

1 STATE OF NEW HAMPSHIRE

2 SITE EVALUATION COMMITTEE

3
4 **June 3, 2011** - 10:18 a.m.

DAY 2

5 Public Utilities Commission
6 21 South Fruit Street
7 Suite 10
8 Concord, New Hampshire9 **RE: SEC Docket No. 2011-01**
10 **Joint Motion of Laidlaw Berlin**
11 **BioPower, LLC, and Berlin Station,**
12 **LLC, for Transfer and Amendment**
13 **of the Certificate of Site and**
14 **Facility Issued to Laidlaw Berlin**
15 **BioPower, LLC, and Notice of**
16 **Change of Major Contractor.**
17 **(Public hearing & Deliberations)**18 **PRESENT:**19 Thomas Burack, Cmsr.
20 *(Presiding as Chairman)*
21 Thomas Getz, Chairman
22 *(Vice Chairman of SEC)*
23 Clifton Below, Cmsr.
24 Amy Ignatius, Cmsr.
Harry Stewart, Dir.
Robert Scott, Dir.
George Bald, Cmsr.
Brad Simpkins, Interim Dir.
Michael Harrington**SITE EVALUATION SUBCOMMITTEE:**Dept. of Environmental Services
Public Utilities Commission
Public Utilities Commission
Public Utilities Commission
Water Division - DES
Air Resources Division - DES
Dept. of Resources & Econ. Dev.
Div. of Forests & Lands - DRED
Public Utilities Commission

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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.
Senior Asst. Atty. General
N.H. Dept. of Justice

REPTG. THE CITY OF BERLIN, NH:

Merritt Schnipper, Esq.
(Downs, Rachlin & Martin)

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P R O C E E D I N G

1
2 CHAIRMAN BURACK: Good morning, ladies
3 and gentlemen. We are here today for a continuation of a
4 recessed public meeting of the New Hampshire Site
5 Evaluation Committee. As many of you already know, the
6 Committee is established by RSA 162-H. The membership of
7 this Subcommittee includes the Commissioners or Directors
8 of a number of State agencies, as well as designated
9 senior personnel from various State agencies. My name is
10 Tom Burack. I serve as Commissioner of the State's
11 Department of Environmental Services. And, pursuant to
12 RSA 162-H, I also serve as Chairman of this Committee.

13 I would now like to ask the other
14 members of the Committee who are present at this meeting
15 to introduce themselves, starting to my far right.

16 DIR. STEWART: Harry Stewart, Director
17 of Water Division, Department of Environmental Services.

18 CMSR. BALD: George Bald, Commissioner,
19 Department of Resources & Economic Development.

20 DIR. SCOTT: Bob Scott, Department of
21 Environmental Services, Air Resources Division Director.

22 CMSR. BELOW: Clifton Below, a Public
23 Utilities Commissioner.

24 VICE CHAIRMAN GETZ: Tom Getz, Chairman

1 of the Public Utilities Commission and Vice Chair of this
2 Committee.

3 CMSR. IGNATIUS: Amy Ignatius, Public
4 Utilities Commissioner.

5 DIR. SIMPKINS: Brad Simpkins, Division
6 of Forests & Lands.

7 MR. HARRINGTON: Mike Harrington, New
8 Hampshire PUC.

9 CHAIRMAN BURACK: Thank you. Also, to
10 my immediate right is Michael Harrington, who serves as
11 legal counsel to the Committee -- I mean, Michael
12 Iacopino, yes. Sorry.

13 MR. HARRINGTON: We look so similar.

14 CHAIRMAN BURACK: Forgive me. Michael
15 Iacopino, who serves as legal counsel to the Committee in
16 this proceeding.

17 MR. IACOPINO: I don't have quite as
18 many 4,000 footers as Mr. Harrington does.

19 CHAIRMAN BURACK: Our agenda today
20 involves only one item, an adjudicatory hearing in docket
21 number 2011-01, Joint Motion of Laidlaw Berlin BioPower,
22 LLC, and Berlin Station, LLC, for transfer and amendment
23 of the Certificate of Site and Facility issued to Laidlaw
24 Berlin BioPower, LLC, and notice of change of major

1 contractor.

2 Let me provide some brief history here.
3 On November 8, 2010, the New Hampshire Site Evaluation
4 Committee, which we will refer to as the "Committee",
5 issued a Certificate of Site and Facility, referred to as
6 the "Certificate", to Laidlaw Berlin BioPower, LLC, for
7 the siting, construction, and operation of a 70 megawatt
8 biomass-fueled electric power facility located in Berlin,
9 Coos County, New Hampshire, the "Facility".

10 On March 9, 2011, Laidlaw Berlin
11 BioPower, LLC, and Berlin Station, LLC, we will refer to
12 them as the "Joint Applicants", filed a joint motion to
13 amend the Certificate, to transfer the Certificate to
14 Berlin Station, LLC, and to notify the Committee of a
15 change in major contractors, and we will refer to that as
16 the "Joint Motion".

17 The Joint Applicants propose to transfer
18 the Certificate to Berlin Station, LLC. Berlin Station,
19 LLC, is a special purpose entity, whose members are BBP
20 Holdings 1, LLC, holding 99 percent, and BBP Holdings 2,
21 LLC, holding 1 percent. BBP Holdings 1, LLC, is an
22 indirect subsidiary of NewCo Energy, LLC. BBP Holdings 2,
23 LLC, is a subsidiary of CSC Holdings Group, LLC. Berlin
24 Station, LLC, intends to execute a right of use agreement

1 with Burgess BioPower, LLC, an indirect subsidiary of
2 NewCo Energy, LLC, permitting Burgess BioPower, LLC, to;
3 lease and manage the facility and all certificates,
4 licenses, and contracts pertaining thereto.

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

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

18 On May 18, 2011, the Committee commenced
19 an adjudicatory hearing in this docket. Unfortunately,
20 the Committee was unable to conclude the proceeding on
21 that date. There was insufficient time for the Committee
22 to hear closing arguments and begin its deliberations in
23 this matter. Therefore, the proceeding was recessed to
24 the call of the Chair. On May 24, 2011, Counsel for the

1 Committee issued a notice scheduling the continuation of
2 this recessed proceeding to today. The notice was posted
3 at the Office of the Public Utilities Commission and the
4 Department of Environmental Services. The notice was also
5 posted on the Committee's website.

6 Today, the Committee will hear closing
7 arguments and, if appropriate, proceed to deliberate on
8 the merits of the Joint Motion. The public is statutorily
9 represented in this proceeding by Counsel for the Public,
10 K. Allen Brooks and Peter Roth, both are Senior Assistant
11 Attorneys General. The Joint Applicants are represented
12 by Barry Needleman and Cathryn Vaughn, from McLane, Graf,
13 Raulerson & Middleton. The City of Berlin is represented
14 by Merritt Schnipper and Peter Van Oot of Downs, Rachlin &
15 Martin. Edrest Properties, LLC, was an intervenor in this
16 matter, but withdrew from the proceeding by notice dated
17 May 27, 2011.

18 Before we begin with closing arguments,
19 I will take appearances. Closing arguments will be heard
20 in the following order: First, we will hear from Counsel
21 for the Public; we will then hear from the City of Berlin,
22 if it chooses to make an argument; the Applicant will then
23 give final closing arguments, as it bears the burden of
24 proof in these proceedings. Thereafter, I anticipate that

1 we will go directly into deliberations on the merits of
2 the matter.

3 So, may I now have appearances.

4 Counsel.

5 MR. BROOKS: Allen Brooks, Counsel for
6 the Public.

7 MR. SCHNIPPER: Merritt Schnipper, on
8 behalf of the City of Berlin.

9 MR. NEEDLEMAN: Barry Needleman, on
10 behalf of the Applicant, along with me is my colleague,
11 Kate Vaughn.

12 CHAIRMAN BURACK: Thank you very much.
13 And, so, we will now hear our closing arguments, starting
14 with those of Counsel for the Public.

15 MR. BROOKS: Thank you, Mr. Chairman.
16 Yesterday, June 2nd, we filed a document entitled "Counsel
17 for the Public's Proposed Conditions and Procedures".
18 That's essentially wrapping up what I would say in terms
19 of closing argument. We do believe that, given the new
20 entities involved, and given what we were trying to
21 achieve last time, that all the entities that we've
22 described should be bound by the Certificate. We
23 understand that a lot of those entities are specifically
24 formed for this purposes -- for the purposes of this

1 project, and for the purpose of not being subject to
2 outside liability, what's been described as
3 "recourse-free", but we want them to be "recourse-full"
4 with respect to the Certificate. We want everyone
5 involved to be able to be bound.

6 We have also a condition with respect to
7 possible decommissioning, if the Project does not begin by
8 -- or, is not completed by a certain date. I think that
9 speaks for itself in the filing.

10 There is a recommendation with respect
11 to organizational chart and with respect to some other
12 information including a note purchase agreement. I won't
13 go into that in detail, I'll let the pleadings speak for
14 itself.

15 We did, however, request something that
16 may be somewhat unusual, and that is related to the
17 efficiency of this process and the finality of this
18 process. This is supposed to be a process whereby all of
19 the aspects of the Project are fully evaluated, a
20 certificate is given, and then that evaluated Project goes
21 forward. We're already here the second time, after
22 recently having issued the first Certificate, with a
23 number of new entities, new financing agreements, and
24 other pretty significant changes. We don't want that to

1 happen again. We don't want this process merely to be
2 something that's a hurdle to get over for the Applicant in
3 order to show their lenders, whereby they close, and then
4 everything changes again, we're back before the Committee
5 essentially going through the same process. We want this
6 to be a process with finality with respect to that Project
7 that has been fully vetted, and essentially not just end
8 up back here in a few months, once the PPA is issued,
9 looking at new entities, a new structure, or new
10 financing.

11 So, we don't yet know what that might
12 entail, but we did note that that PPA has been -- the
13 conditionally approved PPA has been appealed. We
14 understand that the Applicant may be working on resolving
15 all issues in that appeal and all of the conditions raised
16 by the PUC. So, essentially, what we're looking for,
17 either today or in some other form, is for the Applicant
18 to demonstrate why the final deliberations today will
19 result in a review and a decision on what essentially
20 looks like the final Project. Not that we come back
21 again, in a few months again, with a substantially
22 different project. We want to have that efficiency. And,
23 if not, if things are going to change based on the PPA
24 approval or finality, then perhaps it's best to suspend

1 deliberations until that final time.

2 So, that is our request, as set forth in
3 our pleading. And, I really don't have anything else to
4 add, but I'll be happy to answer any questions.

5 CHAIRMAN BURACK: Are there any
6 questions at this time for Counsel for the Public?
7 Commissioner Below.

8 CMSR. BELOW: Thank you, Mr. Chairman.
9 Why do you believe that a date of July 31st, 2013 for a
10 deadline, I take it, to commence construction is necessary
11 or advisable?

12 MR. BROOKS: Again, there is no magic
13 date that we could choose. I think that, essentially,
14 we're looking for a two-year time frame would be a
15 reasonable time frame in which to, and I think that we
16 said "for the completion of construction", that two years
17 will be a reasonable time frame to achieve that. And,
18 we're not saying that the door slams shut in two years.
19 All it means is that they would come back and say to the
20 Committee "why isn't it completed by that time?" So,
21 there's no magic about July 31st. It was essentially a
22 two-year window.

23 CMSR. BELOW: How would you judge
24 completion?

1 MR. BROOKS: It seems -- I'm sorry. Go
2 ahead.

3 CMSR. BELOW: Would you expect it has to
4 be in service, producing power by that date?

5 MR. BROOKS: We can determine, if you
6 wish, further the definition of "completion". But my
7 understanding would be either in service or capable of
8 being in service at that time. No further physical
9 modifications would be necessary to put the plant in
10 service at that time.

11 CMSR. BELOW: Okay.

12 CHAIRMAN BURACK: Other questions?
13 Commissioner Ignatius.

14 CMSR. IGNATIUS: Thank you. Good
15 morning, Mr. Brooks. I guess I don't understand why it is
16 more efficient to stop proceedings today and wait until
17 the appeal process has run, and then re-gather, than to go
18 forward today and, if necessary, if there's an approval,
19 and if the results of the appeal change things, to then
20 address what needs to be changed. It seems to me, either
21 way, you have the potential for further proceedings. But
22 that, if there is no further action needed, you haven't
23 held things up by suspending today.

24 MR. BROOKS: And, there is no, and I've

1 actually talked to opposing counsel about this, too, no
2 one can guarantee that there won't be any changes in the
3 future, regardless of what certificate is issued for what
4 facility. And, so, what we'd like the Applicant to do
5 today is essentially to address that question that you
6 just asked, which is, "is it just as efficient to do
7 that?" I can think of at least one way where I believe at
8 least it wouldn't be efficient to issue a certificate and
9 then reopen hearings. Namely, if it's something that
10 actually could have been addressed simply in the way the
11 Certificate was drafted. In other words, we've had all
12 the testimony we need, we've had the deliberations. And,
13 maybe some -- simply some new information, either
14 financial or on the business entities is there, that,
15 through its deliberations and through its actual physical
16 drafting of whatever the Certificate looks like, that the
17 counsel -- that the Committee could have actually
18 addressed that. Rather than what I believe to be a rather
19 thorough and painstaking process of putting words to paper
20 and figuring out exactly what conditions are going to be
21 in there, what language is going to be used, and then
22 seeing a change that could have actually been addressed at
23 this time.

24 We are not really in a position to say

1 what exactly changes might occur, and maybe none are
2 forecasted to occur by the Applicant. So, it's really
3 something that we want in terms of disclosure, and maybe
4 today is a good time to make that disclosure and respond,
5 as to "what is the most efficient means of proceeding?"
6 And, again, we're not wedded to saying "you must suspend
7 deliberations." That's why we didn't file a motion to say
8 "suspend it till a future time." We just want a little
9 bit more information on "what's the most efficient process
10 and how can we go forward?"

11 CMSR. IGNATIUS: Have you discussed any
12 of these conditions with the Applicant prior to the filing
13 of the pleading yesterday or since the filing of the
14 pleading?

15 MR. BROOKS: We, and I personally told
16 opposing counsel, without providing them with the actual
17 document before filing, that we'd be looking to have
18 entities bound in the manner we've described; that we'd be
19 discussing a decommissioning provision; and, specifically,
20 we did have both emails and verbal discussions a few days
21 ago about the last topic we talked about, in terms of "is
22 it more efficient to suspend deliberations?" "Are there
23 going to be significant changes with the PPA?", etcetera.
24 And, with that, and one of the reasons that we worked out

1 this suggestion of saying "let's put some information on
2 the table and on the record today about what's inefficient
3 or more efficient."

4 CMSR. IGNATIUS: And, the documents that
5 you request in your Item 3, 4, perhaps it's just those
6 two, were those -- did you share with the Applicant that
7 you were looking for those documents before there would be
8 any action taken by the SEC?

9 MR. BROOKS: I don't know if we
10 specifically mentioned those documents. But I think that
11 we, throughout both the technical sessions and through
12 discussions, we've made it known that we do want to have
13 as much updated information as we can. So, I believe that
14 they have been so far forthcoming.

15 (Lights flickering in hearing room.)

16 MR. BROOKS: Looks like we need more bio
17 energy. They have been relatively forthcoming with
18 providing those types of documents, with the caveat that
19 they should be confidential and under seal, to the extent
20 that they need to be. So, I don't know that there's been
21 any resistance to that. And, I can't recall if we
22 specifically, again, put these specific documents in front
23 of them. Other than I believe we've talked about the
24 organizational chart even at the last open session.

1 CMSR. IGNATIUS: Thank you.

2 CHAIRMAN BURACK: If I may, I'll just
3 note that the lights have flickered several times. And,
4 if we do lose power, we will do our best to continue these
5 proceedings, with or without electricity. Attorney
6 Brooks, let me just ask you. I'm looking at Counsel for
7 the Public's Exhibit 5, which is the "Berlin Station
8 Capital Structure". And, I realize you may not have that
9 in front of you today. But I'm just trying to understand
10 which entities that are listed on that document you are
11 asking or suggesting should be bound by the terms of the
12 Certificate?

13 I don't know if you would -- do you have
14 a copy of that handy or not?

15 MR. BROOKS: I don't have a copy of it
16 in front of me. I do recall the document that you're
17 talking about.

18 MR. SCHNIPPER: I've got an extra one.

19 MR. BROOKS: And, Attorney Schnipper has
20 one.

21 (Atty. Schnipper handing document to
22 Atty. Brooks.)

23 CHAIRMAN BURACK: If you could make
24 reference to that document and tell us which of those

1 documents -- which of those entities on this page you were
2 specifically requesting to have bound?

3 Again, I would note that it is my
4 understanding that the entities that the Joint Applicants
5 have proffered or proposed to be bound are NewCo Energy,
6 LLC, Berlin Station, LLC, and Burgess BioPower, LLC.

7 MR. BROOKS: Correct. We would say
8 that, and we've said this in the pleading, but that every
9 entity listed on that chart. But I should be more
10 specific. It would be every entity that's actually in one
11 of the rectangles on that chart. Obviously, the
12 subcontractors, etcetera, would not necessarily be bound
13 by the Certificate.

14 CHAIRMAN BURACK: So, could you just
15 name them off please, just so we have a record established
16 as to which ones you are specifically asking.

17 MR. BROOKS: Certainly. Beginning,
18 essentially, from top to bottom as shown on this chart.
19 CSC Group Holdings, LLC; NewCo Energy, LLC; NewCo Energy
20 Holdings, LLC; BBP Holdings 2, LLC; BBP Holdings 1, LLC;
21 Burgess Holding, LLC; Berlin Station, LLC; and Burgess
22 BioPower, LLC.

23 CHAIRMAN BURACK: Thank you. That's
24 helpful. And, again, can you just help us understand why

1 it is that you believe those, the additional entities that
2 you've listed, in addition to the three that were
3 proffered by the Joint Applicants, what additional
4 protections or security would be provided as a consequence
5 of binding those other parties as well?

6 MR. BROOKS: Certainly. Some of the
7 entities, obviously, have a closer, let's say, connection
8 to Berlin Station, LLC, I'm looking at BBP Holdings 2 and
9 BBP Holdings 1. To the extent that either of those
10 entities is involved in actual decision-making of Berlin
11 Station, LLC, or has influence over the operation of
12 Berlin Station, LLC, either financially or in the
13 operation and production of electricity, we would want
14 those entities to be bound. That essential argument is
15 what carries all the way through.

16 To the extent that these entities either
17 are wholly owned by or wholly control another entity who
18 can make decisions that will affect the actual facility
19 that we're talking about, we see no reason why those
20 entities would not be bound. And, in fact, my
21 understanding is that most of these companies have
22 specifically been formed for the purpose of creating this
23 project. They're not outside entities. So, in that
24 respect, they do serve some function there. Some of them

1 have security interests in different areas of the project,
2 some of them just have at least managerial capability.
3 And, I understand that, in fact, many of the actual
4 individuals of these companies are the same. So, we don't
5 believe that what we're asking for is overly burdensome,
6 but we do believe that it provides a complete picture of,
7 you know, who might have control over any decision-making
8 at the project.

9 CHAIRMAN BURACK: Thank you. Another
10 entity that you identified in your document filed
11 yesterday, your "Proposed Conditions and Procedures", also
12 suggest that an entity known as "BBP Finance", I believe
13 it's "BBP Finance, LLC", should also be bound. And, can
14 you help us understand why you believe that entity should
15 also be bound?

16 MR. BROOKS: And, I apologize, because
17 Peter Roth did actually take the lead on most of the
18 financial aspects of this project. But, as we discussed
19 it, and as I discussed it with him, essentially, the logic
20 would be the same. That, to the extent that BBP Finance,
21 again, was a company created specifically for the creation
22 of this project and the operation of this project, that
23 many of the members are the same, and that it has some
24 control either over the assets in security or in the

1 actual operation of the plant, that there's no reason for
2 it not to be bound, and, in fact, that it should be bound.

3 CHAIRMAN BURACK: Thank you. Other
4 questions?

5 VICE CHAIRMAN GETZ: Yes, Mr. Chairman.
6 I just wanted to make it clear or make sure I understand
7 for the record. So, you've gone through with counsel and
8 he's identified one, two, three, four, five, six, seven,
9 eight entities, plus Finance, that would be bound. And, I
10 think you mentioned that the Applicants are proposing
11 three entities. Can we just make sure what those three
12 entities are?

13 CHAIRMAN BURACK: Yes. My understanding
14 is that the three entities that the Applicant has proposed
15 to be bound are NewCo Energy, LLC, which, again, on this
16 Counsel for the Public's Exhibit 5 would be toward the
17 upper right-hand side. And, then, two entities down at
18 the bottom of the corporate structure, Berlin Station,
19 LLC, and Burgess BioPower, LLC.

20 VICE CHAIRMAN GETZ: Thank you.

21 CHAIRMAN BURACK: So, essentially, the
22 bound entities would be those three. And, all the
23 entities here with the word "Holding" or "Holdings" in
24 their names would not be -- are not being proposed by the

1 Joint Applicants to be bound. Likewise, BBP Finance, LLC,
2 has not been proposed, at least at this time by the Joint
3 Applicants to be bound.

4 Okay. Other questions for Counsel for
5 the Public at this time?

6 (No verbal response)

7 CHAIRMAN BURACK: Okay. Thank you very
8 much, Attorney Brooks. Attorney Schnipper, do you have
9 any?

10 MR. SCHNIPPER: I do have a few
11 comments. First, I'd just like to say that the position
12 of the City is that they would urge the Committee to move
13 directly to deliberations and to grant this Joint Motion
14 in its entirety. The City believes that a tremendous
15 amount of effort has gone into this process, and including
16 the issuance of a very detailed and protective
17 certificate. And, the City is eager to see the benefits
18 of this Project to begin to flow, both to itself and to
19 the State of New Hampshire more broadly.

20 Before I move into specific comments
21 about the motion, I'd like to address Counsel for the
22 Public's proposed conditions, if I might. The City has no
23 issue with the binding of additional entities. But it has
24 to strongly oppose the inclusion of Proposed Condition 2,

1 regarding the triggering of decommissioning terms,
2 especially as of July 1st, 2013, which we would just note,
3 you know, we're operating under the assumption that, when
4 construction begins, we're looking at a 27-month time
5 horizon to complete this Project. So, obviously, that
6 date, although counsel stated that, you know, that date
7 wasn't something they were wedded to, you know, just
8 doesn't allow enough time.

9 But, more generally, I think, when the
10 Committee decided to include decommissioning terms in the
11 Certificate or the requirement of decommissioning terms in
12 the Certificate, it did so on the basis of basically
13 concerns about both public safety and aesthetics within
14 the City of Berlin. Those concerns are appreciated and I
15 feel they're meaningfully addressed by the Certificate
16 terms. And, the Certificate envisions a process where the
17 City and the Applicant together crafts decommissioning
18 terms for final approval by the Committee before
19 construction can begin.

20 The City's goal is to have a functioning
21 facility that's both employing members of its community,
22 and it's patronizing secondary businesses, and, you know,
23 providing kind of a stable, industrial base there. So,
24 its goal is to not see the decommissioning terms kick in.

1 And, while the City views them as an important protection
2 in the event that such projects -- that this Project might
3 fail, you know, I think the City's goal is to make sure
4 that it does not fail.

5 So, you know, the City -- these final
6 terms will have triggers, they will have time frames.
7 And, as I think the Committee knows, there's still
8 negotiations ongoing between the City and the Applicant
9 about how those terms will finally be structured, and they
10 will be subject to the Committee's approval. But the City
11 firmly believes that that's a matter between the Applicant
12 and the City, and that the Committee will take a look at
13 those final terms and decide if they're sufficient. And,
14 so, we just oppose the inclusion of such a triggering of a
15 show cause date.

16 In terms of submission of additional
17 paperwork to the Committee, Items 3 and 4, the City again
18 doesn't have any, in fact, it thinks it's a good idea for
19 more submissions, if the Committee wants those. But it
20 strongly opposes the idea that a vote on this motion or
21 the deliberations on this motion should be delayed pending
22 the submission of those documents.

23 Again, you know, before construction can
24 commence, the full financing package will have to be

1 submitted to the Committee. We assume that that includes
2 a review of those documents, and not just simply a formal
3 submission. So that any opportunity to object to or want
4 clarification from the Committee as to the contents of
5 those documents will still be there before construction
6 can commence. So, I don't think there's any real reason
7 to delay moving on this motion, which we see as a very
8 kind of discrete substitution of certain parties that
9 don't change the functional and really broader terms of
10 the Certificate.

11 And, with regard to the fifth condition,
12 which is about suspending deliberations, you know, unless
13 the Applicant can demonstrate that there will be no change
14 brought by the appeal process, again, construction cannot
15 commence until the approved PPA is with the Committee.
16 There is no, you know, if this condition is denied, I
17 mean, we're still going to -- nothing's going to happen,
18 the ground is not going to be broken until the appeals
19 process runs its course, and the, you know, the fully
20 approved PPA is before the Committee.

21 So, we just think, in effect, adding
22 this sort of condition is going to add further delay to a
23 process that already has become somewhat attenuated. And,
24 from the City's perspective, the sooner we can move into

1 kind of completing the permitting and planning process and
2 begin the construction and operation process the better.

3 So, with regard -- so, in light of those
4 comments, I'd just simply like to say more generally that,
5 from the City's perspective, the changes proposed by the
6 Applicant are only going to serve to strengthen the
7 process and strengthen the Applicant's ability to run this
8 Project, both technically, financially, and managerially.
9 We see the change in corporate structure, to the extent
10 that it eliminates entities, as simplifying both operation
11 and enforcement, if enforcement becomes necessary of
12 Commission terms.

13 It's generally recognized that a lot of
14 what we're seeing in the corporate structure is basically
15 happening in order to facilitate the debt financing of
16 this project. And, while it's complex, I think that the
17 Committee, in its original Certificate decision, noted
18 that at this point debt financing, which is the reality of
19 projects of this scope, and that developers just don't do
20 these things off their balance sheet anymore. And, so
21 that, to the extent that these changes can facilitate
22 that, that financing, it's essential to allowing this
23 Project to move forward.

24 In addition, you know, specific aspects

1 of the financing, and I'm thinking of the New Market Tax
2 Credits here, you know, are going to permit additional
3 benefits to flow. And that, while the Project itself
4 would go forward in any event, you know, the City would
5 see a loss of both the Revolving Loan Fund and a direct
6 grant if the New Market Tax Credits themselves don't come
7 into play. So, for that reason, we strongly support, you
8 know, the approval of the new corporate structure.

9 Very briefly, with regard to the change
10 in engineering and construction contractors. It seems
11 that we're seeing only an increase in the resources and
12 capabilities of the entities that are being brought in. I
13 thought Homeland seemed like an impressive organization,
14 but there's no denying that Babcock & Wilcox and its
15 subsidiaries are nationally known and recognized entities
16 with a lot of expertise in this area. And, we would say
17 that the addition of Waldren to a major role is just a net
18 gain for the State of New Hampshire as well.

19 As far as the wood supplier change goes,
20 Carrier seems to have more resources than Cousineau had.
21 They're going to be bound by a contract and Certificate
22 terms that provide the same level of protection as were
23 going to be available when Cousineau was running the show.
24 So, if anything, I'd say there's an improvement, in terms

1 of resources that are already stationed in the North
2 Country. And, there is no opportunity for any substantive
3 change for the worse, because all the binding terms in
4 both the contract and the Certificate remain.

5 Finally, with regard to the increase in
6 operating capacity from 70 to 75 megawatts, again, I would
7 note that in the original decision this Committee noted
8 that the ultimate goal of the Applicant was to move to a
9 net generation capacity of 70 megawatts; this realizes
10 that. And, from what we've heard, it realizes that
11 without any additional use of fuel or other resources, and
12 purely by added efficiencies, which I think we should all
13 laud. I mean, that's great. And, especially given the
14 Applicant's acceptance of the conditions imposed by the
15 PUC with regard to the PPA, that additional capacity is
16 not going to be a required purchase by the ratepayers.
17 It's basically going to go to the market. If it's needed,
18 it will be available. If it's not, nobody is going to
19 have to spend money on it. So, it seems to me and to the
20 City as though that's basically a win/win.

21 So, in conclusion, I would just simply
22 say we would urge the Committee to grant this Joint
23 Motion, after proper deliberation, but without any further
24 delay and without the addition of any conditions that

1 would cause further delay, and to allow very significant
2 and far-reaching benefits both to the City of Berlin and
3 to the State of New Hampshire to begin to flow.

4 So, that's all I have to say. If there
5 are any questions, I'd be happy to answer them.

6 CHAIRMAN BURACK: Thank you very much,
7 Attorney Schnipper. Are there questions for Attorney
8 Schnipper from members of the Committee? Director Scott.

9 DIR. SCOTT: Good morning. I just want
10 to, just to clarify, I think you said it well, but I just
11 want to clarify. So, is it your position, the Town's --
12 the City's position that, regarding the Counsel for the
13 Public's Proposed Conditions and Procedures, that there's
14 -- are there any parts of that that the City finds
15 desirable or feels necessary?

16 MR. SCHNIPPER: I wouldn't say that the
17 City feels any of them are necessary. The City has no
18 objection to the binding of the additional entities. And,
19 it has no objection and thinks it's wise to have
20 submission of additional paperwork, if the Committee will
21 find that helpful. It's just the City's position that
22 there's no need to delay these proceedings. That that can
23 be part of the final submission of financing paperwork.

24 DIR. SCOTT: Thank you.

1 CHAIRMAN BURACK: Other questions for
2 Attorney Schnipper?

3 (No verbal response)

4 CHAIRMAN BURACK: If not, thank you very
5 much, Attorney Schnipper. Attorney Needleman.

6 MR. NEEDLEMAN: Thank you, Mr. Chair. I
7 think what I'll do is begin by commenting on the Counsel
8 for the Public's conditions, and then conclude by
9 summarizing for the Committee exactly what it is we're
10 asking for here.

11 With respect to Condition 1, the binding
12 of these various entities, this is something that Public
13 Counsel did raise with us before yesterday and we were
14 aware they would be interested in. We object to this, as
15 made clear in the proceeding. We have offered up Berlin
16 Station, Burgess BioPower, and NewCo as the entities to be
17 bound here. I think it would be helpful for the Committee
18 to recall exactly how we came to this place during the
19 proceedings last year. It was at that time that the
20 ownership structure was in some flux here. And, that the
21 Committee was aware that the Project was in the process of
22 being sold, and that these new entities were going to be
23 purchasing it. We detected at that time some unease on
24 the part of the Committee regarding that process. And,

1 so, at that time we offered to have these other entities
2 bound, if it would make the Committee more comfortable.
3 We thought that that was probably a little bit unusual, in
4 terms of how these processes normally work, but we thought
5 it was the appropriate thing to do at the time, and we
6 were comfortable with that.

7 We came into this proceeding recognizing
8 that that having been done, we should try to do something
9 comparable. And, so, that's why we offered Burgess
10 BioPower, Berlin, and NewCo as the entities to be bound.

11 We are concerned about binding all of
12 these other entities, only because, to pick up on what the
13 Chair said, we don't see any security that would be gained
14 by binding these other entities. We simply don't see any
15 value to it. And, more importantly, it just strikes me as
16 an unusual precedent, to start binding every entity in an
17 ownership chain. I wish I had perfect recall about all of
18 the other certificates that this Committee has issued, and
19 I don't. I'm familiar with some of them. And, for
20 example, in the case of the ConEd facility that was
21 originally certificated about 12 years ago, I don't
22 believe the Committee would have thought to reach up the
23 chain and bind the ultimate ConEd entity in New York, or
24 wherever they're located, I think that it was the facility

1 that was bound. And, so, I believe that's the appropriate
2 way to do it. And, I just -- I don't believe it's
3 appropriate to reach up and bind every entity in the
4 chain. And, I'm not sure there's much more for me to add
5 on that point.

6 On Condition 2, Mr. Schnipper, I think,
7 raised those issues very well. I was generally aware from
8 public counsel that they were going to add something
9 having to do with decommissioning. I wasn't aware of the
10 specific condition. I will just echo Mr. Schnipper's
11 objections. I think that the Committee has adequately
12 dealt with decommissioning. Certainly, the July 31st date
13 is not workable, given a 27-month construction timeline.
14 And, I really, frankly, see no need for this condition to
15 be added.

16 Three (3) and four (4) are ones that I'd
17 like to focus on just a little bit. These are both ones
18 that we were not aware of before yesterday. The first
19 time I saw these two conditions was when we got this
20 filing yesterday. Certainly, to the extent that the
21 Committee feels that the information that Public Counsel
22 is requesting would have some value and wants to order us
23 to produce it, maybe as part of a closing package or
24 before construction, that's fine. We can do that. But I

1 certainly object to the notion that we should be required
2 at this late hour to now create new information and
3 produce it prior to a Committee vote.

4 Number 5, Public Counsel and I generally
5 talked about this issue. Public Counsel, I think,
6 originally was contemplating filing a motion. And, we
7 worked together to take this path instead. I certainly
8 appreciate their willingness to work with us on that and
9 avoid a motion practice. That being said, we do object to
10 this approach. We object to such a standard being imposed
11 on us like this, certainly at this late hour. This
12 proceeding is almost complete. It has been going on for
13 approximately three months. This is the third time this
14 Committee has gotten together on this matter. There was a
15 day-long technical session. There has been a fair amount
16 of discovery provided from us. And, the Committee has now
17 heard all of this and is here today and ready to move
18 forward, and we think they should move forward. And, we
19 think it would be unreasonable and unfair, frankly, to
20 suddenly stop this proceeding because there are third
21 parties involved in other matters that we have no control
22 over, who may or may not take some type of action.

23 Moreover, as some of the Committee
24 members I believe are aware, there are significant efforts

1 underway to try to address those matters in those other
2 proceedings. And, hopefully, those will be resolved. I
3 can assure you, my client has no desire to be in front of
4 this Committee again, and I suspect the Committee has no
5 desire to have any further proceedings that are necessary.
6 And, it is our hope that this will, in fact, be the end of
7 this process.

8 But, certainly, we are at a point where
9 efficiency does not dictate stopping this process now.
10 Efficiency dictates continuing this process and having it
11 be finished, so that, with any luck, this Project can go
12 forward in short order and start bringing significant
13 economic benefits to the people in the North Country. So,
14 those are my views with respect to the conditions that
15 Public Counsel has presented.

16 Let me just quickly circle back and
17 summarize for the Committee now exactly what it is we're
18 asking for here. There were four elements to our motion.
19 I'm going to briefly address each. I'm not going to go
20 into all the evidence that was presented. The first was a
21 request that, in this revised corporate structure, that
22 the Certificate be transferred to the new entity Berlin
23 Station. We provided this chart for you, Exhibit 5, that
24 shows you the structure and where Berlin Station fits into

1 it. We provided information about the structure, why it's
2 needed, the nature of the financing. And, the fact that
3 this new Berlin Station is going to have all of the
4 attributes of the old Laidlaw Berlin BioPower and PJPD.
5 And, so, based on all of that evidence, we are asking that
6 you transfer the Certificate to Berlin Station.

7 The second issue raised in our Joint
8 Motion was a Notice of Change in Major Contractors, which
9 was required by the Certificate. The Certificate
10 originally contemplated that Homeland would be the
11 construction contractor, and that its subsidiary,
12 Fibrowatt, would be the operations contractor once the
13 facility was up and running. We provided notice in our
14 Joint Motion that we would like to substitute, for
15 Homeland, Waldren Engineering, backed by Shaw Group, and
16 that we would like to substitute, for Fibrowatt, Delta
17 Power Services, which is a subsidiary of Babcock & Wilcox.

18 We provided what I believe was
19 substantial evidence supporting the fact that these are
20 all excellent, highly experienced entities, who we believe
21 will do an exceptional job in the roles that we
22 contemplate for them.

23 The third thing that we asked for in the
24 Certificate was an amendment to be able to replace

1 Cousineau, the wood supplier, we RCT. You heard that we
2 could not reach final financial terms with Cousineau, and
3 so we sought to replace them with RCT. The contract, as
4 signed right now, is virtually identical to the Cousineau
5 contract, but for just two conditions; one, adding
6 additional storage during mud season, the other condition
7 replacing the pledge of stumpage with a performance bond
8 as security.

9 You heard about RCT's substantial
10 capabilities. And, you also heard, I think most
11 importantly for a lot of members of this Committee, that
12 RCT understands the sustainability requirements, they are
13 incorporated into the contract. They will be incorporated
14 into the supplier agreements. And, RCT, as an entity, has
15 substantial experience already, before even taking this
16 Project on, dealing with issues of sustainability, because
17 of the customers it now supplies.

18 And, then, finally, we asked for an
19 amendment in the Certificate to increase the facility's
20 megawattage from 70 to 75 megawatts. We presented
21 evidence showing that this is purely an efficiency change.
22 That it will not have any effect on critical facility
23 parameters, like air emissions, truck traffic, noise, wood
24 consumption, things like that. It is purely an efficiency

1 issue. And, so, we are asking that you amend the
2 Certificate accordingly to reflect that increase.

3 And, I will just say in conclusion that
4 I'm certainly happy to answer any questions, and that we
5 very much appreciate the Committee's time and
6 consideration in this matter.

7 CHAIRMAN BURACK: Thank you very much,
8 Attorney Needleman. Are there questions from the
9 Committee for Attorney Needleman? Commissioner Below.

10 CMSR. BELOW: Thank you, Mr. Chairman.
11 Just to be clear, as I recall, you described the role of
12 BBP Finance as involved as perhaps an issuer in the New
13 Market Tax Credit structure. Could you just clarify or
14 confirm that, relative to Exhibit 5, which is described as
15 "Berlin Station Capital Structure", which it seems like,
16 if they're just involved in the NMTC tax credit, they
17 wouldn't really be involved in the capital structure. If
18 you could just confirm that?

19 MR. NEEDLEMAN: I will try to be as
20 specific as I can. I'm operating at a little bit of an
21 information deficit with this one. My understanding is
22 that BBP Finance exists for the purpose, as you said, of
23 facilitating the New Market Tax Credit transfer of funds.
24 That it is not part of this ownership structure. And,

1 that it could, in theory, be placed on this chart simply
2 to show where it fits in. But, in terms of ownership and
3 control, my understanding is that it does not play a role.

4 CMSR. BELOW: Thank you.

5 CHAIRMAN BURACK: If I may, while we're
6 on the subject of BBP Finance, I'm not sure if I heard you
7 speak specifically to Condition 4 or the fourth request
8 that the Counsel for Public made, which is that BBP
9 Finance be bound by the terms and conditions of the
10 Certificate. Did you speak to that specifically? And,
11 even if you did, if you could just repeat what your
12 position would be on that issue.

13 MR. NEEDLEMAN: That's -- are you
14 talking about the first request? It seems like it, yes.

15 CHAIRMAN BURACK: Well, perhaps I'm
16 mistaken here. Yes. I'm sorry, that is part of the first
17 request. I had it broken out separately. I apologize.
18 Okay.

19 MR. NEEDLEMAN: Yes. I would say,
20 broadly speaking, we're opposed to any parties besides the
21 three that we proposed being bound. With respect
22 specifically to BBP Finance, based on my understanding
23 that it's not part of the ownership structure, I would
24 certainly see no sense to having that bound.

1 CHAIRMAN BURACK: Thank you.

2 Mr. Harrington.

3 MR. HARRINGTON: Yes. With regard to
4 Counsel for the Public's Condition 5, this is the one that
5 talks about the appeal to the Supreme Court, and there was
6 a statement that was just made by the attorney for Berlin
7 to the effect that "the ground wouldn't be broken until
8 this issue was resolved." I think, earlier, there was a
9 statement made sometime ago, and maybe at the original
10 hearings, that "construction wouldn't start until there
11 was a non-appealable PPA in place." Is that still the
12 position or would you -- is it the position that you would
13 go forward as soon as allowed by the conditions imposed by
14 this Committee, whether or not the issue with the appeal
15 to the Supreme Court had been resolved or not?

16 MR. NEEDLEMAN: Well, I can't give you a
17 definitive answer on that, but I could try to shed some
18 light on it. First of all, once this Committee has taken
19 final action and once the PUC has taken final action, we
20 certainly, from a regulatory standpoint, feel we would be
21 in a position to be able to go forward. Whether or not we
22 could come up with a way to convince the lenders to allow
23 us to go forward, subject to some sort of appeal risk, is
24 something I don't know. We might certainly try to do

1 that. I simply don't know whether we could be successful.
2 I also, frankly, don't know whether other efforts would be
3 successful in taking that appeal risk away. I'm certainly
4 hopeful they will be.

5 MR. HARRINGTON: Okay. When you say
6 "other efforts", you mean negotiations with the parties
7 that are making the appeal?

8 MR. NEEDLEMAN: Yes.

9 MR. HARRINGTON: Okay. And, with regard
10 to Public Counsel's Condition 1, you had mentioned, going
11 back to this Exhibit 5, that your position was that you
12 wanted NewCo Energy, LLC, Burgess BioPower, LLC, and
13 Berlin Station, LLC, to be the entities that were bound by
14 the terms and conditions of the Certificate. And, in just
15 looking at the way this thing flows, then who would be
16 responsible for the 1 percent of BBP Holdings 2, LLC,
17 because they don't seem to fit underneath any of those
18 others that would be -- unless it comes down to Berlin
19 Station, LLC? I'm not sure how that would work.

20 MR. NEEDLEMAN: I'm sorry. I'm not sure
21 I understand your question.

22 MR. HARRINGTON: Well, if you look at
23 the other entities on here, everything below NewCo, NewCo
24 Energy, LLC, it directly reports through them, the Burgess

1 Holdings, --

2 MR. NEEDLEMAN: Right.

3 MR. HARRINGTON: -- various ones. And,
4 then, the other two entities would be listed themselves,
5 burgess BioPower, LLC, and Berlin Station, LLC. But BBP
6 Holdings 2, LLC, doesn't report through any of those
7 entities, like the others do. It reports up to CSC Group
8 Holdings, LLC, which you're not proposing to be bound.
9 But I believe they own 1 percent of the Project, correct?

10 MR. NEEDLEMAN: That's correct. And,
11 I'm not sure you're asking me to explain why those two are
12 separated, I think that was explained. But --

13 MR. HARRINGTON: That was, excuse me
14 that was explained. I'm just wondering who is going to be
15 responsible for that one percent?

16 MR. NEEDLEMAN: Sure. I think the way
17 that works is, if you recall in the original proceeding,
18 we submitted what turned out to be "Committee Exhibit 1".
19 And, within Committee Exhibit 1, we provided a breakdown
20 of who the investors were in NewCo Energy, and one of
21 those investors was CSC Group Holdings. So, it becomes a
22 little bit circular, because, when you follow BBP Holdings
23 2 up to CSC, and then back to NewCo, you find that CSC
24 Group Holdings is actually one of the investors in NewCo

1 as it stands right now. And, this chart really, I don't
2 think, should place CSC necessarily above NewCo. I mean,
3 properly, it should be below it, because CSC is one of
4 many components of NewCo.

5 MR. HARRINGTON: Okay. Well, so, if you
6 move that down, then it would be picked up through that
7 chain that goes through CSC to NewCo?

8 MR. NEEDLEMAN: Yes. And, again, just
9 that there needed to be those two separate entities, I
10 believe it was for New Market Tax Credit purposes, there
11 needed to be two owners, so there wouldn't be any
12 disregarded transaction, I think was how it was described.

13 MR. HARRINGTON: All right. Thank you.
14 That helps. With regard to counsel's Condition 2, I mean,
15 obviously, I think the date of July 31st, 2013 is not
16 practical if you started construction today. Is there any
17 other date that you would think would be applicable there
18 or you just prefer not to see a date at all?

19 MR. NEEDLEMAN: Frankly, I would prefer
20 not to see this condition at all. I would think that the
21 Committee on its own would certainly have the power, if it
22 has any question about the progress, to call us in here
23 and ask us what's happening. I don't think a specific
24 condition is necessary. If the Committee ultimately

1 determines that one is necessary, at the very least I
2 would ask it to have in mind that the projected
3 construction schedule is 27 months. And, even if we
4 started tomorrow, we wouldn't be done until something like
5 September of 2013.

6 MR. HARRINGTON: And, one final, on your
7 condition, which is increasing the gross power output, was
8 there a completed interconnection agreement, I just cannot
9 remember, on the lower level, which I think was up to 70
10 megawatts before? So, it's --

11 MR. NEEDLEMAN: I'm being told "yes".

12 MR. HARRINGTON: Okay. And, so, now
13 you've submitted that to ISO-New England to make a change
14 to 75?

15 MR. NEEDLEMAN: Yes.

16 MR. HARRINGTON: And, that's not been
17 approved yet, it's still in negotiations or "in progress",
18 I guess you would say, "in process"?

19 MR. NEEDLEMAN: I'm told they expect
20 that to happen next week.

21 MR. HARRINGTON: All right. Thank you.
22 That's all I had, Mr. Chairman.

23 CHAIRMAN BURACK: Thank you. Other
24 questions for Attorney Needleman? Director Stewart.

1 DIR. STEWART: I understand your
2 objection to or I understand that you object to including
3 all these entities under the Certificate or naming them in
4 the Certificate. My question is, if the Committee were to
5 err on the side of conservatism, if you will, and
6 incorporate all of these entities into a Certificate,
7 what's the downside? Is there a downside to that? I hear
8 an objection, but I'm not understanding what the downside
9 would be.

10 MR. NEEDLEMAN: The primary downside,
11 from my perspective at the moment, and it's not
12 definitive, is that it could cause some discomfort for our
13 lenders. I have tried to get a definitive answer to the
14 question as to whether or not this would be a problem for
15 the lenders, and, honestly, I don't have that answer. All
16 I have is an expression that it could be cause for some
17 concern. And, so, my position is one erring on the side
18 of caution and trying to continue to do everything I can
19 to make this deal financeable, and still try to assure the
20 Committee that it is getting everything it requires to be
21 comfortable, which is why I'm taking the position I'm
22 taking. I cannot definitively tell you it would be a
23 problem for them. So, that's the reason why I'm
24 objecting.

1 CHAIRMAN BURACK: Commissioner Below.

2 CMSR. BELOW: Just along those lines, is
3 it fair to say that the three entities that you have
4 currently proposed to be bound by the terms and conditions
5 of the Certificate are in comparable places in the
6 ownership structure as the three entities that were bound
7 under the original Certificate?

8 MR. NEEDLEMAN: I believe it is, and I
9 think that's the reason we proposed it. We tried to get
10 the entities on the ground floor, who would be dealing
11 with the construction and operation, and we tried to get
12 the entity at the top, who is the ultimate owner, NewCo.
13 And, I would just remind the Committee again that the
14 entity you see here, NewCo Energy, LLC, is exactly the
15 same entity that you saw in the prior proceeding, NewCo
16 Energy, LLC. And, so, that was our intention, yes.

17 CHAIRMAN BURACK: Thank you. Can you --
18 there's a statement you made a short while ago in response
19 to a question I believe from Mr. Harrington that,
20 actually, I'm not sure I understood what you were trying
21 to tell us. And, again, I think you were making reference
22 to Counsel for the Public's Exhibit 5, Attorney Needleman,
23 where you pointed out that maybe the depiction of CSC
24 Group Holdings, LLC, which appears in the upper left-hand

1 side of this organizational chart, should actually be
2 dropped down so that it appears below NewCo Energy, LLC,
3 or parallel to it? I'm just trying to understand what you
4 were suggesting to us in terms of what the relationship is
5 between CSC Group Holdings and NewCo Energy, LLC?

6 MR. NEEDLEMAN: Again, I believe, and I
7 don't have it with me, that in the prior proceeding there
8 was an exhibit, which I think was Committee Exhibit 1. It
9 was one that the Committee, during the proceeding, asked
10 us to prepare. A component of that exhibit was to
11 identify who the investors are in NewCo Energy, LLC. We
12 provided a long list of investors, which included the
13 various individuals, and I believe also included CSC Group
14 Holdings. And, so, I was simply suggesting that CSC Group
15 Holdings is one of many owners of NewCo Energy. Where it
16 physically appears on the chart I'm not sure matters very
17 much. But it just, you know, it seemed to me that it
18 might be more appropriate to be a little bit lower. That
19 was all.

20 CHAIRMAN BURACK: All right. So, just
21 trying to come back, though, if I'm understanding you
22 correctly, you're telling us that CSC Group Holdings is an
23 owner of NewCo Energy, it's not the other way around?
24 NewCo Energy, LLC, is not an owner of CSC Group Holdings?

1 MR. NEEDLEMAN: That's correct. And,
2 Ms. Vaughn reminds me that, in the original motion we
3 filed on March 9th that initiated this proceeding, we
4 attached as an exhibit a chart which also showed a bubble
5 with other investors in NewCo Energy. Again, just to
6 remind the Committee that there are a series of investors
7 in NewCo Energy, not just CSC Group Holdings.

8 CHAIRMAN BURACK: Thank you. And, can
9 you tell us, was CSC Group Holdings, LLC, formed
10 specifically for the purposes of this transaction?

11 MR. NEEDLEMAN: No. CSC Group Holdings
12 existed prior to this transaction. I don't know more than
13 that, other than I do know that they were an owner of
14 NewCo at least as of last September, when we were here.

15 CHAIRMAN BURACK: And, can you tell us,
16 do you know whether CSC Group Holdings has holdings or
17 investments in other entities other than NewCo Energy,
18 LLC? That is, is it a single purpose entity? Was it
19 created specifically for the purpose of this project or is
20 it involved in investments in other projects as well,
21 separate and distinct from this project in Berlin?

22 MR. NEEDLEMAN: I'm being told it's
23 involved in other investments entirely separate and
24 distinct from this project. I think, yes, Ms. Vaughn has

1 reminded me that Matt Eastwick --

2 (Court reporter interruption.)

3 MR. NEEDLEMAN: Sorry. You need to get
4 me one of those "Slow Down" signs. Matt Eastwick, when we
5 testified, I believe testified to that point.

6 CHAIRMAN BURACK: Thank you. Other
7 questions? Commissioner Ignatius.

8 CMSR. IGNATIUS: Thank you. Mr.
9 Needleman, on the request for submission of updated
10 organizational charts prior to taking a vote, as requested
11 by Public Counsel, I'd like to break out the question a
12 little bit and ask you, separate from when any updated
13 information might be filed, first of all, are you opposed
14 to any submission of any updated or changed organizational
15 information?

16 MR. NEEDLEMAN: Separate from the timing
17 issue, no. If the Committee finds that it's helpful,
18 we'll provide it.

19 CMSR. IGNATIUS: And, have there been
20 any changes since the -- from the information that's
21 already been submitted in this proceeding?

22 MR. NEEDLEMAN: Not that I'm aware of.

23 CMSR. IGNATIUS: So, when you said
24 earlier "it wouldn't be fair to ask you to create

1 something new", is there anything new to be created in
2 response to Public Counsel's request?

3 MR. NEEDLEMAN: If you ask that BBP
4 Holdings somehow be represented on the chart, then I would
5 consider that to be new.

6 CMSR. IGNATIUS: Other than the BBP --

7 MR. NEEDLEMAN: BBP Finance, I'm sorry.

8 CMSR. IGNATIUS: Okay. Other than that
9 entity, BBP Finance, is there any change that would be
10 required to show current accurate information about the
11 organizational structure from the Exhibit 5 that was in
12 this proceeding?

13 MR. NEEDLEMAN: No.

14 CHAIRMAN BURACK: Commissioner Below.

15 CMSR. BELOW: Well, I think with one
16 exception, which was pointed out at the hearing, which is
17 NewCo Energy, LLC, has other investors besides CSC Group
18 Holdings, which was represented in your original Exhibit 5
19 in your filing?

20 MR. NEEDLEMAN: Correct.

21 CMSR. BELOW: So, just to point out, the
22 revised Exhibit 5 is perhaps not fully representational,
23 in that it doesn't show other investors in NewCo Energy,
24 LLC.

1 CMSR. IGNATIUS: And, also, in the
2 Condition Number 4, the first part of it asked for
3 "updated and complete debt/equity figure". Is there any
4 change in the debt/equity information that's already been
5 submitted to the SEC?

6 MR. NEEDLEMAN: Not that I'm aware of.

7 CMSR. IGNATIUS: If there were any
8 change, do you have the same answer, you would be prepared
9 to submit it to the Committee?

10 MR. NEEDLEMAN: I assumed we already
11 were going to, because we're required to submit the
12 closing package.

13 CMSR. IGNATIUS: The other aspect of
14 this that we've been talking about this morning, and you
15 had said "well, in the past, there may have been less
16 effort on the part of Site Evaluation Committees to bind
17 other participants in the chain of ownership", I think
18 it's a tension that we are struggling with, that the more
19 single purpose entities that are created and more the
20 project seem to be, and not only this project, seem to be
21 kind of compartmentalized into smaller units that are
22 created only for one purpose, the more the concern is
23 raised about "is there adequate protection in the event
24 something should go wrong?" Hence the talk about binding

1 other people, and that then creates other issues, whether
2 that's an appropriate tool.

3 So, how would you respond to that
4 concern? If it's not to bind those beyond the three that
5 you've identified, how do you assure the community of
6 Berlin and assure this Committee that there's adequate
7 protection if something should not go well?

8 MR. NEEDLEMAN: Sure. I certainly
9 understand that concern. And, it was with that concern in
10 mind that, when we filed this Joint Motion, we again
11 offered to have NewCo Energy, LLC, bound. You've got the
12 entity at the top of the ownership structure. I would
13 think, if we didn't offer that, you would take us to task
14 for it, and rightly so. What I'm suggesting is, you've
15 already got the entity at the top of the structure. So, I
16 have not heard anyone really articulate any value in
17 adding all of those intermediate entities. That's my
18 point.

19 CMSR. IGNATIUS: Thank you. Nothing
20 else. Mr. Chairman?

21 CHAIRMAN BURACK: Yes. I'm sorry.

22 CMSR. IGNATIUS: I did have another area
23 I meant to ask, if I may?

24 CHAIRMAN BURACK: Yes, Commissioner

1 Ignatius.

2 CMSR. IGNATIUS: The question that
3 Public Counsel asks is for "suspension of deliberations
4 today, if the Applicant is unable to demonstrate", try to
5 find their wording, "demonstrate that the appeal of the
6 PPA will not result in any significant changes to the
7 Project." Can you demonstrate that the appeal would not
8 have any significant changes or, if it did have
9 significant changes, how you would respond to those
10 issues?

11 MR. NEEDLEMAN: I'm not sure I can make
12 that demonstration. I can certainly sit here today and
13 tell you that, based on my reading of the tea leaves, I
14 don't think it will. Again, I want to reiterate, I think
15 it's unfair to hold us to that standard in the context of
16 this proceeding. And, I would also say that I think that
17 there is a condition in the existing Certificate that
18 actually contemplates this. Because, ultimately, what we
19 are required to do under the existing Certificate is to
20 come back to this Committee when the PUC has taken final
21 action, present the final PPA to you, explain the
22 differences in the PPA, and I think, again, assert that,
23 with these changes, we can still go forward. And, so, I
24 think that, whatever protections Public Counsel might be

1 seeking with respect to this, they already exist in this
2 context. And, so, that's the reason why, among others, I
3 don't believe it's appropriate to slow this process down
4 at this point.

5 CMSR. IGNATIUS: Did you just say that
6 you anticipate coming back to the Committee yet again to
7 discuss the PPA or that the proceeding we just took at the
8 end constituted that?

9 MR. NEEDLEMAN: I'm sorry. I didn't
10 hear the last part of that.

11 CMSR. IGNATIUS: If the Supreme Court
12 upholds the PPA as ordered by the Commission, do you
13 anticipate another proceeding before the Site Evaluation
14 Committee to talk about the adequacy of the PPA to reach
15 financing and go forward with the Project?

16 MR. NEEDLEMAN: No, I don't think so.
17 And, as I answer, I don't want to presuppose that the
18 Supreme Court will ever get to it. I would like to assume
19 that, when the PUC takes its final action, that will be
20 the end of it. I'm simply saying that there is a
21 condition in the existing Certificate that requires us to
22 notify the Committee that that PPA is final and explain
23 the changes. We have actually presented that in the
24 context of this proceeding. And, I suppose a view could

1 be taken that we have met that condition. I could
2 understand why the Committee may say "Well, you haven't,
3 because the PUC hasn't acted. So, you don't have
4 something final yet." If that were the view that was
5 taken, all I would anticipate, when it became final, was
6 probably a letter to the Committee providing notice and
7 asking that it verify that we met that condition. I would
8 not anticipate further proceedings. Just like I would not
9 anticipate further proceedings with respect to a lot of
10 other things that the Committee has required us to submit
11 prior to construction. I think we would simply submit
12 them and ask that the Committee sign off on them as
13 conditions of the Certificate that have been met.

14 CMSR. IGNATIUS: Thank you. I think I
15 misunderstood something you said before, so I appreciate
16 that.

17 MR. NEEDLEMAN: I'm sorry.

18 CHAIRMAN BURACK: Mr. Harrington.

19 MR. HARRINGTON: Yes. Just to follow
20 up, referring back to the Exhibit 5, the capital structure
21 diagram. And, I may be -- my memory might be certainly
22 wrong here, but I think what I remember is, if you look
23 down to the "equity" box there, where it says "NMTC", New
24 Market Tax Credit, "19.9 million". That money was going

1 to get to the Project through Burgess BioPower, LLC, is
2 that correct?

3 MR. NEEDLEMAN: I'm sorry, I don't know
4 the answer to that question.

5 MR. HARRINGTON: Well, what I was
6 getting to was, my real question was, there's also a large
7 amount in the "equity" box, there's also the "Investment
8 Tax Grant", under the ARRA 1603 funding. Which entity is
9 going to be receiving that money?

10 MR. NEEDLEMAN: Again, I'm sorry, I
11 don't recall. I do believe that that was the subject of
12 testimony, and we may be able to look that up for you.
13 But I don't want to make a mistake and guess at this
14 point.

15 MR. HARRINGTON: What I'm trying to get
16 with the line of questioning is, is one of these three
17 entities that you propose to be bound by the conditions
18 the ones that will be receiving -- actually will hold the
19 equity through the New Market Tax Credit and through the
20 Investment Tax Grant, because it's a substantial amount of
21 the equity, and I just wanted to see if it was indeed one
22 of those three?

23 MR. NEEDLEMAN: Again, I'm not certain
24 of the answer. I'm hoping that the answer is somewhere in

1 the testimony. But I don't want to guess on something
2 that I don't know.

3 MR. HARRINGTON: Fair enough. Thank
4 you.

5 CHAIRMAN BURACK: Any other questions at
6 this time for Mr. Needleman?

7 (No verbal response)

8 CHAIRMAN BURACK: Any follow-up
9 questions that any member of the Committee have for any of
10 the parties who have provided us with their summations
11 here today? Director Scott, and then Attorney Iacopino.

12 DIR. SCOTT: I guess I'll ask a question
13 to the Counsel of the Public. On the same exact topic
14 that was just being discussed, as far as who's held, what
15 entities. Can you help me out maybe and can you envision
16 a scenario for me where, other than Berlin Station, LLC,
17 Burgess BioPower, LLC, or NewCo Energy, if the other
18 entities could cause some kind of issue? Can you maybe
19 help me envision that?

20 MR. BROOKS: I don't know if they would
21 cause an issue, to the extent that they would purposefully
22 try to do something underhanded. But, depending on how
23 the financing goes, depending on how the Project actually
24 turns out, I don't know the answer. And, I don't know

1 whether someone with a 99 percent interest in the Project
2 may want the Project to do something else for financial
3 reasons that maybe isn't exactly in conformance with what
4 the Certificate is. I also don't -- I don't see how,
5 let's say, NewCo Energy, LLC, is listed on this chart, has
6 that direct interest in Berlin Station, LLC, as they only
7 have an interest, as far as this chart goes, in NewCo
8 Energy Holdings. NewCo Energy Holdings only has an
9 interest in BBP Holdings 1. That entity is the one that
10 controls the interest. So, to the extent that these
11 entities exist at all, and that they have been somewhat
12 separated and compartmentalized, if you want to go up the
13 chain to the next one that says "okay, who can actually
14 make the decisions when times are tough?" I don't think
15 that just binding NewCo Energy, LLC, gets you where you
16 need to go. Again, it's hard to envision all the
17 different scenarios. But, as Director Stewart mentioned,
18 it seems like there's little -- it's not a very onerous
19 requirement to bind these entities. They're essentially
20 single purpose entities. And, it gives us some comfort of
21 saying "well, we don't have to predict every scenario
22 where someone might make a decision financially as to what
23 to do if things are tough here." We know that everyone
24 involved is going to abide by the terms of the

1 Certificate, as they should. I don't believe any of these
2 entities would ever give testimony and could ever give
3 testimony to say "well, you know, certificate or no
4 certificate, if we have to, we're going to disregard what
5 the certificate says."

6 DIR. SCOTT: Thank you.

7 MR. IACOPINO: I just have one
8 housekeeping matter. And, I need to ensure that each
9 party that's here is comfortable with it, because I'm not
10 sure we got it into the record. But, in the original fuel
11 supply agreement and in the sustainability conditions,
12 there is reference to the document "*Good Forestry in the*
13 *Granite State*", I believe it was the 1997 version. It is
14 my understanding that each of the parties have agreed
15 that, through this process, we can amend that to include
16 the latest version, which I believe is a 2010 version, of
17 "*Good Forestry Practices in the Granite State*". Is that
18 the position of the Applicant?

19 MR. NEEDLEMAN: Yes, it is.

20 MR. IACOPINO: Is that the position of
21 the City?

22 MR. SCHNIPPER: Yes, it is.

23 MR. IACOPINO: And, is that the position
24 of Counsel for the Public?

1 MR. BROOKS: Yes, it is.

2 MR. IACOPINO: Thank you.

3 CHAIRMAN BURACK: If I may, Counsel for
4 the Public's question raised just another question in my
5 mind for Attorney Needleman. Attorney Needleman, would it
6 be correct to understand that any of the entities that
7 appear in this organizational chart below NewCo Energy,
8 LLC, are within, essentially solely controlled by the
9 entities above them? That is, there are no other entities
10 that have any ownership interest or control over these,
11 these intermediate entities?

12 MR. NEEDLEMAN: I'm going to say "yes",
13 but I just want to say -- can I get -- the answer is
14 "yes", but I just want to be perfectly clear. I believe,
15 in the original exhibit we filed, there was a bubble box
16 showing one other potential investor in NewCo Energy. As
17 of today, there is no additional investor there. I just
18 wanted to remind you of that situation. Subject to that,
19 the answer is "yes".

20 CHAIRMAN BURACK: Thank you. So, based
21 upon the current situation, unless some new investor were
22 to come along, effectively, the controlling -- the
23 controlling interest is going to be NewCo Energy, LLC,
24 with the exception here of the 1 percent interest, that's

1 the BBP Holdings 2, LLC, interest, that's 100 percent held
2 and controlled by CSC Group Holdings?

3 MR. NEEDLEMAN: That's correct.

4 CHAIRMAN BURACK: So, again, I'm just
5 trying to explore and understand whether the theoretical
6 risks or concerns raised by Counsel for the Public are --
7 whether there is, in fact, any substance to them, whether
8 they are purely theoretical or not. And, I'm wondering if
9 you want to say anything further to address that issue or
10 concern that has been raised here?

11 MR. NEEDLEMAN: I think I've covered as
12 much ground as I can. I have a difficult time coming up
13 with a practical concrete example of a risk that would be
14 covered by binding these other entities separate from what
15 we've offered. I can't tell you that there isn't one, I
16 just -- I can't think of one.

17 CHAIRMAN BURACK: Thank you. Director
18 Stewart.

19 DIR. STEWART: Are the officers, board
20 of directors, I'm not even sure what the structures are
21 here, officers, board of directors, *etcetera*, of NewCo
22 Energy the same as for BBP Holdings and Burgess Holding?
23 Are there different groups of individuals that are in
24 control of these different organizations?

1 MR. NEEDLEMAN: Yes, actually, let me
2 refer you to our responses to Public Counsel's Data
3 Request Number 10, where this question was actually asked.
4 And, we went down through each of the entities and
5 described who the manager was for the entity and who the
6 members were. And, for all of those entities below,
7 except for CSC Group Holdings and NewCo, all those
8 subsidiary entities are managed by Cate Street Capital.
9 So, it's the same manager. The members are different, but
10 that's just to reflect the boxes on the chart. But, in
11 terms of the manager, but for NewCo Energy and CSC Group
12 Holdings, the manager of every one of those entities,
13 according to our response in this data request, was Cate
14 Street Capital. That's Public Counsel Exhibit 1.

15 CHAIRMAN BURACK: That's Public Counsel
16 Exhibit 1 in this proceeding?

17 MR. NEEDLEMAN: In this proceeding.
18 Public Counsel Exhibit 1 in this proceeding, Page 4 and 5.

19 CHAIRMAN BURACK: Okay. Give us all
20 just a moment to find that please.

21 (Short pause.)

22 CHAIRMAN BURACK: Are there any further
23 questions?

24 (No verbal response)

1 CHAIRMAN BURACK: If not, I would
2 propose that we, unless folks feel they need a break, if
3 anybody feels they need a break, I propose that we simply
4 try to get through our deliberation process here, if that
5 is acceptable to the members of the Committee? Steve, are
6 you okay?

7 (Brief discussion with Court Reporter.)

8 CHAIRMAN BURACK: Why don't we take --
9 we'll take about five minutes here. Let's try to be back
10 here by 11:35 by the clock on the back wall here, if we
11 could please.

12 (Recess taken at 11:31 a.m. and the
13 hearing reconvened at 11:42 a.m.)

14 CHAIRMAN BURACK: Everybody ready to
15 resume?

16 CMSR. BALD: We are.

17 CHAIRMAN BURACK: Okay. Thank you. Let
18 us commence our deliberations. And, I want to urge us to
19 try to be as complete and, at the same time, as efficient
20 as we can be in our deliberative process. I'm going to
21 suggest that, rather than a general discussion here of
22 these issues, that I think we all have sufficient
23 familiarity with the overall structure and issues here,
24 based on our original proceeding here, as well as the

1 process that we've been through on the -- I think it was
2 the 18th of May and then today. So that what I suggest we
3 do is that we move directly to discussion, deliberation
4 on, and then motions and votes with respect to each of the
5 specific items that have been requested in the Applicant's
6 Joint Motion, and then that we take up consideration of
7 the additional requests or conditions proposed by Counsel
8 for the Public. I think that would probably be the most
9 direct approach here.

10 Do you have a different suggestion,
11 Commissioner Ignatius?

12 CMSR. IGNATIUS: No, I'm happy with
13 that. I just did want to make one clarification before we
14 get into it. And, that's -- we're in a complicated
15 situation here with different tribunals. And, just to be
16 sure that the record's clear, because I think we've and I
17 think I have been one to have used words that may have
18 been misleading.

19 We have the Public Utilities Commission
20 issuing an order that approved conditionally the PPA and
21 the conditions, there were a number of significant
22 changes. We have in response to that a filing from PSNH
23 that represents that the revised PPA is in compliance with
24 the Commission order, and that's now pending before the

1 Commission. There is a rehearing request on the
2 Commission's order from another party challenging the
3 Commission's determination. There is, separate from that,
4 although it crosses into some similar issues, but a
5 separate proceeding that is an appeal to the Supreme Court
6 on a prior legal issue coming out of the PPA docket, and
7 that's now been docketed at the Supreme Court. It isn't
8 an appeal of the Commission's order on the PPA, because
9 that's still pending before us.

10 So, I think we've kind of crossed
11 between the two -- the two notions that there may yet be
12 an appeal of the PPA itself in the Supreme Court. But, if
13 that should happen, that hasn't happened yet, because it's
14 still sitting before the Commission to determine whether
15 the rehearing request is appropriate, and whether the
16 filing that was made by PSNH is in compliance with the
17 Commission's conditions. Thank you.

18 CHAIRMAN BURACK: Thank you very much.
19 Okay. Here's how I propose to proceed. The Joint
20 Applicants have identified four categories of relief that
21 they're looking to have addressed. And, I'm going to take
22 these a little bit out of order, because I think this will
23 be the most efficient way for us to do this. What I want
24 to do first is take up the second of their requests, which

1 is the change in fuel supplier from Cousineau to RCT.
2 That item is, in fact, under the terms of the original
3 Certificate, an item that only requires notification to
4 us. Having said that, there is -- am I mistaken about
5 that? I'm sorry, the fuel supplier does require approval
6 by the Committee?

7 MR. IACOPINO: Yes.

8 CHAIRMAN BURACK: Okay. So, let's take
9 up that issue first, and would just entertain any general
10 discussion of that, and then a motion. If somebody would
11 like to generally discuss that topic, and then, if there's
12 anybody who feels that they wish to make a motion as to
13 whether to approve that request for a change in condition
14 or a change in fuel supplier? Director Scott.

15 DIR. SCOTT: It's my observation that
16 the new fuel supply agreement that we are being asked to
17 approve is actually, in many aspects, an improvement upon
18 the original one. They have a 45 day supply requirement
19 for mud season, that should provide the facility greater
20 surety as it operates. And, RCT seems to have the proper
21 credentials and experience. And, so, I can make a motion
22 now, if you'd like, but I think it's a positive.

23 CHAIRMAN BURACK: Okay. I would also
24 just offer the observation that the agreement with RCT

1 includes a performance bond in lieu of the stumpage
2 pledge, which I think one could also view as being a more
3 favorable or beneficial term than was considered with
4 Cousineau. I believe we also heard testimony that RCT is
5 simply a larger entity, a larger corporate entity, with
6 greater assets than Cousineau had, therefore, would bring
7 greater capabilities overall to perform, and it's I think
8 what the record would generally reflect.

9 Are there any other points anybody would
10 like to make with respect to that issue?

11 (No verbal response)

12 CHAIRMAN BURACK: If not, is there a
13 motion on this? Director Scott.

14 CMSR. BALD: I was going to second it.

15 CHAIRMAN BURACK: Okay.

16 CMSR. BALD: But I thought I might wait
17 till you make it first.

18 DIR. SCOTT: I move that we accept the
19 change of -- make sure I get the wording right here --
20 change of fuel supplier as proposed by the Applicant.

21 CHAIRMAN BURACK: Is there a second?

22 CMSR. BALD: Second.

23 CHAIRMAN BURACK: A second.

24 MR. HARRINGTON: Just a question.

1 CHAIRMAN BURACK: Mr. Harrington.

2 MR. HARRINGTON: Just so I'm clear what
3 we're doing then, we'll be going to the condition that
4 says that "the Applicant shall not commence construction
5 until such time that it has filed, with the Subcommittee,
6 a signed Fuel Supply Agreement with Cousineau Forest
7 Products", and substituting the "RCT" instead, is that
8 correct?

9 MR. IACOPINO: Yes.

10 CHAIRMAN BURACK: That is correct. And,
11 that is on Page 4, second paragraph from the bottom of
12 Page 4 of the Certificate.

13 MR. HARRINGTON: Thank you.

14 CHAIRMAN BURACK: Okay. Commissioner
15 Below.

16 CMSR. BELOW: And, is it that Fuel
17 Supply Agreement that would reflect the updated version of
18 the -- what's it called, the "*Good Forestry Practices*
19 *Manual*"?

20 MR. IACOPINO: Just for housekeeping,
21 that would actually be reflected in both that provision,
22 but also in the sustainability conditions, which are also
23 attached to the Certificate that were agreed upon by the
24 parties.

1 CMSR. BELOW: Okay.

2 MR. IACOPINO: One adopts the other.

3 CHAIRMAN BURACK: So, Director Scott, is
4 it the intention of your motion that the change in the
5 sustainability conditions are also reflected in this?

6 DIR. SCOTT: Correct.

7 CHAIRMAN BURACK: Is that acceptable to
8 you as well, Commissioner Bald?

9 CMSR. BALD: Correct.

10 CHAIRMAN BURACK: Any further discussion
11 of the motion then?

12 (No verbal response)

13 CHAIRMAN BURACK: All right. If not,
14 all in favor, please say "aye"?

15 (Multiple members indicating "aye".)

16 CHAIRMAN BURACK: Any opposed?

17 (No verbal response)

18 CHAIRMAN BURACK: Abstentions?

19 (No verbal response)

20 CHAIRMAN BURACK: Okay. Thank you. I
21 believe that was unanimous. All right. Let us move to
22 then the third request of the Applicant, which is the
23 increase in gross power output from 70 megawatts to
24 75 megawatts. And, this issue is referenced, I believe,

1 on Page 5 of the original Certificate, is that correct?
2 Yes, it is. The second paragraph on Page 5 of the
3 Certificate. Somebody like to just address the record
4 with respect to -- that's been established on this issue?
5 Mr. Harrington.

6 MR. HARRINGTON: Yes. I think they made
7 a very good explanation as to why they were -- how they
8 were increasing the gross megawatt output from 70 to 75,
9 due to the changes in the design of the structure, which
10 would improve efficiency and not require the addition --
11 the use of additional fuel. So, therefore, there would be
12 no additional emissions, no additional truck traffic, and
13 anything that would be associated with consuming more
14 fuel. I see no problem with it. And, I guess we would --
15 I would say we should probably just amend that condition
16 to say up to 75 megawatts.

17 CHAIRMAN BURACK: Further discussion?
18 Mr. Scott. Director Scott.

19 DIR. SCOTT: I'd like to also note on
20 the record that, given that there are no increases in air
21 emissions due to this uprate, I think it's actually in the
22 public interest to get more power out of the same -- given
23 the same amount of pollution, if you will. So, I think
24 that's a positive thing also.

1 CHAIRMAN BURACK: Thank you. I would
2 also note that I believe we heard that they will be using
3 a new, rather than a used, steam turbine generator, which
4 is going to, among other things, optimize the steam
5 turbine generator's exhaust pressure. I believe we also
6 heard testimony that there may be a very small increase in
7 the overall decibel level, the noise level, but it would
8 be, I believe we heard, if not less than one decibel,
9 maybe even less than one-tenth of a decibel increase,
10 which may not even be noticeable to members of the public.

11 Are there any other items that people
12 would like to discuss with respect to this item before we
13 have a motion on this?

14 (No verbal response)

15 CHAIRMAN BURACK: Mr. Harrington, would
16 you like to make a motion with respect to this matter?

17 MR. HARRINGTON: Sure. I guess I would
18 make a motion that we accept the Applicant's change to
19 amend the condition for a gross unit uprate of up to
20 75 megawatts.

21 CHAIRMAN BURACK: Thank you. Is there a
22 second to Mr. Harrington's motion?

23 DIR. SIMPKINS: I'll second it.

24 CHAIRMAN BURACK: Director Simpkins,

1 thank you. Any discussion?

2 (No verbal response)

3 CHAIRMAN BURACK: If not, all in favor

4 --

5 CMSR. IGNATIUS: Just, Mr. Chairman, --

6 CHAIRMAN BURACK: Yes.

7 CMSR. IGNATIUS: -- the one thing is,
8 and I think that people all are accepting this, but to be
9 certain it's clear, is that this is subject to approval by
10 the ISO for the higher level, which, as we heard today, is
11 still pending.

12 MR. IACOPINO: If I could, Mr. Chairman,
13 just read for the Committee --

14 CHAIRMAN BURACK: Yes.

15 MR. IACOPINO: -- the section of the
16 Certificate that you would be amending. It's on Page 5,
17 it's the second paragraph. It reads: "Further Ordered
18 that the Applicant continue to cooperate with the
19 requirements of ISO-New England and obtain all ISO
20 approvals necessary to a final interconnection agreement
21 for a gross unit rating of up to 70 megawatts. Said
22 interconnection agreement shall be filed with the
23 Subcommittee prior to the commencement of construction."
24 It's my understanding that the motion would simply amend

1 the numeral "70" to "75", if I'm correct?

2 CHAIRMAN BURACK: That's correct.

3 MR. HARRINGTON: Correct.

4 CHAIRMAN BURACK: But the requirement to
5 obtain all the necessary approvals from ISO would apply to
6 the original 70 megawatts, to address your concern,
7 Commissioner Ignatius, it sounds like the same condition
8 would still apply here.

9 CMSR. IGNATIUS: Yes.

10 CHAIRMAN BURACK: Okay. Is there any
11 further discussion then of this motion?

12 (No verbal response)

13 CHAIRMAN BURACK: If not, all in favor,
14 please say "aye"?

15 (Multiple members indicating "aye".)

16 CHAIRMAN BURACK: Any opposed?

17 (No verbal response)

18 CHAIRMAN BURACK: Abstentions?

19 (No verbal response)

20 CHAIRMAN BURACK: Okay. I believe that
21 also is unanimous. All right. Let's move to the fourth
22 issue then raised by the Applicant, Joint Applicants,
23 which is a Notice of Change of Major Contractors. And,
24 again, this is the item, I misspoke before, this is the

1 item that, under the terms of the Certificate, really only
2 requires notice to us. But, in fact, there is a provision
3 of the Certificate, not just in a discussion in our
4 decision, but a provision of the Certificate that
5 specifically makes reference to "Homeland Renewable
6 Energy", that we're just trying to locate that.

7 MR. IACOPINO: Page 5.

8 CHAIRMAN BURACK: It's the first
9 paragraph on the top of Page 5. And, so, I guess I would
10 welcome first a discussion of this issue, but then we
11 probably do need to have a motion to amend the language of
12 the Certificate to make reference to the replacement
13 contractor. Recognizing that, otherwise, we will have an
14 out-of-date Certificate.

15 Anybody wish to discuss this issue?

16 Mr. Harrington.

17 MR. HARRINGTON: Yes, I think that the
18 substitution of Babcock & Wilcox is very acceptable. They
19 have been an engineering firm that's been in existence for
20 a long time, actually, I guess it would be Delta Power
21 Services, which is a subsidiary of B&W. They have been
22 around for a long time and are well known. They're also,
23 Babcock & Wilcox did some of the initial work on the
24 boiler enhancements that was needed to replace it. So, I

1 don't see any problem with this change.

2 CHAIRMAN BURACK: Do you also want to
3 address the issue of Waldren Engineers' role here?

4 MR. HARRINGTON: I guess I'm just trying
5 to keep track of who's doing what here.

6 CHAIRMAN BURACK: Commissioner Below.

7 CMSR. BELOW: Mr. Chairman, it sounds
8 like to me, in terms of the paragraph at the top of
9 Page 5, it sounds like Delta Power Services, LLC, is --
10 would have the operations and maintenance contractor, and
11 Waldren Engineering & Construction, Inc., is -- would
12 serve as construction engineer, with primary
13 responsibility for oversight of the contractor. So, it
14 might be that both should be referenced in an amended
15 paragraph, in terms of a plural, "signed Operations,
16 Maintenance and Engineering Contracts with Delta Power
17 Services, LLC, and Waldren Engineering & Construction,
18 Inc.", you know, according to the request, pursuant to the
19 request of the Applicant.

20 MR. HARRINGTON: That certainly makes
21 sense, yes. Because they split it up into two different
22 companies, where it was one before.

23 CHAIRMAN BURACK: Very well. Okay.

24 CMSR. BELOW: So, I'd make a motion to

1 amend the Certificate to reflect the substitution of Delta
2 Power Services, LLC, and Waldren Engineering &
3 Construction, Inc., for the operations and maintenance and
4 construction engineering, respectively, in the first
5 paragraph on Page 5.

6 CHAIRMAN BURACK: Is there a second to
7 that motion?

8 CMSR. BALD: Second.

9 CHAIRMAN BURACK: Director --
10 Commissioner Bald, thank you. Is there any discussion of
11 the motion?

12 (No verbal response)

13 CHAIRMAN BURACK: If not, all in favor,
14 please signify by saying "aye"?

15 (Multiple members indicating "aye".)

16 CHAIRMAN BURACK: Opposed?

17 (No verbal response)

18 CHAIRMAN BURACK: Abstentions?

19 (No verbal response)

20 CHAIRMAN BURACK: Okay. I think we have
21 a unanimous vote on that item as well.

22 Let us then go to the first item
23 requested by the Joint Applicants, which is the transfer
24 of the Certificate, including the corporate restructuring.

1 And, again, this may also raise the issue of which
2 entities are, in fact, going to be bound by the terms of
3 the Certificate. But I think we probably should take the
4 discussion first just of the transfer of the Certificate
5 itself. That is, transferring the Certificate from Berlin
6 Laidlaw BioPower -- Laidlaw Berlin BioPower, LLC, to
7 Berlin Station, LLC.

8 And, is there any discussion generally
9 of that, of that request?

10 (No verbal response)

11 CHAIRMAN BURACK: Do you wish to --
12 Commissioner Below.

13 CMSR. BELOW: Well, just in general, it
14 appears to be a reasonable and well substantiated request.
15 I wasn't part of the original Subcommittee, but, from what
16 I've reviewed of the original record and decision, it
17 certainly seems to be consistent with what was expected
18 that may occur. And, I might also mention that the
19 revised corporate structure, ownership structure, and
20 legal structure is reflected in the proposed revised PPA
21 that has been filed with the PUC.

22 CHAIRMAN BURACK: Thank you.
23 Commissioner Ignatius.

24 CMSR. IGNATIUS: Thank you.

1 Commissioner Below is correct. The original hearings made
2 clear that there would likely be further reorganization as
3 the Project evolved. And, so, it does not come as a
4 surprise that these developments have all come together
5 and that we have the changes that were put forth in this
6 proceeding.

7 In addition to that, we have the
8 situation with the New Market Tax Credits that have their
9 own very small requirements to be eligible to participate
10 in that program. And, so, some of the -- some of the
11 changes that we've seen also are in order to allow for
12 that -- that money to be able to come into the Project.

13 And, as leaving apart for a moment the
14 question of who's bound, I think the reorganized structure
15 as presented to us is appropriate, and we should, in my
16 view, support that reorganization.

17 CHAIRMAN BURACK: Thank you. Other
18 discussion? Director Scott.

19 DIR. SCOTT: I just want to add, as has
20 been alluded to, my understanding is that, with this new
21 structure, again, you have the New Market Tax Credits, but
22 basically it strengthens the financing and the surety of
23 the Project as a whole. So, again, to the extent that's
24 the case, I think it's a beneficial change also.

1 CHAIRMAN BURACK: Is there other
2 discussion of this issue or request?

3 (No verbal response)

4 CHAIRMAN BURACK: I would note that
5 there appear to be at least two provisions in the original
6 order of November 8, 2010 that make reference to these
7 various entities. One is the third or the final
8 paragraph, bottom of Page 2 of the order, and the next
9 would be the second paragraph on the top of Page 3 of the
10 original order. And, I know you probably do not all have
11 these documents in front of you, so let me just read to
12 you what these two provisions are. And, it is possible
13 that there are other -- other conditions that make
14 reference to the names of specific entities. And, if
15 there were to be a motion on this, I would suggest that it
16 would subsume an understanding that we would be making any
17 other changes necessary to accommodate or to reflect the
18 change in certificate holder, if we were to approve this.
19 So, the condition on the bottom of Page 2 reads: "Further
20 Ordered that the Decision and this Order and Certificate
21 shall apply to and bind the Applicant and the following
22 Affiliated Entities: NewCo, PJPD, and Aware Funding,
23 LLC," which are referred to as the "Affiliated Entities".
24 "Prior to the commencement of construction, each of the

1 Affiliated Entities shall prepare and file with the Site
2 Evaluation Committee written guarantees reasonably
3 acceptable to the Subcommittee, of all of the obligations
4 and conditions imposed upon the Applicant in the Decision
5 and in the Order and Certificate." So, that's the first
6 item that we may be needing to amend.

7 The second, again, this is the second
8 paragraph at the top of Page 3, it reads: "Further
9 Ordered that the Applicant shall provide immediate notice
10 to the Subcommittee in the event that the Applicant or any
11 of its associated companies including NewCo, PJPD, or
12 Aware Funding, LLC, shall file a bankruptcy or insolvency
13 petition in any jurisdiction, foreign or domestic; or be
14 subject to involuntary bankruptcy or any other proceeding
15 pertaining to debt restructuring or the liquidation of
16 assets."

17 So, I think this is largely a matter, if
18 the Committee is amenable to the request of the parties,
19 to substituting the names of some or all of the entities
20 that are shown on the various -- or, the two corporate
21 structure charts that we have been looking at and
22 considering in this, in this proceeding.

23 MR. IACOPINO: Mr. Chairman?

24 CHAIRMAN BURACK: Yes.

1 MR. IACOPINO: I would also point out
2 that the definition of the term "Applicant" in the
3 Certificate would have to be changed to "Berlin Station,
4 LLC", and also that the definition of the term "affiliate"
5 -- "affiliated entities" would have to be changed to
6 "NewCo Energy, LLC, and Burgess BioPower, LLC," or any
7 other entities that you all choose to designate as the
8 affiliated entities.

9 I would also point out, for the
10 Committee's sake, that you do have in Exhibit 1, Public
11 Counsel Exhibit 1, some specific language that was
12 presented by the Applicant regarding the language for the
13 changes, which is consistent with what you've already
14 done, but you may want to look at that for this particular
15 and they suggest the replacement language in that exhibit,
16 just bring that to your attention as you deliberate.

17 DIR. SCOTT: Could you direct us to the
18 page?

19 MR. IACOPINO: Page 9 of Exhibit 1, I'm
20 sorry. Counsel for the Public's Exhibit 1.

21 MR. HARRINGTON: Page 9?

22 MR. IACOPINO: Yes. Do you have the
23 exhibit, Mr. Harrington.

24 MR. HARRINGTON: Is this the one

1 "Laidlaw Berlin BioPower, LLC, --

2 MR. IACOPINO: Yes. It's Page 9 of that
3 exhibit.

4 CHAIRMAN BURACK: Thank you, Attorney
5 Iacopino, for reminding us of the existence of this answer
6 to Question 26. And, it may cause us to ultimately want
7 to go back and take a -- reconsider one or more of the
8 motions that we've already taken here.

9 I think it's important also just to note
10 and understand for the record that we are deliberating
11 today, we are adopting, making decisions here, which will
12 result in a written document that would be created by
13 counsel for final review and approval. And, so, there may
14 be some further adjustments necessary that would be
15 consistent with the spirit of what we have done today in
16 the final document that would ultimately come to the
17 Committee members for their review and execution.

18 Commissioner Bald.

19 CMSR. BALD: Mr. Chairman, I am
20 confident that we have adequate protections by having this
21 with NewCo Energy, Berlin Station, LLC, and Burgess
22 BioPower. And, I'd like to make a motion that we go
23 forward on that. But, so I don't make a mistake, I guess
24 I would like to ask if Mr. Iacopino could restate what he

1 said before and I would make that as a motion?

2 MR. IACOPINO: To answer your question
3 Commissioner Bald, your motion would be worded as follows:
4 That you move that the term "Applicant" in the Certificate
5 be changed to "Berlin Station, LLC" -- definition of the
6 term "Applicant" in the Certificate would be changed to
7 "Berlin Station, LLC". That the definition in the
8 Certificate of the term "affiliated entities" be changed
9 to "NewCo Energy, LLC, and Burgess BioPower, LLC". And
10 that, on Page 2 of the Certificate, the existing paragraph
11 be changed to read as follows: "Further Ordered that the
12 Decision and this Order and Certificate shall apply to and
13 bind the Applicant and the following Affiliated Entities:
14 NewCo and Burgess BioPower, LLC, (Affiliated Entities).
15 Prior to the commencement of construction, each of the
16 affiliated entities shall prepare and file with the Site
17 Evaluation Committee written guarantees reasonably
18 acceptable to the Subcommittee, of all of the" --
19 actually, it should be "to the Committee, of all of the
20 obligations and conditions imposed upon the Applicant in
21 the Decision and in the Order and Certificate."

22 Your motion would go onto say that, on
23 Page 3 of the Certificate, that that paragraph, the second
24 full paragraph on Page 3 be amended to read: "Further

1 Ordered, that the Applicant shall provide immediate notice
2 to the Committee in the event that the Applicant or any of
3 its associated companies, including NewCo and Burgess
4 BioPower, LLC, shall file a bankruptcy or insolvency
5 petition in any jurisdiction, foreign or domestic, or be
6 subject to involuntary bankruptcy or any other proceeding
7 pertaining to debt restructuring or the liquidation of
8 assets."

9 CMSR. BALD: So moved.

10 CHAIRMAN BURACK: Is there a second to
11 the motion?

12 (Non-verbal indication by Cmsr.
13 Ignatius.)

14 CHAIRMAN BURACK: Second by Commissioner
15 Ignatius. Is there discussion?

16 CMSR. IGNATIUS: With just one, I think,
17 very minor, friendly amendment, if it's acceptable. And,
18 that is that, before the execution of an order, that we,
19 the Committee, have received an updated organizational
20 chart, with any clarifications that have been discussed
21 today, just so that the record has the most current
22 information as part of our package of what we are
23 approving.

24 CHAIRMAN BURACK: So, you're suggesting

1 that that would -- that we would have to receive that
2 before we execute this order?

3 CMSR. IGNATIUS: Yes.

4 CHAIRMAN BURACK: It's not -- not just
5 that that would have to be part of whatever the final
6 closing package is?

7 CMSR. IGNATIUS: Right. And, I
8 understand, from the representations from counsel today,
9 that there are no changes, there's merely some
10 clarifications that were discussed. So they have it all
11 in one place on a new document, similar to Exhibit 5, that
12 that be submitted to the record.

13 CHAIRMAN BURACK: Is it your expectation
14 or intention that such a revised capital or corporate
15 structure chart would show the \$75 million loan
16 transaction that involved BBP Finance or is that not an
17 expectation of yours?

18 CMSR. IGNATIUS: I think it would be
19 preferable, personally, to have it shown. It can be off
20 to the side, it can be in a circle, and however to
21 differentiate it from the capital structure. But that I
22 think that is an element of it. And, certainly, what
23 we've been discussing today and how all of these different
24 entities interrelate, I think that would be helpful.

1 CHAIRMAN BURACK: Commissioner Bald, do
2 you accept that as an amendment to your motion?

3 CMSR. BALD: I guess I would like to
4 ask, am I clear that what you're asking for is just an
5 updated org. chart?

6 CMSR. IGNATIUS: An updated chart of the
7 capital -- Berlin Station Capital Structure.

8 CMSR. BALD: Right. And, that's it?

9 CMSR. IGNATIUS: Yes.

10 CMSR. BALD: I don't have a problem with
11 it. But I guess it's -- I just want to be clear as to
12 when the expectation of that is. I mean, if we get this
13 order written, if it's approved, and how long do you think
14 it will take for us to put this together, or I shouldn't
15 say "us"?

16 MR. IACOPINO: Two weeks.

17 CMSR. BALD: Two weeks, okay. So that
18 getting the updated shouldn't be a problem. So, I guess
19 I'll agree with that.

20 CHAIRMAN BURACK: Mr. Harrington.

21 MR. HARRINGTON: Yes. As far as this
22 motion goes, it seems like we've sort of brought in the
23 Public Counsel's first condition. By passing this, we
24 would have already made a decision on Public Counsel 1.

1 So, is that the intent of what we're trying to accomplish
2 here?

3 CHAIRMAN BURACK: Can you remind us of
4 what Public Counsel's first request was?

5 MR. HARRINGTON: That was the one that
6 talks about binding all the groups in the org. chart, plus
7 BBP Financing. And, in this case, it would seem to say
8 we're saying "we're going to go along to bind the
9 Applicant and the following Affiliated Entities, NewCo and
10 Burgess Power, LLC." So, that would -- are we limiting it
11 to that at this point or are we going to have a discussion
12 on the need to look at what Public Counsel said?

13 CHAIRMAN BURACK: Well, I think, as in
14 connection with this motion, we need to consider this very
15 issue.

16 MR. HARRINGTON: Okay.

17 CHAIRMAN BURACK: That is, the proposal
18 is to bind only -- not "only", but to bind the three
19 entities that were proposed by the Joint Applicants. And,
20 that the question is -- I guess we can do this a couple
21 ways. We could take a vote on this and then see if
22 anybody wants to move to bind any additional parties, to
23 amend the language to bind any additional parties. We
24 could do it that way.

1 MR. HARRINGTON: That would be fine. I
2 just wanted to make sure where I was going on it.

3 CHAIRMAN BURACK: Yes. There may be
4 another issue that Commissioner Getz just wants to clarify
5 as well here.

6 VICE CHAIRMAN GETZ: Yes. I think
7 there's a confusion between the first and third proposals
8 made by Counsel for the Public Proposed Conditions and
9 Procedures. I took Commissioner Ignatius' proposal to be
10 actually the third proposal dealing with the updated
11 organizational chart showing the relationship of BBP
12 Finance and any other changes to the org. chart that may
13 take place. I didn't take the motion to be referring to
14 the first proposal dealing with who's bound.

15 MR. HARRINGTON: I was referring to
16 Commissioner Bald's original motion, which talked about
17 who was bound, the very long one that Mike read, that
18 included the section on "Further Ordered that it shall
19 apply and bind the Applicant in the following". So, then,
20 Commissioner Ignatius added an additional condition onto
21 that. But the original thing, as proposed, included that,
22 basically, from Page 9 of Exhibit 1.

23 CMSR. BALD: Mr. Chairman, that was the
24 way I framed my motion.

1 CHAIRMAN BURACK: Yes. Okay. And, I
2 think, to keep this as simple as possible, probably the
3 best way for us to do this is to specifically discuss and
4 take a vote on your motion, and then we can have a further
5 discussion on the issue of whether we also wish to bind
6 any additional parties. And, then, if someone wishes to
7 make a motion on that, we can see what happens with that.
8 Okay?

9 So, further discussion of the -- and,
10 again, as I said, this is not to the exclusion of a
11 further motion to add other parties, but a discussion of
12 binding the three parties that were proposed based on the
13 motion made by Commissioner Bald. Please.

14 MR. HARRINGTON: Yes, I'm still not
15 clear. Is Commissioner Ignatius's addition to the motion
16 on Commissioner Bald's original motion?

17 CMSR. BALD: Yes.

18 MR. HARRINGTON: Or is that being
19 considered separate? It's part of it.

20 CHAIRMAN BURACK: No, that is now part
21 of Commissioner Bald's motion.

22 MR. HARRINGTON: Okay. All right.

23 CHAIRMAN BURACK: So, again, the
24 understanding is that, if Commissioner Bald's motion were

1 to be adopted, we would be amending the Certificate to
2 bind the three entities that are specifically identified
3 here: Berlin BioPower -- I'm sorry, Berlin Station, LLC,
4 as the -- redefined now as the Applicant, as well as
5 Burgess BioPower, LLC, and NewCo Energy, LLC. And, that
6 with the understanding that, in the interim time period
7 here, between the time when we take our vote today and the
8 time that we all actually sign off on the actual written
9 order and amended Certificate, that we will have submitted
10 to us by the Joint Applicants a revised or updated capital
11 structure chart, --

12 MR. HARRINGTON: Okay.

13 CHAIRMAN BURACK: -- including any
14 revisions to the corporate structure.

15 MR. HARRINGTON: And, it also contained
16 the bankruptcy condition with the new names in it as well,
17 correct?

18 CHAIRMAN BURACK: That is correct. Yes.

19 MR. HARRINGTON: Thank you.

20 MR. IACOPINO: I have one housekeeping
21 matter, Mr. Chairman, that I would point out to the
22 Committee, is that, in the motion, in two places, I read
23 the term "NewCo" without adding "Energy, LLC", because
24 that's the way it was printed in the exhibit. But my

1 understanding is that it was just shorthand for "NewCo
2 Energy, LLC", which is on Exhibit 5, at the top of the
3 NewCo side of the chart. Just so you know and so there's
4 no confusion within the record, when we speak about
5 "NewCo", it's "NewCo Energy, LLC".

6 CHAIRMAN BURACK: And, again, just to
7 further clarify that, that is to say that it is -- "NewCo"
8 is not also a reference in this context of your motion to
9 "NewCo Energy Holdings, LLC". Is that your intention,
10 Commissioner Bald?

11 CMSR. BALD: That's correct.

12 CHAIRMAN BURACK: Okay. And, again, the
13 second to the motion originally was Commissioner Ignatius.
14 So, that's consistent with your understanding as well?

15 CMSR. IGNATIUS: Yes.

16 CHAIRMAN BURACK: Okay. Further
17 discussion then of this motion?

18 (No verbal response)

19 CHAIRMAN BURACK: If not, all in favor,
20 please signify by saying "aye"?

21 (Multiple members indicating "aye".)

22 CHAIRMAN BURACK: Any opposed?

23 (No verbal response)

24 CHAIRMAN BURACK: Abstentions?

1 (No verbal response)

2 CHAIRMAN BURACK: Okay. That is also a
3 unanimous vote.

4 Then, is there further discussion then
5 of, and I believe we have now addressed all of the issues
6 raised in the original Joint Motion by the Applicant.
7 And, so, now I think we're turning to the discussion of
8 the requests, the additional requests or proposals made by
9 Counsel for the Public. And, I think the first issue here
10 is the one that was raised by Mr. Harrington's question
11 before is, "is there an interest in binding any additional
12 parties here?" And, I just want to have a discussion of
13 that. Director Scott.

14 DIR. SCOTT: Sorry, Mr. Chair, before we
15 go onto that, I just want to make sure, we're in Exhibit 1
16 for Counsel for the Public, the Applicant does have some
17 other, on Page 10, some other requests. Are we going to
18 address those also?

19 CHAIRMAN BURACK: I believe we have, but
20 maybe we want to go back and revisit those quickly,
21 because those may require some clarifications here.

22 MR. IACOPINO: I think that the uprate
23 in power is taken care of by what has occurred. I think
24 that we will need to address the -- what we refer to as an

1 "engineering agreement" is referred to as a "master
2 services agreement" and a consulting contract with Waldren
3 Engineering and with Stone & Webster. That may need to be
4 considered again with a new motion, and also the Delta
5 Power Service motion may need to be considered to include
6 DPS Berlin, LLC, which is a subsidiary of Delta Power
7 Services, which is a subsidiary itself of Babcock &
8 Wilcox.

9 CHAIRMAN BURACK: Okay.

10 MR. IACOPINO: If you look at Page 10 of
11 that, we may need to re-address the first two full
12 paragraphs that are listed on Page 10 of Public Counsel's
13 Exhibit Number 1. I don't believe that we do need to
14 address the uprate in power, because it's been -- and I
15 think we covered the Richard Carrier matter as well.

16 CHAIRMAN BURACK: Okay.

17 MR. HARRINGTON: Just a question.

18 CHAIRMAN BURACK: Yes.

19 MR. HARRINGTON: Maybe for counsel. On
20 Page 1 of this actual Certificate, it uses the term
21 "nominally designed for generation of 70 megawatts". Does
22 that cover us with changing it to "75" or do we need to
23 change that part of the Certificate to "75" as well?

24 MR. IACOPINO: I would recommend that we

1 change that to "75" as well. And, perhaps --

2 MR. HARRINGTON: That appears in a
3 couple of places in that first -- the first and second
4 paragraph.

5 MR. IACOPINO: I will draft the new
6 Certificate, the amended Certificate for the Committee to
7 sign.

8 MR. HARRINGTON: Okay.

9 MR. IACOPINO: I assume you all agree
10 that it's "75" in every place.

11 CHAIRMAN BURACK: Commissioner Below.

12 CMSR. BELOW: And, that's in the
13 "whereas" provisions, and I think that Counsel for the
14 Committee should generally update the "whereas" to reflect
15 the development of the record, because it's still true
16 that Laidlaw Berlin BioPower, LLC, was the original
17 applicant, but I think the "whereas" clauses can reflect
18 our actions.

19 MR. HARRINGTON: Just didn't want to
20 come back for another meeting because we missed that.

21 CMSR. BELOW: No.

22 CHAIRMAN BURACK: Well, and I think it
23 may be helpful, and we can do this now or we can do this
24 at the end, but we may just want a motion that we are

1 going to make such other conforming amendments as are
2 necessary to the order and the Certificate in order to be
3 consistent with the other actions that we vote to take
4 here today.

5 DIR. SCOTT: So moved.

6 CHAIRMAN BURACK: So, a motion to that
7 effect by Director Scott. Is there a second to that?

8 CMSR. IGNATIUS: Second.

9 CHAIRMAN BURACK: Second by Commissioner
10 Ignatius. Discussion of that motion?

11 (No verbal response)

12 CHAIRMAN BURACK: If not, all in favor,
13 signify by saying "aye"?

14 (Multiple members indicating "aye".)

15 CHAIRMAN BURACK: Opposed?

16 (No verbal response)

17 CHAIRMAN BURACK: Abstentions?

18 (No verbal response)

19 CHAIRMAN BURACK: Okay. That also is
20 passed unanimously.

21 I think it may be helpful to have a
22 motion to substitute for the motion that we unanimously
23 approved earlier with respect to the engineering firms,
24 and instead, in lieu of that motion, to instead adopt the

1 following amendments to the order: That is, in the first
2 full paragraph on Page 5, that that language be amended to
3 state as follows: "Further Ordered that the Applicant
4 shall not commence construction until such time that it
5 has filed, with the Committee, a signed Operations and
6 Maintenance Agreement with DPS Berlin, LLC." And, that
7 there be a further condition added to the Certificate,
8 presumably immediately following the Certificate -- the
9 condition that was just mentioned here, that would read:
10 "Further Ordered that the Applicant shall not commence
11 construction until such time that it has filed, with the
12 Committee, a signed Master Services Agreement with Waldren
13 Engineering & Construction, Inc., and a consulting
14 contract with Stone & Webster, Inc."

15 Does someone care to make a motion to
16 that effect?

17 CMSR. BALD: So moved.

18 CHAIRMAN BURACK: Motion by Commissioner
19 Bald. Is there a second?

20 MR. HARRINGTON: Second.

21 DIR. SCOTT: Second.

22 CHAIRMAN BURACK: Second by
23 Mr. Harrington. Any discussion of this motion?

24 (No verbal response)

1 CHAIRMAN BURACK: If not, all in favor,
2 please signify by saying "aye"?

3 (Multiple members indicating "aye".)

4 CHAIRMAN BURACK: Opposed?

5 (No verbal response)

6 CHAIRMAN BURACK: Abstentions?

7 (No verbal response)

8 CHAIRMAN BURACK: Okay. That motion
9 also is adopted unanimously. All right. Thank you,
10 Director Scott, for bringing us back to those issues. So,
11 I think we now have addressed all of the issues raised by
12 the Joint Applicants in their Joint Motion. And, let us
13 now turn to further discussion of the items requested in
14 the June 2nd filing of Counsel for the Public.

15 And, again, the first issue that is
16 raised is this issue of "which party should be bound?"
17 And, I would welcome a further discussion of this issue.
18 Commissioner Bald.

19 CMSR. BALD: Mr. Chairman, just
20 following along with the motion I made, I'm confident and
21 feel that we have adequate protection by binding NewCo
22 Energy, LLC, Berlin Station, LLC, and Burgess BioPower,
23 LLC. And, I don't see the need to do others. I guess
24 that there's really not a motion to make on this, unless

1 somebody makes a motion to include these. But I just --
2 it is consistent with the motion I made before.

3 CHAIRMAN BURACK: Thank you,
4 Commissioner Bald. Mr. Harrington.

5 MR. HARRINGTON: Yes. This is certainly
6 not my field of expertise, but I still would like to
7 reiterate, maybe somebody on the Committee can help out
8 with this. Does it matter where the equity, if we go to
9 Exhibit 5, we have the equity from the 1603 and the equity
10 from the New Market Tax Credit, which is I guess the
11 entire equity for the Project, who gets that equity? Does
12 it matter whether that's one of the three companies that
13 is bound? Or does the organization structure cover that
14 because their under NewCo Energy, LLC? I just don't have
15 a clue, but it seemed to me it would be a question worth
16 asking.

17 For example, if all of it was going to
18 Burgess Holding Company, LLC, does that make a difference?

19 MR. IACOPINO: I think what you have to
20 understand is that they don't own the equity. The equity
21 in the Project will, once the --

22 FROM THE FLOOR: Can you speak up? I'm
23 sorry.

24 MR. IACOPINO: Sorry. The equity in the

1 Project, once the closing takes place, will be owned by,
2 as I understand it, Berlin Station, LLC. And, that the
3 monies that are coming, the \$75 million that are down on
4 the side, actually it may be in another exhibit -- oh, no,
5 they're on the bottom, --

6 MR. HARRINGTON: They're down there.

7 MR. IACOPINO: -- down on the right,
8 where it says "equity". That's a monetization
9 transaction, where that money is loaned to the Project,
10 through Berlin Station, LLC. Berlin Station commences its
11 construction, pays that money back when it gets the 1603
12 grant, and then has that equity in the Project at that
13 time.

14 MR. HARRINGTON: Okay. So, it's not an
15 issue, is what you're saying?

16 MR. IACOPINO: You have to decide
17 whether it's an issue or not. I'm just trying to explain
18 as I understand what the evidence in the record is. But
19 the Committee has to determine whether or not that's an
20 issue for you. But, really, what that -- that's a loan so
21 they can establish their equity, --

22 MR. HARRINGTON: But it appears --

23 MR. IACOPINO: -- and that will occur at
24 their financial closing, which we, under the Certificate

1 as it presently exists, the Committee will receive all of
2 those documents.

3 MR. HARRINGTON: And, it appears what
4 you're saying is it will be controlled through Berlin
5 Station, LLC, which is one of the three parties that is
6 being bound by this agreement?

7 MR. IACOPINO: Berlin Station will then
8 have the money while -- or, its lenders will -- it will be
9 taking draws of the money from those lenders and
10 constructing the Project, and they will be the sort of the
11 "boots on the ground", if you will, if that's your
12 question?

13 MR. HARRINGTON: Okay. I think that
14 satisfies my concern. Thank you.

15 CHAIRMAN BURACK: Is there any further
16 discussion of this issue?

17 (No verbal response)

18 CHAIRMAN BURACK: If not, it sounds like
19 there is -- there is not going to be a motion made on this
20 issue in my sense from seeing folks here. Commissioner
21 Getz.

22 VICE CHAIRMAN GETZ: If I could just add
23 this observation. I didn't sit on the case previously.
24 And, looking at the condition that was issued in the

1 original order back in November of 2010, and what we're
2 seeing is a substitution of NewCo, Berlin Station, and
3 Burgess BioPower. It seems to me that the recourse is
4 comparable to what was provided originally by the
5 Subcommittee. And, I'm not -- haven't seen any changed
6 circumstances that have been described or proposed that
7 would lead me to conclude that it's necessary to bind
8 additional entities.

9 So, it seems to me that the proposed
10 condition and the actions you've already taken provide
11 comparable protections to what were originally proposed.
12 So, I guess my inclination would be not to adopt the
13 proposal by Counsel for the Public made yesterday.

14 CHAIRMAN BURACK: Thank you. And, I
15 appreciate and concur in the observations that you have
16 made, Commissioner Getz, on that issue. So, unless
17 there's anything further on that, I think we can move to
18 the next sort of items that were requested by Counsel --
19 sorry, I have this in a different sequence than perhaps is
20 in the -- may I just look at this document.

21 The next issue that's raised is this
22 issue of a construction deadline. That is, "if
23 construction is not completed by July 31 of 2013, that
24 Berlin Station BioPower -- Berlin Station, LLC, shall file

1 a notice with the Site Evaluation Committee and show cause
2 as to why the decommissioning provisions of the Order and
3 Certificate of Site and Facility should not be imposed."

4 Anybody wish to discuss this item?

5 Mr. Harrington, then --

6 MR. HARRINGTON: Well, I think, just
7 initially, the deadline of July 31st, 2013, it certainly
8 could not be applied, unless we want to cancel the
9 Project, because it's been already stated numerous times
10 by the Applicant that their present construction schedule
11 is 27 months. And, it's not going to start for a while.
12 So, I don't think that, if we're going to look at imposing
13 a date, it has to be something quite a bit beyond the one
14 proposed by Public Counsel.

15 CHAIRMAN BURACK: Commissioner Ignatius,
16 go ahead.

17 CMSR. IGNATIUS: Thank you. In addition
18 to the comment about the timing, we've seen this sort of a
19 provision in a recent case. It does not seem as
20 appropriate in the situation here, where you already have
21 a developed site. You have a -- you don't have a
22 situation where you've got land that will be disturbed,
23 and then, if nothing every comes of it, then where are you
24 left with a half-built project. There's already a fully

1 developed site. And, if, for some reason, the Project did
2 not go forward, you may not end up in a much different
3 situation in terms of the physical structure than you have
4 today. So, I find that as a sort of different
5 circumstance, less of a need for this sort of a provision.

6 In addition, we've heard in other
7 situations where this sort of provision is something that
8 the community is really in favor of, to be protected and
9 not left with something half done and then abandoned.

10 And, we've heard today, from counsel for the City, that
11 it's not in favor of this provision. That it would be
12 seeking, if for some reason this Project didn't go
13 forward, it would be seeking some other use of the
14 facility, and wouldn't want to be embroiled in a
15 discussion of whether or not to commence decommissioning.

16 So, for those reasons, as well as
17 Mr. Harrington's comment, I don't see a basis to include
18 the term that Public Counsel requested.

19 CHAIRMAN BURACK: Any further discussion
20 of this issue?

21 (No verbal response)

22 CHAIRMAN BURACK: If not, it appears to
23 me that there is not going to be a motion with respect to
24 this matter.

1 The third and fourth items raised by
2 Counsel for the Public, in terms of proposed conditions
3 and procedures, I think we can probably take up together,
4 because I think we have, in a somewhat different manner
5 than was requested or proposed, we have, in fact,
6 incorporated these items into the motion previously
7 adopted, made by Commissioner Bald and seconded by
8 Commissioner Ignatius. Which is that we do expect that
9 during the time period while our final order is being
10 drafted, and before we would sign or actually execute a
11 final order, that we would be receiving from the
12 Applicants or Joint Applicants an updated and amended
13 organizational chart that, in fact, depicts the
14 relationship with BBP Finance and shows any modifications
15 that may have occurred with respect to the corporate
16 structure.

17 So, does anybody have any further
18 observations on that issue? But I believe that,
19 effectively, we have, by actions already taken, addressed
20 those two concerns.

21 MR. HARRINGTON: Mr. Chairman.

22 CHAIRMAN BURACK: Yes.

23 MR. HARRINGTON: You sort of reiterated
24 what we did with 3, it was the amendment made by

1 Commissioner Ignatius. Does that cover Item 4 as well?

2 CHAIRMAN BURACK: That is the updated
3 and completed debt/equity figure. Well, I think that our
4 expectation would be that, in some fashion, what appears
5 as Counsel for the Public's Exhibit 5, would also reflect,
6 and it may be in additional boxes there on the lower
7 right-hand corner, somehow a notation describing that
8 \$75 million monetization transaction.

9 MR. HARRINGTON: I didn't quite follow
10 that. Where is it on Exhibit -- Exhibit 5 is the chart,
11 right, is this what you're referring to?

12 MR. IACOPINO: Bottom right-hand corner,
13 in the three bolded boxes there on the equity side.

14 MR. HARRINGTON: Yes.

15 MR. IACOPINO: You see there's the
16 "Shareholder 1603"?

17 MR. HARRINGTON: Yes.

18 MR. IACOPINO: That's the --

19 MR. HARRINGTON: ITC.

20 MR. IACOPINO: That's the ITC, or grants
21 in lieu of ITC and the New Market Tax Credits. I think
22 the Chairman is saying that we would anticipate that the
23 actual lender of that, which I understand to be BBP
24 Finance, would be listed in there, as providing the

1 monetization, the vehicle for the monetization
2 transaction. I believe. I don't want to speak for you.

3 CHAIRMAN BURACK: Well, I had -- I had
4 understood that to be incorporated into the earlier motion
5 that was made and adopted. Perhaps I was reading too much
6 into that motion, but that's what I understood was the
7 expectation. Did I misunderstand that?

8 CMSR. BALD: Well, I guess you would
9 have to ask Ms. Ignatius, because I didn't -- I didn't
10 take -- I just took it that what her amendment was was
11 addressing Item 3.

12 CMSR. IGNATIUS: Mr. Chairman, the way
13 the Public Counsel's proposed conditions were written,
14 they loop together. Three (3) was specific to changes to
15 the organizational chart showing the relationship of BBP
16 Finance. Four (4) continued with other details regarding
17 the debt/equity figure and \$75 million note purchase
18 agreement as part of the updated organizational chart.
19 So, they do kind of all come together in Number 4. And, I
20 was intending that any changes on the organizational chart
21 would be reflected. And, if there are no changes, as
22 Mr. Needleman has stated, other than some clarifications,
23 that we would have it, it would be clear in the document
24 to show that. So that, if there is a change to the

1 debt/equity figures that's on the current version of
2 Exhibit 5, they would be changed. And, if there was no
3 change, it would appear as they do now. It sounds like
4 there's a little further information to be added. And,
5 so, I intended that both 3 and 4 be incorporated into the
6 prior motion. And, don't expect, from what we've heard
7 today, that there is really very much that will be added
8 to that document. So, it's not a significant change.

9 CMSR. BALD: And, Mr. Chairman, I'm fine
10 with it.

11 MR. HARRINGTON: Just so I'm clear. The
12 part in 4 which talks about the "\$75 million note
13 purchase", and includes the figure of any exposition of
14 guarantees or pledges being made, all of which is not
15 presently on Exhibit 5, would be added to Exhibit 5, is
16 that what we're referring to? Or, would be a separate
17 document? You know, one's an organization chart and one
18 seems to be talking about some type of a narrative
19 explaining what type of purchase agreements were entered
20 into and so forth.

21 CHAIRMAN BURACK: And, yes, Commissioner
22 Below.

23 CMSR. BELOW: I would just observe,
24 there is one major exposition of a pledge that is shown in

1 the Exhibit 5, which is between the lenders' 200 million
2 and Berlin Station, LLC, it indicates assignment of all
3 assets and right-of-use agreement. That's a pledge. So,
4 you know, one of those is shown here. But I would think
5 that any other guarantees or pledges could also be
6 indicated on the org. chart or capital structure chart,
7 either directly or by annotation.

8 CHAIRMAN BURACK: I'm seeing nodding
9 heads from Commissioner Ignatius and I believe from others
10 as well. And, again, unless folks feel we need to further
11 clarify this in a motion that's already been made, I
12 believe it should be clear that the expectation of the
13 Committee is is that we will receive a document that is
14 effectively a revision and update to what was submitted to
15 us as Counsel for the Public's Exhibit 5, that's entitled
16 "Berlin Station Capital Structure". That would include
17 also a notation of, well, any other changes that are
18 needed here, as well as a notation of what this -- what
19 this additional transaction is involving the 75 million
20 with BBP Finance, and whatever -- whatever clarifications
21 they may wish to put on there, however they wish to
22 qualify, that it's not technically an owner of the
23 facility that would be within the prerogative of the Joint
24 Applicants to include such information as that or other

1 that they think is appropriate. Okay? Do we have --

2 MR. IACOPINO: That's acceptable to me.

3 Thank you.

4 CHAIRMAN BURACK: Okay. Everybody's
5 comfortable with that?

6 CMSR. BELOW: Yes.

7 CHAIRMAN BURACK: All right.

8 MR. HARRINGTON: Just -- I'm still
9 trying to get a clarification on this. Does this include,
10 because I see nothing on the Exhibit 5, the capital
11 structure chart, the part about the \$75 million purchase
12 note to be entered into by Burgess Holding, which I assume
13 is Burgess Holding -- I don't know which "Burgess Holding"
14 that refers to in the Public Counsel, because there's
15 Burgess Holding 2, 1, and Burgess Holding, LLC.
16 Presumably, that's Burgess Holding just LLC, without a 1
17 or a 2 next to it, and include in the figure an exposition
18 of any guarantees or pledges made by any of the entities
19 on the revised and updated org. chart to obligate the
20 \$75 million purchase note. The \$75 million purchase note
21 doesn't appear anywhere, at least that I can see, so
22 that's still confusing as to where that's going to come in
23 or if we are bringing it in at all.

24 MR. IACOPINO: Mr. Harrington, I think

1 if you add the 54.9 million and the 19.9 million, --

2 MR. HARRINGTON: Oh, that's the 75
3 million they're referring to?

4 (Multiple parties speaking at the same
5 time.)

6 MR. HARRINGTON: I'm sorry.

7 MR. IACOPINO: Okay.

8 MR. HARRINGTON: Doesn't come out to 75
9 million exactly, but --

10 MR. IACOPINO: It's close.

11 MR. HARRINGTON: Okay. So, close enough
12 for a lawyer, but not for an engineer, I guess.

13 MR. IACOPINO: Sorry.

14 CHAIRMAN BURACK: All right. So, we're
15 --

16 MR. HARRINGTON: That makes me happy.
17 Thank you.

18 CHAIRMAN BURACK: You're comfortable
19 with that? Okay. All right. Again, I hope it should be
20 -- it is clear to Counsel for the Public that the intent,
21 I think, of what the Committee is looking for here is one
22 document that essentially depicts all of the major
23 financial transactions that will occur in order to allow
24 this transaction to move forward. I'm seeing a nodding

1 head from Attorney Needleman.

2 MR. NEEDLEMAN: I think I understand.

3 CHAIRMAN BURACK: So, we have clarity
4 there. Thank you. The last item raised by Counsel for
5 the Public relates to the issue of -- this issue of the
6 Purchase Power Agreement and its status, and, effectively,
7 a request that we suspend deliberations until all issues
8 associated with the PPA are fully and finally resolved.

9 Before we have a discussion about it, I
10 simply want to remind the members of the Committee of what
11 is in the Certificate now with respect to this issue, so
12 that we all know where and how this is addressed. This is
13 addressed in the -- on Page 4 of the Certificate, in the
14 third paragraph up from the bottom. And, I will just --
15 I'll just read this simply, so that we all have this:
16 "Further Ordered that the Applicant shall not commence
17 construction until such time as the New Hampshire Public
18 Utilities Commission has approved a Power Purchase
19 Agreement (PPA) between the Applicant and Public Service
20 Company of New Hampshire (PSNH) similar in form and
21 substance to the PPA presented to the Subcommittee as
22 Exhibit Laidlaw 39, CONFIDENTIAL. The Applicant shall (i)
23 notify the Subcommittee of the approval or denial of the
24 PPA by the PUC; (ii) if approved, provide a copy of the

1 approved PPA to the Subcommittee; (iii) identify any
2 changes in the PPA made or caused to be made by the PUC;
3 and (iv) provide supplemental documentation demonstrating
4 the Applicant's financial ability to construct and operate
5 the Facility based on an approved, but amended, PPA. (If
6 further review is necessary, the Presiding Officer will
7 notify the Applicant)."

8 So, that is the provision that we
9 currently have in the PPA -- in the Certificate with
10 respect to the PPA. And, what I would point out is that,
11 when we adopted this provision, we contemplated at least
12 two different scenarios. One is that the PPA, as
13 originally submitted to us and reviewed by us, in the form
14 of Exhibit Laidlaw 39 CONFIDENTIAL, would be materially
15 similar to the PPA that was finally adopted. But we also
16 contemplated the possibility that other things could
17 happen within the PUC process as that went forward, and so
18 we went on to require that we be notified of the approval
19 or denial, and that, if it were approved, that we be
20 provided with an amended version of the document. And
21 that, if there were amendments, that we be -- that the
22 changes that were made by the PUC be identified to us, and
23 that, in that conjunction -- in that connection, they also
24 provide us with whatever additional information was

1 necessary to demonstrate that effectively they had the
2 financial ability to construct and operate. And, the
3 discretion was then left to the presiding officer to make
4 a determination as to whether, based upon the information
5 that had been submitted, it appeared necessary for the
6 Committee to take any further action, but essentially
7 leaving it within the discretion of the Presiding Officer
8 to make that determination. And, I think that the
9 presumption being that, if the PPA was satisfactory to the
10 Public Utilities Commission, on the basis that it was --
11 it met those expectations/requirements, and based upon the
12 other data submitted, that the Presiding Officer would be
13 able to make a determination as to whether we could accept
14 what was submitted as being sufficient or whether we would
15 need to take a further look at it before we could approve
16 it finally.

17 So, I think that was the intent of what
18 we did here. I would note that, if we want to make any
19 amendments at all, we may want to amend this language to
20 refer to the Committee, rather than the Subcommittee, in
21 this provision. But, whether we would want to suspend
22 deliberations here, I think is the question. That would
23 be a very different -- different approach than what we
24 currently have in this language.

1 Commissioner Bald, and then Director
2 Scott.

3 CMSR. BALD: Mr. Chairman, so I
4 understand it, we're -- I don't think we should suspend
5 it. And, if I'm clear on what this says, is that,
6 basically, if the PUC makes any changes, they're going to
7 notify you. And, if it's really substantial, then you
8 would make a decision to notify the Applicant at that
9 time. Is that correct?

10 CHAIRMAN BURACK: That's correct. And,
11 whether it would be myself or whoever the Presiding
12 Officer would be at whenever time that occurs, that's
13 correct.

14 CMSR. BALD: Well, I know the PUC, and I
15 know they'll do a good job. And, I don't think we should
16 delay making a decision.

17 CHAIRMAN BURACK: Director Scott.

18 DIR. SCOTT: I just want to clarify your
19 understanding of what the current Certificate says. So,
20 the Applicant cannot commence construction until there's a
21 PPA in hand. They have to notify, it says "Subcommittee",
22 but it would say "Committee". Would they, having done,
23 would they then be able to construct, even if the
24 Presiding Officer thought there was cause to open up the

1 proceedings?

2 MR. IACOPINO: They have filed. They
3 actually submitted, during our proceedings in this docket,
4 a copy of the revised PPA. They had received conditional
5 approval from the PUC. They assert that that revised PPA
6 complies with the conditional approval. My understanding
7 of what's happening at the PUC now is that the PUC is
8 going to review that to determine if it complies. And, in
9 addition to that, also they have these motions, a motion
10 or two motions for rehearing on their initial order
11 issuing the conditional approval.

12 So, from a legal standpoint, what they
13 have provided us so far is not a approved PPA. So that it
14 is left to some future action of the PUC before they can
15 even have the appropriate document to submit to us.

16 DIR. SCOTT: If I could be more explicit
17 to my question?

18 MR. IACOPINO: I'm sorry.

19 DIR. SCOTT: My question, and I know
20 you're in a discussion, too, my discussion was -- my
21 question was, once they submit a approved PPA, once they
22 have one in hand, would argue that they could start
23 construction, though, at the same time they have to submit
24 to the Committee a copy of that. And, my question is,

1 does the -- if, for some reason, the Presiding Officer
2 thought more action was necessary, can they -- with this
3 wording can they still construct regardless or are they
4 barred from constructing until the Presiding Officer has
5 taken some sort of action?

6 MR. HARRINGTON: I might be able to help
7 out here, if I could?

8 CHAIRMAN BURACK: Please,
9 Mr. Harrington.

10 MR. HARRINGTON: Because I think we're
11 in kind of a "belt and suspenders" land. The main purpose
12 of putting the stipulation in on the Purchase Power
13 Agreement was to make sure they had adequate financing in
14 order to build the Project. There was a lot of discussion
15 in the original hearing that they needed to have a
16 non-appealable PPA as a condition for financing. So, as
17 we go along, if you were to look at the condition, one
18 before this, on the same, on Page 4, it says that "the
19 Applicant shall not commence construction,
20 as...defined..., until such time as construction financing
21 is completely in place."

22 So, I think the real issue here is, they
23 are not going to be able to start construction until
24 construction financing is in place. And, the record

1 clearly shows that, without an approved PPA, that's
2 sufficient to make the lenders happy, as Mr. Needleman had
3 said -- had responded to my question earlier today, they
4 won't be building anything. So, I think this is sort of
5 self-regulating, to some extent. That these were all kind
6 of the "belt and suspenders".

7 But the bottom line is, without the
8 approved financing, which they can't start construction
9 without, nothing's going to happen. And, the financing
10 includes a adequate PPA that will make their lenders
11 happy. So, I think we're pretty safe here. And, I think
12 it also addresses most of the concerns raised by Public
13 Counsel.

14 MR. IACOPINO: Mr. Harrington is
15 correct, that, as a practical matter, the previous
16 paragraph, in the real world, will -- they have to have
17 the approval from the Site Evaluation Committee before
18 they're going to get their money to build. However, if,
19 for some reason, they had obtained their construction
20 financing before, I anticipate they would file the
21 approved PPA and whatever -- and the additional
22 information required by (i) through (iv) with the Site
23 Evaluation Committee. Upon doing that, they would be able
24 to commence construction of the Project. If the Site

1 Evaluation Committee then determines that "well, wait a
2 minute, we need to have you come in here for further
3 proceedings for one reason or another", that's what --
4 that's the way it would happen, just by the reading of
5 this particular section of the Certificate.

6 DIR. SCOTT: Thank you.

7 CHAIRMAN BURACK: Thank you. And,
8 again, I had mentioned earlier, maybe we would need to
9 separately amend this provision to replace "Subcommittee"
10 with "Committee" but I think that the motion that we
11 adopted earlier to provide us with general ability to make
12 necessary changes to conform, to update, provides us with
13 the authority to change the references to "Subcommittee"
14 to the "Committee" itself.

15 Okay. I believe we have now addressed
16 all of the issues and concerns raised by the Counsel for
17 the Public with respect to this proceeding.

18 Is there anything else that any members
19 of the Committee wish to raise with respect to this
20 matter?

21 (No verbal response)

22 CHAIRMAN BURACK: Attorney Iacopino, do
23 you have anything further?

24 MR. IACOPINO: No.

1 CHAIRMAN BURACK: Okay. Again, just to
2 summarize. We have deliberated today. We have taken
3 votes on motions that will be incorporated into a written
4 order and amended Certificate. And, we are instructing
5 our counsel to undertake drafting of those revisions as
6 expeditiously as possible. The expectation is that the
7 drafting process and subsequent review and execution
8 process by the members of the Committee will take
9 approximately two weeks from today. So, we would
10 anticipate being able to issue an updated Certificate and
11 amended order by approximately the 17th of June.

12 If there is nothing further to come
13 before us today, we stand adjourned. Thank you.

14 **(Whereupon the hearing and deliberations**
15 **were adjourned at 12:55 p.m.)**