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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

August 25, 2010 - 9:11 a.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

DAY 3

MORNING SESSION ONLY

RE: 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. (Hearing on the merits)

PRESENT:
Thomas Burack, Cmsr.
(Presiding as Chairman)

SITE EVALUATION SUBCOMMITTEE:
Dept. of Environmental Services

Amy Ignatius, Cmsr.
William Janelle, Asst. Dir.
Elizabeth Muzzey, Dir.
Harry Stewart, Dir.
Craig Wright, Asst. Dir.
Donald Kent, Administrator
Christopher Northrop
Michael Harrington

Public Utilities Commission
Dept. of Transportation
N.H. Div. of Historical Res.
Water Division - DES
Air Resources Division - DES
Dept. of Resources & Econ. Dev.
Office of Energy & Planning
Public Utilities Commission

* * *

Counsel for the Committee:

Michael J. Iacopino, Esq.
Kristin L. Clouser, Esq.

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

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2 ALSO PRESENT:

3 REPTG. THE APPLICANT:
4 (Laidlaw Berlin BioPower)Barry Needleman, Esq.
Gregory H. Smith, Esq.
Cathryn E. Vaughn, Esq.
(McLane, Graf, Raulerson
& Middleton)

5

6 REPTG. CITY OF BERLIN:

Peter D. Van Oot, Esq.
Merritt Schnipper, Esq.
(Downs Rachlin Martin)

7

8 REPTG. CLEAN POWER DEVELOPMENT: James T. Rodier, Esq.

9 COUNSEL FOR THE PUBLIC:

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

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WITNESS PANEL: LOUIS T. BRAVAKIS
 CURTIS RICHMOND
5 DAMMON FRECKER

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13 Dir. Muzzey 33, 46
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E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
COMM. 1A	NewCo Energy, LLC Balance Sheets As of Dec. 31, 2009 & Aug. 16, 2010	6
COMM. 7	An Assessment of Biomass Harvesting Guidelines from the Forest Guild January 2009	6
COMM. 8	Revised Assessment of Biomass Harvesting and Retention Guidelines from the Forest Guild April 2010	6

P R O C E E D I N G

(Hearing resumed at 9:11 a.m.)

CHAIRMAN BURACK: Good morning. I'm going to call to order today's session of the New Hampshire Site Evaluation Committee, in our SEC Docket Number 2009-02, Application of Laidlaw Berlin BioPower, LLC, for a Certificate of Site and Facility for a 70 megawatt biomass fueled energy facility in Berlin, Coos County, New Hampshire. Again, my name is Tom Burack. I serve as Chair as this Committee and Subcommittee. And, at this time, I would like to ask Attorney Iacopino, Counsel to the Committee, if he would please place some documents into the record and have them marked.

MR. IACOPINO: Thank you, Mr. Chairman. The first exhibit that we have is a request from the Committee, a data request from the Committee to the Applicant. It has been marked as "Committee Exhibit 1A". It is entitled "NewCo Energy, LLC Balance Sheets, as of December 31, 2009 and August 16, 2010". And, I'm going to pass copies of that around to the Committee. A couple of them have already been marked, but you may have to put markings on it. It's "Committee Exhibit 1A".

The next exhibit is also in response to a request from the Chair during the proceeding. This is

1 to be marked as "Committee Exhibit Number 7". It is
2 entitled "An Assessment of Biomass Harvesting Guidelines",
3 by Alexander M. Evans and Robert T. Perschel,
4 P-e-r-s-c-h-e-l, from the Forest Guild, January 2009.
5 And, I will pass those out to the Committee as well. And,
6 again, that is "Committee Exhibit 7".

7 And, finally, we have "Committee Exhibit
8 8", which is a document that was requested by the
9 Committee of the Applicant during the course of these
10 proceedings. It is entitled "Revised Assessment of
11 Biomass Harvesting and Retention Guidelines", by Alexander
12 M. Evans, Robert T. Perschel, Brian A. Kittler,
13 K-i-t-t-l-e-r, from the Forest Guild, and it is dated
14 April 2010. And, again, I'll pass that out to the
15 Committee, and that would be "Committee Exhibit Number 8".

16 So, those are all the new exhibits.

17 (The documents, as described, were
18 marked as Committee Exhibit 1A,
19 Committee Exhibit 7, and Committee
20 Exhibit 8, respectively for
21 identification.)

22 (Dammon Frecker recalled to the stand,
23 with Louis Bravakis & Curtis Richmond.)

24 CHAIRMAN BURACK: Good morning. We are

1 going to continue with the panel that we were speaking
2 with yesterday, that includes Messrs. Bravakis, Richmond,
3 and we have also asked Mr. Frecker up to join this panel
4 this morning. The gentleman from LandVest, Mr. Mongan, is
5 not here today. But what I'd like to do here is,
6 Mr. Frecker, ask you if you are in a position to respond
7 to the two questions that were deferred to you from
8 yesterday?

9 WITNESS FRECKER: I am.

10 CHAIRMAN BURACK: Do you know precisely
11 what those questions are?

12 WITNESS FRECKER: I think it would be
13 helpful if you could restate them.

14 CHAIRMAN BURACK: I will ask our counsel
15 to restate them. My recollection --

16 MR. IACOPINO: I've got it.

17 BY MR. IACOPINO:

18 Q. Mr. Frecker, yesterday I was asking about a calculation
19 performed by Clean Power Development contained on Page
20 9 of CPD Exhibit Number one, which is the testimony of
21 Mr. Liston. And, do you have that before you?

22 A. (Frecker) I do.

23 Q. All right. I draw your attention to the bottom of
24 Page 9. There is a letter authored by Peter

1 Bloomfield, PE, dated May 6, 2010, which comes up with
2 a calculation of the usage that your proposed plant
3 would use of 823,700 tons per year. And, the question
4 that had been referred to you was whether or not you
5 agreed with the premises of the assumptions made by
6 Mr. Bloomfield and the conclusions that he draws with
7 respect to the potential usage of biomass facility
8 biofuel by the proposed project?

9 A. (Frecker) Yes. In answering that question, I think it
10 might be helpful if the Committee could look at the
11 Applicant's Exhibit Number 48, which is the revised Air
12 Permit application submitted in May of 2010.

13 MR. IACOPINO: Now, it would be the
14 first exhibit in the second volume of exhibits from the
15 Applicant.

16 MR. HARRINGTON: It's not confidential,
17 right?

18 MR. IACOPINO: No, it's not.

19 BY MR. IACOPINO:

20 Q. Do you have a particular page, Mr. Frecker?

21 A. (Frecker) Yes. Specifically, I direct your attention
22 first to Page 3. And, Section 2.1, which is titled
23 "Biomass Boiler & Steam Generator". And, if you go
24 down to the third paragraph in that section, that

1 begins with "The boiler will be capable of firing whole
2 tree chips", about the third sentence in that paragraph
3 states "The heat input rate to the boiler will vary
4 depending [upon] the moisture content of the wood
5 fuel." The next sentence states "The average heat
6 input rate at maximum steam load will be 932 MMBtu per
7 hour", which was based upon a 37 percent -- a "37.6
8 percent moisture content fuel." The next sentence
9 states that "The maximum heat input rate will be 1,013
10 MMBtu per hour with a 50 percent moisture content
11 fuel." So, what is presented here is that the heat
12 input rate to the boiler will vary depending upon the
13 moisture content of the fuel.

14 And, if you go further to Page 9 in the
15 same exhibit, Section 3.0, titled "Facility Emissions",
16 in the second paragraph, about halfway down, it states
17 that "The maximum short term emission rates...are
18 derived from the maximum emission rates for each
19 pollutant [on a] pound per MMBtu basis", and "the
20 maximum heat input rate of the boiler 1,013 MMBtu per
21 hour." So, the maximum short term pound per hour
22 emission rates were based upon that 1,013 MMBtu per
23 hour, which is the heat input rate that is used in
24 Mr. Bloomfield's calculation.

1 If you go to the next paragraph, in the
2 next to the last sentence, it states "The average
3 annual heat input rate for the boiler [is] 932 MMBtu
4 per hour." So, what we've done, for the purposes of
5 evaluating air emissions, is we've used a short-term
6 "worst case" operating condition, the highest expected
7 moisture content of 50 percent, in order to be able to
8 estimate what the maximum short term pounds per hour
9 emission rates are that might be measured during an
10 emissions testing program, and also to evaluate the
11 short-term ambient air quality impacts of the Project.
12 National ambient air quality standards have various
13 averaging periods that range from one hour to three
14 hours to eight hours to twenty-four hours. So, using
15 that maximum short term heat input, and resulting in
16 the maximum short term emission rates, allows us to
17 very conservatively evaluate the air quality impacts of
18 the Project against those short-term ambient air
19 quality standards.

20 However, as has been discussed here at
21 length, nobody anticipates that the average annual fuel
22 moisture content will be 50 percent. In fact, it's
23 been talked about it being as fired on the order of
24 42.5 percent. And, so, for the purposes of calculating

1 the annual total potential emissions of the Project in
2 tons per year, we used something that comes closer to
3 that annual average fuel moisture content and annual
4 average heat input rate. And, this is a very common
5 practice in air permitting. I have been doing this for
6 over 25 years. And, it's very standard for a variety
7 of air emission sources to present "worst case" short
8 term emission rates in operating conditions, and to
9 present, for the purposes of evaluating annual
10 emissions and air quality impacts, annual average
11 operating conditions.

12 So, with that background, looking at
13 Mr. Bloomfield's letter and his calculation, you can
14 see that what has been done here is essentially to use
15 a short-term "worst case" operating condition of 1,013
16 MMBtus per hour of heat input, based upon that "worst
17 case" short-term fuel moisture content of 50 percent,
18 to calculate an annual fuel consumption for the
19 Project. So, essentially, that calculation uses a
20 short-term condition to calculate an annual outcome,
21 which I don't believe is appropriate. And, in fact, if
22 you used an annual average heat input rate closer to
23 the annual average fuel moisture content, you would
24 find that you would calculate a number very close to

1 the 750,000 ton per year that Laidlaw has always talked
2 about.

3 Q. Have you done that calculation?

4 A. (Frecker) Yes, I have.

5 Q. What did you come up with when you performed the
6 calculation? And, why don't you explain to us the
7 variables that you put into it.

8 A. (Frecker) And, again, I think that's a very good point,
9 is it's important to be doing all of these calculations
10 in I guess what you could call an "apples-to-apples
11 basis", of looking at the same consistent fuel moisture
12 content, the same consistent heat input rate, the same
13 consistent capacity factor. And, when you do that at a
14 42.5 percent fuel moisture content, you come out with a
15 number that looks pretty close to 722,000 tons per
16 year.

17 CHAIRMAN BURACK: Could you walk us
18 through those calculations please in more detail?

19 WITNESS FRECKER: Sure. Sure.

20 BY THE WITNESS:

21 A. (Frecker) The engineers for the Project gave us these
22 heat input rates of 1,013 -- B&W essentially gave us
23 these heat input rates of 1,013 MMBtu per hour at 50
24 percent, 932 MMBtu per hour at 37.6 percent. If you

1 interpolate between those two numbers, to get a
2 42.5 percent moisture content fuel, you'll calculate a
3 heat input rate of about 938.5 MMBtu per hour. Based
4 upon the analysis of fuels that were provided to B&W
5 that were represented to be representative of the
6 Project, B&W provided us with heating values of the
7 fuel. So, rather than using theoretical data, we based
8 it on actual analysis of regional fuels, and that gave
9 us a heating value of 4,980 Btus per pound for that
10 fuel.

11 CHAIRMAN BURACK: I'm sorry, "4,980"?

12 WITNESS FRECKER: That's correct.

13 CHAIRMAN BURACK: And, again, that's
14 Btus per ton?

15 WITNESS FRECKER: Per pound of fuel.

16 CHAIRMAN BURACK: Per pound of fuel.

17 Thank you.

18 BY THE WITNESS:

19 A. (Freckler) So, if you then take the Btus per hour, and
20 you multiply it by the -- thank you -- if you divide it
21 by the heating value in Btus per pound, you'll come up
22 with the pounds per hour of fuel.

23 CHAIRMAN BURACK: I'm sorry. Walk us
24 through which numbers you're dividing by which numbers

1 please.

2 WITNESS FRECKER: I'm sorry. Take the
3 938.5 MMBtu per hour, --

4 CHAIRMAN BURACK: Okay.

5 WITNESS FRECKER: -- divide it by the
6 4,980 Btus per pound.

7 CHAIRMAN BURACK: Okay.

8 WITNESS FRECKER: That gets you pounds
9 per hour of fuel.

10 CHAIRMAN BURACK: And, what is that
11 number?

12 WITNESS FRECKER: I have not done that
13 intermediate calculation.

14 CHAIRMAN BURACK: Okay.

15 WITNESS FRECKER: But I can tell you
16 that, if you then multiply that by 8,760 hours per year,
17 which is the total number of hours in a year, and then
18 multiply that by an 87.5 percent capacity factor, that
19 gets you the total pounds of fuel fired in the year. And,
20 you divide that by 2,000, that will get you to tons per
21 year.

22 CHAIRMAN BURACK: Can you point to us
23 anyplace in any of the submittals where those calculations
24 are all laid out?

1 WITNESS FRECKER: No, they are not.

2 CHAIRMAN BURACK: Okay. Would you
3 please put those on paper for us and submit that to us as
4 an additional exhibit?

5 WITNESS FRECKER: I'd be glad to.

6 MR. HARRINGTON: Excuse me,
7 Mr. Chairman, could I just -- could you do that at 45
8 percent moisture content as well please?

9 WITNESS FRECKER: I have. And, at
10 45 percent moisture content, I can tell you that it
11 calculates to about 760,000 tons per year.

12 MR. HARRINGTON: Okay. Could you submit
13 that one as well?

14 WITNESS FRECKER: I can.

15 MR. HARRINGTON: Thank you.

16 CHAIRMAN BURACK: So, again, would you
17 please just review those numbers. At a 45 percent
18 moisture rate -- or, moisture content it is 700 and --

19 WITNESS FRECKER: 61,000.

20 CHAIRMAN BURACK: All right. And, what
21 is at a 42.5 percent moisture rate?

22 WITNESS FRECKER: 722,000.

23 CHAIRMAN BURACK: Thank you. Any other
24 questions from the Subcommittee on this calculation issue?

1 (No verbal response)

2 CHAIRMAN BURACK: Okay.

3 BY MR. IACOPINO:

4 Q. The next question that had been deferred to you by Mr.
5 Bravakis, Mr. Frecker, involves Page 12 of Mr. Liston's
6 testimony, at Line 9. And, if you've already answered
7 this in the last question, please let us know, but it
8 looks to be a different calculation to me. Where Mr.
9 Liston says that "Finally, consider that the Air Permit
10 application for Laidlaw Berlin BioPower shows that
11 their calculations are based on a fuel flow rate of
12 124.9 tons per hour." And, then, he comes up with the
13 conclusion that, if there's "7,603 hours" that you're
14 operating, the annual consumption would be
15 "949,615 tons of biomass".

16 A. (Frecker) And, if -- give me just one moment. If you
17 go to, in Exhibit 48, if you turn to the section with
18 the "Application Forms", which is Section 8, Page 60.
19 And, the first three pages are a Form ARD-1, just flip
20 past those, and look at the Form ARD-2, which, in
21 Section 1, "Equipment Information", identifies the
22 device as the "wood-fired boiler".

23 Q. Yes.

24 A. And, in Item A, over on the right-hand column, you see

1 a "Gross Heat Input" number of 1,013 MMBtus per hour.
2 That's that same maximum short-term "worst case"
3 emission rate that we talked about. Down below that is
4 where the "124.9" tons per hour of fuel comes from that
5 is presented in the section of Mr. Liston's testimony
6 that you just referenced. Again, representing that
7 short-term "worst case" operating condition, which has
8 been used to calculate an annual outcome.

9 Q. So, in essence, what you're telling us is that you
10 disagree that the fuel flow rate used by Mr. Liston is
11 appropriate, because it's a maximum, it's only used for
12 a short period -- it's a maximum that's only used in
13 short-term situations?

14 A. (Freckler) That is exactly correct. It is fine for use
15 in a short-term outcome. It is not appropriate for use
16 for an annual outcome.

17 CHAIRMAN BURACK: Do you have a sense as
18 to what the actual average annual flow rate will be?

19 WITNESS FRECKER: I can present that in
20 the calculations which you have requested.

21 CHAIRMAN BURACK: That would be helpful
22 to see. Thank you.

23 CMSR. IGNATIUS: Mr. Chairman?

24 CHAIRMAN BURACK: Commissioner Ignatius.

1 CMSR. IGNATIUS: Thank you.

2 BY CMSR. IGNATIUS:

3 Q. While we're on that page, Mr. Frecker, on the page of
4 Mr. Liston's testimony, Page 12, that's where the
5 discussion of the "rule of thumb" of "1.7 green tons of
6 wood, at a 45 percent moisture content" used for some
7 calculations. Is that a rule that you've seen used as
8 a way to kind of approximate fuel consumption in your
9 experience?

10 A. (Frecker) I personally can't pass judgment on that
11 number, because, to me, in my experience, that depends
12 a lot upon the design factors associated with the
13 system itself. It's correlating the heat input to the
14 energy output, and that really depends a lot upon the
15 specific design of the project and its overall
16 efficiency. So, I can't pass judgment on that number
17 one way or another.

18 Q. Is there an easy calculation you use when you're
19 thinking about a project, without all of the details to
20 do the refined calculation you just gave us, to give a
21 sense of what the fuel consumption might be for a
22 facility?

23 A. (Frecker) Not really. In my practice, we try to stay
24 away from those sort of generalities, because of the

1 very specific nature and permit conditions that our
2 numbers lead to. So, we usually look towards the
3 project's design engineers to provide us with that
4 information.

5 Q. So, the calculation you gave us a few moments ago, and
6 you're going to put in writing as an exhibit, are what
7 you would use to be able to estimate fuel usage, rather
8 than the kind of "rule of thumb" calculations that were
9 contained on Page 12 of Mr. Liston's testimony?

10 A. (Frecker) That's correct. As I indicated, the numbers
11 that I have given you for heat input, for the heating
12 value of the fuel, were based upon the specific design
13 of this project. Fuels that were sampled and analyzed
14 to be representative of this specific project, and
15 information presented to us by the design engineers for
16 this specific project.

17 Q. If we took your numbers and tried to calculate what
18 your estimate is on a megawatt per hour basis, how many
19 green tons per megawatt-hour? Have you done that
20 calculation?

21 A. (Frecker) I have not, but I can.

22 Q. It would be interesting to compare against the 1.7.

23 A. (Frecker) Sure.

24 Q. Is that something you can do right now or you'd would

1 have to submit later?

2 A. (Frecker) I'd prefer to present that in --

3 CHAIRMAN BURACK: Thank you. It would
4 be helpful if you would --

5 CONTINUED BY THE WITNESS:

6 A. (Frecker) -- in the calculations that the Chairman has
7 requested.

8 CMSR. IGNATIUS: Thank you.

9 CHAIRMAN BURACK: Thank you. That would
10 be helpful if you would do so.

11 MR. HARRINGTON: Mr. Chairman?

12 CHAIRMAN BURACK: Mr. Harrington.

13 BY MR. HARRINGTON:

14 Q. Maybe to clear up something here. The figure, the 1.7
15 there, that seems to be some type of an average that
16 people might use for an average wood-burning plant, but
17 it doesn't apply to any specific plant, would that be
18 correct?

19 A. (Frecker) Again, I'm not familiar with the reference
20 for this factor. But it sounds to me as though your
21 inference is correct.

22 Q. So, if the heat rate of the plant, your heat rate is
23 somewhere in the 13,000 range, that would be, say,
24 drastically different than a plant that had a heat rate

1 in the 19,000 range, for example?

2 A. (Frecker) I believe that's reasonable.

3 Q. So, you really, to get specific, you really have to use
4 the actual heat rate from the actual plant in question?

5 A. (Frecker) That certainly is always my preference.

6 MR. HARRINGTON: Thank you.

7 CHAIRMAN BURACK: Thank you. Any other
8 questions for Mr. Frecker on this set of issues?

9 MR. ROTH: Mr. Chairman?

10 CHAIRMAN BURACK: Yes, Mr. Roth.

11 MR. ROTH: If I may interrupt, while
12 he's doing the calculation on the sort of the "rule of
13 thumb" issue, I wonder if it would make sense for him to
14 do a "rule of thumb" calculation based, as it has been so
15 named, based on the use of the two types of potential
16 fuel, which is the waste tops and branches and stuff
17 versus the whole tree?

18 CHAIRMAN BURACK: The question that I --
19 let me phrase this as a question.

20 BY CHAIRMAN BURACK:

21 Q. Would you anticipate that you would see a difference in
22 moisture content between fuel that is derived from tops
23 and branches, as opposed to fuel derived from chipped
24 roundwood?

1 A. (Bravakis) If I may, Mr. Chairman, I'd like to have
2 Mr. Richmond answer that question.

3 A. (Richmond) We have not seen a significant difference.
4 We supply a pellet plant in Jaffrey with roundwood, and
5 we supply our biomass plants with tops and roundwood
6 mixed in, and there's no significant difference.

7 Q. Do you have any sense at all as to what the range is
8 between, in which these might be found?

9 A. (Richmond) I don't work that specifically. No, I
10 couldn't.

11 Q. So, when you say you have "not found a significant
12 difference", is this based on testing that you have
13 done?

14 A. (Richmond) Tests, testing coming into the facilities,
15 both the pellet plant and the biomass plant test their
16 moisture contents.

17 Q. Thank you.

18 A. (Richmond) Now, if your roundwood has been sitting, it
19 would, obviously, dry out. I'm talking a green stem,
20 freshly cut, there's no significant difference.

21 CHAIRMAN BURACK: Counsel, do you have
22 any information to suggest that there are significant
23 differences between these two types of fuel?

24 MR. ROTH: Just my intuition, Mr.

1 Chairman, that a cut branch and limb will dry out much
2 faster than a stem. And, I guess we don't know what the
3 nature of the fuel was that was sent to the manufacturer
4 for its analysis and testing for purposes of making these
5 calculations.

6 CHAIRMAN BURACK: Thank you. Well, I
7 think we have asked Mr. Frecker to make these calculations
8 at -- on two different moisture contents, I believe at 42
9 and a half percent moisture content and 45 percent
10 moisture content. Perhaps it would be helpful if you
11 could just show us the same calculations at the bottom of
12 the range, which I think you've said is about
13 "37.5 percent", is that right?

14 WITNESS FRECKER: I can. I can show you
15 the bracket, the end points, if you will, of the 37.6 and
16 the 50 percent, which is the data that we started with
17 that was provided by the Project's engineers.

18 CHAIRMAN BURACK: Okay. I think it
19 would be helpful if you could. So, it sounds like we're
20 looking for essentially the same calculation using four
21 different moisture factors.

22 WITNESS FRECKER: Yes.

23 CHAIRMAN BURACK: Okay.

24 BY CHAIRMAN BURACK:

1 Q. I just want to ask you one other question about this
2 that occurs to me. You talked about interpolating
3 between 1013, that's 1,013, and 913. Is that a
4 straight-line interpolation, or is there some
5 mathematical process that's used that's beyond the
6 straight-line interpolation that gives you a midpoint?

7 A. (Frecker) We have done that as a straight-line
8 interpolation.

9 Q. And, is that the standard methodology as you understand
10 it?

11 A. (Frecker) Within the narrow range that we're talking
12 about for fuel moisture content and heat input, we
13 believe that that is a reasonable -- it is reasonable
14 to do that.

15 CHAIRMAN BURACK: Thank you. I'd now
16 like to offer members of the Subcommittee an opportunity
17 to continue questioning of the panelists as we were
18 working on late yesterday afternoon. And, Mr. Harrington,
19 I believe you were questioning one of the witnesses at
20 that time.

21 MR. HARRINGTON: Yes.

22 BY MR. HARRINGTON:

23 Q. This is a question for Mr. Richmond, I believe. You
24 had made a statement saying that "Schiller pays more

1 than market price, because their back is up to the
2 water", and then you went on to describe how, because
3 their sourcing range could not go to the east, because,
4 obviously, there's no trees growing out in the ocean.
5 So, is the price that we would expect at Schiller
6 comparable to the price that you would expect in Berlin
7 or would the Berlin price be lower, because they're not
8 backed up to an ocean? Or, just what exactly does that
9 imply, your statement about the --

10 A. (Richmond) There's another factor why Schiller pays
11 slightly more, and that is that they only have six days
12 of pile down space available at the site. So, all of
13 their delivery is just-in-time delivery. And, so, that
14 causes them to pay a little bit higher. But, to answer
15 your question, we notice roughly a \$2 to \$4
16 differential in pricing south of the Notch to north of
17 the Notch, the Franconia Notch. And, that would be
18 pretty much in line with the difference that Schiller's
19 paying. So, --

20 Q. So, Schiller would be \$2 to \$4 --

21 A. (Richmond) Well, Schiller is paying 2 to 4 more on the
22 southern end of New Hampshire than they would if they
23 were located differently and had more pile down space.

24 Q. Okay.

1 A. (Richmond) And, that differential pretty much matches
2 north of the Notch.

3 Q. I'm confused on your last statement.

4 A. (Richmond) Okay.

5 Q. The "differential matching north of the Notch".

6 A. (Richmond) They're paying roughly 2 to 4 more than the
7 southern market. And, north of the Notch, generally,
8 the fiber costs you 2 to 4 more dollars north of the
9 Notch, due to trucking and other logistics. So, if you
10 look at the difference south, they would add it on to
11 that price up north, and it would be about the same.

12 Q. Okay. So, what you're saying is, both a plant located
13 in Berlin and a plant located in Portsmouth --

14 A. (Richmond) Would pay --

15 Q. -- would both pay \$2 to \$4 more than someone south,
16 someone in the southern part of New Hampshire, but for
17 different reasons?

18 A. (Richmond) Yes.

19 MR. HARRINGTON: Okay. Thank you.

20 CMSR. IGNATIUS: Mr. Chairman?

21 CHAIRMAN BURACK: Yes.

22 BY CMSR. IGNATIUS:

23 Q. Could we, just to be sure I understand that, because I
24 was drawing a different conclusion from what you said,

1 --

2 A. (Richmond) Okay.

3 Q. -- so I think I got it wrong, could you just give us
4 some numbers that are rough numbers that seem similar
5 to what you've seen in your experience?

6 A. (Richmond) Okay. Today, roughly, the plants south of
7 the Notch are in the \$26 to \$28 range; and you get
8 north of the Notch, where it's more competitive, with
9 paper mills and such, and you would be paying in the
10 low 30s. So, what I'm saying is, if you take what
11 Schiller is paying down here, the difference, it would
12 be comparable to the price today up north.

13 Q. So that Schiller would be paying the \$26 to \$28 range
14 or something above that?

15 A. (Richmond) Plus. Plus, a little bit more, due to the
16 two factors I spoke of.

17 Q. So, would Schiller be in the \$28 to \$30 range, sort of
18 tacking another --

19 A. (Richmond) Yes, they're just -- Yes. They're slightly
20 above 30, but, yes.

21 CMSR. IGNATIUS: Thank you.

22 CONTINUED BY THE WITNESS:

23 A. (Richmond) They're in that range.

24 BY CHAIRMAN BURACK:

1 Q. And, again, the two factors that you're describing with
2 respect to Schiller are what?

3 A. (Richmond) 180-degree purchasing radius, versus a 360,
4 and very limited pile down area, just-in-time delivery.
5 Two major factors that force you to pay a little more
6 than your local competitors.

7 Q. And, again, these are prices for what type of wood?

8 A. (Richmond) Green, whole tree chips, a green short ton
9 delivered.

10 Q. And, are those two different types of chips or are you
11 describing the same thing?

12 A. (Richmond) The same, same fuel. The same fuel.

13 CHAIRMAN BURACK: Okay. Thank you.

14 Mr. Harrington?

15 MR. HARRINGTON: Yes, I think that's the
16 -- that's all I have for right now.

17 CHAIRMAN BURACK: Thank you.

18 Mr. Janelle.

19 MR. JANELLE: Just got a couple of
20 questions.

21 BY MR. JANELLE:

22 Q. Is roundwood and pulp the same thing?

23 A. (Richmond) Yes.

24 Q. Okay. Talk a little bit about deliveries to the site.

1 A. (Richmond) Sure.

2 Q. How many a day are you planning on for the site?

3 A. (Richmond) Roughly 100 trucks a day.

4 Q. One hundred trucks a day. So, about seven or eight an
5 hour-ish?

6 A. (Richmond) That would be good. Yes.

7 Q. And, the delivery hours are?

8 A. (Richmond) It was --

9 A. (Bravakis) 5:00 a.m., 5:00 a.m., Monday through Friday,
10 5:00 a.m. to 9:00 p.m. Saturday, 9:00 a.m. to
11 6:00 p.m., I believe. I'm sorry.

12 MR. SCHNIPPER: 8:00 a.m. on Saturdays.

13 WITNESS BRAVAKIS: I'm sorry?

14 MR. SCHNIPPER: 8:00 a.m. on Saturdays.

15 WITNESS BRAVAKIS: 8:00 a.m. to -- Thank
16 you.

17 BY THE WITNESS:

18 A. (Bravakis) 8:00 a.m. to 6:00 p.m. We changed that on
19 Saturday.

20 BY MR. JANELLE:

21 Q. And, does roundwood or pulp weigh the same as biomass
22 when you truck it in or is it heavier or --

23 A. (Richmond) It's more condensed, denser. It's a tough
24 question.

1 A. (Bravakis) We looked into that a little bit. And, I
2 think they're relative, within the range, pretty
3 similar, a truck of roundwood and a truck of wood
4 chips. You have to remember that when you chip wood,
5 it increases in volume, basically doubles in size
6 almost. So, you get a bigger truck full of material,
7 as opposed to logs on a truck. But, roughly, we looked
8 into that at one point, we thought roundwood would way
9 a lot more, but it doesn't.

10 Q. Okay. And, a cost of biomass versus a cost of
11 roundwood per ton, can you give us a range on that?

12 A. (Richmond) That, again, depends on the competition from
13 the pulp markets and what their markets are looking
14 for. But a liberal biomass spec versus a delivered
15 chip, you would get both of the commodities delivered
16 at roughly the same price. They would come in -- they
17 would come in within a dollar or two a ton of each
18 other.

19 Q. Okay. So, depending on where that person is cutting in
20 the woods, there may be no benefit to taking the wood
21 to a pulp mill versus taking it to your biomass plant,
22 if it's a similar price?

23 A. (Richmond) If it was a similar price. There's other
24 factors. At a biomass plant, you could bring in mixed

1 loads, you could have punky or half-rotted wood. So,
2 they wouldn't be the same spec. So, they don't really
3 compete. A true pulpwood spec, you would get more
4 money going to the pulp mill than you would going to a
5 biomass facility with it. So, no, I don't agree with
6 that. The pulpwood would -- is more precise on the
7 spec, maybe even on the length. Some facilities
8 require just 8-foot, whereas a biomass plant would take
9 it any length. And, so, there's a lot of restrictions
10 on the pulpwood that drive the price up more.

11 Q. But it sounds like a lot of it relates to
12 transportation?

13 A. (Richmond) Absolutely.

14 Q. And, whatever is closer might make --

15 A. (Richmond) And, what your woodlot looks like and the
16 thinning you're doing on it and what you're getting off
17 it.

18 Q. Okay.

19 A. (Bravakis) If I may, there's also something else that
20 you might want to -- pulp markets tend to be more
21 cyclier [sic] than biomass markets, because of the
22 worldwide movement of the pulp, and conditions such as,
23 recently, there was an earthquake in Chile that
24 destroyed some infrastructure, which now I understand

1 has been rebuilt. So, that drives the pulp markets up
2 and down. So, there might be times when it might not
3 be advantageous to bring roundwood into the facility.
4 Other times it might be very advantageous to bring it
5 in, compared to the pulp markets.

6 Q. And, in the Application, I notice that you estimated
7 that the biomass plant would generate about a third
8 less truck trips than what was the pulp mill that was
9 there before. Is that based on the number of trucks
10 that was there before or --

11 A. (Bravakis) What I understand, if memory serves, I
12 believe I recall that there used to -- 180 trucks used
13 to come into that facility every day, from interviews
14 with the folks that ran the plant. And, we're going to
15 be around 100 trucks a day. So, that basically makes
16 sense.

17 Q. Okay. And, that's based -- and, that would, I guess,
18 to try to rationale that, it's just there was a higher
19 volume of material that was coming into the pulp plant?

20 A. (Bravakis) It was. Absolutely. Yes.

21 MR. JANELLE: Thank you.

22 CHAIRMAN BURACK: Other questions at
23 this time for -- Ms. Muzzey.

24 BY DIR. MUZZEY:

1 Q. Are there any other differences between the tops and
2 bottoms for biomass fuel and then the whole tree chips
3 as a fuel source that would change the calculations
4 that Mr. Frecker is doing, besides the moisture
5 content?

6 A. (Bravakis) No.

7 DIR. MUZZEY: Thank you.

8 CHAIRMAN BURACK: Go to Dr. Kent, and
9 then Mr. Stewart.

10 DR. KENT: Thank you.

11 BY DR. KENT:

12 Q. I just wanted to follow up on a discussion we heard
13 yesterday. I realize Mr. Mongan isn't here, but I'll
14 give it a shot. In Appendix P in Exhibit 1, the
15 Application, the report from LandVest. We were talking
16 about Table 3.

17 A. (Bravakis) I'm sorry, about what?

18 Q. Table 3, --

19 A. (Bravakis) Okay.

20 Q. -- in the LandVest report. That's Appendix P, I
21 believe.

22 A. (Bravakis) In the Addendum?

23 Q. No, in the original report.

24 A. (Bravakis) Okay.

1 CHAIRMAN BURACK: This will be Appendix
2 P to Exhibit 1.

3 WITNESS BRAVAKIS: Oh, in the
4 Application. Okay. Table 3. Okay.

5 BY DR. KENT:

6 Q. And, if you remember, I was trying to understand "Net
7 Growth" versus "Removal". And, where we ended our
8 conversation was that that bottom line in this table,
9 which is the "Removals from Harvesting Data", that is
10 the -- and correct me if I'm wrong, but that's the
11 information that either the loggers, the foresters, or
12 the landowners themselves report to the state, which
13 then drives the taxes applied to that cut, correct?

14 A. (Bravakis) That's correct. And, bear in mind, there
15 are three states involved; it's New Hampshire, Maine,
16 and Vermont.

17 Q. Okay. In New Hampshire, are you aware of any
18 exceptions to reporting requirements?

19 A. (Bravakis) I am not.

20 Q. So, you're not familiar with the exceptions that New
21 Hampshire has for reporting?

22 A. (Bravakis) I am not.

23 Q. If there were exceptions to that reporting information,
24 what would be the net effect on those numbers?

1 A. (Bravakis) I'm assuming what you're referring to is, if
2 an individual was not required to report their harvest,
3 then those numbers would obviously go up.

4 DR. KENT: Thank you.

5 CHAIRMAN BURACK: Mr. Stewart, Director
6 Stewart.

7 BY DIR. STEWART:

8 Q. A little bit of a gearshift, the economic impacts of
9 the Project on the North Country. First, how many jobs
10 full-time will there be at the plant itself?

11 A. (Bravakis) There will be 40, we estimate 40 jobs. And,
12 for the record, I would like to clear up a statement
13 that we made the other day. When we were asked "if
14 Cousineau were to supply the Project, would there be a
15 reduction in employees on the property -- on the
16 Project?" And, my answer was "no", because Cousineau
17 would provide those employees on the site. What I've
18 learned since then, that not only will Cousineau supply
19 those employees, but the Project will also have two
20 additional employees, or three, I'm not quite sure
21 what, two or three additional employees that will be
22 working with Cousineau and the fuel procurement on the
23 property. So, actually, by signing the contract with
24 Cousineau, the employment will go up.

1 Q. And, in the woods, intuitively, to me at least, and I'm
2 not an economist, I'm an engineer, when the two mills,
3 the pulp mills went down in northern New Hampshire,
4 there was a million tons or so of lost wood, wood
5 product that was not going to the pulp mills, so there
6 had to have been a loss of jobs. And, I'm trying to
7 understand how the 750,000 tons that will be brought to
8 this facility, if it's permitted, translates into jobs
9 in the woods in the North Country. Can you provide an
10 estimate of that?

11 A. (Bravakis) The estimate that we have been talking about
12 is up to 200 new jobs as the fracture gets rebuilt.
13 And, that's adding truckers. What I learned also is
14 that, when a logging contractor, who has been just
15 supplying roundwood to pulp mills, when they put a
16 chipper into their operation, that adds three people.
17 So, there will be an expansion of existing operations.
18 And, as we used our illustration yesterday, some
19 contractors dropped out of work when the pulp mills
20 left. Some decided to go to other markets, but a
21 number of them dropped out. We anticipate they will
22 either start up again or new ones will take their
23 place.

24 And, if Mr. Richmond wants to add more

1 to how he sees the infrastructure building up, he's got
2 a lot more experience than I do in that respect.

3 A. (Richmond) Well, as Lou said, every time you add a
4 chipper, you're adding a couple other pieces of
5 machinery that service it, and those all take
6 operators. It's roughly three operators per chipper.
7 And, that's one thing we intend on doing is introducing
8 chippers into the North Country. That's going to be
9 pertinent.

10 Another thing is that, with the current
11 surplus of chips we have, loggers have idled crews.
12 They are not cutting as much, because they can't market
13 as much. They're restrained on how many loads they can
14 market. So, they may have chippers and skidders and
15 trucks parked, that they would hire people back from
16 lay-off or hire new employees and put those crews in
17 the woods with a good viable market. So, I think it's
18 definitely far-reaching across the North Country in
19 jobs. It's very much needed.

20 DIR. STEWART: Okay. Thank you.

21 BY CHAIRMAN BURACK:

22 Q. Along those lines, is there any kind of a more rigorous
23 analysis that you've done of this? Is there any
24 written backup for this "200 job" estimate that you

1 have?

2 A. (Bravakis) We have looked in some analysis that was
3 done by the Massachusetts Department of Energy
4 Resources, as to how many jobs per ton of production,
5 which I could send to you. And, also, in -- I believe
6 it's in the filing with the PUC of PSNH, Dr. Shapiro
7 did a very detailed economic analysis, which describes
8 the economic benefits of this in a very detailed
9 manner, which I would point you to.

10 CHAIRMAN BURACK: If you can just
11 provide us to the -- and that's a public document in that
12 docket?

13 WITNESS BRAVAKIS: I believe it is. I
14 believe it is.

15 MR. RODIER: We have a copy of it.

16 WITNESS BRAVAKIS: Okay.

17 MR. RODIER: So, if that would help
18 anybody, we'd be happy to provide it to you.

19 WITNESS BRAVAKIS: It's a very thorough
20 analysis of the economic opportunities that this Project
21 represents.

22 DIR. STEWART: One more, Mr. Chairman,
23 if may?

24 CHAIRMAN BURACK: Please. Please go

1 ahead.

2 BY DIR. STEWART:

3 Q. Somewhere in the documents, I read that there will be a
4 preference for North Country loggers, if you will, in
5 terms of supply. How do you intend to do that? I
6 mean, I've heard this "back hauling" concept, which is
7 a way to, you know, let the economy, you know, the
8 economics of going back and forth to Massachusetts help
9 to save, basically, revenue, I think, or expense. So,
10 how do you guarantee that there will be a preference
11 for North Country loggers, so we can get more
12 employment in the North Country?

13 A. (Bravakis) Before Mr. Richmond answers that, I would
14 like to say that I believe the market will guarantee
15 that. Simply, because they're the closest in proximity
16 to the facility, they have the least transportation.
17 They have the ability to create relationships directly
18 with the personnel who are procuring. And, so, there's
19 a strong economic incentive to purchase material as
20 close to the facility as possible. The loggers and
21 contractors and truckers that are within 20, 30,
22 40 miles of the facility have a distinct economic
23 advantage over trying to orchestrate and manage back
24 holes -- back hauls.

1 So, maybe Mr. Richmond can elaborate on
2 that a little bit more. Go ahead. Yes. Go ahead, you
3 can talk about that.

4 A. (Richmond) Yes. I'll reiterate what Lou said, first of
5 all, is that, as I stated earlier, our first goal,
6 logistically and economically, is to buy as much wood
7 as we can, as close as we can. That's what we do with
8 any of our facilities. But, in this contract, as in
9 others that I hold here in New Hampshire, the first
10 thing they mandate is they carve out a number of tons
11 that we are mandated to give to local suppliers. And,
12 that might be of a confidential nature --

13 A. (Bravakis) Yes.

14 A. (Richmond) -- in the contract. But there is a
15 stipulation in there for a set amount of tons that I
16 must give them. It will be much more than that, but I
17 do have a baseline I have to work with.

18 Q. Okay. So, there will be a stipulation in the agreement
19 for using local product, hence creating jobs at the
20 local level?

21 A. (Bravakis) Absolutely. Absolutely.

22 DIR. STEWART: Thank you.

23 CHAIRMAN BURACK: Thank you. And, it
24 would be helpful, Mr. Bravakis, if you could provide

1 copies to the Committee of both the economic analysis you
2 described performed by Dr. Shapiro, as well as the Mass.
3 Department of Energy Resources study. Thank you.

4 Dr. Kent.

5 BY DR. KENT:

6 Q. If I could just follow up on that. So, a stipulation
7 requiring a certain percentage of the chips to come
8 from the local area, will that have a net effect of
9 increasing competition close to the plant for chips?

10 A. (Richmond) No. I think it's a very reasonable
11 baseline, that we're going to get many more chips.
12 It's easily achievable.

13 Q. Okay. So, your response that "no, that's not correct",
14 is predicated on the assumption that there's surplus
15 chips?

16 A. (Richmond) There's surplus. There's that many chips
17 surplus there currently.

18 DR. KENT: Thank you.

19 CHAIRMAN BURACK: Commissioner Ignatius.

20 CMSR. IGNATIUS: Thank you.

21 BY CMSR. IGNATIUS:

22 Q. Mr. Richmond, you've said that one of the requirements
23 for your delivery is that it be clean, there be no
24 construction/demolition debris. How do you guarantee

1 that that's the case?

2 A. (Richmond) We deal with that every day. But, in this
3 instance, trucks are coming straight out of the woods.
4 They're chips that have been run through a chipper and
5 blown into the truck. And, there's no demolition in
6 the woods. We're very familiar with C&D wood waste and
7 the laws governing that. We do not handle any C&D wood
8 waste in our business. So, we're strictly clean,
9 virgin wood waste, is all we handle at Cousineau.

10 Q. There's been a lot of testimony about going to a 70 or
11 assuming a 70 percent utilization rate. Do you think
12 that that's feasible for your experience with loggers
13 and in the work in the woods?

14 A. (Richmond) Yes. I believe that's an industry standard
15 practice.

16 Q. Do your loggers that you work with have any exclusivity
17 relationship, so that, if they work supplying you, they
18 can't work supplying anyone else?

19 A. (Richmond) No.

20 Q. Based on your knowledge of the woods and the products
21 we're talking about, do you think, in the North
22 Country, there is room for an additional large user of
23 biomass, if the Laidlaw plant were operational?

24 A. (Richmond) Yes.

1 Q. And, "large" on the order of the Clean Power
2 Development proposal of roughly 30 megawatts?

3 A. (Richmond) Yes.

4 Q. Do you think there's an opportunity for even more than
5 that?

6 A. (Richmond) It would push well farther, and it might
7 drive up prices. It depends on what happens in the
8 pulp markets and such as the years go by here. A
9 snapshot of today? I would have no problem looking at
10 supplying the Laidlaw facility and another facility of
11 roughly half its size up there.

12 CMSR. IGNATIUS: Thank you.

13 BY CHAIRMAN BURACK:

14 Q. And, if I may just follow up on that, Mr. Richmond.
15 You believe that there is sufficient supply, with the
16 understanding that you would -- the forest overall in
17 the wood basket would still meet the definition of
18 "sustainability" that was discussed yesterday, that is
19 that removals would not exceed growth?

20 A. (Richmond) Yes. I mean, if you were building
21 facilities like that up in the North Country, it would
22 be handled -- you would definitely be out of that
23 100-mile radius, and it would be handled, a large part
24 of it, logistically, from southern and western states,

1 such as New York. We would ramp up the back hauls.

2 There's a huge supply the more you look around.

3 Q. And, I just want to be clear here with what you just
4 said. You're saying that you would have to reach out
5 beyond 100 miles if we were to build -- see built in
6 the North Country more than the two plants that we've
7 talked about here, that is the Laidlaw and the CPD
8 facilities, or just more than if we were to build the
9 Laidlaw facilities?

10 A. (Richmond) If both of the facilities were built. The
11 Laidlaw facility, plus another facility of roughly half
12 its size, and we were supplying both, it would require
13 us to reach farther than the 100-mile radius.

14 CHAIRMAN BURACK: Thank you. Dr. Kent.

15 DR. KENT: Let me follow up on that.

16 BY DR. KENT:

17 Q. Have you worked out the efficiency of your back hauls?
18 As I believe you testified to earlier that, if you're
19 reaching into New York, we're still maintaining the
20 price as if we were taking wood from within the 100
21 miles or have we just increased the price of the chips?

22 A. (Richmond) When you started, when the other plant
23 opened, we'd probably see a rise in prices. And, it
24 would be offset with the economies of back hauls. We

1 know -- we work in New York State, I know of huge
2 resources there that are untapped.

3 Q. As chip prices rise, am I correct in assuming that that
4 cost is passed along ultimately to ratepayers?

5 A. (Richmond) I don't know the economics too much of how
6 they would pay us. But, yes, I would assume the
7 end-user would. I don't know.

8 Q. Is that a reasonable assumption, Mr. Bravakis, that
9 increased costs to you would ultimately be passed onto
10 PSNH, and PSNH would pass them on? I know you can't
11 speak for PSNH, but is that typically the way the
12 industry works?

13 A. (Bravakis) Again, I'll defer, that's a PPA question to
14 my colleague. But I can tell you the price we pay, we
15 pay for wood chips does not affect the price we receive
16 for electricity. We're very incentivized to keep our
17 prices low. And, if I may, the concept of rail is
18 still an aspect of our project, which could help
19 mitigate and lower some of those costs. And, as Mr.
20 Richmond alluded to, one cannot forget the fact that
21 Newpage, in Rumford, consumes 2.2 million tons per
22 year. And, nobody's suggesting that that facility will
23 cease operations, but nobody -- nor can anybody predict
24 that it will continue operations for the foreseeable

1 future. So, there's a lot of forces at play up there
2 that we've been thinking about and analyzing for a
3 number of years now, which all impact this, this wood
4 supply issue.

5 DR. KENT: Thank you.

6 WITNESS BRAVAKIS: Uh-huh.

7 CHAIRMAN BURACK: Further questions at
8 this time for this panel? Ms. Muzzey.

9 BY DIR. MUZZEY:

10 Q. This is a question for Mr. Richmond. And, I need to
11 check my notes from yesterday, but I thought yesterday,
12 as we were talking about the different companies that
13 you work with, you mentioned that others have
14 sustainability policies as well, or some sort of policy
15 that addressed sustainability?

16 A. (Richmond) They track it, I'll say. We definitely, I
17 mean, I work for Sappi, IP, and the big companies, and
18 they definitely have policies. And, it is tracked,
19 yes.

20 Q. Could you explain what is tracked?

21 A. (Richmond) They would send a forester and audit our
22 books, pull out loads, say "where did this come from?"
23 "How was it tracked?" Check the forest management plan
24 on that particular cut, make sure it was in place. So,

1 we're spot-checked. And, they will pull random loads
2 and follow them.

3 DIR. MUZZEY: Okay. Thank you.

4 BY CHAIRMAN BURACK:

5 Q. And, if I may just follow up on that. You describe
6 those as "auditors" or "foresters" who come in?

7 A. (Richmond) The company procurement forester would
8 contact us, who we work closely with on a daily basis,
9 and they would spot-check us, and just pull a random
10 load and follow it through the process, and check the
11 forest management plan on it.

12 Q. And, you described "Sappi", that's a large timber
13 holding company or what --

14 A. (Richmond) That is a paper, pulp and paper facility,
15 has two locations; one in Westbrook, Maine, and one in
16 Hinkley, Maine.

17 Q. And, IP, is International Paper Company?

18 A. (Richmond) International Paper. We service that in
19 Ticonderoga, New York.

20 Q. Are there, to your knowledge, private consulting firms
21 or other entities that provide similar types of auditor
22 services?

23 A. (Richmond) We don't run into them. It's actually the
24 company forester that would come and check us out, the

1 procurement agent that we deal with.

2 Q. Are you aware, however, of any similar type of
3 activities to that that I've just described?

4 A. (Richmond) That would come --

5 Q. In other words, independent auditors, looking at
6 purchase records of different buyers, to ascertain
7 whether or not they are complying with --

8 A. (Richmond) I haven't run into them --

9 Q. You have not.

10 A. (Richmond) -- in my business.

11 CHAIRMAN BURACK: Thank you.

12 DIR. STEWART: Mr. Chairman?

13 CHAIRMAN BURACK: Yes.

14 DIR. STEWART: A follow-up question?

15 CHAIRMAN BURACK: Director Stewart.

16 BY DIR. STEWART:

17 Q. Do the foresters, back up into the woods, do they
18 randomly go out to the areas where the trees have been
19 harvested?

20 A. (Richmond) Oh, sure.

21 Q. To confirm that the practices in the field have been
22 done in accordance with the specifications?

23 A. (Richmond) Sure. Their forester will come and spend a
24 day with my forester and drive around and visit jobs,

1 absolutely.

2 DIR. STEWART: Okay. Thank you.

3 MR. JANELLE: One follow-up?

4 CHAIRMAN BURACK: Mr. Janelle.

5 BY MR. JANELLE:

6 Q. Mr. Richmond, can you give me a sense the percentage of
7 your business versus pulp facilities versus biomass
8 facilities?

9 A. (Richmond) We handle six pulp mills, six power plants,
10 four mulch companies, two colleges, ten public schools,
11 and three pellet mills currently; 31, total of 31
12 facilities.

13 Q. Okay. And, of that 31, six are pulp mills?

14 A. (Richmond) Correct.

15 Q. So, the rest basically are --

16 A. (Richmond) Biomass or pellet-type facilities.

17 MR. JANELLE: Thank you.

18 CHAIRMAN BURACK: Okay. Attorney
19 Needleman, did you have some additional direct you wish to
20 do with this panel?

21 MR. NEEDLEMAN: I did, yes. Thank you.

22 REDIRECT EXAMINATION

23 BY MR. NEEDLEMAN:

24 Q. Mr. Bravakis, yesterday during your testimony you

1 referred to something that you called the "NREL
2 Report". I just wanted to call your attention to
3 Exhibit 21 in this proceeding, and ask you if that is
4 the document you were referring to?

5 A. (Bravakis) Yes, it is.

6 Q. And, Exhibit --

7 CHAIRMAN BURACK: Excuse me. Hold on
8 just a moment. If you'd please just give us an
9 opportunity to look at that and understand what that
10 document is.

11 MR. SCHNIPPER: I'm sorry. What's the
12 exhibit number?

13 CHAIRMAN BURACK: Exhibit 21.

14 MR. SCHNIPPER: Thanks.

15 CHAIRMAN BURACK: Thank you. Please
16 proceed.

17 BY MR. NEEDLEMAN:

18 Q. And, Exhibit 22 is also an NREL slide show, comparing
19 the consequences of power from biomass, coal, and
20 natural gas, is that correct?

21 A. (Bravakis) Yes.

22 Q. At Page 22 of Mr. Liston's testimony, if you could go
23 there please.

24 CHAIRMAN BURACK: Sorry. You are in

1 CPD's Exhibit 1?

2 MR. NEEDLEMAN: I believe that's
3 correct.

4 CHAIRMAN BURACK: Thank you.

5 BY MR. NEEDLEMAN:

6 Q. And, you were asked yesterday, with respect to Page 22
7 of that testimony, about the contribution from federal
8 lands. Do you recall that?

9 A. (Bravakis) Yes.

10 Q. And, you actually addressed this issue specifically in
11 your supplemental prefiled testimony, which is Exhibit
12 10, is that correct?

13 A. (Bravakis) Yes.

14 Q. But, at Exhibit 10, Page 6, Line 11, is that the place
15 where you address this?

16 A. (Bravakis) Yes.

17 Q. And, could you just read that paragraph quickly please.

18 A. (Bravakis) Yes. "On Page 22 of his prefiled testimony,
19 Mr. Liston suggested that the LandVest study
20 "identifies or implies that federal land is available
21 as a significant source for its supply". We do not
22 understand how Mr. Liston could have reached such a
23 conclusion, but the short answer is that LandVest is
24 not making that assumption. See e.g. LandVest Report,

1 Table 3. The federal contribution in the wood basket
2 is comparatively minor."

3 Q. Thank you. Yesterday, one of the Committee members
4 asked you about information pertaining to the chipper
5 that you intend to put on the site, and you weren't
6 able to answer the question. Do you have more
7 information about that now?

8 A. (Bravakis) Yes. We looked at our records, and that
9 chipper will have a hourly capacity of 200 tons
10 production.

11 Q. At Page 12 of Mr. Liston's testimony, Line 2, there's
12 been some discussion about this issue of the "rule of
13 thumb". And, I just want to have you clarify something
14 for the record. Line 2 says "Using the rule of thumb
15 data provided by Laidlaw", and goes on to talk about
16 the "13,000 tons". Could I call your attention to
17 Exhibit 20 please. And, I'm looking, in particular, at
18 Page 6, at the bottom.

19 A. (Bravakis) Oh. Okay. I'm sorry. Page 6.

20 CHAIRMAN BURACK: Sorry, counsel, you're
21 taking us to Exhibit -- Laidlaw Berlin Exhibit 20?

22 MR. NEEDLEMAN: Correct. Page 6, at the
23 bottom.

24 CHAIRMAN BURACK: Thank you.

1 WITNESS BRAVAKIS: Uh-huh.

2 BY MR. NEEDLEMAN:

3 Q. And, the first question that Clean Power asked was to
4 "Provide all data supporting the calculation of
5 42.5 percent moisture content for fuel", and then to
6 identify the source of that data. Do you see that?

7 A. (Bravakis) I do.

8 Q. And, on the second line and the third line down,
9 Laidlaw provided that information, and beginning on
10 that third line, it says "This figure is supported by
11 fuel sample testing", and it refers to an "Attachment
12 6", and then it says "a report compiled by Innovative
13 Natural Resources (Attachment 7, at Page 11)." Do you
14 see that?

15 A. (Bravakis) I do.

16 Q. Is it fair to say that you were citing that report for
17 the purpose of the fuel moisture content?

18 A. (Bravakis) That's correct.

19 Q. Were you citing that report for any other purpose?

20 A. (Bravakis) No.

21 Q. And, is it correct that the actual exhibit cited there
22 is also included as an exhibit in these materials, and
23 that would be Exhibit 26?

24 A. (Bravakis) That's correct.

1 Q. So, when we make reference to that "rule of thumb",
2 it's not Laidlaw's rule of thumb, that would be
3 Innovative Natural Resources' rule of thumb?

4 A. (Bravakis) That's correct.

5 Q. And, then, finally, could you look at Mr. Liston's
6 testimony at Page 11 please. At Line 5, there was some
7 discussion yesterday and some this morning about this
8 calculation, using 87.5 percent moisture -- or,
9 87.5 percent capacity factor, 50 percent moisture. Do
10 you recall the discussion yesterday?

11 A. (Bravakis) I do.

12 Q. What we didn't do was discuss the chart on Page 10 of
13 Mr. Liston's testimony. I'd like to do that quickly.

14 A. (Bravakis) Uh-huh.

15 Q. The chart that Mr. Liston reproduced on Page 10 came
16 from Laidlaw, is that correct?

17 A. (Bravakis) That's correct.

18 Q. And, at the top of that chart, it assumes an annual
19 capacity factor of 87.5 percent, is that correct?

20 A. (Bravakis) That's correct.

21 Q. And, if you look down at that chart, according to that
22 chart, if the fuel moisture content were 45 percent,
23 what would be the approximate annual fuel usage of the
24 facility?

1 A. (Bravakis) 7,400 -- "744,793".

2 Q. Where are you getting that from?

3 A. (Bravakis) I'm getting that from the top, the table at
4 the top, where it corresponds the fuel moisture with
5 the export heat rate and to the annual fuel consumption
6 at a capacity factor of 87.5.

7 Q. And, just so we're clear, that number is actually
8 "744,793", is that correct?

9 A. (Bravakis) That's correct.

10 Q. And, if you look down at the actual chart itself, and
11 you look at the 45 percent moisture content on one
12 axis, that corresponds to approximately 750,000 on the
13 other axis, is that correct?

14 A. (Bravakis) That's correct.

15 Q. Mr. Frecker, yesterday the Committee asked a question
16 about the number of trucks needed to take ash from the
17 facility. Do you have any additional information about
18 that?

19 A. (Frecker) Yes. We've looked into it a little bit
20 further. And, in order to handle both the fly ash from
21 the fabric filter and the bottom ash from the boiler
22 itself, we anticipate that it would take on the order
23 of about two dozen trucks per week. So, assuming that
24 that occurred five days per week, perhaps even six days

1 per week, a reasonable range of trucks to handle that
2 ash would be four to six trucks per day.

3 Q. Yesterday, you were also asked some questions from the
4 Committee about the ash silo. Do you have any updated
5 information on that?

6 A. (Freckler) We've been given some preliminary indication
7 by B&W's engineers that -- of the approximate
8 dimensions of that silo. And, I'm later today going to
9 be working with the -- my staff who did the visual
10 simulations that are shown behind us and in the
11 Application, to try to show that, depict that. I can
12 tell you that, as I believe Mr. Strickler pointed out
13 yesterday, in the overall site plan, it shows the
14 location of that silo sitting between the steam turbine
15 building and the boiler building. And, we anticipate
16 that that silo will rise up above the steam turbine
17 building by perhaps as much as 15 to 20 feet, maybe
18 more, we need to look at that a little bit more, but
19 would certainly be dwarfed by the mass of the boiler
20 building that would be behind it. So, we're hoping to
21 be able to provide a visual depiction of that to the
22 Committee, perhaps as soon as tomorrow.

23 Q. The Committee also asked you yesterday for a list of
24 the conversions at those other two facilities of

1 Babcock & Wilcox boilers, as well as any information
2 you could get about compliance with the air permits at
3 those facilities. Do you have any information
4 pertaining to that?

5 A. (Frecker) We've looked into both facilities; one is
6 located in Calhoun, Tennessee, the other one is located
7 in Rome, Georgia. And, we've obtained the operating
8 permit for the facility in Rome, Georgia. As you can
9 imagine, there are very different Air Permitting rules
10 in the Southeast and in Georgia than there are here in
11 the Northeast. So, it's very difficult to compare some
12 of the permitted emissions limitations. The boiler
13 does not have the number of emissions limitations that
14 it would if it were here in New Hampshire, and it
15 doesn't have quite the stringency of emissions
16 limitations, but we're working on preparing a
17 comparison of those. I could tell that we've also
18 looked at EPA's Envirofacts database, which is a
19 database maintained by the Environmental Protection
20 Agency, provides a myriad of data on a company's
21 environmental requirements and performance. And, among
22 the information it provides is a compliance status with
23 regard to audits, inspections, and emissions test
24 programs. And, I can provide you with a printout of

1 that for the Rome, Georgia, facility, that shows over
2 several years it has complied with all of its emissions
3 testing requirements, and that those tests have shown
4 that the boiler is meeting all of its emissions limits.
5 We're working on acquiring similar information for the
6 Tennessee facility right now.

7 Q. Mr. Richmond, with respect to the draft contract with
8 Laidlaw, is it fair to say that you would not have
9 taken on this contract if you did not believe that your
10 company was going to be able to supply the 750,000 tons
11 per year that the facility needs?

12 A. (Richmond) Absolutely. It's a huge financial
13 obligation, and it's -- we risk, the reputation of our
14 company is everything, it's impeccable out there in the
15 forest products industry. The same suppliers that
16 would supply current facilities, we'll be counting on
17 them to supply this facility in some fashion. And, if
18 we fail at one, we fail at them all. So, no, we take
19 it very seriously. And, as we say in our sales call,
20 "No one's fire has ever gone out on our watch." And,
21 we intend to continue that.

22 Q. And, you will supply that in what I'm going to call a
23 "sustainable manner", and what I mean by that is the
24 conditions that this Committee imposes with respect to

1 sustainability will be incorporated into that contract,
2 is that correct?

3 A. (Richmond) Yes.

4 Q. You testified that you supply numerous other facilities
5 in the state, including biomass plants, is that
6 correct?

7 A. (Richmond) That's correct.

8 Q. Do you believe that, by taking on this contract, you
9 will -- that it will have any adverse effect on your
10 other clients?

11 A. (Richmond) No. Actually, one of my larger clients is
12 present here today. And, I spoke with him yesterday in
13 the hall, and he's very much in favor of this. And,
14 they're located basically 60 to 80 miles south of the
15 facility.

16 Q. Who is that?

17 A. (Richmond) Tim, Tim Chase, with --

18 Q. What company?

19 A. (Richmond) With Indeck Alexandria.

20 Q. What does Indeck Alexandria do?

21 A. (Richmond) It is a biomass facility.

22 Q. So, that would be a potential competitor of Laidlaw?

23 A. (Richmond) They will use the same feedstock.

24 Q. Why would they be in favor of this?

1 A. (Richmond) To support the infrastructure of the forest
2 products industry.

3 MR. NEEDLEMAN: I have no further
4 questions at this time, Mr. Chair.

5 CHAIRMAN BURACK: Thank you very much.
6 We'll take this, we'll take this in the following order
7 here. I'm going to first -- and, again, I'm going to ask,
8 we're going to go into some cross-examination, and I'd ask
9 counsel and the Committee if they would please to restrict
10 their questions to the additional issues or the issues
11 that have been raised by Attorney Needleman in his
12 redirect of these witnesses. Okay? So, going to start
13 with Attorney Schnipper, do you have questions?

14 MR. SCHNIPPER: I don't have anything
15 that specifically arises out of the redirect. I did have
16 a question about the carve-out. Am I correct that that's
17 going to be saved for the confidential session? The
18 carve-out in the contract --

19 (Court reporter interruption.)

20 MR. SCHNIPPER: In response to a
21 question from the Committee, there is a discussion of a
22 carve-out in the Cousineau contract for local tonnages.
23 Am I correct that that's a confidential aspect, so we'll
24 go into that later?

1 CHAIRMAN BURACK: I believe there has
2 been testimony on that. Why don't you state your question
3 and let's see if we can answer that.

4 MR. SCHNIPPER: It was as to the details
5 of those numbers, and my brief review of the contract
6 didn't help me identify where that was identified. But,
7 if the specifics need to wait for the confidential
8 session, that's fine.

9 CHAIRMAN BURACK: Is that a confidential
10 aspect of the agreement?

11 WITNESS BRAVAKIS: Yes. Yes.

12 CHAIRMAN BURACK: It is. Okay. We will
13 hold that then to a later time.

14 RE-CROSS-EXAMINATION

15 BY MR. SCHNIPPER:

16 Q. And, just one other question, and I don't know if this
17 -- again, it doesn't spring from the direct, but it was
18 a question about what factors would influence the
19 development of rail transport of fuel to the facility,
20 and how that would -- would that only be something that
21 would be economical and thus probably happen when the
22 sort of local radius was already being maximally
23 utilized? Or, is that something that could
24 potentially, you know, provide sort of an economy of

1 scale that would undercut local sourcing?

2 A. (Bravakis) We haven't fully analyzed all of that. I
3 can characterize rail as an option that we just are
4 keeping as an option at this point in time. There is
5 no intention to undercut the local supply by rail.

6 MR. SCHNIPPER: Fair enough.

7 CHAIRMAN BURACK: Thank you. Attorney
8 Rodier, questions?

9 MR. RODIER: Thank you.

10 BY MR. RODIER:

11 Q. Mr. Richmond, did I hear you say you -- you mentioned
12 the representative from Indeck here today?

13 A. (Richmond) Yes.

14 Q. He supports your view?

15 A. (Richmond) Yes.

16 Q. Well, let me ask you hypothetically, would you feel
17 differently if that's not the case, if he says so?

18 A. (Richmond) Well, it would be different than the
19 conversation I had yesterday, I guess.

20 Q. You pride yourself on your relationships with these
21 customers, is that right?

22 A. (Richmond) Yes.

23 Q. This deal could harm them, couldn't it?

24 A. (Richmond) I don't see how.

1 Q. You don't see how?

2 A. (Richmond) No.

3 Q. Okay. You told me --- well, look, this is all about
4 price, isn't it? Attorney Needleman said "can you
5 supply the \$750,000 a year -- 750,000 pounds a year,
6 right?

7 A. (Richmond) Yes.

8 Q. Because it's -- the price is there, right? It makes
9 that possible. If somebody is willing to pay for it,
10 it's possible, isn't that correct?

11 A. (Richmond) No.

12 Q. No?

13 A. (Richmond) I'd be working on the same constraints as I
14 do any of my other clients.

15 Q. Okay. You told me yesterday you could put a plant up
16 in downtown Boston, a 70 megawatt plant in downtown
17 Boston, and provide it with fuel chips, if the price is
18 right, is that correct?

19 A. (Richmond) Yes. If someone was paying an exorbitant
20 price, yes.

21 Q. Right. And, you could put a 200 megawatt plant up in
22 New Hampshire and just take away all the -- and, if the
23 price was right, you just reallocate all the wood chips
24 away from your existing customers to this new plant,

1 put everybody else out of business, isn't that right?

2 A. (Richmond) No. I don't believe the economics would
3 work on there --

4 Q. Hypothetical, what if that was the case? That would
5 work, wouldn't it? And, you'd take the business,
6 wouldn't you?

7 A. (Richmond) I would look at any business opportunity.

8 MR. RODIER: Okay. Mr. Chairman?

9 CHAIRMAN BURACK: Yes.

10 MR. RODIER: One more question. And, I
11 know we've got to be very brief here. We have not had any
12 discouragement from cross-examination. I've tried to keep
13 to the point. I think Commissioner Ignatius touched on
14 the core issue here: Is there any room left for CPD, if
15 they go ahead with this contract, if Laidlaw goes in with
16 Cousineau? And, I'd just like leave to ask one or two
17 questions on that?

18 CHAIRMAN BURACK: Please. Go ahead.

19 MR. RODIER: Thank you. I appreciate
20 that greatly.

21 BY MR. RODIER:

22 Q. Commissioner Ignatius got to the point here of the
23 hearings. She said, "Assume the Laidlaw use is
24 750,000 tons a year, it goes into operation." She

1 said, "Could you supply CPD on top of that?" Do you
2 recall that?

3 A. (Richmond) Yes, I do.

4 Q. And, you said?

5 A. (Richmond) Yes.

6 Q. "Yes", you could. Well, that's a function of what
7 price CPD could afford to pay for the electricity --
8 could afford to pay for the wood chips, isn't that
9 right?

10 A. (Richmond) Yes.

11 Q. And, the price for wood chips in that area is going to
12 be set by the Laidlaw plant, isn't it?

13 A. (Richmond) I don't believe that they're going to drive
14 the price in the area. It's going to be a fair market
15 value. I mean, it's --

16 Q. Yes. Well, --

17 A. (Richmond) We're not going to go in and pay exorbitant
18 prices for the fuel.

19 Q. No, you're going to pay --

20 A. (Richmond) I don't have to.

21 Q. You're going to pay what it takes, right?

22 A. (Richmond) No. I'm going to pay a fair market value
23 for the fuel.

24 Q. Right. Now, the market value of the fuel --

1 A. (Richmond) I don't have an open checkbook --

2 Q. If the 800 pound gorilla comes in --

3 (Court reporter interruption.)

4 MR. RODIER: I'm sorry.

5 BY MR. RODIER:

6 Q. If the 800 pound gorilla comes in, and is able, he's
7 got a relationship for it to pass through whatever it
8 pays to regulated ratepayers, they're going to be able
9 to pay whatever it takes. And, you're saying that's
10 not going to affect the operations of any other plants
11 in the area?

12 A. (Richmond) We see that time to time from paper
13 companies pay, when the demand is up, pay more than a
14 biomass price. So, that obligation gets fulfilled, and
15 the people go back to the biomass. So, no, I don't --
16 I don't see anybody coming in and paying a huge price
17 up there and dictating the biomass market.

18 MR. RODIER: Okay.

19 CHAIRMAN BURACK: Thank you. Any
20 further questions then? You're all set, Attorney Rodier?

21 MR. RODIER: Yes, I am.

22 CHAIRMAN BURACK: Okay. Thank you.

23 MR. RODIER: I appreciate it.

24 CHAIRMAN BURACK: Counsel for the

1 Public?

2 MR. BROOKS: Thank you, Mr. Chairman. I
3 have one question, and it doesn't relate directly to the
4 redirect of Attorney Needleman, but it does relate to
5 testimony I heard after we questioned. And, if I may ask
6 that question?

7 CHAIRMAN BURACK: Please proceed.

8 BY MR. BROOKS:

9 Q. I believe that the statement was made with respect to
10 the prices of the Schiller plant by Mr. Richmond,
11 versus the price up north of the Notch, that both of
12 those prices would be slightly above otherwise market
13 prices by \$2 to \$4 or something like that?

14 A. (Richmond) No. The price above the Notch, in the low
15 30s, would be today's price, which is roughly what
16 Schiller is paying today. It's not higher. It's
17 higher compared to the southern tier of the state.

18 Q. Right. That's what I'm saying. It's both of those
19 prices, both above the Notch and the Schiller Station,
20 are higher than the southern part of the state?

21 A. (Richmond) Correct.

22 Q. Okay. And, I guess my question is, why, and I think
23 you mentioned transportation costs, but why would the
24 costs be higher above the Notch, if that's where the

1 resource was? We heard Mr. Bravakis testify that, when
2 they located the Laidlaw facility or chose the
3 location, that they looked at it because the
4 infrastructure was there and the resources were there,
5 so why a higher cost above the Notch?

6 A. (Richmond) Because, once you get above the Notch, up in
7 the North Country, you're competing with the pulp and
8 paper companies for the pulpwood versus the biomass
9 wood. And, they tend to pay a little more, so it holds
10 the price up a little more.

11 Q. Okay. So, would it be more, let's say, beneficial for
12 a biomass facility, all things being equal, to locate
13 in southern New Hampshire, rather than above the Notch?

14 A. (Richmond) I don't -- I don't think it's any more
15 beneficial. The resource is up there, the
16 infrastructure was there, this amount was being
17 consumed there. I think it's only natural to look in
18 that area. With the surplus we have today, the
19 southern tier of the state is also a likely spot.

20 MR. ROTH: I have a couple of questions.

21 BY MR. ROTH:

22 Q. And, I suppose this one is for Mr. Frecker.

23 Mr. Frecker, I'm looking at Exhibit 25, which was the
24 Hazen Research analysis.

1 CHAIRMAN BURACK: This is Laidlaw's
2 Exhibit 25?

3 MR. ROTH: That's correct.

4 CHAIRMAN BURACK: Thank you.

5 BY MR. ROTH:

6 Q. I note at first that the date of this report is
7 "October 2007". Why was this done three years ago?

8 A. (Bravakis) I can answer that.

9 A. (Frecker) Yes, I'm not familiar with this. And, I
10 think Mr. Bravakis could answer your question.

11 A. (Bravakis) I can answer that. For those of you who
12 might not be aware, we've been developing this project
13 since 2006. And, as I described yesterday, any
14 developer initially comes in and does some initial
15 fatal flaw analysis. And, with us, it was not only
16 looking at the boiler and trying to fit that -- and
17 trying to make that fit into whatever, we needed to
18 look at the fuel as well with B&W. So, this was a
19 first initial fuel analysis that we provided to B&W, so
20 that they could give us an assessment of what it would
21 take to convert that boiler.

22 Q. Okay. And, then, I note that -- oh, as a follow-up to
23 that. So, you were doing this to understand whether
24 the existing boiler would operate with the fuel supply

1 that was there?

2 A. (Bravakis) Correct.

3 Q. And, was that because of a concern that the conversion
4 was going to somehow change the efficiencies of the
5 boiler or -- because wasn't the previous -- wasn't the
6 boiler, as it's currently operating or was operating
7 under Fraser's management, wasn't that using --

8 A. (Bravakis) No.

9 Q. -- wood as well?

10 A. (Bravakis) No. This is a black liquor recovery boiler.

11 Q. Okay. So, it's --

12 A. (Bravakis) So, it burned black liquor.

13 Q. Okay. I note that your -- that the sample was whole
14 tree chips. Why did you choose whole tree chips, when
15 it appears that the business plan was for tops and
16 branches?

17 A. (Bravakis) Tops and branches are whole tree chips.

18 Q. Okay. So, tell me what whole tree chips are then?

19 A. (Bravakis) It's a designation. Tops and branches are
20 commonly referred to as "whole tree chips" that goes to
21 biomass plants. And, it will be a combination of
22 inferior stems that are unmerchantable, predominantly
23 tops and branches, that sort of thing.

24 Q. Okay. So, whole tree chips, or your view, whole tree

1 chips includes stems and --

2 A. (Bravakis) That's correct.

3 Q. -- roundwood, so to speak, right?

4 A. (Bravakis) That's correct.

5 Q. But it doesn't include roundwood that's suitable for
6 pulping, is that correct?

7 A. (Bravakis) It could. It might. It depends, again as
8 we discussed, the location of the plants, the
9 transportation, the markets for pulp at the time. And,
10 if you recall, yesterday, when I was saying a pulp log
11 is taken to a facility and processed into a chip, a
12 much more refined chip, because it gets debarked,
13 screened, but essentially it gets reduced in size to
14 particles. So, sometimes it's advantageous for the
15 logger to maybe take less money, but not transport it
16 as far. Or, if the pulp markets are down, he would
17 take it to a biomass facility or convert it into a
18 whole tree chip.

19 Q. Now, the sample that was used here, was that pulp chips
20 or biomass chips?

21 A. (Bravakis) They were biomass chips obtained at -- I
22 believe we went to the Whitefield power plant, and we
23 took a number of samples. And, if I may, we have
24 currently conducted a much more detailed survey for B&W

1 and the engineers on a number of samples. But this was
2 a very preliminary analysis that was done, to give what
3 we considered a high level representative sample of the
4 fuel that would come to the boiler, in an effort to
5 help assist B&W to come back to us and give us their
6 assertion of converting the boiler from black liquor to
7 biomass.

8 Q. And, is that new report in the record?

9 A. (Bravakis) No, it's not. It's still in process. It
10 hasn't been completed yet.

11 Q. All right. I have one more question then.

12 A. (Bravakis) Sure.

13 Q. And, it somewhat relates to Mr. Richmond's testimony,
14 in response to a question by the Committee. And, also,
15 as a follow-up to Attorney Brooks's question. And,
16 that is, as I understand the dynamic, when -- and you
17 described the price of pulp, the price of pulpwood goes
18 up and down with the pulp market, correct?

19 A. (Richmond) Correct.

20 Q. And, the pulp market goes up and down with basically
21 the demand for paper products, is that fair to say?

22 A. (Richmond) Correct.

23 Q. Now, you probably heard Mr. Bravakis describe how
24 there's some -- "nobody's willing", in my words, I'm

1 paraphrasing him, "nobody's willing to bet on how long
2 Newpage is going to stay open", correct?

3 A. (Richmond) Correct.

4 Q. Do you have any concern that an additional demand for
5 wood products in the North Country will cause a price
6 difficulty for Newpage that will put Newpage out of
7 business?

8 A. (Richmond) I think that facility has operated there for
9 years and years, I'm not going to dare to say how much.
10 And, they have been through the other pulp mills
11 running and all that competition. I believe it really
12 supports, again, it's using the lower grade that's
13 leaving in the woods, supports the logging operations
14 and enhances their operations.

15 Q. So, you don't think that -- so, this plant could be the
16 straw that breaks Newpage's back?

17 A. (Richmond) I really don't know the economics that much
18 of what is actually driving that facility. But, again,
19 I'll just say that I believe it enhances it. I think
20 they have been up against stiffer competition and
21 survived it.

22 Q. Do you know how many people work at the Newpage mill?

23 A. (Richmond) Not exactly, but it's much less than in
24 years past.

1 Q. Is it hundreds?

2 A. (Richmond) I would assume so.

3 Q. And, some of them might be New Hampshire residents?

4 A. (Richmond) Possibly.

5 MR. ROTH: Okay. That's all.

6 CHAIRMAN BURACK: Questions? Mr.

7 Wright.

8 MR. WRIGHT: Just one quick follow-up
9 technical question to Mr. Frecker, I think.

10 BY MR. WRIGHT:

11 Q. Attorney Needleman raised the issue of the ash silo,
12 and I think you described it as being slightly larger
13 or taller than the steam turbine building, is that
14 correct?

15 A. (Frecker) That is correct.

16 Q. Could you point out which building that is on that
17 drawing for me?

18 A. (Frecker) Yes. I'll refer to the visual simulation,
19 which is Figure (h)(3)(iv)-3. It was included in
20 Exhibit 1, the SEC Application. This building that
21 sits in the foreground, this relatively what I would
22 refer to as a "squat structure" is the steam turbine
23 building. This larger building, in back of the stack,
24 is the boiler building. And, as shown in this blow-up

1 of the site plan, there's an ash silo that's located
2 right between those two structures, which is where that
3 silo would go. So, what we'll attempt to show is how
4 that would appear, protruding slightly above, we
5 expect, the steam turbine building, but be overwhelmed
6 by the mass of the boiler building.

7 Q. Just one quick follow-up question. As part of the Air
8 Permit application, you had to do a very complex air
9 dispersion modeling analysis for the facility?

10 A. (Frecker) That's correct.

11 Q. Do you expect the -- and, one of the factors that
12 impacts the results of that modeling is structure of
13 the buildings on-site. Do you have any feel as to
14 whether the addition of that structure will have any
15 impact on that analysis that was previously done?

16 A. (Frecker) No, it won't at all. Because what the
17 modeling looks at is what's referred to as a
18 "controlling structure". And, that controlling
19 structure is determined by the projected width of the
20 structure in relation to the stack. So, the projected
21 width, we anticipate that silo is on the order of
22 20 feet in diameter. As you can see from looking at
23 the figures, the projected width of those other
24 structures, the boiler building, most notably, is much,

1 much larger than that.

2 MR. WRIGHT: Okay. Thank you very much.

3 CHAIRMAN BURACK: Other questions?

4 Mr. Harrington.

5 WITNESS BRAVAKIS: Mr. Chairman?

6 CHAIRMAN BURACK: Yes.

7 WITNESS BRAVAKIS: If we're going to go
8 on much longer, could we take a break?

9 (Laughter.)

10 WITNESS BRAVAKIS: I'm going to stop
11 drinking coffee before these things.

12 CHAIRMAN BURACK: We'll go ahead and
13 take a break from now until -- why don't we try to be back
14 here by five minutes of 11:00. I don't think we're going
15 to have very much more time with this panel. I think
16 we're almost done. And, then, we'll, from there, move to
17 the panel of Mr. Bartoszek and Mr. Strickler. Okay?

18 WITNESS BRAVAKIS: Thank you.

19 CHAIRMAN BURACK: Thank you.

20 (Whereupon a recess was taken at 10:44
21 a.m. and the hearing resumed at 10:59
22 a.m.)

23 CHAIRMAN BURACK: We are now returning
24 from our break. And, then, we will resume questioning of

1 this panel. And, I think we had just a few other
2 questions before we wrap up this panel. Mr. Harrington,
3 did you have a question?

4 MR. HARRINGTON: Yes.

5 CHAIRMAN BURACK: Please proceed.

6 BY MR. HARRINGTON:

7 Q. Just one real quick question. We had discussed this
8 just a little earlier on the -- at 45 percent water
9 content or moisture content, and the figure I think
10 that was just brought up was 761,000 tons would be used
11 annually. Then, in the -- and, we were talking about
12 Mr. Liston's testimony, on Page 10, there was a little
13 chart there, that I thought I heard came from a Laidlaw
14 document that says, at 45 percent moisture content, it
15 would be 744,793, this is in response to a question
16 from Mr. Needleman. Can you tell us which one of those
17 is correct?

18 A. (Frecker) Well, I think that the difference between
19 those two numbers, the 744 and the 761, recognizing
20 that that's about a 1 percent difference, is in round
21 off and some of the factors that are being used.

22 Q. Okay. So, it's just a slightly different way of doing
23 the same calculation?

24 A. (Frecker) That's right.

1 Q. Okay. And, I did have one other question. There was
2 some discussion by Mr. Richmond on the costs being
3 different above the Notches, it's a little bit more
4 expensive because of the competition with the mills,
5 and below it was cheaper, except in the case of
6 Schiller, because they had a more limited range due to
7 the back up to the ocean. So, below the Notches then,
8 they're not getting competition from pulp mills, so
9 they are burning whole trees in the facilities down
10 there?

11 A. (Richmond) Oh, no. There's still plenty of roundwood
12 that finds its way north in the form of pulpwood and/or
13 sawlogs, going to Canada and the northern sawmills.
14 So, no, it does not mean that they're putting the whole
15 trees or the high grade in the chippers.

16 Q. So, why is the price lower there then?

17 A. (Richmond) Private landowners, more of a push economy,
18 more land conversion going, the economy's a little
19 stronger, so there's more of that push economy wood
20 down here than there is up north.

21 MR. HARRINGTON: I never realized that
22 wood economics was so complicated. And, I won't try to
23 learn it all today. Thank you. That's all I had.

24 CHAIRMAN BURACK: Other questions from

1 the Subcommittee? Any other questions?

2 (No verbal response)

3 CHAIRMAN BURACK: Okay. I do have one
4 other question for Attorney Needleman here. Yesterday,
5 when we were questioning Mr. Mongan, I asked him about the
6 frequency of the FIA reporting. Do you have an answer on
7 that at this point or are you still seeking that
8 information?

9 MR. NEEDLEMAN: I'm not sure. Let me
10 ask Mr. Bravakis.

11 WITNESS BRAVAKIS: We have an update,
12 and let me provide it for you. And, if you'd like
13 additional, we can certainly get that to you, Mr.
14 Chairman.

15 One of the questions, if I'm correct, is
16 "whether or not there's any FIA data made available since
17 the report?" And, what we understand now is that, yes, in
18 2004, 2008, inventory data is available on the Web.
19 However, according to Dr. Shi, who did this investigation
20 last night, the corresponding removal seems incomplete
21 from the online database. And, we can provide for you the
22 URL, if you would like that.

23 The second question was, "How often FIA
24 data is updated? How often do they update their growth

1 and removal estimates in the area that was studied?" The
2 response that we have is that we do not know how often FIA
3 updates their growth/removals. We can contact them to get
4 that answer. However, what we're learning is they're
5 constantly changing and their online data inventory
6 reporting tools. So, if you would like them to -- if you
7 would like us to contact them to get the actual schedule
8 of when they update, we'd be pleased to do that.

9 And, then, the third question was, "is
10 there new FIA data? Does it depart significantly from
11 information that was used in the study?" What we have
12 learned is that the average net growth of the growing
13 stock is much more than was used in the study, according
14 to the new data. So, those numbers would go up. However,
15 the removal data is not completed yet, so therefore it is
16 not available.

17 CHAIRMAN BURACK: Thank you. So, if I
18 understand your answer to the last question, that the
19 review that's been done so far of the new FIA data that
20 are available online indicates that there is more growth
21 than was previously described, but the data relating to
22 removals does not appear to be complete yet. Is that
23 correct?

24 WITNESS BRAVAKIS: That's correct.

1 CHAIRMAN BURACK: Okay. It would be
2 very helpful if you could contact or have the LandVest
3 people contact the personnel at the -- is it U.S.
4 Department of Agriculture, again, that prepares the FIA,
5 is that correct?

6 WITNESS BRAVAKIS: I don't know.

7 CHAIRMAN BURACK: Okay. Well, --

8 WITNESS BRAVAKIS: Forest Service, I
9 thought.

10 CHAIRMAN BURACK: The Forest Service.

11 WITNESS BRAVAKIS: Or, the Department of
12 the Agriculture, they might be, I don't know.

13 CHAIRMAN BURACK: Right. Yes, it would
14 be.

15 WITNESS BRAVAKIS: Okay.

16 CHAIRMAN BURACK: If you would please
17 have LandVest, or if you or one of your personnel would
18 contact them, it would be very helpful to know what their
19 -- if there is a regular schedule for updates of FIA for
20 this region, what that schedule is. Also, would you just
21 please provide us with just the URL, just so that we can,
22 if we wish to go and look at that ourselves, just put that
23 in writing to us please.

24 WITNESS BRAVAKIS: We will do that, Mr.

1 Chairman.

2 CHAIRMAN BURACK: Very good. Thank you.
3 Gentlemen, I want to thank all of you very much for taking
4 the time, for bearing with us, and answering our
5 questions. We appreciate your responsiveness. Again, it
6 is possible that we may have additional questions for some
7 or all of you before these proceedings conclude. But, for
8 the moment, I think we have satisfied our need. So, we
9 thank you very much.

10 MR. ROTH: Mr. Chairman?

11 CHAIRMAN BURACK: Yes.

12 MR. ROTH: On that note, we still have
13 confidential questions that may be addressed to Mr.
14 Richmond.

15 CHAIRMAN BURACK: Yes. And, we will
16 work to find a manner in which we can ensure that we get
17 responses or have an opportunity to pose those questions
18 and obtain responses.

19 MR. ROTH: Thank you.

20 CHAIRMAN BURACK: So, we're going to
21 excuse this panel, at least for the moment, and I'm going
22 to ask Attorney Needleman if you would please bring to us
23 the next witnesses.

24 MR. NEEDLEMAN: Yes. I would ask

1 Mr. Bartoszek to come up and also Mr. Strickler to come up
2 again please.

3 (Whereupon Michael B. Bartoszek was duly
4 sworn and cautioned by the Court
5 Reporter and Carl S. Strickler was
6 recalled to the stand having been
7 previously sworn.)

8 MICHAEL B. BARTOSZEK, SWORN

9 CARL S. STRICKLER, PREVIOUSLY SWORN

10 DIRECT EXAMINATION

11 BY MR. NEEDLEMAN:

12 Q. Mr. Bartoszek, could you just state your full name and
13 your position for the Committee please.

14 A. (Bartoszek) Michael Bartoszek. I'm the President and
15 CEO of the Applicant.

16 Q. And, you've provided testimony and supplements in this
17 matter, which have been submitted to the Committee as
18 Exhibits 33, 34, 35, and 36, is that correct?

19 A. (Bartoszek) That's correct.

20 Q. And, do you have any material additions or changes to
21 any of that testimony?

22 A. (Bartoszek) I have no additions or changes to the
23 testimony. I'd like to just briefly touch on a couple
24 of points that have been discussed quite a bit, but

1 just to quickly point out their significance from my
2 perspective. We talked about the Pre-EPC Agreement,
3 the selection of Babcock & Wilcox as the EPC contractor
4 for the Project. And, from a financing perspective,
5 this is pretty significant. Because, subsequent to the
6 Pre-EPC Contract, upon the execution of the EPC
7 Contract, that will provide, basically, an all-in price
8 for the construction of the Project, which is a
9 critical element to the financing. So, the lender, the
10 person who is going to finance the long-term debt of
11 the Project, will know exactly what it's going to cost.

12 The Fuel Supply Agreement is also an
13 important component of the financing, because it really
14 complements and works in conjunction with the Power
15 Purchase Agreement. It provides certainty with respect
16 to cost on the fuel side, just as the Power Purchase
17 Agreement provides certainty with respect to revenue.
18 So, it provides a picture to -- from the financing
19 perspective, as to what the annual cash flows of the
20 Project are going to be.

21 And, then, lastly, the New Market Tax
22 Credits were mentioned by Mayor Grenier at the opening
23 of the session. The Project's received an allocation
24 of 44.5 million of New Market Tax Credits. And, the

1 top of the gross proceeds and goes directly into the
2 community for -- it's basically kind of a community
3 grant. I'm not exactly sure what its specific purpose
4 is, but it's a community -- community development
5 grant. And, then, the remaining proceeds, after costs,
6 go to the project as equity. So, it's quite
7 significant.

8 Q. With respect to Exhibits 33, 34, 35, and 36, which is
9 your initial testimony, and then various amendments and
10 supplemental testimony, do you now swear to that and
11 adopt it as your own for purposes of this proceeding?

12 A. (Bartoszek) I do.

13 Q. Now, before I turn you over to cross-examination,
14 there's one other thing I wanted to do. We submitted
15 to the Committee, I believe on Tuesday morning, what's
16 been designated "Committee Exhibit Number 1", and that
17 was a response to the Committee's request for more
18 information about the new ownership structure. Do you
19 have a copy of that in front of you?

20 A. (Bartoszek) I do.

21 Q. What I wanted to do is just take a few minutes, at a
22 very high level, and I'm looking particularly at the
23 chart, which I now know it doesn't have page numbers.
24 But it's Committee Exhibit Number 1, and there's a

1 chart about two-thirds of the way through. And, the
2 page is titled "Laidlaw Berlin BioPower at Berlin, New
3 Hampshire Ownership and Operation Structure". And, I
4 would like to have everyone focus on that page for a
5 few minutes.

6 CHAIRMAN BURACK: If I may interrupt for
7 just a moment, counsel. I believe that yesterday a chart
8 was prepared on the whiteboard behind the panelists here.
9 Would it be helpful to work with that or do you believe
10 that differs from this chart on this page?

11 MR. NEEDLEMAN: There may be a very
12 slight difference, I haven't compared them. But it would
13 probably be helpful to work from that one. So, if we
14 could maybe take the boards down that are blocking it.
15 And, if anyone does notice a difference that they think is
16 important, please call it to my attention and we'll
17 address it.

18 WITNESS BARTOSZEK: Would you like me to
19 stand up here, Mr. Chairman, and use the board or just
20 leave it up there for visual purposes?

21 CHAIRMAN BURACK: It may be helpful if
22 you stand next to it and point to it as you're walking
23 through this. For members of the Committee and the
24 public, I've counted pages, and it appears to me that this

1 is at approximately Page 12 of this document, if you want
2 to look at the paper version.

3 BY MR. NEEDLEMAN:

4 Q. Now, again, what I want to do, just at a very high
5 level, is have you orient the Committee to these
6 various players. And, let me begin by asking you, are
7 there any entities on that chart that are publicly
8 traded companies?

9 A. (Bartoszek) No.

10 Q. Are there any entities on that chart that are owned in
11 any way by publicly traded companies?

12 A. (Bartoszek) No.

13 Q. So, every entity on that chart is purely a private
14 entity?

15 A. (Bartoszek) That's correct.

16 Q. Let me begin with NewCo Energy, LLC, which is the
17 entity at the top of the chart. Can you describe to us
18 what NewCo's role and purpose is in this new structure?

19 A. (Bartoszek) NewCo's basically an investment vehicle.
20 The current and former partners and the utility
21 practice of Accenture and other investors, basically
22 invested their capital in NewCo for the purposes of
23 financing the equity in the Project.

24 Q. And, if this deal is consummated, NewCo will become the

1 100 percent owner of the Applicant, Laidlaw Berlin
2 BioPower, is that correct?

3 A. (Bartoszek) That's correct.

4 Q. And, then, looking to the right column, "Laidlaw Berlin
5 BioPower" is the next entity down, is that correct?

6 A. (Bartoszek) Correct.

7 Q. Can you describe for the Committee what the purpose of
8 Laidlaw Berlin BioPower is?

9 A. (Bartoszek) Laidlaw Berlin BioPower's purpose is to be
10 the Applicant, basically, to own all the material
11 agreements of the Project and -- or to hold all the
12 material agreements of the Project, and to basically
13 manage and control the Project.

14 Q. Is there any change at all in the role that Laidlaw
15 Berlin BioPower will be playing going forward under the
16 new structure, in relation to the role they were
17 playing under the old structure with respect to this
18 project?

19 A. (Bartoszek) No. And, actually, as we walk through each
20 of these, these are all, basically, these are all the
21 same roles that they played previously.

22 Q. Well, and let me clarify that. When you say that, are
23 you focusing particularly on the entities on the right
24 side of the column, and then on PJPD?

1 A. (Bartoszek) That's right. PJPD is playing the same
2 role it played previously, and LBB is, as well as
3 NewCo. NewCo was probably not on the original chart.
4 But, if you had gone further up the chart, you would
5 have seen NewCo there. So, they're all playing the
6 same role they did previously.

7 Q. And, I will get to PJPD in a minute, but I just want to
8 continue down the right side for the moment. So,
9 underneath "Laidlaw" on that chart is "Homeland
10 Renewable Energy". Can you explain what Homeland
11 Renewable Energy's role is here?

12 A. (Bartoszek) Homeland's job is -- Homeland Renewable
13 Energy's job is to manage the construction of the
14 Project.

15 Q. And, is the role that Homeland is playing going forward
16 the same role that Homeland was playing previously?

17 A. (Bartoszek) It is indeed.

18 Q. And, again, I am focusing on roles, not on corporate
19 relationships and ownership structure.

20 A. (Bartoszek) Correct.

21 Q. And, then, underneath "Homeland" is "Fibrowatt". Can
22 you explain what role Fibrowatt will be playing?

23 A. (Bartoszek) Fibrowatt is contemplated to be the
24 operator of the facility. So, it's pretty common in

1 the energy industry for there to be a third party who
2 manages and operates the actual facility, once it
3 commences commercial operations, pursuant to what's
4 commonly called an "O&M Agreement". And, that could be
5 an affiliate of the developer, but oftentimes it's a
6 disinterested third party.

7 Q. Let me go over now to the left column, and there is an
8 entity on that chart called "Aware". I believe the
9 full name is "Aware Funding, LLC". What role does that
10 entity play?

11 A. (Bartoszek) It's basically the funding entity. So, the
12 funds flow from NewCo to Aware.

13 Q. And, then, what role does PJPD play?

14 A. (Bartoszek) PJPD's role is the owner of the physical
15 assets of the plant and the facility, and also acts as
16 the lessor. So, in the original chart that we
17 provided, PJPD was always the owner of the assets and
18 held the assets, and leased them to the Applicant,
19 Laidlaw Berlin BioPower, pursuant to a long-term lease.
20 And, that's exactly what they're continuing to do in
21 this structure.

22 Q. Now, one other question. In the original Application,
23 there was a chart attached to your testimony, which is
24 -- will be, we assume, if the deal closes, what the

1 prior structure looked like. And, there was one entity
2 in that chart that was/is a publicly traded company.
3 Which entity was that?

4 A. (Bartoszek) That's Laidlaw Energy Group, Inc.

5 Q. And, what is your relationship to Laidlaw Energy Group,
6 Inc.?

7 A. (Bartoszek) I'm its president and CEO.

8 Q. And, can you briefly describe what Laidlaw Energy
9 Group, Inc., is?

10 A. (Bartoszek) Laidlaw Energy Group is basically a company
11 who holds investments in renewable energy projects.

12 Q. And, is it correct that, if this deal goes forward as
13 contemplated, Laidlaw Energy Group, Inc., will no
14 longer have a connection to the Project?

15 A. (Bartoszek) That's correct.

16 Q. And, let me be more clear. Will no longer have an
17 ownership interest in the Project?

18 A. (Bartoszek) That's correct, yes. I will continue to be
19 its CEO, as I will continue to be the President and CEO
20 of the Applicant, but it will not have an equity
21 interest in the Project.

22 MR. NEEDLEMAN: That's all I wanted to
23 ask at this point, Mr. Chairman. Mr. Bartoszek and
24 Mr. Strickler are now available for questions.

1 CHAIRMAN BURACK: So, you have no
2 questions at all of Mr. Strickler at this time?

3 MR. NEEDLEMAN: Not at this point.

4 CHAIRMAN BURACK: Okay. Thank you.
5 Very good. Turn to Attorney Schnipper, does the City of
6 Berlin have questions?

7 MR. SCHNIPPER: Just a few questions for
8 Mr. Bartoszek.

9 CROSS-EXAMINATION

10 BY MR. SCHNIPPER:

11 Q. Mr. Bartoszek, my colleague, Pete Van Oot, the other
12 day asked Mr. Bravakis a few questions about the
13 stipulated agreements negotiated between the Applicant
14 and the City of Berlin, but I think you were actually
15 the appropriate person for some of those questions to
16 be directed to. So, I'm going to ask you them.

17 A. (Bartoszek) Okay.

18 Q. First, you're aware, I assume, that -- of the ongoing
19 negotiations between the City of Berlin and the
20 Applicant with regard to a stipulated set of permit
21 conditions?

22 A. (Bartoszek) I am.

23 Q. And, are you aware of the content of those agreed upon
24 stipulations?

1 A. (Bartoszek) I'm generally familiar with the content.

2 Q. And, to the extent that you're not, Mr. Bartoszek's
3 knowledge is okay with you? That he knows the
4 specifics.

5 A. (Bartoszek) Mr. Bravakis's knowledge?

6 Q. Excuse me, yes.

7 A. (Bartoszek) People get us confused all the time.

8 Q. Yes. Mr. Bravakis --

9 A. (Bartoszek) Yes.

10 Q. -- is intimately aware, I know, because I've been
11 working with him on that. So, Mr. Bravakis had said
12 that you were the individual with the power to bind the
13 Applicant to those conditions, is that correct?

14 A. (Bartoszek) That's correct.

15 Q. And, assuming that the final, agreed upon form that we
16 have here today is ultimately acceptable to both
17 parties, are you prepared to bind the Applicant to
18 those conditions?

19 A. (Bartoszek) I am prepared to execute that agreement.

20 Q. Great. Thank you. With regard to the new ownership
21 structure, one outstanding question for the City is,
22 who the party is that's responsible for the payment of
23 property taxes on the facility?

24 A. (Bartoszek) Pursuant to the lease, as you may recall,

1 so, PJPD, the property owner, who actually receives the
2 bills for property taxes as the property owner, tenders
3 those bills to the Applicant for payment. So, I guess,
4 kind of a simple explanation is all operating expenses
5 or expenses of the Project of any nature are the
6 responsibility of the Applicant, Laidlaw Berlin
7 BioPower.

8 Q. Now, they're the contractual obligation of Laidlaw.

9 But, in terms of ultimate responsibility, the property
10 owner is PJPD, the party that's responsible for paying
11 those taxes, and it's simply under a business agreement
12 that -- under which Laidlaw will pay them?

13 A. (Bartoszek) That really seems -- you really seem to be
14 asking me to draw a legal conclusion there.

15 Q. Well, no, --

16 A. (Bartoszek) I would probably agree with what you're
17 saying, that I would think that, as the property owner,
18 they are ultimately responsible. And, you are correct,
19 that we are contractually responsible to pay those
20 costs. So, were we not to pay those costs, we would be
21 in, presumably, in breach of our agreement with PJPD.

22 Q. Understandably, and I don't in any way think that that
23 will occur. My question is more from the City, because
24 the City needs to know who the ultimate payor is in the

1 event that it needs to attempt to collect property
2 taxes, that's the only question from our end. So, I
3 guess, as we both understand it, the bill will be going
4 to PJPD, paid by Laidlaw?

5 A. (Bartoszek) That's correct. And, that's how it's been
6 handled to date. I can tell you, I think on two or
7 three occasions, I've signed disbursements to pay
8 property taxes to the City of Berlin. So, that is
9 exactly how it's functioned to date, and I expect in
10 the future how it will function.

11 Q. Excellent. And, so that nothing about that
12 relationship has been changed by this change in
13 ownership structure?

14 A. (Bartoszek) Not all all.

15 Q. Now, just to make clear, prior to the change in
16 ownership structure, both you, I believe, and please
17 correct me if I'm wrong, through your holdings in
18 Laidlaw Energy Group, and then Mr. Bravakis and
19 Mr. Kusche through their respective LLCs, did have an
20 equity stake in the Project? Or, in -- no, I guess,
21 not in the asset and the facilities, but in the
22 operational entity? Is that a better way to say it?

23 A. (Bartoszek) Right. Kind of a simple way to look at it
24 is the PJPD owns the physical assets, and, under the

1 lease, our entitlement was largely to Project cash
2 flows.

3 Q. Got it. And, that entitlement on behalf of the
4 Applicant has not changed, simply the ownership
5 structure of the Applicant has, but your roles didn't.
6 So, you -- the three of you no longer have what I would
7 -- I mean, and I'm not an expert in this, but ownership
8 responsibilities, it's more management responsibilities
9 at this point. Is that a fair way to describe it?

10 A. (Bartoszek) Right. I mean, as I tried to point out
11 earlier, our roles are -- all the roles of people who
12 you see here during this proceeding, the roles really
13 aren't changing. So, I remain the President and CEO of
14 the Applicant. My underlying equity interest in the
15 Project or the underlying equity interest of my company
16 is contemplated to be sold. We still are an equity
17 holder, as things stand right now. We, obviously,
18 expect that transaction to close. But that is correct.
19 So, from a managerial perspective, everything remains
20 the same. From a -- it's simply a sale or a
21 transference of the underlying equity in the Project.

22 Q. Got it. Okay. Thank you. Now, this may be, you may
23 -- I know you're not in a position to bind PJPD to
24 answers, but a question I have is, when there's

1 questions about the development of the balance of the
2 property, and there's a lot of talk about possibly
3 collocating third party businesses, who's going to make
4 those decisions, in terms of who comes in as a tenant?
5 I mean, I know the City will have a zoning and a
6 planning role. But, in terms of selecting tenants,
7 would that be the Applicant or PJPD as the asset owner?

8 A. (Bartoszek) Well, the lessee, the Applicant, is
9 responsible for the entire property. So, we would have
10 a direct responsibility for those decisions. I can
11 tell you that, in connection with the contemplated
12 sale, the Board of Managers of the Applicant will
13 change and will be consistent with the Board of
14 Managers of NewCo. So, my reporting responsibility to
15 NewCo, who, if you come down this way [indicating], is
16 an owner of PJPD.

17 Q. Sure.

18 A. (Bartoszek) Obviously, they have a involvement in those
19 decisions from a corporate governance standpoint.

20 Q. Understood. Yes. And, so, I guess what I'm saying is,
21 you know, obviously, there will be -- the change in
22 board structure is going to mean a change in
23 personalities making these decisions, but the legal
24 entity making the -- well, every decision with regard

1 to what goes on on that property is still the
2 Applicant?

3 A. (Bartoszek) Yes. And, I probably should even -- I
4 wouldn't even characterize it as a "change in
5 personalities". Because, keep in mind, that NewCo has
6 been here all along.

7 Q. Sure.

8 A. (Bartoszek) And, they have been funding the equity --
9 been funding the development of the Project since we
10 entered into our agreement with them, our development
11 agreement. So, the personalities really all remain the
12 same, and I believe all remain committed to working
13 very closely with the City of Berlin.

14 Q. I'm glad to hear that. One more question about
15 taxation. I mean, is basically the funds that are
16 flowing, if I'm correct, there's a leasehold held by
17 Laidlaw from PJPD. The debt is issued by Aware, and
18 that debt is not issued back to NewCo, it's issued to a
19 variety of -- or is it issued?

20 A. (Bartoszek) That's a great question. I mean, maybe to
21 take a quick second --

22 Q. Please take your time.

23 A. (Bartoszek) -- and talk about project financing might
24 be in order. So, there will be at what we would

1 characterize the "financial closing" or the
2 "construction closing", a lender will make a loan to --
3 it could, it will presumably be the Applicant, but
4 oftentimes a new LLC is created for liability purposes,
5 but, you know, basically it's the applicant. And, the
6 long-term debt holder is basically the mortgage holder
7 of the property. And, he will most certainly require
8 that all revenues from the Project be sent to,
9 basically, to a lockbox, and there will be an agreement
10 that governs the disbursement of those funds from that
11 lockbox. And, that will invariably at the top of that
12 disbursement schedule is the operation and maintenance
13 of the facility, any property taxes, any federal taxes.
14 Those are almost invariably the top line items of
15 disbursement. And, then, the next level down will
16 generally be debt service, will be the obligations to
17 the lender, and then any obligations to any investors
18 subordinate to the lender. And, then, it just keeps
19 basically flowing down the list of designated payees.
20 And, generally, way, way, way down at the bottom, the
21 last guy, is if there's any profits left over,
22 hopefully.

23 Q. Well, as a stakeholder and a small share of that top
24 tier, the City is happy to hear that it occupies that

1 level of priority. One last question about the New
2 Market, excuse me, Tax Credits, am I correct in what I
3 heard that the Applicant plans to make a \$500,000
4 direct grant from those tax credits to the City?

5 A. (Bartoszek) My understanding is \$500,000 is set aside
6 for some type of funding for the City. I'm not exactly
7 sure how it's characterized. I can check into that and
8 get back to you. But I know the figure is correct, I'm
9 not exactly sure what it's designated purpose is.

10 Q. That will be great, and I'd love any more details you
11 have on that.

12 A. (Bartoszek) Sure.

13 MR. SCHNIPPER: Thanks. That's all I
14 have.

15 CHAIRMAN BURACK: Thank you very much,
16 Attorney Schnipper. Attorney Rodier.

17 MR. RODIER: Thank you, Mr. Chairman.

18 BY MR. RODIER:

19 Q. Mr. Bartoszek, I just want to acquaint us all with your
20 exhibits that have your name on them. And, those are
21 Exhibits 33, 34, 35, 36, Applicant's exhibits, is that
22 correct?

23 A. (Bartoszek) That sounds correct.

24 Q. Okay. Could we turn to Tab 33, Exhibit 33. And, let

1 me know when you have it.

2 A. (Bartoszek) All set.

3 Q. Okay. This was the original testimony filed last
4 December 16th or thereabouts?

5 A. (Bartoszek) Filed with the Application, correct.

6 Q. Right. Okay. And, very quickly, and let me just add,
7 I want to try to get through this in a half an hour,
8 that's my objective. Just wanted you to know that.

9 A. (Bartoszek) That sounds good.

10 Q. I'm sure the Committee is not upset to hear that. On
11 Page 1 of your prefiled testimony, you don't list any
12 formal education, so I just wanted to ask you just in
13 passing very briefly, do you have any formal secondary
14 education?

15 A. (Bartoszek) Yes. I attended both Rutgers and DePaul
16 Universities. I did not receive a degree.

17 Q. Rutgers and what?

18 A. (Bartoszek) DePaul University.

19 Q. Oh, the one out in Chicago?

20 A. (Bartoszek) Correct.

21 Q. Okay. So, let's go to the next tab, which is Exhibit
22 4, and --

23 A. (Bartoszek) I'm sorry?

24 Q. One more question on Exhibit 33. Because, as you're

1 aware, you probably are aware, that I'm going to focus
2 on the PPA pass-through issue, right?

3 A. (Bartoszek) I kind of figured you were going to talk
4 about that.

5 Q. Yes. Would you look at Page 7 of Exhibit 33. And, I'd
6 just like you to read Lines 19 -- 19 through 22.

7 A. (Bartoszek) "Positive factor in securing the debt
8 financing."

9 Q. Oh, I'm sorry. I may have misspoken. I meant to say
10 "Page 7, Lines 19" -- oh, I see what you did. There's
11 a partial sentence there. No. Start with the new
12 complete sentence "Under".

13 A. (Bartoszek) So, do you want me to read from Line 18 or
14 Line 20.

15 Q. Well, the easier thing to do is to just start -- is to
16 just do what you were going to do. But, when you get
17 to Line 22, stop after "terms of the PPA." Just stop
18 there. Read the rest of it.

19 A. (Bartoszek) Okay. "Positive factor in securing the
20 debt financing. Under the PPA, PSNH will purchase
21 100 percent of the Project's electric output and
22 capacity for a period of 20 years. As a hedge against
23 rising fuel prices, the energy price will be adjusted
24 based on the Project's cost of biomass fuel pursuant to

1 the terms of the PPA."

2 Q. Okay. That's good. "The energy price will be adjusted
3 based on the Project's cost of biomass fuel pursuant to
4 the terms of the PPA." Now, this passage was
5 subsequently amended, was it not?

6 A. (Bartoszek) That's correct.

7 Q. And, where would we find that under -- well, tell us
8 what the -- the next exhibit is what, 34?

9 A. (Bartoszek) Yes, after 33 comes 34.

10 Q. And, 34 is -- looks like it's just two pages. And,
11 this was an amendment filed May 7th, right after the
12 technical session. And, you filed an amendment to this
13 testimony, as well as the Application, did you not?

14 A. (Bartoszek) That's -- I filed an amendment to my
15 testimony, yes.

16 Q. Okay. And, could you just tell us what -- was
17 something taken out and something inserted?

18 A. (Bartoszek) Yes.

19 Q. Tell us what was taken out and what was inserted?

20 A. (Bartoszek) What was deleted, I don't have a redline
21 version in front of me, but --

22 MS. VAUGHN: You do.

23 WITNESS BARTOSZEK: Oh, in the other --

24 BY MR. RODIER:

1 Q. Well, let me ask, get to it on the questions then.

2 Mr. Bartoszek, I'll just ask some questions and we'll
3 get to the same point, if that's okay?

4 A. (Bartoszek) Sure.

5 Q. All right. Line 20 and 21, there's a sentence that
6 says "As a hedge against rising fuel prices, the energy
7 price will be adjusted based on the Project's cost of
8 biomass fuel pursuant to the terms of the PPA." That
9 was taken out?

10 A. (Bartoszek) That's right.

11 Q. And, if we go to Exhibit 34, Lines 20 and 21, the
12 sentence that read -- the new sentence inserted in its
13 place was "The Project will have incentives to acquire
14 fuel at competitive prices." Is that correct?

15 A. (Bartoszek) That's correct.

16 Q. Okay. Now, let's go to 35. And, 35 is supplemental
17 testimony that you put in on July 9th, correct?

18 A. (Bartoszek) I believe that's correct.

19 Q. Okay. All right. And, then, finally, we've got
20 Exhibit 36, which is a amended piece of testimony that
21 amends what?

22 A. (Bartoszek) The purpose of the amended testimony is to
23 make reference to the contemplated sale of the equity
24 to NewCo, as we previously discussed.

1 Q. Okay. So, and basically amends your testimony that you
2 filed as part of the Application, but that was
3 subsequently changed, this one change that we talked
4 about, but this amends -- it amends the December 16th
5 version, which incorporates the May 7th change, is that
6 correct?

7 A. (Bartoszek) I'm not quite sure if I'm following you
8 there. Perhaps you could restate the question.

9 Q. Okay. Well, I'm going to move on, because time is of
10 the essence here. You in the room the other day where
11 we sort of struggled trying to figure out how the price
12 that PSNH is going to pay you for your cost of wood
13 would be determined? We were talking about "what is
14 the WPA?" And, "what, if anything, does it have to do
15 with the price of wood at Schiller?" Do you recall all
16 that?

17 A. (Bartoszek) I do recall that. And, I'll be happy to
18 try to help you with that.

19 Q. Yes. How about a nice concise, simple explanation of,
20 under the PPA, what PSNH will pay you to reimburse you
21 for the cost of fuel that you consume in Berlin?

22 A. (Bartoszek) Well, as my colleague, Mr. Bravakis, was
23 trying to explain, that they're not going to pay us
24 anything associated with the cost of our fuel in

1 Berlin. Would you -- if you'd like, I could --

2 Q. Well, let me just stop you right there and ask you why?

3 Because it's not going to have anything to do with the
4 cost of fuel you burn in Berlin, it's going to be
5 related to the cost of fuel burned at Schiller?

6 A. (Bartoszek) That's right.

7 Q. I appreciate you saying that.

8 A. (Bartoszek) The Wood Price Adjustment is associated
9 with the price of wood.

10 Q. And, finally, it was something that simple that sort of
11 clears up the big question here. So, as a matter of
12 fact, I was looking at the -- are you familiar with the
13 testimony PSNH filed with the PUC?

14 A. (Bartoszek) I'm generally familiar with it.

15 Q. Okay. Did you review that before they put it in?

16 A. (Bartoszek) I did not.

17 Q. Okay. Let's me just, as an officer of the court here,
18 let me just read you what Richard Labrecque of PSNH
19 says on Page 4 of his testimony. It's pretty brief.

20 MR. NEEDLEMAN: Do you have a copy that
21 Mr. Bartoszek could look at?

22 MR. RODIER: We do not have an extra
23 copy. What I will do, Mr. Needleman, I'll put it on your
24 desk and I'll read from it, so you can see I've read it

1 correctly.

2 MR. NEEDLEMAN: No, no. I'm sure you
3 will. I'm not the witness. So, I just want him to be
4 able to see it and understand the context of it.

5 MR. RODIER: Okay. Would it be okay if
6 I read it, and then I give him a minute to review it?

7 MR. NEEDLEMAN: Sure.

8 MR. RODIER: Okay.

9 BY MR. RODIER:

10 Q. "Please describe the energy pricing. The energy base
11 price is -- redacted -- per megawatt-hour and applies
12 to the first calendar quarter of commercial operation.
13 In each subsequent calendar quarter, the energy base
14 price will be revised to incorporate a Wood Price
15 Adjustment (WPA), which", as one of these gentlemen
16 over here helped us the other day, by pointing out that
17 that is contained "in Article 6.1.2(a)(ii)."

18 Now, here's the heart of this. I'm
19 reading from Line 8 of Mr. Labrecque's testimony.

20 MR. RODIER: Court stenographer know how
21 to spell that name?

22 (Court reporter indicating "yes".)

23 BY MR. RODIER:

24 Q. "The WPA will reflect the difference between the actual

1 price per ton that PSNH paid for biomass fuel at the
2 Northern Wood Power Plant "Schiller Station" in the
3 immediately preceding quarter." "The difference", that
4 is the difference between base price and the price that
5 PSNH paid at Schiller, "The difference (in dollars per
6 ton), whether positive or negative, will be converted
7 into a dollar per megawatt-hour adjustment using a
8 multiplier of _____", it's redacted, I don't know what
9 that is, "per megawatt-hour. The final energy price
10 payable in the invoice period will be the base price,
11 as adjusted by the WPA." How does that strike you?
12 Does that strike you as accurate? Is that consistent
13 with your understanding?

14 A. (Bartoszek) Yes.

15 Q. Okay. I was hoping you would take a quick look at it
16 and give that back to me, after you look at it.

17 MR. RODIER: I will represent to the
18 Commission that's -- where did we get that? Off the
19 Commission's website?

20 MR. GABLER: Yes, it's off the website.

21 CHAIRMAN BURACK: And, Attorney Rodier,
22 do you know the date of that?

23 MR. RODIER: Oh, sure.

24 MR. IACOPINO: And docket number.

1 CHAIRMAN BURACK: Docket number and date
2 please.

3 MR. RODIER: Sure. This is the filing
4 that was made by PSNH on July 26, 2010. And, it was
5 pre-assigned a docket number, which I think is 10-195.

6 CHAIRMAN BURACK: Thank you.

7 BY MR. RODIER:

8 Q. You agree with that?

9 A. (Bartoszek) I'm sorry, what's the question?

10 Q. Do you agree with what Mr. Labrecque had to say?

11 A. (Bartoszek) I do.

12 Q. Okay. That's helpful. So, is it fair to say that the
13 price that you're going to bill PSNH is going to go up
14 and down based upon the difference between the base
15 price embedded in your contract and the price of wood
16 at Schiller, is that correct? Is that essentially
17 correct?

18 A. (Bartoszek) Yes. If you --

19 Q. Okay.

20 A. (Bartoszek) Do you mind if I expand on that?

21 Q. Well, maybe -- you know something, your attorney can
22 always do redirect. So, I'll ask the questions here
23 for the moment. I'm sure you understand. So, the
24 price you bill PSNH will fluctuate with the wood

1 market, won't it?

2 A. (Bartoszek) Well, that's not really the correct way to
3 characterize it --

4 Q. Well, it will go up and down based upon the cost of
5 wood at Schiller.

6 A. (Bartoszek) That's not really correct.

7 Q. Okay, now we're getting to the nut here. What don't I
8 understand?

9 A. (Bartoszek) Okay. Well, as you read in the testimony
10 of Mr. Labrecque, the concept behind the Wood -- the
11 WPA, the Wood Price Adjustment, is to capture the
12 differential between the base price and the price paid
13 at Schiller Station. And, just some background behind
14 why we did this this way. It's not uncommon, in
15 connection with the financing of a biomass plant, for
16 lenders and investors, who are going to commit
17 significant capital, to want some sort of mechanism to
18 pass through the variable cost of biomass fuel. It's,
19 you know, it's a critical issue with respect to
20 financing.

21 In this case, and we spent more than two
22 years negotiating with Public Service of New Hampshire,
23 this contract, and I can tell you that PSNH was
24 critically concerned with the -- making sure that this

1 contract did not have any undue impact on ratepayers.
2 Indeed, if you continue reading the next paragraph of
3 the paper you provided me, you'll see that they make
4 reference to that. So, rather than provide a Wood
5 Price Adjustment based on our actual cost of wood at
6 the plant, which the concern was it might take away our
7 incentive necessarily to get the best price for wood.
8 How do you police that, whether or not we're getting
9 the best price? And, it became a cumbersome effort to
10 try to find some mechanism to make sure we were always
11 getting the best price for biomass fuel.

12 So, it was suggested that, instead of
13 doing that, we would use PSNH's price at Schiller
14 Station as a means of adjusting the price of
15 electricity. And, the price that PSNH pays to start
16 out with does not have bearing on the adjustment to the
17 price of our electricity, it's only the differential.
18 And, that difference is adjusted on a quarterly basis.
19 So, it's not fluctuating up and down, as you
20 characterize it. It's analyzed on a quarterly basis,
21 and then an adjustment. And, the key here, and the key
22 benefit to ratepayers also, is, up or down, adjustment
23 is made to the price of electricity based on the
24 fluctuation of the price at Schiller.

1 Q. Well, let me just read the next couple of sentences
2 then. This is Line 17 through 20. "What is the
3 purpose of the WPA?" "The parties to the PPA were
4 concerned that the cost of biomass fuel delivered to
5 the Project could vary over the 20 year term of the
6 PPA. Without the WPA, LBB could be faced with
7 increasing fuel costs and declining operating margins
8 or even losses, perhaps to the extent that production
9 would have to cease." So, you have to be able to
10 recover at least any possible increases in fuel costs,
11 don't you? And, the vehicle to do that is this WPA,
12 isn't that correct?

13 A. (Bartoszek) No, that's not. And, if you continue
14 reading, it gets to the part about --

15 Q. I'm just asking you, --

16 A. (Bartoszek) No, that's not correct.

17 Q. -- not to go into rebuttal mode here, but just to
18 respond to the question.

19 A. (Bartoszek) I'm sorry. That's -- I'm sorry, that's not
20 correct.

21 Q. Tell me why that's not correct.

22 A. (Bartoszek) Because, as I understand your question,
23 you're associating it with the price of our fuel. And,
24 it is not connected to the price of our fuel --

1 Q. I understand that.

2 A. (Bartoszek) -- in Berlin. The adjustment is solely
3 with respect to the price of electricity, and the
4 adjustment, up or down, is tied to how Schiller, a
5 large, and presumably a buyer that's able to get a
6 fairly competitive market price for biomass, the price
7 they pay, the differential between the price they pay,
8 and that impacts our price for -- that we have paid for
9 our electric output, not our biomass fuel input.

10 Q. Well, what it comes down to is you have a base price in
11 your contract with PSNH, right?

12 A. (Bartoszek) That's correct.

13 Q. The base price is adjusted up and down at a difference
14 between the cost of Schiller wood to Public Service in
15 its relationship to the base price, is that correct?

16 A. (Bartoszek) That's -- yes, that's correct. And, up or
17 down.

18 Q. Yes. And, let's just have a hypothetical. Let's
19 assume they go up. Let's assume the delta or the
20 difference between the cost of wood PSNH buys to burn
21 at Schiller becomes significantly greater than the base
22 fuel price, okay? Do you have that hypothetical in
23 mind?

24 A. (Bartoszek) I understand what you're saying.

1 Q. Okay. Then, there's going to be an adder to the base
2 price, correct?

3 A. (Bartoszek) The portion of the formula is redacted, so
4 I'm not comfortable talking about the exact
5 calculation.

6 Q. Some of it -- Some of it will be added to the base
7 price?

8 A. (Bartoszek) The general point is correct. That, if the
9 price of fuel goes up, the differential somehow adds to
10 the base price of electricity.

11 Q. Okay. So, the price PSNH pays to you would then
12 increase under that hypothetical?

13 A. (Bartoszek) Under that hypothetical, the price of
14 electricity paid to us, assuming that that were to
15 occur at the close of the quarter, as characterized in
16 the PPA, --

17 Q. Right.

18 A. (Bartoszek) -- that, in aggregate, it is higher, yes,
19 it could potentially adjust the price of electricity
20 up.

21 Q. Would you agree --

22 (Court reporter interruption.)

23 MR. RODIER: Sorry.

24 BY MR. RODIER:

1 Q. Would you agree then that that increase is just passed
2 through to PSNH's ratepayers ultimately?

3 A. (Bartoszek) I can't really speak for how PSNH deals
4 with those things.

5 Q. Okay. You didn't review the filing that they made with
6 the PUC?

7 A. (Bartoszek) I am generally familiar with the filing,
8 but --

9 Q. Okay. And, in that filing, it says they need approval
10 by November 10th or this deal, lock, stock, and barrel,
11 without any change in PSNH's ability to recover costs
12 fully from its ratepayers. You're aware that that's in
13 there?

14 A. (Bartoszek) I am aware of their filing.

15 Q. Okay. And, so, this is without, I mean, this is just a
16 huge thing for your project, correct? I mean, it's
17 absolutely indispensable, it's what the success of this
18 project depends upon, is having this PPA to recover
19 these cost fluctuations, is that correct?

20 A. (Bartoszek) The ability to attract financing to a large
21 capital project of this type is dependent upon
22 certainty of cash flow.

23 Q. Right.

24 A. (Bartoszek) Which is what the PPA provides.

1 Q. Now, we premarked into evidence, I'm going to ask you
2 to turn to what is "CPD Exhibit 4". And, do you have
3 CPD Exhibit 4?

4 A. (Bartoszek) Yes.

5 Q. This is Laidlaw's data response. It's actually to a
6 question from the Office of Public Counsel. And, I'm
7 looking at Question 14 and its response. Do you see
8 that?

9 A. (Bartoszek) Yes.

10 Q. And, could you read that question and response.

11 A. (Bartoszek) "Is a PPA necessary in order to make the
12 Project financially viable? Response: Yes."

13 Q. Okay. So, that was your response then, and it still is
14 your response today?

15 A. (Bartoszek) I stand by that response.

16 Q. Now, Mr. Bravakis, you were sitting right there, says
17 "The price the project pays does not affect the cost of
18 electricity." Now, I'm starting to see that there's
19 two ways you can interpret that. If you say "the cost
20 of electricity to the ratepayers", that's not true,
21 strictly. Well, let me just tell you what he said:
22 "The price the Project pays (for wood) does not affect
23 the cost of electricity." Do you agree with that?

24 A. (Bartoszek) I do.

1 Q. And, given what we just went through here, your earlier
2 questions and answers, just explain to the Committee
3 why that statement's not true.

4 A. (Bartoszek) As I explained, the price, we would have
5 liked to have had a pass-through of what we pay for
6 wood, that would have been probably, you know, a good
7 way for us to do it. And, as I said earlier, it's not
8 uncommon in the financing of these types of plants to
9 see that kind of mechanism. But, at the end of the
10 day, PSNH felt it was more in their interest of their
11 ratepayers to be able to have a certainty that the
12 Project was getting the best price with respect to --
13 well, not necessarily the best price with respect to
14 fuel, but not to give us the ability or not to have to
15 run into that question as to whether or not we were
16 getting the best price for fuel.

17 Q. Okay.

18 A. (Bartoszek) Which would be associated with giving us
19 the ability to just pass through our fuel costs.

20 Q. Right.

21 A. (Bartoszek) So, they having a Schiller Station, which
22 clearly could be -- the price they pay for wood fuel
23 could clearly be ascertained, and the difference -- the
24 differential clearly ascertained as a way to adjust the

1 price of electricity, made a great deal of sense for
2 this project.

3 Q. Okay. So, it's true that I was sceptical of this
4 response, but now I understand it. Because it's not
5 the price that the Project pays, because that doesn't
6 affect the cost of the electricity. It's whatever you
7 are reimbursed by PSNH for wood consumption, based upon
8 the prices at Schiller that affect the cost of
9 electricity?

10 A. (Bartoszek) No. I mean, you're -- you're not quite
11 getting it right. It's not tied to the price of wood
12 consumption. In fact, we're incentivized to try to
13 keep our price of wood consumption as competitive as,
14 you know, as possible, because we cannot pass that
15 price through. Whatever we pay for wood is what we pay
16 for wood.

17 Q. Got it.

18 A. (Bartoszek) We get a price adjustment to the revenue
19 side, to what we receive for electricity, if Schiller
20 -- if there is an adjustment associated with the price
21 Schiller pays for its fuel.

22 Q. Right.

23 A. (Bartoszek) And, you know, again, I mean there's -- I
24 don't want to draw any inference from what you're

1 saying, but, really, this is a very good way of doing
2 this. It really is in the interest of ratepayers to do
3 it this way.

4 Q. Well, --

5 A. (Bartoszek) Because how, otherwise --

6 Q. Maybe your attorney can ask you about that, because
7 that's not what I'm getting into here, okay?

8 A. (Bartoszek) Sure.

9 Q. But the price that you bill PSNH for the volume of wood
10 that you consume in Berlin does affect the price for
11 electricity to ratepayers?

12 A. (Bartoszek) We don't bill PSNH for the price of wood we
13 receive in Berlin.

14 Q. And, the price PSNH reimburses you for the wood you
15 burn --

16 A. (Bartoszek) You can -- we can discuss this all day
17 long, but it's not going to change. The price we pay
18 for wood in Berlin is not tied to what we receive --

19 Q. No. One more time. I said the price you pay PSNH, for
20 the tons of wood you burn in Berlin, does affect the
21 cost of ratepayers, because the base price is adjusted
22 by the WPA, which tracks the cost of wood burned at
23 Schiller, no?

24 A. (Bartoszek) Can you please restate the question?

1 Q. No, that's all right. I think we got the picture here,
2 and I don't want to wear out my welcome. And, by the
3 way, is LL -- I call it "LLEG", because it's your
4 ticker symbol, isn't it, "LLEG"?

5 A. (Bartoszek) That's correct.

6 Q. All right. They're not an owner of NewCo, are they?

7 A. (Bartoszek) No.

8 Q. I looked at the list. Okay. So, by the way, anyone
9 from NewCo in the room?

10 A. (Bartoszek) Yes. Yes, there is.

11 Q. Okay. So, if the Commission had any questions,
12 obviously, for NewCo, it's up for them to decide,
13 because there is somebody here?

14 A. (Bartoszek) Yes.

15 Q. Okay. And, by the way, your role, continuing role,
16 you're going to be an employee of what I call "LBB",
17 the Applicant?

18 A. (Bartoszek) My role remains the same. I'll be the
19 chief executive of the Applicant.

20 Q. And, are you going to be compensated?

21 A. (Bartoszek) My -- No, I'm not going to be compensated.

22 Q. So, let me ask you a question, I just want to get to a
23 point here. I'm leaving this adjustment clause, maybe
24 somebody else can do better than I did. But you want

1 to start construction this fall, don't you?

2 A. (Bartoszek) We want to start construction by the end of
3 the year, that's correct.

4 Q. Okay. For all the reasons that we know, you want to
5 get these tax incentives, right?

6 A. (Bartoszek) It is, yes.

7 Q. Okay. According to your filing at the PUC, you need a
8 final decision from the PUC by November 10th?

9 A. (Bartoszek) I believe that's what it says, correct.

10 Q. Okay. Or what?

11 A. (Bartoszek) I'm sorry.

12 Q. Or what? What happens if you don't get that?

13 A. (Bartoszek) It is important for the Project to commence
14 construction by the end of the year, as I believe it
15 was discussed earlier in these proceedings, for the
16 purposes of qualifying for the federal Investment Tax
17 Credit, which is an important part of financing the
18 Project.

19 Q. Do you want me to have the question read back to you?
20 Or, why don't I just rephrase it. I said, "or what?"
21 What's going to happen if you don't get that approval
22 by November 10th?

23 A. (Bartoszek) Oh, I'm happy to try to answer that. If we
24 don't receive approval by November 10th, potentially,

1 the Project may not receive the Investment Tax Credits,
2 and that might have a negative impact on the Project.

3 Q. Okay. And, by the way, that's not just a decision from
4 the PUC, it's probably -- I think it says "a final
5 unappealable order from the PUC", doesn't it?

6 A. (Bartoszek) I believe that's what it says, --

7 Q. So, that means that, if there's a trip to the Supreme
8 Court here in the future, then that has to take its
9 course before you start construction, isn't that right?

10 MR. NEEDLEMAN: I want to object to that
11 question. I think he's calling for a legal conclusion.

12 CHAIRMAN BURACK: Yes. I'm not going to
13 ask him to answer that question.

14 MR. RODIER: I'm sorry, Mr. Chairman?

15 CHAIRMAN BURACK: I'm not going to ask
16 him to answer that question. I think you are asking for a
17 legal conclusion.

18 MR. RODIER: Okay. That's fair. That's
19 correct. The document will speak for itself, okay.

20 BY MR. RODIER:

21 Q. So, I am -- I'm just going to ask, I'm getting there, I
22 might not quite make it, but you had a term sheet,
23 November 20, it's dated -- you issued a press release
24 in September 29, 2008, announcing the PPA, didn't you?

1 A. (Bartoszek) That sounds correct.

2 Q. Yes. Okay.

3 A. (Bartoszek) I don't have it in front of me, but that
4 sounds --

5 Q. So, you're almost two years later to get this thing out
6 the door and signed, right?

7 A. (Bartoszek) Yes. I believe the original announcement
8 was our reaching a term sheet and agreement on general
9 terms --

10 Q. Okay.

11 A. (Bartoszek) -- of the PPA. And, yes, it took quite a
12 while to negotiate.

13 Q. Okay. Couldn't get it done any faster? Took two
14 years, even after you issued the press release?

15 A. (Bartoszek) Yes. As I said earlier, it took two years
16 to negotiate the contract.

17 Q. Did you have a letter of intent?

18 A. (Bartoszek) Yes, we had -- well, we had -- I guess I
19 would characterize it as a "letter agreement".

20 Q. A letter agreement. So, was it binding on each side?

21 A. (Bartoszek) I'm not sure I can really -- is that
22 something that should be part of the confidential
23 session? I'm not sure to what extent I can comment on
24 that.

1 MR. NEEDLEMAN: I don't believe the
2 letter agreement is an exhibit here. And, I'm not aware,
3 as I sit here, what the nature of it is, but I believe we
4 considered it confidential in the past.

5 MR. RODIER: All right. All I asked is
6 whether it's -- "the letter agreement was binding". Look,
7 I'm going to keep moving, Mr. Chairman.

8 WITNESS BARTOSZEK: Just to be clear, I
9 want to help you and I want to answer your question. I'm
10 just not sure if I'm permitted to answer the question.

11 MR. RODIER: Yes. Okay.

12 BY MR. RODIER:

13 Q. Now, I guess -- so, the final thing, really, is I'm
14 really interested in this question that came up, I
15 think it was Mr. Bravakis, I said -- we were talking
16 about, because of concerns about greenhouse gases, they
17 may change the rules for RECs in Massachusetts. And,
18 one of the results that could happen this fall is that
19 plants like yours could lose their ability to qualify
20 for a certain class of RECs in Massachusetts. Do you
21 recall those discussions?

22 A. (Bartoszek) Yes, I do.

23 Q. Okay. And, then, I said "well, you know what? Once
24 these things go viral, that could spread to New

1 Hampshire, it could happen in New Hampshire." So, I
2 asked a hypothetical, or maybe I'll ask it now. And, I
3 have to stop myself, because I didn't lay the base for
4 the question. But you get compensated under this PPA
5 by PSNH for RECs, don't you, produced by this plant?

6 A. (Bartoszek) Yes.

7 Q. Hypothetical. New Hampshire follows suit and says
8 "Plants like yours, which are not combined heat and
9 power, don't qualify for New Hampshire RECs anymore."
10 Are you still going to get paid by PSNH?

11 A. (Bartoszek) I'd have to defer to the terms of the
12 contract. I'm not exactly sure how to interpret that.

13 Q. I mean, I looked at it. It looks like they still got
14 to pay you.

15 A. (Bartoszek) I think that -- I think that's correct.

16 Q. So, they may not exist and have no value, but the deal
17 would be you still get paid.

18 A. (Bartoszek) Well, look at it this way. You enter into
19 a contract with somebody today, and you make an
20 agreement. And, then, in connection with that
21 agreement, somebody invests \$160 million to build
22 something, I think it's reasonable to expect that folks
23 are going to honor the terms of the contract. So, if
24 you were to then say two years later "I'm going to

1 change the deal, after you've spent \$160 million", that
2 would be a pretty tough thing to do.

3 MR. RODIER: Okay. Let me check my list
4 here. I'm okay, Mr. Chairman. And, I delivered.

5 CHAIRMAN BURACK: Thank you very much,
6 Attorney Rodier. Appreciate that.

7 MR. RODIER: Yes.

8 CHAIRMAN BURACK: Okay. Going to turn
9 now to counsel for the public for questions for this
10 panel.

11 MR. BROOKS: Thank you, Mr. Chairman.

12 BY MR. BROOKS:

13 Q. Mr. Bartoszek, one of the questions from Attorney
14 Rodier prompted you to start answering by saying "it's
15 in the interest of ratepayers to do it this way", and
16 this is with respect to the WPA. Mr. Rodier preferred
17 not to have that distract from his questioning, but I'd
18 actually like you to expand on why it would be in the
19 interest of the ratepayers to have the WPA set up this
20 way?

21 A. (Bartoszek) That's a great question. I appreciate the
22 opportunity to answer it. As I said earlier, the
23 challenge in attracting long-term financing for a
24 biomass plant is it's -- biomass is a commodity, is not

1 as easily contracted for as, say, natural gas, where
2 you could go out and you could find a counter-party who
3 could provide a guaranteed, long-term agreement to
4 supply natural gas at a price that provides certainty
5 with respect to that expense for the plant. So, one of
6 the ways commonly, that this is commonly dealt with in
7 the financing of these types of projects is that
8 variable cost to biomass fuel is passed through to the
9 buyer of the power, and that price fluctuates up and
10 down. And, in our discussions, certainly that was
11 something that we proposed to PSNH. And, the response
12 that we got back from PSNH was they were concerned
13 that, if we structured the deal that way, we would lose
14 our incentive to necessarily get the best price for
15 biomass, and then that would be disadvantageous to
16 ratepayers. If, basically, we were able to pay
17 whatever we wanted to pay for biomass fuel, pass that
18 through to PSNH, who, in turn, pass that through to
19 ratepayers, that wouldn't be a good thing.

20 By doing it the way we ultimately
21 agreed, and tying the price to the differential at
22 Schiller Station, which is a -- pays a market-based
23 price, I think all the parties felt -- and, a
24 market-based price, which, as I think you heard from

1 the Cousineau representative, that is reasonably
2 comparable to the price of wood in Berlin, we feel that
3 that is a reasonable way to do it, that addressed the
4 concern, but ensured that ratepayers were not unduly
5 burdened by paying too much for this mechanism in the
6 contract.

7 Q. Okay. So, the advantage to ratepayers would be the --
8 in comparison to the alternative, of having them pass
9 through costs be related to your actual cost of fuel
10 procurement, because you would no longer necessarily be
11 incentivized to reduce those costs?

12 A. (Bartoszek) Right. I mean, I'm not necessarily saying
13 that that's -- that that's the way it would work in
14 reality. Obviously, I think a business is always going
15 to try to do its best to negotiate the best deal. But,
16 certainly, that was a concern that was raised by PSNH,
17 and I think it's a valid concern. And, this is the way
18 that we chose to address it.

19 Q. Okay. And, I just wanted to, again, make sure that,
20 when you say "it's in the interest of ratepayers", it's
21 a comparison between a situation where their
22 pass-through costs would have been tied to whatever
23 your procurement costs were, and, rather than that,
24 have the choice be to have it tied to something that

1 they actually control, which is the cost of wood at
2 Schiller?

3 A. (Bartoszek) That's right. I mean, and just to
4 elaborate slightly, because you wouldn't otherwise --
5 it would be very difficult to otherwise finance a
6 project like this. So, if the end goal is "we want the
7 Project and we believe it's a good thing for the North
8 Country", expecting a long-term lender to accept the
9 variable risk of fuel going up and down is pretty
10 unrealistic. So, that it has to be dealt with some
11 way, and this was what all the parties -- what the
12 parties felt was the best way in the interest of
13 ratepayers to deal with it.

14 Q. Okay. That gets to the specific interest of ratepayers
15 with respect to those alternatives. Either having a
16 price tied to your fuel costs or the Schiller fuel
17 costs. But what about the interest of ratepayers
18 overall for PSNH in this type of situation, where their
19 price of energy will be tied to a fuel source, like
20 wood? And, I say that, because, at least I can
21 envision it, and maybe you can tell me why this isn't
22 true, but a situation where the actual price, let's
23 say, the spot price for electricity on the grid goes
24 pretty low, but, for some reason, the price of wood is

1 very high. Under the PPA, they're actually going to be
2 paying you more for their electricity, even though the
3 spot prices for electricity are down. So, is it still
4 in the interest of the ratepayers for them to enter
5 into that type of agreement?

6 A. (Bartoszek) It's definitely in the interest of
7 ratepayers, because you have to look at it, it's really
8 more of a macro issue, because a considerable portion
9 of the electricity generated in this region of the
10 country is tied to natural gas, which is an incredibly
11 volatile commodity. And, I'm sure it's not, folks in
12 this room, a pretty common -- have, I'm sure, heard of
13 the spiking prices of natural gas during the cold
14 months. So, it's definitely in the interest of
15 ratepayers for PSNH to diversify its portfolio of
16 electricity, the sources of fuel for its electric
17 consumption, by looking at an alternative fuel like
18 biomass.

19 MR. BROOKS: I assume anything, and I'll
20 let Attorney Needleman chime in, too, that I would want to
21 ask you about the actual financial terms in the PPA, I
22 should wait?

23 CHAIRMAN BURACK: Attorney Needleman.

24 MR. NEEDLEMAN: I mean, certainly, to

1 the extent it's confidential, yes. I think the Chair has
2 been saying, if you think there's a way to ask for it in
3 public, go ahead and try and we'll figure it out from
4 there.

5 MR. BROOKS: It wouldn't be a good try,
6 actually.

7 (Laughter.)

8 BY MR. BROOKS:

9 Q. Well, you answered the question about the Massachusetts
10 REC Program. So, that program, and this has been asked
11 before, but that program, whether it comes or goes,
12 you're saying doesn't affect the Laidlaw Project?

13 A. (Bartoszek) That's right. I mean, that's not the --
14 that proposal does not exist in New Hampshire, it's not
15 the law in New Hampshire, and nor is it -- I mean,
16 that's basically the answer. It's not something that's
17 occurring in New Hampshire.

18 Q. Can we go back to your first answer, which was with
19 respect to the organizational chart. And, maybe to
20 kind of make it clearer for me, which probably means
21 dumbing it down. But I want to know, basically, who
22 has the money on that chart? And, it sounds like the
23 money might come from a third party lender. Maybe
24 that's just the debt financing portion, and the equity

1 comes from somewhere else or something else. So, can
2 you trace the money for me on -- using that chart?

3 A. (Bartoszek) Yes. Your assumption is correct, in the
4 capital structure. So, this would be -- NewCo would be
5 equity, and then they contributed their to acquire the
6 assets on this side [indicating].

7 CHAIRMAN BURACK: I'm sorry, on which
8 side were you pointing to?

9 CONTINUED BY THE WITNESS:

10 A. (Bartoszek) I'm sorry. So, flowing down the left side
11 of the chart, it contributed equity down this stream,
12 to Aware, and, in turn, to PJPD, to acquire the
13 physical assets of the plant. That's basically equity
14 capital. And, then, flowing down the right side of the
15 chart, they've, in connection with the contemplated
16 transaction, are now acquiring the cash flows of the
17 Project under the PPA. So, in addition to the equity
18 capital, we have other sources of capital that have
19 been discussed. And, one of those is the New Market
20 Tax Credits, which would contribute additional equity
21 or -- in a project financing, the senior lender is
22 basically like the mortgage holder on your house. They
23 pretty much have all the -- they have first crack at
24 the collateral. So, anybody below the senior lender,

1 even if they have got a second mortgage or a second
2 loan, they're basically kind of characterized as
3 "equity". So, the New Market Tax Credit funds may flow
4 into the Project as a loan, but that loan will be
5 subordinate to the ultimate senior lender -- and my
6 marker is running out -- who's going to contribute long
7 term debt, or is going to contribute capital to fund
8 the balance of the construction of the Project, in
9 consideration for long-term debt, the amortization of
10 which will be tied to the cash flows associated with
11 the Power Purchase Agreement.

12 So, coming back to why the Power
13 Purchase Agreement is important and an integral part of
14 the financing of the Project, that lender will now,
15 with some degree of certainty, what the revenues of the
16 Project are going to be looking forward 20 years, and
17 can structure the amortization of its financing to
18 coincide with that.

19 Q. Thank you. I had a number of questions about
20 basically, you know, interconnection to the Coos Loop.
21 Is this the right panel to ask that?

22 A. (Bartoszek) My colleague, Mr. Kusche, handles largely
23 interconnection matters for us. So, it might be best
24 to defer those to him.

1 MR. BROOKS: Okay.

2 MR. ROTH: As a starting point, it may
3 make sense, since you've now changed the chart, for us to
4 make a copy of that chart and introduce it as an exhibit.

5 MR. NEEDLEMAN: I was actually going to
6 ask whether there's a way ultimately to, whatever we end
7 up there, make the whole --

8 MR. ROTH: Yes, you press that green
9 button, and that bar moves across it and makes a copy of
10 it.

11 MR. IACOPINO: Is it plugged in?

12 WITNESS BARTOSZEK: Well, I kind of
13 scrawled on it. It might be better if we could produce a
14 better copy and submit it, explaining what I've written up
15 there, unless you really prefer to have that. It wasn't
16 my intention to --

17 MR. ROTH: It would, actually, it
18 wouldn't be a bad idea if someone could provide sort of a
19 capital structure of the project, separate from the
20 corporate structure, in some sort of a chart or graphic
21 like that. It always helps, for me anyway, to see it sort
22 of laid out.

23 WITNESS BARTOSZEK: Sure, we can do
24 that.

1 BY MR. ROTH:

2 Q. And, right now, I already have some questions about the
3 price of the Project or the cost of the Project. And,
4 you just mentioned twice, a minute ago, that, and you
5 seem to be talking about a hypothetical project, but
6 I've seen this figure elsewhere, and you suggested that
7 "the project is \$160 million." Is that the correct
8 figure?

9 A. (Bartoszek) Well, Mr. Roth, I think, as we discussed in
10 a technical session, it's hard to pin that down until
11 we execute the final EPC Contract, because that's the
12 contract that's going to give us the final figure for
13 what the Project is going to cost. But that's roughly
14 the current estimate, between \$160 and \$170 million.

15 Q. Okay. So, the 80 and 30, the 80 million in debt and
16 the 30 million in equity that, and I thought it was a
17 \$110 million price tag that was expressed in the
18 Application. That's not -- that's no longer correct?

19 A. (Bartoszek) Yes, I apologize. There's some confusion
20 over that. I know -- I thought we supplied the updated
21 \$160 million figure, and perhaps it was in our
22 responses to the interrogatories. So, I thought that
23 information had been provided. So -- or, updated.

24 Q. It's possible, in the data request responses, it was,

1 but the Application itself I think still reflects a
2 \$110 million price. But you're now saying it's 160 to
3 170?

4 A. (Bartoszek) That's correct. And, there is also, I
5 think as Mr. Bravakis pointed out yesterday, there's a
6 few different ways to characterize the "price" of the
7 Project. Whether or not you're talking about
8 construction cost or whether you're talking about the
9 all-in final cost that the financing is based on,
10 because that will incorporate the costs of issuance,
11 will involve numerous reserve funds, both for reserve
12 funds associated with the debt -- debt service reserve
13 funds, reserve funds for major maintenance, reserve
14 funds for working capital, and a bunch of other project
15 costs, and that's what ultimately brings it up to the
16 \$160 to \$170 million. So, the construction cost would
17 be a lot closer to the \$110 million in the Application.

18 Q. But, for purposes of sort of your capital structure,
19 you said, in the Application, "80 million in debt,
20 30 million in equity", which leaves you roughly, you
21 know, what, \$50 to \$60 million short of that 160-170?

22 A. (Bartoszek) Right. That's correct. Perhaps we should
23 update those figures to reflect the most recent
24 estimates.

1 Q. Okay. And, these are probably confidential questions,
2 but do you know who the lender is for the 80 million in
3 debt? Have you worked up a term sheet with a lender
4 for the 80 million in debt?

5 A. (Bartoszek) We've engaged Key Bank Capital Markets to
6 arrange the debt financing, the project financing for
7 the Project. And, in my discussions with Key Bank,
8 they have given us a high degree of confidence that,
9 based on where the Project stands currently, that they
10 can arrange the financing for the Project.

11 MR. ROTH: Okay. Is -- and, I know that
12 Key Bank is not one of your witnesses, but is somebody
13 from Key Bank here, just in case somebody has any
14 questions for them?

15 MR. NEEDLEMAN: He was here for two
16 days, and we are going to try to get him back this
17 afternoon. I know he's unavailable tomorrow.

18 MR. ROTH: Okay. That's good to know.
19 Thank you.

20 BY MR. ROTH:

21 Q. So, at this point, is it fair to say from your answer
22 that you don't yet have a commitment letter or a term
23 sheet for a loan package through Key Bank?

24 A. (Bartoszek) The -- two answers. In order to get a

1 commitment letter to definitively commit a lender to a
2 financing, we need to have all material permits in
3 place. So, that's really a chicken-and-the-egg
4 question in this kind of proceeding. We do have, in
5 the confidential exhibits, I know a letter from Key
6 Bank and a letter from -- a comfort letter from an
7 investor.

8 Q. Okay. And, we'll talk about those in the confidential
9 session. But isn't, I mean, isn't it common for a
10 commitment letter, a term sheet to include in it
11 conditions to closing that would include arranging and
12 having in place all your necessary permits?

13 A. (Bartoszek) It could. I mean, it could be either way
14 around. But, generally, for someone to really go to
15 that level, I mean, you know, a commitment letter, that
16 does have outs, as you've described. But the
17 preferable way to, for a large financial institution to
18 write a commitment letter, would be really to subject
19 it to as few closing conditions as possible. So, it's
20 not unreasonable for the lender to want all material
21 permits and contracts in place before providing that
22 letter.

23 Q. Has the comfort letter prospect identified that they
24 wouldn't do a commitment short of that that included

1 sort of conditionality on permits? Maybe that's --

2 A. (Bartoszek) Maybe that's something better for the
3 confidential session.

4 Q. Okay. All right. Now, I'm kind of interested in, in
5 terms of the corporate structure, sort of who's in
6 charge. And, I know that you're identified as the "CEO
7 of Laidlaw Berlin BioPower, LLC". But you're not being
8 compensated for that. Is that -- that was your
9 testimony of a few minutes ago, that you receive no
10 compensation for your position as officer of the
11 Applicant?

12 A. (Bartoszek) Yes. I'm sort of -- I'm sort of unclear
13 how to answer that, because it touches on some of the
14 aspects of the contemplated sale to NewCo. And, I'm
15 not sure to what extent those details are confidential
16 or disclosable. So, upon reflection, I think it's fair
17 to say that I'm being compensated for my role. So, I
18 think I probably misspoke there.

19 Q. So, are you being compensated by Laidlaw, the public
20 company, of which you are also an officer?

21 A. (Bartoszek) No, no. They're -- it's not involved in
22 the transaction.

23 Q. Okay.

24 A. If you're asking me, am I compensated in my role as CEO

1 of Laidlaw Berlin BioPower, I believe that I am
2 receiving consideration in connection with being an
3 equity -- indirect equity holder in this transaction
4 for acting in that role.

5 Q. Okay. An "indirect equity holder". Now, I didn't see
6 your list -- your name among the list of people in
7 NewCo?

8 A. (Bartoszek) No, I'm not an equity holder in any way of
9 NewCo. So, the --

10 Q. Okay. So, are you an indirect equity holder of the
11 Applicant?

12 A. (Bartoszek) I am currently, but I will not be after
13 this transaction closes. So, obviously, there's
14 consideration paid for the sale of the -- the
15 contemplated sale, and upon receipt of that
16 consideration to corporate entities in which I'm an
17 equity holder, I would indirectly be receiving
18 consideration.

19 Q. Okay. I see. And, you indicated that there were going
20 to be changes of the management and board of Laidlaw
21 Berlin BioPower with that purchase. Was that -- did I
22 understand that correctly?

23 A. (Bartoszek) Right. The buyer now, who will own
24 100 percent of LBB, will want -- will be putting its

1 own Board of Managers in place.

2 Q. So, does that mean you and Mr. Bravakis and Mr. Kusche
3 are no longer going to be involved in the Project?

4 A. (Bartoszek) No, not at all. I mean, nothing is
5 changing in terms of the administrative -- our
6 administrative roles in the Project. We simply report
7 to a new board.

8 Q. So, after this transaction with -- between NewCo and
9 public Laidlaw, you will still be President of the
10 Applicant, Mr. Bravakis and Mr. Kusche will both be
11 Vice Presidents after-the-fact?

12 A. (Bartoszek) That's exactly correct.

13 Q. But Mr. Cyr, Mr. Mueller, and Mr. Ferree will be gone,
14 is that --

15 A. (Bartoszek) No. Mr. Cyr, Mr. Mueller, and Mr. Ferree
16 will be the Board of Managers of the new -- of the
17 Applicant at that time.

18 Q. Okay. So, then, this list of officers of the Board,
19 officers and directors of the Board of the Applicant is
20 post transaction?

21 A. (Bartoszek) That's correct.

22 Q. Okay. So, just so I understand it, going forward there
23 will be no connection to public Laidlaw. Correct?

24 A. (Bartoszek) That's right.

1 Q. And, this was more or less contemplated from the start,
2 is that my understanding? That there was -- I think,
3 in the Application, or somewhere in the material I saw,
4 it was contemplated that NewCo was going to buy out
5 public Laidlaw from the very beginning, correct?

6 A. (Bartoszek) No, no. I think what you might be
7 referring to, Mr. Roth, is the contemplated sale/lease
8 back transaction?

9 Q. Well, you tell me. I mean, what I thought I saw was
10 that NewCo was going to be taking up public Laidlaw?

11 A. (Bartoszek) No. That was not contemplated from the
12 beginning. I'll give you a brief explanation. I think
13 you might be referring to is the sale/lease back
14 structure that we chose to utilize for the financing of
15 the Project. So, when we, it's probably worth noting,
16 that we've been associated with Berlin, the Berlin
17 Project and this property going back to 2006, late
18 2006. And, when, we initially started working on the
19 Project, we invested our own equity, at our own cost,
20 to explore the viability of the Project. As
21 Mr. Bravakis kind of outlined yesterday, the sort of
22 fatal flaw analysis that you go through in order to
23 ascertain if a project has viability.

24 CHAIRMAN BURACK: Can I just interrupt

1 you? You said "we". Who is "we" in this instance?

2 WITNESS BARTOSZEK: That would be
3 Laidlaw Energy Group, Inc.

4 CHAIRMAN BURACK: Thank you.

5 BY THE WITNESS:

6 A. And, then, at a certain point, we entered into a
7 financing arrangement with PJPD, whereby PJPD acquired
8 the property and assets of the former Burgess Mill, and
9 agreed to enter into a long-term lease with the -- then
10 with the Applicant, an LLC subsequently formed for the
11 purpose of owning this project as a special purpose
12 entity. So, that might perhaps be what you were
13 referring to. There were -- the other thing probably
14 worth pointing out is, this was not always
15 contemplated, but it is not an uncommon evolution.
16 Because our role in the Project, we don't -- we're not
17 construction people, and we're not power plant
18 operators, per se. Our role, as the project sponsor,
19 differs quite significantly from, say, Mr. Strickler,
20 the role of Mr. Strickler and his firm, who oversee
21 construction and most likely will oversee the
22 operations of the facility. So, as a project sponsor,
23 our job is to assemble the various components that make
24 a project -- a project and a project financing viable,

1 including material contracts, permits and things of
2 that nature, so that the project essentially pencils
3 out and makes sense. And, it's not uncommon for then a
4 developer at that stage to make some arrangement to
5 move to the side as other parties move forward with
6 construction and operation.

7 BY MR. ROTH:

8 Q. And, do you think that -- so, the "Laidlaw" name is
9 really -- is going to be sort of an artifact after this
10 transaction, is that correct?

11 A. (Bartoszek) I don't know, I might take issue with that.
12 It's, you know, as I said, we've been associated with
13 this project since 2006. We've spent a lot of time in
14 the community. I believe the community associates the
15 Project with us, and particularly with myself and
16 Mr. Bravakis and Mr. Kusche. And, as we say, we intend
17 to be -- we are going to continue our association with
18 the Project as its -- myself in the role of CEO and my
19 colleagues in executive roles. So, we don't expect
20 that to change.

21 Q. But Laidlaw Energy's involvement and commitments to the
22 Project will end with the transaction?

23 A. (Bartoszek) Yes. The public entity Laidlaw Energy
24 Group's involvement with the Project, yes, will end

1 upon sale of that. You're correct in that.

2 Q. Okay. Will there be any remaining contractual
3 obligations for Laidlaw Energy to support or provide
4 any material support or financing or anything to the
5 Applicant?

6 A. (Bartoszek) No.

7 Q. Will there be any consulting contract between Laidlaw
8 Energy and the Applicant?

9 A. (Bartoszek) Yes. So, our continued role in -- will be
10 governed under some sort of a consulting or employment
11 contract going forward, to ensure our continued -- I
12 can tell you that, part of the consideration for the
13 sale was ensuring our continued involvement in the
14 Project, to ensure that it comes to -- that we do our
15 best to make sure it comes to fruition.

16 MR. ROTH: And, this is for Attorney
17 Needleman. On a confidential basis, can we have that
18 consulting contract?

19 MR. NEEDLEMAN: Yes. I mean, we can
20 certainly talk about it. I'm not sure the actual
21 contracts exist. They're probably in the same form as the
22 other documents I shared with you, which is a letter
23 agreement.

24 BY MR. ROTH:

1 Q. And, Laidlaw Energy won't have any ownership interest
2 going forward in Laidlaw, the Applicant?

3 A. (Bartoszek) That's correct.

4 Q. Will Laidlaw Energy have a security interest in any of
5 the assets of the Applicant after-the-fact?

6 A. (Bartoszek) No.

7 Q. Now, I understand that the transaction, the sale, the
8 future sale transaction, also, and maybe it's
9 unrelated, but what's happening to Homeland in this, in
10 the future? I see that they went from having an
11 ownership interest, according to the corporate org.
12 chart that you initially submitted, if I can find that.
13 Now, Exhibit 1 to your initial prefiled testimony was
14 an organization chart that showed "Homeland Renewable
15 Energy", and had "50 percent of Homeland Laidlaw",
16 which had "50 percent of Laidlaw Berlin BioPower". Is
17 that your understanding of how it was set up before?

18 A. (Bartoszek) Correct.

19 Q. And, now, as we look at the chart behind you, we see
20 that Homeland is now sort of a dotted line between
21 Laidlaw and Homeland. And, I assume that that means
22 that there's no longer either a direct or indirect
23 ownership interest between Homeland and Laidlaw?

24 A. (Bartoszek) That's correct. If you'd like me -- would

1 you like me to elaborate --

2 Q. Well, let me just ask a few more questions, maybe you
3 don't need to. Is that change occurring as part of
4 this other transaction between NewCo and Laidlaw Energy
5 or is this a separate transaction, a different
6 transaction, that's causing Homeland to change its
7 skin, so to speak?

8 A. (Bartoszek) No, it's all part and parcel to the same.
9 I mean, I think, as Mr. Strickler, it may have been in
10 response to a question from Commissioner Ignatius
11 yesterday, you have kind of multiple equity owners in
12 this project. And, I think we all felt, when we sought
13 to sit down and make this deal, that we felt it would
14 be in the interest of the Project to streamline the
15 ownership, so that there is one equity owner. And,
16 certainly, from the perspective of financing, it makes
17 the financing of the Project a lot less cumbersome.
18 So, yes, the answer to your question is correct. And,
19 it's part and parcel of the same transaction, and a
20 significant part of that is to streamline the
21 ownership, to make the financing of the Project easier.

22 Q. Prior to the change, did Homeland have continuing
23 commitments to pay capital in or was it fully
24 subscribed?

1 A. (Bartoszek) I'm not sure I understand what you mean by
2 "fully subscribed"?

3 Q. Was Homeland, Homeland Renewables -- or, Homeland
4 Laidlaw, I mean, there's sort of a trail here, but
5 Homeland Laidlaw had 50 percent of Laidlaw Berlin
6 BioPower. Was that 50 percent -- had they paid for all
7 that or was there still an obligation to pay more?

8 A. (Bartoszek) Well, Homeland beneficially owned
9 25 percent, because we were the 50 percent, we are the
10 50 percent owner of Homeland Laidlaw. So, the math
11 pencils out, so that Homeland Renewable beneficially
12 owns 25 percent, because of our --

13 Q. Okay.

14 A. (Bartoszek) -- and making our holdings 75 percent. So,
15 in connection with this transaction, we found -- we
16 thought it was beneficial to simply unwind the
17 transaction whereby Homeland would be paying us certain
18 monies in consideration for the equity we sold to
19 Homeland.

20 Q. So, did you -- so, the question then is, since it's not
21 50 percent, and it's only 25 percent, the question is
22 the same, has Homeland paid for all of the equity that
23 it had?

24 A. (Bartoszek) No.

1 Q. So, that was simply a commitment from Homeland to pay
2 for that equity?

3 A. (Bartoszek) That's right.

4 Q. Okay. And, so, now that commitment is no longer there?

5 A. (Bartoszek) That's right.

6 Q. Okay. Now, I notice from press reports that Homeland
7 has -- or, I shouldn't say "Homeland", perhaps it's
8 Fibrowatt, has had a couple of projects that were in
9 development in other parts of the country that weren't
10 successful. Are you aware of those?

11 A. (Strickler) I'm not sure what you mean by --

12 A. (Bartoszek) Are you directing that to me or
13 Mr. Strickler?

14 Q. Either one of you could answer it.

15 A. (Strickler) I'm not sure what you mean, "unsuccessful"?

16 Q. I thought I read in the press there was a project, I
17 think, in Georgia?

18 A. (Strickler) Yes. The project in Georgia that we were
19 -- we were looking at developing a project in northern
20 Georgia, a poultry litter-fired power plant. But we
21 were working with a co-op, an electric co-op, expecting
22 to get, you know, hopefully getting a power purchase
23 agreement. That has been not come -- didn't come about
24 as yet. So, we just suspended the development of that

1 project, until that PPA is in hand.

2 Q. Okay. Are there any other projects that Fibrowatt was
3 developing that had been put on hold in the past year
4 or two?

5 A. (Strickler) We put one project in, but we're working on
6 three projects in North Carolina, and we put one of
7 them on hold.

8 Q. So, that's in addition to the one in Georgia?

9 A. (Strickler) In Georgia, correct. Yes. We're working
10 on 13 others throughout the country.

11 Q. Okay. And, those are all going well enough?

12 A. (Strickler) They're all in development, yes.

13 Q. Okay. So, speaking for Laidlaw -- for the Applicant, I
14 should say, you have a great deal of confidence in
15 Fibrowatt?

16 A. (Bartoszek) That's correct. We know the management of
17 Homeland and its key employees very well. We have a
18 very high degree of confidence in their capabilities.

19 Q. Because I'm looking at sort of the organization here
20 and sort of the flow of things. And, at some point,
21 you will have Homeland in charge of construction, which
22 is the next stage, and then Fibrowatt is going to be in
23 charge of operation and maintenance, and Babcock &
24 Wilcox and another contractor are going to be in charge

1 of basically doing the construction for Homeland. Once
2 we get past the certificate, who's really going to be
3 doing this project? What it looks like is, it's all
4 been contracted out to other people. So, in terms of
5 looking at the financial -- the financial and
6 managerial capability to operate the Project, should we
7 be looking at Laidlaw or should we be looking at
8 Homeland or should we be looking at Fibrowatt or, you
9 know, Babcock & Wilcox?

10 A. (Bartoszek) Well, that's a great question. And, I
11 think that the structure you outlined, where -- and
12 we're entering into contracts with parties to perform
13 these services is very typical for this type of
14 project. It's not transferring equity ownership -- or,
15 I think the question was asked yesterday or the day
16 before, you know, "who has the right to hire and fire?"
17 And, that's going to remain with the Applicant. The
18 Homeland is going to have a contractual responsibility
19 to perform these services in accordance with the terms
20 of its agreement. And, if it doesn't perform in
21 accordance with the terms of its agreement, obviously,
22 there's going to be penalties and recourse in the
23 agreement.

24 Similarly, and that's why the EPC

1 Contract is such a huge part of the Project, the EPC
2 contractor, Babcock & Wilcox, puts an enormous amount
3 of security on line to ensure the timely construction
4 and correct operation of the plant. So, at the end of
5 the day, it's often -- they're often referred to as the
6 "turnkey contractor", because you get a plant that is
7 ready to flip on the switch and operate. And, if they
8 don't do that, there are going to be significant
9 penalties in the agreement that can be pursued either
10 by the Applicant or by the Applicant's assignees,
11 specifically its lenders.

12 Q. But, based on what you've just said, I mean, it seems
13 to me that we should know more about Babcock & Wilcox,
14 maybe we should know more about Fibrowatt, before we
15 can determine that the financial and managerial
16 capability to construct and operate the Project is
17 there?

18 A. (Bartoszek) But, I mean, I'm sorry, Mr. Roth, I
19 probably should have further elaborated. These are,
20 you know, as I read the statute, and your desire to
21 ascertain the financial capability of the Applicant,
22 obviously, this is not a "there's a cash on the balance
23 sheet calculation." This is a "is there the ability to
24 put the requisite equity and attract the requisite

1 financing to build this project, in accordance with the
2 way it's applied for to this Committee?"

3 And, the only way to do that is to have
4 these material contracts in place. These material
5 contracts are part and parcel to closing that
6 financing, and being able to meet that requirement
7 under the statute. So, I think it's those elements
8 that make the Project financeable, and presumably a
9 condition of the permit's ultimately going to be the
10 ability to get the financing. So, they all work
11 together, basically.

12 Q. Would you agree then that perhaps, at a minimum, the
13 Committee should see final agreements with Babcock &
14 Wilcox and final agreements with Homeland and
15 Fibrowatt, and I suppose, you know, the consulting
16 agreement between Laidlaw and the Applicant, so that
17 they can understand how it is that, beyond the
18 certificate date, this project is going to be
19 constructed and financed and operated?

20 A. (Bartoszek) Well, I'll just take one of those examples,
21 the EPC, the final EPC Contract, as you suggest. That
22 is a process that requires significant design,
23 negotiation. It's my understanding, from discussions
24 with our counsel, that it's, in all likelihood, and I

1 believe I even stated in my testimony that we are
2 willing to accept as a condition of this permit the
3 ability to get the financing. And, the only way we can
4 get the financing is to have those material contracts
5 in a form and substance acceptable to the parties who
6 are going to lend the capital. So, I think if you make
7 that condition a condition of the permit, you get
8 everything else that you want.

9 Q. So, not only are we supposed to then essentially have
10 the financial capability be determined by a post
11 certification "we told you", we should also accept that
12 the construction and operation should also be subject
13 to a similar pass on it, pending post certification,
14 saying "yes, we did it"?

15 A. (Bartoszek) Well, no. I think, as I kind of suggested
16 before, I think -- I think, I would guess the requisite
17 hard look is "Do these elements presented by the
18 Applicant give me a comfort level that they have the
19 equity and can provide -- and can obtain the debt
20 financing to build the Project, and do they have the
21 parties in place to operate and construct it in a way
22 in accordance with the Application?" So, --

23 Q. But how do we know that, until we see those final
24 agreements with Homeland, Fibrowatt, and Babcock?

1 A. (Strickler) And, can I ask just a question? I mean,
2 maybe I can try to help answer or try to get to I think
3 one of your points. And, I guess is you're asking
4 whether the parties involved have the requisite
5 experience and capability of doing it?

6 Q. The Applicant has the obligation to demonstrate that
7 the Applicant has the financial and managerial
8 capability.

9 A. (Strickler) Okay.

10 Q. And, essentially, what I'm seeing, and this is more by
11 way of argument, because you asked the question, that
12 the Applicant itself is entirely dependent upon the
13 managerial and financial capability of, especially with
14 respect to operation and maintenance and construction,
15 other parties that aren't applicants, and for whom we
16 not seen the final agreements and we have not had
17 testimony of those people about it. But that's, as I
18 said, that's really by way of argument. I'm not here
19 debating --

20 A. (Strickler) I mean, I'm here. My testimony is for both
21 of these elements. And, my testimony is -- I'm here to
22 answer questions about my financial -- or, my, you
23 know, experience and our company's experience, and it's
24 in my testimony.

1 Q. That's correct. But your testimony was -- is now
2 essentially reduced to a contract that nobody has seen
3 yet. And, that's the point I'm trying to make. And,
4 I'll move on to other questions.

5 CHAIRMAN BURACK: Mr. Roth, how much
6 more questioning do you think you have here? We're
7 probably at a point where we need to be looking to take a
8 lunch break soon.

9 MR. ROTH: Let's take a lunch break. I
10 think I have -- I don't want to go, because I have a far
11 amount more, and I don't want to do it while everybody is
12 sitting here twitching, wanting to go to lunch. So, --

13 MR. RODIER: Mr. Chairman, may I ask --

14 CHAIRMAN BURACK: Mr. Rodier.

15 MR. RODIER: -- just so I can plan my
16 day? What are your objectives for this afternoon, in
17 terms of we've got Mr. Kusche waiting, but are we going to
18 have -- do I understand you're going to, no matter what
19 happens, you're going to get Ms. Laflamme on the stand?

20 CHAIRMAN BURACK: That is correct. It's
21 my intention, when we have completed this panel, we're
22 going take Ms. Laflamme out of turn. I made a commitment
23 and had an understanding from Counsel for the Applicant
24 that they have no objection, and understand that Counsel

1 for the Public has no objection, to having Ms. Laflamme
2 testify this afternoon.

3 MR. RODIER: Thank you.

4 CHAIRMAN BURACK: So, when we're done
5 with this panel, we will take Ms. Laflamme. And, then, as
6 time permits we will turn to Mr. Kusche. Okay? So, let's
7 take a break until 1:45.

8 (Whereupon the Day 3 Morning Session
9 recessed for lunch at 12:45 p.m. The
10 Day 3 Afternoon Session to resume
11 under separate cover so designated.)
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