAN GOLDNER: Yes. Commissioner
19 Simpson, would you --

20 CMSR. SIMPSON: I don't have anything
21 further to add at this time.

22 MR. HUSBAND: Pardon me. May I add a
23 couple comments here?

24 CHAIRMAN GOLDNER: Yes.

1 MR. HUSBAND: I'm going to go back and
2 actually urge, on behalf of Liberty, to allow it
3 more time. Because, I think, what I'm hearing
4 from Liberty, and I think it's going to be the
5 case, if they have to file a plan by October 2nd,
6 all you're going to see is a plan that does not
7 include any of the new technology that they're
8 looking into, it's just more gas.

9 Maybe you could agree, or I guess we
10 can always say that, if we were to file a
11 settlement sometime, with the settlement, if we
12 ask for more plan -- if Liberty asks for more
13 time, and it was something being agreed to in the
14 settlement as well, maybe you would give it more
15 time then. But I side with Liberty on its
16 concern.

17 I think, if we're really all going to
18 come back here and end up with the best possible
19 plan for New Hampshire, you probably do have to
20 give it more time. And I say this without
21 waiving any of Mr. Clark's arguments on the
22 record. Excuse me. I think, actually, more time
23 is consistent with his arguments.

24 Liberty does need to assess what it

1 gets from the Commission for guidance, or today,
2 and it will need more time to look at the
3 technology, I think.

4 CHAIRMAN GOLDNER: Commissioner
5 Simpson, did you want to --

6 CMSR. SIMPSON: I think Mr. Krakoff had
7 a comment he'd like to make before I go.

8 MR. KRAKOFF: Yes. I mean, even though
9 CLF opposed Liberty's motion, you know, CLF
10 agrees with Liberty that there are valid reasons
11 for extending the deadline. And CLF proposed a
12 modification to Liberty's extension request.

13 So, rather than denying the motion
14 outright, I'd suggest maybe hold, you know, take
15 it under advisement until after the July 11th
16 update.

17 MR. HUSBAND: We would agree to that,
18 too. I'm sorry. I would agree with that last
19 comment by CFL [CLF?], too.

20 *[Chairman Goldner and Commissioner*
21 *Simpson conferring.]*

22 CHAIRMAN GOLDNER: Yes. That's
23 agreeable to the Commission. We can take it
24 under advisement. Mr. Krakoff, thank you for the

1 suggestion.

2 CMSR. SIMPSON: And I would encourage
3 the Parties, in working together, to provide an
4 update to the Commission with respect to
5 settlement progress in this proceeding by July
6 11th, if possible, to provide a consensus view of
7 how to move forward. That's really what we're
8 looking for.

9 CHAIRMAN GOLDNER: And just one
10 follow-up for Mr. Sheehan. And maybe I'm just
11 the one that's unclear on this. But I assume
12 that the Company has a five- or ten-year capital
13 plan, the CEO reviews it, and it's something
14 that's probably refreshed at least annually, and
15 probably there's smaller quarterly updates.

16 Is that consistent with the Liberty
17 process?

18 MR. SHEEHAN: I am not in the weeds on
19 that. But there is that process that's always
20 ongoing of what the upcoming years will hold, and
21 that, as you say, is always subject to review and
22 adjustment as the years go on.

23 CHAIRMAN GOLDNER: I guess I was
24 glancing at Ms. Menard during my discussion,

1 but --

2 MR. SHEEHAN: Did I say something right
3 or wrong?

4 MS. MENARD: I would say it doesn't go
5 out ten years. I'm not sure whether five years
6 is a tangible or just kind of a guidance-type
7 forecast. And I imagine you're looking for more
8 specific projects and things like that. So, we'd
9 have to take that back and flesh out the details
10 for an LCIRP.

11 CHAIRMAN GOLDNER: Yes. This kind of
12 goes to Mr. Kreis's point earlier. You know, I
13 think what the Commission is interested in is,
14 you know, "what is your capital plan?" We're not
15 interested in the process by which you arrived at
16 the capital plan. That's the Company's business.
17 What we are interested in is what's in the
18 capital plan and what's not in the capital plan.

19 And then, the LCIRP process with, you
20 know, I through VII, and all the other points,
21 there's a lot of important features to that. And
22 that's something we need to discuss at the LCIRP
23 process. But it all starts with the capital
24 plan, and a baseline in what the Company is doing

1 in that capital planning.

2 So, I think, Mr. Sheehan, you were
3 saying earlier that the Company is updating its
4 winter data, and that that will be available
5 soon. But that's what we would expect to look at
6 as the main feature to the October 2nd filing.
7 It's just what the Company has already done. So,
8 we're not asking for anything new or fresh or
9 different, just what has your CEO looked at and
10 reviewed and signed off on.

11 Any other comments, Commissioner
12 Simpson?

13 CMSR. SIMPSON: No. I think closing,
14 if the parties have some comments they'd like to
15 make, now seems to be a good time.

16 CHAIRMAN GOLDNER: All right. Does
17 anyone have any closing comments? We'll begin
18 with Mr. Krakoff. Anything, Mr. Krakoff?

19 MR. KRAKOFF: I don't have anything to
20 add. Just, you know, I think CLF's position is
21 outlined in detail in its summary position that
22 was filed earlier this month.

23 CHAIRMAN GOLDNER: Okay. Thank you.
24 Mr. Husband?

1 MR. HUSBAND: I would, again, refer the
2 Commission to Mr. Clark's position statement on
3 this.

4 I would also say, I didn't have a
5 chance to chime in for him on the issue of
6 whether or not there could be a final hearing in
7 this matter on the filings that have been
8 submitted. I just don't see that that is a
9 productive use of time.

10 I had this discussion, while the
11 Commission wasn't in the room. What I'm hearing
12 is, basically, what I'm hearing from Mr. Sheehan
13 is that, if there is a proceeding, it has to --

14 MS. SCHWARZER: Objection. To the
15 extent there was settlement conversations when
16 the Commission was out of the room, I believe
17 it's appropriate not to share them at this time.

18 MR. HUSBAND: Those weren't settlement
19 discussions.

20 MR. KREIS: Plus, there isn't anything
21 being offered in evidence right now. Mr. Husband
22 is an attorney. I think the Commission is
23 entitled to rely on his understanding of his
24 obligations as a member of the Bar.

1 MS. SCHWARZER: Well, to the extent the
2 Department made comments while the Commission was
3 out of the room, it was not my expectation they
4 would be presented to the Commission at this
5 time.

6 So, with that caveat, if there's no
7 objection from Liberty, I certainly withdraw my
8 objection.

9 MR. HUSBAND: Well, I would just say,
10 and I'll start over again, that I don't see the
11 point of holding a final hearing on a case that
12 my client has never received the adequate
13 submissions for, and can't adequately prepare
14 for, and I don't think that's in compliance with
15 due process or a fair hearing.

16 And where is it going to go? To what
17 end? We have a final hearing, and then there's a
18 decision, and it should be accepted by the
19 Supreme Court and immediately overturned, because
20 there was nothing that could have been approved
21 from the beginning, and nothing that was ripe for
22 a hearing.

23 The other issue that's been lingering
24 from the outset is we're here four years after

1 this initial plan was filed, which my client said
2 at the outset was unapprovable on its face. And
3 I'm still hearing this argument, sort of, from
4 various parties, or from the room anyways, that,
5 "Once Liberty files something, because this is an
6 adjudicative proceeding, it has to go all the way
7 to conclusion." And this came up in the
8 discussion that was on the record. I don't think
9 there's any argument that it was in any way
10 confidential.

11 But, if that position is true, once a
12 proceeding under the LCIRP statutes is initiated,
13 it has to conclude through a litigation process,
14 and it involves all this discovery and a final
15 hearing, then it means that Liberty can file a
16 napkin, and we are bound by that napkin, for
17 however long it wants to linger out there. The
18 Commission can never get rid of the proceeding on
19 its face because it's not approvable. It's got
20 to be litigated through a final hearing. I think
21 it's just nonsense.

22 The Commission does have authority to
23 control its own dockets. And that, if it has a
24 case that's clearly approvable, it can dispose of

1 it, and it should.

2 CHAIRMAN GOLDNER: Thank you, sir.

3 We'll move to Mr. Kreis.

4 MR. KREIS: I just have two things to
5 say. The first one is more important than the
6 second.

7 The first thing I want to say is "Thank
8 you." I very much appreciate everything I've
9 heard from the Bench today, and almost everything
10 I've heard from any of the Parties today.

11 And my second point is that, as I said
12 earlier, although I appreciate the Commission's
13 forbearance and thoughtfulness, and saying "we'd
14 like an update on July 11th", from my standpoint,
15 July 11th is the settlement deadline.

16 This docket has been pending since
17 2017. In 2017, my daughter was starting high
18 school; she's now halfway through college. That
19 is long enough.

20 And, if we don't have a settlement to
21 present you by July 11th, I am not going to sign
22 the settlement. And, so, the update will be
23 "This is a fully contested case." And I think
24 that Liberty would be entitled to a hearing in

1 those circumstances.

2 Thank you.

3 CHAIRMAN GOLDNER: Thank you, Mr.
4 Kreis. Ms. Schwarzer.

5 MS. SCHWARZER: Thank you, Mr.
6 Chairman. The Department has no comment.

7 CHAIRMAN GOLDNER: Thank you. And
8 we'll wrap up with Attorney Sheehan.

9 MR. SHEEHAN: Thank you.

10 I second Mr. Kreis's comment, that we
11 do appreciate these conferences. I think what we
12 gained today, even though we may not all be
13 thrilled, is a much closer meeting of the minds
14 and much less talking past each other that
15 happens with paper filings. So that we do
16 appreciate these opportunities.

17 I would have nothing else to say on the
18 substance. We've all gone over it.

19 CHAIRMAN GOLDNER: Okay. Thank you.
20 And, so, we'll take this matter under advisement,
21 particularly the Motion for Confidentiality --
22 no, that was the -- I'm sorry, Mr. Krakoff, it
23 was the Motion for --

24 MR. KRAKOFF: The Motion -- I think

1 Liberty's Motion for Extension of the Deadline to
2 File the next LCIRP.

3 CHAIRMAN GOLDNER: Extension of the
4 Deadline, yes. Thank you. It's been a long day.
5 Apologize for that.

6 And we are adjourned. Thank you.

7 ***(Whereupon the status conference was***
8 ***adjourned at 11:09 a.m.)***

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