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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

August 20, 2010 - 9:08 a.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

RE: SEC Docket No. 2009-02
Application of Laidlaw Berlin
BioPower for a Certificate of
Site and Facility for a 70 MW
Biomass Fueled Energy Facility
in Berlin, Coos County, New
Hampshire. (Prehearing conference)

* * *

Presiding: Michael Iacopino, Esq.
Counsel for the Committee

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)

REPTG. CITY OF BERLIN:

Merritt Schnipper, Esq.
(Downs Rachlin Martin)

REPTG. CLEAN POWER DEVELOPMENT:

James T. Rodier, Esq.

COUNSEL FOR THE PUBLIC:

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

P R O C E E D I N G

1
2 MR. IACOPINO: We're ready to get
3 started. Okay. We're here for a prehearing conference.
4 My goal out of this conference is to ensure that our
5 adjudicatory hearings next week go as smoothly as
6 possible, with as little delay during the course of the
7 hearings as possible. I've passed out an agenda for the
8 conference today. And, obviously, I've listed five issues
9 in there. And, if there are any other issues that any
10 parties need to raise, we can certainly do that. But I
11 think we should proceed pretty much in the order that that
12 agenda is set up for. And, we'll just -- but we'll leave
13 the exhibits as the very last thing, because I know
14 there's a lot of them, and I'm probably going to let Steve
15 -- we'll probably go off the record for the actual marking
16 of them, if they need to be marked, but organization of
17 them. Although, I'll probably need you still here, Steve,
18 just so that you know what they consist of.

19 The first issue that I think we need to
20 discuss is the order of examination, the time needed for
21 the witnesses, how each party intends to present its
22 witnesses, those sorts of issues. I would like to start
23 with Mr. Needleman. If you can tell me how you plan on
24 calling your witnesses, the order in which you're going to

1 call them, and how much time you think they should take,
2 and then we'll go around the table to the other parties to
3 get sort of an idea of what they plan to do with your
4 witnesses.

5 MR. NEEDLEMAN: Sure. We've got the
6 five witnesses who we've prefiled testimony for. I think
7 that the order we're going to do them will be Lou Bravakis
8 first, Mike Bartoszek second, --

9 MR. RODIER: I'm sorry, who was first?

10 MR. NEEDLEMAN: Lou Bravakis.

11 MR. RODIER: Oh. Okay. I'm sorry, I
12 didn't hear you.

13 MR. NEEDLEMAN: Mike Bartoszek second,
14 David Frecker third, Carl Strickler fourth, Ray Kusche
15 fifth. My strong preference would be to present them all
16 consecutively and then make them available as a panel for
17 cross-examination. And, the reason I would like to do
18 that is because, based both on my experiences in other
19 proceedings, and also thinking about how things have gone
20 in this proceeding at the technical sessions, it's pretty
21 rare that a single witness is capable of answering a
22 question; frequently, others chime in. And, I think that
23 it would be much more efficient for the whole process if
24 they were presented as a panel and could answer questions

1 as a panel. That certainly doesn't mean that people can't
2 direct examination to particular people. But I just
3 think, for example, if we go one at a time, and someone
4 asks Lou a question, and Lou can answer it partially, but
5 then says "I'm going to really have to turn to Dammon" or
6 to someone else on the panel, we don't have them sworn in
7 and haven't presented their testimony, it's just going to
8 slow things down and be awkward.

9 In terms of time, I think that, if I
10 were to present them as a panel and just move them all in
11 consecutively, and put most of our exhibits in at that
12 same time, I think I could probably do that in under two
13 hours.

14 MR. RODIER: May I ask a clarifying
15 question, Mike, or how does this work?

16 MR. IACOPINO: That's fine.

17 MR. RODIER: I just want to clarify one
18 thing.

19 MR. IACOPINO: Yes.

20 MR. RODIER: What I was going to do is,
21 you know, it's prefiled testimony, so you're just going to
22 ask for summaries from your witnesses?

23 MR. NEEDLEMAN: I'm not going to have
24 them read the testimony. I'm going to have them --

1 MR. RODIER: Okay.

2 MR. NEEDLEMAN: -- swear to it, adopt
3 it, and I'm going to ask each one to give a brief summary
4 of the highlights.

5 MR. RODIER: Okay. That's good.

6 MR. IACOPINO: And, then, I taken it
7 you're going to -- are you going to have them adopt all of
8 your exhibits? Is that your intention or --

9 MR. NEEDLEMAN: Well, I'm going to try
10 to do that up front. And, what I've done is tried to
11 break up the exhibits as much as I can to tie to the
12 individuals who are primarily responsible for them. It
13 doesn't work perfectly. But, you know, for example, on
14 exhibits related to wood supply issues, things like that,
15 that's primarily going to be Lou Bravakis. And, so, what
16 I want to try to do is identify those and move those in up
17 front as I go through the witnesses.

18 MR. IACOPINO: What does Counsel for the
19 Public think of that presentation?

20 MR. ROTH: I don't particularly like it.
21 There are a couple of things that are objectionable,
22 starting with the -- starting with the last one first.
23 The typical way I've seen this done is the witness is
24 sworn in, adopts his testimony, and announces any changes

1 in the testimony, but there isn't an opportunity to give
2 direct testimony by "summarizing it" and hitting the high
3 points. That's never the way I've seen it done here.

4 And, I don't think the Committee would want to sit for two
5 hours while you go through that process, which is kind of
6 in derogation of the whole procedure.

7 Secondly, the submitting the panel as a
8 bulk panel is not consistent with the way the testimonies
9 were filed, and deprives us of an effective way to
10 cross-examine the witnesses, who may give different
11 answers to similar questions. And, to have them all
12 sitting there sort of rising and, you know, playing a
13 little bit of whack-a-mole for the cross-examiner is a bit
14 unfair.

15 And, if, for example, there were two
16 witnesses who had joint prefiled testimony, I could see
17 that being a panel. But, to say the whole lot of them,
18 all five of them go up and get to pick and choose who
19 answers the question, I think does not -- is not faithful
20 to the cross-examination process, and we would object to
21 that.

22 MR. IACOPINO: Let me ask -- let me ask
23 you, Barry, where do you see the overlap on the witnesses?

24 MR. NEEDLEMAN: Well, for example, when

1 we were at one of the technical sessions, and a question
2 was directed at Mike Bartoszek about experience associated
3 with financing projects like this, Mike answered that
4 question in part, and then Carl Strickler also offered his
5 experience dealing with that. So, I mean, I just expect
6 that, in a process like this, there's going to be overlap.

7 I expect that, for example, if someone
8 asks a question about global warming issues, greenhouse
9 gas issues, Lou is going to have something to say about
10 that, and then, on the technical side, Dammon Frecker may
11 have something to say about that as well. But I -- I
12 mean, my view is it's not -- I don't intend to deprive
13 anyone of a fair chance to examine. I've seen it done
14 this way, I think, a number of times. And, I just think
15 that, in terms of trying to move us through the process,
16 it will unquestionably be more efficient.

17 MR. IACOPINO: Is there any smaller
18 panel breakouts that you could envision?

19 MR. NEEDLEMAN: I haven't really thought
20 about it in that respect, only because it's just hard for
21 me to try to predict all the places where there's overlap
22 or other people may have things to say.

23 MR. IACOPINO: Well, let me ask this of
24 each party. How much time do you think your

1 cross-examination of each of these witnesses, for our
2 purposes right now, let's just presume you're going to
3 take each witness separately, how much time would you
4 anticipate in cross-examination? And, I'll start just to
5 my left with Mr. Schnipper, for -- go through the list,
6 Lou Bravakis?

7 MR. SCHNIPPER: We don't imagine that we
8 would be cross-examining anyone except Mr. Bravakis, you
9 know, and it's only a very remote chance. And, let me
10 just say to start that we're still working with the
11 Applicant to just reach a completely agreed upon proposed
12 set of permit conditions. And, if that happens, we won't
13 be doing any cross-examination.

14 MR. IACOPINO: Well, let's assume you
15 don't. How much time? I'm just trying to get an idea
16 what the timing is.

17 MR. SCHNIPPER: I mean, a half hour.
18 Because we've already reached agreement on most, so
19 there's only a few things that would even need to be
20 probed, in any event.

21 MR. IACOPINO: Okay. Counsel for the --
22 and, is that just Mr. Bravakis?

23 MR. SCHNIPPER: Yes. I don't think
24 we'll have questions for anyone else.

1 MR. IACOPINO: Okay. And, how about,
2 Counsel for the Public, for each witness what -- and
3 roughly, I'm not -- this is nothing that you're going to
4 be held to. In fact, Mr. Burack probably won't even know
5 that we've had this discussion to this level of detail.
6 But I'm just trying to get an idea so that we can make a
7 determination as to what the best way to actually do this
8 will be.

9 MR. ROTH: We don't anticipate having
10 questions for everyone. And, at the most, 30 minutes per
11 witness.

12 MR. IACOPINO: Okay. Jim?

13 MR. RODIER: Well, we are somewhat
14 hamstrung by the fact that we're a limited intervenor,
15 which we, you know, we disagree with that. But that could
16 -- so, what I'm saying is, there's going to -- there may
17 well be a difference here between what we'd like to do for
18 cross-examination and what we're allowed to do.

19 MR. IACOPINO: For our purposes today,
20 though, why don't you tell us what you anticipate based
21 upon what you would like to do.

22 MR. RODIER: Okay. That's where I was
23 going --

24 MR. IACOPINO: And, that way, because I

1 assume, if you don't get to do what you'd like to do, it's
2 going to be shorter, so that we at least have a
3 conservative --

4 MR. ROTH: We're looking for a worst
5 case; your best case.

6 MR. IACOPINO: -- so we have a
7 conservative estimate.

8 MR. RODIER: Sure. So, with Bravakis, a
9 couple hours; Kusche, an hour. Want me to use six minute
10 increments here or --

11 MR. IACOPINO: We're all used to it.

12 MR. RODIER: Strickler, an hour;
13 Bartoszek, an hour; and Frecker a half hour.

14 MR. IACOPINO: And, what's your position
15 with cross-examining them as a panel?

16 MR. RODIER: Well you know, the PUC does
17 it.

18 MR. IACOPINO: I mean, there's nothing
19 that limits you from directing your --

20 MR. RODIER: Well, I was going to say,
21 you can always direct a question.

22 MR. IACOPINO: Right.

23 MR. RODIER: But, I -- having heard the
24 objections of the Attorney General, I mean, I would have

1 to say I don't want to -- I don't want to disagree,
2 because he's got good points. So, I think I was probably
3 ready to say "we'll live with, you know, Laidlaw's
4 proposal." But I think the objections have some merit
5 that should be considered or, you know, it may be better
6 to take them one at a time.

7 MR. ROTH: Mike and Barry, I wouldn't be
8 opposed to taking them in smaller groups, if you want to,
9 you know, tag team them with one, you know, one other
10 person in a given case. That's fairly typical and
11 understandable. But, just to have the whole phalanx of
12 them being able to pick and choose how a question gets
13 answered, I just don't think that that's
14 cross-examination, that's "Who Wants to be a Millionaire?"

15 MR. IACOPINO: Well, is your concern,
16 Peter, that, essentially, if you were to, let's say he
17 tendered the whole panel, is it your concern, when you say
18 "it's not cross-examination", that you're afraid that
19 you'll ask particular cross-examination questions of a
20 particular witness, and he will get help from the other
21 ones in answering the questions or --

22 MR. ROTH: Yes, that's essentially the
23 problem. Because, you know, the witness's testimony is
24 supposed to essentially stand for -- stand on its own, and

1 it comes with some expertise and knowledge. If, on
2 cross-examination, the cross-examination the witness is
3 unable to answer the question or doesn't have the
4 information pertinent to his own testimony, that should be
5 an obvious thing. But, if he's got, you know, four
6 friends that he can, you know, phone a friend, and
7 somebody else can bolster his testimony, who has not
8 submitted testimony on that issue, then the whole thing
9 gets really watered down. And, I just don't think that
10 that's the way it should work.

11 MR. NEEDLEMAN: I think, and there's an
12 important point there as well. I mean, it's been
13 customary, in my experience dealing with this Committee,
14 that to the extent there's a witness that can't fully
15 answer a question, but there's somebody else that's part
16 of our group that's there, we've turned to that person in
17 the past who has been able to provide additional
18 information, I'm thinking most recently when we did the
19 NAEA proceeding, and there was a guy from the Shell Energy
20 Trading, and someone asked a question and it couldn't be
21 completely answered, the guy from Shell Energy Trading
22 stood up and provided more information, and that gave the
23 Committee what it needed.

24 MR. ROTH: When the Committee asks

1 questions, that's a fairly typical process. But the
2 Committee isn't cross-examining, the Committee is seeking
3 information. And, --

4 MR. IACOPINO: Well, and that, Peter,
5 that is the Committee's goal for the whole proceeding, is
6 to obtain the information that's necessary to determine
7 whether or not to grant or deny a certificate. So, I
8 mean, oftentimes, I mean, even if you have one witness at
9 a time, and you do a stellar cross-examination and all the
10 witness can say is "well, jeez, I don't know. I'd have to
11 defer that to, you know, the next witness", or whatever, I
12 mean, yes, it's probably uncomfortable for the witness,
13 but I'm not sure what kind of actual effect it has on the
14 decision of the Committee, because the Committee is
15 looking for the information, as opposed to -- I mean, for
16 the most part in these things, unless there's a real
17 credibility issue about a particular witness, there's not,
18 you know, that's not really the focus. By the same token,
19 though, just putting all of your witnesses up on a panel
20 is not how the Committee is used to doing things.

21 Normally, we've had, when we've had panels, the panels
22 have been designed by looking at the subject matter of the
23 witnesses' testimony. So, if you have, you know, a
24 witness who is going to testify about, you know, the

1 wetlands issues, and you've got somebody who is going to
2 testify about wildlife, oftentimes we've, you know, put
3 them on, because lots of times, as a panel, because their
4 testimony is going to overlap in areas.

5 So, there should be a medium here,
6 between just simply saying "I'm going to present all my
7 witnesses and then tender them for cross-examination." Is
8 there some kind of breakdown of the witnesses that you
9 think would be -- where we can deal with those overlaps?

10 MR. NEEDLEMAN: Sure. I'm not sure -- I
11 haven't really thought about this, so I'm not sure it's
12 going to work perfectly. But I suppose one way we could
13 do it is I could try putting Lou, Ray, and Carl up. And,
14 the reason I think of that is Lou is primarily responsible
15 for introducing sort of the overall big picture of the
16 Project and talking about wood supply issues. Carl and
17 Ray are sort of the technical/environmental. So, if I'm
18 trying to project places where there is most likely to be
19 overlap, it seems to me that's one of those places. That
20 leaves Mike Bartoszek and Ray, I guess, --

21 MR. IACOPINO: Dammon?

22 MS. VAUGHN: Dammon. You meant to say
23 "Dammon".

24 MR. NEEDLEMAN: I'm sorry. Let me say

1 it again.

2 MR. ROTH: Not "Lou, Ray, Carl", you
3 mean "Lou, Dammon, Carl"?

4 MR. NEEDLEMAN: I mean "Lou, Dammon,
5 Carl", correct. I'm sorry. I'm not really sure it would
6 make sense then to take Mike and Ray together as a panel,
7 because I'm not really sure there is much overlap between
8 their issues, so I suppose we could do them separately.

9 MR. ROTH: That would work.

10 MR. BROOKS: Yes. And, Mike, just for
11 your consideration, too. I think that, you know, this
12 isn't necessarily an adversarial proceeding, but it is an
13 adjudicatory proceeding. And, we want to efficiently get
14 information out there, but I think it's helpful to be able
15 to have a witness who, if they filed prefiled testimony on
16 a topic, has to answer the question. If for no other
17 reason than -- I don't want to have someone just say "I
18 don't know", "I don't know". But I want to see if the
19 answer is being consistent between one person who has
20 knowledge on a topic and between the next person, without
21 the benefit of them either conferring or just deferring.
22 So, I don't mind a smaller panel either, but just
23 anticipate that I may want to say, too, if there's a panel
24 of three, to say "this question is for you and you alone",

1 and to the extent that I give them the extra leeway, then
2 that would be fine.

3 MR. IACOPINO: I don't think there's any
4 problem with that, and you're always free to direct your
5 questions to an individual. And, if he starts to get
6 assistance from somebody else, I have actually seen
7 chairpeople from our Committee say "no, the question was
8 asked to so and so."

9 MR. BROOKS: And, if it's appropriate, I
10 would like to be able to do that as well. And, obviously,
11 the SEC can say "no, we want to hear." But I just want to
12 -- people may anticipate that I may want one witness to
13 answer one question.

14 MR. IACOPINO: Oh, I think that's -- I
15 think that's fair. And, I also think that it addresses
16 the issues that, just as far as organizing a Committee
17 proceeding, I think that that, you know, doing it in three
18 panels is easier for -- it's easier for Mr. Patnaude, it's
19 easier for the Committee, I think. And, it also, if it
20 breaks it out somewhat by subject matter, it's also easier
21 for everybody to be organized in how they're going to
22 approach their cross-examination. What do you guys at
23 Clean Power think about that?

24 MR. RODIER: Well, this last iteration

1 sounded good.

2 MR. IACOPINO: Okay. All right. So,
3 why don't we agree -- well, why don't we do it that way
4 then. Would you envision the three-person panel with
5 Mr. Bravakis, Mr. Kusche, and Mr. Frecker as being first?

6 MR. NEEDLEMAN: Not Mr. Kusche.

7 MR. IACOPINO: Oh, did I get the wrong
8 one? I'm sorry.

9 MR. NEEDLEMAN: Yes. That's okay. I
10 messed up. Let me do it for you again. The panel, which
11 I think will go first, will be Lou Bravakis, Carl
12 Strickler, and Dammon Frecker. Is that what I said?
13 Right.

14 MR. IACOPINO: Okay.

15 MR. NEEDLEMAN: And, then, when the
16 panel is done, Mike Bartoszek will go individually. And,
17 then, when he's done, Ray Kusche will go individually.

18 MR. ROTH: And, who's going to address
19 financial, technical, managerial, is that going to be
20 Bartoszek or Kusche?

21 MR. NEEDLEMAN: No, Mike is going to
22 address financial aspects, and then Carl is going to
23 address technical/managerial primarily.

24 MR. ROTH: Carl?

1 MR. NEEDLEMAN: Stickler.

2 MR. ROTH: Stickler.

3 MR. IACOPINO: He's in that first panel.

4 MR. ROTH: So, I guess, and I don't
5 quite see the link between Strickler and Bravakis and
6 Frecker. Typically, the way I would have expected it to
7 be broken out would be, and just in the logic of how these
8 proceedings have worked for me in the past, is Strickler
9 would pair up with Bartoszek, because that's sort of a
10 common subject matter, and kind of one of the findings
11 altogether, financial, technical, managerial capabilities.

12 MR. IACOPINO: He knows his witnesses
13 better than --

14 MR. NEEDLEMAN: Yes. I mean, and there
15 are different ways to skin the cat. That's one way. I
16 was just thinking the other way to do it was to put the
17 people up there that collectively have sort of the overall
18 facility knowledge, the technical knowledge, the
19 environmental knowledge, because those tend to be
20 questions that I find are blended together. Whereas, the
21 financial aspects tend to sort of stand on their own and
22 not mix with those other topic areas.

23 MR. IACOPINO: All right. So, if I
24 understand, basically, you're saying is you're sort of

1 peeling the technical out of the financial and managerial,
2 because it deals with more on-the-ground type stuff. And,
3 that's why you've put Mr. Frecker in with Mr. Bravakis,
4 who's sort of an overall overview witness, and with
5 Mr. Strickler, who's the technical guy, and then
6 Mr. Frecker is the technical guy, too?

7 MR. NEEDLEMAN: Correct.

8 MR. ROTH: Barry, there's nothing wrong
9 with having Strickler sit for -- sit with Bartoszek during
10 the financial, technical, managerial type questions, so
11 that he could sit in two panels. Answer questions that
12 are sort of, you know, I don't know how to put it, but
13 that go along with environmental impacts, along with
14 Bravakis and Frecker, and have him respond to operational
15 and safety kind of details when he's sitting with
16 Bartoszek.

17 MR. IACOPINO: So, you don't have any
18 problem if Strickler sat in both, both panels basically?

19 MR. ROTH: No.

20 MR. BROOKS: I think it would make more
21 sense to do that.

22 MR. IACOPINO: Okay.

23 MR. ROTH: And then have him respond to
24 different questions on different panels.

1 MR. IACOPINO: Do you have any problem
2 with that, Jim?

3 MR. RODIER: No. By the way, is
4 somebody writing this up, so that we'll all have this game
5 plan?

6 MR. IACOPINO: Yes. I'm going to --
7 there will be an agenda that will be handed out Monday
8 morning that will have --

9 MR. RODIER: Good.

10 MR. IACOPINO: Assuming, now understand,
11 I am not a decision-maker on this Committee.

12 MR. RODIER: Yes.

13 MR. IACOPINO: I mean, Tom Burack may
14 look at everything we do here today and say "That's not
15 the way I'm doing it." I don't think that will be the
16 case, but he's going to, you know, he's going to be the
17 presiding officer at the hearing, so he'll have the final
18 say. But my guess is what we -- we agree on doing this,
19 he's going to agree with that.

20 MR. NEEDLEMAN: That's fine.

21 MR. ROTH: What is Ray's area?

22 MR. NEEDLEMAN: Interconnection.

23 MR. ROTH: Okay. Electrical.

24 MR. IACOPINO: So, it looks like the

1 plan right now is the first panel will be three witnesses;
2 Mr. Bravakis, Mr. Strickler, and Mr. Frecker; the second
3 set of witnesses will be a panel as well, which will be
4 Mr. Strickler again and Mr. Bartoszek; and then the last
5 witness will be alone, and it will be Mr. Kusche.

6 MR. NEEDLEMAN: Yes.

7 MR. IACOPINO: Okay. Good. By the way,
8 does any of that organization of those witnesses, Jim,
9 change any of your estimates, in terms of your amount of
10 cross-examine?

11 MR. RODIER: I don't think so.

12 MR. IACOPINO: Okay.

13 MR. RODIER: You know, a lot of
14 cross-examination is a function, you could have a
15 recalcitrant -- you could say "I want an hour", have a
16 recalcitrant witness go nowhere. So, I mean, --

17 MR. IACOPINO: Like I said, nobody is
18 holding anybody to here. We all understand it's a fluid
19 process.

20 MR. RODIER: All right. So, that's
21 fine.

22 MR. IACOPINO: The order that we have
23 traditionally done cross-examination in SEC proceedings
24 has been, normally, the witness goes on and is presented,

1 there's been questions from the Committee, and then,
2 normally, we go into the parties' cross-examination. And,
3 some occasions Public Counsel has requested to go first,
4 on other occasions they have requested to go last. And,
5 my experience with who's ever been our presiding officer
6 is they have usually acquiesced to whatever Counsel for
7 the Public's desire is. And, so, I will give you the
8 first choice on that.

9 MR. ROTH: Well, my first, I mean, I
10 don't know, maybe I've got summer befuddlement, but I
11 always thought that the Committee asked questions after
12 the cross-examinations had been done?

13 MR. IACOPINO: I always thought we went
14 first.

15 MR. ROTH: Your court reporter is
16 nodding "yes", though.

17 MR. IACOPINO: Am I wrong? Okay. I've
18 got it wrong then. That's -- you're probably correct
19 there.

20 MR. ROTH: Okay. Well, we appreciate
21 the prerogative or having the choice, we will -- of being
22 first, we will go last.

23 MR. IACOPINO: Okay. Since you've only
24 -- I'm going to put the City, you say you only have

1 questions for Mr. Bravakis?

2 MR. SCHNIPPER: Yes, and potentially so.

3 MR. IACOPINO: All right. Right now.

4 Your plan.

5 MR. SCHNIPPER: We're happy to go first.

6 MR. IACOPINO: Okay. So, I think we'd
7 put the City first, then allow Clean Power, and then allow
8 Counsel for the Public. Any problem with that order?
9 That order of questioning?

10 MR. RODIER: No problem. I need to talk
11 to Mel for 30 seconds.

12 MR. IACOPINO: Sure.

13 MR. RODIER: May I just go over here?

14 MR. IACOPINO: No problem.

15 (Off the record.)

16 MR. IACOPINO: Okay. Any -- I know you
17 talked with Mr. Liston. Any change in your position at
18 all?

19 MR. RODIER: No. Not on anything
20 discussed so far.

21 MR. IACOPINO: Okay. All right. The
22 next -- so, I guess we've got number one on the agenda
23 worked out.

24 MR. NEEDLEMAN: Actually, do we fully?

1 I'm just curious, after we've presented our case, who are
2 the next witnesses?

3 MR. IACOPINO: You'll get redirect.

4 MR. NEEDLEMAN: No, I'm not talking
5 about redirect, I'm talking about there are other
6 witnesses besides Laidlaw's. What's that order?

7 MR. IACOPINO: Yes. Okay.

8 MR. RODIER: Well, that's -- we got
9 prefiled from Mel Liston and Bill Gabler.

10 MR. IACOPINO: Right.

11 MR. RODIER: Mel is basically biomass
12 availability, as everybody knows, and Gabler is on the
13 transmission and interconnection issue. It would, you
14 know, to put them up there, we were contemplating
15 individually, because there's not much overlap there.
16 But, you know, how long would having them authenticate --
17 identify themselves, authenticate their testimony or
18 whatever, and give a summary? Fifteen minutes, maybe.

19 MR. IACOPINO: Okay.

20 MR. RODIER: Okay? Now, there's one
21 issue that I did want to bring up here, it's one that I
22 may have briefly mentioned to you earlier this week,
23 Mr. Hearing Examiner, and that is that Mel Liston has a
24 sister in Florida who's very, very ill. And, it's sort of

1 like a day-to-day thing here, you know, if something looks
2 really bad and imminent or whether it's a good day, that
3 kind of thing. So, the way that it's going right now, it
4 looks like he is going to be available next week. We --
5 let's say it's Tuesday, for sake of discussion, --

6 MR. IACOPINO: Okay.

7 MR. RODIER: -- that CPD goes on? So,
8 you know, he would be around. But our backup plan, in the
9 event that he has to go to Florida, was we have prepared
10 Peter Bloomfield to adopt fully Mel's testimony and
11 responses. That's our backup plan, should it be needed.
12 But I do also want to, you know, suggest right now that
13 what we would like to do is have a panel of Mel and Peter
14 available for, certainly, for questions from the
15 Committee, but also for cross-examination on CPD's biomass
16 availability testimony. That's what we'd like to do.

17 MR. IACOPINO: Peter?

18 MR. RODIER: I'm sorry. Peter
19 Bloomfield.

20 MR. IACOPINO: Right. But --

21 MR. RODIER: And, --

22 MR. IACOPINO: Okay, we have no -- I
23 understand he may substitute if Mel has to go leave
24 because of his sister.

1 MR. RODIER: Yes, I know.

2 MR. IACOPINO: But in terms of a panel?
3 I don't know, you're talking about a panel with Peter, we
4 don't have any prefiled testimony from him?

5 MR. RODIER: I know you don't. But he's
6 fully in agreement word-for-word with what has been
7 prefiled.

8 MR. ROTH: I thought you had proposed a
9 panel where he and the prefiler would sit together? Did I
10 misunderstand that?

11 MR. RODIER: Correct. That's what we
12 plan on doing now.

13 MR. IACOPINO: So, what's your --

14 MR. RODIER: Unless Mel's got to go to
15 Florida, that's what we're --

16 MR. ROTH: But, if he didn't file
17 testimony, he shouldn't be on a panel.

18 MR. RODIER: Okay.

19 MR. ROTH: Unless he's adopting
20 testimony and sits by himself, that I would agree to.

21 MR. RODIER: Okay.

22 MR. ROTH: But I do not think he should
23 sit on a panel, and, you know, for the same reason I
24 objected to their bulking of their panel, you know, the

1 guy has not really --

2 MR. RODIER: Okay. I understand. Sure.

3 MR. IACOPINO: I think it's -- and, it's
4 also difficult for a party to, I mean, what you get is
5 cross-examination, --

6 MR. RODIER: Well, look, let me ask this
7 --

8 MR. IACOPINO: -- it's difficult to
9 cross-examine somebody who you don't know anything about.

10 MR. RODIER: Right.

11 MR. IACOPINO: I mean, obviously, you
12 all know things about each other, but that you don't know
13 really what the guts of their testimony is as well.

14 MR. ROTH: Yes. This is not "Who Wants
15 to be a Millionaire?"

16 MR. RODIER: Okay. Well, let's -- let
17 me then, I guess, leave it this way. If Mel has to go to
18 Florida over this weekend, then would there be any problem
19 with substituting Peter Bloomfield, if he adopts his
20 testimony, --

21 MR. IACOPINO: Anybody have any
22 objection?

23 MR. RODIER: -- as our fallback plan?

24 MR. ROTH: I would not object.

1 MR. SCHNIPPER: No objection.

2 MR. RODIER: Everybody know who Peter
3 Bloomfield is?

4 MR. NEEDLEMAN: Yes, I do. I would have
5 no objection --

6 (Court reporter interruption.)

7 MR. NEEDLEMAN: I would certainly have
8 no objection, if circumstances require Mel to be away. I
9 would just want to be certain that Peter is fully adopting
10 everything, --

11 MR. RODIER: Yes.

12 MR. NEEDLEMAN: -- so that we can fairly
13 question him about everything and there would be no delay
14 in process.

15 MR. RODIER: Okay. Yes. That's --

16 MR. IACOPINO: And, I guess I want to
17 explore this a little bit more, though, Jim. Is it, in
18 proposing the panel, is it your understanding that Peter
19 brings something additional?

20 MR. RODIER: Well, he currently buys a
21 lot of wood.

22 MR. IACOPINO: Okay.

23 MR. RODIER: So, that's what it's all
24 about.

1 MR. IACOPINO: All right.

2 MR. RODIER: It's not abstract with
3 Peter Bloomfield. It's what's going on out there.

4 MR. IACOPINO: Well, I understand. But,
5 if you're going to put things in to determine whether
6 they're concrete or abstract, I mean, what's been
7 presented to the Committee so far on that issue is really
8 studies and opinions based on those studies.

9 MR. RODIER: No, I know.

10 MR. IACOPINO: And, you know, it just
11 seems to me that it's sort of unfair to the other parties
12 if you then add sort of another figure in there, and
13 you're actually going to try to trade off on his -- on his
14 background and his qualifications, which is unfair to the
15 other parties.

16 I mean, you can always -- like I say, I
17 am not the presiding officer, you can request to put him
18 on of the Chairman, once the hearings get started. But,
19 as far as, I mean, to me that just doesn't seem like it's
20 fair to the other parties.

21 MR. RODIER: Yes. That's fine. So, I
22 understand what you're saying. Oh, my God, I had
23 something else. Oh. The only thing I want to add here as
24 sort of background, you know, with the relationship with

1 Gestamp, G-e-s-t-a-m-p, Peter Bloomfield is taking a
2 active, he was just a member of the LLC and like on the
3 board, and now he's very actively involved with CPD. And,
4 this, you know, on a day-to-day basis, it's going to be
5 his actual responsibility. So, there has been some
6 restructuring of the responsibility to CPD, to some
7 extent, for the roles. So, that was what kind of gave
8 thought to this. But, look, your points are well-taken,
9 and I think we probably -- I heard the opinions of
10 everybody, and I also heard you say we can get one last
11 shot at the Committee, if we really felt strongly on this.

12 MR. IACOPINO: Right.

13 MR. RODIER: Assuming Mel is even going
14 to be in town.

15 MR. IACOPINO: I mean, one thing -- one
16 thing about Gestamp, I understand the relationship, at
17 least from the press releases and whatnot. But, I mean,
18 the Clean Power Development Project is not what's being
19 determined here. And, the relationship with Gestamp, and
20 any role that Gestamp may play in Clean Power
21 Development's Project, I don't really know how relevant or
22 material that is to what the Committee has to determine
23 with regard to this application.

24 MR. RODIER: No, I was talking about

1 Peter Bloomfield's role with CPD.

2 MR. IACOPINO: Okay. So, he's becoming
3 a bigger player in the company and that's --

4 MR. RODIER: Yes.

5 MR. IACOPINO: -- or, a more day-to-day
6 player, I should say?

7 MR. RODIER: Is that right, Mel?

8 MR. LISTON: That's correct.

9 MR. IACOPINO: Okay. All right. Well,
10 I think it raises some issues, and I certainly wouldn't
11 recommend it at this point.

12 MR. RODIER: Okay.

13 MR. IACOPINO: But you're free to raise
14 it with Commissioner Burack on Monday. And, by the same
15 token, though, to the other parties, I mean, if, in fact,
16 Mr. Liston cannot be here because of his family
17 circumstances, you know, I mean, you're pretty much saying
18 "we'll allow him to adopt his testimony", you're sort of
19 saying "well, he's going to be" -- "he can be a witness
20 under those circumstances." And, I suppose the question
21 always can be posed is, "if he can be a witness under
22 those circumstances, why can't he be a witness about those
23 issues under these circumstances?" I agree, it's not fair
24 to just allow in the trade-off on his qualifications and

1 experience. But that is sort of a question that you might
2 face, if they do move to have Mr. Bloomfield actually
3 testify.

4 MR. NEEDLEMAN: Well, it's a fair
5 question. And, I would like to speak to that now, just so
6 my reasoning is clear.

7 MR. IACOPINO: Yes.

8 MR. NEEDLEMAN: I am opposed to the idea
9 of them functioning as a panel. I am not opposed to the
10 idea of Mr. Bloomfield substituting. If Mel has a family
11 issue, I respect that and I don't want this proceeding to
12 trump that. And, I'm willing to be flexible in that
13 circumstance. But that same flexibility doesn't extend to
14 just giving him the benefit of adding witnesses at the
15 eleventh hour to create a panel.

16 MR. ROTH: And, we share that, too.

17 MR. IACOPINO: Okay.

18 MR. ROTH: There is a difference between
19 bolstering a weak witness who may need bolstering and
20 standing alone by himself.

21 MR. IACOPINO: Well, I just -- well, I'm
22 not sure anybody was going to be a weak witness. But I'm
23 just raising it because I just want, you know, I want it
24 aired out here that there is another side to the whole

1 issue, that I want everybody just to be aware of, in case,
2 on Monday morning, we are dealing with this with the
3 Committee.

4 MR. BROOKS: The fallback position I
5 think would be Bloomfield doesn't get to testify under
6 either circumstance, that's -- if we've got to choose one
7 or the other. And, we're doing it merely because there's
8 a very real-life expediency that we need to deal with.
9 And, out of courtesy and out of the hope that we give the
10 SEC good information, we're willing to kind of bend over
11 backwards and go along with that.

12 MR. IACOPINO: Okay.

13 MR. RODIER: Great.

14 MR. IACOPINO: All right. So, at this
15 point, I'm going to prepare this agenda for next week
16 without Mr. Bloomfield on a panel. And, obviously, we
17 know what the position is, if, unfortunately, you have to
18 go to Florida. Okay. And, then, the City intends to put
19 on Ms. Laflamme, is that correct?

20 MR. SCHNIPPER: The City would be
21 putting on Pam Laflamme, the City Planner, as their only
22 witness. If at all possible, we would prefer to put her
23 on on Tuesday. We don't anticipate that her testimony
24 will be long. Assuming that, even if there are the very

1 few remaining issues unresolved between Laidlaw and the
2 City, I still think that our examination of her will be no
3 longer than an hour at the most. And, then, I don't know
4 to what extent their might be some cross-examination.
5 But, if we can get her in on Tuesday, for her personal
6 schedule, that would be much --

7 MR. IACOPINO: Well, really, what you're
8 asking is for her to be the -- for you to present your
9 case in chief immediately after the Applicant's done?

10 MR. SCHNIPPER: That's correct.

11 MR. IACOPINO: Any objection to that?

12 (No verbal response)

13 MR. IACOPINO: I mean, as I understand,
14 Counsel for the Public doesn't have any witnesses. So,
15 it's really -- do you have -- you're the next, I've got
16 two sets of witnesses; one from the City, one from Clean
17 Power. Do you have any objection to the City putting
18 their case in chief in first?

19 MR. RODIER: Of course not.

20 MR. IACOPINO: Okay. And, how much time
21 do each of the parties think that they will spend -- oh,
22 I'm sorry. With Mr. Liston and Mr. Gabler, how much time
23 would you expect on cross-examination?

24 MR. NEEDLEMAN: My best guess now is 45

1 minutes to an hour with Mr. Liston, and 15 minutes to 30
2 minutes with Mr. Gabler.

3 MR. IACOPINO: Counsel for the Public?

4 MR. BROOKS: Thirty minutes apiece.

5 MR. SCHNIPPER: We don't anticipate
6 having any questions for them.

7 MR. IACOPINO: And, then, for Pam,
8 Ms. Laflamme?

9 MR. RODIER: Well, if there's going to
10 -- if there's a stipulation here, it's been discussed, I
11 don't, you know, then we probably would be interested in
12 asking some questions about --

13 MR. IACOPINO: I'm just trying to get --

14 MR. RODIER: Who's going to present the
15 stipulation? Your witness?

16 MR. SCHNIPPER: Well, there's going to
17 be kind of a two-phased approach. You know, a large
18 amount of it is already definitely agreed on between us.
19 So, I assume that Laidlaw will put in that part, for it's
20 own, I suppose, even if there is an incomplete agreement,
21 is when it puts in its exhibits, I don't know that for a
22 fact.

23 MR. IACOPINO: Let me ask this question.
24 Those exhibits that you e-mailed to everybody yesterday --

1 MR. SCHNIPPER: Well, I just e-mailed
2 those to you actually, to the Committee.

3 MR. IACOPINO: Oh.

4 MR. SCHNIPPER: And, I have hard copies
5 here for --

6 MR. IACOPINO: Okay. Those documents,
7 do they include everything that has been agreed upon so
8 far, --

9 MR. SCHNIPPER: They do.

10 MR. IACOPINO: -- so they can prepare
11 what they're going to have to cross-examine over?

12 MR. SCHNIPPER: Well, yes, with one
13 exception, that's already -- we have agreed is going to be
14 removed. And, maybe that will be best addressed when I
15 distribute the exhibits.

16 MR. IACOPINO: Okay.

17 MR. SCHNIPPER: And, then, there are
18 basically blank spots left for the few issues that still
19 are under discussion between --

20 MR. IACOPINO: So, when Jim leaves here
21 today, he will have a very good idea of what the bulk of
22 the -- and when Counsel for the Public leaves here today,
23 they will have a good idea of what the bulk of the
24 agreements between the City of Berlin and the Applicant

1 are, and that there may be some further stipulations that
2 occur between now and the end of the hearing?

3 MR. SCHNIPPER: That's correct. And,
4 they're even -- I would just say that we would reserve the
5 right to seek leave to amend them more significantly, if
6 we needed to.

7 MR. IACOPINO: Certainly.

8 MR. SCHNIPPER: But, basically, the
9 parties have worked long and hard to create what you've
10 got there in front of you, and we assume that we're going
11 to resolve the last few outstanding bits before the
12 hearing begins. If we don't, we'd have to present
13 evidence on our two different positions on those. But we
14 don't anticipate right now that we won't be able to come
15 an agreement. But, in any case, Jim and the Counsel for
16 the Public will have the vast bulk of it over the weekend
17 to work with.

18 MR. IACOPINO: Okay. Let me do this
19 then. Let me start with Barry. I'll get to you in just a
20 second, okay? How much cross-examination would you intend
21 to have on Ms. Laflamme?

22 MR. NEEDLEMAN: Probably none.

23 MR. IACOPINO: Okay.

24 MR. NEEDLEMAN: And, I say that because

1 I expect we will reach agreement on a stipulation and
2 there will be nothing left to dispute between us.

3 MR. IACOPINO: Okay. I'm sorry, Peter.

4 MR. ROTH: I was looking for a
5 clarification. And, that is Ms. Laflamme will be subject
6 to cross-examination regardless of whether a complete
7 agreement is reached, is that correct?

8 MR. SCHNIPPER: We certainly intend to
9 make her available, yes.

10 MR. IACOPINO: Well, if she's not, then,
11 obviously, a motion to strike her prefiled testimony would
12 be in order. And, I don't know how the City would sponsor
13 the agreement. Although, clearly, somebody from the
14 Applicant could say "we're a party to this agreement."

15 MR. ROTH: Yes, I was just -- maybe I
16 was only hearing --

17 MR. IACOPINO: I can say this --
18 (Multiple parties speaking at the same
19 time.)

20 MR. IACOPINO: I'm sorry. I think the
21 Committee is going to want to hear from her.

22 MR. SCHNIPPER: I would hope so.

23 MR. IACOPINO: Just so you know. Okay.

24 MR. SCHNIPPER: And, obviously, she's

1 available to everyone. What I'm saying is that, assuming
2 that we are in total agreement with the Applicant, we
3 don't feel that we will need to elicit anything more than
4 her prefiled testimony and her affirmation that the City
5 has agreed to the stipulations that we're putting in as an
6 exhibit. At that point, anyone who has questions.

7 MR. ROTH: Okay. Yes. I understand.

8 Thirty minutes.

9 MR. IACOPINO: Okay. And, Jim, you just
10 can't give me a very good estimate, because you don't know
11 what's in the agreement?

12 MR. RODIER: Thirty minutes. Say, you
13 know, we would probably just want to clarify or understand
14 what's in there. So, at most, 30 minutes.

15 MR. IACOPINO: Okay.

16 MR. SCHNIPPER: And, let me just say
17 that, in the event that we reach a negotiated resolution
18 of the outstanding issues at any point in the weekend, we
19 can send right to the service list the new exhibit so that
20 people have as much time as possible before Monday morning
21 to familiarize themselves.

22 MR. IACOPINO: That would be helpful.
23 But please make sure that she knows that we are requiring
24 her to testify, regardless of whether there's a

1 stipulation or not.

2 MR. SCHNIPPER: Oh, yes. She shows
3 that.

4 MR. IACOPINO: Okay.

5 MR. SCHNIPPER: She's prepared. And,
6 that's, you know, just because Tuesday works better for
7 her, that's the only preference. But she's fully engaged
8 in the process and ready to appear for all questions.

9 MR. IACOPINO: Well, based on my -- so
10 far what has been stated by people, in terms of what they
11 expect the timing to go, my guess is that we will not be
12 done with the Applicant's witnesses until sometime Tuesday
13 afternoon. So, that -- because I basically count about 11
14 hours' worth of testimony there, so probably not be till
15 Tuesday afternoon. Although, I don't want you necessarily
16 to plan on that, because I don't know what's going to
17 happen either. So, --

18 MR. SCHNIPPER: I understand.

19 MR. IACOPINO: But just where we're at
20 --

21 MR. SCHNIPPER: I'm just indicating a
22 preference here.

23 MR. IACOPINO: And, then, depending upon
24 how much time is spent with Ms. Laflamme on Tuesday,

1 assuming that's when we get to her, then I believe that we
2 would start either right up on Tuesday with the Clean
3 Power witnesses, or maybe Wednesday morning. So, just so
4 that everybody has an idea. And, of course, as we all
5 know, is that these things usually take longer, rather
6 than less time than what people estimate. So, my guess is
7 we're going to be well into Wednesday, maybe even Thursday
8 morning, before the end of this, end of the witness
9 testimony occurs, at least based upon the estimates that
10 everybody has given here today.

11 Are there any other issues about the
12 order of witnesses that -- go ahead, Barry.

13 MR. NEEDLEMAN: Sort of. Is the
14 Committee expecting opening statements from the parties?

15 MR. IACOPINO: No.

16 MR. NEEDLEMAN: And, then, Peter had
17 raised a question, which I don't think we addressed, about
18 witnesses trying to summarize their testimony. It's --

19 MR. IACOPINO: I think you'll have
20 leeway, in terms of when you put your witnesses up, I
21 think you'll have some leeway. I don't think, however,
22 that the Chair is going to allow you to simply, you know,
23 start going through the whole testimony. You know, I know
24 what they would prefer, is that the written testimony be

1 as comprehensive as possible, and all you do is simply
2 have them sponsor it, and then tender them for examination
3 by the other parties. But it's -- there has been leeway
4 granted. Understanding that things change over the
5 process and it's, you know, it's -- sometimes it's
6 impossible to amend your prefiled testimony every time
7 there's some minor -- minor change. So, you'll be given
8 some leeway. I assumed, when you said "two hours", you
9 meant for all five of those witnesses. So, that's roughly
10 a half an hour -- well, it's a little less than a hour an
11 hour each. So, that's not an unreasonable amount of time,
12 I don't think.

13 MR. ROTH: That sounds like a lot to me.
14 I mean, typically, I've seen them, you know, they come in
15 and they say, you know, "what is the purpose of your
16 testimony?" They say that for like one minute or two
17 minutes. Ask "is there anything you want to change?"
18 That's another two minutes. And, from the witness taking
19 the chair, to the first cross-examination, is like three
20 to five minutes at most.

21 MR. IACOPINO: Yes. But, if he takes
22 ten minutes for each witness, that's 50 minutes. Okay?
23 And, that's without any of -- and that's if he just went
24 straight through. Okay? So, I mean, I don't think -- and

1 then I'd rather be conservative than non-conservative at
2 this point. So, --

3 MR. NEEDLEMAN: Well, and it raises
4 another issue, too. And, I don't feel strongly about how
5 we do this, but that's, you know, the idea of getting our
6 exhibits moved in. I had thought it would be more helpful
7 up front to identify our exhibits and tie them to
8 witnesses and move them in at that point. I've also done
9 it where we just leave all our exhibits until the end, and
10 then we make a motion to move them all in. We can do
11 that, too.

12 MR. IACOPINO: And, actually, and the
13 last thing I would do today, when we're actually talking
14 about the exhibits, we may come to some better
15 understanding --

16 MR. NEEDLEMAN: Okay.

17 MR. IACOPINO: -- as to how that may be
18 done. Because, if there's a whole bunch of exhibits that
19 nobody is objecting to, I have no problem, and I know that
20 my Committee will have no problem, with either at the
21 beginning or the end you just say "These are the
22 unobjected to exhibits", you know, and they're all moved
23 in at once.

24 If there are exhibits that, and this

1 goes for all the parties, obviously, if there are exhibits
2 that people are objecting to, hopefully, we'll know what
3 they are before the end of this meeting today, and we can
4 deal with how to deal with those objections.

5 Understanding that this is an administrative hearing, the
6 rules of evidence don't apply, and, you know, there's got
7 to be a good reason not to permit the introduction of
8 evidence.

9 MR. NEEDLEMAN: Well, and then the
10 answer to your question, Peter, is, if I'm not going to go
11 through those exhibits up front, that will significantly
12 shorten those introductions. And, if the Committee says
13 that it's going to be helpful to have a witness spend two
14 to three minutes summarizing their testimony, we'll do
15 that. And, if the Committee doesn't want to hear that, we
16 won't do that.

17 MR. IACOPINO: I think the one thing the
18 Committee does want you to ask, and wants all of the
19 parties to ask, is "Are there any changes that you need to
20 make in this testimony?" Okay? And, obviously, just for
21 your all, you know, safety in the record, especially where
22 there's been amendments to testimony, I think you might
23 want to sort of in the record maybe give an explanation as
24 to why did this testimony change. That's up to you, but

1 I'm just thinking, as a lawyer, I might want that in the
2 record.

3 MR. ROTH: And, I don't have any problem
4 with that.

5 MR. IACOPINO: Yes. So, that there's,
6 you know, so you've got reasons in the record.

7 MR. SCHNIPPER: Could I just say one
8 thing? When I think about the direction examination of
9 our witness, you know, I'm probably going to want to take
10 her through the contents of the stipulation, at least a
11 little bit, to note the way that they correspond with, you
12 know, what the City sees its statutory role, and that I
13 hope will assist the Counsel for the Public and CPD in
14 their cross-examination.

15 MR. ROTH: That will be fine. We've
16 done that before.

17 MR. IACOPINO: You don't have any
18 problem with that, do you, Mr. Rodier?

19 MR. RODIER: Well, no. I mean, prefilled
20 testimony --

21 MR. SCHNIPPER: I don't --

22 MR. RODIER: No, I'm just saying that's
23 different, you only need a few minutes, I agree. But
24 something that's new and material like this, then, when

1 she gets on the stand, I think going -- walking through it
2 is good.

3 MR. SCHNIPPER: Yes. That's the way I
4 feel, like, when you guys cross her on it, we'll have
5 already kind of laid out, you know, --

6 MR. RODIER: Yes.

7 MR. SCHNIPPER: -- why the City thinks
8 it is an appropriate condition.

9 MR. IACOPINO: So, to sort of summarize
10 where we're at with that issue then about the initial sort
11 of introduction of the witnesses, is that, by the end of
12 today, we'll have a better idea on what exhibits are going
13 to be in dispute, if any. And, I would -- I would prefer
14 that, if the parties are all in agreement that there's not
15 really disputes about the admissibility, not that you
16 agree with the exhibits, but that the exhibits are
17 admissible, that you just move them all in right at the
18 beginning of the hearing or perhaps right after you --
19 just before you tender your -- each set of witnesses,
20 maybe even before you start. It's up --

21 MR. NEEDLEMAN: Sure.

22 MR. IACOPINO: Depending upon how much
23 agreement there is in the room. Because, as a practical
24 matter, if there's agreement, I don't think anybody on the

1 Committee is going to disagree with the parties on how the
2 case should be presented.

3 MR. NEEDLEMAN: And, my expectation is
4 that we would probably resolve that by Monday morning.
5 I'm not sure if --

6 (Court reporter interruption.)

7 MR. RODIER: Sorry, Steve.

8 MR. NEEDLEMAN: I have no problem with
9 us ultimately resolving that exhibit issue Monday, if we
10 have to. I realize we're going to be giving people a
11 bunch of exhibits and they will need time to look at them.
12 I don't expect most of them will turn into any surprises.
13 But we don't have to reach agreement now on objections.

14 MR. IACOPINO: Am I correct, though, in
15 understanding that most of these exhibits have already
16 been distributed?

17 MR. NEEDLEMAN: Yes. I mean, there's --
18 yes.

19 MR. IACOPINO: Okay.

20 MS. VAUGHN: Almost all of them.

21 MR. IACOPINO: And, the only reason why
22 there's that big crate sitting behind you is because I
23 asked to have individual sets for each of the Committee
24 members?

1 MR. NEEDLEMAN: Correct. And, because
2 there are parties that we thought would be here that
3 aren't. So, --

4 MR. IACOPINO: Okay. Okay. And, I'm
5 sorry for any inconvenience that that causes, but I think,
6 in the long run, it will be more convenient for everybody,
7 because we will not be spending precious time passing one
8 document around from Committee member to Committee member,
9 and then have them coming back and saying "oh, you know,
10 wait, I need that again." That's the whole idea.
11 Hopefully, it works well.

12 Is there any other discussion about the
13 order of examination or the time needed for each of the
14 witnesses or the order of the case in chief that we're
15 going to use? Anybody have any questions or any concerns
16 or anything else they want to raise about that particular
17 issue?

18 (No verbal response)

19 MR. IACOPINO: All right. Well, the
20 next issue is how we are going to deal with the -- there's
21 a series of documents that have been treated
22 confidentially in this docket. Some have been treated
23 confidentially in that they are available only to the
24 Committee members and Counsel for the Public. Some have

1 been treated confidentially that they are disclosable to
2 the parties, as well as the Committee and Counsel for the
3 Public. That's my understanding of where we are at with
4 the confidential documents.

5 MR. NEEDLEMAN: One correction. That I
6 think, actually, there are two sets. There is one set
7 that is confidential with respect to the Committee, Public
8 Counsel, and the City.

9 MR. IACOPINO: Okay.

10 MR. NEEDLEMAN: And, then, there is a
11 second set, which is confidential with respect to everyone
12 at this table.

13 MR. IACOPINO: Okay.

14 MR. NEEDLEMAN: Is that right?

15 MR. RODIER: Right.

16 MR. IACOPINO: Well, I did not
17 understand that. I understood that the Power Purchase
18 Agreement --

19 MR. RODIER: He's talking about the
20 System Impact Statement.

21 MR. NEEDLEMAN: I'm talking about the
22 ISO documents.

23 MR. IACOPINO: The ISO documents were
24 only, I mean, as I read the order, were only -- the City

1 wasn't included in that.

2 MR. SCHNIPPER: No, we're in -- we had,
3 the attorneys, has only access to the Applicant's
4 ownership structure documents.

5 MR. NEEDLEMAN: Okay.

6 MR. IACOPINO: I don't think that that's
7 such a big deal. If it turns out you want the City to
8 have access to the SIS, I don't think that that is going
9 to be a big deal.

10 MR. SCHNIPPER: Okay.

11 MR. IACOPINO: I asked folks, if you
12 have exhibits, and, actually, even Clean Power still has
13 one testimony that's still -- Mr. Gabler's testimony is
14 still subject to protective order, because of its
15 reference to the SIS.

16 MR. RODIER: Well, let me chime in at
17 this point. There is information on the ISO website.
18 And, when you see our exhibit list, that we were going to
19 try to mark it as an exhibit list, it's publicly
20 available. But I think the information that Gabler
21 redacted from his testimony is now public. Am I close on
22 that, Bill, or --

23 MR. GABLER: It's not public.

24 MR. RODIER: Okay.

1 MR. IACOPINO: I guess you're not close.

2 MR. GABLER: It's available to me
3 because I've got the security clearance to access it.

4 MR. RODIER: Okay. What about the
5 transmission -- the Reliability Committee Agenda Report?

6 MR. GABLER: The agenda is public
7 information. The actual details of what's discussed, the
8 substantive evidence that was discussed in that agenda
9 item, --

10 MR. RODIER: Okay.

11 MR. GABLER: -- is CEI also.

12 MR. RODIER: Okay. So, I'm all wet.
13 One thing that, while I think of it, one thing that would
14 really help, could we get a copy of the System Impact
15 Study now, at this point, so that Mr. Gabler can look at
16 it, so that we can -- he's going to be looking for some
17 specific things, it may help us resolve some of these
18 other issues. If you're going to give it to us later, can
19 you give it to us now?

20 MR. IACOPINO: Do you want it right -- I
21 have it handy, if you -- if there's no objection?

22 MS. VAUGHN: I mean, I have --

23 MR. RODIER: Yes, would you just pull
24 one out?

1 MR. IACOPINO: And, this is, just so
2 that we're all, I mean, we can discuss the dates of these
3 reports, right?

4 MR. GABLER: Oh, yes.

5 MR. IACOPINO: Okay. Just so we're all
6 talking about the same document, the last document we have
7 is the SIS from May 21, 2010, is that correct?

8 MR. NEEDLEMAN: Yes, I believe so.

9 MR. IACOPINO: Okay.

10 MR. RODIER: Yes.

11 MR. IACOPINO: All right.

12 MR. GABLER: And, the biggest
13 difference, of course, is that the publicly available, or
14 the available one on the ISO website is dated April 26th.
15 And, so, that's the only one I've been able to access is
16 the April 26 version.

17 MR. IACOPINO: Okay. And, I haven't
18 gone, I mean, I don't know what other parties have done, I
19 know I haven't gone to the website, so I don't know what
20 the April 26 one says, I do have the May 21, though.

21 MR. GABLER: And, as of yesterday, the
22 NEPOOL or the ISO website still had only posted the April
23 26 edition.

24 MR. NEEDLEMAN: And, that's, maybe I'm

1 still confused, but that's what I was talking about
2 before, it was our intention that CPD should have access
3 to that.

4 MR. RODIER: Right. Oh, we know that.
5 That's why, you know, we were just kind of wishing we --

6 MR. IACOPINO: I thought they -- I
7 actually --

8 (Court reporter interruption - multiple
9 parties speaking at the same time.)

10 MR. IACOPINO: One at a time. Sorry.

11 MR. RODIER: Sorry.

12 MR. IACOPINO: My understanding was
13 that, because you guys are in the queue, you get a copy of
14 it anyway, you're on the same transmission line.

15 MR. RODIER: Correct. That's what we
16 thought.

17 MR. IACOPINO: But, if you don't have it
18 yet, then perhaps they can give you that copy.

19 MR. GABLER: We'll get it --

20 MR. RODIER: Yes.

21 MR. IACOPINO: So, because there is
22 several of these documents that are confidential and
23 subject to confidentiality orders, during the hearing, if
24 there is going to be reference to those particular

1 documents, either in direct or cross-examination, it is
2 going to be incumbent upon the party who is doing the
3 questioning to advise the Committee, advise the Chairman
4 that "I intend to ask questions now about a, you know, a
5 document that is not subject to public disclosure." At
6 which point, we will probably ask the public to leave the
7 room. There will be minutes, there will be, obviously, a
8 transcript will continue to be kept, and we will proceed.
9 We've done this in several other proceedings. But, for
10 the convenience of everybody, what we would really like to
11 do is keep all of those, keep sort of that section
12 together, so that we do not need to do it three or four
13 times during the course of the day. So, what I'm looking
14 for is, if the parties believe that they are capable of
15 saving all of this stuff that may rely on documents that
16 are subject to protective order for a particular time, and
17 dealing with that sort of almost as a separate panel, if
18 you will, but not necessarily a panel, but in one chunk of
19 time.

20 MR. NEEDLEMAN: Well, I will say, from
21 my perspective, that sounds fine. The vast majority of
22 them will be documents that Mike Bartoszek will have to
23 deal with, so that will come a little bit later in the
24 process. And, the remainder will be ones that Ray has to

1 deal with, and that will come at the end of the process.
2 So, I think the way the witnesses are set up, it lends
3 itself for confidential --

4 MR. IACOPINO: Now, I don't know if any
5 of the other parties have thought about this, but actually
6 I'm encouraged to hear that. So, you don't think, for
7 instance, with the first panel you'll have it, so it could
8 be that we just need to do it twice, once for each of
9 those witnesses?

10 MR. NEEDLEMAN: Well, I'll ask Kate to
11 correct me, but nothing is coming to mind now with respect
12 to that first group of three, where they're going to have
13 to talk about any of these confidential documents.

14 MR. IACOPINO: And, are you comfortable
15 that you can segregate the material, so that we can just
16 do that at the end of -- at the end of your -- when you
17 would normally be done with each of these witnesses?

18 MR. NEEDLEMAN: It's going to be really
19 easy for me. I mean, I'm going to have, for example, Mike
20 Bartoszek adopt his testimony, probably talk about a
21 couple of changes, and then the questions are going to
22 start. So, I think it will be more incumbent upon the
23 questioners to figure out how they carve out the
24 confidential pieces from the non-confidential pieces.

1 MR. IACOPINO: What's Public Counsel
2 think about the ease of doing this?

3 MR. ROTH: Yes. We've always done it
4 that way before, as I recall. And, I think it should work
5 here again.

6 MR. IACOPINO: And, Jim, you will
7 actually, even though there are some documents that you
8 will be asked to leave the room for, there are other
9 documents that you've got. You're all right with that
10 process?

11 MR. RODIER: Sure.

12 MR. IACOPINO: Okay. All right. And, I
13 take it, anybody who is going to submit documents that are
14 subject to or exhibits that are subject to the
15 confidentiality orders, they're marked as "confidential",
16 so that my Committee members don't wind up leaving them
17 out on their desks or whatever?

18 MR. NEEDLEMAN: Yes, for us. And, I
19 think we've also segregated them.

20 MS. VAUGHN: They're in a separate
21 binder from the others, and there's two disks.

22 MR. IACOPINO: Two disks.

23 MS. VAUGHN: One is confidential, one is
24 not.

1 MR. IACOPINO: Okay. All right. The
2 next -- anybody else need to discuss anything about
3 confidential documents?

4 (No verbal response)

5 MR. IACOPINO: All right. The next
6 thing I had on my agenda was a discussion regarding
7 briefing or a post hearing memoranda, and also that sort
8 of ties in with Number 4, the statutory time frames. Once
9 we complete this, this adjudicatory hearing, the Committee
10 has to schedule public deliberations and get an order out,
11 which is pretty much, we're going to have about 30 days to
12 do that under the time frame set forth in RSA 162-H.

13 So, with that in mind, I wanted to
14 discuss what the parties were thinking about, any kind of
15 briefing? And, let me throw it out first to the
16 Applicant.

17 MR. NEEDLEMAN: I'll do it the same way
18 I've done it before. If we get to the end of the process,
19 and the Committee thinks there are issues that it would
20 like briefed that will be helpful for it to decide, we'll
21 brief it. I'm not, at this point, anticipating asking for
22 the right to brief, if the Committee doesn't want it.

23 MR. IACOPINO: Counsel for the Public?

24 MR. ROTH: In the past, it's been

1 something that provides the parties an opportunity to
2 summarize their view of the evidence, in a way that I
3 think is helpful. And, more importantly, present
4 conditions that they think ought to be adopted by the
5 Committee, based upon their review of the evidence. So, I
6 guess I would support there being briefing.

7 Now, one of the -- you know, the
8 never-ending problem with briefing is coming up against
9 the decision date and trying to get the transcripts out of
10 Steve's fingers in a timely way that doesn't drive him
11 over the bridge. And, I notice that the -- well, I looked
12 at the calendar, and the time on this seemed unusually
13 short for that period. It just seemed like it's really
14 crammed there.

15 MR. IACOPINO: It is, because of the
16 timing, where we wound up over the summer for most of the
17 intervening time.

18 MR. ROTH: Yes.

19 MR. IACOPINO: But, also, one of the
20 problems that we have, is not the cause of anybody in this
21 room, it's the way the statute is designed, is it suggests
22 that you have the adjudicatory hearings after the final
23 State agency reports are due. And, they, of course,
24 aren't due until sixty days before the end of the time

1 frame. And, the statute says that you have to hold your
2 --

3 MR. ROTH: Right.

4 MR. IACOPINO: -- you're to commence
5 your adjudicatory hearings within 30 days of that. Which,
6 if you wait till the 30th day, which we have pretty much
7 done, not because we wanted to, but because of the fact
8 that it's August, and we had schedules we needed to
9 address on the Committee, it does leave us with roughly a
10 month. It is shorter than a traditional plant, or any of
11 the older renewables that we did, such as Lempster,
12 because we weren't under --

13 MR. ROTH: The shortened time frame.

14 MR. IACOPINO: Right, the shortened time
15 frame, and worse than the shortened time frame is the
16 benchmarks within the time frame.

17 MR. ROTH: Right. So, in a way, the
18 time frame is not working well with the statutory
19 benchmarks, and maybe that ought to be addressed.

20 MR. IACOPINO: Yes, but that's --

21 MR. ROTH: Maybe what we can do in this
22 case is, rather than have briefs and, you know, rush
23 through transcripts, is simply have a deadline after the
24 hearing closes for parties to submit any conditions that

1 that they wished to have the Committee consider.

2 MR. IACOPINO: Understand, I'm not
3 trying to discourage anybody from briefing anything.

4 MR. ROTH: Oh, I understand that. I'm
5 just trying to be practical myself, --

6 MR. IACOPINO: If you want to brief
7 something, you should.

8 MR. ROTH: -- because I'm not crazy
9 about writing a brief either, but getting the conditions
10 out there is, I think, valuable. So, that's why I suggest
11 forgoing briefing and simply a memorandum of conditions.

12 MR. NEEDLEMAN: I have two thoughts on
13 that. Well, first of all, are you anticipating closing
14 statements, because that can help with the summary of the
15 evidence?

16 MR. IACOPINO: I think you will be
17 permitted relatively brief closing statements by the
18 Chairman.

19 MR. NEEDLEMAN: Okay. On the issue of
20 the conditions, it's understandable that the process could
21 lead to people concluding they would like to propose
22 conditions. I just want to make sure that, if that
23 happens, there is some opportunity for a response to that.
24 And, I realize that those deadlines don't help very much

1 with that. But I just don't want to be in a position
2 where, ten days after the hearings close, we see proposed
3 conditions for the first time and have no chance to say
4 anything about them, before the Committee decides whether
5 or not to include them in the certificate.

6 MR. IACOPINO: Well, I mean, that's a
7 fair --

8 MR. ROTH: Yes, it would be nice if they
9 have an opportunity to say that they agreed with all of
10 them.

11 MR. IACOPINO: Well, it would nice, if
12 you guys are going to have conditions, if you'd all get
13 together over the weekend and agree on them all and just
14 present them, too.

15 MR. SCHNIPPER: Well, we've been working
16 on them --

17 MR. NEEDLEMAN: We're doing that with
18 the City.

19 MR. IACOPINO: Well, --

20 MR. NEEDLEMAN: I recognize that the
21 process can produce issues. And, what I would hope is, as
22 that's happening, or immediately afterwards, we can try to
23 work together and get some agreement on that.

24 MR. IACOPINO: I'm just trying to look

1 at the calendar for a minute here.

2 MR. ROTH: That said, I mean, if we set
3 a date, say, you know, ten days after the close of the
4 hearing, I wouldn't -- I think it would be a good idea for
5 us to sit down and try to hash through any conditions that
6 we're thinking about proposing, and see if we could
7 massage them or get you to agree to them.

8 MR. NEEDLEMAN: Yes.

9 MR. ROTH: I think that would, even if
10 you put that in sort of the order to say "the parties will
11 meet to discuss any proposed conditions."

12 MR. RODIER: I've got something to say,
13 when you're ready, Mike.

14 MR. IACOPINO: Oh. Go ahead. Go ahead.

15 MR. RODIER: Well, this is a very
16 important issue to CPD. And, we're very mindful of
17 everything Attorney Iacopino just said about why the
18 procedural schedule is the way it is. But we really need
19 to insist on having an opportunity to put in a post
20 hearing memorandum, because of how vital this matter is to
21 CPD. And, we're going to need a transcript in order to do
22 that. So, that's what we have to say.

23 Now, what does that mean, in terms of
24 how much time we need, or is the Committee going to be

1 able to get a decision out by December [September?] 23rd?
2 I would say, under the circumstances here, given that the
3 Committee has got the discretion to, you know, go beyond
4 the nine months, if they, for good cause, that they might
5 do that. Because it's not as if, given what's now going
6 on over at the PUC, it's not as if construction is going
7 to start -- be able to start for quite a while, let me
8 just say that. So, I don't see that it's going to hold
9 anything up at all, if the Commission takes another three
10 weeks or a month to issue its decision. But, in any
11 event, that's not for me to decide. I'm just saying there
12 is -- there is that, wanted to make that point that there
13 is a basis here for extending that September 23rd date for
14 a Commission order. And, that we need the time to put in
15 a post hearing memorandum. And, I'm not going to do it
16 without the benefit of a transcript.

17 MR. NEEDLEMAN: Well, I want to say,
18 with respect to that, that we would strongly oppose any
19 delay in the Committee issuing its decision under the
20 statutory timetable. And, I've been involved in plenty of
21 proceedings, here and elsewhere, where people are under
22 tight deadlines, and they meet them by working hard and
23 getting them in. And, if, Jim, you need to get a brief
24 in, so be it. You know, get it in, and let's set a

1 deadline, and we'll have a tight deadline to respond to
2 it, and the Committee will have what it needs to make its
3 decision.

4 MR. RODIER: Okay. Then, I need you to
5 arrange with the court reporter to get us an expedited
6 transcript, overnight.

7 MR. NEEDLEMAN: That's not for me,
8 that's for the court reporter and you. I mean, I'm happy
9 to have access to transcripts that anyone else has access
10 to.

11 (Brief off-the-record discussion ensued
12 regarding availability of transcripts.)

13 MR. IACOPINO: If we conclude the
14 hearing next week -- let me start there. If, for some
15 reason this hearing does not conclude next week, then,
16 obviously, everything that I say is not going to mean
17 anything. But, if we were to conclude the hearing next
18 week, I believe what Mr. Patnaude is saying is that the
19 last of the transcripts could be done by the following
20 Friday, which is September 3rd. I know that my Committee,
21 dates that we are looking at right now for deliberations
22 are the week after that, and the week following that,
23 which is the week of September 6 and the week of
24 September 12th. And, so, that fits --

1 MR. ROTH: Well, the brief would have to
2 be in before the deliberations.

3 MR. IACOPINO: Right. So that you file
4 a brief by the 10th, if you were to have the transcripts
5 by roughly the 3rd?

6 MR. RODIER: Well, that's pretty quick.
7 I was thinking the transcripts were going to be more like,
8 you know, two or three weeks, which has been my
9 experience. But, if we're going to get the transcripts by
10 September 3rd, that's a little bit different. Then, in
11 the hearing -- in the Hearing Officer's view here, what
12 would be, under those circumstances, your view of what a
13 reasonable number of days would be to get in a post trial
14 memorandum, assuming we get the last one by September 3rd?

15 MR. IACOPINO: I would say one week, the
16 following Friday, which is September 10th.

17 MR. RODIER: So, is September 3rd on a
18 Friday, evidently?

19 MR. IACOPINO: September 3rd is a
20 Friday, yes. Which means I would have to schedule
21 deliberations for the week of the 13th.

22 MR. NEEDLEMAN: And, Mike, with that
23 schedule, it gives us no opportunity to respond.

24 MR. IACOPINO: Right. That means that

1 you would have to probably reply by like Monday, the 13th.

2 MR. NEEDLEMAN: Well, couldn't we --
3 couldn't we shorten the post trial brief, to say that
4 Wednesday, and let us respond by that Monday, so we each
5 have five days, and then it will be in the Committee's
6 hands to deliberate that week? I mean, I understand Jim
7 wants the right to do it, and I'm not going to dispute his
8 right to do it, but they are a limited intervenor, and
9 there are only two topics that they need to cover in the
10 hearing.

11 MR. IACOPINO: Can you do it by
12 September 1st, the Wednesday, if you were to get -- I'm
13 not "September 1st", September 8th, the Wednesday?

14 MR. RODIER: No. No. Because this
15 isn't in a vacuum here. We're going to have, you know,
16 this CPD matter is a very extended family of issues.
17 We've got to file a brief at FERC, we've got PPA
18 proceedings that are going to take my time over at the
19 PUC. I need a week, from September 3rd, no question about
20 it. And, even at that, it's -- I'm concerned about not
21 doing a good job for my client. It's not easy.

22 MR. IACOPINO: I know, but one --

23 MR. RODIER: Everybody here that's done
24 them knows, it takes time.

1 MR. IACOPINO: Yes, but one point is, I
2 mean, one of the benefits of the way that we do these
3 proceedings is you have all the direct testimony already,
4 you'll have all the exhibits. In fact, as I understand
5 it, you probably have all the exhibits already, in the
6 things that have been filed during the course of the
7 pendency of these proceedings. So that, in terms of what
8 you put into your brief, I mean, I know a large part of it
9 is going back and, you know, addressing, "okay, well,
10 where did I get this from" and making the appropriate
11 references to it. But a lot of that is going to be to
12 exhibits that you already have. You already have all the
13 direct testimony of all the witnesses. So that, really,
14 the only thing that the transcript is going to include,
15 that you don't already have, for the most part, is
16 cross-examination, and any additional exhibits that have
17 come by the board, such as the stipulation with the City
18 of Berlin. And, I mean, I'm not going to -- usually, in
19 these cases, there's something that somebody forgot to
20 mark beforehand and we have to mark, so there will
21 probably be some number of exhibits that are new. But
22 those things already exist and they're already available
23 to you.

24 MR. RODIER: Yes, I know. But where I'm

1 coming there is cross-examination. We're counting on
2 cross-examination.

3 MR. NEEDLEMAN: Well, our witnesses will
4 be going early in the process. So, presumably, those
5 transcripts might be available sooner.

6 MR. IACOPINO: Well, I will leave it, I
7 mean, I'll talk to the Chairman about it, about how he
8 wants to do it. I will talk with him both about the idea
9 of -- well, I'll talk to him about three things. First,
10 the overall, just the whole briefing schedule, obviously.
11 And, I will -- you know, and you'll get a chance during
12 the course of the hearings to express your opinion to him.

13 MR. RODIER: Sure.

14 MR. IACOPINO: I'll talk with him about
15 Public Counsel's suggestion of, you know, just the
16 deadline for submission of conditions and a time to
17 respond. And -- oh, the timing was the third, the third
18 issue.

19 MR. RODIER: Well, let me add this. I
20 hope we're getting the sense here, we're going to try to
21 do this, but -- and I don't even want to call it a
22 "brief", because it's not going to be a comprehensive
23 brief, it's going to be a post trial memoranda.

24 MR. IACOPINO: Uh-huh.

1 MR. RODIER: And, we're asking for a
2 week to prepare that.

3 MR. IACOPINO: From the time that you
4 have the transcripts?

5 MR. RODIER: Right.

6 MR. IACOPINO: Yes. No, I understand
7 that. I'm not going to make the decision.

8 MR. RODIER: I know that.

9 MR. IACOPINO: I'll alert the
10 Chairperson that it's going to be an issue. I'm going to
11 recommend to him that he deals with it on Monday, so that
12 everybody knows in advance how much time they're going to
13 have. And, you know, we'll hopefully take care of it as a
14 housekeeping matter on Monday, and, you know, he'll make
15 the final decision, and you all will know. I know it's a
16 very touchy area. And, unfortunately, it's one that, you
17 know, as much as it sounds easy to just say, you know,
18 "the Committee should extend its own time to deliver an
19 opinion", there's a statutory standard for what the
20 Committee would have to find in order to do that. And,
21 that standard is not "well, they're not going to start
22 construction within the next couple of months anyway."
23 That standard deals with the public interest, as opposed
24 to whether or not there's a -- whether or not the

1 construction season is in effect. So -- and, that's
2 something I can't decide, because they're the people, the
3 Committee are the people who are vested with determining
4 what's in the public interest. So, we're going to have to
5 let them decide on that issue. I understand that you're
6 going to suggest that there should be an extension of the
7 statutory time frame.

8 MR. RODIER: No, I didn't say I was
9 going to suggest that to the Committee Monday.

10 MR. IACOPINO: Well, no, I think that --

11 MR. RODIER: I said that within this
12 room.

13 MR. IACOPINO: I think that everybody
14 should probably be prepared for such a request, because we
15 are up against a tight time frame. If I were preparing
16 this as a trial or as an administrative hearing from an
17 advocacy position, I would be prepared to deal with that.

18 MR. RODIER: Right.

19 MR. IACOPINO: And, I think everybody
20 should be prepared to deal it, because I'm sure that it's
21 something that is likely to come up, given the tight time
22 frame that we have.

23 MR. RODIER: Well, let me --

24 MR. IACOPINO: And, it's come up in

1 several other proceedings as well. So, from experience,
2 we know that it arises.

3 MR. RODIER: Let me just say this.
4 We're very concerned of the short amount of time that the
5 Committee has to make a decision here is going to be
6 harmful to CPD's interests. Because the paramount
7 objective is going to be to boot something out the door.
8 And, --

9 MR. IACOPINO: Well, where with the
10 Applicant has the burden of proof --

11 MR. RODIER: And, that is of concern to
12 us.

13 MR. IACOPINO: Where the Applicant has
14 the burden of proof, I don't know who that should be a
15 bigger concern to.

16 MR. RODIER: No, that's a good point.
17 That's a good point.

18 MR. IACOPINO: But, nonetheless, I'm not
19 the person who's going to make a decision. So, I can
20 assure you all that the Committee is going to deliberate
21 on every issue, even those that are not in dispute,
22 because that's the way they have always done things.
23 Those deliberations will be in public. I've asked
24 everybody to get full sets of exhibits here today so that

1 when they do come to deliberate, everybody is -- all of my
2 Committee members are fully aware of what's in the record.
3 And, that's why we've, you know, asked to do that, so that
4 we can try to do our best under what the statute provides
5 us. And, if we can't, then we can't. That's a different
6 issue. But, you know, I know that the Committee is going
7 to do its best to comply with the statute.

8 MR. RODIER: Sure.

9 MR. IACOPINO: So, anyway, I will leave
10 the issue of the timing of briefing, for lack of a better
11 word, or post hearing memoranda, to be addressed as a
12 housekeeping matter with the presiding officer. And, I'm
13 going to recommend that he deal with it right on Monday,
14 so that everybody has fair warning.

15 Okay. The next issue is identification
16 and premarking of exhibits. However, is anybody -- are
17 there any loose ends that I haven't addressed, that people
18 want to address before we do that, because I think that
19 may get a little complicated? And, what I'm going to
20 propose to do is to go off the record while we go through
21 the exhibits, so that Mr. Patnaude can move around freely
22 and can see what the exhibits are, so that he has an idea
23 of what he's dealing with during the course of the
24 proceedings as well. And, then, maybe go back on the

1 record, once we have them all, just to put in the list, so
2 that we know we have a record of what the parties are
3 anticipating calling. I'm sorry, Peter, did you have a
4 loose end?

5 MR. ROTH: This gentleman here has a
6 loose end.

7 MR. IACOPINO: Why don't you identify
8 yourself and tell me what your loose end is.

9 MR. FORTUNE: Yes. I'm William Fortune,
10 Industrial Consultants, Incorporated. And, we have a
11 poly-generation design that is far superior to anything
12 that anybody else has proposed. And, it's economically
13 viable, without any government subsidies. And, I know
14 we're coming in late. And, I had a Petition to Intervene,
15 maybe it's untimely at this point. And, what I want to
16 raise, and I also sent a letter in to object to the
17 permitting of this plant.

18 MR. IACOPINO: Yes. Your letter was
19 part of the public comment, that was accepted, and we
20 accept public comment in these proceedings right up to the
21 day that an order is issued.

22 MR. FORTUNE: Yes.

23 MR. IACOPINO: What you're telling me
24 now, though, is that you want to intervene as a party.

1 You, first of all, you have to file a written Motion to
2 Intervene. You have one there?

3 MR. FORTUNE: Yes.

4 MR. IACOPINO: Okay. And, it is
5 untimely. There was an intervention deadline set many,
6 many weeks ago. But, out of fairness, the Administrative
7 Procedures Act actually allows intervention up to three
8 days before. So, I will take that before we leave. I
9 can't promise you any results on it. I will have the
10 presiding officer look at it. But, if I understand
11 correctly, you have a design. Have you tried to talk to
12 the folks at Laidlaw, to their technical people, about
13 selling them your design or selling them the unit that
14 you've designed?

15 MR. FORTUNE: No, we haven't talked to
16 Laidlaw at this point. We have tried to deal with
17 Bloomfield. And, he was -- he was part of our proposal at
18 one time, but he backed out.

19 MR. IACOPINO: Well, do you understand
20 that the Committee really doesn't have the sort of
21 authority to just say "well, you have to use a particular"
22 --

23 MR. FORTUNE: I understand that.

24 MR. IACOPINO: -- "a particular design"?

1 MR. FORTUNE: We just want to raise the
2 issue at this point. That's all we can do at this point
3 is --

4 MR. IACOPINO: Well, I can't tell you
5 that you're prohibited to file a Motion to Intervene.
6 Anybody can file anything.

7 MR. FORTUNE: Right.

8 MR. IACOPINO: I believe it's probably
9 unlikely for it to be granted, but I will take it. I
10 expect that the Applicant will be prepared to object
11 Monday morning. And, we will deal with it as a
12 housekeeping matter. I would suggest you be here Monday
13 morning, when the hearing starts, sir, in case the
14 Chairperson wishes to discuss it with you. He may not.
15 But, if he does, I'd suggest that you be here for Monday
16 morning, and we'll deal with it as a housekeeping matter.

17 MR. FORTUNE: Now, are we entitled to
18 address the Committee on Monday as a public -- is it open
19 to the public?

20 MR. IACOPINO: I'm going to take that
21 motion from you. I haven't seen it, you have something
22 written, obviously, it's in front of you.

23 MR. ROTH: I think what he was talking
24 about was public comment, making a public comment.

1 MR. IACOPINO: Yes. There will be a
2 time designated on Monday for public comment. I think,
3 right now, it's probably going to be right at the
4 beginning, because we've had requests from the Coos County
5 Commissioners, and there was another --

6 MR. SCHNIPPER: I believe Mayor Grenier,
7 from the City.

8 MR. IACOPINO: -- Mayor Grenier, right,
9 both asked if they could address first thing Monday
10 morning, and that's been my recommendation to the
11 Chairperson. That would get that out of the way. And, I
12 understand that Mr. Patch wants to read a letter from
13 Gestamp. I assume that will be done Monday morning as
14 well, at least that's my understanding.

15 MR. RODIER: And, I'm going to have a --
16 if the Mayor -- Berlin is a party. And, I do not think a
17 party should be allowed to make public comment.

18 MR. SCHNIPPER: Well, I'll, obviously,
19 leave that to the Chairman of the Committee. But, you
20 know, we represent the City polity as a whole. And, it
21 effectively is the legislative branch which makes the
22 ultimate decisions for the City. The Mayor would not be
23 appearing in his official capacity as the City, but he
24 would be appearing in his official capacity as the

1 executive, chief executive of the City. So, I leave that
2 to the Chairperson of the Committee. And, I would just
3 finish by saying that I'm not in control of what the Mayor
4 does or attempts to do.

5 (Laughter.)

6 MR. ROTH: We would not object to the
7 Mayor making a comment.

8 MR. NEEDLEMAN: Nor would we.

9 MR. IACOPINO: Well, if he's going to be
10 permitted to, it's going to be Monday morning.

11 MR. RODIER: Okay.

12 MR. IACOPINO: And, just for, I mean, as
13 Counsel for the Public is aware, it's not unusual, if you
14 come in here on the first day of an adjudicatory, to see a
15 state senator or somebody also come in who wants to make a
16 comment, and it has been, obviously, the -- or a county
17 commissioner, it has been the policy of the Committee in
18 the past to allow that to be done. We ask everybody to
19 make their public comments and be as brief as possible in
20 doing so, because we really want to get the adjudicatory
21 rolling. As all the lawyers in the room know is, when
22 you're taking evidence, the sooner you can get it going,
23 the faster it goes. So, --

24 MR. RODIER: Right.

1 MR. IACOPINO: And, I don't mean that in
2 a disparaging manner. I mean it because there will be a
3 lot of fits and starts in this hearing, just as there is
4 in any trial in a court or any administrative proceeding.

5 MR. RODIER: So, my only point was that
6 parties should not be making public comment. That's what
7 testimony is for. Now, I did hear a differentiation from
8 the attorney for the City Council?

9 MR. SCHNIPPER: Well, we're the attorney
10 for the City.

11 MR. RODIER: For the City, okay. And,
12 the Mayor of the City you see is in a slightly different
13 compartment?

14 MR. SCHNIPPER: And, look, I understand
15 that, you know, from your position, there might not seem
16 to be a sufficient enough difference to justify him making
17 a public comment. And, that's why I say, the City of
18 Berlin does not look at his statements on Monday morning
19 as statements by the City of Berlin during the course of
20 this proceeding. He, as the Mayor of the City, wishes to
21 come --

22 MR. RODIER: Okay.

23 MR. SCHNIPPER: -- and present a
24 statement to the Committee. And, to the extent that the

1 Committee is going to permit that, --

2 MR. RODIER: Okay.

3 MR. SCHNIPPER: -- he's going to do it.

4 MR. ROTH: The statute provides that the
5 Committee is supposed to hear and take due regard of the
6 views of elected officials in the place where the project
7 is being constructed. So, --

8 MR. RODIER: Don't they have to
9 intervene?

10 MR. ROTH: No. They don't.

11 MR. RODIER: Oh. Okay.

12 MR. IACOPINO: And, it is no secret that
13 the Mayor has already made public comment at the
14 informational hearing that we had up in Berlin.

15 MR. RODIER: Okay.

16 MR. IACOPINO: He spoke at that hearing
17 as well.

18 MR. RODIER: All right. It's not worth
19 arguing about.

20 MR. IACOPINO: And, you're certainly
21 free to object to it on Monday morning. But, you know,
22 just as a said, for the most part, when elected officials
23 or public officials have come to give public comment, we
24 have generally permitted it to happen.

1 MR. RODIER: Yes.

2 MR. IACOPINO: And, we've tried to get
3 it down quickly. And, in this circumstance, we'll try to
4 get it done Monday morning.

5 MR. RODIER: Okay.

6 MR. ROTH: They also write letters.

7 MR. SCHNIPPER: Yes, they do.

8 MR. RODIER: Tell us about it. No,
9 that's fine. I'm dropping it, okay? I hear what you're
10 saying. That makes sense.

11 MR. IACOPINO: All right. Any other
12 issues that anybody wants to raise? Mr. Fortune, why
13 don't you give me that motion.

14 MR. FORTUNE: Well, I don't have all the
15 copies. That's my original. I couldn't get it off the
16 press fast enough.

17 MR. NEEDLEMAN: Can we get a copy today?

18 MR. IACOPINO: Yes, I'll try to get
19 copies for everybody.

20 MR. FORTUNE: Well, I could read it
21 right now?

22 MR. IACOPINO: Well, no, you've got to
23 give it me or you're not technically moving to intervene.
24 So, just give it to me, I'll get copies made for everybody

1 before they leave here today. And, we're off the record.

2 (Whereupon the prehearing conference
3 went off the record for marking of
4 exhibits from the parties to the
5 proceeding. And, the prehearing
6 conference did not reconvene and
7 subsequently adjourned thereafter at or
8 about 11:10 a.m.)

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{SEC 2009-02}(PREHEARING CONF) - August 20, 2010
LIDLAW BERLIN BIOPOWER, LLC

	6 (1) 65:23	47:15 admissible (1) 47:17	allowed (2) 10:18;77:17	arises (1) 72: 2
[allows (1) 75: 7	around (4) 4: 2;26: 8;49: 8;73:21
[September] (1)	8	adopt (5) 6: 2, 7;26:10;32:18;	Almost (2) 48:20;55:17	arrange (1) 65: 5
64: 1	8th (1) 67:13	adopted (1) 59: 4	alone (3) 16:24;22: 5;33:20	aspects (2) 18:22;19:21
1	A	adopting (2) 27:19;29: 9	along (3) 20:13,13;34:11	assist (1) 46:13
10th (2) 66: 4,16	able (8) 12:12;13:17;16:14; 17:10;38:14;53:15;	adopts (2) 6:24;28:19	Although (3) 3:17;39:13;41:15	assistance (1) 17: 6
11 (1) 41:13	64: 1, 7	advance (1) 70:12	altogether (1) 19:11	associated (1) 8: 2
11:10 (1) 82: 8	abstract (2) 30: 2, 6	adversarial (1) 16:12	always (8) 11:21;17: 4;23:11,13; 30:16;32:21;57: 3;72:22	assume (5) 9:14;11: 1;36:19; 38:10;77:13
12th (1) 65:24	accept (1) 74:20	advise (2) 55: 3, 3	amend (2) 38: 5;43: 6	assumed (1) 43: 8
13th (2) 66:21;67: 1	accepted (1) 74:19	advocacy (1) 71:17	amendments (1) 45:22	Assuming (6) 21:10;31:13;34:24; 40: 1;42: 1;66:14
15 (1) 36: 1	access (7) 51: 3, 8;52: 3;53:15; 54: 2;65: 9, 9	affirmation (1) 40: 4	amount (4) 22: 9;36:18;43:11; 72: 4	assure (1) 72:20
162-H (1) 58:12	acquiesced (1) 23: 6	afraid (1) 12:18	announces (1) 6:24	attempts (1) 78: 4
1st (2) 67:12,13	Act (1) 75: 7	afternoon (2) 41:13,15	answered (3) 8: 3;12:13;13:21	Attorney (4) 11:24;63:17;79: 8, 9
2	active (1) 31: 2	afterwards (1) 62:22	anticipate (8) 9: 4;10: 9,20;16:23; 17:12;34:23;36: 5;38:14	attorneys (1) 51: 3
2010 (1) 53: 7	actively (1) 31: 3	again (5) 16: 1;18:10;22: 4; 49:10;57: 5	anticipating (3) 58:21;61:13;74: 3	August (1) 60: 8
21 (2) 53: 7,20	actual (4) 3:15;14:13;31: 5;52: 7	against (2) 59: 8;71:15	apiece (1) 36: 4	authenticate (2) 25:16,17
23rd (2) 64: 1,13	actually (14) 10: 7;17: 6;24:24; 30:13;33: 2;37: 2;44:12, 13;50: 6;51:12;54: 7; 56: 5;57: 7;75: 7	agency (1) 59:23	appear (1) 41: 8	authority (1) 75:21
26 (3) 53:16,20,23	add (3) 30:12,23;69:19	agenda (9) 3: 7,12;21: 7;24:22; 34:15;52: 5, 6, 8;58: 6	appearing (2) 77:23,24	availability (3) 25:12;26:16;65:12
26th (1) 53:14	adding (1) 33:14	ago (1) 75: 6	Applicant (8) 9:11;37:24;39:14; 40: 2;58:16;72:10,13; 76:10	available (12) 4:16;26: 4,14;39: 9; 40: 1;49:23;51:20;52: 2; 53:13,14;68:22;69: 5
3	additional (3) 13:17;29:19;68:16	agree (9) 18: 3;21:18,19;27:20; 32:23;46:23;47:16; 62:13;63: 7	Applicant's (3) 35: 9;41:12;51: 3	aware (3) 34: 1;73: 2;78:13
30 (6) 10:10;24:11;36: 1; 40:14;58:11;60: 5	address (7) 18:18,22,23;60: 9; 73:18;76:18;77: 9	agreed (6) 9:11;36:18;37: 7,13; 40: 5;62: 9	application (1) 31:23	away (1) 29: 8
30th (1) 60: 6	addressed (5) 37:14;42:17;60:19; 73:11,17	agreement (16) 9:18;27: 6;36:20; 38:15;39: 1, 7,13,14; 40: 2,11;47:14,23,24; 48:13;50:18;62:23	apply (1) 45: 6	awkward (1) 5: 8
3rd (7) 65:20;66: 5,10,14,17, 19;67:19	addresses (1) 17:15	agreements (1) 37:24	appreciate (1) 23:20	B
4	addressing (1) 68: 9	ahead (3) 42:12;63:14,14	approach (2) 17:22;36:17	back (3) 49: 9;68: 9;73:24
4 (1) 58: 8	adjourned (1) 82: 7	aired (1) 33:24	appropriate (3) 17: 9;47: 8;68:10	backed (1) 75:18
45 (1) 35:24	adjudicatory (7) 3: 5;16:13;58: 9; 59:22;60: 5;78:14,20	alert (1) 70: 9	April (4) 53:14,16,20,22	background (2) 30:14,24
5	administrative (4) 45: 5;71:16;75: 6; 79: 4	allow (6) 24: 7, 7;32:18,24; 42:22;78:18	area (2) 21:21;70:16	backup (2) 26: 8,11
50 (1) 43:22	admissibility (1)		areas (2) 15: 4;19:22	backwards (1) 34:11
6			arguing (1) 80:19	bad (1) 26: 2

{SEC 2009-02}(PREHEARING CONF) - August 20, 2010
LIDLAW BERLIN BIOPOWER, LLC

<p>Barry (5) 7:23;12: 7;20: 8; 38:19;42:12</p> <p>Bartoszek (13) 4: 8,13;8: 2;11:13; 15:20;18:16,20;19: 9; 20: 9,16;22: 4;55:22; 56:20</p> <p>based (6) 4:18;10:20;30: 8; 41: 9;42: 9;59: 5</p> <p>basically (6) 19:24;20:18;25:11; 37:18;38: 8;41:13</p> <p>basis (2) 31: 4;64:13</p> <p>becoming (1) 32: 2</p> <p>beforehand (1) 68:20</p> <p>befuddlement (1) 23:10</p> <p>beginning (3) 44:21;47:18;77: 4</p> <p>begins (1) 38:12</p> <p>behind (1) 48:22</p> <p>benchmarks (2) 60:16,19</p> <p>bend (1) 34:10</p> <p>benefit (3) 16:21;33:14;64:16</p> <p>benefits (1) 68: 2</p> <p>Berlin (6) 37:24;68:18;77:16; 79:18,19;80:14</p> <p>besides (1) 25: 6</p> <p>best (6) 10: 7;11: 5;35:24; 37:14;73: 4, 7</p> <p>better (6) 12: 5;19:13;41: 6; 44:14;47:12;73:10</p> <p>beyond (1) 64: 3</p> <p>big (4) 15:15;48:22;51: 7, 9</p> <p>bigger (2) 32: 3;72:15</p> <p>biggest (1) 53:12</p> <p>Bill (2) 25: 9;51:22</p> <p>binder (1) 57:21</p> <p>biomass (2) 25:11;26:15</p> <p>bit (6) 7:13,13;29:17;46:11;</p>	<p>55:23;66:10</p> <p>bits (1) 38:11</p> <p>blank (1) 37:18</p> <p>blended (1) 19:20</p> <p>Bloomfield (11) 26:10,19;28:19;29: 3; 30: 3;31: 1;33: 2,10; 34: 5,16;75:17</p> <p>Bloomfield's (1) 32: 1</p> <p>board (2) 31: 3;68:17</p> <p>bolster (1) 13: 7</p> <p>bolstering (2) 33:19,19</p> <p>boot (1) 72: 7</p> <p>both (5) 4:18;20:18,18;69: 8; 77: 9</p> <p>branch (1) 77:21</p> <p>Bravakis (14) 4: 7,10;6:15;9: 6, 8,22; 11: 8;18: 5,11;19: 5; 20: 3,14;22: 2;24: 1</p> <p>break (1) 6:11</p> <p>breakdown (1) 15: 8</p> <p>breakouts (1) 8:18</p> <p>breaks (1) 17:20</p> <p>bridge (1) 59:11</p> <p>brief (16) 6: 3;58:21,22;61: 6, 9, 17;64:23;65:11;66: 1, 4; 67: 3,17;68: 8;69:22,23; 78:19</p> <p>briefed (1) 58:20</p> <p>briefing (8) 58: 7,15;59: 6, 8;61: 3, 11;69:10;73:10</p> <p>briefly (1) 25:22</p> <p>briefs (1) 60:22</p> <p>bring (1) 25:21</p> <p>brings (1) 29:19</p> <p>broken (1) 19: 7</p> <p>BROOKS (5) 16:10;17: 9;20:20; 34: 4;36: 4</p>	<p>bulk (4) 7: 8;37:21,23;38:16</p> <p>bulking (1) 27:24</p> <p>bunch (2) 44:18;48:11</p> <p>Burack (3) 10: 4;21:13;32:14</p> <p>burden (2) 72:10,14</p> <p>buys (1) 29:20</p>	<p>calendar (2) 59:12;63: 1</p> <p>call (2) 4: 1;69:21</p> <p>calling (2) 3:24;74: 3</p> <p>can (44) 3:10,23;5: 4;6:11; 10: 6;11:21;13: 6, 7; 14:10;15: 9;17:11; 29:12;30:16,17;31:10; 32:19,21,21;35: 5;37:10; 39:17;40:19;44:10; 45: 3;52:15,16,18;53: 2; 54:18;56:15,15;60:21; 61:14;62:21,22;67:11; 72:19;73: 4,21,22;76: 2, 6;78:22;81:17</p> <p>capabilities (1) 19:11</p> <p>capable (2) 4:21;55:14</p> <p>capacity (2) 77:23,24</p> <p>care (1) 70:13</p> <p>Carl (10) 4:14;8: 4;15:13,16; 16: 2, 3, 5;18:11,22,24</p> <p>carve (1) 56:23</p> <p>case (13) 11: 5, 5;12:10;21:16; 25: 1;34: 1;35: 9,18; 38:15;48: 2;49:14; 60:22;76:13</p> <p>cases (1) 68:19</p> <p>cat (1) 19:15</p> <p>cause (2) 59:20;64: 4</p> <p>causes (1) 49: 5</p> <p>CEI (1) 52:11</p> <p>certain (1) 29: 9</p>	<p>certainly (8) 3:10;5: 1;26:14;29: 7; 32:10;38: 7;39: 8;80:20</p> <p>certificate (2) 14: 7;62: 5</p> <p>Chair (2) 42:22;43:19</p> <p>Chairman (5) 30:18;55: 3;61:18; 69: 7;77:19</p> <p>chairpeople (1) 17: 7</p> <p>Chairperson (4) 70:10;76:14;77:11; 78: 2</p> <p>chance (4) 8:13;9: 9;62: 3;69:11</p> <p>change (6) 22: 9;24:17;43: 4, 7, 17;45:24</p> <p>changes (3) 6:24;45:19;56:21</p> <p>chief (4) 35: 9,18;49:14;78: 1</p> <p>chime (2) 4:22;51:16</p> <p>choice (2) 23: 8,21</p> <p>choose (3) 7:18;12:12;34: 6</p> <p>chunk (1) 55:18</p> <p>circumstance (3) 33:13;34: 6;81: 3</p> <p>circumstances (7) 29: 8;32:17,20,22,23; 64: 2;66:12</p> <p>City (30) 23:24;24: 7;34:18,20, 21;35: 2,16,17;37:24; 39:12;40: 4;46:12;47: 7; 50: 8,24;51: 7;62:18; 68:17;77: 7,20,22,23; 78: 1;79: 8,10,11,12,17, 19,20</p> <p>clarification (1) 39: 5</p> <p>clarify (2) 5:17;40:13</p> <p>clarifying (1) 5:14</p> <p>Clean (7) 17:23;24: 7;31:18,20; 35:16;42: 2;51:12</p> <p>clear (1) 33: 6</p> <p>clearance (1) 52: 3</p> <p>clearly (1) 39:13</p> <p>client (1) 67:21</p> <p>close (4)</p>	<p>51:21;52: 1;62: 2; 63: 3</p> <p>closes (1) 60:24</p> <p>closing (2) 61:13,17</p> <p>collectively (1) 19:17</p> <p>comfortable (1) 56:14</p> <p>coming (5) 49: 9;56:11;59: 8; 69: 1;74:14</p> <p>commence (1) 60: 4</p> <p>comment (12) 74:19,20;76:24,24; 77: 2,17;78: 7,16;79: 6, 17;80:13,23</p> <p>comments (1) 78:19</p> <p>Commission (2) 64: 9,14</p> <p>Commissioner (2) 32:14;78:17</p> <p>Commissioners (1) 77: 5</p> <p>Committee (65) 7: 4;13:13,23,24;14: 2, 2,14,14,20;17: 7,16,19; 21:11;23: 1,11;26:15; 30: 7;31:11,22;34: 3; 37: 2;39:21;42:14; 44:20;45:12,15,18;48: 1, 23;49: 8, 8,24;50: 2, 7; 52: 5;55: 3;57:16;58: 9, 19,22;59: 5;60: 9;61: 1; 62: 4;63:24;64: 3,19; 65: 2;70:18,20;71: 3, 9;72: 5,20;73: 2, 6; 75:20;76:18;77:19; 78: 2,17;79:24;80: 1, 5</p> <p>Committee's (2) 14: 5;67: 5</p> <p>common (1) 19:10</p> <p>company (1) 32: 3</p> <p>compartment (1) 79:13</p> <p>complete (2) 39: 6;58: 9</p> <p>completely (2) 9:11;13:21</p> <p>complicated (1) 73:19</p> <p>comply (1) 73: 7</p> <p>comprehensive (2) 43: 1;69:22</p> <p>concern (4) 12:15,17;72:11,15</p> <p>concerned (2)</p>
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**{SEC 2009-02}{PREHEARING CONF} - August 20, 2010
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67:20;72: 4 concerns (1) 49:15 conclude (3) 65:13,15,17 concluding (1) 61:21 concrete (1) 30: 6 condition (1) 47: 8 conditions (12) 9:12;59: 4;60:24; 61: 9,11,20,22;62: 3,12; 63: 5,11;69:16 conference (5) 3: 3, 4, 8;82: 2, 6 conferring (1) 16:21 confidential (10) 50: 4, 7,11;54:22; 56: 3,13,24;57:15,23; 58: 3 confidentiality (2) 54:23;57:15 confidentially (3) 49:22,23;50: 1 confused (1) 54: 1 consecutively (2) 4:16;5:11 conservative (3) 11: 3, 7;44: 1 consider (1) 61: 1 consideration (1) 16:11 considered (1) 12: 5 consist (1) 3:18 consistent (2) 7: 8;16:19 constructed (1) 80: 7 construction (3) 64: 6;70:22;71: 1 Consultants (1) 74:10 contemplating (1) 25:14 contents (1) 46:10 continue (1) 55: 8 control (1) 78: 3 convenience (1) 55:10 convenient (1) 49: 6 Coos (1) 77: 4	copies (4) 37: 4;81:15,19,24 copy (4) 52:14;54:13,18;81:17 correction (1) 50: 5 correctly (1) 75:11 correspond (1) 46:11 Council (1) 79: 8 Counsel (17) 6:18;9:21;10: 2;23: 3, 6:24: 8;35:14;36: 3; 37:22;38:15;46:13; 49:24;50: 2, 8;57: 1; 58:23;78:13 Counsel's (1) 69:15 count (1) 41:13 counting (1) 69: 1 County (2) 77: 4;78:16 couple (4) 6:21;11: 9;56:21; 70:22 course (10) 3: 6;35:19;42: 4; 53:13;55:13;59:23; 68: 6;69:12;73:23;79:19 court (7) 23:15;29: 6;48: 6; 54: 8;65: 5, 8;79: 4 courtesy (1) 34: 9 cover (1) 67: 9 CPD (9) 26: 7;31: 3, 6;32: 1; 46:13;54: 2;63:16,21; 67:16 CPD's (2) 26:15;72: 6 crammed (1) 59:14 crate (1) 48:22 crazy (1) 61: 8 create (2) 33:15;38: 9 credibility (1) 14:17 cross (1) 47: 4 cross-examination (29) 4:17;7:20;9: 1, 4,13; 10:18;12:14,18,19;13: 2, 2:14: 9;15: 7;17:22; 22:14,23;23: 2;26:15;	28: 5;35: 4,23;38:20; 39: 6;43:19;46:14;55: 1; 68:16;69: 1, 2 cross-examinations (1) 23:12 cross-examine (4) 7:10;22:10;28: 9; 37:11 cross-examiner (1) 7:13 cross-examining (3) 9: 8;11:15;14: 2 curious (1) 25: 1 currently (1) 29:20 customary (1) 13:13	14:14;59: 9;64: 1,10, 19;65: 3;70: 7,15;72: 5, 19 decision-maker (1) 21:11 decisions (1) 77:22 defer (1) 14:11 deferring (1) 16:21 definitely (1) 36:18 delay (3) 3: 6;29:13;64:19 deliberate (3) 67: 6;72:20;73: 1 deliberations (5) 58:10;65:21;66: 2,21; 72:23 deliver (1) 70:18 deny (1) 14: 7 depending (2) 41:23;47:22 deprive (1) 8:12 deprives (1) 7: 9 derogation (1) 7: 6 design (4) 74:11;75:11,13,24 designated (1) 77: 2 designed (3) 14:22;59:21;75:14 desire (1) 23: 7 desks (1) 57:17 detail (1) 10: 5 details (2) 20:15;52: 7 determination (1) 10: 7 determine (3) 14: 6;30: 5;31:22 determined (1) 31:19 determining (1) 71: 3 Development (1) 31:18 Development's (1) 31:21 difference (4) 10:17;33:18;53:13; 79:16 different (9) 7:10;19:15;20:24,24;	38:13;46:23;66:10; 73: 5;79:12 differentiation (1) 79: 7 difficult (2) 28: 4, 8 direct (7) 5: 2;7: 2;11:21;17: 4; 55: 1;68: 3,13 directed (1) 8: 2 directing (1) 11:19 direction (1) 46: 8 disagree (3) 10:15;12: 1;48: 1 disclosable (1) 50: 1 disclosure (1) 55: 5 discourage (1) 61: 3 discretion (1) 64: 3 discuss (6) 3:20;53: 2;58: 2,14; 63:11;76:14 discussed (4) 24:20;36:10;52: 7, 8 discussion (6) 10: 5;26: 5;37:19; 49:12;58: 6;65:11 disks (2) 57:21,22 disparaging (1) 79: 2 dispute (4) 39: 2;47:13;67: 7; 72:21 disputes (1) 47:15 distribute (1) 37:15 distributed (1) 48:16 docket (1) 49:22 document (4) 49: 8;53: 6, 6;55: 5 documents (15) 37: 6;49:21;50: 4,22, 23;51: 4;54:22;55: 1,15, 22;56:13;57: 7, 9,13; 58: 3 done (25) 6:10,23;7: 3;8:13; 18:16,17;22:23;23:12; 35: 9;41:12;44: 8,18; 46:16;53:18;55: 9; 56:17;57: 3;58:18;60: 7; 65:19;67:23;72:22; 77:13;78:18;81: 4
		D		
		Dammon (8) 5: 5;8:10;15:21,22,23; 16: 3, 4;18:12 date (3) 59: 9;63: 3;64:13 dated (1) 53:14 dates (2) 53: 2;65:21 David (1) 4:14 day (5) 26: 2;55:13;60: 6; 74:21;78:14 days (8) 58:11;59:24;60: 5; 62: 2;63: 3;66:13;67: 5; 75: 8 day-to-day (3) 26: 1;31: 4;32: 5 deadline (5) 60:23;65: 1, 1;69:16; 75: 5 deadlines (2) 61:24;64:22 deal (15) 15: 9;34: 8;45: 4, 4; 49:20;51: 7, 9;55:23; 56: 1;71:17,20;73:13; 75:16;76:11,16 dealing (5) 8: 5;13:13;34: 2; 55:17;73:23 deals (3) 20: 2;70:11,23 December (1) 64: 1 decide (4) 58:20;64:11;71: 2, 5 decides (1) 62: 4 decision (10)		

<p>door (1) 72: 7 down (4) 5: 8;13: 9;63: 5;81: 3 drive (1) 59:10 dropping (1) 81: 9 due (3) 59:23,24;80: 5 during (8) 3: 6;20: 9;54:23; 55:13;68: 6;69:11; 73:23;79:19</p>	<p>38: 2;42: 8, 8;44: 9,21; 45: 3;47:11;56: 1,16,16; 58:18;59:24;74: 4, 6, 8 ends (1) 73:17 Energy (2) 13:19,21 engaged (1) 41: 7 enough (2) 79:16;81:16 ensued (1) 65:11 ensure (1) 3: 4 entitled (1) 76:17 environmental (2) 19:19;20:13 envision (2) 8:18;18: 4 especially (1) 45:21 essentially (3) 12:16,22,24 estimate (3) 11: 7;40:10;42: 6 estimates (2) 22: 9;42: 9 even (15) 9:19;10: 4;14: 8; 31:13;34:24;36:20; 38: 4;42: 7;47:20;51:12; 57: 7;63: 9;67:20;69:21; 72:21 event (4) 9:20;26: 9;40:17; 64:11 everybody (20) 17:21;25:12;29: 2; 31:10;34: 1;36:24;42: 4, 10;49: 6;55:10;67:23; 70:12;71:13,19;72:24; 73: 1,14;78:18;81:19,24 everyone (3) 10:10;40: 1;50:11 evidence (8) 38:13;45: 6, 8;52: 8; 59: 2, 5;61:15;78:22 evidently (1) 66:18 examination (6) 3:20;5: 2;35: 2;43: 2; 46: 8;49:13 examine (1) 8:13 Examiner (1) 25:23 example (6) 5: 3;6:13;7:15,24;8: 7; 56:19 except (1) 9: 8</p>	<p>exception (1) 37:13 executive (2) 78: 1, 1 exhibit (5) 40: 6,19;48: 9;51:18, 19 exhibits (34) 3:13;5:11;6: 8,11,14; 36:21,24;37:15;44: 6, 7, 9,14,18,22,24;45: 1,11; 47:12,16,16;48:11,15; 51:12;57:14;68: 4, 5,12, 16,21;72:24;73:16,21, 22;82: 4 exist (1) 68:22 expect (7) 8: 5, 7;35:23;39: 1; 41:11;48:12;76:10 expectation (1) 48: 3 expected (1) 19: 6 expecting (1) 42:14 expediency (1) 34: 8 expedited (1) 65: 5 experience (7) 8: 2, 5;13:13;23: 5; 33: 1;66: 9;72: 1 experiences (1) 4:18 expertise (1) 13: 1 explanation (1) 45:23 explore (1) 29:17 express (1) 69:12 extend (2) 33:13;70:18 extended (1) 67:16 extending (1) 64:13 extension (1) 71: 6 extant (5) 13:14;17: 1;31: 7; 35: 4;79:24 extra (1) 17: 1</p>	<p>fact (6) 10: 4,14;32:15;36:22; 60: 7;68: 4 fair (7) 8:13;17:15;30:20; 32:23;33: 4;62: 7;73:14 fairly (3) 12:10;14: 1;29:12 fairness (1) 75: 6 faithful (1) 7:19 fallback (2) 28:23;34: 4 familiarize (1) 40:21 family (3) 32:16;33:10;67:16 far (7) 17:16;24:20;30: 7,19; 37: 8;41:10;74:11 fast (1) 81:16 faster (1) 78:23 feel (3) 40: 3;44: 4;47: 4 felt (1) 31:11 FERC (1) 67:17 few (5) 9:19;35: 1;37:18; 38:11;46:23 Fifteen (1) 25:18 fifth (1) 4:15 figure (2) 30:12;56:23 file (6) 27:16;66: 3;67:17; 75: 1;76: 5, 6 filed (3) 7: 9;16:15;68: 6 final (3) 21:17;59:22;70:15 financial (6) 18:19,22;19:11,21; 20: 1,10 financing (1) 8: 3 find (2) 19:20;70:20 findings (1) 19:10 fine (8) 5:16;17: 2;21:20; 22:21;30:21;46:15; 55:21;81: 9 fingers (1) 59:10 finish (1)</p>	<p>78: 3 first (26) 3:19;4: 8, 9;6:22; 18: 5,11;19: 3;22: 1; 23: 3, 8, 9,14,22;24: 5, 7; 35:18;43:19;56: 7,12; 58:15;61:13;62: 3;69: 9; 75: 1;77: 9;78:14 fits (2) 65:24;79: 3 five (6) 3: 8;4: 6;7:18;43: 9, 20;67: 5 flexibility (1) 33:13 flexible (1) 33:12 Florida (5) 25:24;26: 9;27:15; 28:18;34:18 fluid (1) 22:18 focus (1) 14:18 folks (2) 51:11;75:12 following (3) 65:19,22;66:16 forgoing (1) 61:11 forgot (1) 68:19 forth (1) 58:12 Fortune (12) 74: 9, 9,22;75: 3,15, 23;76: 1, 7,17;81:12,14, 20 four (2) 13: 5;55:12 fourth (1) 4:14 frame (10) 58:12;60: 1,13,15,15, 16,18;71: 7,15,22 frames (1) 58: 8 Frecker (10) 4:14;8:10;11:13;18: 5, 12;19: 6;20: 3, 6,14; 22: 2 free (3) 17: 4;32:13;80:21 freely (1) 73:21 frequently (1) 4:22 Friday (4) 65:20;66:16,18,20 friend (1) 13: 6 friends (1) 13: 6</p>
E				
<p>earlier (1) 25:22 early (1) 69: 4 ease (1) 57: 2 easier (4) 17:18,18,19,20 easy (3) 56:19;67:21;70:17 economically (1) 74:12 edition (1) 53:23 effect (2) 14:13;71: 1 effective (1) 7: 9 effectively (1) 77:21 efficient (2) 4:23;8:16 efficiently (1) 16:13 either (8) 16:21,22;34: 6;41:17; 42: 2;44:20;55: 1;61: 9 elected (2) 80: 6,22 Electrical (1) 21:23 eleventh (1) 33:15 elicit (1) 40: 3 else (10) 5: 6;9:24;13: 7,15; 17: 6;30:23;49:16;58: 2; 65: 9;74:12 elsewhere (1) 64:21 e-mailed (2) 36:24;37: 1 encouraged (1) 56: 6 end (15)</p>	<p>entitled (1) 76:17 environmental (2) 19:19;20:13 envision (2) 8:18;18: 4 especially (1) 45:21 essentially (3) 12:16,22,24 estimate (3) 11: 7;40:10;42: 6 estimates (2) 22: 9;42: 9 even (15) 9:19;10: 4;14: 8; 31:13;34:24;36:20; 38: 4;42: 7;47:20;51:12; 57: 7;63: 9;67:20;69:21; 72:21 event (4) 9:20;26: 9;40:17; 64:11 everybody (20) 17:21;25:12;29: 2; 31:10;34: 1;36:24;42: 4, 10;49: 6;55:10;67:23; 70:12;71:13,19;72:24; 73: 1,14;78:18;81:19,24 everyone (3) 10:10;40: 1;50:11 evidence (8) 38:13;45: 6, 8;52: 8; 59: 2, 5;61:15;78:22 evidently (1) 66:18 examination (6) 3:20;5: 2;35: 2;43: 2; 46: 8;49:13 examine (1) 8:13 Examiner (1) 25:23 example (6) 5: 3;6:13;7:15,24;8: 7; 56:19 except (1) 9: 8</p>	<p>exist (1) 68:22 expect (7) 8: 5, 7;35:23;39: 1; 41:11;48:12;76:10 expectation (1) 48: 3 expected (1) 19: 6 expecting (1) 42:14 expediency (1) 34: 8 expedited (1) 65: 5 experience (7) 8: 2, 5;13:13;23: 5; 33: 1;66: 9;72: 1 experiences (1) 4:18 expertise (1) 13: 1 explanation (1) 45:23 explore (1) 29:17 express (1) 69:12 extend (2) 33:13;70:18 extended (1) 67:16 extending (1) 64:13 extension (1) 71: 6 extant (5) 13:14;17: 1;31: 7; 35: 4;79:24 extra (1) 17: 1</p>	<p>face (1) 33: 2 facility (1) 19:18</p> <p style="text-align: center;">F</p> <p>face (1) 33: 2 facility (1) 19:18 fact (6) 10: 4,14;32:15;36:22; 60: 7;68: 4 fair (7) 8:13;17:15;30:20; 32:23;33: 4;62: 7;73:14 fairly (3) 12:10;14: 1;29:12 fairness (1) 75: 6 faithful (1) 7:19 fallback (2) 28:23;34: 4 familiarize (1) 40:21 family (3) 32:16;33:10;67:16 far (7) 17:16;24:20;30: 7,19; 37: 8;41:10;74:11 fast (1) 81:16 faster (1) 78:23 feel (3) 40: 3;44: 4;47: 4 felt (1) 31:11 FERC (1) 67:17 few (5) 9:19;35: 1;37:18; 38:11;46:23 Fifteen (1) 25:18 fifth (1) 4:15 figure (2) 30:12;56:23 file (6) 27:16;66: 3;67:17; 75: 1;76: 5, 6 filed (3) 7: 9;16:15;68: 6 final (3) 21:17;59:22;70:15 financial (6) 18:19,22;19:11,21; 20: 1,10 financing (1) 8: 3 find (2) 19:20;70:20 findings (1) 19:10 fine (8) 5:16;17: 2;21:20; 22:21;30:21;46:15; 55:21;81: 9 fingers (1) 59:10 finish (1)</p>	<p>fact (6) 10: 4,14;32:15;36:22; 60: 7;68: 4 fair (7) 8:13;17:15;30:20; 32:23;33: 4;62: 7;73:14 fairly (3) 12:10;14: 1;29:12 fairness (1) 75: 6 faithful (1) 7:19 fallback (2) 28:23;34: 4 familiarize (1) 40:21 family (3) 32:16;33:10;67:16 far (7) 17:16;24:20;30: 7,19; 37: 8;41:10;74:11 fast (1) 81:16 faster (1) 78:23 feel (3) 40: 3;44: 4;47: 4 felt (1) 31:11 FERC (1) 67:17 few (5) 9:19;35: 1;37:18; 38:11;46:23 Fifteen (1) 25:18 fifth (1) 4:15 figure (2) 30:12;56:23 file (6) 27:16;66: 3;67:17; 75: 1;76: 5, 6 filed (3) 7: 9;16:15;68: 6 final (3) 21:17;59:22;70:15 financial (6) 18:19,22;19:11,21; 20: 1,10 financing (1) 8: 3 find (2) 19:20;70:20 findings (1) 19:10 fine (8) 5:16;17: 2;21:20; 22:21;30:21;46:15; 55:21;81: 9 fingers (1) 59:10 finish (1)</p>

<p>front (6) 6:10,17;38:10;44: 7; 45:11;76:22</p> <p>full (1) 72:24</p> <p>fully (7) 13:14;24:24;26:10; 27: 6;29: 9;41: 7;73: 2</p> <p>function (1) 22:14</p> <p>functioning (1) 33: 9</p> <p>further (1) 38: 1</p>	<p>government (1) 74:13</p> <p>grant (1) 14: 7</p> <p>granted (2) 43: 4;76: 9</p> <p>Great (1) 34:13</p> <p>greenhouse (1) 8: 8</p> <p>Grenier (2) 77: 6, 8</p> <p>group (2) 13:16;56:12</p> <p>groups (1) 12: 8</p> <p>guess (11) 15:20;19: 4;21:18; 24:22;28:17;29:16; 35:24;41:11;42: 6;52: 1; 59: 6</p> <p>guts (1) 28:13</p> <p>guy (5) 13:19,21;20: 5, 6;28: 1</p> <p>guys (4) 17:22;47: 4;54:13; 62:12</p>	<p>39:16;45: 5;47:18; 54:23;58: 7, 9;60:24; 63: 4,20;64:15;65:14,15, 17;66:11,11;67:10; 71:16;73:11;76:13; 79: 3;80:14,16</p> <p>hearings (7) 3: 5, 7;30:18;59:22; 60: 5;62: 2;69:12</p> <p>held (1) 10: 4</p> <p>help (5) 12:20;52:14,17;61:14, 24</p> <p>helpful (6) 16:14;40:22;44: 6; 45:13;58:20;59: 3</p> <p>high (1) 7: 2</p> <p>highlights (1) 6: 4</p> <p>himself (2) 27:20;33:20</p> <p>hitting (1) 7: 2</p> <p>hold (2) 60: 1;64: 8</p> <p>holding (1) 22:18</p> <p>hope (5) 34: 9;39:22;46:13; 62:21;69:20</p> <p>hopefully (3) 45: 2;49:11;70:13</p> <p>hour (12) 9:17;11: 9,12,13,13; 22:15;33:15;35: 3;36: 1; 43:10,10,11</p> <p>hours (4) 5:13;7: 5;11: 9;43: 8</p> <p>hours' (1) 41:14</p> <p>housekeeping (4) 70:14;73:12;76:12,16</p>	<p>13,23;37: 3, 6,10,16,20; 38: 7,18,23;39: 3,10,17, 20,23;40: 9,15,22;41: 4, 9,19,23;42:15,19;43:21; 44:12,17;45:17;46: 5,17; 47: 9,22;48:14,19,21; 49: 4,19;50: 9,13,16,23; 51: 6,11;52: 1,20;53: 1, 5, 9,11,17;54: 6,10,12, 17,21;56: 4,14;57: 1, 6, 12,22;58: 1, 5,23;59:15, 19;60: 4,14,20;61: 2, 6, 16;62: 6,11,19,24;63:14, 17;65:13;66: 3,15,19,24; 67:11,22;68: 1;69: 6,14, 24;70: 3, 6, 9;71:10,13, 19,24;72: 9,13,18;73: 9; 74: 7,18,23;75: 4,19,24; 76: 4, 8,20;77: 1, 8;78: 9, 12;79: 1;80:12,16,20; 81: 2,11,18,22</p>	<p>41:21</p> <p>individual (2) 17: 5;48:23</p> <p>individually (3) 18:16,17;25:15</p> <p>individuals (1) 6:12</p> <p>Industrial (1) 74:10</p> <p>information (11) 13: 4,18,22;14: 3, 6, 15;16:14;34:10;51:17, 20;52: 7</p> <p>informational (1) 80:14</p> <p>initial (1) 47:10</p> <p>insist (1) 63:19</p> <p>instance (1) 56: 7</p> <p>intend (4) 8:12;38:20;39: 8;55: 4</p> <p>intends (2) 3:21;34:18</p> <p>intention (2) 6: 8;54: 2</p> <p>Interconnection (2) 21:22;25:13</p> <p>interest (2) 70:23;71: 4</p> <p>interested (1) 36:11</p> <p>interests (1) 72: 6</p> <p>interruption (3) 29: 6;48: 6;54: 8</p> <p>Intervene (6) 74:14,24;75: 2;76: 5; 80: 9;81:23</p> <p>intervening (1) 59:17</p> <p>intervenor (2) 10:14;67: 8</p> <p>intervention (2) 75: 5, 7</p> <p>into (4) 23: 2;42: 7;48:12; 68: 8</p> <p>introducing (1) 15:15</p> <p>introduction (2) 45: 7;47:11</p> <p>introductions (1) 45:12</p> <p>involved (2) 31: 3;64:20</p> <p>ISO (5) 50:22,23;51:17;53:14, 22</p> <p>issue (24) 3:19;13: 8;14:17; 25:13,21,30: 7;33:11;</p>
G				
<p>Gabler (14) 25: 9,12;35:22;36: 2; 51:20,23;52: 2, 6,11,15; 53: 4,12,21;54:19</p> <p>Gabler's (1) 51:13</p> <p>game (1) 21: 4</p> <p>gas (1) 8: 9</p> <p>gave (2) 13:22;31: 7</p> <p>General (1) 11:24</p> <p>generally (1) 80:24</p> <p>gentleman (1) 74: 5</p> <p>Gestamp (5)/b> 31: 1,16,19,20;77:13</p> <p>G-e-s-t-a-m-p (1) 31: 1</p> <p>gets (3) 12:12;13: 9;47: 1</p> <p>given (6) 12:10;42:10;43: 7; 64: 2, 5;71:21</p> <p>gives (1) 66:23</p> <p>giving (2) 33:14;48:10</p> <p>global (1) 8: 8</p> <p>goal (2) 3: 4;14: 5</p> <p>God (1) 30:22</p> <p>goes (4) 22:24;26: 7;45: 1; 78:23</p> <p>good (17) 6: 5;12: 2;18: 1;21: 9; 22: 7;26: 2;34:10;37:21, 23;40:10;45: 7;47: 2; 63: 4;64: 4;67:21;72:16, 17</p>	<p>groups (1) 12: 8</p> <p>guess (11) 15:20;19: 4;21:18; 24:22;28:17;29:16; 35:24;41:11;42: 6;52: 1; 59: 6</p> <p>guts (1) 28:13</p> <p>guy (5) 13:19,21;20: 5, 6;28: 1</p> <p>guys (4) 17:22;47: 4;54:13; 62:12</p>	<p>high (1) 7: 2</p> <p>highlights (1) 6: 4</p> <p>himself (2) 27:20;33:20</p> <p>hitting (1) 7: 2</p> <p>hold (2) 60: 1;64: 8</p> <p>holding (1) 22:18</p> <p>hope (5) 34: 9;39:22;46:13; 62:21;69:20</p> <p>hopefully (3) 45: 2;49:11;70:13</p> <p>hour (12) 9:17;11: 9,12,13,13; 22:15;33:15;35: 3;36: 1; 43:10,10,11</p> <p>hours (4) 5:13;7: 5;11: 9;43: 8</p> <p>hours' (1) 41:14</p> <p>housekeeping (4) 70:14;73:12;76:12,16</p>	<p>idea (14) 4: 3;9:15;10: 6;33: 8, 10;37:21,23;42: 4;44: 5; 47:12;49:10;63: 4;69: 8; 73:22</p> <p>identification (1) 73:15</p> <p>identify (4) 6:16;25:17;44: 7;74: 7</p> <p>ill (1) 25:24</p> <p>imagine (1) 9: 7</p> <p>immediately (2) 35: 9;62:22</p> <p>imminent (1) 26: 2</p> <p>Impact (2) 50:20;52:14</p> <p>impacts (1) 20:13</p> <p>important (2) 13:12;63:16</p> <p>importantly (1) 59: 3</p> <p>impossible (1) 43: 6</p> <p>include (3) 37: 7;62: 5;68:14</p> <p>included (1) 51: 1</p> <p>incomplete (1) 36:20</p> <p>inconvenience (1) 49: 5</p> <p>Incorporated (1) 74:10</p> <p>increments (1) 11:10</p> <p>incumbent (2) 55: 2;56:22</p> <p>indicating (1)</p>	
H	H			
<p>half (3) 9:17;11:13;43:10</p> <p>hamstrung (1) 10:14</p> <p>handed (1) 21: 7</p> <p>hands (1) 67: 6</p> <p>handy (1) 52:21</p> <p>happen (2) 41:17;80:24</p> <p>happening (1) 62:22</p> <p>happens (2) 9:12;61:23</p> <p>happy (2) 24: 5;65: 8</p> <p>hard (4) 8:20;37: 4;38: 9;64:22</p> <p>harmful (1) 72: 6</p> <p>hash (1) 63: 5</p> <p>hear (8) 4:12;17:11;39:21; 45:15;56: 6;79: 7;80: 5; 81: 9</p> <p>heard (3) 11:23;31: 9,10</p> <p>hearing (26) 21:17;25:23;38: 2,12;</p>	<p>half (3) 9:17;11:13;43:10</p> <p>hamstrung (1) 10:14</p> <p>handed (1) 21: 7</p> <p>hands (1) 67: 6</p> <p>handy (1) 52:21</p> <p>happen (2) 41:17;80:24</p> <p>happening (1) 62:22</p> <p>happens (2) 9:12;61:23</p> <p>happy (2) 24: 5;65: 8</p> <p>hard (4) 8:20;37: 4;38: 9;64:22</p> <p>harmful (1) 72: 6</p> <p>hash (1) 63: 5</p> <p>hear (8) 4:12;17:11;39:21; 45:15;56: 6;79: 7;80: 5; 81: 9</p> <p>heard (3) 11:23;31: 9,10</p> <p>hearing (26) 21:17;25:23;38: 2,12;</p>	I		
<p>hearing (26) 21:17;25:23;38: 2,12;</p>	<p>hearing (26) 21:17;25:23;38: 2,12;</p>	<p>IACOPINO (207) 3: 2;5:16,19;6: 6,18; 7:22;8:17,23;9:14,21; 10: 1,12,19,24;11: 6,11, 14,18,22;12:15;14: 4; 15:21;17: 3,14;18: 2, 7, 14;19: 3,12,23;20:17,22; 21: 1, 6,10,13,24;22: 7, 12,17,22;23:13,17,23; 24: 3, 6,12,14,16,21; 25: 3, 7,10,19;26: 6,17, 20,22;27: 2,13;28: 3, 8, 11,21;29:16,22;30: 1, 4, 10;31:12,15;32: 2, 5, 9, 13;33: 7,17,21;34:12,14; 35: 7,11,13,20;36: 3, 7,</p>	<p>immediately (2) 35: 9;62:22</p> <p>imminent (1) 26: 2</p> <p>Impact (2) 50:20;52:14</p> <p>impacts (1) 20:13</p> <p>important (2) 13:12;63:16</p> <p>importantly (1) 59: 3</p> <p>impossible (1) 43: 6</p> <p>include (3) 37: 7;62: 5;68:14</p> <p>included (1) 51: 1</p> <p>incomplete (1) 36:20</p> <p>inconvenience (1) 49: 5</p> <p>Incorporated (1) 74:10</p> <p>increments (1) 11:10</p> <p>incumbent (2) 55: 2;56:22</p> <p>indicating (1)</p>	<p>intention (2) 6: 8;54: 2</p> <p>Interconnection (2) 21:22;25:13</p> <p>interest (2) 70:23;71: 4</p> <p>interested (1) 36:11</p> <p>interests (1) 72: 6</p> <p>interruption (3) 29: 6;48: 6;54: 8</p> <p>Intervene (6) 74:14,24;75: 2;76: 5; 80: 9;81:23</p> <p>intervening (1) 59:17</p> <p>intervenor (2) 10:14;67: 8</p> <p>intervention (2) 75: 5, 7</p> <p>into (4) 23: 2;42: 7;48:12; 68: 8</p> <p>introducing (1) 15:15</p> <p>introduction (2) 45: 7;47:11</p> <p>introductions (1) 45:12</p> <p>involved (2) 31: 3;64:20</p> <p>ISO (5) 50:22,23;51:17;53:14, 22</p> <p>issue (24) 3:19;13: 8;14:17; 25:13,21,30: 7;33:11;</p>

{SEC 2009-02}(PREHEARING CONF) - August 20, 2010
LIDLAW BERLIN BIOPOWER, LLC

34: 1;44: 4;47:10;48: 9; 49:17,20;61:19;63:16; 64:10;69:18;70:10; 71: 5;72:21;73: 6,10,15; 76: 2 issued (1) 74:21 issues (21) 3: 8, 9,22;6:14;8: 8, 9; 15: 1,16;16: 8;17:16; 32:10,23;35: 1;37:18; 40:18;42:11;52:18; 58:19;62:21;67:16; 81:12 issuing (1) 64:19 item (1) 52: 9 iteration (1) 17:24	Laflamme (6) 34:19,21;36: 8;38:21; 39: 5;41:24 laid (1) 47: 5 Laidlaw (4) 35: 1;36:19;75:12,16 Laidlaw's (2) 12: 3;25: 6 large (2) 36:17;68: 8 last (12) 3:13;6:22;17:24;22: 4; 23: 4,22;31:10;38:11; 44:13;53: 6;65:19;66:14 late (1) 74:14 later (2) 52:18;55:23 Laughter (1) 78: 5 lawyer (1) 46: 1 lawyers (1) 78:21 lead (1) 61:21 least (5) 11: 2;31:17;42: 9; 46:10;77:14 leave (14) 3:12;26:23;28:17; 38: 5;44: 9;55: 6;57: 8; 60: 9;69: 6;73: 9;75: 8; 77:19;78: 1;82: 1 leaves (3) 15:20;37:20,22 leaving (1) 57:16 leeway (5) 17: 1;42:20,21;43: 3, 8 left (3) 9: 5;37:18;39: 2 legislative (1) 77:21 Lempster (1) 60:11 lends (1) 56: 2 less (2) 42: 6;43:10 letter (3) 74:16,18;77:12 letters (1) 81: 6 level (1) 10: 5 likely (2) 15:18;71:21 limited (2) 10:14;67: 8 limits (1) 11:19	line (1) 54:14 link (1) 19: 5 list (5) 9: 5;40:19;51:18,19; 74: 1 listed (1) 3: 8 Liston (7) 24:17;25: 9,23;32: 8, 16;35:22;36: 1 little (8) 3: 6;7:13;29:17;43:10; 46:11;55:23;66:10; 73:19 live (1) 12: 3 LLC (1) 31: 2 logic (1) 19: 7 long (4) 25:16;34:24;38: 9; 49: 6 longer (2) 35: 3;42: 5 look (9) 21:14;28: 6;31: 8; 48:11;52:15;62:24; 75:10;79:14,18 looked (1) 59:11 looking (7) 11: 4;14:15,22;39: 4; 52:16;55:13;65:21 looks (3) 21:24;26: 1, 4 loose (4) 73:17;74: 4, 6, 8 lot (7) 3:14;7:17;22:13; 29:21;43:13;68:11;79: 3 lots (1) 15: 3 Lou (13) 4: 7,10;5: 4, 4;6:15; 8: 9;9: 6;15:13,14;16: 2, 3, 4;18:11	many (2) 75: 5, 6 mark (3) 51:19;68:20,20 marked (2) 3:16;57:15 marking (2) 3:15;82: 3 massage (1) 63: 7 material (3) 31:22;46:24;56:15 matter (10) 14:22;17:20;19:10; 47:24;63:20;67:16; 70:14;73:12;76:12,16 May (24) 5:14;7:10;8:10,22; 10:16;12: 5;16:23; 17:12,12;21:13;24:13; 25:22;26:23;31:20; 33:19;38: 1;44:14,17; 52:17;53: 7,20;55:15; 73:19;76:14 maybe (13) 23:10;25:18;37:14; 39:15;42: 3, 7;45:23; 47:20;53:24;60:19,21; 73:24;74:15 Mayor (9) 77: 6, 8,16,22;78: 3, 7; 79:12,20;80:13 mean (49) 5: 1;8: 5,12;9:17; 11:18,24;13:12;14: 8, 8, 12,15;16: 3, 4;19:14; 21:13;22:16;23: 9;28: 4, 11;30: 6,16,19;31:15,17; 32:15,17;35:13;43:14, 24;46:19;48:17;50:24; 52:22;53: 2,18;56:19; 62: 6;63: 2,23;65: 8,16; 67: 6;68: 2, 8,18;69: 7; 78:12;79: 1, 2 means (2) 66:20,24 meant (2) 15:22;43: 9 medium (1) 15: 5 meet (2) 63:11;64:22 meeting (1) 45: 3 Mel (11) 24:11;25: 9,11,23; 26:13,23;28:17;29: 8; 31:13;32: 7;33:10 Mel's (2) 26:10;27:14 member (3) 31: 2;49: 8, 8 members (4)	48:24;49:24;57:16; 73: 2 memoranda (3) 58: 7;69:23;73:11 memorandum (4) 61:11;63:20;64:15; 66:14 mentioned (1) 25:22 merely (1) 34: 7 merit (1) 12: 4 messed (1) 18:10 might (7) 33: 1;35: 4;45:22; 46: 1;64: 4;69: 5;79:15 Mike (15) 4: 8,13;5:15;8: 2, 3; 12: 7;15:20;16: 6,10; 18:16,21;55:22;56:19; 63:13;66:22 Millionaire (2) 12:14;28:15 mind (3) 16:22;56:11;58:13 mindful (1) 63:16 minor (2) 43: 7, 7 minute (3) 11: 9;43:16;63: 1 minutes (17) 10:10;25:18;36: 1, 1, 2, 4;40: 8,12,14;43:17, 18,20,22,22;45:14; 46:23;55: 7 misunderstand (1) 27:10 mix (1) 19:22 Monday (23) 21: 7;32:14;34: 2; 40:20;48: 4, 9;67: 1, 4; 70:11,14;71: 9;73:13; 76:11,12,15,18;77: 2, 9, 13;78:10;79:18;80:21; 81: 4 month (2) 60:10;64:10 months (2) 64: 4;70:22 mooring (1) 78:10 more (14) 4:23;8:16;13:22;20: 2, 20;29:17;32: 5;38: 5; 40: 3;44: 6;49: 6;56:22; 59: 3;66: 7 morning (14) 21: 8;34: 2;40:20; 42: 3, 8;48: 4;76:11,13,
J				
jeez (1) 14:10 Jim (10) 10:12;21: 2;22: 8; 29:17;37:20;38:15; 40: 9;57: 6;64:23;67: 6 job (1) 67:21 joint (1) 7:16 justify (1) 79:16				
K				
Kate (1) 56:10 keep (2) 55:11,11 kept (1) 55: 8 kind (12) 7: 5;14:13;15: 8; 19:10;20:15;26: 3;31: 7; 34:10;36:17;47: 5;54: 5; 58:14 knowledge (5) 13: 1;16:20;19:18,18, 19 knows (5) 19:12;25:12;40:23; 67:24;70:12 Kusche (7) 4:14;11: 9;18: 5, 6,17, 20;22: 5				
L				
lack (1) 73:10				
		M		
		majority (1) 55:21 makes (2) 77:21;81:10 making (5) 68:10;76:24;78: 7; 79: 6,16 managerial (4) 18:19;19:11;20: 1,10 manner (1) 79: 2		

<p>16:77:10,13;79:18; 80:21;81: 4 most (14) 5:11;9:18;10:10; 13:18;14:16;15:18; 35: 3;40:14;43:20; 48:12,15;59:16;68:15; 80:22 motion (6) 39:11;44:10;75: 1; 76: 5,21;81:13 move (8) 5:10;6:16;8:15;33: 2; 44: 8,10;47:17;73:21 moved (2) 44: 6,22 moving (1) 81:23 much (23) 3:11;4: 1,23;6:11; 8:24;9: 3,15;16: 7; 25:15;32:17;35: 6,20,22; 38:20;40:20;41:24; 47:22;58:11;60: 6; 61:24;63:24;70:12,17 Multiple (2) 39:18;54: 8 myself (1) 61: 5</p>	<p>81:17 needs (1) 65: 2 negotiated (1) 40:17 NEPOOL (1) 53:22 never-ending (1) 59: 8 new (3) 40:19;46:24;68:21 next (16) 3: 5;14:11;16:20; 24:22;25: 2;26: 4;34:15; 35:15;49:20;58: 2, 5; 65:14,15,17;70:22;73:15 nice (2) 62: 8,11 nine (1) 64: 4 nobody (2) 22:17;44:19 nodding (1) 23:16 non-confidential (1) 56:24 non-conservative (1) 44: 1 none (1) 38:22 nonetheless (1) 72:18 Nor (1) 78: 8 Normally (4) 14:21;22:24;23: 2; 56:17 note (1) 46:11 notice (1) 59:11 nowhere (1) 22:16 number (5) 8:14;24:22;58: 8; 66:13;68:21</p>	<p>48:13 objective (1) 72: 7 obtain (1) 14: 6 obvious (1) 13: 5 obviously (14) 3: 8;17:10;28:11; 34:16;39:11,24;45: 1,20; 55: 7;65:16;69:10; 76:22;77:18;78:16 occasions (2) 23: 3, 4 occur (1) 38: 2 occurs (1) 42: 9 off (7) 3:15;24:15;30:13; 73:20;81:15;82: 1, 3 offered (1) 8: 4 officer (5) 21:17;23: 5;30:17; 73:12;75:10 Officer's (1) 66:11 official (2) 77:23,24 officials (3) 80: 6,22,23 off-the-record (1) 65:11 oftentimes (2) 14: 8;15: 2 older (1) 60:11 once (5) 30:18;44:23;56: 8; 58: 8;74: 1 one (54) 5: 3,17;6: 3,22;8: 1; 12: 6, 9, 9;14: 8;15:12, 19;16:19;17:12,13; 18: 8;19:10,15;24:22; 25:20,21;31:10,15,15; 34: 6;35:16,16;37:12; 43:16;45:17;46: 7;49: 7; 50: 5, 6;51:13;52:13,13, 24;53:14,15,20;54:10; 55:18;57:23,23;59: 7,19; 66:14,15;67:22;68: 1, 2; 70:16;75: 2,18 ones (2) 12:21;55:24 only (20) 8:20;9: 9,19;23:23,24; 30:23;34:21;39:16; 41: 7;46:23;48:21; 49:23;50:24,24;51: 3; 53:15,22;67: 9;68:14; 79: 5</p>	<p>on-the-ground (1) 20: 2 open (1) 76:18 opening (1) 42:14 operational (1) 20:14 opinion (2) 69:12;70:19 opinions (2) 30: 8;31: 9 opportunity (6) 7: 1;59: 1;61:23;62: 9; 63:19;66:23 oppose (1) 64:18 opposed (5) 12: 8;14:15;33: 8, 9; 70:23 order (21) 3:11,20,24;4: 7;22:22; 24: 8, 9;25: 6;39:12; 42:12;49:13,14;50:24; 51:14;55:16;58:10; 63:10,21;64:14;70:20; 74:21 orders (2) 54:23;57:15 organization (2) 3:16;22: 8 organized (1) 17:21 organizing (1) 17:16 original (1) 81:15 others (2) 4:22;57:21 ought (2) 59: 4;60:19 out (27) 3: 4, 7;16:14;17:20; 19: 7;20: 1;21: 7;24:23; 30: 3;33:24;34: 9, 9; 47: 5;51: 7;52:24;56:23, 23;57:17;58:10,15; 59: 9;61:10;64: 1;72: 7; 75: 6,18;77:11 outstanding (2) 38:11;40:18 over (11) 24:13;28:18;34:10; 37:11;38:16;43: 4; 59:11,16;62:13;64: 6; 67:18 overall (4) 15:15;19:17;20: 4; 69:10 overlap (7) 7:23;8: 6,21;15: 4,19; 16: 7;25:15 overlaps (1)</p>	<p>15: 9 overnight (1) 65: 6 overview (1) 20: 4 own (5) 12:24;13: 4;19:21; 36:20;70:18 ownership (1) 51: 4</p>
P				
				<p>pair (1) 19: 9 Pam (2) 34:21;36: 7 panel (36) 4:16,24;5: 1, 6,10;7: 7, 8,17;8:18;11:15;12:17; 14:19;15: 3;16: 6,22,23; 18: 4,10,16;19: 3;22: 1, 3;26:13;27: 2, 3, 9,17, 23,24;29:18;33: 9,15; 34:16;55:17,18;56: 7 panels (6) 14:21,21;17:18;20:11, 18,24 paramount (1) 72: 6 part (9) 8: 4;13:15;14:16; 36:19;68: 8,15;74:19; 75:17;80:22 partially (1) 5: 4 particular (9) 5: 2;12:19,20;14:17; 49:16;54:24;55:16; 75:21,24 particularly (1) 6:20 parties (28) 3:10;4: 2;30:11,15,20; 32:15;35:21;38: 9; 39:18;42:14;43: 3;45: 1, 19;47:14;48: 1;49: 2; 50: 2;53:18;54: 9;55:14; 56: 5;58:14;59: 1;60:24; 63:10;74: 2;79: 6;82: 4 parties' (1) 23: 2 party (8) 3:21;8:24;28: 4;39:14; 55: 2;74:24;77:16,17 passed (1) 3: 7 passing (1) 49: 7 past (4) 13:17;19: 8;58:24; 78:18 Patch (1)</p>
N				
<p>NAEA (1) 13:19 necessarily (3) 16:12;41:15;55:18 necessary (1) 14: 6 need (24) 3:10,16,17,19;9:19; 24:10;33:19;34: 8;40: 3; 45:19;46:23;48:11; 49:10;55:12;56: 8;58: 2; 63:18,21,24;64:14,23; 65: 4;67: 9,19 needed (6) 3:20;13:23;26:11; 38: 6;49:13;60: 8 Needleman (67) 3:23;4: 5,10,13;5:23; 6: 2, 9;7:24;8:19;13:11; 15:10,24;16: 4;18: 6, 9, 15,21;19: 1,14;20: 7; 21:20,22;22: 6;24:24; 25: 4;29: 4, 7,12;33: 4, 8;35:24;38:22,24;42:13, 16;44: 3,16;45: 9;47:21; 48: 3, 8,17;49: 1;50: 5, 10,14,21;51: 5;53: 8,24; 55:20;56:10,18;57:18; 58:17;61:12,19;62:17, 20;63: 8;64:17;65: 7; 66:22;67: 2;69: 3;78: 8;</p>	<p>object (6) 7:20;28:24;74:16; 76:10;78: 6;80:21 objected (1) 27:24 objecting (2) 44:19;45: 2 objection (7) 28:22;29: 1, 5, 8; 35:11,17;52:21 objectionable (1) 6:21 objections (4) 11:24;12: 4;45: 4;</p>			
O				

{SEC 2009-02}{PREHEARING CONF} - August 20, 2010
LIDLAW BERLIN BIOPOWER, LLC

<p>77:12 Patnaude (3) 17:18;65:18;73:21 peeling (1) 20: 1 pendency (1) 68: 7 people (16) 5: 1, 2;8:22;17:12; 19:17;40:20;41:10; 42: 6;45: 2;48:10;61:21; 64:21;71: 2, 3;73:17; 75:12 per (1) 10:10 perfectly (2) 6:13;15:12 perhaps (2) 47:18;54:18 period (1) 59:13 permit (3) 9:12;45: 7;80: 1 permitted (3) 61:17;78:10;80:24 permitting (1) 74:17 person (5) 12:10;13:16;16:19,20; 72:19 personal (1) 35: 5 perspective (1) 55:21 pertinent (1) 13: 4 Peter (18) 12:16;14: 4;26:10,13, 17,18;27: 3;28:19;29: 2, 9,18;30: 3;31: 1;32: 1; 39: 3;42:16;45:10;74: 3 Petition (1) 74:14 phalanx (1) 12:11 phone (1) 13: 6 pick (2) 7:18;12:12 picture (1) 15:15 pieces (2) 56:24,24 place (1) 80: 6 places (3) 8:21;15:18,19 plan (10) 3:23;4: 3;21: 5;22: 1; 24: 4;26: 8,11;27:12; 28:23;41:16 Planner (1) 34:21</p>	<p>plant (2) 60:10;74:17 play (1) 31:20 player (2) 32: 3, 6 playing (1) 7:12 please (1) 40:23 plenty (1) 64:20 point (20) 13:12;32:11;34:15; 40: 6,18;44: 2, 8;51:17; 52:15;55: 6;58:21; 64:12;68: 1;72:16,17; 74:15;75:16;76: 2, 2; 79: 5 points (3) 7: 3;12: 2;31: 8 policy (1) 78:17 polity (1) 77:20 poly-generation (1) 74:11 posed (1) 32:21 position (7) 11:14;24:17;34: 4,17; 62: 1;71:17;79:15 positions (1) 38:13 possible (6) 3: 6, 7;34:22;40:20; 43: 1;78:19 post (7) 58: 7;63:19;64:15; 66:13;67: 3;69:23;73:11 posted (1) 53:22 potentially (1) 24: 2 Power (8) 17:23;24: 7;31:18,20; 35:17;42: 3;50:17;51:12 PPA (1) 67:17 practical (2) 47:23;61: 5 precious (1) 49: 7 predict (1) 8:21 prefer (3) 34:22;42:24;47:13 preference (3) 4:15;41: 7,22 prefiled (11) 4: 6;5:21;7:16;16:15; 25: 9;27: 4, 7;39:11; 40: 4;43: 6;46:19</p>	<p>prefiler (1) 27: 9 prehearing (3) 3: 3;82: 2, 5 premarking (1) 73:16 prepare (3) 34:15;37:10;70: 2 prepared (6) 26: 9;41: 5;71:14,17, 20;76:10 preparing (1) 71:15 prerogative (1) 23:21 present (10) 3:21;4:15;5:10;15: 6; 35: 8;36:14;38:12;59: 3; 62:14;79:23 presentation (1) 6:19 presented (6) 4:24;5: 7;22:24;25: 1; 30: 7;48: 2 presiding (5) 21:17;23: 5;30:17; 73:12;75:10 press (2) 31:17;81:16 presumably (1) 69: 4 presume (1) 9: 2 pretty (6) 3:11;4:20;32:17; 58:11;60: 6;66: 6 primarily (4) 6:12,15;15:14;18:23 probably (23) 3:14,15,17;5:12;10: 4; 12: 2;14:12;23:18;31: 9; 36:11;38:22;40:13; 41:14;46: 9;48: 4;55: 6; 56:20;67: 1;68: 5,21; 71:14;76: 8;77: 3 probed (1) 9:20 problem (14) 12:23;17: 4;20:18; 21: 1;24: 8,10,14;28:18; 44:19,20;46: 3,18;48: 8; 59: 8 problems (1) 59:20 procedural (1) 63:18 procedure (1) 7: 6 Procedures (1) 75: 7 proceed (2) 3:11;55: 8 proceeding (10)</p>	<p>4:20;13:19;14: 5; 16:12,13;17:17;33:11; 79: 4,20;82: 5 proceedings (11) 4:19;19: 8;22:23; 55: 9;64:21;67:18;68: 3, 7;72: 1;73:24;74:20 process (17) 4:23;7: 5,20;8: 6,15; 14: 1;22:19;29:14;41: 8; 43: 5;55:24;56: 1;57:10; 58:18;61:20;62:21;69: 4 produce (1) 62:21 prohibited (1) 76: 5 Project (5) 15:16,18;31:18,21; 80: 6 projects (1) 8: 3 promise (1) 75: 9 proof (2) 72:10,14 proposal (2) 12: 4;75:17 propose (2) 61:21;73:20 proposed (5) 9:11;27: 8;62: 2; 63:11;74:12 proposing (2) 29:18;63: 6 protective (2) 51:14;55:16 provide (1) 13:17 provided (1) 13:22 provides (3) 59: 1;73: 4;80: 4 Public (39) 6:19;10: 2;23: 3;24: 8; 35:14;36: 3;37:22; 38:16;46:13;49:24; 50: 3, 7;51:21,23;52: 6; 55: 5, 6;57: 1;58:10,23; 69:15;70:23;71: 4; 72:23;74:19,20;76:18, 19,24,24;77: 2,17;78:13, 19;79: 6,17;80:13,23,23 publicly (2) 51:19;53:13 Public's (1) 23: 7 PUC (3) 11:16;64: 6;67:19 pull (1) 52:23 Purchase (1) 50:17 purpose (1)</p>	<p>43:15 purposes (2) 9: 2;10:19 put (19) 5:11;15: 2;19:16; 20: 3,12;23:24;24: 7; 25:14;30: 5,17;34:18,22; 36:19;42:20;63:10,19; 64:14;68: 8;74: 1 puts (1) 36:21 putting (5) 14:19;15:13;34:21; 35:17;40: 5</p>
Q				
<p>qualifications (2) 30:14;32:24 questioners (1) 56:23 queue (1) 54:13 quick (1) 66: 6 quickly (1) 81: 3 quite (2) 19: 5;64: 7</p>				
R				
<p>raise (6) 3:10;32:13;49:16; 74:16;76: 1;81:12 raised (1) 42:17 raises (2) 32:10;44: 3 raising (1) 33:23 rare (1) 4:21 rather (3) 42: 5;44: 1;60:22 Ray (8) 4:14;15:13,17,20; 16: 2, 6;18:17;55:24 Ray's (1) 21:21 reach (4) 9:11;39: 1;40:17; 48:13 reached (2) 9:18;39: 7 read (4) 5:24;50:24;77:12; 81:20 ready (4) 3: 2;12: 3;41: 8;63:13 real (1) 14:16 realize (2)</p>				

{SEC 2009-02}(PREHEARING CONF) - August 20, 2010
LAILAW BERLIN BIOPOWER, LLC

48:10;61:24 real-life (1) 34: 8 really (24) 5: 5;8:19;13: 9;14:18; 15:11;16: 5, 7;26: 2; 28: 1,13;30: 7;31:11,21; 35: 7,15;47:15;52:14; 55:10;56:18;59:13; 63:18;68:13;75:20; 78:20 reason (7) 4:17;15:14;16:17; 27:23;45: 7;48:21;65:15 reasonable (1) 66:13 reasoning (1) 33: 6 reasons (1) 46: 6 recalcitrant (2) 22:15,16 recall (1) 57: 4 recently (1) 13:18 recognize (1) 62:20 recommend (3) 32:11;70:11;73:13 recommendation (1) 77:10 reconvene (1) 82: 6 record (12) 3:15;24:15;45:21,23; 46: 2, 6;73: 2,20;74: 1, 2;82: 1, 3 redacted (1) 51:21 redirect (2) 25: 3, 5 reference (2) 51:15;54:24 references (1) 68:11 regard (2) 31:23;80: 5 regarding (2) 58: 6;65:12 regardless (2) 39: 6;40:24 related (1) 6:14 relationship (3) 30:24;31:16,19 relatively (1) 61:17 releases (1) 31:17 relevant (1) 31:21 Reliability (1)	52: 5 rely (1) 55:15 remainder (1) 55:24 remaining (1) 35: 1 remote (1) 9: 9 removed (1) 37:14 renewables (1) 60:11 reply (1) 67: 1 Report (1) 52: 5 reporter (6) 23:15;29: 6;48: 6; 54: 8;65: 5, 8 reports (2) 53: 3;59:23 represent (1) 77:20 request (2) 30:17;71:14 requested (2) 23: 3, 4 requests (1) 77: 4 require (1) 29: 8 requiring (1) 40:23 reserve (1) 38: 4 resolution (1) 40:17 resolve (3) 38:11;48: 4;52:17 resolving (1) 48: 9 respect (6) 8:20;33:11;50: 7,11; 56:11;64:18 respond (6) 20:14,23;65: 1;66:23; 67: 4;69:17 response (4) 35:12;49:18;58: 4; 61:23 responses (1) 26:11 responsibility (2) 31: 5, 6 responsible (2) 6:12;15:14 restructuring (1) 31: 6 results (1) 75: 9 review (1) 59: 5	right (58) 9: 2;11:22;18: 2,13; 19:23;22: 1,20;24: 3, 3, 21;25:10;26: 3,12,20; 28:10;30: 1;31:12;32: 7, 9;34:14;38: 5,14;40:19; 42: 2;47:17,18;49:19; 50:14,15;52:20;53: 3,11; 54: 4;57: 9,12;58: 1, 5, 22;60: 3,14,17;65:21; 66: 3,24;67: 7, 8;70: 5; 71:18;73:13;74:20; 76: 7;77: 3, 3, 8;78:24; 80:18;81:11,21 rising (1) 7:12 RODIER (113) 4: 9,11;5:14,17,20; 6: 1, 5;10:13,22;11: 8, 12,16,20,23;17:24;21: 3, 9,12;22:11,13,20;24:10, 13,19;25: 8,11,20;26: 7, 18,21;27: 1, 5,11,14,18, 21;28: 2, 6,10,16,23; 29: 2,11,15,20,23;30: 2, 9,21;31:13,24;32: 4, 7, 12;34:13;35:19;36: 9, 14;40:12;46:18,19,22; 47: 6;48: 7;50:15,19; 51:16,24;52: 4,10,12,23; 53:10;54: 4,11,15,20; 57:11;63:12,15;65: 4; 66: 6,17;67:14,23;68:24; 69:13,19;70: 1, 5, 8; 71: 8,11,18,23;72: 3,11, 16;73: 8;77:15;78:11, 24;79: 5,11,22;80: 2, 8, 11,15,18;81: 1, 5, 8 role (3) 31:20;32: 1;46:12 roles (1) 31: 7 rolling (1) 78:21 room (6) 47:23;55: 7;57: 8; 59:21;71:12;78:21 ROTH (53) 6:20;10: 9;11: 4;12: 7, 22;13:24;16: 2, 9;18:18, 24;19: 2, 4;20: 8,19,23; 21:21,23;23: 9,15,20; 27: 8,16,19,22;28:14,24; 33:16,18;39: 4,15;40: 7; 43:13;46: 3,15;57: 3; 58:24;59:18;60: 3,13,17, 21;61: 4, 8;62: 8;63: 2, 9;66: 1;74: 5;76:23; 78: 6;80: 4,10;81: 6 roughly (4) 10: 3;43: 9;60: 9;66: 5 RSA (1) 58:12	rules (1) 45: 6 run (1) 49: 6 rush (1) 60:22 S safety (2) 20:15;45:21 sake (1) 26: 5 same (10) 5:12;14:18;27:23; 32:14;33:13;39:18; 53: 6;54: 9,14;58:17 sat (1) 20:18 saving (1) 55:15 saying (13) 10:16;15: 6;19:24; 30:22;32:17,19;40: 1; 46:22;49: 9;64:11; 65:18;78: 3;81:10 schedule (6) 35: 6;58:10;63:18; 66:20,23;69:10 schedules (1) 60: 8 Schnipper (40) 9: 5, 7,17,23;24: 2, 5; 29: 1;34:20;35:10;36: 5, 16;37: 1, 4, 9,12,17; 38: 3, 8;39: 8,22,24; 40:16;41: 2, 5,18,21; 46: 7,21;47: 3, 7;51: 2, 10;62:15;77: 6,18;79: 9, 14,23;80: 3;81: 7 season (1) 71: 1 SEC (3) 17:11;22:23;34:10 second (5) 4: 8,13;22: 2;38:20; 50:11 Secondly (1) 7: 7 seconds (1) 24:11 secret (1) 80:12 section (1) 55:11 security (1) 52: 3 seek (1) 38: 5 seeking (1) 14: 2 seem (2) 30:19;79:15	seemed (2) 59:12,13 seems (2) 15:19;30:11 sees (1) 46:12 segregate (1) 56:15 segregated (1) 57:19 selling (2) 75:13,13 senator (1) 78:15 send (1) 40:19 sense (4) 16: 6;20:21;69:20; 81:10 sent (1) 74:16 separate (2) 55:17;57:20 separately (2) 9: 3;16: 8 September (13) 64:13;65:20,23,24; 66:10,14,16,17,19; 67:12,13,13,19 series (1) 49:21 service (1) 40:19 sessions (2) 4:20;8: 1 set (11) 3:12;9:12;22: 3;47:19; 50: 6,11;56: 2;58:12; 63: 2;64:24;75: 5 sets (4) 35:16;48:23;50: 6; 72:24 several (3) 54:22;55: 9;72: 1 share (1) 33:16 Shell (2) 13:19,21 short (2) 59:13;72: 4 shorten (2) 45:12;67: 3 shortened (3) 60:13,14,15 shorter (2) 11: 2;60:10 shot (1) 31:11 shows (1) 41: 2 side (2) 8:10;33:24 significantly (2)
--	--	--	---	---

38: 5;45:11 similar (1) 7:11 simply (5) 15: 6;42:22;43: 1; 60:23;61:11 single (1) 4:21 SIS (3) 51: 8,15;53: 7 sister (2) 25:24;26:24 sit (7) 7: 4;20: 9, 9,11;27: 9, 23;63: 5 sits (1) 27:20 sitting (3) 7:12;20:15;48:22 six (1) 11: 9 sixty (1) 59:24 skin (1) 19:15 slightly (1) 79:12 slow (1) 5: 8 smaller (3) 8:17;12: 8;16:22 smoothly (1) 3: 5 somebody (9) 13: 7,15;15: 1;17: 6; 21: 4;28: 9;39:13;68:19; 78:15 someone (5) 5: 3, 6;8: 7;13:20; 16:17 sometime (1) 41:12 sometimes (1) 43: 5 somewhat (2) 10:13;17:20 sooner (2) 69: 5;78:22 sorry (14) 4: 9,11;15:24;16: 5; 18: 8;26:18;35:22;39: 3, 20;48: 7;49: 5;54:10,11; 74: 3 sort (25) 4: 3;7:12;15:15,17; 19: 9,17,21,24;20: 4,12; 25:24;30:11,12,24; 32:18;33: 1;42:13; 45:23;47: 9,10;55:11,17; 58: 7;63:10;75:20 sorts (1) 3:22 sounded (1)	18: 1 sounds (3) 43:13;55:21;70:17 speak (1) 33: 5 speaking (2) 39:18;54: 9 specific (1) 52:17 spend (2) 35:21;45:13 spending (1) 49: 7 spent (1) 41:24 spoke (1) 80:16 sponsor (2) 39:12;43: 2 spots (1) 37:18 stand (4) 12:24,24;19:21;47: 1 standard (3) 70:19,21,23 standing (1) 33:20 start (12) 3:22;9: 4,10;38:19; 42: 2,23;47:20;56:22; 64: 7, 7;65:14;70:21 started (2) 3: 3;30:18 starting (2) 6:22,22 starts (3) 17: 5;76:13;79: 3 State (2) 59:23;78:15 stated (1) 41:10 Statement (2) 50:20;79:24 statements (5) 42:14;61:14,17;79:18, 19 statute (5) 59:21;60: 1;73: 4, 7; 80: 4 statutory (6) 46:12;58: 8;60:18; 64:20;70:19;71: 7 stellar (1) 14: 9 Steve (3) 3:14,17;48: 7 Steve's (1) 59:10 Stickler (2) 19: 1, 2 still (9) 3:17;9:10;35: 2;37:18; 51:12,13,14;53:22;54: 1	stipulation (6) 36:10,15;39: 1;41: 1; 46:10;68:17 stipulations (2) 38: 1;40: 5 stood (1) 13:22 straight (1) 43:24 Strickler (11) 4:14;8: 4;11:12;18:12; 19: 5, 8;20: 5, 9,18;22: 2, 4 strike (1) 39:11 strong (1) 4:15 strongly (3) 31:11;44: 4;64:18 structure (1) 51: 4 studies (2) 30: 8, 8 Study (1) 52:15 stuff (2) 20: 2;55:15 subject (10) 14:22;17:20;19:10; 39: 5;51:14;54:23;55: 5, 16;57:14,14 submission (1) 69:16 submit (2) 57:13;60:24 submitted (1) 13: 8 submitting (1) 7: 7 subsequently (1) 82: 7 subsidies (1) 74:13 substantive (1) 52: 8 substitute (1) 26:23 substituting (2) 28:19;33:10 sufficient (1) 79:16 suggest (6) 26:12;61:10;71: 6, 9; 76:12,15 suggestion (1) 69:15 suggests (1) 59:21 summaries (1) 5:22 summarize (3) 42:18;47: 9;59: 2 summarizing (2)	7: 2;45:14 summary (3) 6: 3;25:18;61:14 summer (2) 23:10;59:16 superior (1) 74:11 supply (2) 6:14;15:16 support (1) 59: 6 suppose (4) 15:12;16: 8;32:20; 36:20 supposed (2) 12:24;80: 5 Sure (19) 4: 5;11: 8;14:13; 15:10,10,11;16: 5, 7; 24:12;28: 2;33:22; 40:23;47:21;48: 5; 57:11;61:22;69:13; 71:20;73: 8 surprises (1) 48:12 swear (1) 6: 2 sworn (2) 5: 6;6:24 System (2) 50:20;52:14	tend (2) 19:19,21 tender (3) 15: 7;43: 2;47:19 tendered (1) 12:17 terms (8) 5: 9;8:15;22: 9;27: 2; 41:10;42:20;63:23;68: 7 testify (5) 14:24;15: 2;33: 3; 34: 5;40:24 testimonies (1) 7: 8 testimony (46) 4: 6;5: 7,21,24;6:24; 7: 1, 2,16;12:23;13: 4, 7, 8;14:23;15: 4;16:15; 25:17;26:10,16;27: 4,17, 20;28:13,20;32:18; 34:23;39:11;40: 4; 41:14;42: 9,18,23,24; 43: 6,16;45:14,20,22,24; 46:20;51:13,13,21; 56:20;68: 3,13;79: 7 thereafter (1) 82: 7 thinking (7) 4:19;13:18;19:16; 46: 1;58:14;63: 6;66: 7 third (3) 4:14;69:17,17 Thirty (3) 36: 4;40: 8,12 though (9) 10:20;14:19;23:16; 29:17;32:15;48:14; 53:20;57: 7;74:24 thought (11) 8:19;15:11;23:11,13; 27: 8;31: 8;44: 6;49: 2; 54: 6,16;56: 5 thoughts (1) 61:12 three (11) 16:24;17:17;22: 1; 43:19;45:14;55:12; 56:12;64: 9;66: 8;69: 9; 75: 7 three-person (1) 18: 4 throw (1) 58:15 Thursday (1) 42: 7 tie (2) 6:11;44: 7 ties (1) 58: 8 tight (4) 64:22;65: 1;71:15,21 till (2) 41:14;60: 6
T				
		table (2) 4: 2;50:12 tag (1) 12: 9 talk (8) 24:10;56:13,20;69: 7, 8, 9,14;75:11 talked (2) 24:17;75:15 talking (11) 15:16;25: 4, 5;27: 3; 31:24;44:13;50:19,21; 53: 6;54: 1;76:23 team (1) 12: 9 technical (11) 4:20;8: 1,10;18:19; 19:11,18;20: 1, 5, 6,10; 75:12 technical/environmental (1) 15:17 technical/managerial (1) 18:23 technically (1) 81:23 telling (1) 74:23 ten (3) 43:22;62: 2;63: 3		

{SEC 2009-02}(PREHEARING CONF) - August 20, 2010
LIDLAW BERLIN BIOPOWER, LLC

<p>timely (1) 59:10</p> <p>times (3) 8:14;15: 3;55:13</p> <p>timetable (1) 64:20</p> <p>timing (5) 9:16;41:11;59:16; 69:17;73:10</p> <p>today (12) 3: 8;10:19;21:14; 37:21,22;42:10;44:13; 45: 3;47:12;72:24; 81:17;82: 1</p> <p>together (6) 16: 6;19:20;27: 9; 55:12;62:13,23</p> <p>token (2) 14:18;32:15</p> <p>Tom (1) 21:13</p> <p>topic (3) 16:16,20;19:22</p> <p>topics (1) 67: 9</p> <p>total (1) 40: 2</p> <p>touchy (1) 70:16</p> <p>town (1) 31:14</p> <p>trade (1) 30:13</p> <p>trade-off (1) 32:24</p> <p>Trading (2) 13:20,21</p> <p>traditional (1) 60:10</p> <p>traditionally (1) 22:23</p> <p>transcript (5) 55: 8;63:21;64:16; 65: 6;68:14</p> <p>transcripts (10) 59: 9;60:23;65: 9,12, 19;66: 4, 7, 9;69: 5;70: 4</p> <p>transmission (3) 25:13;52: 5;54:14</p> <p>treated (3) 49:21,22;50: 1</p> <p>trial (5) 66:13;67: 3;69:23; 71:16;79: 4</p> <p>tried (4) 6:10;75:11,16;81: 2</p> <p>trump (1) 33:12</p> <p>try (12) 6: 9,16;8:21;15:13; 30:13;51:19;62:22; 63: 5;69:20;73: 4;81: 3, 18</p>	<p>trying (10) 8:15;9:15;10: 6;15:18; 36:13;42:18;59: 9;61: 3, 5;62:24</p> <p>Tuesday (8) 26: 5;34:23;35: 5; 41: 6,12,15,24;42: 2</p> <p>turn (2) 5: 5;48:12</p> <p>turned (1) 13:16</p> <p>turns (1) 51: 7</p> <p>twice (1) 56: 8</p> <p>two (16) 5:12;7: 4,15;20:11; 35:16;38:13;43: 8,16,18; 45:13;50: 6;57:21,22; 61:12;66: 8;67: 9</p> <p>two-phased (1) 36:17</p> <p>type (2) 20: 2,10</p> <p>typical (3) 6:23;12:10;14: 1</p> <p>Typically (2) 19: 6;43:14</p>	<p>43:11</p> <p>unresolved (1) 35: 1</p> <p>untimely (2) 74:15;75: 5</p> <p>unusual (1) 78:13</p> <p>unusually (1) 59:12</p> <p>up (31) 3:12;6:10,11,16;7:18; 13:22;14:19;15:13; 18:10;19: 9,17;21: 4; 25:14,21;42: 2,20;44: 7; 45:11,24;47:20;56: 2; 57:16;59: 8,16;64: 9; 71:15,21,24;74:20;75: 7; 80:14</p> <p>upon (9) 9:11;10:21;37: 7; 41:23;42: 9;47:22;55: 2; 56:22;59: 5</p> <p>use (3) 11: 9;49:15;75:21</p> <p>used (2) 11:11;14:20</p> <p>usually (3) 23: 6;42: 5;68:18</p>	<p>67: 7;69: 8;77:12;78:15; 81:12</p> <p>warming (1) 8: 8</p> <p>warning (1) 73:14</p> <p>watered (1) 13: 9</p> <p>way (31) 6:23;7: 3, 8, 9;8:14; 10: 7,24;13:10;15:12; 18: 3;19: 6,15,16;21: 3, 15;22: 7;26: 3;28:17; 46:11;47: 3;56: 2;57: 4; 58:17;59: 2,10,21;60:17; 63:18;68: 2;72:22;77:11</p> <p>ways (1) 19:15</p> <p>weak (2) 33:19,22</p> <p>website (4) 51:17;53:14,19,22</p> <p>Wednesday (5) 42: 3, 7;67: 4,12,13</p> <p>week (16) 3: 5;25:22;26: 4; 34:15;65:14,15,18,22, 22,23,23;66:15,21;67: 6, 19;70: 2</p> <p>weekend (4) 28:18;38:16;40:18; 62:13</p> <p>weeks (3) 64:10;66: 8;75: 6</p> <p>well-taken (1) 31: 8</p> <p>weren't (1) 60:12</p> <p>wet (1) 52:12</p> <p>wetlands (1) 15: 1</p> <p>whack-a-mole (1) 7:13</p> <p>whatnot (1) 31:17</p> <p>what's (14) 11:14;25: 6;27:13; 30: 3, 6;31:18;40:11,14; 41:16;52: 7;57: 1;64: 5; 71: 4;73: 2</p> <p>Whereas (1) 19:20</p> <p>Whereupon (1) 82: 2</p> <p>whole (13) 4:23;7: 6,17;12:11,17; 13: 8;14: 5;33:24;42:23; 44:18;49:10;69:10; 77:20</p> <p>who's (7) 18:18;20: 4, 5;23: 5; 25:24;36:14;72:19</p>	<p>wildlife (1) 15: 2</p> <p>William (1) 74: 9</p> <p>willing (2) 33:12;34:10</p> <p>wind (1) 57:16</p> <p>wished (1) 61: 1</p> <p>wishes (2) 76:14;79:20</p> <p>wishing (1) 54: 5</p> <p>within (4) 60: 5,16;70:22;71:11</p> <p>without (5) 16:20;34:16;43:23; 64:16;74:13</p> <p>witness (32) 4:21;6:23;9: 3;10: 2, 11;12:20;13: 2,14;14: 8, 10,11,12,17,24;16:15; 17:12;20: 4;22: 5,16,24; 32:19,21,22;33:19,22; 34:22;36:15;42: 8; 43:18,22;45:13;46: 9</p> <p>witnesses (38) 3:21,22,24;4: 4, 6; 5:22;6:17;7:10,16,23; 9: 1;14:19;15: 7, 8; 19:12;22: 1, 3, 8;25: 2, 6;33:14;35:14,16; 41:12;42: 3,12,18,20; 43: 9;44: 8;47:11,19; 49:14;56: 2, 9,17;68:13; 69: 3</p> <p>witnesses' (1) 14:23</p> <p>witness's (1) 12:23</p> <p>wood (3) 6:14;15:16;29:21</p> <p>word (1) 73:11</p> <p>word-for-word (1) 27: 6</p> <p>work (8) 5:15;6:13;13:10; 15:12;16: 9;38:17;57: 4; 62:23</p> <p>worked (3) 19: 8;24:23;38: 9</p> <p>working (4) 9:10;60:18;62:15; 64:22</p> <p>works (2) 41: 6;49:11</p> <p>worse (1) 60:15</p> <p>worst (1) 11: 4</p> <p>worth (2)</p>	
	U	V			
	<p>ultimate (1) 77:22</p> <p>ultimately (1) 48: 9</p> <p>unable (1) 13: 3</p> <p>uncomfortable (1) 14:12</p> <p>under (13) 5:12;32:20,21,23; 34: 5;37:19;58:12; 60:12;64: 2,19,21;66:12; 73: 4</p> <p>understandable (2) 12:11;61:20</p> <p>understood (1) 50:17</p> <p>unfair (3) 7:14;30:11,14</p> <p>unfortunately (2) 34:17;70:16</p> <p>unit (1) 75:13</p> <p>unless (3) 14:16;27:14,19</p> <p>unlikely (1) 76: 9</p> <p>unobjected (1) 44:22</p> <p>unquestionably (1) 8:16</p> <p>unreasonable (1)</p>	W	<p>vacuum (1) 67:15</p> <p>valuable (1) 61:10</p> <p>vast (2) 38:16;55:21</p> <p>VAUGHN (5) 15:22;48:20;52:22; 57:20,23</p> <p>verbal (3) 35:12;49:18;58: 4</p> <p>version (1) 53:16</p> <p>vested (1) 71: 3</p> <p>viable (1) 74:13</p> <p>view (4) 8:12;59: 2;66:11,12</p> <p>views (1) 80: 6</p> <p>vital (1) 63:20</p>		
		W			
		<p>wait (2) 49:10;60: 6</p> <p>walking (1) 47: 1</p> <p>Wants (8) 12:14;28:14;45:18;</p>			

41:14;80:18
wound (1)
59:16
write (1)
81: 6
writing (2)
21: 4;61: 9
written (3)
42:24;75: 1;76:22
wrong (4)
18: 7;20: 8;23:17,18

Y

yesterday (2)
36:24;53:21