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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

April 22, 2011 - 9:28 a.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

RE: SEC Docket No. 2011-01
Joint Motion of Laidlaw Berlin
BioPower, LLC, and Berlin Station,
LLC, for Transfer and Amendment
of the Certificate of Site and
Facility Issued to Laidlaw Berlin
BioPower, LLC, and Notice of
Change of Major Contractor.
(Public Meeting)

| | |
|-------------------------------------------------|--------------------------------------|
| PRESENT: | SITE EVALUATION SUBCOMMITTEE: |
| Thomas Burack, Cmsr. (Presiding as Chairman) | Dept. of Environmental Services |
| Thomas Getz, Chairman (Vice Chairman of SEC) | Public Utilities Commission |
| Glenn Normandeau, Exec. Dir. | N.H. Fish & Game Department |
| Clifton Below, Cmsr. | Public Utilities Commission |
| Amy Ignatius, Cmsr. | Public Utilities Commission |
| Elizabeth Muzzey, Dir. | N.H. Div. of Historical Res. |
| Harry Stewart, Dir. | Water Division - DES |
| Robert Scott, Dir. | Air Resources Division - DES |
| George Bald, Cmsr. | Dept. of Resources & Econ. Dev. |
| Joanne Morin, Dir. | Office of Energy & Planning |
| Brad Simpkins, Interim Dir. | Div. of Forests & Lands - DRED |
| Michael Harrington | Public Utilities Commission |

* * *

Counsel for the Committee: Michael Iacopino, Esq.

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

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ALSO PRESENT:

REPTG. THE APPLICANT:
(Laidlaw Berlin BioPower)

Barry Needleman, Esq.
Cathryn E. Vaughn, Esq.
*(McLane, Graf, Raulerson
& Middleton)*

COUNSEL FOR THE PUBLIC:

K. Allen Brooks, Esq.
Peter C. L. Roth, Esq.
Senior Asst. Attys. General
N.H. Dept. of Justice

REPTG. EDREST PROPERTIES, LLC:

Jonathan Edwards

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P R O C E E D I N G

CHAIRMAN BURACK: Good morning. Good morning, ladies and gentlemen. Welcome to a public meeting of the New Hampshire Energy Facility Site Evaluation Committee. My name is Tom Burack. I serve as Commissioner of the State's Department of Environmental Services, and, pursuant to RSA 162-H, the governing statute here, Commissioner of Environmental Services also serves as Chairman of this Site Evaluation Committee. We have two dockets for consideration on today's agenda.

The first is Docket Number 2011-01, the Joint Motion of Laidlaw Berlin BioPower, LLC, and Berlin Station, LLC, for Transfer and Amendment of the Certificate of Site and Facility issued to Laidlaw Berlin BioPower, LLC, and Notice of Change of Major Contractor.

The second item on our agenda for today is Docket Number 2011-02, the Petition for Jurisdiction Over Renewable Energy Facility Proposed by Antrim Wind Energy, LLC.

Before turning to our agenda, I would ask the members of the Committee to introduce themselves, starting with on my far right. Director Normandeau, would you introduce yourself.

DIR. NORMANDEAU: Glen Normandeau,

{SEC 2011-01} {04-22-11}

1 Director of Fish & Game.

2 DIR. STEWART: Harry Stewart, Director
3 of the Water Division, Department of Environmental
4 Services.

5 DIR. MORIN: Joanne Morin, Director of
6 the Office of Energy & Planning.

7 DIR. SCOTT: Bob Scott, Director of the
8 Air Resources Division with the New Hampshire Department
9 of Environmental Services.

10 CMSR. BELOW: Clifton Below, one of
11 three Public Utility Commissioners.

12 VICE CHAIRMAN GETZ: Tom Getz, Chairman
13 of the Public Utilities Commission and Vice Chair of this
14 Committee.

15 DIR. MUZZEY: Elizabeth Muzzey, Director
16 of Historical Resources and the Department of Cultural
17 Resources.

18 CMSR. IGNATIUS: Amy Ignatius, one of
19 the New Hampshire PUC Commissioners.

20 DIR. SIMPKINS: Brad Simpkins, Interim
21 Director of the Division of Forests & Lands.

22 MR. HARRINGTON: Mike Harrington, New
23 Hampshire PUC.

24 CMSR. BALD: George Bald, Commissioner

1 of Department of Resources & Economic Development.

2 CHAIRMAN BURACK: To my immediate right
3 is?

4 MR. IACOPINO: Mike Iacopino, Counsel to
5 the Committee.

6 CHAIRMAN BURACK: We have a procedural
7 matter here that involves strictly the Public Utilities
8 Commission.

9 VICE CHAIRMAN GETZ: Yes. Under the RSA
10 162-H, the PUC is required to designate a Commission
11 engineer to sit on a proceeding. So, I move that we
12 designate Mike Harrington as the engineer for the PUC in
13 this proceeding. And, that's a vote to be taken solely by
14 the PUC Commissioners.

15 CMSR. IGNATIUS: I second the motion.

16 CMSR. BELOW: I concur.

17 VICE CHAIRMAN GETZ: The motion is
18 unanimous.

19 CHAIRMAN BURACK: Very good. Thank you
20 very much. A few other housekeeping items for everyone.
21 I would ask people, if you could please, to take your
22 cellphones and either set them to vibrate or turn them
23 off, as I will be doing right now with my own. And, we
24 also should point out that, if you need restrooms, you

1 want to explain that?

2 CMSR. BELOW: Or water. If you go out
3 that door and walk around the back of this room, there's
4 restrooms and a drinking fountain down the hallway over
5 there.

6 CHAIRMAN BURACK: In addition, because
7 we have two separate matters today, we will, after the
8 first proceeding, we will take a short break, and we will
9 then create a separate transcript for each of the two
10 proceedings. So, when we get to the second proceeding, we
11 will do a series of reintroductions.

12 Okay. I'd also like at this time to
13 introduce Counsel for the Public, Allen Brooks and Peter
14 Roth of the New Hampshire Attorney General's Office.

15 MR. ROTH: Good morning. Thank you.

16 CHAIRMAN BURACK: So, now what I'd like
17 to do is turn to our first agenda item, which is Docket
18 Number 2011-01, which is the Joint Motion of Laidlaw
19 Berlin BioPower, LLC, and Berlin Station, LLC, for
20 Transfer and Amendment of a Certificate of Site and
21 Facility issued to Laidlaw Berlin BioPower, LLC, and
22 Notice of Change of Major Contractor.

23 First, a little background here. On
24 November 8, 2,010, the New Hampshire Site Evaluation

{SEC 2011-01} {04-22-11}

1 Committee, which we will refer to as the "Committee",
2 issued a Certificate of Site and Facility, which we refer
3 to as the "Certificate", to Laidlaw Berlin BioPower, LLC,
4 for the siting, construction, and operation of a
5 70 megawatt biomass fueled electric power facility located
6 in Berlin, Coos County, New Hampshire, and we will refer
7 to this as the "Facility".

8 On March 9, 2011, Laidlaw Berlin
9 BioPower, LLC, and Berlin Station, LLC, the Joint
10 Applicants, filed a joint motion to amend the Certificate
11 to transfer the Certificate to Berlin Station, LLC, and to
12 notify the Committee of a change in major contractors. We
13 refer to this as the "Joint Motion". The Joint Applicants
14 propose to transfer the Certificate to Berlin Station,
15 LLC. Berlin Station, LLC, is a special purpose entity
16 whose members are BBP Holdings 1, LLC, 99 percent, and BBP
17 Holdings 2, LLC, 1 percent. BBP Holdings 1, LLC, is an
18 indirect subsidiary of NewCo Energy, LLC. BBP Holdings 2,
19 LLC, is a subsidiary of CSC Group Holdings, LLC. Berlin
20 Station, LLC, intends to execute a right of use agreement
21 with Burgess BioPower, LLC, an indirect subsidiary of
22 NewCo Energy, LLC, permitting Burgess BioPower, LLC, to
23 lease and manage the Facility and all certificates,
24 licenses and contracts pertaining thereto.

1 In addition, the Joint Applicants seek
2 to amend the Certificate to permit operation at
3 75 megawatts, rather than 70 megawatts. The increase in
4 output is asserted to be achieved through design
5 efficiencies and will not require additional fuel. The
6 Joint Applicants further request that the Certificate be
7 amended to permit a change in the fuel supply contractor.

8 Transfer of the Certificate and
9 amendments to the Certificate are required to be approved
10 by the Committee pursuant to RSA 162-H. The Committee's
11 authority to approve or deny the proposed transfer and
12 amendments is set forth in RSA 162-H:4, the RSA 162-H:5,
13 I, and New Hampshire Code of Administrative Rules, Site
14 203.

15 Notice of consideration of this docket
16 at this public meeting was published in the New Hampshire
17 Union Leader on March 24, 2011 and in the Berlin Daily Sun
18 on March 25, 2011. To date the Commission has received
19 three Motions to Intervene in the proceeding. Thomas
20 Maniscalco, Edrest Properties, LLC, and the City of Berlin
21 have moved to intervene. The Applicant objects to the
22 Motions to Intervene filed by Mr. Maniscalco and Edrest
23 Properties, LLC. The Applicant does not object to the
24 Motion to Intervene filed by the City of Berlin.

1 The Committee has also received a
2 response to the Joint Motion from Counsel for the Public,
3 Senior Assistant Attorney General K. Allen Brooks. In his
4 response, Counsel for the Public requests that the
5 Committee permit discovery and hold an adjudicative
6 proceeding in this matter. No other written comments have
7 been received from members of the public to date.

8 So, at this point, I will take
9 appearances. First, from counsel for the Applicants and
10 then Counsel for the Public, and then, if present, from
11 Mr. Maniscalco, Edrest Properties, LLC, the City of
12 Berlin, and any other potential intervenors from whom we
13 have not yet heard in writing.

14 So, first, would counsel for the
15 Applicants, please make your appearance.

16 MR. NEEDLEMAN: Yes, Mr. Chairman.
17 Thank you. Barry Needleman, from McLane, Graf, Raulerson
18 & Middleton, representing the Applicants. And, with me is
19 my colleague, Kate Vaughn.

20 CHAIRMAN BURACK: Thank you. Counsel
21 for the Public.

22 MR. BROOKS: Thank you. Allen Brooks,
23 Counsel for the Public. And, with me is co-counsel, Peter
24 Roth.

1 CHAIRMAN BURACK: Is Mr. Maniscalco
2 here?

3 (No verbal response)

4 CHAIRMAN BURACK: All right. Is there
5 anyone here on behalf of Edrest Properties, LLC? Would
6 you state your name please for the record, sir.

7 MR. EDWARDS: Jonathan Edwards.

8 CHAIRMAN BURACK: Thank you, sir. And,
9 finally, is there anyone here on behalf of the City of
10 Berlin?

11 (No verbal response)

12 CHAIRMAN BURACK: Okay. Very good.
13 Thank you. So, in this docket, we will proceed as
14 follows: First, we will allow the Joint Applicants to
15 make a short presentation to the Committee. I would ask
16 that the Applicant, through counsel, simply explain the
17 relief that is being requested and the reasons why. When
18 the Joint Applicant presentation is complete, we will open
19 the floor to Committee questions. Those questions may be
20 answered by the Joint Applicants. However, before anyone
21 speaks, if -- you don't have anybody with you today? Any
22 experts?

23 MR. NEEDLEMAN: I do, Mr. Chairman.

24 CHAIRMAN BURACK: You do.

1 MR. NEEDLEMAN: I have Ray Kusche next
2 to me here, who you may remember from the first
3 proceeding.

4 CHAIRMAN BURACK: Yes.

5 MR. NEEDLEMAN: And, then, I also have
6 Charles Grecco and Matt Eastwick, from Cate Street
7 Capital, if they're needed.

8 CHAIRMAN BURACK: Very good. Thank you
9 for having them here. So, if there are questions that the
10 Committee has for you that one of them would need to
11 answer, we would just ask them to state their name and
12 affiliation for the record before they -- before they
13 speak.

14 The Joint Applicants may be ready today
15 to answer some or all of the Committee's questions, we
16 understand that. But, to the extent that additional
17 research or time is necessary to answer a question from
18 the Committee, we will treat those questions as data
19 requests and set a deadline for a response.

20 So, we will then address the Motions to
21 Intervene. I will allow each prospective intervenor, who
22 may be present, to make a short presentation, in order to
23 identify themselves and advise the Committee about their
24 substantial interests in these proceedings and why they

1 should be permitted to intervene. The Applicant will be
2 permitted to explain its objections. Thereafter, I may
3 rule on the motions or take the motions under advisement.

4 So, I believe we are now ready to
5 proceed. I'm sorry. Once we have addressed the
6 intervention issues, we will likely take a moment to
7 determine what the next steps in this docket might be. It
8 is most likely that we will schedule this matter for
9 further proceedings. And, I may ask that counsel and all
10 interested parties remain to meet with Counsel to the
11 Committee following the completion of the second matter
12 here today in order to discuss scheduling. A further
13 written order addressing the Motions to Intervene and
14 scheduling will be issued in the near future.

15 So, I would now ask the Joint
16 Applicants, through their counsel, to provide a summary of
17 your petition, the relief requested, and the reasons that
18 you require relief. Attorney Needleman.

19 MR. NEEDLEMAN: Thank you, Mr. Chairman.
20 Good morning. Good morning, members of the Committee.
21 Very briefly, the Joint Motion that we filed has four
22 components to it. The first component, as the Chairman
23 described, is a revision to the corporate structure, which
24 is best explained by an attachment to the Motion. There

1 are really two primary reasons why the structure is being
2 changed. One is because of the request of the lenders, as
3 we anticipated at the first proceeding, to accommodate
4 their needs. And, also because, as the Committee is
5 aware, a substantial portion of the funds for the
6 construction of this facility will come through New Market
7 Tax Credits. And, there are various tax rules and other
8 requirements associated with receipt of those funds that
9 require revisions to this corporate structure.

10 I would point out that one benefit of
11 this revision is that the Committee may remember that
12 initially the certificate holder was Laidlaw Berlin
13 BioPower and the owner of the real estate was PJPD
14 Holdings. In this new structure, all of that will be
15 collapsed into a single entity, Berlin Station, that we
16 propose be the certificate holder.

17 The second change involves a notice of
18 change in contractors. The Committee may recall that
19 Homeland Renewable was going to be the owner's engineer
20 for construction, overseeing Babcock & Wilcox, the EPC
21 contractor, and then a subsidiary of Homeland, Fibrowatt,
22 was going to be the operator of the facility. We propose
23 to replace both of those entities.

24 On the construction side, with Waldron

1 Engineering, a firm that may be known to many of you.
2 It's a New Hampshire-based engineering firm with
3 significant experience in this type of project. And,
4 then, also they will be able to draw on the resources of a
5 much larger national firm, Shaw Engineering, to the extent
6 that that's necessary.

7 On the operational side, we propose to
8 substitute Delta Power Services. Delta Power is a
9 subsidiary of Babcock & Wilcox. And, so, there is a
10 significant benefit there to having the entity who is
11 building the facility then hand off operations to one of
12 its subsidiaries. And, as we described in the materials,
13 Delta has substantial experience in this area as well.
14 Both of those changes also are primarily at the prompting
15 of the lenders to the project.

16 Third, the Committee approved, for
17 purposes of a fuel supplier, a draft contract that we
18 initially presented to the Committee with Cousineau Forest
19 Products. We propose to substitute Cousineau Forest
20 Products with an entity called "RCT", Richard Carrier
21 Trucking. The purpose is straightforward. Following the
22 prior proceeding, Laidlaw was unable to reach final terms
23 with Cousineau on the contract. And, as a consequence,
24 because we wanted to keep this contract materially the

1 same as it was presented to the Committee, we instead
2 decided to contract with Richard Carrier.

3 As you may have seen in the prefiled
4 testimony, the contract as you saw it is materially
5 identical. There are really two changes. One change is,
6 during the mud season, Richard Carrier will provide
7 additional off-site storage, which we view to be an
8 environmental benefit. And, then, second, in lieu of a
9 pledge of stumpage that Cousineau was going to offer as
10 security, Richard Carrier will instead post a security
11 bond.

12 Other than that, there are no changes to
13 the contract. It will be adopted exactly as you reviewed
14 it and approved it. And, I would note, most
15 significantly, that includes adoption and incorporations
16 of every sustainability condition as you approved it,
17 exactly as you approved it.

18 Richard Carrier is a large entity, with
19 substantial experience in the area. And, I might note
20 that Mr. Kusche, who you are familiar with, who you know
21 operated a biomass plant in Greenville, personally worked
22 with Richard Carrier for many years and has experience in
23 dealing with him on the supply contracts.

24 And, then, finally, we are asking the

1 Committee to amend the certificate to increase the
2 megawattage at the facility from 70 to 75 megawatts. This
3 was contemplated to some extent at the initial proceeding.
4 That increase is purely a function of efficiency. The
5 engineers, subsequent to the last proceeding, examined the
6 project, examined the way in which it would be
7 constructed, and have been able to squeeze more power out
8 of the project using the same amount of fuel. I want to
9 emphasize to the Committee that there will be no change in
10 the consumption of fuel. We still anticipate using
11 750,000 tons per year, exactly as we anticipated in the
12 initial proceeding. And, as we explained in the Motion
13 and in the prefiled testimony, there will be no changes to
14 other impacts, such as increases in truck traffic, air
15 emissions, or things like that. Again, this is purely an
16 efficiency increase. And, this is currently before ISO.
17 And, ISO, as of this date, has not yet acted on the
18 application, but we are hopeful that it will do so
19 shortly.

20 Those are the four changes that we are
21 seeking here today. And, we're certainly happy to answer
22 any questions that the Committee might have about this.

23 CHAIRMAN BURACK: Thank you, Attorney
24 Needleman. Are there questions at this time from members

1 of the Committee? Mr. Harrington.

2 MR. HARRINGTON: Yes. As far as the
3 power upgrade, has that been or have you applied to
4 ISO-New England and been accepted for the new output?

5 MR. NEEDLEMAN: Could I ask Mr. Kusche
6 to answer that question?

7 CHAIRMAN BURACK: Sir, would you just
8 state your name and spell your name for the record please.

9 MR. KUSCHE: Raymond S. Kusche, spelled
10 K-u-s-c-h-e. Since testifying last year before the
11 Committee, I have become a full-time employee of Cate
12 Street Capital. My title there is Director of Energy
13 Services. And, the answer is "yes." On September 24th, I
14 believe it was, we submitted an application for what we
15 call an "incremental increase" to our prior System Impact
16 Study figure, up to 75 megawatts gross. We signed a study
17 agreement with ISO-New England on November 11th. And,
18 they have been conducting the study. We haven't received
19 any written reports yet. But, through telephone calls and
20 conversations, we have gotten preliminary results that
21 thermal studies have been completed and there's no impact.
22 And, initial results of the voltage and short-circuit
23 studies is that there's no impact. We're hoping to get a
24 written report, draft report -- interim report by the end

1 of this week. But ISO-New England can't give us a firm
2 date for having the actual study in our hands.

3 MR. HARRINGTON: Follow up?

4 CHAIRMAN BURACK: Please.

5 MR. HARRINGTON: "By the end of this
6 week", you're talking today then?

7 MR. KUSCHE: Yes.

8 MR. HARRINGTON: So, I'm assuming it's
9 probably not going to be this week. Okay. And, if there
10 was -- if, for some reason, they were to come back and say
11 that "the transmission, existing transmission couldn't
12 handle the additional power", would the option at that
13 time for you then to be just to scale back to the original
14 output or to upgrade the transmission or would it depend
15 on exactly what would be required?

16 MR. KUSCHE: Well, I think -- I can't
17 answer that, because I don't know. If there was a
18 requirement -- a requirement for a small upgrade, then,
19 you know, we would have to evaluate that. If there was a
20 requirement for spending tens of millions of dollars, we
21 would have to evaluate that. But, like I said, what --
22 the preliminary feedback we're getting is that there's no
23 impact.

24 MR. HARRINGTON: Thank you.

1 MR. KUSCHE: I mean, as you know, they
2 don't even study projects less than 5 megawatts.

3 CHAIRMAN BURACK: Thank you, Mr. Kusche.
4 Commissioner Ignatius.

5 CMSR. IGNATIUS: Thank you, Mr.
6 Chairman. Mr. Needleman, in the original hearings, there
7 was a lot of discussion about the New Market Tax Credits
8 and deadlines for finalizing a project. And, we were told
9 that December 31st, 2010 was the end for that. I take it
10 there's an extension or a new round of tax credit funding
11 that the Project can take advantage of?

12 MR. NEEDLEMAN: Let me try to provide a
13 general answer to that. And, then, if I need to get into
14 more depth, I may call on Mr. Eastwick. But a number of
15 things have happened.

16 First of all, as I understand it, the
17 allocatees that were providing these New Market Tax
18 Credits remains very interested in this Project and think
19 it's very attractive, and have been persuaded to hold on
20 for a period of time. Part of the way in which they were
21 persuaded was that I believe additional funds were
22 committed to them to convince them to extend the deadlines
23 for those credits. So, there has been a cost to Laidlaw
24 in order to extend those credits out.

1 And, I also believe that the opportunity
2 for allocation of New Market Tax Credits, in general, has
3 dried up to some extent. And, so, there has also been
4 some incentive for them to hang on. So, that the short
5 answer is that they have been persuaded to stay on up
6 through this point.

7 CMSR. IGNATIUS: Is there a -- if I may
8 follow up?

9 CHAIRMAN BURACK: Please.

10 CMSR. IGNATIUS: Is there a new deadline
11 that you believe you have to work towards here?

12 MR. NEEDLEMAN: With respect to the New
13 Market Tax Credits, not that I know of. But I guess I
14 would just ask Mr. Eastwick to confirm that. If I way, we
15 filed prefiled testimony on behalf of Mr. Keith Mueller.
16 Subsequent to that, we provided the resumé to the
17 Committee of Mr. Eastwick, and indicated that he would
18 stand in for Mr. Mueller and adopt that testimony, but for
19 the personal qualifications. And, so, Mr. Eastwick is
20 here from Cate Street Capital. He's dealing with the
21 financing of this Project. And, I would ask him, if it's
22 okay with the Committee, to introduce himself and try to
23 elaborate on this issue.

24 CHAIRMAN BURACK: If you would please.

1 MR. NEEDLEMAN: Matt, can you come
2 forward?

3 CHAIRMAN BURACK: You may certainly come
4 to the podium. Thank you.

5 MR. EASTWICK: Good morning. I'm Matt
6 Eastwick. I run the capital markets activity for Cate
7 Street Capital. And, to answer the question about the New
8 Market Tax Credit extension, as Mr. Needleman indicated,
9 we have re-upped the allocations from our six entities
10 that are part of the New Market Tax Credit structure.
11 There is no obligation for them to extend past December
12 31st, 2010, but we have continued to work with those six
13 entities. And, at this point, there is no specific
14 deadline in which those allocations expire.

15 CMSR. IGNATIUS: Thank you. And, if I
16 may, also on financing, so either of you that would like
17 to answer this, the timing issues on the Investment Tax
18 Credits were also a part of the hearings initially. Where
19 do we stand with that?

20 MR. EASTWICK: Well, by "Investment Tax
21 Credits", you also mean the Section 1603 Cash Grant
22 Program from the federal government?

23 CMSR. IGNATIUS: If that's the right
24 term for the ARRA-funded investment tax for renewable

1 projects that had a certain in-service deadline in order
2 to qualify.

3 MR. EASTWICK: Sure. So, the
4 Section 1603 cash grant, which was due to expire at the
5 end of 2010, as part of federal legislation at the end of
6 the year, that was extended. So that, if we are able to
7 put our project in service by the end of 2011 at this
8 point in time -- I'm sorry, not "put in service", begin
9 construction by the end of 2011, then that will be part of
10 the eligibility requirements to receive that cash grant
11 post construction.

12 CMSR. IGNATIUS: Thank you.

13 CHAIRMAN BURACK: Thank you. Other
14 questions for Attorney Needleman, anybody else with the
15 Joint Applicants? Attorney Iacopino.

16 MR. IACOPINO: Mr. Needleman, part of
17 the certificate in this matter was contingent upon the
18 approval of your Power Purchase Agreement with Public
19 Service Company of New Hampshire. And, you were required
20 to come back to the Site Evaluation Committee once that
21 Power Purchase Agreement had either been approved or
22 rejected by the Public Utilities Commission. I understand
23 that the Public Utilities Commission, within the last week
24 or so, has issued an order conditionally approving that --

1 well, rejecting, but then setting forth conditions that it
2 would accept on that Power Purchase Agreement. Do you
3 anticipate having that Power Purchase Agreement and the
4 requirement to come back before this Committee as part of
5 this proceeding or are we looking at something further
6 down the road with respect to that?

7 MR. NEEDLEMAN: We hadn't, obviously,
8 when we initially filed, because we didn't know whether
9 the PUC would act or not. Now, with the PUC having acted,
10 we would certainly be open to including it. The problem
11 is that at this point it's uncertain what will happen
12 between PSNH and Laidlaw with respect to that. If we
13 assume for a moment that the entities agree with all of
14 the conditions and submit it back to the PUC as the PUC
15 proposed, it is conceivable we could include it as part of
16 this proceeding. If not, we would have to provide it to
17 the Committee subsequent, and then have you act on it
18 accordingly.

19 MR. IACOPINO: Are there any other
20 conditions hanging out there that you're aware of that
21 you're required to comply with that, whether it would make
22 any sense, and, obviously, I'm concerned about --

23 MR. NEEDLEMAN: Sure.

24 MR. IACOPINO: -- calendaring and

1 scheduling and things like that, any other conditions out
2 there that may or may not be able to be rolled into what
3 we're doing in this docket?

4 MR. NEEDLEMAN: No. We had a strong
5 desire -- well, let me start by saying we're well aware
6 that there are a series of things that we need to do with
7 respect to coming back to the Committee and submitting
8 material to the Committee prior to the commencement of
9 construction. We are working on all of those things. We
10 do not anticipate that any of those things will require
11 further Committee action at this point. We simply believe
12 we will be able to provide the Committee with what it
13 instructed us to provide prior to the commencement of
14 construction.

15 MR. IACOPINO: Thank you.

16 CHAIRMAN BURACK: Commissioner Ignatius.

17 CMSR. IGNATIUS: Thank you. One other
18 area I was curious about. You've submitted prefiled
19 testimony of Mr. Kusche and Mr. D'Elia, if I'm pronouncing
20 that right, addressing the change to the fuel supply
21 contractor. But you don't have testimony from Mr. Carrier
22 himself or anyone from the company, the RCT. Do you
23 anticipate having someone, Mr. Carrier himself, I assume,
24 available to speak to the contract if we have further

1 proceedings here?

2 MR. NEEDLEMAN: I apologize for the
3 confusion. Mr. D'Elia is here on behalf of RCT. He is an
4 executive of one of the RCT companies. He has been
5 designated by Mr. Carrier to speak on behalf of RCT. He
6 has worked closely with Mr. Carrier for an extended period
7 of time, and he is completely familiar with all of the
8 operations and the way in which the Fuel Supply Agreement
9 will be implemented.

10 CMSR. IGNATIUS: Thank you. That was my
11 mistake. I appreciate that.

12 CHAIRMAN BURACK: Any other questions at
13 this time?

14 (No verbal response)

15 CHAIRMAN BURACK: Very good. Thank you.
16 We'll now address the Motions for Intervention. And, I
17 will allow each person seeking intervention to very
18 briefly explain why they wish to intervene and tell us
19 what interest they may have that may be affected by this
20 proceeding. And, we will then allow the Applicant to
21 briefly respond.

22 First, I just want to confirm that
23 Thomas Maniscalco is not present? Anybody here on behalf
24 of Mr. Maniscalco?

1 (No verbal response)

2 CHAIRMAN BURACK: Very well. And, we
3 have received a written submittal from him. Next, Edrest
4 Properties, LLC, and I believe, Mr. Edwards, you are here
5 on behalf of that entity. Would you please come forward
6 to the rostrum and introduce yourself and spell your name
7 for the stenographer.

8 MR. EDWARDS: My name is Jonathan
9 Edwards, J-o-n-a-t-h-a-n, Edwards. I represent Edrest
10 Properties. Edrest Properties has partners that own,
11 manage and lease a significant number of properties in
12 Berlin, within feet of the truck routes and within yards
13 of the facility. We have a number of properties that are
14 within a "Depreciation Zone", it's been classified by the
15 Berlin City Assessor's Office, that significantly brings
16 down the value within close proximity to the facility.
17 And, we are concerned that, without discovery, that we're
18 not certain what impact the additional megawatts could
19 have on further truck traffic. We know we're being told
20 that it won't. But we do feel that, without discovery,
21 kind of difficult to really know that for sure. We think
22 that's important.

23 We're also concerned about -- we know
24 that we have emission standards and so forth that have

1 been equated based on the original size. We're concerned
2 about emissions, particularly in the Depreciation Zone.
3 We're wondering what impact the additional size. And, if
4 there is any more truck traffic, what impact that can have
5 on further depreciation.

6 Wondering on what impact that can have
7 on revenue in Berlin. We feel that the Office for the
8 Consumer Advocate and the City of Berlin did not represent
9 the Depreciation Zone of properties in the first round of
10 EFSEC. We feel that, because we have a significant
11 interest close to that area, and that we have significant
12 experience in the real estate market, that it is important
13 and it is not repetitive that we be involved.

14 We understand that right now there's a
15 very large concern with a few issues, being that the
16 smaller IPPs are having significant trouble right now
17 obtaining wood. We've been told that that's not just due
18 to mud season. We're concerned that there may have been
19 some changes since the first EFSEC hearings as to wood
20 issues. We're concerned about the change in the wood
21 company that's going to be involved with this. They own a
22 woodyard close to Brentwood where they color chips. We're
23 concerned that they may start to create upward pressure on
24 price due to the fact that their location is close to

1 Schiller. We're concerned that the Berlin plant is being
2 based on Schiller prices. We think that, because of the
3 fact that Carrier is involved, close by Schiller, that
4 this can have a detrimental effect on the price of wood,
5 making it very difficult for the current IPPs to continue
6 to operate. And, we understand that the current IPPs are
7 having troubles with working without any PPAs.

8 I also feel that we have a significant
9 interest in the New Hampshire forest and the appropriate
10 use of the New Hampshire forest, in that the appropriate
11 use has everything to do with real estate value. And,
12 we're very concerned that a monopoly that can be achieved
13 with a very large operation, such as Carrier, can have an
14 impact on the backbone of the biomass industry in northern
15 New Hampshire, and not only that, but the backbone of the
16 revenue that supports the towns that these facilities are
17 located in. Thank you.

18 CHAIRMAN BURACK: Thank you very much,
19 Mr. Edwards. Attorney Iacopino has a question for you.

20 MR. IACOPINO: Mr. Edwards, you
21 represented in your response to the objection to your
22 Motion to Intervene that "Edrest Properties' partners own,
23 lease or manage properties within 200 yards of the
24 facility." What do you mean when you say "Edrest

1 Properties' partners"?

2 MR. EDWARDS: Edrest Properties is
3 essentially a management and leasing company. The
4 partners involved own properties individually in their own
5 names.

6 MR. IACOPINO: Okay. Does Edrest manage
7 -- does Edrest itself manage any of the properties within
8 200 yards of the facility?

9 MR. EDWARDS: Yes.

10 MR. IACOPINO: Does Edrest own any of
11 the facilities within 200 yards of the property?

12 MR. EDWARDS: Edrest's partners own the
13 facilities.

14 MR. IACOPINO: And, what -- please tell
15 us more about what is your -- what is the relationship
16 between Edrest Properties, LLC, and the owners of
17 properties that are close to 200 yards of the facility,
18 what is the relationship? Does the owner of the property
19 hire Edrest to lease out the property and act as a rental
20 agent and property manager?

21 MR. EDWARDS: Yes.

22 MR. IACOPINO: So, Edrest Properties,
23 LLC, itself has no fee ownership in any of those
24 properties?

1 MR. EDWARDS: Edrest Properties is in
2 the process of placing ownership that is in the individual
3 partners into the partnership of Edrest Properties right
4 now.

5 MR. IACOPINO: What properties? Can you
6 tell us the addresses?

7 MR. EDWARDS: Yes, 616 Third Avenue, 212
8 Willow, 323 School Street, 110 York -- 110 York Street.
9 Those are the four that we're working on right now.

10 MR. IACOPINO: And, it's your
11 representation to the Committee that those properties are
12 going to eventually be owned at least in part by the
13 Edrest Properties, LLC?

14 MR. EDWARDS: Yes.

15 MR. IACOPINO: Thank you.

16 CHAIRMAN BURACK: Mr. Edwards, can you
17 give us a sense as to what the time frame is for that
18 process that you've just described here? When would that
19 be completed?

20 MR. EDWARDS: Probably by June.

21 CHAIRMAN BURACK: And, would it be --
22 can you list for us or tell us who the managing partner is
23 or the managing director, the managing member, and the
24 other members are of Edrest Properties, LLC?

1 MR. EDWARDS: Sure. Myself, as manager,
2 Jonathan Edwards. Spencer Charest.

3 CHAIRMAN BURACK: Spencer Charest?

4 MR. EDWARDS: Yes.

5 CHAIRMAN BURACK: Would that be -- how
6 would that be spelled?

7 MR. EDWARDS: C-h-a-r-e-s-t.

8 CHAIRMAN BURACK: Any other members?

9 MR. EDWARDS: Cynthia Edwards.

10 CHAIRMAN BURACK: Cynthia Edwards?

11 MR. EDWARDS: Yes.

12 CHAIRMAN BURACK: And, is Cynthia
13 Edwards a relation of yours?

14 MR. EDWARDS: She's my wife.

15 CHAIRMAN BURACK: Thank you. Are there
16 any other properties within the -- what you've described
17 as the "200 yard Depreciation Zone" that are not
18 anticipated to be transferred to Edrest Properties, LLC,
19 in which you have any ownership interest personally?

20 MR. EDWARDS: No.

21 CHAIRMAN BURACK: Are there any other
22 properties within this 200 yard Depreciation Zone that
23 Edrest Property, LLC, manages on behalf of any other
24 parties?

1 MR. EDWARDS: Yes.

2 CHAIRMAN BURACK: And, how many
3 properties are there in that category?

4 MR. EDWARDS: Within 200 yards, there's
5 probably about another 15 units.

6 CHAIRMAN BURACK: And, when you're
7 describing these as "units", are these residential?

8 MR. EDWARDS: Multi-family.

9 CHAIRMAN BURACK: Multi-family. Okay.
10 Thank you. Mr. Edwards, in the prior or in the initial
11 round of proceedings before the Site Evaluation Committee
12 involving this facility, you also petitioned to intervene.
13 Can you help us to understand what the entity or entities
14 were that you were seeking to have intervene at that time
15 and how those differ from Edrest Properties, LLC?

16 MR. EDWARDS: Well, Edrest Properties
17 has combined more, more properties than my initial
18 intervention, because I was intervening for myself and
19 only with my own properties. So, there's more, there's
20 more properties involved.

21 CHAIRMAN BURACK: Thank you. Are there
22 other questions at this time for Mr. Edwards from the
23 members of the Committee?

24 (No verbal response)

1 CHAIRMAN BURACK: Okay. Thank you very
2 much, Mr. Edwards. Appreciate you taking the time. Okay.
3 We'll now provide an opportunity for the Applicant to
4 briefly respond to the intervenors' request to intervene.
5 Attorney Needleman.

6 MR. NEEDLEMAN: Thank you, Mr. Chairman.
7 With respect to Mr. Maniscalco, and I apologize if I'm not
8 pronouncing that correctly, we have already articulated
9 the basis for our objection, and I have nothing to add to
10 that.

11 With respect to the City, we don't
12 object to the City participating in this proceeding. We
13 welcome their participation.

14 We filed an objection with respect to
15 Mr. Edwards' petition. I do have a few points I would
16 like to add to that. Let me begin by saying that, as you
17 noted, Mr. Chairman, in the first proceeding Mr. Edwards
18 alleging many of the same things that he is alleging here,
19 sought intervention, and this Committee denied that,
20 finding that he did not have a substantial interest.
21 Mr. Edwards sought rehearing from this Committee on that
22 petition, and the Committee again denied it, noting that
23 "the interest claimed by Mr. Edwards is no more than a
24 general interest", and then further down said

1 "essentially, his entire claim is based upon the fact that
2 he is a resident of Berlin and owns a business in the
3 City."

4 I would assert that there is no
5 substantial difference in this proceeding. The Committee
6 did note that, in that proceeding, Mr. Edwards did not
7 assert that he owned any abutting property, and in this
8 proceeding he seems to have asserted that. But I think it
9 is very significant that, in that first proceeding, when
10 every issue regarding this facility was on the table, this
11 Committee found that Mr. Edwards still did not have a
12 substantial interest.

13 What we're now talking about is a very
14 limited proceeding, where only a very narrow set of issues
15 pertaining to this facility is on the table. And, if
16 Mr. Edwards did not have standing when all of the issues
17 were on the table, I submit that it will be very difficult
18 to find, in light of these decisions, that he would now
19 suddenly have standing when only a narrow set of issues
20 are on the table.

21 With respect to his assertion that he
22 may at some time be a property owner abutting this
23 facility, it sounds to me as though he is claiming that
24 the interest that he is most interested in protecting has

1 to do with the forest industry. I don't think that he has
2 established a connection between the simple change in
3 contractors that we propose, adopting all of the
4 conditions of the prior contract, with some interest he
5 might generally have of the health of the New Hampshire
6 forest because he abuts the facility. I don't think that
7 connection is there, and I don't believe that it meets the
8 standards for intervention under the appropriate statutes.
9 And, so, we would again ask that you deny his petition.

10 CHAIRMAN BURACK: Thank you. Anything
11 further from members of the Committee at this time on
12 this?

13 (No verbal response)

14 CHAIRMAN BURACK: Okay. Very good. I'm
15 going to take all of the intervention motions under
16 advisement, and we will issue a written order in the near
17 future. What I am going to do is to just indicate that we
18 are anticipating -- excuse me.

19 (Chairman Burack conferring with Mr.
20 Iacopino.)

21 CHAIRMAN BURACK: Attorney Needleman, I
22 understand that you may have been speaking with Counsel
23 for the Public on a schedule for moving these proceedings
24 forward. Can you describe what it is that you have been

1 discussing at this point?

2 MR. NEEDLEMAN: Yes. We worked together
3 with Counsel for the Public to try to develop a set of
4 deadlines for moving this to a hearing date, and we have
5 agreed on those deadlines. We propose that data requests
6 of the Applicant be due May 4th; that the Applicant
7 respond to those data requests on May 11. That a
8 technical session, if it's necessary, be held on May 13th.
9 And, that the evidentiary hearing on this matter be held
10 sometime during the week of May 16th.

11 We have agreed on those dates with
12 Counsel for the Public. We recognize that that is an
13 aggressive schedule. But, I think, as members of this
14 Committee are aware, there is a strong interest in trying
15 to conclude this process as quickly as possible on behalf
16 of the Applicant. And, so, we appreciate Public Counsel's
17 willingness to move this quickly.

18 CHAIRMAN BURACK: Thank you. And, has
19 the City of Berlin been communicated with with respect to
20 this schedule or any of the other potential intervenors?

21 MR. NEEDLEMAN: No.

22 CHAIRMAN BURACK: Thank you. Counsel
23 for the Public, do you have anything you wish to add with
24 respect to the proposed schedule that has been outlined by

1 Attorney Needleman?

2 MR. BROOKS: We agree with the proposed
3 schedule.

4 CHAIRMAN BURACK: Thank you. The
5 Committee has had an opportunity to confer briefly before
6 the commencement of today's proceeding, just with respect
7 to potential availability. And, during the week of May
8 16th, and this will require further polling of
9 availabilities, it appears that most likely May 18th, I
10 believe that's a Wednesday, or May 19th would be the most
11 likely dates on which we could assure that we would have a
12 quorum to be able to consider this matter. So, I would
13 ask all the parties at this time to set aside May 18th and
14 19th.

15 (Chairman Burack conferring with Mr.
16 Iacopino.)

17 CHAIRMAN BURACK: Well, our plan of
18 process here would be to issue a procedural order in the
19 near -- in the very near future setting out the schedule,
20 most likely along the lines of what has been proposed
21 here, Attorney Needleman, by yourself, with concurrence of
22 Counsel for the Public. And, this will also include a
23 ruling with respect to all of the Motions for
24 Intervention.

1 I would ask that the parties do remain
2 through the conclusion of the next proceeding to be able
3 to meet with Attorney Iacopino, including any of the
4 intervenors who are here, in order to discuss further
5 details of the procedural process.

6 (Chairman Burack and Vice Chairman Getz
7 conferring with Mr. Iacopino.)

8 CHAIRMAN BURACK: Just trying to find a
9 way to accommodate all of the needs of the various parties
10 here. What I'm going to ask here, we're going to, in just
11 a moment, conclude the portion of the meeting regarding
12 Docket Number 2011-01. And, then, what I'm going to do is
13 ask all of the proposed intervenors, potential
14 intervenors, as well as the parties to this proceeding to
15 meet immediately here, I believe the room next door should
16 be open to meet. And, I'm going to ask you, as quickly as
17 possible, and we hope this can be done in a fairly short
18 period of time, to go through any further procedural
19 matters with respect to scheduling here. And, as soon as
20 that meeting has been completed, we will then proceed with
21 the second item on the agenda, Docket Number 2011-02,
22 relating to Antrim Wind Energy.

23 And, so, unless any member of the
24 Committee has anything further with respect to this first

1 item, we will close the proceeding on this matter at this
2 time?

3 (No verbal response)

4 CHAIRMAN BURACK: Very good. We will do
5 that. We will take about a 10-minute break.

6 (Whereupon a recess was taken at 10:15
7 a.m. for the parties, potential
8 intervenors and Mr. Iacopino to confer
9 regarding SEC 2011-01, and the hearing
10 resumed at 10:30 a.m.)

11 CHAIRMAN BURACK: If I could ask
12 everyone to please take a seat. Before we proceed to the
13 second agenda item, I'm just reopening the transcript for
14 the first proceeding here, in order to ask Attorney
15 Iacopino to simply summarize the meeting that he has had
16 with the parties.

17 MR. IACOPINO: Thank you, Mr. Chairman.
18 We did meet. Present were the Applicant, Mr. Brooks, and
19 Mr. Edwards, for Edrest Properties, LLC. And, it does
20 appear that the schedule that has been agreed upon by the
21 Applicant and Counsel for the Public is satisfactory to
22 Mr. Edwards, should Edrest be granted intervenor status.
23 So that we -- I indicated to the parties that the
24 procedural order will likely include that, obviously,

{SEC 2011-01} {04-22-11}

1 you'll make the final decision, but will likely include
2 that, since it appears to be agreeable to everybody who is
3 or may be a party in that proceeding.

4 I also advised the Applicant during that
5 meeting that we would like to know sooner rather than
6 later what the status on their coming back to the
7 Committee with respect to the Power Purchase Agreement
8 issue is. It is a requirement and a condition of their
9 certificate. And, of course, I'd like to make things as
10 -- make the scheduling as easy as possible for the members
11 of the Committee, all of whom have very important jobs, in
12 addition to what we're doing here today.

13 So, that was basically the entire
14 conversation. It was an informal meeting. The real
15 purpose was simply to make sure that scheduling will
16 comply with -- that the scheduling will be satisfactory to
17 everybody. And, as the Chair stated earlier, it appears
18 as though we'll be looking at the -- what did we say, the
19 18th or 19th for a final hearing in this docket.

20 CHAIRMAN BURACK: Thank you, Attorney
21 Iacopino. Any questions at this time from the Committee
22 with respect to the Laidlaw Berlin BioPower matter?

23 (No verbal response)

24 CHAIRMAN BURACK: Very good. Okay.

1 Thank you. I will now again close the transcript and
2 close that proceeding.

3 (Whereupon the hearing re: *SEC 2011-01*
4 ended at 10:33 a.m.)

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