

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3
4 August 26, 2010 - 9:05 a.m.
5 Public Utilities Commission
6 21 South Fruit Street
Suite 10
Concord, New Hampshire

DAY 4
MORNING SESSION
ONLY

7 RE: Application of Laidlaw Berlin
8 BioPower for a Certificate of
9 Site and Facility for a 70 MW
10 Biomass Fueled Energy Facility
in Berlin, Coos County, New
Hampshire.
(Hearing on the Merits)

11
12 PRESENT: SITE EVALUATION SUBCOMMITTEE:

13 Thomas Burack, Cmsr. (Presiding as Chairman)	Dept. of Environmental Services
14 Amy Ignatius, Cmsr.	PUC
William Janelle	DOT
15 Elizabeth Muzzey	N.H. Div. of Hist. Res.
Harry Stewart	Water Division - DES
16 Craig Wright	Air Resources Div - DES
Donald Kent	DRED
17 Christopher Northrop	OEP
Michael Harrington	PUC

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19 * * *

20 Counsel for the Committee: Michael Iacopino, Esq.

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22
23 COURT REPORTER: SUSAN J. ROBIDAS, LCR NO. 44
24

1 ALSO PRESENT:

2 REPRESENTING LAIDLAW BERLIN BIOPOWER, APPLICANT:

3 Barry Needleman, Esq.
4 Gregory H. Smith, Esq.
5 Cathryn E. Vaughn, Esq.
(McLane, Graf, Raulerson &
Middleton)

6

7 REPRESENTING CITY OF BERLIN:

8 Merritt Schnipper, Esq.
(Downs Rachlin Martin)

9

10

11 REPRESENTING CLEAN POWER DEVELOPMENT:

12 James T. Rodier, Esq.

13

14

15 COUNSEL FOR THE PUBLIC:

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

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MICHAEL B. BARTOSZEK

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P R O C E E D I N G

(Hearing resumed at 9:05 a.m.)

CHAIRMAN BURACK: Good

morning. We will resume our proceedings in the State of New Hampshire Site Evaluation Committee, Docket No. 2009-02, Application of Laidlaw Berlin BioPower, LLC for a Certificate of Site and Facility for a 70-megawatt biomass fuel energy facility in Berlin, Coos County, New Hampshire.

Before we return to our completion of the panel of Messrs. Bartoszek and Strickler, I'm going to ask counsel for the Applicant, Mr. Needleman, if he has a motion to make at this time.

MR. NEEDLEMAN: I do, Mr. Chair. Thank you.

Our Exhibit No. 38 is a confidential document which is entitled, "Development Agreement and Associated Documents." And it was our original intention to include with that an amended version of the development agreement, which also had attached to it a lease form. That was inadvertently left out of that document. So what we have done is supplied to

1 the Committee those two documents now, which I
2 think have been designated as Exhibits 38A. And
3 what I would like to do is make a motion that,
4 for all the same reasons, that be treated
5 confidentially, like Exhibit 38.

6 CHAIRMAN BURACK: Thank you.
7 And when you say "for all the same reasons," you
8 are referring to what?

9 MR. NEEDLEMAN: I'm referring
10 to the original motion we made, which you
11 granted, to treat the original development
12 documents as confidential, on the basis that it
13 is a confidential business document.

14 CHAIRMAN BURACK: And so it's
15 your position, then, that anything more than
16 limited disclosure of those documents would
17 likely cause substantial harm to the Applicant's
18 competitive position? Is that your position?

19 MR. NEEDLEMAN: That's our
20 position. And we request that that document be
21 treated by the council -- the Committee in the
22 same manner as the development agreement.

23 CHAIRMAN BURACK: Very well.
24 For the reasons that we've discussed here, and

1 that will be further elaborated in a written
2 order that I will issue later, I will grant that
3 motion.

4 Were there some additional
5 exhibits also to be marked? Let us do that now
6 if we could, please.

7 MR. IACOPINO: Your Honor, the
8 first -- Your Honor -- the first exhibit,
9 Mr. Chairman, is a exhibit which is entitled,
10 "Berlin Power Plant Capital Structure," which
11 would be Applicant's Exhibit 65.

12 (Laidlaw Exhibit 65 marked for
13 identification.)

14 MR. IACOPINO: The next
15 exhibit appears to be another Forest Guild
16 publication entitled, "Forest Biomass Retention
17 and Harvesting Guidelines for the Northeast," by
18 the Forest Guild Biomass Working Group. And this
19 is dated May 2010.

20 Did you want this admitted as
21 a Committee exhibit?

22 MS. VAUGHN: Committee
23 exhibit.

24 MR. IACOPINO: So this was a

1 data request of the Committee, so it should be
2 marked as the next Committee exhibit, which would
3 be Committee Exhibit 9, I believe.

4 (Committee Deposition Exhibit 9 marked
5 for identification.)

6 CHAIRMAN BURACK: So this next
7 document that's circulating for the Committee is
8 Committee Exhibit 9.

9 MR. HARRINGTON: Excuse me,
10 Mr. Chairman. Just a question on the Applicant's
11 65. Are we going to get an explanation as to
12 what all this means?

13 CHAIRMAN BURACK: I expect
14 that we will.

15 MR. IACOPINO: The next
16 exhibit was at the request of the Committee as
17 well. It is a document entitled, "State of New
18 Hampshire Public Utilities Commission Direct
19 Testimony of Lisa K. Shapiro, Ph.D." in a
20 document entitled, "Request for Approval of Power
21 Purchase Agreement Between Public Service Company
22 of New Hampshire and Laidlaw Berlin BioPower."
23 And it's dated July 26, 2010. This should be
24 marked as Committee Exhibit 10.

1 (Committee Deposition Exhibit 10 marked
2 for identification.)

3 MR. RODIER: May I make one
4 comment?

5 CHAIRMAN BURACK: Yes.

6 MR. RODIER: Dr. Shapiro's
7 testimony, you know, we haven't had a chance to
8 cross on that. We don't expect to have a chance
9 to cross on that. But, you know, there's a lot
10 in there that we would contest. So I just would
11 like the Committee to be mindful of that when
12 you're putting something in by a witness, you
13 know, in another hearing. We certainly, when
14 those proceedings come up, are going to have some
15 very extensive discovery and cross-examination.

16 CHAIRMAN BURACK: Attorney
17 Rodier, we appreciate and understand your point.
18 Clearly, any document that we have for testimony
19 that has been submitted in a form that has not
20 been subject to cross-examination will have to be
21 understood and treated in that light.

22 I do understand that you have
23 in your prior examination or cross-examination of
24 witnesses here made reference to some testimony

1 of a Mr. Labrecque --

2 MR. RODIER: That's correct.

3 CHAIRMAN BURACK: -- I believe
4 it is, in this same PUC proceeding?

5 MR. RODIER: That's correct.

6 CHAIRMAN BURACK: Do you wish
7 to enter Mr. Labrecque's testimony into the
8 record of this proceeding here as well?

9 MR. RODIER: The only reason I
10 didn't do that is because we had it read into the
11 record, and that serves my purpose. But the -- I
12 forget what the standard is for administrative
13 notice. But that's an option for the Committee.
14 I mean, there is an extensive filing at the PUC
15 that has -- well, let me give you a good example.

16 Commissioner Ignatius asked a
17 question yesterday: What is PSNH going to pay
18 for the RECs? It was like, oh, that's
19 confidential. Well, let's go to the PUC Web
20 site. And, you know, we've got that with us
21 today. It's public. So there is a lot of
22 information there.

23 By the way, Commissioner
24 Ignatius should not know what is on the PUC Web

1 site, in my opinion. And I'm just saying that
2 because I think that would be improper. So I
3 think it's a good thing that -- a complication
4 she wasn't aware of what was there. But it's
5 information that has been sent in. But if she
6 will be on, you know, a hearing like this, she
7 should only consider evidence. So I'm just
8 saying that. I don't want anything I say to be,
9 you know, taken as somehow as -- there's a lot on
10 the PUC Web site that anybody shouldn't
11 necessarily be aware of, and, in particular,
12 Commissioner Ignatius.

13 CHAIRMAN BURACK: Thank you,
14 Attorney Rodier. Again, we did request that this
15 be submitted because it was referred to. If
16 you're comfortable with your reading of
17 Mr. Labrecque's testimony, to leave it at that,
18 that's fine.

19 MR. RODIER: Sure.

20 CHAIRMAN BURACK: And again,
21 we will give all of the evidence that we receive
22 such weight as we think is appropriate.

23 MR. RODIER: That's fine.

24 CHAIRMAN BURACK: Thank you.

1 MR. IACOPINO: The final
2 exhibit to be introduced this morning,
3 Mr. Chairman, is a document that was requested by
4 the Committee entitled, "Energy from Forest
5 Biomass Potential Economic Impacts in
6 Massachusetts," prepared for the Massachusetts
7 Division of Energy and Resources and the
8 Massachusetts Department of Conservation and
9 Recreation. It's prepared by the University of
10 Massachusetts, Department of Resource Economics,
11 and dated December of 2007.

12 And I think that would be the
13 next Committee exhibit which would appear to be
14 Committee Exhibit No. 11. And I will pass these
15 out as well.

16 (Committee Deposition Exhibit 11 marked
17 for identification.)

18 CHAIRMAN BURACK: All right.
19 Thank you all for your patience.

20 Attorney Needleman, you had
21 some additional direct for these witnesses, I
22 understand. And will you also work us through
23 this Applicant's 65?

24 MR. NEEDLEMAN: Sure.

1 CHAIRMAN BURACK: Thank you.

2 MR. NEEDLEMAN: Yeah, just a
3 of couple questions. Thank you, Mr. Chair.

4 DIRECT EXAMINATION

5 BY MR. NEEDLEMAN:

6 Q. Mr. Bartoszek, can we turn first to
7 Committee Exhibit 1A, which is the NewCo
8 balance sheet.

9 Do you have a copy of that in front of
10 you?

11 A. (Bartoszek) I do.

12 Q. The Chair was taking you through that
13 balance sheet yesterday and asked you a
14 couple of questions about some particular
15 entries that you were not familiar with at
16 that time.

17 Have you had a chance now to go back
18 and learn more about those?

19 A. (Bartoszek) Yes, I have.

20 Q. I'm looking in particular at -- under the
21 Assets heading. At the bottom of that
22 there's a heading for Other Assets. And
23 there are two entries: One is a \$500,000
24 entry for investment deposit and the other

1 is a \$21,439 entry for security deposits.
2 Can you describe for the Committee what
3 those represent?

4 A. (Bartoszek) Sure. The \$500,000 -- excuse me
5 for my voice. I'm kind of under the
6 weather.

7 The \$500,000 deposit represents a
8 purchase deposit in connection with the
9 contemplated acquisition of the Applicant by
10 NewCo, and the \$21,439 deposit represents
11 retainers on account with law firms.

12 Q. Thank you.

13 Moving now to the issue of New Market
14 Tax Credits. You were asked yesterday if
15 you knew who the allocatees were for those
16 credits. Do you now know -- do you now have
17 that information?

18 A. (Bartoszek) Yes, I do. Would you like me to
19 state them?

20 Q. Yeah, please provide that.

21 A. (Bartoszek) The allocatees are New Hampshire
22 Business Finance Authority; Seedco Financial
23 Services, S-E-E-D-C-O; and CEI Capital
24 Management.

1 Q. And those are all third parties with no
2 relationship to the Applicant here or any of
3 the entities related to the Applicant?

4 A. (Bartoszek) That's correct.

5 Q. And with respect to the \$500,000 loan fund
6 that was mentioned in the context of the New
7 Market Tax Credit, do you want to clarify
8 your statements regarding that?

9 A. (Bartoszek) Yes, I would. I'm just going to
10 read briefly from some information prepared
11 to further describe it.

12 "The New Market Tax Credit Program will
13 also allow us to fund \$500,000 toward other
14 local projects that the City of Berlin will
15 identify as the top community priorities.
16 This is upfront cash that the New Market Tax
17 Credit Program will allow us to make
18 available directly for the benefit of local
19 residents. This half-million dollars of
20 cash becomes available Day 1 after we close
21 the New Market Tax Credit financing, which
22 would close concurrent with the overall
23 project financing closing."

24 Q. Thank you.

1 You have in front of you what's been
2 designated as Applicant's Exhibit 65. The
3 title of this document is "Berlin Power
4 Plant Capital Structure." And there was a
5 request yesterday that we provide a visual
6 representation of what the capital structure
7 of the project looks like. Could you please
8 briefly walk the Committee through this
9 exhibit and explain how it works.

10 A. (Bartoszek) Sure. As we see, as we drew on
11 the white board yesterday, we have NewCo up
12 on top as the contemplated owner of the
13 Applicant, as well as the current owner of
14 PJPD. And as we discussed, PJPD owns the
15 physical assets of the facility and acts as
16 lessor to the Applicant, Laidlaw Berlin
17 BioPower. The lease payment -- the lease
18 requires lease payments, and that's what the
19 arrows represent, lease payments going
20 between the Applicant and PJPD as the
21 lessor.

22 PJPD, as the lessor, will be
23 responsible for -- well, the debt financing
24 or the project financing arranged to

1 construct the project will be secured by the
2 assets held by PJPD. And typically in that
3 kind of financing, all of the assets and
4 material contracts will be assigned as
5 collateral to the lender. Those funds will
6 flow to PJPD, who, in turn, will make them
7 available to the Applicant for the
8 construction of the facility.

9 There's also lines showing guarantee of
10 debt, just to make that clear. As I said --
11 or as I just said, the assets and material
12 contracts typically serve as collateral to
13 the lender. So the Applicant will also
14 guarantee the obligations of the lessor, so
15 that their -- in the event of a default.
16 Basically, this allows the situation where a
17 lender could declare what's called a
18 cross-default. So the two parties would
19 be -- if one party is in default, so would
20 the other party be.

21 On the right-hand side underneath the
22 Applicant we see Fibrowatt, PSNH, Cousineau,
23 Homeland and Babcock & Wilcox.

24 I think the point -- probably one of

1 the biggest points that we'd like to make is
2 the fact that the power purchase agreement
3 will be held by the Applicant and that the
4 cash flows from the power purchase agreement
5 will flow to the Applicant. All cash flows
6 of the project will flow to the Applicant.
7 And that will be the source of payment of
8 the lease payment; and the lease payment, in
9 turn, will serve as the source of payment
10 for the debt service. So that's the flow of
11 funds.

12 And the Cousineau contract and the
13 Fibrowatt and Homeland contracts will also
14 be, as will all material contracts be, with
15 the Applicant. So, payment to Cousineau for
16 its fuel supply will also occur by the
17 Applicant from the proceeds of the power
18 purchase revenues.

19 And the Homeland and Babcock & Wilcox
20 roles in connection with the construction of
21 the plant, in connection with the EPC --
22 Babcock & Wilcox's role as EPC contractor,
23 and Homeland's oversight of Babcock & Wilcox
24 as the EPC contractor, and manager of

1 construction -- will also occur for the
2 benefit of the Applicant, the lessee.

3 And then, down at the bottom we come to
4 the contemplated capital structure, which I
5 believe Mr. Roth asked us to clarify
6 yesterday.

7 So, of the total projected \$167 million
8 budget, there would be this projected-to-be
9 total indebtedness of approximately \$137
10 million split between Series A and Series B
11 bonds. Basically, those are pari passu.
12 Those bonds are of equal stature in the
13 capital structure. And then equity
14 representing \$18 million of cash
15 contemplated to be contributed by NewCo in
16 furtherance of the development of the
17 project, and the other 12 million that I
18 described yesterday from the proceeds of the
19 New Market Tax Credit.

20 And if you recall, I explained the
21 Series B bonds connection to the New Market
22 Tax Credit. So if you add the 32.5 to the
23 12 of the New Market Tax Credit, you come up
24 to the total allocation of 44.5 million. So

1 the 12 million proceeds to the project
2 basically represents the equity portion, and
3 the 32.5 represents the debt portion of the
4 New Market Tax Credit allocation.

5 Q. Focusing on PSNH here for a minute, you said
6 that they are on there with reference to the
7 purchase power agreement; is that right?

8 A. (Bartoszek) That's correct.

9 Q. You'll recall yesterday that Mr. Iacopino
10 asked you a question about what recourse
11 third parties might have toward the
12 Applicant with respect to liabilities,
13 issues like that. And when you provided
14 that answer, I don't believe you mentioned
15 the power purchase agreement.

16 But is it correct that, when the plant
17 is operating, that will be providing a
18 significant stream of revenue to the
19 Applicant?

20 A. (Bartoszek) That's correct. As I tried to
21 point out, the power purchase agreement is
22 obviously an asset of the Applicant, and the
23 revenues and the cash flows associated
24 therewith are obviously a key asset of the

1 Applicant.

2 Q. And do you understand that, if the Committee
3 issues the certificate that you're seeking
4 here, that you, as the Applicant, are
5 responsible for complying with all the terms
6 and conditions of that certificate?

7 A. (Bartoszek) I do.

8 Q. Mr. Iacopino also asked you yesterday
9 whether NewCo would be willing to guarantee
10 the performance in some form. Have you had
11 a chance to discuss that issue with NewCo?

12 A. (Bartoszek) Yes, I have.

13 Q. And is it your understanding that, if the
14 Committee desires it, NewCo would be willing
15 to be bound by the conditions and
16 obligations and requirements of the
17 certificate?

18 A. (Bartoszek) Yes, that's correct.

19 MR. NEEDLEMAN: I have no
20 further questions.

21 CHAIRMAN BURACK: Thank you
22 very much, Attorney Needleman.

23 Attorney Schnipper.

24 MR. SCHNIPPER: Just a couple

1 of questions.

2 CROSS-EXAMINATION

3 BY MR. SCHNIPPER:

4 Q. With regards to the \$500,000 grant portion
5 of the New Market Tax Credits, am I correct
6 in understanding that, at closing those
7 funds will be disbursed directly to the
8 City?

9 A. (Bartoszek) It's our understanding that they
10 will be disbursed from the allocatee to the
11 City.

12 Q. So when you say that the City identifies its
13 top priorities, is the City identifying its
14 top economic development priorities? Is it
15 identifying an allocatee?

16 A. (Bartoszek) It's identifying its top
17 economic development priorities.

18 Q. So, as I understand it then, the funds would
19 be disbursed to the allocatee, who would be
20 identified through the New Market Tax Credit
21 Program, but then the City would basically
22 direct that allocatee to spend the funds at
23 the City's sole discretion? I mean, is that
24 a fair description?

1 A. (Bartoszek) I believe so. We actually, I
2 believe, are going to have our consultant
3 available later today who is assisting us in
4 connection with arranging the New Market Tax
5 Credit financing. He could probably answer
6 more detailed questions --

7 Q. Okay. Great.

8 A. (Bartoszek) -- in connection with exactly
9 how those funds flow, if need be. But I
10 believe your characterization is generally
11 correct.

12 Q. Okay. Fantastic. With regard to the
13 cross-collateral -- sorry, not-cross
14 collateral -- the cross-default provision,
15 am I correct to understand that if PJPD
16 defaults on some of its debts to the
17 third-party lenders, then the Applicant will
18 also -- can be declared to be in default?
19 Is that a correct understanding? So, in
20 that event, the lenders would have whatever
21 remedies are provided for in the debt
22 contracts directly against the Applicant at
23 that time?

24 A. (Bartoszek) Right. I mean, typically, if

1 PJPDP were to default, and the facility would
2 most likely continue to -- unless there's
3 some catastrophic event that would stop the
4 facility from operating -- the lender would
5 presumably step into PJPDP's shoes or appoint
6 some third party to step into PJPDP's shoes.
7 But it shouldn't disrupt the operation of
8 the facility. A lender is obviously going
9 to want to see the facility continue to
10 operate and generate cash flow.

11 Q. Sure, for revenue reasons. But I guess my
12 question is, if -- so, just in that event,
13 would they be basically relying on their
14 financial interests to motivate them to keep
15 the plant going, or would they be bound by
16 all the contractual obligations of the
17 Applicant once they sort of took -- you
18 know, took advantage of their remedies in
19 default? And that may be getting too
20 complex. I just -- you know, when I heard
21 that, I wondered, basically, if they choose
22 to step in, are they obligated to continue
23 operating under sort of all the assumptions
24 of these contracts, or is that sort of

1 within their discretion?

2 A. (Bartoszek) Well, we obviously haven't
3 drafted the debt agreements at this time.
4 But typically, a lender is going to want to
5 continue to see the asset operate, like any
6 bank or mortgage holder.

7 I guess to give you an analogy:
8 Somebody who's lent money to a major capital
9 project like this obviously wants to get
10 their money back.

11 Q. Of course.

12 A. (Bartoszek) And the most likely way they're
13 going to get their money back is through the
14 continued operation of the facility, because
15 the cash flows are much more valuable than
16 the sale of the physical assets themselves.

17 So there's a very strong incentive to
18 always seek continued operation, unless, as
19 I said, for some catastrophic reason
20 operations can't continue.

21 Q. Right. I guess I'm just trying to tease out
22 the difference between the incentives that
23 are based on financial motivations and, you
24 know, legally binding obligations that --

1 you know, I mean, from the City's
2 perspective, once a major project like this
3 gets going, they want to see it carried
4 through just in productive use.

5 A. (Bartoszek) Obviously.

6 Q. All right. One other question. In terms of
7 the cash flow that's going out to the
8 Applicant upon the commencement of
9 production and sale of electricity, can you
10 explain a little bit about how -- up until
11 the time that electricity has been
12 installed, basically all operating funds are
13 being provided just through the lending
14 structure?

15 A. (Bartoszek) That's correct. So at the
16 financial closing, the lender and any other
17 capital committed for the project will be
18 put into a financial institution and will be
19 drawn down in accordance with a schedule for
20 the construction of the plant. So those
21 funds will be -- will all be available to
22 the Applicant as the Applicant is
23 constructing the facility, to meet its
24 financial obligations to pay its EPC

1 contractor and various parties.

2 Q. So I guess as the lender-acquired funds go
3 down, funds come -- that come from operation
4 will come up, and there will kind of be a
5 baseline of available resources that are --
6 this is kind of about the liability and just
7 the availability of funds to meet whatever
8 unexpected expenses might arise. So they'll
9 always kind of -- there's a baseline that's
10 provided by the lender. Once that's
11 exhausted, operating funds come in, and
12 that's kind of the overall scheme?

13 A. (Bartoszek) Well, as I mentioned yesterday
14 when we talked about the overall
15 \$167 million, that total doesn't
16 represent -- all represent construction
17 costs. So I think what you're at -- sort of
18 driving at is what sort of backstops are
19 there.

20 Q. That's right.

21 A. And typically in a project like this, there
22 are going to be numerous reserve funds:
23 Reserve funds for operations, reserve funds
24 for major maintenance, reserve funds for

1 working capital, and work reserve funds for
2 debt service. So those funds are set aside.
3 They're generally not touched unless they
4 need to be touched. And if they're drawn
5 down for some reason to meet obligations,
6 then generally they'll be required to be
7 replaced from future cash flow so that
8 they're brought back up to their original
9 number. So there should always be funds set
10 aside for extraordinary purposes in the form
11 of various reserve funds.

12 Q. And is the structure of those funds and the
13 amount of them information that will be
14 available to the City?

15 A. (Bartoszek) I assume so. I'm not sure to
16 what extent the terms of the overall project
17 financing would be confidential. But I
18 don't see any reason why that would be a
19 problem.

20 Q. Sure. And as I'm sure you understand, the
21 City is only looking for assurances in terms
22 of liability issues, not in terms of getting
23 intrusive on confidential business matters.

24 A. (Bartoszek) Sure.

1 Q. I think that's all we have. Just want to
2 say the City is happy to hear about the
3 agreement of NewCo to bind itself to the
4 terms and conditions of the permit as well.

5 CHAIRMAN BURACK: Thank you,
6 Attorney Schnipper.

7 Attorney Rodier.

8 MR. RODIER: Thank you.

9 CROSS-EXAMINATION

10 BY MR. RODIER:

11 Q. Mr. Bartoszek, you recall Commissioner
12 Ignatius asking you yesterday what PSNH
13 would pay for the RECs produced by the
14 plant?

15 A. (Bartoszek) I do.

16 Q. You said it was confidential.

17 A. (Bartoszek) Yes, I did.

18 Q. Now, there's two options here. One is that
19 I can bring over PSNH's testimony and put it
20 in front of you and ask you to read it into
21 the record. But in lieu of the time here,
22 I'm going to try with a very straightforward
23 question to see if we can get an answer.
24 Okay?

1 A. (Bartoszek) Sure.

2 Q. Here's my attempt.

3 A. (Bartoszek) I'd be happy to try to help you.

4 Q. Don't want you to say anything that's
5 confidential, okay. I'm not trying to get
6 into that.

7 But the plant's going to produce RECs
8 that PSNH is going to buy; isn't that right?

9 A. (Bartoszek) That's correct.

10 Q. And even if there are no RECs anymore,
11 because the law changes, PSNH is going to
12 continue to pay for RECs as if they were
13 still in existence.

14 A. (Bartoszek) The contract contains a clause
15 with respect to change of law -- you are
16 correct -- that if at some point the RPS is
17 done away with in the state of New
18 Hampshire, PSNH would continue to make
19 payments to us. And the purpose of that
20 kind of a clause is, obviously -- again, the
21 whole purpose behind the 20-year power
22 purchase agreement is to create certainty of
23 cash flow over 20 years.

24 Q. Okay. Now, PSNH is going to pay for the

1 RECs. They're going to pay some undisclosed
2 percentage of the EPC; is that correct?

3 A. (Bartoszek) Well, just so -- and again, I
4 want to help you to whatever extent
5 possible. But, again, I don't want to
6 overstep my bounds. So if you don't mind,
7 I'll give you an example of -- I'm reading
8 from Page 29 of Exhibit 40, which is the
9 redacted version of the PSNH power purchase
10 agreement.

11 Q. Okay. So, is it -- oh, the agreement. Can
12 you hang on for a second and I'll find that?

13 A. (Bartoszek) Sure.

14 MR. IACOPINO: Did you say
15 Page 29?

16 MR. BARTOSZEK: It's marked as
17 Page 29 of -- I guess 29 is the exhibit -- it's
18 Page 10 of the contract.

19 MR. IACOPINO: Okay.

20 BY MR. RODIER:

21 Q. Okay. I have it.

22 A. (Bartoszek) Okay. So, in order to try to
23 answer -- excuse me -- to try to answer your
24 question, I'll read from -- and this would

1 be Clause 6.1.2(c)(i) -- 1 or little I.

2 "For New Hampshire Class I RECs that
3 are generated pursuant to facility operation
4 during the first five operating years of the
5 term, PSNH shall pay the product of" -- and
6 that next part is redacted -- "of the
7 renewable products payment that is
8 applicable to the period during which the
9 New Hampshire Class I REC was generated
10 and... the quantity of New Hampshire Class I
11 RECS delivered during that period."

12 Q. Right. I said PSNH is going to pay you an
13 undisclosed percentage of the RPC amount.
14 So you're agreeing with me, aren't you? The
15 answer to the question is "Yes"?

16 A. (Bartoszek) I believe that's generally
17 correct.

18 Q. Okay. Now, the point here is that. I am
19 spacing out here. Tell me what RPC stands
20 for real quick.

21 A. (Bartoszek) Renewable products payment.

22 Q. No, ACP.

23 A. (Bartoszek) Oh, alternative compliance
24 payment.

1 Q. Okay. Correct. Now, that is set by law,
2 isn't it?

3 A. (Bartoszek) That is.

4 Q. Okay. About \$65 a REC? Is that correct?
5 Currently.

6 A. (Bartoszek) I believe that it was originally
7 \$57.12, and it's adjusted annually for
8 inflation. And that was in, I think,
9 2008 dollars -- 2008 or 2009, when the RPS
10 was passed --

11 Q. Okay.

12 A. (Bartoszek) -- or was enacted.

13 Q. Let's just say for the sake of discussion
14 it's \$60, okay.

15 A. (Bartoszek) Sure.

16 Q. Do you know what the current market price
17 is?

18 A. (Bartoszek) I don't know that there's really
19 a market price for New Hampshire RECs,
20 because it's not a very liquid market.

21 Q. Okay. So are you familiar with ICAP Energy,
22 a big broker of RECs?

23 A. (Bartoszek) I am.

24 Q. It's got nothing to do, by the way, with

1 ICAP or ISO. It's ICAP, but it confuses
2 people. It's got nothing to do with
3 capacity payments to ISO.

4 So you are familiar. Do you get their
5 broker sheets every day?

6 A. (Bartoszek) No, I don't.

7 Q. Do you get them once in a while?

8 A. (Bartoszek) I get sheets with information
9 from other marketers of RECs in New England,
10 not that one specifically.

11 Q. Well, these New Hampshire RECs that we're
12 talking about here, they're worth about \$15
13 right now; is that right?

14 A. (Bartoszek) I couldn't agree with that
15 statement. As I said, New Hampshire RPS is
16 pretty nascent at this stage. It was only
17 recently enacted. It's not a very liquid
18 marketplace. So I don't really know that
19 there's a really -- you could really point
20 to a fair market price.

21 Q. My only point is it's -- you're not aware
22 that on the ICAP broker sheets there's a
23 "bid asked" section for New Hampshire
24 Class I RECs?

1 A. (Bartoszek) I'm not aware of that.

2 Q. Oh, okay.

3 A. (Bartoszek) As I said, I don't normally get
4 their information.

5 Q. Would it surprise you that they're only
6 worth \$15?

7 A. (Bartoszek) That seems rather subjective to
8 say that "they're only worth \$15."

9 Q. Okay. Even though there's brokers saying,
10 if somebody's bidding 15 and somebody's
11 asking 16, it's still subjective -- let's
12 drop it.

13 A. (Bartoszek) That's your conclusion. I
14 mean...

15 Q. All right. Look, I understand what you're
16 saying, so we're going to move on here.

17 So, just to say -- for example: Let's
18 just say PSNH is going to pay you 80 percent
19 of the ACP. And the ACP you said was
20 approximately 60. Then PSNH would be paying
21 you \$48; right?

22 A. (Bartoszek) In that example, that would be
23 correct.

24 Q. All right. It's not the market price;

1 correct? So let's just leave this.

2 A. (Bartoszek) Well, can I respond?

3 Q. Of course.

4 A. (Bartoszek) I think that, as I tried to
5 point out earlier, you could use the same
6 example for power. Power has a market
7 price, capacity has a market price, as do
8 RECs. But again, RECs are a nascent market
9 in New Hampshire because they're not --
10 haven't been around that long. So there
11 really isn't, in my view, an established
12 market for RECs in New Hampshire.

13 But the point -- the whole point of a
14 power purchase contract is to establish a
15 price, a fixed price, or to create certainty
16 of cash flow. So if your argument is, well,
17 it's not the market price, that's kind of
18 the point. Because if it were the market
19 price, it would be very hard to attract
20 financing.

21 Q. Mr. Harrington's questions made his point
22 very well yesterday. There's a difference
23 between a contract -- a fixed contract price
24 and a market price, and the risks inherent,

1 and that it takes those risks. So I do
2 understand that. But I do want to move on
3 here.

4 And I've really got to ask Mr.
5 Strickler. You testified the other day --
6 was it Tuesday? Do you recall? It seems
7 like it could have been like three years
8 ago.

9 A. (Strickler) Yes, I testified yesterday.

10 Q. Your testimony still stands?

11 A. (Strickler) Yes.

12 Q. Any question -- any answer that you might
13 have given to any question of mine, that's
14 still correct?

15 A. (Strickler) As far as I know.

16 Q. Okay. Well, you told me that Homeland --
17 you, as an officer of Homeland, are
18 responsible for construction and operation
19 of the plant; is that right?

20 A. (Strickler) That's correct.

21 Q. And you report directly to NewCo, under
22 contract to NewCo?

23 A. (Strickler) Well, under contract to NewCo.
24 I will be -- our obligation, though, is to

1 perform services to the Applicant.

2 Q. Well, I understand that. But this chart
3 here should have a line going -- a straight
4 line, not dotted, up to NewCo, because you
5 have the contract with NewCo, don't you?

6 A. (Strickler) At the end of the day, it will
7 be with the Applicant, but -- the services
8 provided are to the Applicant. Our
9 obligation is to provide the services to the
10 Applicant --

11 Q. I understand.

12 A. (Strickler) -- and they'll have the ability
13 to, you know, direct us in any way that they
14 see fit.

15 Q. Okay. Do we have to go back and look at
16 what your testimony is or maybe go back in
17 the transcript? I'm just trying to ask you.
18 You told me that you, Homeland, were under
19 contract with NewCo --

20 A. (Strickler) That is correct.

21 Q. -- to provide those services.

22 A. (Strickler) I did say that.

23 Q. Okay.

24 A. (Strickler) And the service is provided to

1 the Applicant, as directed by the Applicant.

2 Q. Okay. So then, my question is, if you'll
3 turn around and read that chart, does that
4 chart need to reflect the fact that Homeland
5 has a contract with NewCo that requires
6 certain things from Homeland, as far as
7 design, construction and operation and
8 maintenance of the plant?

9 A. (Strickler) We will at the -- once the
10 contract -- once the transaction that's been
11 described has been completed and before
12 financing the project, we will ultimately
13 have a contract with the Applicant. That
14 will be required by the lenders.

15 Q. Talking about your amended testimony that
16 you put in. And you said post-closure
17 you're going to have a contract directly
18 with NewCo, if I understood you.

19 A. (Strickler) I don't recall saying
20 "post-closing."

21 Q. Well, okay.

22 A. (Strickler) But in any event, I will state
23 here, now, that our contract will ultimately
24 be with the Applicant.

1 Q. Let's look at Page 2, then, of Exhibit 52.
2 Do you have it?

3 A. (Strickler) Yes.

4 Q. Now, I guess I have to ask you to read this
5 into the record. So would you read for the
6 record what is in red on Lines 2 through 5.

7 A. (Strickler) "Under contract with NewCo
8 Energy, LLC, Homeland is to provide service
9 to the Applicant for the development,
10 design, construction and operation of the
11 Berlin project after the change in ownership
12 described in Michael Bartoszek's amended
13 testimony and the amended application."

14 Q. All right. It's not a short-term thing.
15 This is the deal; right? That's what you
16 said. This is one of the reorganization
17 changes you reported to the PUC under oath;
18 isn't that right?

19 A. (Strickler) Yes. And at the end of the day,
20 what I'm testifying here is that, at the end
21 of the day, at the time of financial
22 closing, our agreements will have to be with
23 the Applicant.

24 Q. Oh, I understand what you're saying today.

1 I'm just trying to compare it and contrast
2 it, actually, to what you said the other
3 day. And I asked you if you were sure. Oh,
4 yeah, you're sure. We have a -- there's
5 been a change, hasn't there? You're
6 changing the story, aren't you?

7 A. (Strickler) No.

8 Q. No? You're changing your testimony?

9 A. (Strickler) I'm trying to make it clearer.

10 Q. Okay. One other thing. Commissioner
11 Ignatius asked you -- asked Mr. Bartoszek
12 questions about Richard Cyr and Robert
13 Desrosiers; did she not, Mr. Bartoszek?

14 A. (Bartoszek) Yes.

15 Q. Okay. There's some information on the Site
16 Evaluation Committee Web site that I wanted
17 to just ask you about.

18 PJPD is located at a residence at
19 130 Clinton Street, Portsmouth, New
20 Hampshire; is that correct?

21 A. (Bartoszek) PJPD is a special-purpose
22 entity --

23 Q. Look, I'm asking you a question. Is it a --

24 A. (Bartoszek) I don't know the physical

1 location.

2 Q. Do you know where Richard Cyr lives in
3 Portsmouth?

4 A. (Bartoszek) I don't know his address, off
5 the top of my head.

6 Q. You don't know if it's 130 Clinton Street?

7 A. (Bartoszek) I'm sorry. I don't.

8 Q. Have you ever been over to Cate Street?

9 A. (Bartoszek) I'm sorry?

10 Q. Ever been over to Cate Street?

11 A. (Bartoszek) Yes, I have.

12 Q. You have. Nice building, isn't it?

13 A. (Bartoszek) The street or --

14 Q. No, the building. The street's not nice,
15 but the building is.

16 A. (Bartoszek) Yes, I have.

17 Q. Okay. Richard Cyr's the landlord, isn't he?

18 A. (Bartoszek) I don't know that.

19 Q. You don't know that? His name is on the
20 front door. But anyway --

21 A. (Bartoszek) I've never noticed that.

22 Q. But anyway, that's where Cate Street Capital
23 is, isn't it?

24 A. (Bartoszek) Yes, that's correct.

1 Q. And would you happen to know that, if on
2 a... if in a press release on April 18,
3 2009, Keith Mueller, an advisor to Cate
4 Street Capital and a former employee of
5 Accenture, claimed that Cate Street Capital
6 is, quote, the owner and developer of a New
7 Hampshire-based biomass plant that is
8 intended to provide 65 megawatts of clean
9 energy starting in 2010 -- is that news to
10 you?

11 A. (Bartoszek) I'm not sure what your question
12 is.

13 Q. Let's just assume -- you don't have to
14 concede it if you don't want to. Let's
15 assume it's the same Keith Mueller, a former
16 employee of Accenture, okay. Your Keith
17 Mueller is a former employee of Accenture,
18 isn't he?

19 A. (Bartoszek) Yes, I'm sure we're probably
20 talking about the same person. But if the
21 question is, what's the ownership structure
22 of the Applicant and its parent
23 organizations, it's what's written on the
24 board behind me.

1 Q. I know. I'm asking you a question.

2 You said you've visited Cate Street
3 Capital; is that correct?

4 A. (Bartoszek) I have.

5 Q. Okay. I'm asking you that the language
6 quoted says that it's -- Mr. Mueller is
7 quoted as saying that Cate Street Capital is
8 the owner and developer of a New
9 Hampshire-based biomass plant which is
10 intended to provide 65 megawatts of clean
11 energy starting in 2010. That was released
12 on, I believe, April 18th.

13 Is that news to you?

14 A. (Bartoszek) I guess it's news to me.

15 Q. Okay.

16 A. (Bartoszek) I guess, just to be clear, the
17 owner of the --

18 Q. Okay. I know that --

19 A. (Bartoszek) -- the physical owner of the
20 assets is PJPD.

21 Q. I know that. You know what? This is my
22 letter to the PUC. I said in December that
23 PJPD was the owner of the assets, okay. So
24 I know what's going on here. I don't need a

1 third time to have it pointed out to me.

2 Thank you.

3 With respect to Mr. Desrosiers, he's
4 the -- Ms. Ignatius asked you about Robert
5 Desrosiers, didn't she?

6 A. (Bartoszek) She did.

7 Q. Now, he's the office manager at Cate Street
8 Capital, isn't he?

9 A. (Bartoszek) I believe so.

10 Q. Yeah. And you were there, so you knew that;
11 right?

12 A. (Bartoszek) I -- no, I don't really know
13 exactly what his role is. I've met Bob
14 Desrosiers.

15 Q. Yeah. Well, I hope so. He's like one of
16 the managers, right, of one of these
17 critical entities? I hope you've met him.

18 A. (Bartoszek) It's not uncommon to, I mean
19 special-purpose entities, to appoint someone
20 to be a manager. I mean, oftentimes, I'm
21 sure you know as an attorney, Mr. Rodier,
22 that sometimes you've probably formed
23 special-purpose entities for your client and
24 appointed yourself as manager.

1 Q. No, I appointed my wife. But you're right.
2 I certainly agree it's often somebody that's
3 just there, that you can't really trace back
4 to really what's going on. I know. We do
5 it all the time.

6 So we've talked about Robert Desrosiers
7 and we've talked about Richard Cyr. So I
8 guess what I'm going to do at this point is
9 drop this and try to stick to 10 minutes.
10 And let me just check my notes.

11 (Pause)

12 MR. RODIER: That's all I've
13 got. Thank you.

14 CHAIRMAN BURACK: Thank you,
15 Attorney Rodier.
16 Counsel for public.

17 MR. BROOKS: Thank you,
18 Mr. Chairman.

19 CROSS-EXAMINATION

20 BY MR. BROOKS:

21 Q. We have a couple questions, and I think that
22 it might dovetail with the question posed by
23 Member Harrington regarding whether or not
24 NewCo would agree to be bound by the terms

1 of the certificate once it's issued.

2 That was our concern as well. I mean,
3 we talked about a lot of these different
4 entities and that they were created for what
5 you described as liability purposes. And
6 there's a lot of very legitimate liability
7 purposes that you may be guarding against:
8 tax liability, debt liability, maybe even
9 slip and fall, depending on who they are.
10 But we would like to make sure that the
11 right entities are bound by the certificate.
12 And you've already taken a step there for
13 NewCo.

14 Because PJPD is the owner of the assets
15 and the owner of the property, would you be
16 willing to investigate a condition or some
17 way similar to the NewCo condition that
18 would bind PJPD to those conditions as well?

19 A. (Bartoszek) I'm quite sure that would be
20 acceptable. We offered the NewCo guaranty,
21 because that's the parent organization of
22 PJPD. But I'm quite sure that would be fine
23 as well.

24 Q. Okay. And I ask that just because NewCo

1 does have the hundred-percent ownership, but
2 they go through Aware, and then Aware goes
3 through PJPD.

4 A. (Bartoszek) Correct.

5 Q. So I did want to ask you if you'd be willing
6 to do that.

7 Similar question is for two of the
8 topics that we've discussed before. One is
9 the kind of Brownfield, both obligations and
10 the covenants that might benefit the
11 property that are out there.

12 I believe the question before was who
13 will be the assign of the covenants that
14 we -- that Public Counsel entered into
15 evidence. And there just seemed to be a
16 little bit of speculation about who the
17 assign would actually be. And we'd like to
18 have some assurance about who believes is
19 actually going to be the assign of those
20 covenants and how that's going to work,
21 instead of us -- let's say we had an issue
22 later on. We don't want to be in a position
23 of trying to track down, you know, and go to
24 one entity and they say, well, actually,

1 it's not us because our structure is X, and
2 so go to this one, and we go back and forth.

3 So, a similar condition outlining, you
4 know, both who benefits and who is burdened
5 by those covenants.

6 MR. NEEDLEMAN: Maybe I could
7 speak to that. We would certainly be agreeable
8 to that. I tried my best to clarify that with
9 the T1 area yesterday. I'm still not sure I got
10 all the way there. But we want to get all the
11 way there, and we will work that out to your
12 satisfaction.

13 MR. BROOKS: And that may be
14 nothing more than us all figuring out who
15 actually is the assign and then memorializing
16 that in some way so that there's no guess work.

17 MR. NEEDLEMAN: That would be
18 fine.

19 MR. ROTH: If I might jump in
20 now at this point, just for a brief second,
21 Allen.

22 MR. BROOKS: Sure.

23 MR. ROTH: As a result of
24 the -- and I don't know if this is a question for

1 Attorney Needleman. You might want to go be
2 sworn in, but --

3 MR. NEEDLEMAN: No.

4 MR. ROTH: As a result of the
5 investigations of the groundwater that are to be
6 conducted, one might expect that there would be a
7 requirement of a groundwater management permit
8 being put in place.

9 Who would you expect to be the
10 applicant for the groundwater management permit?
11 Would that be PJPD? And I guess this is just the
12 same question Allen asked, but more specifically
13 directed to the groundwater water management
14 permit.

15 MR. NEEDLEMAN: It's something
16 I would prefer to talk about with you separately.
17 Frankly, we've only thought about that in very
18 general terms at this point.

19 MR. ROTH: Okay.

20 BY MR. BROOKS:

21 Q. So, a similar question with respect to
22 Fibrowatt. I believe that the testimony was
23 that you would be the, you know, operations
24 and maintenance, which I assume means, let's

1 say for air emissions purposes, that you
2 would be the operator under the regulations?

3 A. (Strickler) That is correct.

4 Q. And I'm not -- I can't remember. But if you
5 can remember, remind me. Who was actually
6 listed as the applicant on the air permit?
7 Do you know?

8 A. (Bartoszek) Well, the Applicant in this
9 proceeding is -- would be the recipient of
10 the permit. And Fibrowatt, as the operator
11 of the facility, would ensure conformity
12 with the permit conditions. But the permit
13 holder is the Applicant.

14 Q. Is the Applicant. And who is listed as the
15 owner? Not necessarily the Applicant, but
16 the owner. Was that listed as Laidlaw or
17 PJPD?

18 A. (Bartoszek) I know that, at the time -- and
19 if I'm wrong, I know our environmental
20 consultant's in the room, and perhaps he can
21 correct me. But I believe we clarified with
22 DES, that as the lessee and as the party
23 that has day-to-day control of the facility,
24 the proper party on the air permit is the

1 Applicant in this proceeding, Laidlaw Berlin
2 BioPower.

3 Q. Because they have a hundred-percent property
4 interest for that term, underneath the term
5 of the lease? Is that kind of the logic?

6 A. (Bartoszek) Right. Exactly.

7 Q. Okay. Again, if you're willing to entertain
8 it -- and maybe, Mr. Strickler, you can
9 chime in -- we'd be looking just to make
10 sure that we all -- maybe the testimony will
11 do it, but maybe even a condition would be
12 better -- that, in fact, Fibrowatt will have
13 that operator liability underneath at least
14 the air emissions permit, so we know that if
15 something goes wrong who we're looking for;
16 and in terms of owner liability, that we
17 might be looking for both Laidlaw -- both
18 the Applicant and PJPD. And I think you
19 said that might not be a problem. And I'll
20 give you a chance to investigate that
21 further.

22 A. (Bartoszek) Yeah, I mean, I think generally
23 with respect to permit conditions, the
24 various entities on the board are willing to

1 all agree to guarantee adherence with those
2 permit conditions.

3 MR. NEEDLEMAN: And I would
4 just say, I mean, we're certainly happy to talk
5 about that. And my thinking is that we would be
6 happy to make this arrangement, consistent with
7 whatever similar arrangements must exist at other
8 facilities in the state. I think, for example,
9 of the Newington power plant. And I know that
10 that plant is being operated on a contractor
11 basis, or it was the last time I looked.

12 So whatever arrangements are
13 made for a contractor operation at that point, I
14 mean, I'd be happy to make similar arrangements
15 here.

16 MR. IACOPINO: Can I just make
17 the suggestion here, that what you gentlemen are
18 talking about, we would like to have -- assuming
19 you reach some agreement -- we would like to have
20 written stipulations submitted to the Committee
21 in that regard so that the Committee knows at
22 least what you've agreed on. The Committee may
23 not agree to what you all agree on. But that
24 way, we'll at least know what has been agreed

1 upon between at least some of the parties. And I
2 would suggest that you offer them as proposed --
3 as a stipulation to proposed conditions to the
4 certificate.

5 MR. NEEDLEMAN: It was
6 certainly our expectation to work with Public
7 Counsel, once the proceedings were closed, to do
8 that.

9 MR. IACOPINO: And
10 additionally, that does not mean -- for all the
11 other parties as well -- that does not mean that
12 you should not do whatever cross-examination or
13 examination of the various witnesses that you
14 believe is necessary, because it's not a fait
15 accompli that the Committee will necessarily
16 adopt -- well, number one, grant the certificate;
17 or, number two, necessarily adopt stipulations
18 that these two parties come up with. It may be
19 that there's a better condition out there than
20 what they're suggesting. So, please don't
21 anybody think that by virtue of my suggesting
22 that these be provided as proposed conditions,
23 that that means that they're necessarily going to
24 be granted or that we will not consider -- or the

1 Committee will not consider other options
2 presented by other parties.

3 CHAIRMAN BURACK: Thank you,
4 Attorney Iacopino.

5 Do you have further questions,
6 Counsel for the public?

7 MR. BROOKS: Yes,
8 Mr. Chairman. Thank you.

9 BY MR. BROOKS:

10 Q. You mentioned yesterday in your testimony
11 some experience in Ellicottville.

12 A. (Bartoszek) Yes.

13 Q. And through either the magic or curse of
14 technology, Attorney Roth was able to type
15 in "Ellicottville" and look up some
16 information.

17 We found an article in the Concord
18 Monitor from July 16th, 2008, talking about
19 what looks like a dispute between Laidlaw
20 and the Town of Ellicottville, where Laidlaw
21 sued Ellicottville. Can you tell us about
22 that?

23 A. (Bartoszek) Sure. I think that's a good
24 question. So, a little background.

1 As I mentioned yesterday, I bought the
2 Ellicottville power plant in 1999 and owned
3 and operated it for a number of years.
4 Natural gas-fired power plant.

5 And interestingly, when we bought the
6 plant, we had a long-term power purchase
7 contract with National Grid. And we had a
8 contract for gas supply, to supply gas at a
9 fixed price. And it was about \$3.
10 Basically delivered price of \$3.

11 At some point subsequent to that, I
12 think it might have been the winter of 2001,
13 gas prices went up dramatically. And gas
14 prices had been very low for a number of
15 years prior to that. Everybody seemed to
16 feel gas was never going to go very high
17 because it was abundant. But it quadrupled
18 or it quintupled during the winter.

19 And our supplier kind of said, well, I
20 agreed to sell it to you at 3 when it was at
21 2. But now that it's at 12, I really don't
22 want to sell it to you anymore. So he
23 basically stopped giving us the gas. And he
24 was one of a number of suppliers. So that

1 created a pretty bad situation for us.

2 So I thought, well, this will be easy
3 enough to fix. We'll go to our attorney and
4 ask our attorney to go to court, and
5 hopefully we'll get a court order, you know,
6 telling this guy to give us the gas. And we
7 found out that I guess the judicial system
8 isn't that -- doesn't work that way. And we
9 had to basically go into the market and buy
10 gas while we tried to resolve this dispute
11 that we ultimately -- I believe we
12 ultimately settled. But, you know, it
13 created quite a strain to have to buy gas at
14 four and five times what we were paying
15 under our prior contract.

16 So, as I mentioned yesterday, it was
17 during that time that we started to think:
18 Gee, this is -- it would be better to have
19 some other kind of fuel source that doesn't
20 really subject you to this kind of risk.
21 You know, here you've got a contract and you
22 think, you know, it's ironclad and, you
23 know, you run into this kind of problem.

24 And the northern part of New York,

1 where the plant is situated, is sort of
2 situated in kind of the hardwood capital of
3 New York. So there's abundant wood resource
4 around there. And their closest biomass
5 plant is probably a few hundred miles away.
6 So there's really no competition. You
7 actually may have heard Mr. Richmond say
8 yesterday there's a lot of wood in New York.
9 And that's correct.

10 This business actually sold -- or
11 provided its excess thermal energy to a
12 hardwood lumber-drying business that we also
13 owned. So we were in the wood business
14 already.

15 So we went back to our investors and
16 said, look, let's convert this plant to
17 biomass, because, you know, this whole gas
18 thing isn't working out too well. They
19 didn't like that idea. They felt it was too
20 risky. They were comfortable with gas, and
21 they felt that the gas movement in the
22 market was an aberration. And so they
23 bought us out and -- you know, we got bought
24 out of the project.

1 So, a few years later, after the
2 plant -- the new owner subsequently had to
3 shut the plant down because the gas prices
4 continued to be too high to continue
5 operations. Even with the long-term
6 guaranteed contract price, the price of gas
7 remained too high to allow for economic
8 operations.

9 So, myself and some investors at a New
10 York firm called Greystone, we re-bought the
11 plant. I think this was about mid-2004.

12 I had mentioned yesterday that we
13 approached the New York State Energy
14 Research and Development Authority about
15 support to convert a fossil-fuel plant to
16 biomass. And they thought it was a great
17 idea, and we were subsequently awarded a
18 million-dollar grant from the New York State
19 Energy Research and Development Authority to
20 pursue that project. That was the most
21 money they could award, and it was the first
22 time they had ever awarded a grant to a
23 generation facility of that type.

24 So, re-acquired the plant, grant in

1 hand, and sought to change our fuel over.
2 Thought this would be pretty
3 straightforward: Take some equipment out,
4 put some equipment in and go right ahead.

5 And we -- I think our attorney actually
6 advised us that it wasn't a material change,
7 because all the changes were occurring
8 inside of the building, basically. So I
9 don't think we needed to amend our site
10 plan. But to be safe, we filed some
11 documents with the planning board to, I
12 guess, request permission to make the
13 change. And that's when everything all kind
14 of went awry.

15 Folks who -- this plant had been there
16 and had operated successfully since 1990.
17 And this is now the end of 2004. And a lot
18 of folks came out and said, hey, we don't
19 want a power plant there. So we ended up
20 basically having a property dispute, whereby
21 we felt that our rights as a property owner
22 were being -- to operate our business in
23 accordance with its long prior history had
24 been basically taken away from us, almost

1 kind of like an eminent domain kind of
2 situation. Basically, you have what you
3 think is a power plant and what you invest
4 millions of dollars in as a power plant, and
5 basically you're told you can't be a power
6 plant anymore. You can have it as a garage
7 or something, but it can't be a power plant.

8 So, you know, we went to court and
9 tried to, you know, ask for relief, because
10 we felt we were genuinely wronged. You
11 know, we -- and again, my company and my
12 partners invested millions of dollars on the
13 understanding that this is a power plant,
14 because it had been a power plant for so
15 many years, and a power plant that we had
16 operated successfully for many years.

17 And we felt that we were treated
18 wrongly, and we sought to resolve that
19 dispute. And that dispute is currently
20 working its way through the appellate
21 process.

22 So I can tell you, Mr. Brooks, that it
23 would not be my desire in the least to --
24 you know, I would much rather run my

1 business and be a good neighbor and get
2 along with everybody. The last thing I
3 really want to ever see is to have to go to
4 court for any reason. But, unfortunately,
5 in this situation, we felt we were really
6 wronged and, you know, it was the only way
7 we were able to try to seek to resolve the
8 dispute.

9 Q. Okay. You mentioned it's in the appellate
10 process. Were there any decisions in that
11 case from the court?

12 A. (Bartoszek) Well, we -- the way the process
13 works -- my understanding of the way the
14 process works in New York is we had to go
15 through both the planning board process and
16 to the zoning board, get denied by them, and
17 then seek -- go into what's called an
18 Article 78 process in New York, which I
19 guess is sort of a -- asks the state supreme
20 court to revisit decisions by local planning
21 boards. There's no state citing board like
22 this in New York for projects of this type.
23 It's all handled at the local level by folks
24 who, you know, sit on the local planning

1 board. So there are, certainly in my view,
2 some issues with understanding of technology
3 and things that people in this room, I'm
4 sure, have a very good grasp of, that create
5 challenges when you're dealing with someone
6 who's sitting on the local planning or a
7 local zoning board. So, New York has
8 created a process whereby you can go to the
9 state court and ask that those decisions be
10 revisited.

11 So, when we went to the state supreme
12 court, at the trial level, the judge
13 basically said he thought that the planning
14 board took -- did what it had to do, and he
15 was unwilling to overturn the decision. So
16 we are now at the appeals level in New York.

17 I'm not going to try to explain the
18 process, but I know that the judges are only
19 able to look at limited facts in the case.
20 And I believe the standard that has to be
21 shown is that some egregious error was
22 committed by the planning board. So it's a
23 bit of a challenge.

24 But, you know, again, I can tell you as

1 a businessman, this is the last sort of
2 outcome, you know, we ever want to see in a
3 situation like this. We just want to run
4 our business and do a good job. We had
5 never previously had any incident with the
6 town or anything like that, never had any
7 fines or problems with the New York State
8 Air Division. You know, always complied
9 with our permits, always complied with our
10 terms of our contract with National Grid.
11 So we just really wanted to operate our
12 business that we paid a lot of money for.

13 Q. Okay. So, in summary, there was a dispute
14 when -- the dispute arose when there was a
15 fuel switch --

16 A. (Bartoszek) That's right.

17 Q. -- from gas to biofuel. And Laidlaw felt
18 that it was wronged on its investment and
19 its expectations, sued the town, ended up
20 losing in the supreme court -- which in New
21 York is not the highest court in the land,
22 but it's an intermediate-level court -- and
23 that's currently on appeal?

24 A. (Bartoszek) That's correct. It's probably

1 also worth noting -- I mean, again, I'm
2 sure -- I think it's worth noting that,
3 obviously, we did some due diligence before
4 we made this investment. And we went to the
5 code enforcement officer and asked if we
6 required any zoning variances or anything
7 like that, and we were told that we didn't.
8 And that was a position that the town
9 subsequently changed when, in our view, they
10 felt they wanted to block the project. So
11 that's one of the reasons why we went to
12 court, is we were told one thing and then
13 subsequently told another.

14 Q. Do you think that your -- when I say "you,"
15 I mean the Laidlaw plant, or whatever
16 ownership interest that you had in it at the
17 company. Did your relationship with
18 Ellicottville change from when you first
19 constructed the plant -- or operated the
20 plant in 1990 to 2004?

21 A. (Bartoszek) I think during the course of our
22 ownership -- I mean, it's hard to say really
23 the relationship changed, because there
24 really wasn't -- there really wasn't much of

1 a relationship. It was an existing business
2 there. So it wasn't like a proposed project
3 like this, where we've spent a lot of time
4 in the community talking to the community
5 and making sure people are comfortable and
6 supportive of the project. Since this was
7 an existing business, we really didn't need
8 to sort of go into the community and talk
9 about it as much.

10 So I wouldn't say that the relationship
11 changed. I think that there were some folks
12 with, you know, some -- you know, I guess
13 the best way I could put it is that there
14 was some fairly influential folks who didn't
15 like the plant and who sought to oppose it.
16 Best way I'd characterize it.

17 Q. And I believe the article -- and, again, I'm
18 not putting the article in evidence. I
19 don't claim it's true. The facts come from
20 you, and so I'll rely on you to answer the
21 questions.

22 But I believe the article mentions an
23 opinion that the -- a lot of the locals were
24 now kind of enamored with the idea of

1 tourism in Ellicottville, rather than
2 industrial facilities, and that created
3 tension?

4 A. (Bartoszek) Yeah. I mean, where this plant
5 is situated on State Highway 219, our
6 neighbors are a self-storage facility, a car
7 wash, the municipal garage. So we're not
8 exactly in a tourist section of the -- we're
9 in an industrial section of the town. And
10 the town had always been a small -- even
11 probably by New Hampshire standards --
12 pretty small. Small mountains, small ski
13 resort. And it had been that during the
14 course of the plant's operation. That
15 hadn't really changed.

16 So I -- you know, I think you heard
17 Mr. -- I think it was Mr. Bravakis who
18 yesterday mentioned the opposition to the
19 Burlington Electric plant and the signs,
20 people putting up signs of stumps of trees
21 cut down, and then how, after the fact,
22 people realized it's not that. They have
23 one view of it beforehand, and then after
24 the plant commences operation and they see

1 it's not going to result in the forest being
2 clear-cut or any big impact on the
3 community, that opposition goes away.

4 So I think that's -- some of that is
5 what's going on there, is folks, once they
6 start to realize that the thing that they've
7 been driving past for ten years, oh, that's
8 a power plant, maybe we shouldn't have a
9 power plant in our community. But it was
10 something that they never probably thought
11 about before, and it never bothered them
12 because they had driven past it a million
13 times and not even noticed it.

14 But, yeah, you're correct. I think the
15 desire was to try to focus more on tourism.
16 But the tourist element had always been
17 there, and the plant had coincided with the
18 tourist element. It hadn't in any way
19 adversely impacted the tourist element in
20 the community.

21 Q. Do you know, was there any information from
22 the community that there was a change to the
23 community when you changed fuels from gas to
24 biomass, in terms of -- you know, was there

1 additional noise due to chipping activities
2 or trucking or something like that?

3 A. (Bartoszek) No. I mean, we conducted an
4 extensive environmental impact statement.
5 And we went out of our way -- I mean, we
6 listened to every community concern. And
7 every time a concern came up -- we're
8 concerned about noise. Okay, we won't chip
9 on site. We're concerned about -- we don't
10 want to see a wood pile. Okay. We'll put
11 that inside.

12 So, no, I don't think that -- I think
13 there were concerns, and I think we
14 legitimately -- our plan, you know, sought
15 to address them. I think it actually shows
16 our willingness to work with the community
17 and address community concerns. I mean, I
18 think at the end of the day, as you said,
19 there was a certain desire of, hey, we want
20 tourism. Let's try to find a way to stop
21 this power plant, no matter what. So, no
22 matter what hoops we jumped through, we were
23 never going to kind of get there.

24 But to answer your question, every time

1 a concern came up, we found a way to address
2 it, even if we felt it wasn't anything that
3 was going to have a community impact. We
4 wanted people to feel completely comfortable
5 that it wouldn't have any impact on the
6 community.

7 Q. The issue arose when you changed fuels. In
8 this case, a lot of what we're talking about
9 has to do with the integration of not only
10 the facility, but the fuel. We talked a lot
11 about the wood basket and about trucking and
12 jobs in the economy.

13 So I guess a concern would be that if
14 you had a fuel change at the Laidlaw
15 facility, you may not have to go back to the
16 SEC just to burn a different fuel if you
17 don't have a significant expansion. My
18 question is: How do we deal with that?
19 First of all, if it's -- do you foresee the
20 possibility of any fuel change in the future
21 of Laidlaw?

22 A. (Bartoszek) No, not at all. And I'm quite
23 sure that we're willing to accept the permit
24 condition that we're only allowed to utilize

1 biomass. And I believe that's probably also
2 dealt with in our air permit.

3 Q. Okay. You anticipated my next question,
4 which is, would you be amenable to that
5 condition? And if that condition
6 included -- you know, right now there's a
7 moratorium on construction and debris
8 burning. But if that included C & D
9 burning, would you be okay with that as
10 well?

11 A. (Bartoszek) We have absolutely no intention
12 of utilizing C & D, and we would be
13 perfectly comfortable with that condition.

14 CROSS-EXAMINATION

15 BY MR. ROTH:

16 Q. As part of the dispute with Ellicottville,
17 in addition to the ordinary appeals and
18 challenges that you took to the decision
19 using the state administrative and judicial
20 process, didn't you file a \$10 million
21 lawsuit alleging a violation of civil rights
22 against the town?

23 A. (Bartoszek) Yeah, that's right. We --
24 again, the process in the state court is

1 only for the purpose of trying to resolve
2 the property dispute. There's no -- my
3 understanding is there's no ability to be
4 made whole for any monetary damages in the
5 state court. So we were required to file a
6 separate lawsuit for that.

7 And in addition, as you mentioned, the
8 suit tried to point out or allege that we
9 felt we were being treated differently than
10 other people in the community had been
11 treated when they made changes to their
12 property, and we were being treated that way
13 simply for the purposes of kind of zoning us
14 out of existence.

15 Q. What's the status of that suit now?

16 A. (Bartoszek) My understanding is that the
17 town filed a motion to dismiss or a motion
18 for summary judgment. And that has not
19 yet -- that's been briefed, but the judge
20 has not yet issued a decision in that.

21 Q. Okay.

22 MR. BROOKS: No further
23 questions.

24 MR. ROTH: No, I have other

1 questions about other stuff, just not on that,
2 though.

3 CHAIRMAN BURACK: You have
4 other questions, Attorney Roth, for this panel?

5 MR. ROTH: Yes, I do.

6 MR. BROOKS: I take back my
7 statement about no further questions.

8 MR. ROTH: I thought he wanted
9 to know whether I wanted to ask anything more
10 about this Ellicottville stuff. But I don't.

11 BY MR. ROTH:

12 Q. All right. Turning your attention back to
13 the capital chart, where does the investment
14 tax credit or production tax credit flow fit
15 in here? It's not on this chart anywhere.

16 A. (Bartoszek) That's a good point. So it
17 would be on the right side of the chart with
18 the -- as I mentioned yesterday, the
19 investment tax credit would be considered a
20 capital item. It would be additional
21 capital contributed to our capital budget,
22 so it would be on the PJPD lender side.

23 So, as I mentioned, I believe to

24 Commissioner Ignatius, we are trying to be

1 conservative by not factoring in that number
2 to our capital structure on the lower
3 right-hand corner. But were we to receive
4 proceeds from the ITC, it would add
5 additional equity capital to the project.

6 Q. And if it did add additional capital, equity
7 capital to the project, would that be used
8 to pay down the debt, or would that be used
9 to refund equity to NewCo's investors?

10 A. (Bartoszek) I think, as I -- I may have
11 answered the question to you yesterday.
12 Generally, as you can see here, we're
13 contemplating \$137 million of debt. All
14 these transactions will close concurrently.
15 And the person who puts the most money in,
16 the senior lender, generally drives the
17 closing of the transaction. It would be
18 very unlikely that someone committing that
19 amount of capital to the deal would want to
20 see equity capital exit the transaction. So
21 I'm quite sure they're going to require that
22 those funds stay in the deal as equity.

23 Q. Now, I understand that you've done, in a
24 confidential exhibit, a 20-year

1 look-forward. Now, in terms of the debt, do
2 you anticipate a two-phase of debt
3 financing? Let me explain what I'm
4 thinking.

5 If you close on the financing for
6 construction on, say, December 31st -- and I
7 know that's -- from my own experience, that
8 will ruin a bunch of New York lawyers' New
9 Year's Eve plans. But you're going to go
10 into construction mode and you're going to
11 spend all that money and then you're going
12 to have a completed plant in, say, three
13 years. And at that point, the plant goes
14 operational; correct?

15 A. (Bartoszek) Correct, if all goes well.

16 Q. And everything goes according to plan.

17 Is it your intent to amortize the
18 construction debt over 20 years? Or is it
19 your intent to amortize the construction
20 debt, such that at the moment that it goes
21 operational you refinance again?

22 A. (Bartoszek) The amortization would be
23 coterminous with the PPA. So you'd
24 capitalize the debt service required during

1 the construction phase, so that once cash
2 flow started, the amortization schedule
3 would start.

4 Q. I guess that doesn't really answer my
5 question. Let's say --

6 A. (Bartoszek) You might have -- go ahead. I'm
7 sorry.

8 Q. The PPA, as I would understand it, only
9 works if you're actually producing power;
10 correct?

11 A. (Bartoszek) Correct.

12 Q. So, the PPA becomes operative on the day you
13 commence commercial operations.

14 A. (Bartoszek) It becomes operative during the
15 shake-down phase, the phase where we're
16 testing the plant. Actually, there's
17 provisions in it for payment of -- for
18 output and for RECs and stuff that occurs
19 during the testing phase of the plant. But
20 generally, you're right.

21 Q. Okay. Will you have debt service on the
22 initial -- on the construction loan, that
23 you're going to sign and ruin all the New
24 Year's Eve plans, during the time of

1 construction?

2 A. (Bartoszek) Yeah. And interest will accrue
3 from closing. And that's generally
4 capitalized since you don't have cash flow
5 during that period.

6 Q. So you won't be paying any of the debt
7 during that time.

8 A. (Bartoszek) That's right.

9 Q. But that debt that you signed, is that going
10 to be due and payable at the time you go
11 commercially operational, or is -- and
12 therefore trigger a required refinancing?

13 A. (Bartoszek) That's a good question. It
14 could be done that way. But I think most
15 likely it will be a term loan that is
16 structured to be capitalized and then to
17 amortize at that point.

18 In the case of the Fibrowatt
19 financing --

20 MR. BARTOSZEK: You guys did
21 not refinance a construction loan; correct? You
22 guys did it all?

23 A. (Strickler) Yeah, it's very similar to the
24 way the Fibrominn project was financed. It

1 was, basically, borrow all the money we
2 needed day one, and we paid the interest,
3 having capitalized interest as Mr. Bartoszek
4 said, during the period of time while the
5 plant was being built; and then, upon
6 commercial operations, when we were starting
7 to get revenues from the power, we would
8 start paying the debt service or the lease
9 payment.

10 Q. So you anticipate that the note that you
11 sign on December 31st, 2010 -- and I'm just
12 hypothesizing that date and time. So I'm
13 not putting words in your mouth -- is going
14 to be essentially the last note that you
15 sign for that loan. You're not going to
16 refinance on that commercial operation and
17 do another restructuring.

18 A. (Bartoszek) Yes. I think most likely that's
19 the way it's going to work.

20 And I would also point out, and I guess
21 we're kind of alluding to it, that the
22 structure that we've outlined here is the
23 exact structure that was utilized in the
24 Fibrowatt financing, which was \$212 million

1 for the construction of the plant in Benson,
2 Minnesota.

3 So, yeah, that is exactly how we would
4 expect to do the deal.

5 Q. And then do you -- how will the investors in
6 NewCo obtain a return on their investment?

7 A. (Bartoszek) Well, as I mentioned yesterday,
8 you've got this waterfall of funds that's
9 going to be required to be set up by the
10 lender, and at the top of the food chain is
11 almost always operating expenses and taxes.
12 And then as you move down the food chain,
13 you move down to debt service, and if
14 there's any subordinating debt service or
15 any other obligations to investors, they'd
16 be at the next level down. And then
17 replenishment of funds, of the reserve funds
18 that I mentioned earlier, might be the next
19 level down. And then all the way down at
20 the bottom, if there's anything left over,
21 that's profits for distribution. And
22 they're most likely not going to be
23 distributed -- they'd be distributed
24 periodically. So they would probably be

1 capitalized and then distributed in
2 accordance with a plan. But a lot of this
3 is driven by that document which the lender
4 will require the parties to sign.

5 Q. So if I understand, and maybe in the most
6 simplistic way, the return on investment to
7 the NewCo investors will be through the
8 payment of ordinary dividends.

9 A. (Bartoszek) Right. Yeah. I mean, excess
10 cash flow, profits, after those various
11 items are paid, represents profits to the
12 investors in the project.

13 Q. I guess you're answering the question a
14 little bit differently than I asked it; and
15 that is, do you consider that excess cash
16 flow or profit to be simply dividends or --

17 A. (Bartoszek) Dividend probably isn't the
18 correct term because it's not a corporation
19 or LLC. So you would move the cash flow up
20 the food chain to distribute it up the food
21 chain, but presumably not as a dividend,
22 because they're not C corporations.

23 Q. All right. Thank you.

24 And the NewCo investors do not have an

1 expectation that, when the plant goes
2 commercial, that they're going to get cashed
3 out by an investment tax credit.

4 A. (Bartoszek) I don't believe that's the plan.
5 I want to be clear. I'm not speaking on
6 behalf of NewCo. But as I said, I think
7 most likely any capital generated,
8 associated with this project, is probably
9 going to need to stay in the deal in order
10 to get it financed.

11 A. (Strickler) I mean, it's going to be -- I
12 mean, it's something that will come down the
13 road. The lenders may -- you know, as Mike
14 mentioned, it will be up somewhat to -- the
15 lender is going to have something to say
16 about, you know, whether and how much might
17 get -- you know, might be available to the
18 equity.

19 Q. When you did the Fibrominn financing, how
20 long did it take from, say, the comfort
21 letter, as what was provided in this case,
22 to closing?

23 A. (Strickler) That was five years ago,
24 Mr. Roth. It was months. I couldn't tell

1 you whether it was two months or three
2 months. I honestly -- I don't recall.

3 Q. So you're confident -- are you confident --

4 A. (Strickler) I think it's reasonable. Yes, I
5 think it is reasonable. Based on where the
6 project is today, I think it is reasonable
7 to complete the financing structure by the
8 end of the year.

9 Q. Okay. Now, I know that, right now, NewCo's
10 management board consists of Mr. Cyr,
11 Mr. Mueller and Mr. Ferree, and the manager
12 is Mr. Desrosiers. Now, Mr. Desrosiers and
13 Mr. Cyr are apparently New Hampshire
14 residents; is that correct?

15 A. (Bartoszek) Yes.

16 Q. Okay. Would you -- and maybe you don't
17 have the -- would you be willing to explore
18 the possibility of local representation on
19 the board, somebody from Coos County?

20 A. (Bartoszek) I'm not sure. I'd probably have
21 to get back to you on that. Again, I don't
22 speak for NewCo and --

23 Q. I understand.

24 A. (Bartoszek) As a private entity, I'm not

1 sure how they feel about that.

2 Q. And speaking on behalf of Laidlaw Berlin
3 BioPower, would you be willing to consider a
4 condition which limited Laidlaw's ability to
5 upstream cash flow upon compliance with the
6 terms and conditions of the certificate?

7 A. (Bartoszek) I think we'd have to research
8 that further, Mr. Roth, because that really
9 delves into the sweep of cash and the flow
10 of funds. Again, a lot of that is dictated
11 by documents associated with the financial
12 closing and associated with the lenders, and
13 I'm not sure how that would impact that.

14 I mean, I understand what you're trying
15 to do. And I don't -- I'd say compliance
16 with the permits in order to do that seems
17 reasonable. But I'm not exactly sure we'd
18 have the authority to do that. So we'd have
19 to really look into that.

20 Q. Well, I'm not sure how the lender -- based
21 on the cash-flow waterfall that you
22 described, when it comes down to those last
23 dollars, that everybody else has been
24 satisfied and you're about to upstream to

1 your investors the excess cash flow, why
2 would the lender care what he did with the
3 excess cash flow at that point?

4 A. (Bartoszek) Well, because you're taking a
5 snapshot in time. So if you've got -- let's
6 say that's a one-month period we're looking
7 at -- or a one-quarter period we're looking
8 at. You're obviously going to want cash to
9 stay in the company until you get to a
10 certain period of time and have a certain
11 amount of excess cash where a distribution
12 can be declared, because maybe the next
13 quarter isn't as good. So, as a general
14 statement, I think lenders always care about
15 seeing money go out of a company.

16 Q. Oh, I agree. And all I'm saying is that the
17 money not go out of the company as long as
18 it's not in compliance with the certificate.
19 That's what I'm saying. I'm not saying that
20 you give the money to us or anything like
21 that. What I'm suggesting is, rather -- if
22 you get to a point where you're out of
23 compliance with permits, or you're out of
24 compliance with your certificate, that you

1 not upstream to investors, that you keep the
2 money in the company.

3 A. (Bartoszek) It certainly seems reasonable.
4 I mean, if we were out of compliance with
5 our permit, it seems to me we'd cease
6 operation at that point. We'd probably be
7 in default. So that would be a pretty bad
8 thing.

9 So I'm sure -- what you're saying
10 certainly sounds reasonable.

11 Q. Okay. Thank you.

12 MR. NEEDLEMAN: I would just
13 add -- I mean, we can talk about this separately.
14 If you have a condition you'd like to propose in
15 that respect, we can look at it.

16 MR. ROTH: Okay. Thank you.

17 BY MR. ROTH:

18 Q. I want to turn your attention to the exhibit
19 that was handed to me today. I don't know
20 what number it is. It's the "Energy From
21 Forest Biomass Potential Economic Impacts in
22 Massachusetts."

23 A. (Bartoszek) I'm sorry, Mr. Roth, I didn't --

24 Q. I was given this exhibit today, the "Energy

1 from Forest Biomass Potential Economic
2 Impacts in Massachusetts."

3 A. (Bartoszek) Yes, sir.

4 Q. Are you familiar with this exhibit?

5 A. (Bartoszek) I'm generally familiar with it,
6 yes.

7 CHAIRMAN BURACK: If I may,
8 this is Committee Exhibit 11.

9 MR. ROTH: Eleven. Okay.

10 BY MR. ROTH:

11 Q. Now, you have to forgive me. I was trying
12 to listen to what you were saying in
13 response to questions from Attorney Rodier
14 and read this exhibit and do calculations.
15 So I could make a complete mess of this
16 thing, so bear with me if you will.

17 I'm looking at Page 17 of the exhibit,
18 and actually on to Page 18, where there's
19 some computations about how you convert --
20 that would enable you to convert tons of
21 chips to workers -- jobs created, basically.
22 And I went through these calculations. And
23 if you notice in that first paragraph, they
24 come up with essentially a 4-1/2-person

1 crew. Do you see that?

2 A. (Bartoszek) You're talking about the first
3 paragraph on Page 17?

4 Q. Yeah.

5 A. (Bartoszek) Yes.

6 Q. A 4-1/2-person crew producing 180 tons of
7 chips per day, operating 48 weeks per year,
8 makes 43,200 tons of chips annually.

9 So what I did is I took your volume,
10 750,000 tons, divided that by 43 -- are you
11 following me -- 43,200 --

12 A. (Bartoszek) Sure.

13 Q. -- and I came up with a factor of 17.36. So
14 that, essentially, is sort of how many crews
15 you would need to produce all the chips, all
16 750,000 tons of chips. And a five-member
17 crew -- I rounded up, giving the benefit of
18 the doubt -- and I come up with 86 new jobs
19 working chippers. Does that math sound
20 about right to you?

21 A. (Bartoszek) Well, I'm probably not the best
22 guy to direct wood chip questions to. But I
23 can tell you that, in addition to -- and I
24 note it mentions five days a week --

1 A. (Strickler) Which would be 8 hours, 48 weeks
2 a year, Mike.

3 A. (Bartoszek) -- which doesn't really jive
4 with our expected operations. So we've got
5 a six-day work week.

6 But I would also note that, in addition
7 to people operating chippers, I'm assuming
8 that when counting new jobs created, they're
9 also counting truckers and other people
10 associated with the movement of chips.

11 Q. Okay. We'll get to that in a minute. But I
12 just wanted to confirm that the chipping --
13 and they also include truck drivers who
14 ferry chips to plants, crew members who
15 operate the knuckle boom loader. And I
16 thought I saw in here that they include
17 additional logger types to essentially
18 gather the tops and branches and cut them
19 up.

20 Now, the other factor in the next
21 paragraph, they talk about the amount of
22 machinery needed to equip each crew. And
23 you see that in the middle of the next
24 paragraph it says approximately

1 \$1.5 million?

2 A. (Bartoszek) Yes.

3 Q. Now, yesterday we talked about the
4 \$2 million program that you said would
5 leverage into 2 to 1 I thought you said?

6 A. (Bartoszek) We would expect two and a
7 quarter million dollars could, at a minimum,
8 be leveraged 2 to 1. If you're assuming
9 50-percent equity in a loan, that's 2-to-1
10 leverage, sure.

11 Q. All right. So let's call that 5 million,
12 just for --

13 A. (Bartoszek) Right.

14 Q. Okay. Now, if you take the 1-1/2 and you
15 multiply it by 5 crews, that figure is 7-1/2
16 million.

17 So, is it fair to say, then, that that
18 2-1/2 million is not going to be enough to
19 capitalize all the crews that you're going
20 to need?

21 A. (Bartoszek) I think that's probably correct.

22 MR. BARTOSZEK: But do we have
23 a rough estimate of the cost of a wood chipper?

24 MR. BRAVAKIS: Six hundred

1 thousand dollars.

2 MR. BARTOSZEK: Six hundred
3 thousand?

4 A. (Bartoszek) Yeah, so I'm being told by my
5 colleague that a wood chipper costs roughly
6 \$600,000. So I think when we said we would
7 be -- we would anticipate -- again, we're
8 not directing those funds.

9 Q. Understood.

10 A. (Bartoszek) But the funds are -- my
11 understanding of the funds is they are to be
12 directed for the purpose of benefiting the
13 community and the project. So, for example:
14 Somebody's going to buy a chipper for
15 \$600,000. And part of that loan fund is
16 going to be used to provide equity for that
17 \$600,000 purchase. I think that's the point
18 we were trying to make. I'm not sure about
19 the \$1.5 million figure they get in here.

20 I'd also note --

21 MR. BARTOSZEK: I think
22 there's probably a fairly robust market for used
23 equipment, isn't there?

24 A. (Bartoszek) So, obviously, \$600,000 would be

1 the cost of a new chipper.

2 Q. So you're disputing the USDA Forest Service
3 2005 study and 2002 studies that estimate
4 the cost of equipping machinery for a
5 chipper crew at 1-1/2 million?

6 A. (Bartoszek) I'm absolutely not disputing it.
7 I'm not in a position to dispute it.

8 Q. Now, I had looked -- if you turn to... see,
9 what I would really like is for you to have
10 some real econometric data showing how much
11 wood you're going to get out of the North
12 Country and how many people you're going to
13 employ doing that. Do you anticipate doing
14 an econometric study to show that?

15 A. (Bartoszek) I believe -- and again,
16 Mr. Roth, I'm probably not the right person
17 to ask about wood chips. But I believe that
18 we've largely relied on third-party data
19 sources for making assumptions with respect
20 to employment.

21 I know that this particular report was
22 cited for its conclusion. Well, I guess not
23 conclusion, but --

24 Q. Before you go to that, I just want to ask

1 about the econometric data. So, is it true,
2 are you not planning to do an econometric
3 study of how much wood you're going to take
4 from the North Country and how many people
5 you're going to employ for doing that?

6 A. (Bartoszek) No, I don't believe so.

7 Q. Do you recall answering the data requests in
8 Exhibit 20, Exhibit 18 and Exhibit 37, where
9 you indicated -- maybe it wasn't you
10 personally, but you or your representatives
11 indicated that an econometric study would be
12 later this year or fall 2010?

13 A. (Bartoszek) That was with respect to wood
14 prices, not with respect to employment
15 associated with it.

16 Q. All right. Fair enough. Thank you.

17 Now I'm looking at Page 24 of this
18 report. And there's three pie charts here.
19 And the first pie chart is a big one that
20 says, "Total impact, 440 jobs." And then
21 the second two pie charts are sort of the
22 plant operations and the chips supply. And
23 I think the big one is sort of a combined
24 pie chart of the other two little pie

1 charts. And I note, for this project
2 they're anticipating 440 jobs. Is that...

3 Now, if you go back to the executive
4 summary, they have a scenario of
5 165-megawatt plant. And I don't think
6 they're talking about just one, but perhaps
7 a couple of them.

8 So is the way you came to the 220-some
9 jobs, you sort of just did some simple
10 arithmetic and divided the 440 by the
11 multiplier of the size of the facility?

12 A. (Bartoszek) No, sir. We actually -- and I
13 guess I had hoped that when we provided this
14 exhibit, that we were -- we would have
15 highlighted the section that we were trying
16 to point out to the Committee and to the
17 interested parties, which is on Page 8. And
18 so we're looking at Page 8 of the report,
19 third paragraph from the top.

20 So are we all ready? So, Black &
21 Veatch, which is a fairly well-respected
22 engineering firm, used the model to assess
23 indirect economic impacts of the RPS
24 scenario. And I'll just move further down

1 that paragraph.

2 Biomass operation created 2.13 jobs per
3 megawatt capacity, more than any other
4 renewable assessed, given the ongoing fuel
5 requirement. In total for both construction
6 and operation over the study period, the RPS
7 portfolio increased output by 10.1 billion
8 earnings, by 2.8 billion in employment, and
9 by 85,167 over the business-as-usual
10 scenario.

11 Now, so we used the 2.13 and then --

12 MR. NEEDLEMAN: Page 25.

13 A. (Bartoszek) Is it Page 25? If I refer -- if
14 you could please turn to Page 25, again the
15 third paragraph from the top. So, both the
16 construction phase and the annual O & M of
17 biomass activities create added economic
18 impacts, parenthetical, spillovers, for the
19 rest of the state. With annual operations
20 and maintenance alone, the following occurs:
21 For every 2.9 jobs created in Western
22 Massachusetts by the biomass undertaking,
23 another one job is created elsewhere in
24 Massachusetts. For every \$2.50 of labor

1 income created in Western Massachusetts,
2 another \$1 of labor income is created
3 elsewhere in Massachusetts.

4 So, Mr. Roth, we arrived at the figure
5 by basically interpolating from that data,
6 assuming we're creating two, roughly two
7 direct jobs, and those two direct jobs are
8 creating one additional job somewhere else;
9 so, basically three jobs per megawatt, or
10 210 jobs total for our plant.

11 Q. Other than what's in this report, you don't
12 know how Black & Veatch came up with the two
13 jobs per megawatt?

14 A. (Bartoszek) No, sir. We were really --

15 Q. Okay. That's fine. And other than this
16 report, do you know how they came up with
17 the other job created elsewhere in
18 Massachusetts?

19 A. (Bartoszek) I do not.

20 Q. Okay. That's all.

21 MR. RODIER: Mr. Chairman, may
22 I be heard just briefly? Just sort of a motion.

23 CHAIRMAN BURACK: You want to
24 make a motion now, Mr. Rodier? Is that what you

1 said?

2 MR. RODIER: Well, I don't
3 want to interrupt the flow of the proceedings.
4 Well, can I just tell you what the subject matter
5 is and you decide?

6 CHAIRMAN BURACK: Please do.

7 MR. RODIER: I'd be happy with
8 anything you decide, of course.

9 With regard to the
10 Ellicottville matter, we have a copy of the
11 decision of the board on this matter. And I
12 think it's very important, because the board
13 describes the Applicant here as "having a
14 mendacious attitude and reluctance to cooperate."

15 And I'm just going to suggest, since we have it,
16 you might want to accept it into your evidence.
17 You've got plenty of other exhibits. You might
18 as well have the -- there's been extensive
19 discussion here on this. So if you want to put
20 this in your exhibit file, we'll provide you a
21 copy.

22 MR. NEEDLEMAN: Well,
23 Mr. Chair, before the Committee decides whether
24 or not to do that, if you're inclined to

1 entertain that request, I'd like to be heard
2 first.

3 CHAIRMAN BURACK: Do you
4 expect your argument will be extensive on this,
5 Mr. Needleman?

6 MR. NEEDLEMAN: No, it will be
7 very brief.

8 MR. ROTH: Mr. Chair, if I
9 could make one very -- one sentence of
10 preliminary -- before either of them speaks, I'd
11 like to say one sentence about it. And I'll just
12 say it.

13 <Laughter>

14 MR. ROTH: The sentence is
15 this: I was inspired to ask about Ellicottville
16 by the witness' testimony and did my own research
17 online, and it had nothing to do with any of the
18 notes or anything that were being passed to me
19 from the CPD table, period.

20 CHAIRMAN BURACK: Thank you.
21 Attorney Roth, any additional
22 questions for this panel at this time?

23 MR. ROTH: No, sir, I don't.

24 CHAIRMAN BURACK: Okay. Do

1 any of the other counsel have other questions for
2 the panel? Obviously, we haven't had a chance
3 for the Subcommittee to ask questions of this
4 panel. I'm just looking at time here as well.

5 What I'm going to suggest,
6 then, Attorney Rodier, is if you want to make
7 your argument as to why we -- you want to place
8 this in the record, we'll give Attorney Needleman
9 a chance to make his argument as to why he
10 opposes your request to do so. And I will then
11 take that motion and the argument under
12 advisement and will rule at a later time.

13 We'll then take a break. When
14 we come back, the Subcommittee will ask questions
15 of this panel. And it is still my goal to try to
16 get Mr. Kusche up and hear his testimony and try
17 to complete that, if we can, before we take a
18 lunch break, because I would like to be able to
19 have the entire afternoon, if possible, for the
20 non-public session.

21 So if that is understandable
22 to everybody, Mr. Rodier, please make your
23 argument, if you would, as to the motion that you
24 wish to make to enter that into the record.

1 MR. RODIER: Sure. I already
2 made it. There's been a lot of discussion.
3 There's a passage in here in particular that
4 gives a totally different impression than the
5 Applicant's responses created to the Attorney
6 Generals. Particularly, I mentioned the fact
7 that it talks about the "mendacious and
8 uncooperative attitude." That's what the town
9 said. It's a factor in what they did. I could
10 read more of it, but, you know, time is short.
11 That's it.

12 CHAIRMAN BURACK: Thank you.
13 Thank you for your argument.

14 Mr. Needleman.

15 MR. NEEDLEMAN: Four quick
16 points: No. 1, I feel like I've been very
17 indulgent with respect to the cross-examination
18 that Mr. Rodier has offered. I think virtually
19 none of it has been with respect to the two
20 purposes for which his limited intervenor status
21 applies. And I think this has no bearing on that
22 at all.

23 No. 2, I don't believe that
24 the document has any relevance and should be

1 admitted.

2 No. 3, if the Committee
3 disagrees and is inclined to admit it, we would
4 like the opportunity to be able to admit
5 additional documents that are responsive to that.

6 And No. 4, it seems to me that
7 it goes to the issue of character. And the
8 Committee has had Mr. Bartoszek on the stand for
9 two days, and I think they're fully capable of
10 judging his character and his forthrightness and
11 truthfulness at this point without the assistance
12 of what in other circumstances would be
13 considered hearsay.

14 CHAIRMAN BURACK: Thank you.

15 MR. ROTH: Mr. Chairman, if we
16 may be heard on this?

17 CHAIRMAN BURACK: Yes.

18 MR. ROTH: We support the
19 objection and would similarly object to the
20 introduction of this information. And while the
21 rules of evidence don't apply, I agree that this
22 is evidence of character. And in terms of
23 evidence of character, the testimony stands, and
24 collateral information and documentation is

1 really not appropriate to admit for purposes of
2 character. And we would support the Applicant's
3 objection to this introduction.

4 CHAIRMAN BURACK: Thank you.

5 Attorney Schnipper, do you
6 wish to be heard on this?

7 MR. SCHNIPPER: I'll let the
8 other parties handle it.

9 CHAIRMAN BURACK: Thank you.

10 Very well. Thank you. I will
11 take the motion and argument under advisement.

12 We will take a break until
13 five minutes past eleven. We will return, and I
14 hope to fairly quickly wrap up this panel and
15 then bring up Mr. Kusche.

16 Thank you.

17 (Whereupon a recess taken at 10:55 a.m.
18 and the hearing resumed at 11:15 a.m.)

19 CHAIRMAN BURACK: If we could
20 resume, please.

21 Attorney Roth, did you wish to
22 make a clarification statement for the record?

23 MR. ROTH: Yes. Actually, in
24 my haste to be brief in my remark a moment ago

1 about where I was getting the notes from, I
2 mistakenly attributed the notes to the CPD team;
3 but, in fact, the notes were being passed to me
4 by Tom McCue, who is not a member of the CPD
5 team, and is sitting for the client.

6 MR. SCHNIPPER: He's a city
7 councilor for the City of Berlin.

8 CHAIRMAN BURACK: Thank you
9 very much, Mr. Schnipper.

10 I have had an opportunity now
11 to consider the motion and the argument that was
12 made on the motion. And for reasons that will be
13 fully set forth in the final order in this
14 proceeding, I am going to deny the motion.

15 I'd like now to turn to some
16 further questions of this panel from the
17 Subcommittee. I'm going to take the liberty here
18 of starting. I hope that we're able to get
19 through all of the Committee's questions fairly
20 briefly here.

21 INTERROGATORIES BY CHAIRMAN BURACK:

22 Q. Mr. Bartoszek, there's been reference to a
23 lockbox?

24 A. (Bartoszek) Yes, sir.

1 Q. Can you clarify for us where this lockbox
2 would be -- that is, what entity's books is
3 this lockbox really sitting in?

4 A. (Bartoszek) Mr. Chairman, that generally
5 refers to some third party, such as a
6 trustee, who would be holding funds. The
7 directions in the power purchase agreement
8 for payment of revenues would be amended to
9 direct PSNH to pay those revenues directly
10 to that third party, who would then disburse
11 those funds in accordance with some written
12 agreement among the lenders, the Applicant,
13 the various parties to that agreement.

14 Q. So is this third party that serves as "the
15 lockbox," is this a third party that is
16 selected by the lender?

17 A. (Bartoszek) Yes. Yes, sir. It's generally
18 a large financial institution of some
19 stature that people are -- feel comfortable
20 to hold the funds.

21 Q. And in your experience, is this a common
22 method for addressing these issues?

23 A. (Bartoszek) Yes, sir. It's almost always
24 done this way.

1 Q. Mr. Strickler, you're concurring as well?

2 A. (Strickler) Yes, I am.

3 Q. Thank you.

4 CHAIRMAN BURACK: Mr.
5 Needleman, just seeking to confirm. Yesterday
6 you agreed that you would provide copies of what
7 were described variously as either consulting
8 agreements or employment agreements that might
9 exist, if not now, then at some date in the
10 not-too-distant future between Messrs. Bravakis
11 and Kusche and Bartoszek, and I believe it was
12 described as being with NewCo. Or would those
13 agreements be with Laidlaw?

14 MR. NEEDLEMAN: A couple of
15 comments. First, the ultimate intention -- and I
16 think this was clarified in Committee Exhibit 1
17 which we supplied earlier in the week -- is that
18 certainly Homeland and Fiberwatt's definitive
19 agreements are ultimately going to be with the
20 Applicant, Laidlaw Berlin BioPower. And that was
21 on Page 3.

22 The status of the agreements
23 is -- I looked last night, and they are still in
24 very preliminary form. And I'm not sure that in

1 the form they're in at this point they would be
2 of much value. I don't even believe parties on
3 the opposite sides have had a chance to review
4 some of them to comment on. So they're very
5 early drafts.

6 CHAIRMAN BURACK: And do you
7 know at this stage whether these will take the
8 form of employment agreements or consulting
9 agreements?

10 MR. NEEDLEMAN: I think that
11 the draft -- one of the drafts I looked at last
12 night, at least for the people from Laidlaw, is
13 termed a "management services agreement."

14 CHAIRMAN BURACK: Thank you.

15 BY CHAIRMAN BURACK:

16 Q. Mr. Bartoszek, we have seen reference in
17 some documentation here and heard some
18 testimony this morning to an entity called
19 Cate Street Capital?

20 A. (Bartoszek) Yes, sir.

21 Q. Do you know the exact name of that entity?

22 A. (Bartoszek) I believe it's -- I want to say
23 Cate Street Capital, LLC. I'm not sure if
24 that's exactly correct.

1 Q. I'm not going to hold you to it, but let's
2 just for purposes of this question assume
3 that it is Cate Street Capital, LLC. And if
4 that's not the correct name, please let us
5 know afterwards and we'll ensure that we're
6 able to correct the record.

7 Can you explain to us, if you know,
8 what role Cate Street Capital, LLC has in
9 funding or other relationship it might have
10 to any of the entities shown here on this
11 chart that's behind you and that we did mark
12 last night, by the way, as Laidlaw Berlin
13 BioPower Exhibit 64? Can you explain to us
14 what role Cate Street Capital may play with
15 respect to these entities here?

16 A. (Bartoszek) My understanding is Cate Street
17 Capital is a management company. So its
18 purpose is basically to provide asset
19 management services. So I'm not sure
20 exactly if they provide asset management
21 services to NewCo, but that's my general
22 understanding.

23 Q. Okay.

24 CHAIRMAN BURACK: Attorney

1 Needleman, I think it would be helpful if you
2 could for us confirm possibly what Cate Street
3 Capital's role is. And if it's necessary for us
4 to have an additional witness to explain that to
5 us, if you could let our counsel know.

6 MR. NEEDLEMAN: We'll do that.

7 CHAIRMAN BURACK: Thank you.

8 BY CHAIRMAN BURACK:

9 Q. Finally, I just want to confirm an
10 understanding here. There was some
11 questioning a short while ago regarding an
12 econometric study. And Mr. Bartoszek, I
13 believe you made reference to a study on
14 wood prices that was referenced, as I
15 understand it, in one or more of the
16 technical sessions?

17 A. (Bartoszek) Yes, sir.

18 Q. Okay. I also thought we heard testimony --
19 and perhaps it was from Mr. Bravakis
20 yesterday -- that it was no longer the
21 intention of Laidlaw to perform an
22 econometric study on wood pricing because
23 you believe that those issues would be dealt
24 with sufficiently by entering into an

1 agreement with Cousineau.

2 So, am I correct that it is no longer
3 your intention to perform that econometric
4 wood study?

5 A. (Bartoszek) I believe that's the case.
6 You're exactly right, that the response that
7 made reference to that was during the
8 technical session, which preceded the
9 discussions and negotiations with respect to
10 the Cousineau agreement.

11 Q. Thank you.

12 CHAIRMAN BURACK: Other
13 questions from members of the Subcommittee?

14 Mr. Harrington.

15 INTERROGATORIES BY MR. HARRINGTON:

16 Q. I wanted to get back to the subject -- a
17 couple subjects that have been brought up
18 with regard to the purchase power agreement.

19 There was a question and answer back
20 and forth about if the New Hampshire RPS
21 goes away, whether Public Service would
22 still be buying -- paying the cost of the
23 RECs. And I think you responded,
24 Mr. Cousineau -- no. Have I got the

1 right --

2 A. (Bartoszek) Bartoszek.

3 Q. Bartoszek. I'm sorry -- that they would be,
4 because that's what was part of having the
5 purchase power agreement to stabilize that.
6 But in looking in the purchase power
7 agreement, it talks about, you know,
8 payments for New Hampshire Class I RECs.
9 Well, if the law changed -- I'm no lawyer,
10 by any stretch of the imagination -- they
11 wouldn't exist anymore. So I'm not quite
12 sure how you could pay them. And I would
13 refer you to Article 23 on Page 26 of the
14 PPA. And --

15 CHAIRMAN BURACK: Sorry.

16 Where are you?

17 MR. HARRINGTON: I'm in
18 Exhibit 40, which is the redacted version of the
19 PPA. And there's a provision on Page 26 that
20 deals with changing law.

21 MR. IACOPINO: Revision 23.1.

22 MR. HARRINGTON: Yes, 23.1.

23 BY MR. HARRINGTON:

24 Q. And it appears -- here it says, "If during

1 the term a change in law occurs or if [sic]
2 any of the ISO... documents are changed
3 resulting --

4 (Court Reporter interjects.)

5 Q. -- resulting in elimination or of a material
6 adverse effect upon a material right or
7 obligation of a party, then, unless such
8 change of law is otherwise specifically
9 addressed herein..." -- and let me stop
10 there.

11 I didn't see anyplace in the document
12 where that change in law was specifically
13 addressed herein. So I'm assuming that this
14 provision would govern if, in fact, the RPS
15 standard in New Hampshire went away, and
16 there would be no guaranteed payment going
17 forward, unless it's covered someplace else
18 in the PPA.

19 A. (Bartoszek) Mr. Harrington, I'd refer you to
20 Page 5, Article 1.44.

21 Q. Okay.

22 A. (Bartoszek) And in that definition, New
23 Hampshire Class I Renewable Energy Credits,
24 otherwise known as NH Class I RECs, "shall

1 mean REC produced or, in the event of a
2 change of law, that would have been produced
3 by the facility pursuant to its
4 qualification as a renewable energy source
5 as defined in the New Hampshire Class I
6 Renewable Statutes..." And it goes on to
7 cite the statute. And then at the end, "and
8 regardless of any subsequent change in law."

9 Q. All right. That clarifies that question.
10 Thank you.

11 Another question I had on the PPA was
12 on the same document, Article 7 on Page 11.
13 This is 7.1, and it's called the Right of
14 First Refusal. This appears to be a
15 provision that would allow Public Service to
16 have the right of first refusal for purchase
17 of the Laidlaw facility if indeed it was to
18 be put up for sale. Am I reading that
19 correctly?

20 A. (Bartoszek) Yes, I believe that's correct.

21 Q. And to the best of my knowledge, that would
22 be illegal, for Public Service to buy a
23 generating facility in the state of New
24 Hampshire, unless there was a change.

1 That's specifically banded by statute right
2 now; is that not correct?

3 A. (Bartoszek) My understanding is that's
4 currently the law. That's correct.

5 Q. Okay. Can I ask, then, what is the purpose
6 of having a provision in the purchase power
7 agreement that is prohibited by law?

8 A. (Bartoszek) Well --

9 Q. Or should we save that for confidential
10 session?

11 A. (Bartoszek) Perhaps, or perhaps it's a
12 question that may be better directed to
13 PSNH. I think that certainly having a
14 provision in the agreement that perhaps
15 anticipates the possibility of a change in
16 law is not inappropriate. I can tell you
17 that my experience with other PPAs in the
18 past, because they're such long-term
19 documents -- for example: The PPA that we
20 had with National Grid never contemplated
21 RECs; so then, at some subsequent period,
22 many years into the PPA, you get into a
23 dispute over who's entitled to RECs. So I'm
24 sure, probably in the same vein here, this

1 might be proactive in case of a change in
2 law.

3 Q. But would I be correct in saying that this
4 provision was put in at the request of
5 Public Service?

6 A. (Bartoszek) That I can't answer
7 specifically. There's a lot of back and
8 forth between counsel. We obviously had
9 counsel represent us and PSNH had its
10 counsel in connection with the drafting of
11 this document. So I don't recall exactly
12 whose request it was to put it in.

13 Q. Okay. That's fair enough. And if any of
14 these questions would be better put in
15 confidential session, just say so. I'm just
16 trying to do this at the Chairman's request
17 to get as much out right now.

18 A. (Bartoszek) Yes, sir.

19 Q. Getting back to the whole WPA, or wood price
20 adjustment. There was a factor that was put
21 in there that you would use when that was
22 done. And I realize that factor is
23 confidential. But can you tell me what was
24 the basis? Was that a formula that you used

1 to come up with that, or was it just a
2 compromised number that was agreed on by the
3 parties?

4 A. (Bartoszek) Well, because the item itself is
5 redacted, I think that might be better
6 discussed in confidential session.

7 Q. Okay. Fair enough.

8 And again going to the PPA -- and this
9 is -- I think this could be answered without
10 getting into anything confidential. I'm not
11 asking about the energy or capacity prices.
12 But what time frame were those agreed to in
13 the negotiations? I realize these
14 negotiations were going on for quite some
15 time. Do you have any idea when it was
16 agreed to use the prices that are set in the
17 confidential part of the agreement? And I
18 don't mean the exact date. But would we be
19 talking three months ago or 18 months ago,
20 for example?

21 A. (Bartoszek) It was a process that certainly
22 evolved over a long period of time. We
23 negotiated this agreement, as I believe both
24 parties have acknowledged, for more than two

1 years. Certainly at the outset when we
2 entered into a letter agreement with PSNH,
3 we sought to outline some of the key
4 material terms of the agreement. But I can
5 certainly say there were definite changes in
6 many of the terms and conditions over the
7 course of the negotiations. Once you get
8 those general concepts and get down to
9 getting the lawyers involved in drafting a
10 document, they tend to change a little bit.

11 Q. And the same document, same exhibit, Page 9,
12 Section -- or Article 6.1.2(a), this talks
13 about how you would be compensated by
14 multiplying the adjusted base price in
15 dollars per megawatt hour by the hourly
16 quantity in megawatts of delivered energy.

17 Again, I haven't -- as I just showed
18 with my previous questions, I have not had
19 time to study this document. So I'm just
20 trying to determine the hourly quantity of
21 delivered energy. Is that exactly only what
22 it says it is, how much energy that Laidlaw
23 would put on the grid? Or is there any
24 caveat? For example: If there was a

1 transmission outage or if there was
2 congestion that didn't allow you to put it
3 on there, or for some other reason beyond
4 your control?

5 A. (Bartoszek) It does not -- I think what
6 you're asking is it does not speak to
7 availability. It speaks to actual
8 generation. So in the example you cite,
9 where there's a transmission outage and the
10 plant's tripped and it's unable to get its
11 energy out to the grid, it would not -- my
12 understanding is it would not be paid under
13 that provision.

14 Q. Excuse me. Just so we get this clear, you
15 said it speaks to generation, not
16 availability. So I'm concluding from what
17 you followed up in saying is that this means
18 whatever reason you don't deliver, or
19 whatever reason you do deliver, that amount
20 is what you're going to get compensated for.
21 Regardless of the cause of the
22 non-deliverability, you don't get paid. So,
23 for example, if Public Service's
24 transmission outage is causing you not to be

1 able to deliver, would you get paid at that
2 point?

3 A. (Bartoszek) In that example, we would not
4 get paid. I mean, I can tell you from my
5 own experience, a lightning strike on a
6 transformer and the plant goes down and it's
7 unable to generate electricity out to the
8 grid, even though that's not your fault,
9 you're not going to get paid for your output
10 during that period. And that's consistent
11 with the terms of this agreement.

12 Q. And if you weren't dispatched for economic
13 purposes?

14 A. (Bartoszek) Same answer.

15 Q. Same. And if you were able to be dispatched
16 for economic purposes, but the capacity of
17 the Coos Loop would not allow you to put
18 your generation out, I'm assuming the same
19 thing; you would not get paid?

20 A. (Bartoszek) That is my understanding.

21 Q. And I'm not sure who the right person to ask
22 this question is -- you can close that.
23 It's not having to do with that document.

24 So I'll ask you. As you said earlier,

1 you're the guy in charge. The buck stops
2 here. So at least you should be able to
3 tell me who to ask it to if you don't know
4 it.

5 I'm assuming that Laidlaw sends the --
6 I'm talking about being paid capacity
7 prices, going to enter into the
8 forward-capacity market?

9 A. (Bartoszek) That's right.

10 Q. Oh, they have. Okay.

11 And what is your capacity supply
12 obligation, and when does it start?

13 A. (Bartoszek) We were given a --

14 MR. KUSCHE: June 2013 to May
15 2014.

16 A. (Bartoszek) June 2013 to May 2014 and --

17 MR. KUSCHE: 58.7 megawatts.

18 A. (Bartoszek) -- 58.7 megawatts.

19 MR. HARRINGTON: Thank you
20 very much. That's all the questions I have.

21 CHAIRMAN BURACK: Thank you.
22 Questions from any other members of the
23 Subcommittee?

24 Director Muzzey.

1 DIR. MUZZEY: Thank you.

2

3 INTERROGATORIES BY DIR. MUZZEY:

4 Q. On the chart behind you, Aware is listed as
5 a funding entity?

6 A. (Bartoszek) Yes, ma'am.

7 Q. But then, in the exhibit that we received
8 this morning it's not shown. Can you just
9 explain why that might be the case?

10 A. (Bartoszek) We just sought to simplify the
11 -- it's not -- our intention is not to
12 eliminate it. We just sought to try to
13 simplify the explanation by not listing it
14 there.

15 Q. So it would be under the block called
16 "lenders"?

17 A. (Bartoszek) If I were to draw "lender" on
18 here, it would be down here.

19 (Witness drawing on white board.)

20 CHAIRMAN BURACK: Likewise,
21 then, on this chart, Mr. Bartoszek, where would
22 you show Aware, if you were to make this more
23 complicated?

24 MR. IACOPINO: We're talking

1 about Applicant's Exhibit 65.

2 MR. BARTOSZEK: So we would
3 put Aware up above PJPD, where it appears in this
4 diagram.

5 CHAIRMAN BURACK: Thank you.

6 When you say "this diagram,"
7 you're referring to your Exhibit 64.

8 MR. BARTOSZEK: Exhibit 64.
9 That's correct.

10 CHAIRMAN BURACK: Thank you.

11 MS. MUZZEY: Thank you.

12 CHAIRMAN BURACK: Other
13 questions from the panel at this time for these
14 witnesses?

15 Attorney Iacopino.

16 INTERROGATORIES BY MR. IACOPINO:

17 Q. Mr. Bartoszek, on Exhibit 65 you list the
18 New Market Tax Credits as being a good
19 portion of the equity contribution to the
20 project.

21 Am I correct in understanding that you
22 have to commence construction before the end
23 of this year in order to qualify for those?

24 A. (Bartoszek) That's correct.

1 Q. And what happens if you don't?

2 A. (Bartoszek) Well, we would... I think we
3 would be hopeful that we would receive the
4 allocation during the next period. I'm not
5 exactly sure how that works. We do have
6 somebody here who's our advisor on New
7 Market Tax Credits. It would probably be
8 best --

9 Q. I'm sorry. Finish. I'm sorry.

10 A. (Bartoszek) I can seek to clarify that
11 question and come back to you. Or we can --

12 Q. To the best of your knowledge, are these New
13 Market Tax Credits something that's expected
14 to be extended by the federal legislature?

15 A. (Bartoszek) Yes. I do not believe the
16 issue, Mr. Iacopino, is the expiration, as
17 in the case in the ITCs. My understanding
18 is that the allocation is an annual
19 allocation, and it needs to be put to use
20 during that calendar period. So I'm not
21 sure if the allocation itself goes away and
22 we need to seek a new allocation, but it's
23 not the expiration of the federal program.

24 Q. So you would be subject to whatever the

1 allocation is in the next budget?

2 A. (Bartoszek) Whatever allocation those
3 allocatees might receive and might be able
4 to direct to us during that next period.

5 MR. IACOPINO: I don't have
6 any further questions.

7 CHAIRMAN BURACK: Okay. Very
8 good.

9 Gentlemen, thank you very
10 much.

11 MR. NEEDLEMAN: Mr. Chair?

12 CHAIRMAN BURACK: I'm sorry.

13 MR. NEEDLEMAN: We were just
14 asking someone in the back. I just want to be
15 perfectly clear on what the triggering mechanism
16 is for the New Market Tax Credits, whether it's
17 closing or whether it's construction. I'm being
18 told that it's closing of the transaction, not
19 commencing of construction for the New Market Tax
20 Credits.

21 MR. BARTOSZEK: Yeah. My head
22 cold, obviously. I guess I missed that one.
23 Yeah, it is financial closing.

24 CHAIRMAN BURACK: And the

1 deadline that would have to be met is what date?

2 MR. BARTOSZEK: My
3 understanding is we've been told November 15th.
4 But that may be able to be extended to the end of
5 the year. So we're operating on the assumption
6 that it's the end of the year.

7 CHAIRMAN BURACK: Do you know
8 what the factors are that would allow it to be
9 extended from November 15th to December 31?

10 MR. BARTOSZEK: I do not, but
11 we can look into that.

12 CHAIRMAN BURACK: Counsel, if
13 you could look into that and just inform the
14 Committee. If the easiest way to do this is to
15 provide us with a submittal that includes a copy
16 of whatever the federal regulation or the federal
17 guidelines document is, whatever that might be,
18 if you could just provide that to us.

19 MR. NEEDLEMAN: We'll do that.

20 CHAIRMAN BURACK: Thank you.

21 Commissioner Ignatius.

22 MS. IGNAGTIUS: Thank you,

23 Mr. Chairman.

24 INTERROGATORIES BY CMSR. IGNATIUS:

1 Q. Just a couple of questions about the
2 purchase power agreement that are not --
3 that don't involve redacted terms, so I
4 didn't want to save them until later.

5 If you could explain -- I've read it,
6 but now I need it explained -- Section 6.1.3
7 on Page 11. I guess you have double
8 numbering systems here -- 11 of the actual
9 agreement and 30 in the exhibit, which is
10 Exhibit 40.

11 A. (Bartoszek) Yes. The purpose of 6.1.3 is
12 to basically keep the -- we've established a
13 base price for electricity. And that base
14 price might be higher or lower than the
15 prevailing market prices. So, to the extent
16 that number is higher, the difference is
17 then credited to a fund. And to the extent
18 that it's less, that amount is then
19 subtracted from the fund. And these
20 negative or positive adjustments -- so if --
21 as an example: At the end of the contract
22 term there's \$10 million accumulated in
23 positive dollars in that fund. We wanted to
24 create a mechanism so that ratepayers were

1 never paying more or less than market
2 prices. So that \$10 million could be used
3 in connection with the purchase option
4 agreement by PSNH. So they'd be able to put
5 those dollars to value in connection with
6 the purchase.

7 Q. And when you say in your hypothetical, at
8 the end of the term there's a \$10 million in
9 the fund, that would be because, in
10 aggregate over the entire term, there were
11 periods where the amount -- the contract
12 amount was greater than the market amount?

13 A. (Bartoszek) That's exactly correct. I mean,
14 I can tell you from working with the
15 executives at PSNH over the course of this
16 that there was great concern that New
17 Hampshire ratepayers not pay more than
18 market price for electricity. And this is
19 the way that we -- I think it was a rather
20 clever way we sought to deal with it, so
21 that that's always going to keep track on an
22 hourly basis whether or not the price is
23 more or less. We'd hope, at the end of the
24 contract term, that we'd be flat. But the

1 reality is we'd probably either be higher or
2 lower. And if it's -- and if ratepayers
3 have paid more than the market price,
4 they'll be able -- those dollars will be able
5 to be used for the benefit of the ratepayers
6 for the purchase.

7 Q. At one point yesterday there was a reference
8 to the "spot market." We're not talking
9 about the spot market as the market price
10 that you're comparing against, are you?

11 A. (Bartoszek) I believe it's defined in here
12 as the ISO New England, I'm not sure if it's
13 the day-ahead price or the -- but it is
14 defined in the agreement.

15 Q. All right. I don't see it. It's not in the
16 definitions of "market price," but --

17 MR. KUSCHE: It is defined
18 somewhere.

19 BY MS. IGNAGTIUS:

20 Q. But I accept there's a definition that we
21 can find.

22 A. (Bartoszek) The difference between the ISO
23 New England energy price, which I believe is
24 a defined term -- so if you go back to the

1 definitions...

2 A. (Strickler) It's the day-ahead.

3 A. (Bartoszek) -- it's the day-ahead. It is
4 the day-ahead market. Article 1.32: "ISO
5 New England energy price means the hourly
6 day-ahead ISO New England locational
7 marginal price at the pricing location
8 designated for the facility within the ISO
9 New England settlement and billing
10 systems..."

11 Q. Thank you. That's good.

12 And then the other question I had is
13 just trying to understand the interaction
14 between the definition provisions on
15 renewable products payment, 1.57, for which
16 there are no redactions -- that's on Page 6
17 of the PPA. Again, we're still in
18 Exhibit 40 -- and the last sentence -- the
19 last clause that says, provided further, for
20 the term that the renewable products payment
21 shall be no less than the alternative
22 compliance payment schedule under the New
23 Hampshire statute, and then to compare that
24 with Page 10, Section 6.1.2, which does

1 actually include some redactions. So I
2 don't know if there's a way we can describe
3 how the two fit together without getting
4 into -- I hope there's a way without
5 confidential material. This is on Page 10,
6 Subsection C that you told Mr. Rodier was
7 some sort of multiplier percentage of ACP.

8 And so, I guess, in its most distilled,
9 the question would be: Is it a percentage
10 of the ACP, or is it in that final clause in
11 the definition, "no less than the APC"?

12 A. (Bartoszek) I can tell you that the purpose
13 of the "provided however" in the remainder
14 of that sentence in Clause 1.57 is intended
15 to address the concern that was raised
16 earlier, that if the New Hampshire RPS was
17 somehow pre-empted by a federal RPS, or done
18 away with altogether, that we've still
19 established some sort of base under which
20 the facility could be utilized for pricing
21 certainty over the course of the power
22 purchase agreement. So that's -- the
23 intention of that clause is to maintain
24 those cash flows under the power purchase

1 agreement, irrespective of whether or not
2 the New Hampshire RPS is pre-empted by a
3 federal RPS or is done away with altogether.

4 Q. So that last clause in 1.57 is meant to
5 apply only in the event of a change in
6 law --

7 A. (Bartoszek) That's right.

8 Q. -- in New Hampshire?

9 A. (Bartoszek) That's right.

10 CHAIRMAN BURACK: I just have
11 one clarification question I now want to ask you,
12 Mr. Bartoszek.

13 I'd take you back to
14 Section 6.1.3 on Page 11 of the Applicant's
15 Exhibit 40.

16 You described this adjustment
17 process as "creating a fund." That was the term
18 you used. I don't see the word "fund" in here.
19 So I'm just looking for confirmation. My
20 understanding is that this is essentially sort of
21 a balance sheet record that is kept, but there
22 isn't a pool of money being set aside
23 contemplating a purchase. Am I correct in that
24 understanding.

1 A. (Bartoszek) That's right. It's basically a
2 running tally. It's not a fund. That was
3 an oversimplification.

4 CHAIRMAN BURACK: Thank you.

5 MR. HARRINGTON: Mr. Chairman,
6 I just have one follow-up on the clarification on
7 that.

8 CHAIRMAN BURACK: Please.

9 INTERROGATORIES BY MR. HARRINGTON:

10 MR. HARRINGTON: So, the only
11 purpose of this is to keep this balance sheet
12 and -- basically, if there is no sale of your
13 facility to Public Service, then that balance
14 sheet just gets tossed out, becomes meaningless;
15 is that correct? It's only for the purpose of
16 affecting the sale price, if there is a sale,
17 between Laidlaw and Public Service?

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

19 Q. Okay. Thank you.

20 CHAIRMAN BURACK: Okay. Thank
21 you.

22 MR. BARTOSZEK: Oh,
23 Mr. Harrington, can I just point out, just as a
24 follow-up to your question? My understanding is

1 there is the ability for PSNH to transfer this to
2 an affiliate, transfer the value to an affiliate
3 who could use that for that purpose.

4 BY MR. HARRINGTON:

5 Q. There actually wouldn't be any transfer, in
6 other words --

7 A. (Bartoszek) Transfer the rights.

8 Q. What are they transferring?

9 A. (Bartoszek) They're transferring the rights
10 under the option to a successor or to
11 another party, who, in turn, would be able
12 to potentially utilize that if there was an
13 over-market payment.

14 Q. So if they transferred the rights to an
15 affiliate -- well, let's just say there was
16 an over-market payment. You used
17 \$10 million. Then they would go in with a
18 \$10 million credit towards that purchase?

19 A. (Bartoszek) That's right.

20 Q. And if there was a \$10 million underpayment,
21 they would go in owing \$10 million before
22 they started?

23 A. (Bartoszek) No, it can't be less than zero.
24 So there would just be -- there would be no

1 adjustment then in the purchase.

2 Q. When you talk about the "under" and "over,"
3 that was a running tally, never to go
4 negative.

5 A. (Bartoszek) That's right.

6 Q. Thank you.

7 CHAIRMAN BURACK: Very well.
8 Thank you very much, Mr. Bartoszek,
9 Mr. Strickler. We excuse you at this time. It's
10 possible we may have further questions for you
11 later, and certainly we will in the non-public
12 session.

13 MR. ROTH: Mr. Chairman, I'm
14 sorry. There was -- I have just one further
15 question that came up as a result of your
16 questioning of Mr. Bartoszek.

17 CHAIRMAN BURACK: Please
18 proceed.

19 RECROSS-EXAMINATION

20 BY MR. ROTH:

21 Q. There was reference that you made in
22 response to a question from the Committee,
23 that you referred to "someone who is our
24 advisor" with respect to the New Market

1 Credits. Who is that person?

2 A. (Bartoszek) David Cohen, who's sitting in
3 the room in the back.

4 Q. And is he your chief financial officer?

5 A. (Bartoszek) No, he's an outside advisor
6 who's advising us with respect to the New
7 Market program.

8 Q. Do you have a chief financial officer?

9 A. (Bartoszek) The Applicant has no designated
10 chief financial officer. I would
11 contemplate that we would be designating
12 someone for that purpose at the time that
13 that's necessary.

14 Q. Okay. Thank you.

15 MR. ROTH: That's all.

16 CHAIRMAN BURACK: Thank you,
17 Attorney Roth.

18 Okay. Gentlemen, thank you
19 again. We excuse you for the moment.

20 (Witness panel excused.)

21 And Attorney Needleman, if you
22 would please present your next witness.

23 MR. NEEDLEMAN: We'll ask
24 Mr. Kusche to come up at this point.

1 CHAIRMAN BURACK: Attorney
2 Needleman, please proceed.

3 MR. NEEDLEMAN: Thank you,
4 Mr. Chair.

5 Mr. Kusche, could you please
6 state your full name for --

7 CHAIRMAN BURACK: We will need
8 to swear him in.

9 MR. NEEDLEMAN: I'm sorry.

10 CHAIRMAN BURACK: Sorry. I
11 overlooked that myself. Why don't we do that
12 first and then we'll go from there.

13 (Whereupon the witness was duly sworn
14 and cautioned by the Court Reporter.)

15 RAYMOND S. KUSCHE, SWORN

16 DIRECT EXAMINATION

17 BY MR. NEEDLEMAN:

18 Q. Mr. Kusche, could you please state your full
19 name and position.

20 A. My name is Raymond S. Kusche, and I am
21 vice-president of Laidlaw Berlin BioPower.

22 Q. And we have introduced in the record here
23 Exhibits 54 and 55, which is your initial
24 testimony and then your amended prefiled

1 testimony; is that correct?

2 A. That's correct.

3 Q. And do you have any material changes to
4 either of those documents?

5 A. I do have a few.

6 Q. Could you please describe those for the
7 Committee.

8 A. Yes. The first change occurs on the top of
9 Page 5 -- this is Exhibit 54. First line
10 with the sentence beginning "One." I would
11 add at the beginning of that sentence, "A
12 newly constructed trench adjacent to" --

13 CHAIRMAN BURACK: I'm sorry.
14 Could you repeat that, please?

15 MR. KUSCHE: "A newly
16 constructed trench adjacent to one of the
17 existing underground Fiberglas lines..."

18 A. In that same paragraph, beginning on Line 3,
19 I would strike that last sentence saying,
20 "This cable will be pulled through the
21 existing pipeline and will be specifically
22 constructed for this purpose."

23 CHAIRMAN BURACK: So you're
24 striking that last sentence?

1 MR. KUSCHE: Yes.

2 CHAIRMAN BURACK: Thank you.

3 A. The next change -- in fact, that is the only
4 change to Exhibit 54.

5 I do have a change to Exhibit 55, which
6 is the supplemental testimony I provided.
7 And that's a one-page exhibit. Beginning on
8 page -- or excuse me -- on Line 16,
9 beginning with the word "No." It's "No,
10 comma, I do not expect that this will occur,
11 period."

12 CHAIRMAN BURACK: Could you
13 repeat that, please?

14 MR. KUSCHE: Yes. And it's
15 actually a medium-sized paragraph that I'd like
16 to add there. I have it in text form here, which
17 I will read. And I can also present this to you,
18 the written form, if that's convenient.

19 CHAIRMAN BURACK: I think it
20 would be helpful if you could afterwards provide
21 that to our reporter.

22 MR. KUSCHE: Would you like me
23 to read the whole thing now?

24 CHAIRMAN BURACK: Why don't

1 you, please.

2 MR. KUSCHE: That whole
3 paragraph, Line 16 through 19, would be replaced
4 with this paragraph: "No, I do not expect that
5 to occur. With regard to the idea that existing
6 hydroelectric projects owned by PSNH, or anyone
7 else, would be dispatched off if the loop is
8 overloaded, comma, the NEPOOL market rules allow
9 these hydro projects to, parenthesis,
10 self-schedule" -- or, excuse me, "quotation
11 marks, self-schedule, end quotation, comma,
12 essentially meaning that they bid into the
13 day-ahead energy market at a price of zero,
14 parentheses, dollars, slash, per megawatt hour,
15 close parentheses. New sentence. If generation
16 on the loop exceeds the carrying capacity of the
17 line, the ISO will adjust generation based upon
18 economic dispatch. This means that they will
19 reduce generation starting with the most
20 expensive generator's bids in the day-ahead
21 market" -- "day-ahead bid stack until they have
22 reached a level equal to the carrying capacity of
23 the line. Because hydro projects generally have
24 a bid price of zero due to their ability to

1 self-schedule, it is highly unlikely that they
2 would ever be subject to economic dispatch,
3 period."

4 CHAIRMAN BURACK: Thank you.
5 If you would just be sure we give that to
6 Ms. Robidas.

7 MR. KUSCHE: Okay.

8 A. And that completes the modifications to my
9 testimony.

10 BY MR. NEEDLEMAN:

11 Q. Subject to those modifications to
12 Exhibits 54 and 55, do you adopt that
13 testimony as your own in this proceeding and
14 swear to it?

15 A. I do.

16 MR. NEEDLEMAN: No further
17 questions at this time.

18 CHAIRMAN BURACK: Thank you
19 very much.

20 Okay. Now turn to the City of
21 Berlin for questions.

22 MR. SCHNIPPER: We have no
23 questions for Mr. Kusche.

24 CHAIRMAN BURACK: You have no

1 questions.

2 Attorney Rodier.

3 MR. RODIER: Thank you,
4 Mr. Chairman. That was a pretty material change
5 that's hitting us in realtime. So I'm going to
6 do the best I can, and I'm hoping that -- let me
7 ask you. What time do you think we'll go for
8 lunch?

9 CHAIRMAN BURACK: Well, how
10 long do you -- how much questioning do you think
11 you have for this witness?

12 MR. RODIER: Let me tell you
13 what I wanted to do. I wanted to maybe make a
14 couple phone calls, because I was prepared for
15 basically some different facts. Now they've --
16 there's some different terms. I want to make a
17 phone call over lunch. I'm going to go about an
18 hour. I'm going to go as fast as I can. This
19 threw a little bit of a, you know, monkey wrench
20 into my plans for cross-examination.

21 Having said that, I'm willing
22 to proceed forthwith and just do the best that I
23 can. One reason I say that is I know that there
24 is an expert on these issues on the Committee.

1 So as long as -- why don't we do that.

2 I'll do the best I can, okay.

3 I'll see what the Committee asks. And I know
4 that at the end, if I got a couple things I want
5 to pick up on, maybe you'll give me a chance to
6 do that. How's that sound?

7 CHAIRMAN BURACK: Go ahead.

8 MR. IACOPINO: Mr. Rodier, do
9 you have cross-examination that deals with
10 subjects other than the dispatch of the hydros?

11 MR. RODIER: Oh, sure.

12 MR. IACOPINO: Okay. Can you
13 do that cross-examination and then perhaps decide
14 if you can get to the hydros at a different time?
15 Because that's the only change --

16 MR. RODIER: Yeah. I mean, at
17 a minimum, I'll do everything else. Maybe I'll
18 get to this last. I'm going to do the best I can
19 and see how it goes.

20 CHAIRMAN BURACK: Before you
21 do, let me just ask you this, Attorneys Roth and
22 Brooks: How much questioning do you think you
23 have for Mr. Kusche?

24 MR. ROTH: Half an hour, at

1 the most.

2 CHAIRMAN BURACK: Half-hour,
3 at the most? And I'm not sure --

4 MR. HARRINGTON: Fifteen to 20
5 minutes, max. Maybe not even that much.

6 CHAIRMAN BURACK: Okay.
7 Here's what I'm going to suggest that we do,
8 Attorney Rodier. I'm going to ask you to proceed
9 and do what you can with all of the other issues
10 other than this hydroelectric plant dispatch
11 issue, and we'll see where we are at that point.
12 We may take a lunch break there, or we may first
13 have you proceed, Attorney Roth. But my hope is
14 to be able to get this wrapped up, if not before
15 lunch, then within an hour or so after we
16 complete lunch. I'm concerned that we're going
17 to have our non-public session have to spill over
18 into Friday morning if we don't keep this moving
19 along here.

20 MR. RODIER: I'm going to keep
21 it moving along. I just mention there was
22 another material change in megawatts. They were
23 successful in the MCM market. That is a very
24 substantial change as well, and we just heard

1 that as well. So I'm going to just do the best I
2 can. I'll let you know --

3 CHAIRMAN BURACK: Please do.
4 Please proceed.

5 MR. RODIER: Thank you.

6 CROSS-EXAMINATION

7 BY MR. RODIER:

8 Q. Mr. Kusche, Exhibits 54 and 55 are yours; is
9 that correct? Is 56 -- well, let's stick
10 with 54 and 55.

11 A. That's correct.

12 Q. Okay. Just by way of brief introduction,
13 we've met before, haven't we?

14 A. Yes, we have.

15 Q. We were in a meeting in regards to one of
16 these biomass plants to try to figure out
17 how to sell... weren't we, or something like
18 that?

19 A. We have met before in conjunction with a
20 facility that I managed previously in
21 becoming a member of NEPOOL, so that we
22 could participate in the day-ahead markets.

23 Q. Okay. By the way, you subsequent-- oh, no.
24 Is it LLEB that joined NEPOOL -- LLB,

1 rather?

2 A. Laidlaw Berlin BioPower is a member of
3 NEPOOL, yes.

4 Q. Okay. And it's, what? Goes back about a
5 year that you joined NEPOOL?

6 A. I would have to check the dates. But
7 approximately that. That's true. Maybe a
8 little more.

9 Q. And that automatically makes you a
10 participant in ISO New England; does it not?

11 A. It does.

12 Q. And that leads into -- in fact, I think you
13 may have done that so that you could
14 participate in these FCM auctions; is that
15 correct?

16 A. That's correct.

17 Q. All right. You were defaulted for a few
18 days a couple of weeks ago. Is there any
19 reason for that?

20 A. No. The only reason for that was actually
21 because I was on vacation, and we were late
22 in making a payment to meet our financial --
23 what's called financial assurance
24 requirements as a result of qualifying for

1 our capacity obligation. And we immediately
2 remedied that.

3 Q. Right. And I know that. I've been there
4 myself with an entity that got tossed out
5 for a few days. So I sympathize.

6 A. ISO New England is very rigid in their
7 payment schedules.

8 Q. That's right. I managed to get it in by
9 noon. And if it's there at five past
10 twelve, too bad. Cash.

11 Okay. Thank you.

12 Let's -- so I want to take this
13 chronologically then. So, No. 55 -- no, 54.
14 This is the original testimony.

15 A. Correct.

16 Q. And by that, I mean it was filed at the time
17 of the application back last December;
18 right?

19 A. Correct.

20 Q. Okay. And this testimony largely focuses on
21 the so-called feasibility study; does it
22 not?

23 A. It focuses on my education. There's a
24 number of topics that are actually addressed

1 here.

2 Q. Well, this is not a trick question. The
3 large of it is the feasibility study.

4 A. Yes, our interconnection request.

5 Q. Right. And so when somebody wants to
6 interconnect with an ISO transmission
7 facility -- in this case, a PSNH
8 transmission line -- there's really a couple
9 of studies, at least. Maybe there's three.
10 The first one's a feasibility study. The
11 second one is the system impact study; is
12 that correct?

13 A. That's correct.

14 Q. And there was a system in your supplemental
15 testimony. You put into evidence the system
16 impact study because that did not become
17 available in May.

18 A. That's correct.

19 Q. So one of the things that -- just so we get
20 our thoughts organized here, the Exhibit 54,
21 you had the results of the feasibility
22 study, which comes first. And then
23 Exhibit 55, you had the results of the
24 system impact study.

1 A. That's correct.

2 Q. Okay. And I want to refer you to Page 2 of
3 your testimony on Line 4.

4 A. This is of the original testimony?

5 Q. Yeah. I'm sorry. Exhibit 54, yeah. Page 2
6 and Line 4. You talked about the project
7 here has got a queue position of No. 251; is
8 that correct?

9 A. Yes.

10 Q. Okay. Now, does this mean that you -- to
11 get your studies done, you would have
12 priority over somebody who is No. 260?

13 A. That's correct. The ISO conducts its
14 studies based upon the queue position.

15 Q. Okay.

16 A. And the earlier you make your application,
17 your initial application when you're
18 assigned a queue number, that establishes
19 the order that they will do their studies.

20 Q. So do you know if CPD is 229?

21 A. I believe that's true.

22 Q. Okay. So, somebody at 229 is going to have
23 certain rights with respect to getting their
24 studies done; isn't that correct?

1 A. With respect to timing?

2 Q. Yeah.

3 A. Yes, that study would be completed before
4 they would initiate a later queue number.

5 Q. Now, in looking at -- you're 251. In doing
6 your studies, is it generally correct to say
7 that they take CPD at 229 as a given
8 project --

9 (Court Reporter interjects.)

10 Q. They're going to assume CPD is in service.

11 A. That's correct.

12 Q. So let's -- all I'm really interested in
13 here is the feasibility study. So in the
14 interest of time, I wanted to go to Page 5
15 of Exhibit 54 and ask you about Lines 10
16 through 12.

17 Lines 10 through 12, you say that the
18 November 9th, 2009 interconnection
19 feasibility study prepared by ISO New
20 England --

21 (Court Reporter interjects.)

22 Q. The November 9, 2009 interconnection
23 feasibility study prepared by ISO New
24 England indicates that the project will not

1 cause any voltage or short-circuit problems
2 on the line; is that right?

3 A. You've read that correctly.

4 Q. Okay. And what line are they talking about
5 here?

6 A. What transmission line?

7 Q. Yeah. They refer to "the line." Which line
8 is that?

9 A. That line would be what's commonly referred
10 to as the Coos Loop, which consists of
11 Public Service labels that has three
12 distinct monitors.

13 Q. Right. So let's look at the feasibility
14 study. The feasibility study is part of the
15 application. Do you have the application
16 with you? I just want to quickly look at
17 the feasibility study.

18 CHAIRMAN BURACK: Let's just,
19 for the record, make clear what document you're
20 referring to by exhibit number.

21 MR. RODIER: Mr. Chairman, I'm
22 looking at part of the application, it was
23 Exhibit P or Q. It was Q.

24 CHAIRMAN BURACK: So this is

1 Applicant Exhibit 1, Appendix Q?

2 MR. RODIER: Yeah.

3 CHAIRMAN BURACK: Thank you.

4 A. Q?

5 BY MR. RODIER:

6 Q. Q.

7 A. Okay. I'm there.

8 Q. This is not protected in any way, is it?

9 A. I don't believe so.

10 Q. Okay. Well, what happened --

11 MR. RODIER: Somebody refresh
12 my recollection here, because it was filed, and
13 then -- Mr. -- Attorney Needleman, what happened?
14 I can't remember.

15 MR. NEEDLEMAN: Yeah. I
16 believe it was initially filed as
17 non-confidential. ISO then asked us to have it
18 treated as confidential. We filed a motion with
19 the Committee requesting confidential treatment,
20 and the Committee granted that motion.

21 MR. RODIER: Oh.

22 MR. IACOPINO: Does it still
23 need confidential treatment?

24 MR. NEEDLEMAN: I think the

1 Committee's order stands, and I haven't heard
2 otherwise from ISO. So I'd rather be safe.

3 CHAIRMAN BURACK: So this is,
4 in fact, a confidential document that should
5 have -- we should label it as such. And I think
6 what we will need to do, Attorney Rodier, unless
7 you just have a general question about it that
8 the witness could answer based on what's in the
9 public record or generally known about this
10 document to the public, you could ask those
11 questions now. And maybe you want to try that
12 and see if we can answer them now. Otherwise,
13 we'll save questioning on this document for the
14 non-public session.

15 MR. RODIER: Thank you.

16 MR. ROTH: Mr. Chairman, if I
17 may. It doesn't appear that the document is
18 included among the confidential documents
19 provided to the parties. And in particular, I'm
20 counting on the disc that was given to us at the
21 prehearing conference. But I'm looking at the
22 list of their exhibits, and the confidential ones
23 are 38, 39 through 43, and none of those includes
24 the ISO study.

1 MR. IACOPINO: Peter, it was
2 Appendix Q of the original application, and there
3 was a motion for confidential treatment filed
4 back at the time of the application for it. So I
5 don't know if in your copy of the application it
6 was included or not.

7 MR. ROTH: Well,
8 unfortunately, on my disc I was not given
9 Exhibit 1. So I had to download the application
10 from the Web site.

11 MR. IACOPINO: It is not on
12 the Web site.

13 MR. ROTH: Of course not. So
14 I'm at a disadvantage on this document. I don't
15 have it on my disc, and I don't know if you have
16 it in your binders. We do not appear to have it
17 in the binders. Does your disc have it?

18 CHAIRMAN BURACK: We will make
19 a copy of it available to you. But again, I
20 think we do -- we have ruled that it is a
21 confidential document.

22 And again, Attorney Rodier, if
23 you wish to ask your question, we'll see if we
24 can answer it now or whether we have to answer it

1 in non-public session.

2 Q. I only got one small area, actually.

3 BY MR. RODIER:

4 Q. Mr. Kusche, do you have a copy of it? I
5 want to ask you --

6 A. I do.

7 Q. Could you -- let's see how far I can get.
8 Would you look at --

9 MR. KUSCHE: May I say
10 something?

11 CHAIRMAN BURACK: Yes,
12 Mr. Kusche.

13 MR. KUSCHE: I just want to
14 clarify that ISO New England has very strict
15 rules about confidentiality of documents that
16 they produce and they hold. And we signed -- as
17 a part of the study agreement, it included
18 confidentiality provisions. And in order for an
19 outside party -- even if that party is a NEPOOL
20 participant, they must apply for access to any
21 confidential agreements. And that's the only
22 reason why we need to treat this as confidential,
23 because of ISO New England's rules and
24 regulations.

1 MR. RODIER: Right. And let
2 me just follow that up. CPD, being ahead of LBB
3 in the queue, did apply. That's why we have our
4 copy of this legitimately, aside from what's
5 going on with this Committee. Just to clarify
6 that.

7 CHAIRMAN BURACK: I understand
8 and appreciate that. But I think for purposes of
9 this proceedings --

10 MR. RODIER: I agree.

11 CHAIRMAN BURACK: -- this is a
12 very confidential document.

13 MR. RODIER: I agree.

14 CHAIRMAN BURACK: So I think
15 if you want to ask a question about some specific
16 writing on some specific page in this, I'm going
17 to ask you to hold that for the non-public
18 session.

19 MR. RODIER: In other words,
20 you don't want me to -- I can't even refer to a
21 page number?

22 MR. IACOPINO: Ask the
23 question.

24 CHAIRMAN BURACK: Why don't

1 you ask the question and we'll see.

2 MR. RODIER: Okay.

3 BY MR. RODIER:

4 Q. Would you turn to page -- well, let's turn
5 to Section 4.2.

6 A. Yes, sir.

7 Q. Okay. You see a table there?

8 A. I do. I see Table 4.2, Project Dispatch.

9 Q. Okay. It refers to -- I think it's okay to
10 say that we can conceptually discuss MIS
11 dispatch in public, that's for sure. So can
12 you tell me what MIS dispatch refers to?

13 A. MIS is an acronym which stands for minimum
14 interconnection standards.

15 Q. Right. And -- well, layman's terms, what's
16 that mean?

17 A. Layman's terms? I'll attempt to simplify
18 this.

19 Q. Yeah.

20 A. Minimum interconnection standards means that
21 a generator can apply for interconnection in
22 the ISO system and generate as long as there
23 is capacity on the line to accept its
24 generation. It does not provide for

1 guaranteed transmission rights over that
2 transmission line.

3 Q. I just got to make a note here. Okay.
4 Doesn't guarantee... at MIS, nobody's
5 guaranteed access to the lines to get their
6 power to market.

7 A. Well, people are guaranteed access to the
8 line, but they're subject to economic
9 dispatch.

10 Q. You're guaranteed that you can hook into the
11 line, but you may not generate.

12 A. That's a very simplified statement which
13 requires a lot of detail behind it. You're
14 allowed access. And, in fact, you're given
15 privileges and rights to access to the
16 lines. However, depending upon certain
17 circumstances, if that line is constrained
18 in some manner, then, under MIS, the
19 generators on that line are subject to
20 economic dispatch, which the ISO will order
21 in order to preserve stability of the line.

22 Q. The lines constrained subject to economic
23 dispatch... All right. Let's assume
24 there's four plants. Who goes first? Who

1 gets to go first? Oh, economic dispatch.
2 It's the lowest bidder.

3 A. No, economic dispatch is not the lowest
4 bidder. Economic dispatch is a procedure
5 that ISO New England uses to select which
6 generators will be either dispatched down or
7 dispatched off until stability on the line
8 is achieved.

9 Q. Well, highest bidders get --

10 A. Generally speaking --

11 Q. -- curtailed. Okay. That's what I'm
12 saying. The lowest bidder --

13 A. -- the highest bidder will --

14 (Court Reporter interjects.)

15 A. Generally speaking, the highest bidder will
16 be the generator which is first selected to
17 be dispatched.

18 BY MR. RODIER:

19 Q. Okay. Is there any way, Mr. Kusche, that
20 you could, without running afoul of
21 anybody's obligations, see if you could just
22 generally tell us all, tell the Committee
23 what the message here, 4. -- Table 4.2 is
24 trying to make?

1 A. Table 4.2 is -- it describes the generation
2 that Siemens, the engineering company that
3 did this study for ISO, chose to displace
4 for the purposes of the hypothetical study.
5 This is not real world.

6 Under MIS, the goal of the study is to
7 determine if putting on -- in our case,
8 let's just call it 60 megawatts. Adding 60
9 megawatts to that location on that line,
10 they then take off another hypothetical 60
11 megawatts of generation. It has nothing to
12 do with economic dispatch. They select
13 those generators that are in the closest
14 proximity to where you're adding the
15 generation, so that it can be an accurate
16 study, and then they see what is the impact
17 of adding that 60 megawatts of generation.
18 It is not in any way indicative of how
19 economic dispatch will work in the real
20 world. It's a theoretical exercise.

21 Q. So, is that why your testimony at Lines 10
22 through 12 says that your project's not
23 going to cause any voltage or short-circuit
24 problems?

1 A. Well, under the assumptions made in the
2 study, where an equivalent amount of
3 generation was taken off and ours was added
4 on to replace it, that's the conclusion of
5 the study, that there will be no voltage or
6 short-circuit impacts to the line.

7 Q. All right. So what we -- and I'm really not
8 trying to put words in your mouth. But let
9 me ask you this: When you say it's not
10 going to cause any voltage or short-circuit
11 problems, it's because what they did when
12 they did their simulations, they added you
13 in at 60, let's say, and they took an
14 equivalent 60 off; so that's probably why
15 there are no voltage or short-circuit
16 problems.

17 A. Yes. And that's a standard protocol for --

18 Q. Oh, I understand.

19 A. -- the studies that they conduct for all
20 generators proposing to interconnect to the
21 MIS. And that is the procedure that they
22 have used for Granite Reliable and the other
23 projects in the queue ahead of us, including
24 the Clean Power project.

1 Q. I agree. Thank you.

2 Okay. So let's go to 55.

3 A. Exhibit 55.

4 Q. Yeah. That's the supplemental testimony I
5 think you put in on July 9th; is that
6 correct?

7 A. I don't have the date here. But let's
8 assume that that's a correct date.

9 Q. Okay. It's your supplemental testimony.

10 A. Okay.

11 Q. All right. In looking at the exhibit list,
12 let's see what it says here. July 9th,
13 2010. Okay.

14 So the purpose of this document is --
15 would it be fair to say you were updating
16 this Committee on the results of the SIS,
17 the system impact study?

18 A. Yes, I was informing the Committee that the
19 system impact study had been completed.

20 Q. Okay. And what did you learn from the --
21 well, let's think about this. This is a
22 protected document.

23 Can you tell us what you learned from
24 this study? Anything the Committee ought to

1 know?

2 A. I can generally offer what we learned from
3 the study. It confirmed what the
4 feasibility study conclusions were, that
5 there were no voltage or short-circuit
6 problems created by interconnecting our
7 project. And it confirmed that there were
8 minor thermal impacts due to our
9 interconnection, which were identified by
10 the ISO study. And costs were associated
11 for both correcting those -- correcting
12 those problems through upgrade to the loop
13 line, and also an estimate for
14 interconnecting our project to the East Side
15 substation.

16 Q. Okay. So, one of them you said -- we talked
17 about those three segments to the Coos
18 County Loop. And one of the things it did
19 is talk about upgrades to those segments?

20 A. Correct.

21 Q. All right. Would you please look at tab --
22 Exhibit 5 to CPD's exhibits.

23 A. Yes.

24 Q. Okay. Now --

1 CHAIRMAN BURACK: Would you
2 give us just all a moment, please, to find that.

3 MR. RODIER: Yep.

4 CHAIRMAN BURACK: Again,
5 you're in Clean Power Development's Exhibit 5?

6 MR. RODIER: Five.

7 CHAIRMAN BURACK: Thank you.

8 BY MR. RODIER:

9 Q. Now, Mr. Kusche, have you seen this memo?

10 A. I have.

11 Q. All right. There's no problem with talking
12 about this memo; right?

13 A. Well, I'm not sure how this memo was
14 obtained. But it is a memo to the
15 Participants Committee at ISO New England,
16 of which I am not a member. So I don't know
17 about the confidentiality of this memo.

18 That was --

19 Q. Well, we obtained it off the ISO Web site.

20 A. Okay.

21 Q. Can I -- there was just a meeting up at
22 Mount Washington, what, last week? And they
23 were talking about this stuff; is that
24 right?

1 A. I'm not aware of that.

2 Q. Okay. Would you take a look at the second
3 page. And let me ask you. What's the
4 purpose of this? This says it's to notify
5 the Participants Committee of the actions
6 taken at its August 16th and 17th, 2010
7 meeting, okay. The actions taken by the
8 Reliability Committee, okay. You agree?

9 A. That's what it says.

10 Q. Okay. Second page. Would you look at
11 Item NU10-T16, and would you read that.

12 A. I'm not finding that.

13 Q. Okay. I'm sorry. It's under Agenda
14 Item 14.

15 A. Oh, that's Page 3?

16 Q. Is it?

17 CHAIRMAN BURACK: I'm sorry.

18 Did you say Agenda Item 13 or Agenda Item 14?

19 MR. RODIER: I misspoke. It's
20 Agenda Item 14. It's the third page.

21 BY MR. RODIER:

22 Q. And under Agenda Item 14, Page 3 of 3,
23 there's three items: NU-10-T16, NU-10-T17,
24 and NU-10-T18. Do you see those,

1 Mr. Kusche?

2 A. Yes.

3 Q. Could you -- you can -- let me just
4 paraphrase here.

5 So, T16 discusses the upgrade of the
6 27-mile overhead 115 kV line from Berlin to
7 Whitefield; is that correct?

8 A. It seems to be correct.

9 Q. And 17 is the 18-mile overhead 115 kV line
10 from Lost Nation to Northumberland.

11 A. Correct.

12 Q. Lost Nation-Northumberland to Whitefield.

13 A. Whitefield, right.

14 Q. Okay. And the third one is the upgrade of
15 the 12-1/2-mile 115 kV line from Lost
16 Nation-Northumberland to Paris-Drummer.

17 MR. RODIER: Should that be
18 Dummer?

19 BY MR. RODIER:

20 Q. It should be Dummer. I guess they made a
21 mistake here.

22 So, let me ask you: Does this then say
23 if these projects are undertaken -- and I'm
24 looking at the second to the last paragraph.

1 Is this memo saying that, if these upgrades
2 are undertaken, there would be no
3 significant adverse effect on -- of the
4 Laidlaw plant -- of the Laidlaw Berlin
5 BioPower Plant on these transmission lines?

6 A. It does. I think that's contained in the
7 sentence, "It is recommended that the
8 project" -- meaning the Laidlaw Berlin
9 BioPower project -- "would not have a
10 significant adverse effect on the
11 reliability or operating characteristics of
12 the transmission facilities of Northeast
13 Utilities System Company, the transmission
14 facilities of another transmission owner, or
15 the system of a market participant."

16 Q. Okay. And I'm saying that assumes that
17 these upgrades would be undertaken; isn't
18 that correct?

19 A. That's correct.

20 Q. Okay. Tell us about the -- so it's saying
21 there's some upgrades to the transmission
22 lines. So we're not talking about
23 transformers here or short leads into
24 interconnection transmission system. We're

1 talk about the lines themselves; is that
2 correct?

3 A. We don't yet know what they are talking
4 about as specific upgrades. That has not
5 been shared with us yet.

6 Q. Oh. So, here we are then. May be
7 substantial upgrades to the Coos County loop
8 that are mandated, and we don't know much
9 about it.

10 A. We do know the scale and magnitude of the
11 upgrades that are required, because we have
12 received -- and it's contained in the
13 confidential version of the system impact
14 study -- cost estimates to perform these
15 upgrades.

16 Q. Are we talking about the upgrades to the
17 local interconnection of the transformer?

18 A. No. We're talking about the --

19 Q. We're talking upgrades to the lines?

20 A. There are two distinct components of the
21 cost estimates provided by ISO for
22 interconnecting our project. One of them
23 are the upgrades required to the Public
24 Service New Hampshire transmission line

1 itself --

2 Q. Right.

3 A. -- the other are the -- well, I should say
4 new equipment that's required to
5 interconnect from our project to their
6 substation.

7 Q. I'm not focusing on what it costs to
8 interconnect. I was talking about the cost
9 of these upgrades we're talking about here.
10 Do you know that?

11 A. I do know that. That was presented both in
12 the feasibility study report and in the
13 system impact study report.

14 Q. Can you show me where the cost of upgrading
15 the transmission lines -- I mean, are you
16 saying that they knew in the feasibility
17 part that they would have to upgrade these
18 transmission lines? I thought that was the
19 purpose of the system impact study.

20 A. I don't know what they know or knew. I only
21 know what they presented in their studies.
22 And, yes, they presented estimates for
23 the -- correcting the thermal deficiencies
24 in the loop line. And they modified those

1 estimates in the system impact study.

2 Q. So you think at this point that you know
3 what the cost of the -- the narrow
4 interconnection cost is going to be, and you
5 also know the cost of upgrading like a
6 27-mile segment of 115 kV transmission line?

7 A. We've been provided estimates by ISO New
8 England for what those costs would be. And
9 we've been -- it's been articulated to us
10 that we can rely upon those estimates. They
11 are within plus or minus 20 percent.

12 Q. Did Dave Forest give those to you?

13 A. No. They were presented in the studies
14 themselves.

15 Q. Okay. So you're saying we can go to the
16 feasibility study and find those costs?

17 A. Yes.

18 Q. Can you tell us and show me where in
19 Appendix P --

20 CHAIRMAN BURACK: We're going
21 to Appendix Q.

22 BY MR. RODIER:

23 Q. Appendix Q in Exhibit Applicant 1.

24 A. This is in the feasibility study?

1 Q. Yeah. I'm talking about the application,
2 Appendix Q.

3 A. Would you like me to direct you to the
4 specific page and section?

5 Q. Is it on Page 7.1?

6 A. Yes, it is.

7 Q. So it's your view that this memorandum, CPD
8 Exhibit 5, is talking about upgrading a
9 127-mile line, that Page 7.1 lists the --
10 those are the upgrade costs that it's
11 referring to?

12 A. No.

13 Q. Oh. Sorry. Go ahead. What did I say
14 wrong?

15 A. The reliability committee was referencing
16 the system impact study. This document
17 you're referring to here is the feasibility
18 study.

19 Q. Correct. I want you to tell me where the
20 costs of the upgrades are for the 27-mile
21 line. That's what I want.

22 A. Well, they were originally contained in the
23 feasibility study --

24 Q. Show me where.

1 A. -- on Page 7.1.

2 Q. Okay. That's what I was asking you. So now
3 they are on 7.1.

4 A. No. You were asking me if what was
5 contained in your Exhibit 5 was related to
6 the cost estimates for our project to
7 upgrade the line.

8 The system impact study was the second,
9 more refined --

10 Q. Right.

11 A. -- look at what those costs would be. And,
12 in fact, where the thermal impacts occurred
13 was a minor change in the system impact
14 study. So the reliability committee looked
15 at the system impact study, not the
16 feasibility study.

17 Q. So, what's the bottom -- I just want the
18 record to be clear. Where's the bottom line
19 on what it's going to cost Laidlaw to
20 upgrade the three segments of the Coos
21 County loop? That's all I'm looking for.

22 A. And I'd be very happy to give you that
23 figure, in fact, that exact figure, except I
24 believe it's confidential information.

1 Q. Okay. It's confidential information. But
2 can you narrow it down for me?

3 A. Well, I would ask my attorney to see how far
4 I can go in narrowing it down without --

5 Q. Well, I'm asking for --

6 A. -- violating confidentiality.

7 Q. If I have to go back and go to executive
8 session here, confidential session, I just
9 want to have a heads-up as to where I'm
10 going to see it in the SIS.

11 MR. NEEDLEMAN: I suggest you
12 not provide the number, just provide the exact
13 exhibit number and the exact page that the number
14 is on.

15 BY MR. RODIER:

16 Q. That's all I'm asking you.

17 A. Okay. I'd be happy to do that. That is
18 included in my supplemental testimony,
19 Exhibit 56.

20 Q. Oh.

21 A. And it is in Section --

22 Q. I don't have it.

23 A. -- VIII. Section VIII, Page 8.1.

24 MR. NEEDLEMAN: What

1 confidential exhibit are you referring to?

2 MR. KUSCHE: This is Exhibit
3 56 -- wait. Yeah, 56.

4 MR. IACOPINO: Exhibit 56 is
5 the system impact study dated May 21, 2010.

6 MR. NEEDLEMAN: What page on
7 that document are you referring to?

8 MR. KUSCHE: That would be
9 Page 8-1.

10 MR. RODIER: Excuse me.

11 (Discussion off the record between
12 Atty. Rodier and client.)

13 BY MR. RODIER:

14 Q. Let me get a grip here, if I can. We do
15 have on -- I think you said Page 8.1 of the
16 SIS, Exhibit 56, I guess it is. We do have
17 a cost estimate for system upgrades.

18 And you are telling the Committee that
19 this is what the cost would be for upgrading
20 each of those segments of the Coos County
21 Loop?

22 A. That is what ISO New England, through their
23 system impact study, has told us.

24 Q. So, basically what you're saying, these are

1 the costs that you're planning on and these
2 are the costs the Commission should be aware
3 of -- Committee?

4 A. Correct.

5 Q. Okay. Fair enough.

6 MR. RODIER: I don't have that
7 much more, actually, Mr. Chairman. If you could
8 just hang on a second, I'd appreciate it.

9 CHAIRMAN BURACK: Sure.

10 BY MR. RODIER:

11 Q. Now, if this wasn't enough, we're now going
12 to talk about you were successful in the
13 forward capacity market auction; am I right?

14 A. We were successful in obtaining a -- in
15 obtaining a capacity obligation for the
16 capacity year 2013, 2014.

17 Q. For 58.7 megawatts.

18 A. It was either 58 megawatts or 58.7
19 megawatts.

20 Q. Okay. Let's just, for sake of discussion,
21 call it 58.7.

22 Now, what does that mean? You have the
23 context here of what we're talking about.

24 We're just trying to come to tell the

1 Committee what the situation is on the
2 transmission, which is a big issue in New
3 Hampshire; right? Transmission.

4 A. Correct.

5 Q. By the way, the special blue ribbon
6 transmission committee, I guess, is meeting
7 next week, on August 29th, to announce the
8 results; is that right?

9 A. I never heard it referred to as "the Blue
10 Ribbon Commission."

11 Q. No, that's what I call it.

12 A. I believe there's a North Country
13 transmission study. Mr. Gabler is a member
14 of that --

15 Q. Yeah. Okay.

16 A. -- as is my colleague, Mr. Bravakis.

17 Q. So they're going to announce the results
18 next week of the study; is that right?

19 A. I am not a member of that committee, so I
20 will take you at your word on that.

21 Q. Well, I'm just asking if you knew. If you
22 don't know, that's fine.

23 A. No, I don't know.

24 Q. Okay. All right. What was the purpose of

1 that study, do you think? I'm not going to
2 ask you because -- I take that question
3 back.

4 So now I'm asking, Mr. Kusche, given
5 everything we've discussed here -- we've
6 talked about feasibility study, SIS; you've
7 had your first two studies done. By the
8 way, is there a third study, or what's next?

9 A. Well, according to the market rules, there
10 are one to two other steps in the process.
11 And we have elected to bypass what's called
12 the facilities study and enter into the next
13 step, which is the actual interconnection
14 agreement.

15 Q. Okay. All right. So, the IA. Have you
16 entered into that yet?

17 A. We have received -- recently received a
18 draft of the interconnection agreement, yes.

19 Q. Okay. And that's another big slug of money
20 that you have to outlay to get that thing
21 taken care of; right?

22 A. There are certain financial payments
23 associated with getting that worked on.

24 Q. Sure. And does the payment go to PSNH or to

1 ISO?

2 A. I'm sorry. Does the what?

3 Q. Does the payment go to PSNH or ISO New
4 England?

5 A. We make the payments to ISO New England.

6 Q. PSNH does the study.

7 A. PSNH is one of the parties involved in doing
8 the study.

9 Q. They do it under the supervision of ISO New
10 England.

11 A. Yes. The interconnection agreement is
12 actually -- in a way, it's a three-way
13 agreement between ISO New England, the
14 transmission company and the generator --

15 Q. Okay.

16 A. -- or interconnector, in this case.

17 Q. So, having said all that, now we've got that
18 overview as well. The interconnection
19 agreement is out there and you have to do
20 that.

21 All I'm trying to get at here, I want
22 you to overlay -- you've had some success,
23 evidently, in -- with a successful bid into
24 the forward capacity market. So you're in

1 for 58.7 megawatts for the years 2013
2 through 2014.

3 What effect is that going to have on
4 the north -- on the Coos County Loop, on
5 this picture that we've been talking about
6 here?

7 A. You'd have to rephrase the question.

8 Q. Well, okay. Is -- what is going to be the
9 effect here, taking everything into account
10 that we have discussed -- the MIS, the
11 economic dispatch, you getting in the
12 forward capacity market? How's that going
13 to affect Granite Reliable?

14 A. I couldn't possibly answer that question.

15 Q. Is it going to affect, do you think -- do
16 you know whether it's going to affect the
17 dispatch for CPD or Granite Reliable?

18 A. Our participation in getting a capacity
19 obligation for those years?

20 Q. Yeah. Going into service under MIS and then
21 having a 58.7-megawatt capacity obligation,
22 what's that -- what could potentially be the
23 effect, good or bad, on the other people
24 that are going to utilize the Coos County

1 Loop?

2 A. Well, I don't -- I really don't understand
3 your question. But perhaps, let me try to
4 assume where I think you're going or what --
5 how you'd like me to respond.

6 We have a capacity obligation for 58,
7 approximate, megawatts for the capacity year
8 beginning June 1, 2013, running for 12
9 months, through the end of May 2014.

10 Under that, we have to provide a
11 certain amount of financial assurances,
12 beginning when we were provided or
13 successful in the bid and at stages through
14 to our commercial operation. And we will be
15 doing that. Once we're operational, those
16 deposit monies are returned to us, and we
17 are eligible for obtaining capacity payments
18 for the capacity that we have an obligation
19 to serve.

20 Q. Right.

21 A. In the case of economic dispatch, under the
22 MIS situation, if -- and excuse me for
23 getting into more detail than I may need to.
24 That capacity is governed under what they

1 now call UCAP. And to keep your 58
2 megawatts of capacity, that level, you are
3 judged on if your project is available and
4 delivering that capacity at certain times
5 when the ISO system needs you and depends
6 upon that plant being available. And if in
7 fact you're not, for reasons that are not
8 inexcusable, then your capacity rate will be
9 lowered.

10 In the case of MIS, if there's economic
11 dispatch and, for example, our plant would
12 be ordered down from 60 megawatts to 40
13 megawatts, that is an instance that does not
14 penalize the project for its UCAP capacity.
15 In that case, we would not be penalized and
16 our capacity would not be adjusted downward.

17 Now, that may have answered a lot more
18 than you wanted, but --

19 Q. It was interesting.

20 A. -- I'm trying.

21 Q. Well, let me tell you what we're really
22 trying to get at here. I'm trying to figure
23 out if your project going online, on the
24 Coos County Loop, and you got this

1 58.7-megawatt obligation, is that going to
2 detrimentally impact Granite Reliable, CPD,
3 Lost Nation, Smith Hydro, Brookfield Hydro,
4 Whitefield? That's what we're trying to get
5 at here. I think that's where the interest
6 of what the Committee may be.

7 A. I cannot connect our capacity obligation
8 with ISO's orders for those projects to run
9 under dispatch. I'm missing the connection.

10 Q. Oh, I was more general. I was talking about
11 your plant's existence and operation. I'm
12 trying to ask you: What can you tell us, if
13 anything -- and if you can't tell us
14 anything, that's fine. But what potential
15 impacts could it have on CPD, Granite
16 Reliable, Smith Hydro, Brookfield Hydro,
17 Lost Nation, and DG Whitefield biomass
18 plants?

19 A. Well, again, not totally understanding the
20 question, I'll attempt to answer.

21 When generation on a transmission line
22 exceeds the capacity of that line to carry
23 all of it, to export all of that power,
24 let's say, whether it's a situation of low

1 load or excess generation, then, project --
2 the loop line, such as -- or lines such as
3 our loop line, which there are generators
4 which have connected under MIS standards,
5 then the ISO will adjust the generation on
6 that line down to the point where the line
7 is stable. It will make that adjustment
8 based upon what they call economic dispatch.

9 Q. Oh.

10 A. Economic dispatch means that every project,
11 every generator, has to bid in the day-ahead
12 market. And they do that the day ahead.
13 The bids are due by 4 p.m. the day preceding
14 the operating day.

15 Most of the generation on the Coos Loop
16 today is hydroelectric. Run-of-river
17 hydroelectric, to be distinct -- which is
18 distinct from pump storage, run-of-river
19 hydroelectric -- which all of the projects
20 on the Androscoggin River and connected to
21 this loop are run-of-river hydro projects,
22 whether they're owned by Public Service of
23 New Hampshire or private companies -- are
24 allowed to self-schedule in the day-ahead

1 market -- meaning, their bids are zero.

2 I have -- in my experience, I have
3 never known for a project which is
4 self-scheduled, bid in at zero, to be
5 dispatched under any ISO, whether it's an
6 opt-for event or anything else.

7 So, moving forward. Let's assume --
8 and I believe there is one other generator
9 on that loop now. And I'm not sure of this,
10 but I believe that the Whitefield biomass
11 plant is connected on the loop -- on the
12 loop side of the --

13 Q. I did mention Whitefield.

14 A. Pardon?

15 Q. I did mention Whitefield.

16 A. Okay.

17 Q. But you know what? I'm really interested --
18 and let's narrow this down. Let's leave the
19 hydros out of it, because that was the --
20 one of the revisions that you made upfront.
21 Now I understand that.

22 I want to -- I really want to get at
23 the LBB Applicant plant comes online, 60
24 megawatts or whatever. What is this going

1 to do -- let's -- can we just keep it to
2 Granite Reliable and stay away from CPD for
3 the moment? Can you tell me? Let's
4 assume -- that's not right. I got to strike
5 that, because CPD is ahead of you in the
6 transmission queue.

7 Let's assume that CPD -- I got a
8 hypothetical. CPD goes into service. So
9 you get Granite Reliable at 99 megawatts and
10 you get CPD at 29 megawatts. You have that
11 in mind?

12 A. That's in my mind.

13 Q. Okay. Now you come in at 60-something.
14 Okay? So the connecting capacity is really
15 substantially in excess of the electricity
16 capability of that loop; is it not?

17 A. I'll take you at your word for that.

18 Q. First time you've heard of somebody saying
19 there's not enough for all three plants? Is
20 that what you're saying?

21 A. I have heard that statement, but I haven't
22 seen the technical data to support that.

23 Q. All right. Fair enough. So let's just say
24 Granite Reliable is in at 99, CPD ahead of

1 you in the queue is at 29. Now you come in.

2 What is that going to do to these other
3 plants under the circumstances here that
4 we're talking about? Can you tell us if
5 it's going to --

6 A. No, I can't, because it's going to
7 completely depend upon the output of those
8 plants and the load on the line and lots of
9 other circumstances.

10 Q. Okay. You can't make a general statement.

11 A. Perhaps you can make a general statement and
12 ask if I agree or disagree.

13 Q. Well, is Granite Reliable going to be
14 thrilled with you coming into service --

15 A. Judging from --

16 Q. -- on the same transmission line?

17 A. -- from the last two years, I would say no.

18 Q. Really, I --

19 A. Excuse me. Did you say Granite Reliable?

20 Q. Yeah.

21 A. Oh, our relationship with Granite Reliable,
22 as far as I'm concerned, is fine. I
23 misinterpreted. I thought you said Clean
24 Power Development.

1 Q. No. Well, okay. By the way, Granite
2 Reliable has to resag all these conductors
3 so that they can get their power to market;
4 isn't that correct?

5 A. I have not read their system impact study.
6 I understand that they are responsible for
7 some upgrades to get their 99 megawatts onto
8 the line.

9 Q. Right. So they're going to be upgrading the
10 line. They're going to be resagging it.
11 And evidently there's some further upgrades.
12 They're further down the pecking order here.
13 So there may be some further upgrades. And
14 is the answer to that "Yes"?

15 A. My understanding is that they will be doing
16 upgrades to the line. They'll be spending a
17 significant amount of money to interconnect
18 to the line.

19 Q. Right.

20 A. And, yes, we will be responsible for certain
21 upgrades for our connection.

22 MR. RODIER: Your Honor -- Mr.
23 Chairman, I think, really, under all the
24 circumstances, I can't go any further with this

1 witness. I guess -- I think we've got what we
2 need to do to get -- at least get a good start on
3 this issue. So I'm at a good stopping point
4 here.

5 CHAIRMAN BURACK: Great.
6 Thank you very much.

7 Counsel for the public, how
8 much questioning do you think you have for this
9 witness?

10 MR. ROTH: Ten or 15 minutes,
11 at the most.

12 CHAIRMAN BURACK: Let's see if
13 we can get through that. I'm looking at the
14 clock and thinking. It's right around 1:00.
15 Perhaps we would take lunch and then come back
16 and try to finish this witness up with the
17 Subcommittee with any additional questioning
18 there might be.

19 Counsel, please proceed.

20 MR. BROOKS: Thank you,
21 Mr. Chairman.

22 CROSS-EXAMINATION

23 BY MR. BROOKS:

24 Q. And I apologize if we've covered this. I'm

1 going to ask some low-level questions first,
2 just to kind of get the landscape there.

3 What is the existing -- how much
4 transmission can the existing infrastructure
5 handle?

6 A. Currently, there's approximately 70
7 megawatts of generation on the line and 70
8 megawatts of load. The best information
9 that I have seen is actually in testimony by
10 Mr. Gabler. And I'm happy to reference
11 that. It was provided in his original
12 testimony, which is -- I've got Exhibit -- I
13 believe it's Exhibit 2 of...

14 MS. VAUGHN: They're marked in
15 the tab.

16 MR. KUSCHE: Yeah.

17 CHAIRMAN BURACK: Are you
18 referring to CPD Exhibit 2?

19 THE WITNESS: Yes. Exhibit 2,
20 Page 8, Line 10, beginning of Line 10.

21 A. And I will quote: "The engineering analysis
22 included in the system impact study
23 completed by Siemens Energy for ISO New
24 England on April 24, 2009, regarding the

1 Granite Reliable Wind Project confirms that,
2 with minor upgrades, the Coos Loop will have
3 an available capacity of between 120 and 140
4 megawatts."

5 Q. So you agree with the number from
6 Mr. Gabler?

7 A. I'm only referencing that number. I don't
8 have any of my own information to confirm or
9 dispute it. But I will say that this -- if
10 quoted correctly, this did come from Siemens
11 Energy, who has been conducting most of the
12 interconnection studies for this loop line
13 for ISO New England. So my assumption is
14 that that's a legitimate and reliable
15 number.

16 Q. I think the next statement in this testimony
17 of Mr. Gabler is meant to say that when you
18 add up three of the big players -- which is
19 Granite Reliable, Clean Power and Laidlaw --
20 you're going to end up with a lot more
21 output than the line can handle.

22 A. Yes, that's correct. And to put a little
23 additional color on that, that's assuming --
24 and Granite Reliable Wind is, of course, a

1 wind project. And the installed capacity of
2 their -- all of their turbines will be 99
3 megawatts. I'm no expert on wind power, but
4 I do know that wind power has a capacity
5 factor of approximately 30 percent. That's
6 actually considered pretty good for a wind
7 project, especially a land-based, ridge-top
8 wind project.

9 So what that means is that there will
10 be rare, if any, circumstances when Granite
11 Reliable is actually producing and exporting
12 99 megawatts onto the line.

13 I do know that Granite Reliable also
14 was successful in participating in the
15 forward-capacity auction for 2014, and ISO
16 New England only allowed them 30 megawatts
17 of capacity.

18 So, to further answer that question in
19 a hypothetical for a moment, if I may, if
20 you assume that the Granite Reliable project
21 is operating and does build 99 megawatts of
22 capacity, and the Laidlaw Berlin BioPower
23 project is operating at 63 megawatts, our
24 assumption is that most of the time there

1 will be adequate capacity on the line for
2 those two projects.

3 If the Clean Power Development project
4 is added to that generation, there will be
5 more instances of time when there will be
6 economic dispatch on the loop. We have not
7 done -- I'm not aware of anybody who has
8 done any study to determine the actual
9 numbers.

10 Q. And ISO will go into the minimum
11 interconnection standards, MIS -- is that
12 right -- based on the output of the plants,
13 not based upon their capacity? So they
14 wouldn't add up the total capacity of
15 Granite Reliable, CPD, if it exists, and
16 Laidlaw to say, okay, we need to go into
17 MIS. They would look to how much power is
18 being generated to do that; is that right?

19 A. They will look at what's bid into the
20 day-ahead market.

21 Q. Presumably the bids relate to generation --

22 A. Yes, they do. And ISO, part of their very
23 complicated duty is to also predict load for
24 the following day, based upon very complex

1 algorithms of weather and other things.

2 Q. Okay. I'm going to have you define "load"
3 in a second. But before we leave that
4 topic, we did mention capacity factor.

5 Laidlaw has a capacity factor near your
6 actual capacity -- maximum capacity, because
7 you burn a resource that you know how much
8 you're going to have, basically. You have
9 some outages you have to account for. But
10 other than that, you know where your
11 resource is coming from --

12 A. Correct.

13 Q. -- as opposed to a wind farm. Unless the
14 wind's blowing and the turbines are spinning
15 at maximum efficiency, you don't know.

16 A. Correct.

17 Q. And that's why they're rated at around 33
18 megawatts for capacity.

19 A. Actually, I've been told by ISO that it was
20 30.

21 Q. Thirty megawatts. Okay.

22 MR. RODIER: Mr. Chairman, I'm
23 having a little trouble hearing the witness. If
24 he could just keep his voice up, I'd appreciate

1 it.

2 CHAIRMAN BURACK: Thank you.

3 BY MR. BROOKS:

4 Q. So, to summarize what you're saying, based
5 on those numbers -- and it's going to
6 fluctuate day to day, based on wind. But on
7 average, you would expect actual electrical
8 production from Granite Reliable to be
9 around 30 megawatts? You don't have to go
10 that far, but --

11 A. I don't know enough about their project to
12 answer that question.

13 Q. Okay. Can you define for me -- when you
14 talked about "load," what do you mean by
15 load? Do you mean the number of people that
16 ISO is predicting will need electricity the
17 next day?

18 A. Yes, on an hour-to-hour basis. ISO New
19 England attempts to predict that regionally
20 and also in smaller areas.

21 Q. So if ISO predicts -- let's say you have a
22 line that can handle 140 megawatts, but ISO
23 predicts that only 40 megawatts will be
24 needed the next day. Will they go into --

1 and let's say you have people bidding in 50
2 megawatts, even though the line could handle
3 140. Will that trigger MIS?

4 A. Let me be clear on what Mr. Gabler
5 represented here. He says that the Coos
6 Loop will have an available capacity of
7 between 120 and 140, with minor upgrades.
8 So, you know, there's -- I'm not sure of the
9 context because I haven't read the whole
10 study. That could mean that that's 120 to
11 140 megawatts of additional capacity on top
12 of the current load or capacity on the line.
13 I don't know. And so it's hard to know what
14 base we're starting from.

15 Q. Sir, I guess my question then may be more
16 simpler than that, and it may just not
17 reflect reality because of the way
18 electricity works.

19 But let's say you had a line that you
20 could squeeze a lot of electricity through,
21 but ISO predicts that you're not going to
22 need very much the next day. So, even if
23 the combined generation is well within the
24 line's capability to handle it, but ISO

1 doesn't want it, does that ever trigger an
2 MIS situation?

3 A. I don't believe so.

4 Q. Okay. That's what I want to know. One
5 thing that you stated that I -- we didn't go
6 in detail, but I wanted it cleared up.

7 You talked about -- and maybe this was
8 in response to statements made at the
9 technical session about the effect on Smith
10 Hydro or the other hydro facilities, that
11 additional generation could have a negative
12 impact on them. And I think that Smith
13 Hydro was the example because PSNH owns
14 Smith Hydro.

15 I heard what you said today. It was
16 somewhat technical. Does that mean,
17 basically, that MIS situations are not going
18 to impact the hydro facilities because they
19 have some kind of preference?

20 A. They should not; and the reason being, even
21 on a hydro project owned by a utility still
22 has a FERC license -- the Federal Energy
23 Regulatory Commission license -- and under
24 the ISO rules, I don't believe there's a

1 distinction made on whether it's
2 utility-owned or privately owned. It's
3 still given the right to bid into the
4 day-ahead markets under what's called
5 self-scheduling, which is bidding zero,
6 essentially.

7 The reason for that is to recognize
8 that this is a renewable energy project, and
9 they don't want to just, you know, bring the
10 output down and just waste the water over
11 the dams.

12 So economic dispatch is always done on
13 a bid stack. Assuming that all the hydros
14 that are run-of-river are at zero, it's
15 extremely unlikely, if there's other
16 generation which is not self-scheduled on
17 that line, whether it's the Coos Loop or a
18 different line, those will be dispatched off
19 first. Anybody who bids above zero is going
20 to be dispatched down or off first before
21 they get to a hydro project.

22 So my answer to that would be, I would
23 think it would be very unlikely that any of
24 the existing hydro projects on the

1 Androscoggin River on this loop line would
2 ever be dispatched down under economic
3 dispatch, MIS.

4 Q. And that's because they are required to be
5 run-of-river facilities, so they don't --
6 for environmental reasons, sometimes,
7 they're made to let the water go over the
8 dam, no matter what.

9 A. They're not made to be run-of-river -- well,
10 they are through licensing. It's very rare
11 for any -- some of these projects are
12 allowed a certain amount of pond storage,
13 but very limited, generally. And because of
14 that factor, they are allowed to
15 self-schedule. And that is a benefit to
16 these hydro projects, that they're not
17 subject to economic dispatch normally.
18 Under MIS condition, they are, except their
19 bid of zero is going to prevent them
20 probably from being dispatched off.

21 MR. ROTH: Mr. Chairman, I
22 notice it's just about 1:00. Do you want me to
23 proceed with a few questions, or shall we break
24 for lunch?

1 CHAIRMAN BURACK: Why don't
2 you go ahead and let's see if we can get this
3 piece done, please. Let's hurry.

4 MR. ROTH: Okay.

5 CROSS-EXAMINATION

6 BY MR. ROTH:

7 Q. I first wanted to follow up on something you
8 said in response to one of Attorney Brooks'
9 questions.

10 You said that it's rare, if ever, that
11 Granite Reliable would run at its nameplate
12 capacity. And I understand you're not an
13 expert on wind power. But would you --
14 given that capacity factor is sort of, as we
15 heard here, related to sort of time and
16 conditions, isn't it possible that, in order
17 to get to a 35-percent capacity factor, in
18 fact, the wind farm is in fact running at
19 its -- at or near its nameplate capacity?

20 A. I'm sorry. Can you rephrase the question or
21 just repeat the question? I think I had a
22 little --

23 Q. Granite Reliable has, according to this
24 Committee's order of last summer, has a

1 35-percent capacity factor?

2 A. Okay.

3 Q. And it seems to me that there are days when
4 the wind doesn't blow at all, so it's
5 producing zero, and that there are other
6 days when the wind is whipping along and the
7 turbines are operating at full capacity. Do
8 you agree with that hypothesis?

9 A. Yes.

10 Q. So that, in fact, there are days when
11 Granite Reliable, or other wind projects --
12 because I'm sure there are others in the
13 queue -- will run at or near their nameplate
14 capacity.

15 A. That's correct.

16 Q. And I'm sure you're familiar that, with wind
17 projects, that the wind tends to blow at
18 night. Do you agree with that?

19 A. Generally, yes.

20 Q. And in the wintertime.

21 A. Yes.

22 Q. And that those projects are likely to be
23 producing their most electricity or, in
24 fact, operating near nameplate capacity

1 during nighttime in the winter. So it's not
2 really true to say that it's rare, if ever,
3 that they would operate at nameplate
4 capacity.

5 A. Okay. I guess I would rephrase it to say
6 that wind projects have -- they develop a
7 curve, which is, you know, time and output.
8 And the percentage of the time that they're
9 at, let's say the top 10 percent of their
10 output, is quite small.

11 So, yeah, that's -- I probably
12 shouldn't have used the word "rare."

13 Q. Okay. You said "rare, if ever."

14 A. Well, and I say "if ever" because, you know,
15 as with many projects, nameplate capacity
16 and maximum output capacity can be two very
17 different things. You can install 99
18 megawatts, but the most you'll ever get, if
19 everything's operating optimally, might be
20 something less than that.

21 And generally, with the amount of
22 turbines that they're going to have there,
23 there likely will be several out of service
24 at times. So that's the only qualification

1 I would put on that.

2 Q. Okay. I think they would probably find that
3 perhaps a debatable subject. But that's
4 another -- we won't go there.

5 Now switching gears a little bit here.
6 In your initial testimony at Exhibit 54, you
7 indicated that your responsibilities for the
8 project included budgeting and pro forma
9 development.

10 A. Yes, that's correct.

11 Q. And as I'm sure you're aware, there was a
12 confidential pro forma that was provided to
13 the parties and submitted as an exhibit.

14 A. Yes.

15 Q. Did you develop that?

16 A. I helped to develop that.

17 Q. Okay. Now, I also note that in response to
18 our -- one of our data requests, we asked --
19 we asked in one of our data requests if
20 sensitivity analyses had been done to
21 determine whether the project would be
22 feasible under various operating scenarios.
23 And the response was something like, we're
24 not going to do that because it's too

1 speculative. Do you recall that? Did you
2 participate in making that answer?

3 A. I don't recall that, but I'll -- I can
4 respond to it.

5 CHAIRMAN BURACK: I'm going to
6 ask you just to hold off here. I just had a
7 member of our Subcommittee disappear on me here,
8 and I didn't realize he was stepping out of the
9 room.

10 We're going to take -- and I
11 apologize to do this to you here. But let's take
12 a break now until 2:00, okay. Thank you.

13 (Whereupon the lunch break was taken at
14 1:05 p.m.)

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{SEC 2009-02} [DAY 4 A.M. SESSION] - August 26, 2010
LAILAW BERLIN BIOPOWER, LLC

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