

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

May 18, 2011 - 1:55 p.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

DAY 1
AFTERNOON ONLY
(PUBLIC SESSION)

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

PRESENT:	SITE EVALUATION SUBCOMMITTEE:
Thomas Burack, Cmsr. (Presiding as Chairman)	Dept. of Environmental Services
Thomas Getz, Chairman (Vice Chairman of SEC)	Public Utilities Commission
Clifton Below, Cmsr.	Public Utilities Commission
Amy Ignatius, Cmsr.	Pubic Utilities Commission
Elizabeth Muzzey, Dr.	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: Susan J. Robidas, LCR NO. 44

{SEC 2011-01}[DAY 1 AFTERNOON ONLY/PUBLIC SESSION]{05-18-11}

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ALSO PRESENT:

Counsel for the Applicant: (Laidlaw Berlin BioPower)	Barry Needleman, Esq. Cathryn E. Vaughn, Esq. (McLane, Graf, Raulerson & Middleton)
Counsel for the Public:	Peter Roth, Esq. (Sr. Asst. Atty. General) K. Allen Brooks, Esq. (Sr. Asst. Atty. General) N.H. Dept. of Justice
Reptg. City of Berlin, NH:	Merritt Schnipper, Esq. (Downs, Rachlin & Martin)
Reptg. Edrest Properties:	Jonathan Edwards

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I N D E X

WITNESS PANEL: MATTHEW EASTWICK
 RAYMOND KUSCHE
 ROSS D'ELIA

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1 P R O C E E D I N G S (resumed)

2 CHAIRMAN BURACK: Good afternoon,
3 everyone. Let us resume our proceedings in the
4 matter involving the Berlin -- or Laidlaw BioPower
5 and Berlin Station matter. We're going to continue
6 now with questions from the Committee for the
7 witnesses from the panel here. And I believe it's
8 approximately 2:30 that one of our panel members --
9 or one of our Committee members, Commissioner Bald,
10 will have to leave us for a while and will return
11 when he can. And once we have concluded again the
12 questions in our regular session here, we will then
13 have a motion to go into a non-public session. But I
14 want to emphasize for the benefit of all here,
15 particularly Committee members, it is important and
16 necessary that we ask in public session any questions
17 that can be asked in public session -- that is, the
18 only questions we should be asking non-public session
19 are those that relate to confidential documents and
20 specifically aspects of those documents that are, in
21 fact, confidential and information relating to which
22 is not otherwise in the public record of this
23 proceeding, or the public portion of the record for
24 this proceeding. If you have any questions or

1 concerns, let me know the nature of the question you
2 want to ask, and we'll determine whether or not it
3 needs to be asked in the public portion of the
4 session. I'm going to suggest that we just proceed
5 around the room here, if we can, just to try to make
6 this as quick as possible.

7 Mr. Stewart, do you have any questions
8 at this time?

9 DIR. STEWART: No.

10 CHAIRMAN BURACK: Okay.

11 DIR. MUZZEY: I have one question.

12 CHAIRMAN BURACK: Director, please.

13 INTERROGATORIES BY DIRECTOR MUZZEY:

14 Q. I'm not sure who on the panel will want to answer
15 this. In the right-of-use agreement between Berlin
16 Station and Burgess BioPower, are the
17 responsibilities in the order and certificate
18 addressed in any way?

19 A. (Mr. Eastwick) I'll answer that. But unfortunately,
20 I don't recall what specifically is in the
21 right-of-use agreement with respect to the
22 certificate. So let me check with you, and maybe at
23 a break we can respond to that.

24 Q. Okay. Thank you.

1 CHAIRMAN BURACK: Other questions? No
2 questions?

3 Okay. Director Scott. Thank you.

4 QUESTIONS BY DIRECTOR SCOTT:

5 Q. Mr. Eastwick, earlier Counsel for the Public asked
6 you about -- to explain a little bit about the change
7 in total project costs. I wanted to try to refine
8 that a little bit, and again, obviously, to the
9 extent you can. If there's any confidential data, we
10 can do that in non-public session. I just wonder if
11 you could delineate a little bit better for me the --
12 what of that change between 167 million and 228
13 million is due to the requested changes to the
14 certificate.

15 A. (Mr. Eastwick) I don't believe any of it is related
16 to the requested changes to the certificate. It is
17 primarily the changes to the scope of the project and
18 also the difference between what were really
19 estimates, going back almost a year, and real costs
20 now based on bids and other specific project-related
21 direct costs that we now have a lot more clarity on.

22 Q. Maybe if I could, I could narrow my question a little
23 bit more. The upgrading, if I understood, there was
24 a cost associated with the upgrading, changing the

1 turbine specs?

2 A. (Mr. Eastwick) So the cost of the original used
3 turbine, I believe the cost was approximately
4 \$2,000,000, and now the new one is \$12 million. So
5 that gives you at least an example of the type of
6 increase in costs that we've incurred.

7 Q. Are there any other cost changes due to the upgrades
8 that you're aware of, significant cost changes?

9 A. (Mr. Kusche) I'll chime in. None that I can recall.
10 Some other -- these all add up. So they may not
11 sound like a lot individually, but they do add up.

12 We've made changes to our -- to the equipment
13 that we're going to use in our fuel yard. We're now
14 making it -- we're adding components out there,
15 equipment out there that provide more automation and
16 to make it an improved fuel yard for an operating
17 standpoint. We've had to make additional deposits at
18 ISO-New England for our capacity obligation that we
19 have, on the order of a quarter-million dollars. I
20 mean, this is just a couple things that come to mind.
21 But as the project is taking longer to develop, get
22 to a construction close, as you all can imagine,
23 we've had costs that continue on. It's a burn rate.
24 But we're also making -- as Mr. Eastwick related, a

1 lot of project costs which were estimates last year,
2 which we were in the process of bidding, we now have
3 bids back. We know what those costs are going to be.
4 And material costs have gone up over the last year.
5 It all is sort of incrementally adding up to
6 \$40 million, approximately.

7 DIR. SCOTT: Thank you.

8 A. (Mr. Eastwick) Just to respond to the right-of-use
9 agreement question, in the right-of-use agreement,
10 Burgess BioPower does assume Berlin Station's
11 obligations under project contracts and permits, of
12 which the certificate would be one of them.

13 DIR. MUZZEY: Thank you.

14 CHAIRMAN BURACK: Thank you. Any
15 further questions? Commissioner Below, any questions
16 at this time?

17 CMSR. BELOW: No.

18 CHAIRMAN BURACK: No questions.

19 MR. SIMPKINS: I have one question,
20 which would be for Mr. D'Elia or Mr. Kusche.

21 INTERROGATORIES BY MR. SIMPKINS:

22 Q. Under the sustainability conditions attached to the
23 certificate, I believe it was Exhibit 76 in the
24 original proceedings, it makes reference to the Good

1 Forestry in the Granite State document, but it
2 references the 1997 version. That was just updated
3 in December 2010. So my question is: Would you be
4 amenable to updating that to reflect the most updated
5 version, the 2010 version?

6 A. (Mr. Kusche) Absolutely. Yes.

7 Q. Thank you.

8 CHAIRMAN BURACK: Any other questions?

9 MR. SIMPKINS: No.

10 CHAIRMAN BURACK: I have a few
11 questions, and then I believe Attorney Iacopino
12 probably has some questions.

13 INTERROGATORIES BY CHAIRMAN BURACK:

14 Q. First question is probably a question, Attorney
15 Needleman, for you. I'm looking at Counsel for the
16 Public's Exhibit 1 and the response of Laidlaw to
17 Question 26 that appears on Page 9. And the question
18 asked, "Please specify each condition of the
19 certificate that you ask the Committee to amend and
20 provide specific terms that you ask to see instead."
21 And your response runs from Page 9 on to Page 10.

22 And my question for you is: Is this still a
23 complete and accurate list of all of the amendments
24 that the joint applicants are requesting to the

1 certificate of site and facility at this time?

2 MR. NEEDLEMAN: Yes, I believe so. We
3 didn't change the introductory language in the
4 certificate, just the conditions that we were
5 focusing on.

6 CHAIRMAN BURACK: So it's simply a
7 change in the conditions. So when you say you did
8 propose changing the introductory language to reflect
9 the fact that the names of the parties are changing
10 or would be changing, is that what you were referring
11 to?

12 MR. NEEDLEMAN: Cate actually made the
13 changes. So maybe rather than translate for her,
14 I'll let her respond.

15 MS. VAUGHN: Well, we didn't change
16 the -- if you look at the certificate itself, all of
17 the "whereases," it got too complicated to try and
18 change the history moving forward. We just focused
19 on what in the conditions needed to be changed.

20 CHAIRMAN BURACK: Understood. Okay.
21 Thank you. But in terms of the conditions
22 themselves, at this time there are no other changes
23 to the conditions, and the language that you're
24 proposing is language that you still stand by.

1 MR. NEEDLEMAN: Correct.

2 CHAIRMAN BURACK: Okay. Thank you.

3 This is perhaps a question for -- well, it's probably
4 for Mr. Eastwick. And Attorney Needleman, you may
5 have some thoughts on this as well. Just trying to
6 understand -- and maybe the easiest way to do this is
7 to look at CFP Exhibit 5, because I think that may
8 show some other additional entities. I'll try to
9 find the document here. Again, this is the document
10 that has the heading "Berlin Station Capital
11 Structure." It's basically a flow chart or
12 organizational chart.

13 What I'm seeking to understand is, in
14 the original -- in the certificate that was issued
15 for this, there is language, although I do not have
16 it in front of me at this moment, that essentially
17 indicates that all the parties to the transaction
18 would agree that they are bound by the terms and
19 conditions of the certificate. And my question is:
20 Of the entities shown here -- first of all, would it
21 be correct to say that all the entities shown here
22 are all of the entities contemplated for this
23 transaction and for the operation of this facility?

24 MR. NEEDLEMAN: Yes.

1 CHAIRMAN BURACK: Yes, it is?

2 MR. NEEDLEMAN: Yes.

3 CHAIRMAN BURACK: So it's a complete
4 list. Of these, are there -- which entities are
5 proposed or offered to in fact be liable and
6 responsible under the terms of the certificate, bound
7 by the terms of the certificate?

8 MR. NEEDLEMAN: Berlin Station, LLC;
9 Burgess BioPower, LLC; and NewCo Energy, LLC, were
10 the ones that we proposed.

11 CHAIRMAN BURACK: And NewCo Energy,
12 LLC. Okay. So it's three that you were proposing to
13 have bound. Again, Burgess BioPower, LLC; Berlin
14 Station, LLC; and NewCo Energy, LLC?

15 MR. NEEDLEMAN: Correct.

16 CHAIRMAN BURACK: Why are you not
17 offering or proposing that the other entities would
18 also be bound by the terms and conditions of the
19 certificate?

20 MR. NEEDLEMAN: What we tried to do is
21 parallel what happened in the last proceeding. So,
22 for example: Berlin Station is really the sum total
23 now of the old Laidlaw Berlin BioPower and the old
24 PJPD. And so it made sense, where those were bound

1 in the past, to bind Berlin Station. It also made
2 sense to us to put Burgess BioPower under the
3 right-of-use agreement, functioning as the manager,
4 as was described before, to bind them as well. And
5 then in the prior version we also had NewCo Energy,
6 LLC bound, which was the entity at the top of the
7 ownership structure. It's the same entity here at
8 the top of the structure. And so as noted
9 previously, there is no analog here to Aware Funding,
10 and so there was nobody to be proposed to be bound.
11 So what we've done here is try to equate who we would
12 offer to be bound here with the entities that were
13 bound in the prior proceeding.

14 CHAIRMAN BURACK: So if we go back and
15 look at the prior proceeding, you're suggesting,
16 then, that the ownership entity equivalent to CSC
17 Group Holdings, LLC was not also bound -- or was not
18 bound by the certificate to this?

19 MR. NEEDLEMAN: I'm not sure there
20 really was an equivalent of CSC in the prior
21 proceeding. I assume you're looking at CSC Group
22 Holdings --

23 CHAIRMAN BURACK: LLC. Correct.

24 MR. NEEDLEMAN: -- in the chart.

1 CHAIRMAN BURACK: In the upper
2 left-hand corner, yes.

3 MR. NEEDLEMAN: Yeah. They are -- if
4 you recall, on Committee Exhibit 1, I believe it was
5 to the prior proceeding, that listed all of the
6 investors in NewCo. CSC Group Holdings, LLC was one
7 of those NewCo investors. So they were bound through
8 NewCo LLC, I suppose.

9 CHAIRMAN BURACK: Okay. Thank you.

10 BY CHAIRMAN BURACK:

11 Q. Looking at Page 5 of the actual motion itself, the
12 joint motion, there's some language here that's a
13 little different from the testimony that I believe
14 was adopted by Mr. Eastwick, and I just want to
15 understand this. This is in the middle of the page.
16 There's a paragraph that says -- it's the third full
17 paragraph. Again, I'm on Page 5 of the joint motion.
18 It reads: BBP Holdings No. 1, LLC will own
19 99 percent of Berlin Station, and BBP Holdings No. 2,
20 LLC, will own 1 percent of Berlin Station. The
21 reason for this arrangement is that NMTC rules
22 prohibit Berlin Station from being a, quote,
23 disregarded entity, close quote, for federal income
24 taxes." And then it goes on to say, "This, in, turn

1 requires Berlin Station to be owned by at least two
2 members with different and ultimate ownership."

3 Can one of you explain for me, or for all of us,
4 what "disregarded entity" is?

5 A. (Eastwick) Sure. So, again, this is a NMTC
6 requirement, that there is not just one owner of what
7 in NMTC parlance is called the QALICB --

8 Q. I'm sorry. Called the what?

9 A. It's an acronym, Q-A-L-I-C-B -- which is the
10 borrower, in this case, Berlin Station, needs to have
11 at least two owners to be not consolidated for tax
12 purposes with another entity. So if that were the
13 case, if there's only one owner, it would be deemed
14 to be a disregarded entity because it could be
15 consolidated completely into its sole owner. So the
16 reason we have two owners, BBP1 and BBP2, is to
17 conform to that requirement.

18 Q. Thank you. I see that sitting behind you, Mr.
19 Eastwick, is Damon Frecker. And I'm just looking for
20 a clarification here. I thought I may have heard one
21 of you say earlier that Mr. Frecker is now an
22 employee of Cate Street Capital. Is that correct?

23 A. (Mr. Eastwick) Yes, it is.

24 Q. And his former employer was?

1 A. (Mr. Kusche) ESS Group --

2 Q. So Mr. Frecker is now full-time with Cate Street
3 Capital. And will he have an ongoing role with this
4 project; and if so, what will that role be?

5 A. (Mr. Kusche) Yes, he will. He's a full-time
6 employee, and his title is managing director of
7 development activities. So, like Damon -- or like
8 myself, Damon has transitioned from our old role in
9 the project and become direct employees of Cate
10 Street Capital.

11 And, you know, that's something I guess that,
12 you know, I'd like to emphasize, is that Cate Street
13 Capital, which was not a real focus during the prior
14 hearings, is a company that's growing and expanding
15 and getting involved in many types of sustainable
16 projects as a developer and, as a result, is adding
17 employees as it sees can contribute to that effort.
18 And we're now 40 strong employees with Cate Street
19 Capital, spanning from California through the Rockies
20 to our main headquarters in Portsmouth, New Hampshire
21 and Portland, Maine. And so we're acquiring the
22 talent and the experience to develop and manage these
23 projects.

24 Q. So, again, if you could just give us a sense. Will

1 Mr. Frecker have an ongoing role with respect to this
2 project -- for example: The environmental matters
3 that he was involved with in the planning and scoping
4 phase for this?

5 A. (Mr. Kusche) Yes, he will.

6 Q. Thank you. There are a couple of different
7 references in both the prefiled testimony, I believe
8 your testimony, Mr. Kusche, as well as in the joint
9 motion, to truck traffic. And I'm just looking for
10 confirmation from you, if this is in fact the case,
11 that when you originally proposed this project, that
12 you also estimated that there would be approximately
13 a hundred trucks per day delivering fuel to the site?

14 A. (Mr. Kusche) That's correct.

15 Q. So your projection of the number of trucks delivering
16 fuel to the site is unchanged.

17 A. (Mr. Kusche) It's unchanged.

18 Q. Okay. And again, Mr. D'Elia, just to be clear here
19 about one of your answers to the earlier questions,
20 your expectation is that most of those trucks would,
21 in fact, be trucks not belonging to RCT Trucking, but
22 belonging to the individual loggers?

23 A. (Mr. D'Elia) That's correct. Yes.

24 Q. And the truck traffic involving RCT would primarily

1 be during mud season or other times of the year when
2 the supply directly from the woods was otherwise
3 inadequate?

4 A. (Mr. D'Elia) Yes, that's correct. Yes.

5 Q. Thank you.

6 Have there been any changes at all in the
7 planning, Mr. Kusche, for the trucking routes into
8 the site or out of the site?

9 A. (Mr. Kusche) No.

10 Q. Mr. D'Elia, can you just clarify for us. There are
11 references to a NewPage facility, I believe in your
12 testimony or supplemental testimony, and then I
13 believe I've seen other documents that suggested
14 there may be two different NewPage facilities. Can
15 you clarify that for us?

16 A. (Mr. D'Elia) Yeah. NewPage, the pulp mill and paper
17 mill, is located in Rumford, Maine, and they're in
18 Shelburn, New Hampshire. They own the property where
19 there's a debarking and chipping operation. And RCT
20 has built -- owns the equipment and has the service
21 contract to operate that facility. So in that case
22 there, NewPage buys the wood and sends it to the
23 property, and Richard has the contract to debark it
24 and chip it and ship it to the mill.

1 Q. Thank you for that clarification.

2 CHAIRMAN BURACK: Attorney Iacopino,
3 you had some questions?

4 MR. IACOPINO: Yes.

5 INTERROGATORIES BY MR. IACOPINO:

6 Q. Let me just start with Mr. Kusche. For our record,
7 would you please explain how the -- or how you're
8 going to increase your gross output without
9 additional fuel.

10 A. (Mr. Kusche) Yes. Most of the efficiency increase is
11 due to the fact that we have replaced what was
12 contemplated to be a used steam turbine generator
13 with a new steam turbine generator. So instead of a
14 1950's vintage General Electric steam turbine
15 generator, we're using a brand new steam turbine
16 generator manufactured by Fuji. That has given us --
17 and that has been allowed by the fact that through
18 final engineering, B & W has determined that through
19 an incremental increase in the steam temperature and
20 pressure in the boiler, they could produce more steam
21 from the same amount of wood. So that extra steam
22 has allowed us to have a slightly larger and more
23 efficient steam generator. That's primarily the
24 cause for the increase in the gross generation.

1 We've also made -- I should say B & W
2 Engineering has also found that we could make very
3 incremental, but still important, efficiency
4 increases by using a slightly more efficient
5 generator, a step-up transformer, which is a
6 transformer that takes the steam turbine generator
7 voltage up to transmission voltage. And that's given
8 us some additional efficiency. So that's
9 primarily -- and I have to emphasize that the BTU
10 input, which is really the amount of wood that we're
11 going to be using, remains unchanged. We're not
12 using additional wood to accomplish this change, but
13 simply an efficiency increase.

14 Q. Mr. Eastwick, we have before us Counsel for the
15 Public's Exhibit 4, which is not a confidential
16 document. So while we're on the record here, could
17 you please tell us exactly what that document
18 demonstrates.

19 A. (Mr. Eastwick) This document is a breakdown by
20 category of all of the direct development costs that
21 we have incurred.

22 Q. This money has already been spent?

23 A. (Mr. Eastwick) Yes, all of this money been spent.

24 Q. And also in Exhibit 5, on the bottom right-hand

1 corner there's some notes that end -- sort of like a
2 little table that ends with \$274.8 million. Can you
3 please explain what that portion of the Berlin
4 Station Capital Structure exhibit refers to while
5 we're on the record in public session, please.

6 A. (Mr. Eastwick) The 274.8 million is composed of three
7 parts of the capital structure, one of which is debt
8 and two of which are equity. So the debt is
9 200 million of senior notes that will be senior
10 secured obligations of Berlin Station, LLC. And the
11 two components of equity are a monetization of the
12 1603 cash grant, which this project is eligible for,
13 as well as a New Market Tax Credit equity component,
14 54.9 and 19.9 million, respectively.

15 Q. Now, am I correct to understand that the debt
16 portion, the senior note, what's going to happen is
17 there's going to be private placement financing in
18 that amount through at least one financing bank, so
19 to speak, and that will pay off folks who have
20 invested so far in this project? Is that correct?

21 A. (Mr. Eastwick) The 200 million represents the debt
22 that will be raised to fully fund this project in
23 conjunction with the equity.

24 Q. I guess a better way to ask the question is, is this

1 what you've also referred to as your "private
2 placement market" in your testimony?

3 A. (Mr. Eastwick) Yes, the 200 million is the private
4 placement of debt with institutional investors.

5 Q. Okay. I also have some other questions I want to
6 make sure are clear -- the answers are clear on our
7 record here.

8 I guess, Mr. Eastwick, you would be the best
9 person to answer this question. In the actual joint
10 petition that was filed, or joint motion, you
11 indicate that the corporate structure has been
12 modified to accommodate both sets of lenders --
13 meaning, your New Market lenders and your private
14 placement lenders. Can you -- when you say "to
15 accommodate them," can you please explain to the
16 Committee and for the record what it is that you're
17 actually doing to "accommodate them." What is it
18 that they require that this corporate reorganization
19 does?

20 A. (Mr. Eastwick) So there are a number of different
21 accommodations that we have kept in mind when
22 designing this structure. We went over one of them a
23 few minutes ago with respect to having two owners of
24 Berlin Station. And that was as an example to

1 accommodate the NMTC requirement that Berlin Station
2 not be deemed a disregarded entity. We've also
3 created a lessor/lessee relationship between Berlin
4 Station and Burgess BioPower in order to accommodate
5 the NMTC requirement that the direct recipient of
6 their funds be deemed a real estate company and not
7 an operating entity. So in order to accommodate
8 that, we've created the lessor/lessee relationship,
9 and also to accommodate the right-of-use agreement so
10 that the NMTC allocation is deemed a real estate
11 allocation.

12 There are also a number of different structural
13 requirements that the senior lenders have, in terms
14 of where the permits lie, where their security is --
15 for the most part it's within Berlin Station, LLC,
16 which is the obligor to the senior debt. Lenders
17 want to make sure that they have access to as much
18 collateral and cash flow as possible out of the
19 entity that they have as the direct obligor. So
20 those are at least three examples of why we
21 structured it this way in order to accommodate all of
22 the different objectives of our investors, our
23 lenders, and the NMTC participants.

24 Q. Can you say to this Committee that none of this

1 reorganization is based upon any desire to escape the
2 upstream liability for the conditions of the
3 certificate that was contained in the original
4 certificate?

5 A. (Mr. Eastwick) Yes, none of this reorganization is
6 designed to escape any of those conditions.

7 Q. I'm a little bit confused on your New Market
8 investors -- your New Market Tax Credit investors.
9 You indicate in various places in your filings that
10 it's -- there are rules that are requiring them to --
11 or requiring this restructuring. Are these rules
12 that are, for instance, in the Code of Federal
13 Regulations? Are they rules that have been passed by
14 Congress or by some governmental agency, or are they
15 the internal rules of the allocatees and sort of
16 based upon their corporate or their founding
17 documents?

18 A. (Mr. Eastwick) It's a combination of both the federal
19 rules of the NMTC program, as well as the individual
20 investment charters of the NMTC allocatees. So the
21 program was designed to encourage investment in a lot
22 of low-income areas across the country. The broad
23 parameters of the program are in place at the federal
24 level, but each individual entity has their own

1 criteria by which they make investments and also by
2 which they receive allocations from the federal
3 government. So it is both the broad program as well
4 as the individual allocatees that are driving our
5 specific structure here. And we have now six
6 allocatees, some of which have certain requirements,
7 such as the real estate investment, and some of which
8 who don't.

9 Q. Can you also explain to us how in the petition it's
10 stated that -- well, actually, you quote Standard &
11 Poor's criteria for special-purpose entities and
12 project finance transactions. And you suggest that
13 you want to eliminate extraneous non-project risk.
14 Can you just tell the Committee, please, what you
15 mean by that.

16 A. (Mr. Eastwick) Sure. So, senior lenders, as well as
17 rating agencies which opine on the credit worthiness
18 of an individual company or individual project,
19 require -- well, they would like to see that there is
20 no external impact from any upstream activity on the
21 entity that they're investing in or that they are
22 rating.

23 Q. Can you give us an example in this context, in the
24 context of this particular transaction?

1 A. (Mr. Eastwick) So in this context, NewCo Energy
2 Holdings is an ultimate investor in the project. But
3 we've created an entity called Berlin Station, LLC,
4 which will have the entire scope, the assets, the
5 permits, everything project-related, as a single
6 entity which will be the obligor for this -- for
7 these investors, for these lenders, and in which we
8 don't have -- they don't have to have any concern
9 about NewCo Energy Holdings as an entity in order to
10 determine the credit worthiness of their obligor.

11 Q. Explain to us: Why didn't you just use the existing
12 entities and just move them around rather than create
13 new entities?

14 A. (Mr. Eastwick) By "existing entities," you mean --

15 Q. Laidlaw Berlin BioPower, LLC, LBB, whatever it was.

16 A. (Mr. Eastwick) Well, we have collapsed those two
17 entities into one. So the --

18 Q. Well, let me stop you. Actually, you did. You
19 created a new entity that serves the same purpose.
20 That's my understanding. Correct me if I'm wrong.

21 A. (Mr. Eastwick) That's correct.

22 Q. And did you do that so that your banks would be
23 confident that they're not stuck with any liability
24 of those prior companies -- in other words, that

1 somebody isn't getting at their assets instead of
2 your new financing?

3 A. (Mr. Eastwick) No. That would have been another
4 option, to either take PJPD and put it into Laidlaw
5 Berlin -- I'm sorry -- Laidlaw or vice versa. In
6 this case, looking at the entire reorganization that
7 we've accomplished here, it was deemed the best
8 course of action to create a new entity and have both
9 of the existing entities be contributed into the new
10 one.

11 Q. Does that assure your financiers that they're not
12 stuck with any old issues that might be in the old
13 companies?

14 A. (Mr. Eastwick) Yes, it does.

15 Q. That's what I was getting at. You answered the
16 question at the tech session, and I was just trying
17 to get the same answer on the record here today.

18 And I guess, Mr. Kusche, you would be the most
19 appropriate to answer these questions that are,
20 again, for the record. And you've already answered
21 them for me informally. But in reviewing the upgrade
22 of the power, are you confident that there is no
23 amendments needed to either your air permit or the
24 permits that you've received from the Water Division,

1 or any additional licensing fees or permit fees due
2 and owing to the State of New Hampshire as a result
3 of this upgrade?

4 A. (Mr. Kusche) Yes, I'm confident that there are no
5 changes necessary.

6 MR. IACOPINO: That's all of my
7 questions.

8 INTERROGATORIES BY CHAIRMAN BURACK:

9 Q. Well, I'll go ahead and ask. I wonder if one of you
10 could briefly summarize for us the names of the
11 entities and the roles that they would play, in terms
12 of the new contractors that would be brought in to
13 assist with basically the development and management
14 of the project. There are a number of entities here.
15 We don't have anything on the record at this point
16 really speaking to any of them, other than Delta
17 Power Systems. I think we had discussion of Delta
18 Power Systems. But there are a number of other
19 entities, including Waldron and Shaw. And I think
20 there may be some others that are listed in the draft
21 conditions, I believe, Stone & Webster engineers.
22 And I'm wondering if one of you could just speak to
23 those entities very briefly.

24 A. (Mr. Kusche) Yes, I'll attempt to do that. And it is

1 spelled out in our joint application. Waldron
2 Engineering & Construction --

3 MS. TUCKER: Could you have him speak
4 up a little more or bring the microphone nearer?

5 A. (Mr. Kusche) How's that?

6 Waldron Engineering & Construction, Inc. is
7 going to serve as the construction engineer with the
8 responsibility of overseeing the EPC contractor,
9 which remains unchanged, who is Babcock & Wilcox
10 Construction Company. Delta Power Services, LLC, who
11 is a wholly-owned subsidiary of Babcock & Wilcox,
12 will serve as the operation and maintenance
13 contractor of the owner.

14 Q. Could I just interrupt at this moment, just to be
15 clear here. Again, I'm looking at Page 10 of these
16 responses to questions, Question 26, Counsel for the
17 Public Exhibit 1. Just want to make sure I heard you
18 correctly. The actual entity is DPS Berlin, LLC; is
19 that correct?

20 A. (Mr. Kusche) That's correct. Delta Power Services
21 has formed a special-purpose entity, which is normal
22 practice for this, to serve as the entity at Berlin
23 Station.

24 Q. Okay. Thank you.

1 A. (Mr. Kusche) Black & Veatch is going to continue to
2 serve as the independent engineer primarily
3 responsible for overseeing construction on behalf of
4 the lenders. That remains unchanged.

5 And Shaw Group continues as a sort of reserve
6 consulting engineering to assist Waldron with
7 additional resources. Shaw Group is a international
8 engineering company. And although we don't expect
9 that they will be called upon during construction of
10 this project, they are available to us under an
11 existing contract, should need be. Did I leave
12 anyone out?

13 Q. Well, there's also reference to a consulting contract
14 with Stone & Webster, Inc.

15 A. (Mr. Kusche) Well, Shaw Group is a subsidiary of
16 Stone & Webster.

17 Q. So Shaw Group is a subsidiary of Stone & Webster.
18 But you're actually having agreements -- so your
19 agreement will actually be with Stone & Webster and
20 not with Shaw Group? Is that what I'm to understand?

21 A. (Mr. Kusche) I do have a copy of that agreement here,
22 and I believe that that is true. I believe that the
23 contract is with... Stone & Webster? I stand
24 corrected. The contract is with Stone & Webster. I

1 have it here somewhere.

2 Q. So the contract is with Stone & Webster, Inc., but
3 the services would be provided primarily by Shaw
4 Group as one of the subsidiaries of Stone & Webster?

5 A. (Mr. Kusche) Correct.

6 Q. Can you just clarify for us now which of these are
7 final signed agreement and which are still in draft.

8 A. (Mr. Kusche) Yes. The Waldron Engineering contract
9 is signed. The Delta Power Services contract is a
10 draft, very close to being signed.

11 Q. When do you expect that to be executed?

12 A. (Mr. Kusche) I would expect that to be executed
13 within a month. Certainly before construction.

14 The contract with Stone & Webster is signed, and
15 the contract with Black & Veach is signed.

16 Q. Are there any other contracts, then, that would be
17 necessary for the construction of the facility
18 itself?

19 A. (Mr. Kusche) We do have an EPC contract -- an
20 engineer, procure and construction contract -- with
21 B & W.

22 Q. And is that signed at this point?

23 A. (Mr. Kusche) It is not signed.

24 Q. When do you expect that to be signed?

1 A. (Mr. Kusche) Again, we're hoping that that will be
2 signed within a matter of weeks. Possibly two to
3 three weeks.

4 Q. Thank you.

5 How are you going to be covering insurance
6 requirements for the operation of the plant itself?

7 A. (Mr. Eastwick) I don't think any of us is directly
8 involved in those details, but we can confer with our
9 colleagues and get back to you at a break.

10 INTERROGATORIES BY MR. IACOPINO:

11 Q. Do you know if there's a certain liability insurance
12 requirement, property insurance requirement, in your
13 contract with your operator?

14 A. (Mr. Eastwick) Yes, there are insurance requirements
15 both through the EPC contract, as well as our lenders
16 are requiring various amounts of insurance.

17 Q. Are there folks here that you can find the specifics
18 of that and report to us later?

19 A. (Mr. Eastwick) Yes.

20 MR. IACOPINO: Okay. Thank you.

21 CHAIRMAN BURACK: Thank you. Any
22 other questions at this time? I'm sorry. Mr.
23 Harrington.

24 MR. HARRINGTON: Yeah, I just wanted

1 to follow up on a couple of things.

2 INTERROGATORIES BY MR. HARRINGTON:

3 Q. Referring to the condition -- and just so I have this
4 straight, this is the condition that was on the
5 bottom of Page 2 of the original certificate. And
6 I'll just read it briefly so you'll understand where
7 I'm at.

8 It says, "Further ordered with the decisions in
9 this order a certificate shall apply to combine the
10 Applicant and the following affiliated entities..."
11 and there's a list of entities: NewCo, PJPD and
12 Aware Funding, LLC. And I think what I heard was
13 that in place of those, we've now put in the
14 Applicant is now Berlin Station, LLC; is that
15 correct?

16 MR. NEEDLEMAN: Yes.

17 MR. HARRINGTON: And also added were
18 Burgess BioPower, LLC?

19 MR. NEEDLEMAN: Yes.

20 MR. HARRINGTON: And NewCo Energy,
21 LLC?

22 MR. NEEDLEMAN: Yes, which is the same
23 NewCo from the prior proceeding.

24 BY MR. HARRINGTON:

1 Q. Okay. Looking at the chart from Public Counsel
2 Exhibit 5, I'm just wondering if -- it appears
3 there's a small section that isn't covered here.
4 Going from Berlin Station, LLC, no matter which way
5 you go up the chart, you either run into Burgess
6 BioPower, LLC or you go through BPB [sic] Holdings
7 through NewCo Energy, eventually getting to NewCo
8 Energy, LLC. But if you go in the left direction
9 through BPP [sic] Holdings 2, LLC, which apparently
10 has 1 percent of the ownership, they don't seem to be
11 covered by the certificate at all. Why is that?

12 A. (Mr. Eastwick) In our requests with the Committee,
13 we've identified these three entities that we think
14 cover all the responsibility of the project, and so
15 we didn't deem that as one that would be part of the
16 certificate process.

17 Q. So if there was some type of a issue of funding that
18 needed to be done to comply with the certificate that
19 the -- through Berlin Station, LLC, Burgess BioPower,
20 LLC and NewCo Energy, LLC, they would cover a hundred
21 percent of the costs and not be concerned about the
22 1 percent that would normally be assigned to BPP
23 Holdings 2?

24 A. (Mr. Eastwick) That's correct.

1 Q. Okay. So the fact -- okay. That's the answer I
2 guess I was looking for then.

3 Just a follow-up on that. There was a question
4 that was raised by the Chairman on Page 5 of the
5 actual filing, that same paragraph that he was
6 referring to in the middle of the page that starts,
7 with BPP Holdings No. 1, LLC will own 99 percent of
8 Berlin Station..." Just let me know when you people
9 are there.

10 The last sentence in that paragraph says, "This,
11 in turn, requires Berlin Station to be owned by at
12 least two members with different ultimate ownership."
13 And maybe it's my naivete of these terms and what
14 exactly they mean, but it looks to me as if the
15 ultimate ownership of BPP Holdings 2, LLC and BPP
16 Holdings 1, LLC is CSC Group Holdings, LLC. So is
17 there -- am I missing something, or is there a
18 conflict between the chart and between the statement?

19 A. (Mr. Eastwick) So, although there is commonality of
20 ownership, the split, and therefore the economic --
21 true economic ownership of each of these entities is
22 different, the most relevant reason why is that --

23 Q. Okay. Excuse me. Which? When you say "these
24 entities," could you just be clear.

1 A. (Mr. Eastwick) I'm sorry. BBP Holdings 1 and BBP
2 Holdings 2.

3 Q. Okay.

4 A. (Mr. Eastwick) The most relevant reason is that there
5 are other investors, CSC Group Holdings plus other
6 investors, that have ownership in NewCo Energy, LLC.

7 Q. Okay. So if I get this straight, what you're saying
8 is that CSC Group Holdings completely owns BPP
9 Holdings 2, but BPP Holdings 1 is owned partially by
10 CSC, but also by other people; is that correct?

11 A. (Mr. Eastwick) That's correct.

12 Q. Okay. So that answers that question. Thank you.
13 Kind of confusing following all that.

14 Just as more of a comment to see if anyone has
15 any issues. I think -- is it accurate to say that
16 the additional megawatts that are being added here,
17 because during the -- let me back up.

18 During the original hearings there was a lot of
19 discussion on the capability of the Coos Loop and how
20 much additional power could be added to this. And in
21 fact, people were filing under MIS, and there would
22 be sort of a competition between the generators
23 there. So the fact that I guess now Berlin Station
24 will increase their output by a little over 8

1 megawatts will simply add additional competition to
2 the existing transmission capacity on the Coos Loop.

3 A. (Mr. Kusche) I think that's a correct statement,
4 yeah.

5 Q. Okay. I'm not sure if this is for here or for the
6 confidential statement part of this. So I'll try to
7 ask it now and pay attention to what was said.

8 In the -- I guess this is Mr. Kusche's testimony
9 on Page 4, when he talks about Black & Veatch, I
10 guess it's pronounced.

11 A. (Mr. Kusche) yes, Black & Veatch.

12 Q. It says it shall serve as the independent engineer
13 with primary responsibility for overseeing
14 construction on behalf of the lenders. Are these
15 lenders we're going to talk about and who exactly
16 that is in the confidential session?

17 A. (Mr. Eastwick) I'm sorry, Mr. Harrington. I wasn't
18 paying attention.

19 Q. It talks about it's going to be -- it's going to
20 serve as an independent engineer with primary
21 responsibility for overseeing the construction on
22 behalf of the lenders. But we haven't mentioned who
23 the lenders are, so is that something we'll address
24 in the confidential section, who they work for?

1 A. (Mr. Eastwick) Yes, we'll talk about specific
2 institutional investors who would be the lenders, and
3 they're represented by one lenders council as well as
4 part of the financing process.

5 Q. It goes on to say here that Black & Veatch will not
6 be under Laidlaw's direction. So I assume when you
7 say "Laidlaw," that means Berlin Station?

8 Well, let me ask the question. Who does it mean
9 when you say "Laidlaw" in that paragraph?

10 MR. NEEDLEMAN: It meant the joint
11 applicants. They are an entirely separate,
12 independent engineer answerable to the lenders.

13 Q. Okay. And do they have stop-work authority on the
14 project, or will they?

15 A. (Mr. Eastwick) The independent engineers?

16 Q. Yeah, Black & Veatch, who's overseeing construction
17 for the lenders, providing an additional layer of
18 construction oversight. I'm not sure what that
19 means. Do they say you're doing the wrong thing, we
20 don't want you to do that, stop? Or do they just
21 report back to the lenders, and then it goes through
22 a process for them getting back to whoever?

23 A. (Mr. Eastwick) They won't have direct stop-work
24 authority, but they will consult with the lenders.

1 And if the project isn't meeting in any way the
2 criteria that's part of the loan documents, then the
3 lenders could have recourse.

4 Q. Okay. Thank you.

5 MR. HARRINGTON: That's all I had, Mr.
6 Chairman.

7 CHAIRMAN BURACK: Ms. Ignatius, you
8 have questions?

9 CMSR. IGNATIUS: I do. There was a
10 document I had assumed was confidential, but is not.
11 So before we go to confidential session, Counsel for
12 Public Document No. 4 is a half-page of direct
13 development costs.

14 CHAIRMAN BURACK: We did go over this
15 before.

16 CMSR. IGNATIUS: Yes. I just had a
17 couple questions that weren't raised.

18 INTERROGATORIES BY CMSR. IGNATIUS:

19 Q. The line item, Laidlaw Berlin BioPower payments, and
20 it's over \$2 million. What does that refer to?

21 A. (Mr. Eastwick) Those are payments that NewCo Energy
22 has made as part of the transaction with Laidlaw to
23 assume control of the project.

24 Q. Can you be more specific than that?

1 A. (Mr. Eastwick) Well, their ownership interests in
2 Laidlaw, which Cate Street didn't control and now we
3 do, and these were payments that were made in order
4 pursuant to that transaction.

5 Q. Does that mean payments to, say, Mr. Bartoszek or
6 some other person who had an interest in the original
7 Laidlaw project?

8 A. (Mr. Eastwick) Not directly to individuals, but to
9 the corporate entity Laidlaw.

10 Q. Okay. The next line, CPD payment for \$100,000, what
11 does that refer to?

12 A. (Mr. Eastwick) CPD is Clean Power Development, which
13 is another entity that Cate Street has purchased,
14 taken control of, as part of this development.

15 Q. All right. A couple lines down, Homeland management
16 fee, and it's almost \$300,000. What does that refer
17 to?

18 A. (Mr. Eastwick) Those were payments that were made to
19 Homeland as part of the development process while
20 they were still a part of our project. They are no
21 longer. So these are payments that we separated from
22 other costs to reflect that. This is legacy costs
23 for the transaction.

24 Q. So this is past management, not an ongoing management

1 cost.

2 A. (Mr. Eastwick) That's correct.

3 Q. And then salary and wages I understand.

4 The last line there says "Others," and it's
5 \$400,000.

6 A. (Mr. Eastwick) This composes about 25 or 30
7 individual line items that are all, you know, small
8 expenses in the, I would say in the \$5- to \$10,000
9 range that we just aggregated. So this would be more
10 characteristic, more reflective of a major cost that
11 we've incurred.

12 Q. I will not ask you to go through each of those.

13 I think everything else is self-evident. So,
14 nothing else. Thank you.

15 CHAIRMAN BURACK: I'm just going to
16 follow up because there were some things that may not
17 be self-evident to everybody here.

18 INTERROGATORIES BY CHAIRMAN BURACK:

19 Q. Professional fees, it looks to me like there's almost
20 \$7 million in professional fees. Can you give us an
21 understanding of what those would represent?

22 A. (Mr. Eastwick) Yes. Those represent major categories
23 of legal, accounting, engineering, other fees that we
24 have incurred for our, broadly speaking, "advisors,"

1 including financial advisors, as well as folks that
2 have been directly assisting us in the professional
3 work, meaning legal and accounting, et cetera, to
4 develop the project.

5 Q. Thank you. And again, the land and infrastructure,
6 the 6.2 million, that represents the cost of
7 purchasing from PJPD the real estate and associated
8 equipment? Would that be a correct understanding, or
9 is there something else there?

10 A. (Mr. Eastwick) The land and infrastructure is the
11 site as well as the existing facility. So it's the
12 asset.

13 Q. Very good. Thank you.

14 CHAIRMAN BURACK: All right. Any
15 other questions?

16 MR. HARRINGTON: Just one follow-up.

17 CHAIRMAN BURACK: Mr. Harrington.

18 INTERROGATORIES BY MR. HARRINGTON:

19 Q. Just getting back to the CPD payment, I wasn't quite
20 sure what your answer was to that. Are you saying
21 that Cate Street has bought that project?

22 A. (Mr. Eastwick) We've bought the entity.

23 Q. "The entity," meaning Clean Power Development? So
24 you own their place in the ISO interconnection queue,

1 for example?

2 A. (Mr. Eastwick) Yes.

3 MR. HARRINGTON: Okay.

4 INTERROGATORIES BY MR. IACOPINO:

5 Q. Mr. Eastwick, one last question. I'm sorry.

6 Berlin Station, LLC and Burgess BioPower, LLC,
7 these limited liability companies, have they already
8 been established, or are these things that are going
9 to be established at a closing? In other words, do
10 they already exist?

11 MR. NEEDLEMAN: They do. They exist
12 today, yes.

13 MR. IACOPINO: Thank you.

14 CHAIRMAN BURACK: Do all of the
15 entities shown on Exhibit 5 exist today?

16 MR. NEEDLEMAN: Yes, I believe so.

17 CHAIRMAN BURACK: Thank you. Okay.

18 MR. ROTH: Mr. Chairman, in light of
19 some of the questions raised by the Committee, there
20 are things I was originally planning on discussing
21 during the closed session, but it seems to me, from
22 what I've heard, is that it's probably appropriate to
23 bring up now before we go into the closed session,
24 and so I have a couple of questions to follow up on

1 things.

2 CHAIRMAN BURACK: That's helpful to
3 hear. Before I turn to you, I just want to check
4 with Mr. Edwards and Attorney Schnipper.

5 Do you also have questions that you
6 think might now be appropriate to ask in public
7 session, do you think?

8 MR. SCHNIPPER: We don't have anything
9 further.

10 CHAIRMAN BURACK: You don't have
11 anything at all, Attorney Schnipper.

12 Mr. Edwards, do you have questions you
13 think might be appropriate in the public session
14 here?

15 MR. EDWARDS: Yes.

16 Initially Exhibit 4 was provided to me
17 as a confidential document and has since been labeled
18 as not confidential.

19 CHAIRMAN BURACK: Okay. Very good.
20 Why don't we do this: Let me ask Counsel for the
21 Public.

22 Why don't you go ahead and ask your
23 questions first, and then we'll see if Mr. Edwards
24 has any additional questions here, and then we will

1 do our non-public piece.

2 MR. ROTH: Okay. Barry, at any time
3 if you think I'm veering into confidential, please,
4 by all means, jump up.

5 INTERROGATORIES BY MR. ROTH:

6 Q. On Exhibit 4 there's the Laidlaw Berlin BioPower
7 payments. And the question I have is: Are there
8 more of those payments that are expected in the
9 future? Have you finished paying Laidlaw Berlin
10 BioPower?

11 A. (Mr. Kusche) There is another payment that will be
12 due to Laidlaw BioPower at the completion of the
13 construction loan closing.

14 Q. And can you tell the Committee how much that payment
15 will be?

16 MR. NEEDLEMAN: I think that might be
17 confidential.

18 MR. ROTH: If the previous ones aren't
19 confidential, I don't know how the future one would
20 be. But...

21 MR. NEEDLEMAN: Let me --

22 MR. ROTH: I'm happy to take it
23 confidential if you -- I just thought --

24 MR. NEEDLEMAN: Yeah, let me at least

1 talk with these folks about it.

2 MR. ROTH: Okay.

3 BY MR. ROTH:

4 Q. And the CPD payment for a hundred thousand, was that
5 the total amount that was paid for this CPD, or is
6 this just an allocation of that payment to this
7 business?

8 A. (Mr. Eastwick) That was the total amount that was
9 paid to CPD.

10 Q. Okay. So Cate Street didn't provide an additional
11 amount that is not reflected on this document for CPD
12 interests.

13 A. (Mr. Eastwick) Actually, I'm not sure of the answer
14 to that. But we can check it and get back to you. I
15 was only looking at the development costs that had
16 been allocated to this project.

17 Q. Okay. Now turning to Exhibit 5, what is BBP Finance,
18 LLC, and why isn't it on this chart?

19 A. (Mr. Eastwick) BBP Finance, LLC is part of the NMTC
20 structure. Specifically, it is the Cate Street
21 entity that is providing the leveraged loan into the
22 NMTC structure. So what we've represented in this
23 chart is just our corporate structure and our capital
24 structure. None of the NMTC participants, the tax

1 equity, any of the participants from the NMTC side
2 are represented on this chart.

3 CHAIRMAN BURACK: Could I just
4 interrupt you for a moment and get some
5 clarification? You've made reference here now to an
6 entity, Attorney Roth, BBP Finance?

7 MR. ROTH: Correct.

8 CHAIRMAN BURACK: Maybe it isn't to
9 show on these document, based on the description Mr.
10 Eastwick just gave us. But looking both at Exhibit 5
11 to the original joint motion, as well as Counsel for
12 the Public's Exhibit 5, I'm not seeing that entity
13 appear here. So are you asking why that entity
14 doesn't appear on this? Is that what you're asking?

15 MR. ROTH: That's correct. In the
16 1603 Note Purchase Agreement there's reference to it,
17 and it's defined as "an issuer." And I didn't
18 understand from that document what it was, who owned
19 it and what its purpose was and why it wasn't on this
20 capital structure figure.

21 CHAIRMAN BURACK: Thank you. Do you
22 have further questions, Attorney Roth?

23 MR. ROTH: Yes.

24 BY MR. ROTH:

1 Q. In addition, there was another entity referred to as
2 the Investment Pooling Fund, LLC. What is that
3 entity, and why is it not on this chart?

4 A. (Mr. Eastwick) That is part of the NMTC structure, so
5 that wasn't meant to be on this chart.

6 Q. And does CSC Group or NewCo have any interest in
7 either BBP or Investment Pooling Fund -- that is, BBP
8 Finance or Investment Pooling Fund?

9 A. (Mr. Eastwick) In BBP Finance but not in the
10 Investment Pooling Fund.

11 Q. Okay. So would it -- do you -- or can you describe
12 where, if anywhere, on this chart BBP Finance kind of
13 attaches to any of these entities? Does it own any
14 interests of any of either Burgess Holdings, BBP
15 Holdings 1 or 2, or Burgess Bio or Berlin Station?

16 A. (Mr. Eastwick) No, it has no ownership interests in
17 any of those.

18 Q. And is it owned by NewCo, or NewCo Energy Holdings?

19 A. (Mr. Eastwick) No.

20 Q. Or is it owned by Burgess Holdings or either of the
21 two BBP Holdings?

22 A. (Mr. Eastwick) No.

23 Q. Okay. Now, with respect to the box on the lower
24 right-hand corner of Exhibit 5, you have debt in

1 senior notes of \$200 million; and then there's what's
2 described as equity, Shareholder 1603 and then NMTC.
3 Now, those two numbers, the 54.9 and the 19.9, add up
4 to roughly 75 million; is that correct?

5 A. (Mr. Eastwick) Yes.

6 Q. Is it true that what you're describing as equity
7 is -- in fact takes place through a \$75 million note
8 purchase agreement?

9 A. (Mr. Eastwick) No.

10 Q. Okay. Now, I was shown a document by your counsel,
11 identified as a note purchase agreement, in the
12 amount of \$75 million that describes 1603
13 transactions and NMTC transactions. So is that \$75
14 million document different from the \$75 million here,
15 the 1603 and the NMTC?

16 A. (Mr. Eastwick) Yes, and they are different. It's
17 just coincidence that the equity in our box on
18 Exhibit 5 is 54.9 plus 19.9, which is 74.8 million,
19 and that the note purchase agreement you're referring
20 to is -- has an amount of \$75 million. They're not
21 the same transaction.

22 Q. Okay. So the note purchase agreement of \$75 million
23 shows that Burgess Holdings, LLC is the issuer of the
24 \$75 million worth of notes; correct?

1 A. (Mr. Eastwick) Yes.

2 Q. Now, why doesn't that show up here as debt on this
3 chart, so that your debt would be \$275 million?

4 A. (Mr. Eastwick) The Burgess Holding transaction is not
5 directly funding the project as debt. The Burgess
6 Holding transaction is a financing transaction that's
7 designed to take advantage of our eligibility for the
8 1603 grant and to create a monetization transaction
9 based on that eligibility. The senior notes and then
10 the note holders will not have access to the 1603
11 collateral, any of that cash grant proceeds or
12 collateral as part of the senior transaction.

13 Q. That's interesting, but it doesn't answer my question
14 about why, if you've got an additional \$75 million
15 worth of debt coming into this project -- and forgive
16 me if I'm getting into confidential. But the
17 maturity date on that debt is 2013. So you got
18 \$75 million worth of debt coming in that's due in
19 basically two years issued by Burgess Holding. Why
20 isn't that relevant to the debt and equity structure
21 of this proposal, and should be displayed on this
22 figure?

23 A. (Mr. Eastwick) This is a separate transaction.
24 Burgess Holdings has the rights to the 1603 grant.

1 And the note purchase agreement that you're referring
2 to is a monetization transaction that we have a
3 distinct group of institutions that will fund. And
4 the use of the proceeds of that 75 million is, in
5 part, to fund what we are calling the "Shareholder
6 1603 proceeds," or equity, into Berlin Station.

7 Q. Okay.

8 A. (By Mr. Eastwick) So you'd probably be
9 double-counting if you called this debt also part of
10 our project financing.

11 Q. Okay. But is it fair to say that what you're calling
12 equity is in fact coming from borrowed money?

13 A. (Mr. Eastwick) I think it's best termed an "equity
14 monetization." This is proceeds that we are eligible
15 for and that we have institutions who are willing to
16 monetize that cash grant in advance of it being
17 received. But it is an equity transaction.

18 Q. How will Burgess Holding, LLC repay the notes in two
19 years?

20 A. (Mr. Eastwick) Through receipt of the cash grant.

21 Q. So then, the cash grant is accounted for on the
22 equity side but goes back out through paying off the
23 notes, the \$75 million worth of notes; correct?

24 A. (Mr. Eastwick) Yes.

1 Q. So then that equity, as you've called it, does that
2 go away at that point, when the notes are paid off?

3 A. (Mr. Eastwick) No.

4 Q. Okay. Where does the equity stay in? Because it
5 seems like you've got a grant coming in for
6 75 million and a debt that attaches for 75 million,
7 and then the 75 million comes in and goes back out to
8 pay off the debt.

9 A. (Mr. Eastwick) No. Again, it's a separate
10 transaction. When the cash grant is received, it
11 will go to the entities that have financed our
12 monetization of the cash grant.

13 Q. The note holders.

14 A. (Mr. Eastwick) The participants in our Burgess
15 Holding transaction.

16 Q. Correct.

17 A. (Mr. Eastwick) But our equity stays in the project.

18 Q. But your equity, is that -- turning to Exhibit 4, is
19 that what that equity is? That's the \$20.2 million?

20 A. (Mr. Eastwick) This is in addition to it.

21 Q. But economically, it seems to me that the only equity
22 that stays in is the 22 that's already in, and then
23 the 75 comes in and goes out.

24 A. (Mr. Eastwick) No. The 75 million will be repaid

1 through the receipt of our cash grant that the U.S.
2 Government will give us sometime in 2013. So that's
3 additional money that won't be returned, that won't
4 be taken out of the project. Money stays in the
5 project through our 1603 shareholder investment.

6 CHAIRMAN BURACK: Anything further,
7 Attorney Roth?

8 MR. ROTH: Just one moment.

9 BY MR. ROTH:

10 Q. Now, earlier there was testimony that the commercial
11 operations' expected date is -- there was some
12 uncertainty about it, but I noted in the 1603 note
13 purchase agreement that it was suggested that it was
14 June 1st of 2013. But in the senior note, \$200
15 million is shown as September 15th. Which one is it?

16 A. (Mr. Kusche) If I had to choose one now, I would say
17 the September date is more likely, because due to the
18 delays that we have experienced this year in our
19 construction start, we now are going to enjoy less of
20 a construction season in 2011, this year, than we had
21 hoped for. We're being told by B & W that our hope
22 for a 24-month construction period will now be 27
23 months. So I think it's not logical to assume a
24 June 1, 2013 commercial operation date, knowing what

1 we know today.

2 Q. Okay. And so is that -- is it fair to say, then,
3 that while I understand that the note purchase
4 agreements were both in draft, that they will both be
5 conformed to the same expected date of commercial
6 operation?

7 A. (Mr. Eastwick) Yes.

8 Q. Okay. Now, my last question is on the order that was
9 given to you in November. There was a discussion in
10 there about whether the 1603 program, I believe it
11 was, or maybe it was referred to as the investment --
12 yeah, it was the 1603, the ARRA Funds, were seen as
13 crucial to the applicant's ability to raise capital,
14 and the Subcommittee concluded that the tax credits
15 are important and helpful, but they're not crucial to
16 raise capital for the financing of the facility.

17 Given the rather large size of the 1603 grant
18 and notes, is it still your view -- and maybe it
19 wasn't your view and it's possible the Subcommittee
20 misunderstood, but I'm giving them the benefit of the
21 doubt -- is it still your view that the 1603 money is
22 helpful and important, but not crucial? Or is it, in
23 fact, now crucial to make this work?

24 A. (Mr. Eastwick) I would characterize it as "helpful"

1 and "very customary" for these types of transactions
2 to incorporate in the overall economics and overall
3 capital structure of a transaction, to incorporate
4 the 1603 grant as part of the source of funds for the
5 project.

6 Q. I'll ask the question this way: If you -- if
7 Congress were to eliminate the 1603 program -- and
8 I'm not asking you to comment on whether you think
9 that's likely or probable. If they were to eliminate
10 it, would you be coming back to the Committee looking
11 for an amendment to your certificate in order to
12 restructure and do different kinds of financing and
13 different corporate structures -- that is, would you
14 find yourself unable to do this project as you've
15 currently proposed it without that money?

16 A. (Mr. Eastwick) We would certainly have to change the
17 source of funds, given that the 1603 grant is a
18 significant part of what we are proposing to do here.
19 But I haven't thought through what those changes
20 would need to be, how we would restructure it.
21 There's too many possibilities for that to be in
22 place. We are very confident that the 1603 grant
23 will be available to us. There's a lot of
24 institutions which share our confidence in that and,

1 therefore, are willing to enter into the monetization
2 transaction with us, and to a certain extent they are
3 incurring some of that risk by entering into this
4 transaction with us.

5 So, to answer your question, I don't know how we
6 would restructure it. But certainly we would
7 restructure the deal to accomplish the same
8 objectives of completing the financing of this
9 project.

10 Q. When you close on the -- when you do your financial
11 close with your note holder agreements, are you going
12 to do both of them at the same time, I gather, the
13 200 and the 75?

14 A. (Mr. Eastwick) That's the intent, yes.

15 Q. In terms of actually assessing those funds, I
16 understand from the tech session that you're not
17 going to immediately have in your bank account
18 \$275 million. That would be far too tempting. But
19 if you had -- what will they fund for you, and which
20 one will they fund first? Are they going to fund the
21 75 as you do construction, or are they going to fund
22 them both kind of pari passu? How are they going to
23 do that?

24 A. (Mr. Eastwick) Mostly to comply with the NMTC

1 structure we will fund the 75 million, because, as we
2 talked about, part of the proceeds will be Cate
3 Street's investment into the NMTC structure. So
4 we'll need that cash up front. But per normal
5 project financing and/or construction loan concept,
6 we will draw down from the senior proceeds along the
7 construction schedule, which serves two purposes:
8 One is to protect the lenders, and the second is to
9 not incur carrying costs. We don't want to pay
10 interest on money we're not using. So that's the
11 intent of the draw for our financing transactions.

12 Q. So if -- let's say you start drawing on the 75, and
13 come October you've drawn, let's say half of it, and
14 Congress makes the program go away. Would you expect
15 that the note holders would stop funding on the 75,
16 or do you believe that they're in it, hell or high
17 water, with whatever Congress does?

18 A. (Mr. Eastwick) I'm sorry if I wasn't clear. The
19 75 million will be funded at closing.

20 Q. At closing. So the money will be there, right then
21 and there. Okay.

22 My last question, and hopefully it doesn't get
23 into confidential. But in one of the agreements, one
24 of the note holder -- one of the note purchase

1 agreements there was a provision requiring the
2 payment of cash equity by, I believe, the issuer.
3 And is that additional cash on top of the equity
4 shown on Exhibit 4, or do they understand that to
5 mean what you've already put in?

6 A. (Mr. Eastwick) Can you be more specific on what
7 you're referring to?

8 Q. In the 1603 agreement there is a provision -- and if
9 you want, I can dig it out -- that says that NewCo
10 equity is in cash. There will be a cash payment by
11 NewCo. Is that in addition, something more than the
12 22 million that's represented on Exhibit 4?

13 MR. IACOPINO: Just a minute. Tell us
14 what you're reading from, Mr. Roth. Is it something
15 the Committee has or not?

16 MR. ROTH: No, it is not.

17 MR. IACOPINO: Just identify it for us
18 so we can --

19 MR. ROTH: It's the draft Section 1603
20 note purchase agreement, draft of May 6th, 2011.

21 MR. IACOPINO: Thank you.

22 MR. HARRINGTON: Just a clarifying
23 question. Mr. Roth, when you're referring to "1603,"
24 are you referring to the ARRA funding 1603? Is that

1 the term you're referring to? Or is this just some
2 other 1603 that happens to be the same number?

3 MR. ROTH: It's my understanding --
4 and this is -- I tried to learn the answer to this
5 myself -- that the note purchase agreement that we've
6 been talking about, the \$75 million note purchase
7 agreement, is with -- is an advance, essentially, on
8 the Section 1603 ARRA grant.

9 MR. HARRINGTON: Okay.

10 MR. ROTH: I believe what I'm
11 referring to is Section 4.21 of that agreement.

12 A. (Mr. Eastwick) So this was incorporated into the note
13 purchase agreement to provide for the possibility
14 that NewCo Holdings would make additional cash
15 contributions. But that has not been determined as
16 of yet.

17 Q. Okay. So it's a placeholder for something that may
18 or may not occur.

19 A. (Mr. Eastwick) Yes.

20 Q. And that would be in addition to the equity shown on
21 Exhibit 4.

22 A. (Mr. Eastwick) In addition to the development costs?

23 Q. Yeah.

24 A. (Mr. Eastwick) I wouldn't term it as development

1 costs at that point. Additional contributions by
2 NewCo, yes.

3 Q. Okay. Is that the -- are the additional
4 contributions by NewCo at NewCo's option, or is that
5 something that the lenders may demand, the note
6 purchasers?

7 A. (Mr. Eastwick) I think that will be subject to our
8 negotiation with the lenders, what the amount, if
9 any, is required.

10 Q. Okay. So it's not a privilege that NewCo could
11 exercise to somehow have a bigger piece. It's
12 something that the lenders might require as part of
13 the closing.

14 A. (Mr. Eastwick) That's correct.

15 Q. Okay.

16 MR. ROTH: I think that's all I have
17 on the additional non-confidential.

18 CHAIRMAN BURACK: Thank you, Attorney
19 Roth.

20 I just want to note on the record that
21 Commissioner Bald just rejoined us. It's about, oh,
22 about 3:14 or so. And I think he left us just before
23 2:30. So we welcome you back.

24 Mr. Edwards, do you have any questions

1 at this time?

2 MR. EDWARDS: Yes, I have a few
3 questions for Mr. Eastwick.

4 INTERROGATORIES BY MR. EDWARDS:

5 Q. Getting back to Exhibit No. 4, the CPD payment. I
6 understand the 100,000 was for purposes of providing
7 Berlin Station or Laidlaw Berlin BioPower with
8 placement in the queue that replaced CPD. Am I
9 following that logic properly?

10 A. (Mr. Eastwick) I wasn't directly involved in the
11 negotiations with CPD, but that is part of their --
12 part of the assets that CPD controls.

13 Q. And I have to assume that the purchase of CPD for
14 100,000 also included the purchase of the proposed
15 CPD project? Am I right on that?

16 A. (Mr. Eastwick) To my knowledge, it incorporated the
17 entire entity and all of its assets.

18 Q. So that Cate Street, doing business as Berlin
19 Station, could potentially also put online the CPD
20 project?

21 A. (Mr. Eastwick) I think that's speculation. I
22 don't -- that's not our intent. So that's not part
23 of this project.

24 Q. When you referred to "payment to CPD," CPD is also,

1 in part, Gestamp. Now, I assume that you are
2 including Gestamp in that \$100,000 CPD payment?

3 MR. NEEDLEMAN: Mr. Chairman, I'm
4 going to object at this point. I can't see how any
5 of these questions are relevant to the subject matter
6 of the joint motion anymore.

7 CHAIRMAN BURACK: Mr. Edwards, I think
8 this is a stretch to understand how this does relate.
9 So unless you can explain to us how you see this
10 relating to the specific request that's before us, I
11 understand it's interesting to know what this payment
12 may represent, but I don't know how it's relevant.
13 Maybe you can help us understand that.

14 MR. EDWARDS: I guess my concern would
15 be that I'm curious if Gestamp was also paid off in
16 full due to the fact that certainly sustainability
17 issues within the forest would occur if there was
18 some way for Gestamp to still go forward with the
19 project. So I guess I'm curious as to whether
20 Gestamp was a part of the CPD payment for that very
21 reason.

22 CHAIRMAN BURACK: The witness can
23 certainly answer the question if they know the
24 answer.

1 A. (Mr. Eastwick) I don't know the answer.

2 MR. HARRINGTON: Excuse me, Mr.
3 Chairman. Could you ask him to repeat? He keeps
4 saying something that sounds like Gestamp or
5 something. And I don't -- I can't understand what
6 he's saying.

7 CHAIRMAN BURACK: The reference is to
8 an entity called Gestamp, G-E-S-T-A-M-P; is that
9 correct?

10 MR. HARRINGTON: Oh, the company, the
11 one that owned CPD or was in negotiation with them or
12 something. Is that what you're referring to?

13 MR. EDWARDS: Yes. Gestamp had become
14 part of CPD.

15 MR. HARRINGTON: Okay.

16 CHAIRMAN BURACK: Thank you.
17 Mr. Edwards, do you have any other questions relating
18 to any of these documents for the public session?

19 MR. EDWARDS: Yes, for Mr. D'Alio.

20 MR. D'ELIA: D'Elia, yeah.

21 MR. EDWARDS: D'Lilia?

22 MR. D'ELIA: D'Elia.

23 MR. EDWARDS: I'll get that
24 eventually.

1 BY MR. EDWARDS:

2 Q. Just getting back to responsibility with Carrier
3 regarding the sustainability and also the practices
4 of loggers and so forth, my curiosity being that you
5 did mention that you don't necessarily have, and
6 Carrier doesn't necessarily have exclusivity with
7 these loggers; is that correct?

8 A. (Mr. D'Elia) That's correct. What do you mean by
9 "exclusivity"?

10 Q. Well, I guess my concern being that you're going to
11 be responsible for checking on these sites on a
12 regular basis to make sure that sustainable forestry
13 practices are occurring, and you certainly have a
14 performance bond that you can provide in the event
15 that issues occur. But I guess my curiosity is, if
16 you don't have exclusive working relations with these
17 loggers, how are you going to be holding your company
18 responsible for their acts when you're not
19 exclusively using them?

20 A. (Mr. D'Elia) The operators are responsible for buying
21 the wood, the stumpage and paying the landowner. And
22 that's part of the -- that's part of their business.
23 What we are is -- Laidlaw will be a consumer of their
24 whole tree chips, which I think in most cases will be

1 one of the many products coming off the job. So, for
2 instance: An operator who -- he may have bought a
3 stumpage sale from the State of New Hampshire. He
4 will have maybe one of our foresters visiting him.
5 And the purpose of him visiting him won't be the
6 sole -- the sole reason won't be to make sure he is
7 doing a sustainable job. It will be to find out
8 his -- how many loads he's going to be coming in, the
9 length of time he's going to be there just checking
10 in, as well as he's selling other products off this
11 job. There may be a forester coming in from a paper
12 company asking the same questions. There may be the
13 head forester from the State that is supervising the
14 job that may be coming in. So, on any one job there
15 will be a lot different foresters, wood buyers coming
16 in visiting that operator. Does that answer your
17 question? I'm trying to make it into a real -- the
18 way it really works out there.

19 Q. I think it certainly helps. Because what you're
20 telling me is there's going to be a number of
21 foresters that are going to be involved to protect
22 sustainability.

23 I guess my question, though, I'm curious how
24 Carrier, when there is not an exclusive arrangement

1 with loggers, can be responsible for that logger.

2 A. (Mr. D'Elia) We are going to be one part of the
3 market. The logger is looking to supply wood to many
4 different markets. He will be supplying chips off
5 that job to other biomass plants. We're not going
6 out there -- well, let's get it this way: We're not
7 going out there buying all the stumpage and then
8 hiring all these loggers on our payroll to go out
9 there and cut it and supply the Laidlaw plant.
10 That's just totally impossible. That's not going to
11 happen.

12 Q. Just two more questions.

13 A. (Mr. D'Elia) Sure.

14 Q. Your performance bond, aside from paying for a delay
15 in -- any delays that may occur in delivery, does the
16 performance bond cover any issues relative to
17 sustainability practices?

18 A. (Mr. D'Elia) Not that I'm aware of.

19 Q. Okay. And I'm not sure if this is getting into
20 confidentiality or not, so I'll try to ask.

21 I'm just curious, with the Carrier shipping yard
22 in Shelburn that is contracted with NewPage, whether
23 or not you can tell us how long that contract is with
24 NewPage.

1 A. (Mr. D'Elia) No.

2 MR. EDWARDS: That's all I have.

3 CHAIRMAN BURACK: Thank you.

4 Mr. Harrington, do you have a motion
5 for us to go into non-public session?

6 MR. HARRINGTON: Yes, I do.

7 CHAIRMAN BURACK: Please proceed.

8 MR. HARRINGTON: I move to enter into
9 non-public session to discuss the content material
10 deemed confidential under R.S.A. 91-A:5. The
11 documents in question are financial documents and
12 commercial documents that are exempt from the Right
13 To Know Law under R.S.A. 91-A:5 Section 4. There's
14 records pertaining to confidential, commercial or
15 financial information that have been provided to the
16 Committee under seal and subject to the protective
17 order.

18 MR. SIMPKINS: Second.

19 CHAIRMAN BURACK: Second by Mr.
20 Simpkins. This does require a roll call vote. So I
21 will ask Counsel to call the roll, please.

22 MR. IACOPINO: Thank you.

23 Mr. Stewart.

24 DIR. STEWART: Yes.

1 MR. IACOPINO: Ms. Muzzey.

2 DIR. MUZZEY: Yes.

3 DIR. MORIN: Yes.

4 DIR. SCOTT: Yes.

5 CMSR. BELOW: Yes.

6 VICE CHAIRMAN GETZ: Yes.

7 CMSR. IGNATIUS: Yes.

8 MR. SIMPKINS: Yes.

9 CMSR. BALD: Yes.

10 MR. HARRINGTON: Yes.

11 CHAIRMAN BURACK: I vote yes as well.

12 MR. IACOPINO: The entire Committee
13 has voted to enter into non-public session.

14 CHAIRMAN BURACK: So, from a practical
15 standpoint, what this means is that any folks who are
16 present in the room who are not counsel to the
17 parties, or the parties themselves, or otherwise
18 subject to the confidentiality agreement that relates
19 to all these documents, we will ask them to leave the
20 room at this time. We will let folks know as soon as
21 the non-public session is concluded, and then we will
22 invite people to resume here.

23 I will note the hour is now 3:25. I
24 had indicated before that I hope to conclude here

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PUBLIC SESSION RESUMES

CHAIRMAN BURACK: Director Scott, do you have a motion?

DIR. SCOTT: Yes, I'd like to move that we seal the minutes and transcripts of the non-public session, because those minutes and transcripts pertain to discussion of financial and commercial documents and information which is exempt from the Right To Know Law in the State of New Hampshire.

CHAIRMAN BURACK: Is there a second to that motion?

MR. HARRINGTON: Second.

CHAIRMAN BURACK: Seconded by Mr. Harrington. Any discussion of the motion? If not, again, we need a roll call vote here, starting with Director Muzzey.

DIR. MUZZEY: Yes.

DIRECTOR MORIN: Yes.

DIR. SCOTT: Yes.

CMSR. BELOW: Yes.

VICE CHAIRMAN GETZ: Yes.

CMSR. IGNATIUS: Yes.

MR. SIMPKINS: Yes.

1 MR. HARRINGTON: Yes.

2 CHAIRMAN BURACK: I vote yes as well.

3 MR. IACOPINO: Mr. Chairman, this roll
4 call vote requires two thirds of the members
5 attending to vote in the affirmative, and that has
6 been accomplished.

7 CHAIRMAN BURACK: In fact, it was a
8 unanimous vote of the members present. I will note
9 that Director Stewart had to leave us at about 4:00
10 to take a call, and it's now nearly 4:30 and he has
11 not returned. And, likewise, Commissioner Bald is
12 also not here.

13 We have now, I believe, had an
14 opportunity to complete all of the examinations of
15 the witnesses, both with respect to what could be and
16 should be reviewed on the public record, but also a
17 non-public session relating to confidential
18 documents. Before we close the --

19 MS. TUCKER: I did have some
20 questions. Is this now the public session?

21 CHAIRMAN BURACK: There will be an
22 opportunity here in just a moment for members of
23 the -- let me just take a look at --

24 (Pause in proceedings)

1 CHAIRMAN BURACK: I'm going to take
2 things a little out of sequence here and just point
3 out that we're going to need time for closing
4 arguments as well as for Committee deliberations. I
5 think both of those segments will occur at a later
6 date. But respecting that there may be members of
7 the public here today who would like to share
8 comments with us, this would be an opportunity now
9 for members of the public to just make a brief
10 statement and share comments. This would not be an
11 opportunity for members of the public or members of
12 the press to ask questions of any of the parties or
13 ask questions of the Committee.

14 So are there any members of the public
15 here today who would like to make a comment on the
16 record for the consideration of the Committee with
17 respect to this proceeding? I am not seeing
18 anyone --

19 MS. TUCKER: I had a question, so I
20 don't --

21 CHAIRMAN BURACK: I'm afraid this is
22 not an opportunity to ask questions. I will ask
23 counsel to approach you and try to understand what
24 the issue of concern is that you have.

1 While that is occurring, again, my
2 expectation would be that we will poll members of the
3 Committee as quickly as possible here to find
4 available future dates as quickly as possible so that
5 we can hear closing arguments from the parties, and
6 also so that the Committee can deliberate with
7 respect to the issues before us.

8 Before we do that, I just want to
9 confirm that there's no other evidence that you
10 intend to put before us. Is that correct?

11 MR. NEEDLEMAN: Let me clean up one
12 issue.

13 Mr. Iacopino asked about insurance
14 limits. We can answer that now.

15 CHAIRMAN BURACK: Would you go ahead
16 and answer that question for us.

17 MR. NEEDLEMAN: Yeah.

18 A. (Mr. Eastwick) So our EPC contractor, Babcock &
19 Wilcox, we're required to have insurance of
20 \$5 million, with excess liability of \$20 million.
21 And then Berlin Station and also Delta Power will
22 have their own separate policies for \$1 million each,
23 with excess liability of \$10 million.

24 CHAIRMAN BURACK: I'm sorry. The

1 other parties would be Burgess Station?

2 A. (Mr. Eastwick) Berlin Station and Delta Power.

3 CHAIRMAN BURACK: Berlin Station and
4 Delta Power. And they would each have 1 million and
5 10 million?

6 A. (Mr. Eastwick) Yes.

7 CHAIRMAN BURACK: Thank you.

8 MR. NEEDLEMAN: And Mr. Chairman, our
9 only other issue is that I would request at this time
10 that our exhibits be moved into the record.

11 CHAIRMAN BURACK: That motion is
12 granted.

13 Attorney Roth, are you also seeking to
14 have all of your exhibits moved into the record as
15 well?

16 MR. ROTH: Yes, sir.

17 CHAIRMAN BURACK: Okay. I will grant
18 that motion also.

19 As mentioned before, we will poll the
20 Committee members and try to find another date as
21 soon as possible when we can bring folks together for
22 closing arguments, which I would anticipate would
23 probably be relatively brief from the parties. I'm
24 not anticipating memoranda from any of the parties.

1 Anybody see the need to submit a memorandum here?

2 MR. NEEDLEMAN: We don't.

3 MR. ROTH: Mr. Chairman, I'm sorry.

4 We think it might be helpful to the Committee if
5 Counsel for the Public submitted a recommendation
6 with respect to the various requests that were
7 outlined in the answer to our data requests that were
8 made by the Applicant for specific changes to the
9 certificate.

10 CHAIRMAN BURACK: You're certainly
11 welcome to submit any recommendations that you may
12 have. But how quickly do you think you could provide
13 that to us?

14 MR. ROTH: Well, we certainly can have
15 it before the deliberative session, whenever that is.
16 I don't know. A week or so? One week.

17 CHAIRMAN BURACK: Attorney Needleman,
18 I would appreciate it if we could have the
19 opportunity to work with Public Counsel on those, so
20 to the extent there is agreement, we could resolve
21 it. And we'd also appreciate the chance to see it
22 before closing, so if there's anything we disagree
23 with, we could at least address that in front of the
24 Committee.

1 MR. ROTH: We'll do our best.

2 CHAIRMAN BURACK: Thank you.

3 Mr. Edwards, do you have anything else
4 you wish to submit in terms of recommendations for
5 language for amendments? No?

6 MR. EDWARDS: No.

7 CHAIRMAN BURACK: Okay. Thank you.
8 Attorney Schnipper, would you have
9 anything?

10 MR. SCHNIPPER: No memo or
11 recommendations, no.

12 CHAIRMAN BURACK: Okay. Thank you.

13 So when we -- and we'll get a date as
14 quickly as we can. When we reconvene in this matter,
15 we will hear closing arguments from the parties. I'd
16 ask you to keep your arguments brief. And if you
17 feel it's not necessary, that's fine as well. And
18 the Committee will then proceed to deliberate and
19 come to a decision.

20 There being nothing further to come
21 before us today, we will stand adjourned. Thank you.

22 (WHEREUPON, the hearing was adjourned
23 at 4:37 p.m.)

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C E R T I F I C A T E

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

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

Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
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